



# Agenda

## Greenville City Council

February 10, 2011  
7:00 PM  
City Council Chambers  
200 West Fifth Street

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**I. Call Meeting To Order**

**II. Invocation - Mayor Dunn**

**III. Pledge of Allegiance**

**IV. Roll Call**

**V. Approval of Agenda**

**VI. Appointments**

1. Appointments to boards and commissions

**VII. Consent Agenda**

2. Minutes from the September 20, October 11, October 14, and November 8, 2010 City Council meetings
3. Resolution accepting dedication of rights-of-way and easements for Fire Tower Commercial Park, Phase 2
4. Contract for design of the Green Mill Run Greenway Phase II Extension
5. Memorandum of Understanding with East Carolina University relating to the Lucille W. Gorham Intergenerational Center
6. Resolution approving the extension of the lease agreement with the State of North Carolina for the first floor of the Lessie Bass Building located at 1100 Ward Street

7. Resolution approving the extension of the lease agreement with Lucille W. Gorham Intergenerational Community Center, Inc. for the second floor of the Lessie Bass Building located at 1100 Ward Street
8. Ordinance amending Greenville Utilities Commission's Water Capital Project Budget for the Tar River Available Water Supply Project
9. Ordinance amending the Sewer Capital Project Budget and a reimbursement resolution relating to Greenville Utilities Commission's Wastewater Treatment Plant Headworks Improvement Project
10. Multilingual welcome sign at Pitt-Greenville Airport
11. Ordinance granting an extension of the time granted to The Rupp Group, LLC, d/b/a/ The Buccaneer Transportation Service, to establish a bus franchise
12. Budget ordinance amendment #7 to the 2010-2011 City of Greenville budget (Ordinance No. 10-57)

## **VIII. New Business**

### **Public Hearings**

13. Ordinance revising Title 11, Chapter 1 - Vehicles for Hire section of the City Code
14. Resolution authorizing the sale of City-owned property located at 909 Douglas Avenue
15. Proposed Fiscal Year 2011-2012 Annual Action Plan
16. Resolution to close a portion of Pitt Street south of Fourteenth Street and north of the Carolina Coastal Railway

### **Public Comment Period**

- The Public Comment Period is a period reserved for comments by the public. Items that were the subject of a public hearing at this meeting shall not be discussed. A total of 30 minutes is allocated with each individual being allowed no more than 3 minutes. Individuals who registered with the City Clerk to speak will speak in the order registered until the allocated 30 minutes expires. If time remains after all persons who registered have spoken, individuals who did not register will have an opportunity to speak until the allocated 30 minutes expires.

### **Other Items of Business**

17. Resolution supporting the Pitt County Board of Health resolution for a comprehensive strategy to promote healthy eating and active living in Pitt County

18. Resolution adopting the Greenville Urban Area Bicycle and Pedestrian Master Plan
19. Contract to complete the environmental assessment for the Intermodal Transportation Center
20. Recommendation to approve the list of highway projects for inclusion in the Metropolitan Planning Organization's (MPO) transportation improvement project priority list
21. Acquisition of property for construction of a new road near the West Dudley Street railroad crossing
22. Consultant for redistricting project
23. Legislative initiatives for the 2011 Session of the North Carolina General Assembly
24. Auditor's management letter for fiscal year ended June 30, 2010
25. Additional One-Stop early voting site for 2011 municipal election

**IX. Comments from Mayor and City Council**

**X. City Manager's Report**

**XI. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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**Title of Item:** Appointments to boards and commissions

**Explanation:** City Council appointments or reappointments need to be made to the Affordable Housing Loan Committee, Community Appearance Commission, Historic Preservation Commission, Public Transportation and Parking Commission, and Recreation and Parks Commission.

**Fiscal Note:** No fiscal impact.

**Recommendation:** Make appointments or reappointments to the the Affordable Housing Loan Committee, Community Appearance Commission, Historic Preservation Commission, Public Transportation and Parking Commission, and Recreation and Parks Commission.

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[Appointments To Boards and Commissions City Council Meetings Agenda Deadline Material 138519](#)



## Appointments to Boards and Commissions

February 10, 2011

### Affordable Housing Loan Committee

**Council Liaison:** Council Member Kandie Smith

Name	District #	Current Term	Reappointment Status	Expiration Date
Alice Brewington	2	First term	Eligible	February 2011
R. J. Hemby	3	First term	Eligible	February 2011
Lovella Perkins	5	First term	Eligible	February 2011

### Community Appearance Commission

**Council Liaison:** Council Member Kandie Smith

Name	District #	Current Term	Reappointment Status	Expiration Date
LaRonda Hodges	3	Filling unexpired term	Moved out of state	April 2011

### Historic Preservation Commission

**Council Liaison:** Council Member Calvin Mercer

Name	District #	Current Term	Reappointment Status	Expiration Date
Henry Doskey	3	Filling unexpired term	Eligible	January 2011

### Public Transportation and Parking Commission

**Council Liaison:** Council Member Kandie Smith

Name	District #	Current Term	Reappointment Status	Expiration Date
Calvin Garris	1	Filling unexpired term	Eligible	January 2011
Nancy Ray	2	Filling unexpired term	Eligible	January 2011

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### Recreation and Parks Commission

**Council Liaison:** Council Member Marion Blackburn

<b>Name</b>	<b>District #</b>	<b>Current Term</b>	<b>Reappointment Status</b>	<b>Expiration Date</b>
Available Slot (Council Member Smith)	5	Filling unexpired term of deceased member	Eligible	May 2012

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## Applicants for Affordable Housing Loan Committee

Jackie Parker  
3709 Live Oak Lane  
Greenville, NC 27858

**Application Date:** 7/8/2010

**District #:** 5

**Home Phone:**

**Business Phone:**

**Email:** mrjparker@aol.com

## Applicants for Community Appearance Commission

Jeffrey Johnson  
2008 Pinecrest Drive  
Greenville, NC 27858

**Application Date:** 2/12/2009

**District #:** 4

**Home Phone:** (252) 355-0644  
**Business Phone:** (704) 968-1051  
**Email:** jsjkey@gmail.com

John Weitz  
1806 E. First Street, Apt. A1  
Greenville, NC 27858

**Application Date:** 9/13/2010

**District #:** 3

**Home Phone:** (404) 502-7228  
**Business Phone:** (252) 328-6579  
**Email:** jweitz@bellsouth.net

Wayne M. Whipple  
3102 Cleere Court  
Greenville, NC 27858

**Application Date:** 3/9/2009

**District #:** 4

**Home Phone:** (252) 321-0611  
**Business Phone:** (252) 327-9475  
**Email:** whipple\_w@yahoo.com

## Applicants for Historic Preservation Commission

John Weitz  
1806 E. First Street, Apt. A1  
Greenville, NC 27858

**Application Date:** 9/13/2010

**Home Phone:** (404) 502-7228

**Business Phone:** (252) 328-6579

**Email:** [jweitz@bellsouth.net](mailto:jweitz@bellsouth.net)

**District #:** 3

## Applicants for Public Transportation and Parking Commission

Richard Malloy Barnes  
208 South Elm Street, Apt. N  
Greenville, NC 27858

**Application Date:** 3/23/2009

**District #:** 3

**Home Phone:** (252) 752-5278

**Business Phone:**

**Email:** kiltedmile@aol.com

Charlie Edwards  
3170 Moseley Dr., #9  
Greenville, NC 27836

**Application Date:** 9/9/2010

**District #:** 3

**Home Phone:** (252) 752-6457

**Business Phone:** (252) 756-0072

**Email:** captaincusa@hotmail.com

## Applicants for Recreation and Parks Commission

Paul C. Anderson  
3704 Tucker Dr.  
Greenville, NC 27858

**District #:** 4

**Application Date:** 10/21/2008

**Home Phone:** (252) 752-6880  
**Business Phone:** (252) 695-1964  
**Email:** panderson007@suddenlink.net

Brian Cooper  
1149 Mulberry Lane, #34-G  
Greenville, NC 27858

**District #:** 5

**Application Date:** 5/1/2003

**Home Phone:** (252) 439-0651  
**Business Phone:** (252) 439-0651  
**Email:** brianevans\_99@yahoo.com

William Fleming  
3609 Oak Hills Drive  
Greenville, NC 27834

**District #:** 1

**Application Date:** 9/24/2010

**Home Phone:** (252) 756-8759  
**Business Phone:** (252) 531-1600  
**Email:** williamhfleming@yahoo.com

Joseph P. Flood  
1919 Sherwood Drive  
Greenville, NC 27858

**District #:** 4

**Application Date:** 2/10/2009

**Home Phone:** (252) 353-9915  
**Business Phone:** (252) 328-2745  
**Email:** floodj@ecu.edu

Carlton Floyd  
104 East Catawba Road  
Greenville, NC 27834

**District #:** 1

**Application Date:** 7/25/2008

**Home Phone:** (252) 757-3302  
**Business Phone:** (252) 258-1312  
**Email:** cfloydnc2004@yahoo.com

Nathan Frank  
4001 Lyme Court  
Greenville, NC 27834

**District #:** 5

**Application Date:** 7/2/2010

**Home Phone:** (252) 321-9730  
**Business Phone:** (615) 504-1933  
**Email:** ncfrank@embarqmail.com

Recreation and Parks Commission (continued)

Jeffrey Johnson  
2008 Pinecrest Drive  
Greenville, NC 27858

**Application Date:** 2/12/2009

**Home Phone:** (252) 355-0644  
**Business Phone:** (704) 968-1051

**District #:** 4

**Email:** jsjkey@gmail.com

Deb Jordan  
4321 Davencroft Village Drive  
Winterville, NC 28590

**Application Date:** 1/31/2011

**Home Phone:** (252) 367-1754  
**Business Phone:** (252) 737-2990

**District #:** 5

**Email:** jordand@ecu.edu

Aaron Lucier  
1516 Thayer Drive  
Winterville, NC 28590

**Application Date:** 9/7/2010

**Home Phone:** (252) 321-3910  
**Business Phone:** (252) 328-2758

**District #:** 5

**Email:** luciera@ecu.edu

Allison Moran-Wasklewicz  
3310 Cadenza Street  
Greenville, NC 27858

**Application Date:** 8/27/2009

**Home Phone:** (252) 227-4505  
**Business Phone:** (901) 647-1316

**District #:** 4

**Email:** awasklewicz@gmail.com

Al Muller  
212 Bristol Court  
Greenville, NC 27834

**Application Date:** 8/18/2009

**Home Phone:** (252) 756-4299  
**Business Phone:** (252) 916-5667

**District #:** 5

**Email:** mullera@ecu.edu

Knox Oakley  
3906 Bach Circle  
Greenville, NC 27858

**Application Date:** 1/31/2011

**Home Phone:** (252) 321-6970  
**Business Phone:** (252) 531-2457

**District #:** 4

**Email:** k.oakleyetridim.com



Recreation and Parks Commission (continued)

Richard S. Patterson  
107 Woodhaven Road  
Greenville, NC 27834

**District #:** 5

**Application Date:** 7/20/2010

**Home Phone:** (252) 916-6593

**Business Phone:** (252) 746-7018

**Email:** rspattersonsr33@gmail.com

L. H. Zincone  
1730 Beaumont Drive  
Greenville, NC 27858

**District #:** 4

**Application Date:** 8/15/2008

**Home Phone:** (252) 756-0071

**Business Phone:**

**Email:** bgrassnut@suddenlink.net



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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- Title of Item:** Minutes from the September 20, October 11, October 14, and November 8, 2010 City Council meetings
- Explanation:** Proposed minutes from City Council meetings held September 20, 2010; October 11, 2010; October 14, 2010 and November 8, 2010 are presented for review and approval.
- Fiscal Note:** There is no direct cost to the City.
- Recommendation:** Review and approve proposed minutes from City Council meetings held September 20, 2010; October 11, 2010; October 14, 2010 and November 8, 2010.
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- [Proposed\\_Minutes\\_of\\_the\\_September\\_20\\_2010\\_City\\_Council\\_Meeting\\_885327](#)
  - [Proposed\\_Minutes\\_of\\_the\\_October\\_11\\_2010\\_City\\_Council\\_Meeting\\_885450](#)
  - [Proposed\\_Minutes\\_of\\_the\\_October\\_14\\_2010\\_City\\_Council\\_Meeting\\_885451](#)
  - [Proposed\\_Minutes\\_of\\_the\\_November\\_8\\_2010\\_City\\_Council\\_Meeting\\_888143](#)
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PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, SEPTEMBER 20, 2010



A regular meeting of the Greenville City Council was held on Monday, September 20, 2010 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm. Council Member Kandie Smith gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; and Carol L. Barwick, City Clerk

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**APPROVAL OF THE AGENDA**

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Council Member Joyner moved to approve the agenda as presented. Council Member Blackburn seconded said motion, which passed by unanimous vote.

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**NEW BUSINESS**

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**PUBLIC HEARINGS**

**HORIZONS: GREENVILLE'S COMMUNITY PLAN 2009-2010 UPDATE**

Community Development Director Merrill Flood gave a brief synopsis of the history of the Horizons Plan and its evolution over time.

Planner Tom Wisemiller stated the plan is intended to be reviewed every five years. He summarized significant elements of the review process which began last year, and discussed changes within the community in the past five years. The Planning and Zoning



Commission, which is the lead agency for the update process, held a total of six public hearings of which four focused on the future land use plan map. Public turnout was good, with much debate and some disagreement, which was taken into consideration in drafting the final document. The final report, as currently presented to Council, was unanimously approved by the Planning and Zoning Commission and is essentially a five-year progress report which analyzes planning and population plans and recommends some changes to the future land use plan map and some text amendments to the future land use plan.

Mr. Bowers then introduced Lynn Tozer, Chairman of the Planning and Zoning Commission. Mr. Tozer stated he'd served on the Planning and Zoning Commission for eight years, the last two of which he'd served as chairman. The Commission is a diverse group of individuals from both the City and the County, appointed by the Council, and they serve with no compensation to make recommendation on issues which impact the City as a whole. They are a fact-finding group, which does an outstanding job of putting issues into proper context through robust debate, good public interaction and healthy discussion amongst the group. They are often criticized and seldom praised.

Mr. Tozer stated that Planning and Zoning supports the recommended changes for six of the eight areas identified by Mr. Wisemiller. Although not all the votes were unanimous, the Commission did vote unanimously to present the changes for Areas 1, 2, 4, 5, 6 and 7 to the City Council. He stated they do not support the proposed changes in Areas 3 and 8.

Mayor Dunn reviewed procedures typically followed for Public Hearings. Mayor Pro-Tem Kittrell moved to extend the time allowed to a person speaking on behalf of a group to five minutes. Council Member Joyner seconded the motion, which passed by unanimous vote following a general discussion by Council.

Mayor Dunn recommended that comments be accepted first on text amendments, followed by land use plan map issues, then any other matters on which someone wishes to speak. She then opened the public hearing for comment from anyone wishing to address proposed text amendments.

#### Vincent Bellis – 1205 E. Wright Road

Mr. Bellis stated he is a member of the Neighborhood Advisory Board, which was created by the Council to serve as a liaison between neighborhoods and the Council, and he was there on the Board's behalf to express their opposition to some of the proposed land use plan. He said the Board felt the proposals offered to the Council reflect the narrow interests of land owners and not the overall broader impact on the general public. Of the six areas for which Planning and Zoning supported proposed changes, the Neighborhood Advisory Board supports only the changes proposed in Area 1.



There being no one else who wished to address proposed text amendments, Mayor Dunn stated the Council would accept comment for or against proposed changes to the Future Land Use Plan Map (FLUPM), beginning with Area 1 (Hwy. 13/Dickinson Avenue Extension).

Mike Baldwin – No address given

Mr. Baldwin stated he represents the property owners who requested the proposed change, indicating he believed the process to have gone quite smoothly up to its present point. Using a map, he identified the area which property owners had requested be changed from OIMF (Office Institutional Multifamily) to C (Commercial), then pointed out additional area on the north side which was added by City staff. Mr. Baldwin suggested this would set a precedent, in his opinion, for having like uses on either side of a major corridor.

There being no one else who wished to address proposed FLUPM changes for Area 1, Mayor Dunn invited comment for or against proposed changes to the FLUPM for Area 2 (Hwy. 33/E. 10<sup>th</sup> Street).

Charles Fuller, Co-President of the River Hill Neighborhood Association

Mr. Fuller stated his group opposes proposed changes for numerous reasons, the most important of which is that the current plan was developed by a diverse group of citizens to provide for commercial office and residential growth. The area is a gateway corridor into the city and to change it would effectively turn it into a commercial corridor. There are already two cemeteries in the area that generate a tremendous volume of traffic, and there is limited ingress and egress for already existing commercial establishments. Existing infrastructure of the corridor is designed to support about 30,000 trips per day. Current traffic volume is about 19,000 trips per day, and an already planned shopping center will add about 10,000 trips per day, bringing this corridor close to its intended capacity. Mr. Fuller urged the Council to follow the Staff recommendation to deny the change.

Eric Restal – No address given

Mr. Restal said he would like to address the park planned for this area, which is currently hard to see from the road. He encouraged the Council to park and walk out into the proposed park land and envision something like Green Springs where citizens come for recreation and children come to play. Then imagine that area with Greenville Boulevard running adjacent to it.

Chris Taylor – 605 Kensington Drive

Mr. Taylor stated he has been a resident of Greenville since 2002 and is a former president of the Brook Valley Homeowner's Association, which represent 164 taxpayers and voters in that subdivision. He stated that they, and a large number of residents in surrounding



subdivisions are opposed to the proposed changes because increased commercial activity would result in increased traffic, thereby creating a major safety concern. Use of a nearby park would decrease due to limited accessibility. There is already vacant commercial property in the area and City Staff does not support the change. He urged the Council to vote against the change.

#### Rebecca Powers – Quail Hollow

Ms. Powers stated her neighborhood sent a letter to members of the City Council and many had responded, so she knew they were aware of neighborhood concerns. Residents of their area are concerned about Economic Development in Greenville, but there are vacant properties already zoned for commercial use that could meet the need. She urged the Council not to vote in favor of rezoning any more land surrounding their neighborhood to commercial property.

#### E. T. Vincent – Oakhurst Subdivision

Mr. Vincent stated his neighborhood is against any further rezoning in the Hwy. 33 East area. Over the past several years, it has become more commercialized, congested and dangerous. Rezoning changes the character and integrity of the neighborhood and is potentially detrimental to homeowners' property values. Mr. Vincent stated that was a high price to ask homeowners to pay so that others might benefit. He encouraged the Council to vote against proposed changes.

#### Tony Hamilton – 4185 Boyce Road (between Grimesland and Blackjack)

Mr. Hamilton stated before the new Lowes was built in this area, he used to go to Washington to do his shopping. He now does his shopping in Greenville and supports the proposed change.

#### Joyce McRoy – 4156 E. Tenth Street

Ms. McRoy stated she supports the proposed change. A majority of the area is already zoned commercial and her house is across the street from the site where the new Walmart will be located. She encouraged the Council to the proposed development of this area so that residents have somewhere to go without having to add to the excessive traffic in downtown Greenville.

#### Henry Moonschein – Lake Glenwood

Mr. Moonschein stated he is an officer in the Lake Glenwood Homeowner's Association. He and his neighbors live within the City's extra-territorial jurisdiction (ETJ) and as such, they have no direct representation on the Council nor do they get to vote on who is elected to the Council, yet the actions of the Council have a direct impact on their lives. The citizens who do get to vote on who is elected choose individuals to represent their interests and not those of the special interest groups. Mr. Moonschein stated that he believes some elected officials lose sight of this at times. He encouraged the Council to vote no to the proposed change and reminded them that democracy only works when elected officials listen to their citizens.



Michael Ertis – Member of Bayt Shalom

Mr. Ertis stated he believes the planned Walmart will be a terrible neighbor for a House of Worship and urged the Council to vote no to the proposed change.

Ryan Danell – Willow Run

Mr. Danell stated he and his wife, who is a Pastor at ECU, chose to live in that area of Greenville because they liked the feel of the neighborhood. It is already much noisier than when they first moved there and the proposed change will make it worse. He stated they will move if the proposed change is approved.

Blythe Tennent – Oakhurst Subdivision

Ms. Tennent stated the new Lowes in her area has already necessitated installation of blinds to block some of their light in the evenings and current traffic levels make her drive home from work take 25 minutes. If more business is added in the area, people will no longer be able to live there. She urged the Council to vote no on proposed changes.

Alan Rubenstein – 4661 E. Tenth Street

Mr. Rubenstein stated he hopes to remain in his present home until he dies. He said he feels that area is going commercial and at least the current location proposed for Walmart is better than the previous one.

Janet Thomas – No address given

Ms. Thomas stated she owned land in the affected area and urged the Council to support the proposed changes. She encouraged looking at the next four years and “growing smart.”

Perry Turner – Hwy. 33 East

Mr. Turner stated he has been working with the City and with Planning and Zoning for a number of months to make this change in the best interest of the City. He asked for the Council’s support of those efforts and their approval of proposed changes. He stated the area across from his property is already zoned commercial and asked what possible reason there could be for not rezoning the other side commercial as well, when doing so would make it more attractive to other people and would bring in jobs and increase the tax base.

Billy Battle – Lake Glenwood Subdivision

Mr. Battle stated he is a member of the Lake Glenwood Homeowner’s Association. He said he would like to digress to the previous year when they were told that the reason for approval of the 30 acre tract for the proposed Walmart was that it was in keeping with the comprehensive land use plan. He stated his neighborhood opposed the change then for a number of reasons, with one of their chief concerns being urban sprawl. They believed the change would adversely affect their quality of life due to increased traffic and the undesirable appearance and consequences of strip commercialization. The plan speaks to those two issues, stating that development is not to adversely impact transportation/traffic and opposing strip commercialization. Mr. Battle stated the professional staff of the City’s Planning and Zoning Department opposed the change of zoning in February. When that



change was proposed, one person spoke in favor, but five others spoke against it. Attendance at that meeting numbered 20-3 for those against versus those in favor.

Carol Williams – Resident of the City’s Extra Territorial Jurisdiction (ETJ)

Ms. Williams stated that she lives in the ETJ, but shops at Walmart. She urged the Council to vote against the proposed changes because she feels development in the area already is sufficient to support the need and she is concerned about the impact on the land and the river of run-off resulting from continued development.

Sherry Esias – River Hill

Ms. Esias stated she supports growth and development, but encourages the City to pursue smart growth. She encouraged filling in the vacant big box locations before promoting outward growth and furthering urban sprawl.

Marion Montgomery – 1407 N. Overlook Drive

Ms. Montgomery stated most of the points she would have made were made by others, but she urged the Council to deny the proposed changes and work to make the area truly bicycle and walker friendly.

Don Williams – River Hill

Mr. Williams stated he is speaking in opposition to proposed changes. He expressed concern that the property in question borders a park and a cemetery, and that any development in the area should protect those existing features. What exists there now is a quiet area where people can walk and pray together.

Chris Mansfield – No address given

Mr. Mansfield stated he was not representing any group, but he served with Mayor Pro-Tem Kittrell in development of the Comprehensive Plan. He stated that significant thought went into development of the initial plan. While revising the plan in reaction to something like major thoroughfare changes resulting from a Department of Transportation (DOT) decision may have value to commercial development, he doesn’t feel those types of changes have been presented in the current proposal.

Stephanie Jilcott – No address given

Ms. Jilcott stated she moved to Greenville about two years ago to work as an Assistant Professor with the Department of Public Health and would like to provide a little of the Public Health stance on this issue. Much is going on currently at the Federal level to make policy changes that will make communities more supportive of biking and walking because urban sprawl is associated with obesity and negative health outcomes. Students are becoming more and more health conscious and it is heartbreaking to see a park such as the one being discussed, which may not be utilized due to the impact of commercialization in the area.





Jim Hopf – Attorney speaking on behalf of a group

Mr. Hopf stated he believes the proposed change is in compliance with the spirit of the Comprehensive Plan. He stated those who have expressed opposition have cited a lack of need for additional services in the area, but stressed that Walmart, Food Lion and Sheetz would not have chosen to locate there without having done extensive demographic study to insure the area would sustain them. He emphasized that the request as proposed does not threaten existing park land, and the developers are prepared to work with the City to promote the park. He stated they have a letter from the Synagogue in the area in support of their proposal (copies provided to Council).

Don Edmondson – Resident of the City's Extra Territorial Jurisdiction

Mr. Edmondson stated his secretary had contacted other cities to inquire about those where parks were located adjacent to commercial development and whether there was any negative feedback as a result of that proximity. Typical zoning buffers insure that parks and commercial property exist as good neighbors. He cited Thomas Foreman Park and Guy Smith Park as examples of where parks and commercial worked well together. Currently proposed plan changes should benefit the City by reducing traffic on Greenville Boulevard, and the additional growth will enlarge the tax based and increase availability of jobs in the area.

Jule White – No address given

Mr. White stated he and his partners own land included in the request and, while they are not against parks, they do favor smart growth. He said they have been involved in many local building renovations and they envision a community where people can walk between their homes and parks and shopping. He encouraged the Council to support the proposed change.

Tommy Stoughton – No address given

Mr. Stoughton stated he is also one of the property owners and that he has lived in this area all his life. He works in real estate and property management, and feels that if Walmart – the world's largest retailer - is interested in locating in this area, that says something about the potential of the area. Growth is already occurring in that area, and he encouraged the Council's support.

Ann Turner – No address given

Ms. Turner stated she owns property in the area across from the Walmart site. She encouraged the Council to support the request.

Mike Baldwin – No address given

Mr. Baldwin, who indicated he represents the owners of the property included in the request, stated there are no environmental issues on the property included in the proposal, but there are some concerns on the remainder of the tract they own. They plan to establish conservation easements and use for open space.

David Vaughn – No address given

Mr. Vaughn stated he is an advocate of parks and has worked with Gary Fenton on many occasions. He said he has thoroughly reviewed the Comprehensive Plan and has worked on several playgrounds. He stated he sees nothing in the proposed request which would negatively impact area parks, and he does not feel commercial zoning would have an adverse effect. He encouraged the Council to support the request.

Irene Hamrick – No address given

Ms. Hamrick stated she is concerned with blight downtown. There are many empty buildings along Dickinson Avenue and as growth expands outward, the problem will worsen. More vacant property will result in increased crime. She feels the City would be wise to fill existing vacancies before it approves paving over its woodlands. She encouraged the Council to deny the request.

Anthony Hall – River Hill

Mr. Hall stated he opposes the proposed change. He said Council has heard from land rushers who want to capitalize on potential changes, with no concern for the impact on the people who actually live in the area. That impact will be far greater than the positive impact for these few.

There being no one else who wished to address proposed FLUPM changes for Area 2, Mayor Dunn called for a brief recess at 8:11 pm.

At 8:17 pm, Mayor Dunn reconvened the meeting and invited comment for or against proposed changes to the FLUPM for Area 4 (SE Greenville Blvd/14<sup>th</sup> Street).

Randy Collier – Brook Valley West

Mr. Collier stated he represents the Homeowner's Association Board of Directors for Brook Valley West and they are concerned about a currently vacant corner parcel in the proposed area. He stated they do not want that parcel changed from residential to commercial because of existing traffic congestion in the area. He respectfully requested Council make no change to existing land use in that area.

Jim Ward – Ward Holdings, LLC

Mr. Ward stated the other three corners of the intersection referred to by Mr. Collier are already zoned commercial, but he wanted to suggest a slightly different approach. His company consists of himself, his wife and their three children. They have invested their lives and finances in this community and own property in every district in the City. It is important to them that Greenville thrives on every front. He reiterated that the intersection in question has commercial characteristics in place on three fronts and suggested that a transition in the neighborhood from single family to commercial could be done by incorporating some rental homes. He asked that Council consider approval of the recommendations by Planning and Zoning, adding that he had personally served on that board in the past and he knows how much careful thought and consideration its members put into each of their recommendations.

Scott Hucks – Eastwood Neighborhood Association Vice-President

Mr. Hucks stated he personally supports neither side in this issue, but the Association met recently to discuss the proposed change and its members were evenly divided on the issue. Concerns raised included added traffic congestion, safety for bike and pedestrian traffic and environmental concerns. Neighbors who support the proposed change were impressed by Mr. Ward's attendance at their meetings and the apparent genuine concern he has for the area. The Association's conclusion was to ask the Council to look inside themselves and determine the best use for this land.

John Hart – Eastwood

Mr. Hart stated he has lived in Eastwood for 21 years and is opposed to the proposed change for a number of reasons. He cited a March editorial in The Daily Reflector which recorded a divided vote by Planning and Zoning on the recommended change, and expressed the appropriateness of the City following criteria established in the Land Use Plan. Mr. Ward, who is a commercial developer, has mentioned prior involvement with the Planning and Zoning Board and has been attending Eastwood's Association meetings. Mr. Hart said these were brilliant moves on Mr. Ward's part because having been in the military, he can appreciate the logic of knowing one's opponent, but while Mr. Ward was present at their Association meetings, he was purposely vague in discussing what they may be trying to recruit into the area. He encouraged the Council to remember that this land should never be considered for commercial development unless the land use plan has changed.

John Tucker – 3029 E. 14<sup>th</sup> Street

Mr. Tucker stated he lives at the opposite end of the street, but drives that stretch of road to and from work. He said he feels making the proposed change to provide for additional commercial development will be making an intersection which is already extremely dangerous even worse. He implored that Council not to approve the change, but suggested since the City already owns property adjacent to Mr. Ward's property, perhaps it could purchase Mr. Ward's property. He regrets there are already 3 corners of that intersection zoned as commercial, and stated that doing so was a mistake that should not be repeated.

James M. Kenyon, MD – Eastwood

Mr. Kenyon stated he strongly opposes the proposed change. He feels the request is incompatible because there are no change conditions in the neighborhood other than Mr. Ward's prior attempts. Change would cause undue negative impact on traffic and the proximity of the property to the park would be incompatible with Little League and other sports. There is no avoiding the obligation of the City Council to provide a safe environment for its citizens of all ages. He stated he can already attest to how hazardous it is to enter athletic facilities in the area because of traffic. The proposed strip mall would only make this worse. Children would be exposed to dense ozone emissions, for which he is a recognized expert. It would be reasonable to anticipate increased incidents of asthma and other respiratory difficulties, and there is potential for stunted growth. He cited



additional concern about the potential negative impact on property values and increased crime in the area, and encouraged the Council to vote no.

Scott Schnieder – Brook Valley East

Mr. Schnieder stated he opposes the change, not because it will impact his life in any way, but on principle. He stated the proposal was presented to Planning and Zoning, who recommended it be denied, and he feels it is now being presented to Council as a means of circumventing the process. He stated he felt it was wrong for Planning and Zoning or the Council to allow themselves to be bullied by economic interests.

There being no one else who wished to address proposed FLUPM changes for Area 4, Mayor Dunn invited comment for or against proposed changes to the FLUPM for Area 5 (Old Pactolus Rd) beginning at 8:39 pm.

Jim Hopf – No address given

Mr. Hopf stated he was speaking to represent the property owner and lessee. He asked for the Council's support of proposed changes, which he described as consistent with the focus area and the City's goal to discourage residential growth in the area due to its flooding potential. The proposed change will allow opportunity for reasonable use of this property through low intensity outdoor recreation. Mr. Hopf stated objections had been raised based on unruly behavior on the land, but stated the claim was baseless and without fact. With regard to environmental concerns, the property has been evaluated by a hydrologist and no issues of concern were revealed.

John Connelly – No address given

Mr. Connelly stated he is the manager of the farm next door to the property in question. They have spent considerable time, effort and money to establish something that Paul Pierce, who owned the property until his death last year, was passionate about. He wanted the land to be a haven for wildlife. Mr. Connelly stated if he separates his emotions from the issue, extension of the existing commercial area makes some sense from a planning standpoint, but if you take a literal look at what is actually there, you will find there are already several vacant commercial properties, businesses which have failed. Those businesses were not able to sustain operations in the area and it doesn't make sense to extend the commercial area even more if what is there is not successful. He feels this extension is to directly benefit Mr. Hopf and his son, who hold great influence in Greenville.

Sue Holland – No address given

Ms. Holland stated her farm also adjoins this property and she feels the proposed change would not be consistent with the land use plan. She said she would agree with Mr. Connelly that the change is being presented on Mr. Hopf's behalf. The North Carolina Wildlife Commission has invested almost \$1 million in wild turkey conservation efforts in that area and it would be a shame to see that wasted. There are bald eagles on the property, as well as a primary nesting site for Eastern box squirrels, which are a rare species. In addition, bob white quail, wood ducks and geese can be found on the property. An influx of people resulting from commercial development will drive animals from their natural habitat by



disrupting their food supply and disturbing their nesting sites. To insure the continued presence of these species in the Greenville/Pitt County area, the Council should vote against the proposed change. The activities and events proposed for the property if this change is approved will involve loud speakers and large volumes of people. There will be noise and littering, along with a significant increase of traffic. She asked that any elected official who has any personal involvement with Mr. Hopf, or who has any involvement in commercial real estate, not be allowed to vote on this issue.

Donna Hemby – No address given

Ms. Hemby stated she was representing the 100 families who live in SanTree Mobile Home Park, who strongly oppose the wake board park. Rails are already in place and the noise level from their “rail jams” is unbearable. Many of these residents have lived in the park for 30 years, since it was first built to give low-income families a place to call home. Ms. Hemby stated the park had already lost two potential new residents because when they saw the rails for the proposed development, they chose to locate elsewhere. She stated that she and the residents of the park sincerely hope the Council will not allow this proposed change to go through.

Jim Holland – No address given

Mr. Holland stated his grandfather was the original owner of the land. His grandfather died a year ago and he (Mr. Holland) is now handling the finances for the property. It is making just enough to pay the taxes. Mr. Holland said he was brought up on this land and would like to bring his kids up there as well. He opposes the proposed change.

Chris Hopf – No address given

Mr. Hopf stated that pretty much all that has been stated in opposition is not true. One party was held on the property as a sort of “Demo Day.” He said he is a competitive rail rider and people came out to watch. A rail like that cannot be built on a river or lake, so their plan was to make it public where people could come to watch. There is no electricity, so typically there will be no loud speakers, although there was a portable one there for that one incident. No alcohol or drugs will be permitted on the property. There will be no hunting on the land, and he hopes the wildlife will remain.

There being no one else who wished to address proposed FLUPM changes for Area 5, Mayor Dunn invited comment for or against proposed changes to the FLUPM for Area 6 (SW Greenville Blvd) beginning at 8:57 pm.

Jon Day – No address given

Mr. Day stated he was speaking on behalf of John Moye, Jr. and John Moye, Sr., who have owned a farm for most of their lives. They have submitted a request to amend the land use plan for 15-20 acres, which is an extension of existing commercial property. They want to extend that to the east to allow for future rezoning. On the north side, the land is already commercial. Mr. Day stated he has had discussion with many of the adjoining owners and they support the request. He has met with residents of Red Oak as well, and there the



request got mixed reviews. He stated he and the Moyes are working toward a positive resolution to their concerns.

#### Lilian Outerbridge – Red Oak

Ms. Outerbridge stated Red Oak is a small community that is home to a very diverse mix of residents; young and old, Caucasian, African American and Hispanic. They are proud of their neighborhood, which is quiet and sedate, and they want it to remain as it is. Greenville Boulevard already poses a major problem for them with its heavy traffic and lack of sidewalks making it unsafe for people walking in the area. Many of the residents of this neighborhood are nearing retirement and hope to live there safely for the remainder of their lives, but if the land is changed to commercial, they may be forced to move away, leaving the neighborhood a ghost town. Mr. Day has stated he is unsure of what will be built there if the property is made commercial, although he did drop a proposal by her house earlier in the day that she had not yet had time to read.

#### David Douglas – Red Oak

Mr. Douglas stated he has lived in Red Oak since 1992 and planned to retire there. He wants the neighborhood to remain as it is, and asked the Council to deny the request.

#### Freddie Outerbridge – President of the Red Oak Neighborhood Association

Mr. Outerbridge stated he is concerned for all his neighbors because the traffic is already at a dangerous level from Greenville Boulevard, particularly when school is in operation. There are no traffic lights, or any other means of controlling traffic. He asked the Council to think the matter over carefully before making a decision.

There being no one else who wished to address proposed FLUPM changes for Area 6, Mayor Dunn invited comment for or against proposed changes to the FLUPM for Area 7 (Hwy 264/Old Stantonsburg) beginning at 9:12 pm.

#### Jon Day – No address given

Mr. Day stated he was speaking as a volunteer on behalf of the medical foundation. Proposed acquisition of the southwest loop will change the area dynamically in both shape and future access. Original zoning was based on an area designated as wetlands, however a study since that time has released the area from its wetlands classification and it was that significant change that triggered the request.

There being no one else who wished to address proposed FLUPM changes for Area 7, Mayor Dunn stated that changes were requested for two other areas, but those requests were not recommended by Planning and Zoning. At 9:14 pm, she invited comment for or against proposed changes to the FLUPM for Area 3 (Evans Street), Area 8 (S. Memorial Drive) or any other item not previously addressed.



Bryant Bates – No address given

Mr. Bates stated he is a member of the Pedestrian Commission and it seems to him that the common objection to all proposed changes is traffic. He said he believed the best solution was to have people ease off the gas, or consider alternative methods of transportation.

Anthony Noel – 109 Tanglewood Drive

Mr. Noel stated he has been arranging showings of a video called “Save our lands, save our towns” which addressed urban sprawl. If you look at tonight’s proposals, all six of the areas on the map are at least two miles from the City’s center. Sprawl encourages neglect of neighborhoods in the urban core, forces people to take cars to work, to retail and professional services and for dining out. The more sprawl you have, the more vehicular traffic there is and the less safety there is for pedestrians and bicyclists. That is a sad thing when you are a college town. Greenville should convert some of the vacant houses and lots into corner stores and make real neighborhoods. Land within the urban core should be recycled to make fully functional neighborhoods. People will not remain in unattractive cities over the long haul. Mr. Noel stated much of his living has been made in development-related jobs; he is not anti-development, but he wants to create partnerships with people to make life better. Of tonight’s proposals, one has already been denied two or three times. This could be the day Greenville chooses to become truly great.

Ryan Denalis – No address given

Mr. Denalis stated he is president of a local cycling club whose members are looking to Greenville to provide what the two previous speakers mentioned. Many people who are opposed to the changes might support them if the City had a firm plan for greenways. Addressing those issues will benefit Greenville in the long term.

Jim Ward – No address given

Mr. Ward stated he read in New Urbanism that neighborhoods should accommodate a range of household types and land uses. There should be a range of activities and there should be a means to adapt as different uses emerge.

Jim Kenny – No address given

Mr. Kenny feels any consideration to changing land use should include requirements for sidewalks and bike lanes. As a retired physician, he spent his career after coming to Greenville telling patients to take walks or ride bikes to improve their health and fitness levels, then worried they might get out and get killed doing it. Greenville needs to be more family-friendly. Communication is lacking in family life.

David Jester – Winterville

Mr. Jester stated although he lives in Winterville, he owns property in Greenville. He is an avid cyclist and hopes the Council will consider bike paths and pedestrian walkways as it makes changes to land use plans. Greenville has signs calling it a “Fit Community” but so many of its destinations require its citizens to get into cars because there are no access provisions for bike and foot traffic.



Hearing no further comment from the public, Mayor Dunn closed the public hearing at 9:28 pm and suggested the Council address its discussion in the same manner as the public hearing.

Council Member Mercer moved to approve proposed text amendments, seconded by Council Member Blackburn. There being no discussion, the motion was approved by unanimous vote.

Mayor Pro-Tem Kittrell moved to approve proposed land use changes related to Area 1. Council Member Joyner seconded the motion, which passed by unanimous vote.

Council Member Blackburn moved to deny the proposed change for Area 2, seconded by Council Member Mercer. Council Member Blackburn expressed appreciation to the citizens who came out to share their opinions. Mrs. Outerbridge brought up exactly what the Council needs to consider; if Greenville does not nurture its community, they will soon become ghost towns. The current land use plan was brought about by two years of work by citizens who put a great deal of thought into it. The Council must ask if there is a compelling reason to make a change. Council Member Blackburn said in this case, she can't see one. When neighborhoods are choked by commercial development, we drain them of life.

Council Member Mercer stated there has been an extraordinary outpouring of objection to this particular proposal and Council should recognize the significance of this. We have a proposal that calls for commercial that is not needed. It is up against park land and it makes no sense for the Council to put money into the park, then approve something that will degrade it. Quality of life has economic value and is enhanced by parks and open space. Citizens should demand good planning policies from their elected officials. If the Council passes this, they are hurting the quality of life for the benefit of a few jobs.

Council Member Joyner stated he lives in Lynndale and his neighborhood fought against Best Buy before it was built. Now that it's there, they love it. In the case for Area 2, the Council has previously approved a Walmart out there and the road is designed to handle about 34,000 trips daily. Businesses want to go that way. If there were profit to be made from filling in vacant locations, they would do it.

Mayor Pro-Tem Kittrell said he thought Mr. Outerbridge was the only one present who was involved in the development of the original plan. The original version was created by a very diverse group of individuals and involved a good deal of compromise. He stated he is a very strong supporter of the plan, which was designed to be updated after five years. That is what is under consideration. This is not a rezoning matter. He stated he feels much sympathy for the Planning Board because their members have been going through this update process over the past year with very little public input. While it is fine to have citizens send emails or come to meetings now to voice their opinions, he is disappointed that so many are doing so now, but didn't bother to get involved in the update process. There have been many concerns raised about biking and walking, but the park will have a





greenway and the City Manager has indicated that the greenways will eventually connect. Mayor Pro-Tem Kittrell stated he feels developers would be delighted to have that as a feature.

Council Member Mercer agreed that, as Mayor Pro-Tem Kittrell pointed out, this is not a rezoning hearing. It is a hearing for potential changes to the land use plan; a technical thing. But technically when you change the land use plan, it makes it easier to come back and ask for a change in zoning. Council Member Joyner feels commercial development in this area will take some of the pressure off other areas of town, but there are already sixty acres on that corridor that are zoned commercial, yet nothing has been built there. The opportunity for commercial development is already there without having to make this questionable land use decision.

Mayor Dunn said the important thing is determining the appropriate use for this land. Her understanding is that the land was purchased initially for a combination of a cemetery and a park. Was this corridor intended to be primarily residential or commercial? Is there already sufficient commercial development in the area to support the needs of its residents? Is commercial or residential a more beneficial neighbor to the park?

Council Member Blackburn stated the Tenth Street East area has a mixture of uses with a transitional feeling. We are talking about a parcel of land, which will have lights, traffic, and noise. She stated she doesn't see more housing developing there, but she feels it is important to follow the land use plan, which provides for transition from the commercial and office areas, down to the single family homes. She stated she wants to see Greenville become a community that supports walking and biking. The existing zoning of this land allows the property owners to make good use of their land. Mixed uses are needed here because if the proposed change is approved, this area will become heavily commercial.

City Attorney Holec reminded the Council of Council Member Blackburn's motion to deny the proposed change for Area 2, which was seconded by Council Member Mercer. Upon the Mayor's call for a vote, the motion failed by a vote of 2 to 4 with Council Members Blackburn and Mercer casting the only "yes" votes.

Council Member Joyner moved to approve the proposed change for Area 2. Council Member Glover seconded the motion, which passed by a vote of 4 to 2, with Council Members Blackburn and Mercer casting the dissenting votes.

Mayor Dunn declared the meeting in recess at 10:46 pm to allow for a short break. She reconvened the meeting at 10:54 pm.

Council Member Blackburn moved to deny the proposed change for Area 4, seconded by Council Member Mercer.

Council Member Mercer said he would not repeat his earlier comments about quality of life, although he feels they are relevant in this case, but he did want to point out that 160



homeowners oppose the change and the Eastwood neighborhood has mixed opinions. When there is a situation not in compliance with the land use plan and Staff recommends not supporting a proposed change, he needs strong neighborhood support to vote in favor of the proposal.

Council Member Blackburn stated this particular issue has been denied on three occasions previously, although it is her first time hearing the matter. Previous Councils have already said this is not a good idea, and given the number of people who have come out in opposition to the change, she feels the current Council owes them their support.

Mayor Pro-Tem Kittrell stated he has voted against this previously, but in this situation, Mr. Ward has spoken to residents in the area and has worked through many of their concerns. Many who were against the change previously are no longer opposed.

City Attorney Holec reminded the Council of Council Member Blackburn's motion to deny the proposed change for Area 4, which was seconded by Council Member Mercer. Upon the Mayor's call for a vote, Council Members Blackburn, Mercer and Smith voted "yes" while Mayor Pro-Tem Kittrell and Council Members Joyner and Glover voted "no." Mayor Dunn voted in favor of the motion, breaking the tie. The motion to deny the proposed change for Area 4 was passed by a vote of 4 to 3.

Council Member Mercer moved to deny the proposed change for Area 5, seconded by Council Member Blackburn, who stated that she did so to allow for discussion.

Council Member Mercer stated the proposed change is not in compliance with the land use plan, and he does not see the strong citizen support he feels is necessary to justify support of the proposal.

Mayor Pro-Tem Kittrell asked about appropriate use of the land given its tendency for flooding. Chief Planner Harry Hamilton stated a non-residential use would be preferred due to flood plain issues, but the Planning Board has included more of the land than the Staff recommended. The type of use that will work in a remote area such as this is something like the current proposal.

Council Member Smith stated she and Council Member Blackburn visited residents in the mobile home park and remained in the park for much of the afternoon. Although she was aware of noise concerns, she had been unable to hear jet skis that seem to be a focus of the concern.

Council Member Blackburn echoed Council Member Smith's comment and said she feels that the proposed use is appropriate for the land since flooding concerns make it undesirable for residential uses and traditional commercial purposes. She stated she was moved by concerns for wildlife in the area, but she doesn't feel the proposed use will be a threat to the wildlife there.



Council Member Joyner moved to call the question, seconded by Mayor Pro-Tem Kittrell. The motion passed by a vote of 5 to 1, with Council Member Mercer casting the dissenting vote.

City Attorney Holec then reviewed Council Member Mercer's motion to deny the proposed change for Area 5, which was seconded for discussion purposes by Council Member Blackburn. Upon the Mayor's call for a vote, the motion failed by a vote of 1 to 5, with Council Member Mercer casting the single affirmative vote.

Council Member Joyner moved to approve the proposed change for Area 5. Council Member Glover seconded the motion, which passed by a vote of 5 to 1, with Council Member Mercer casting the dissenting vote.

Council Member Joyner moved to continue discussion of the proposed change for Area 6 until November 8, 2011 to allow time for discussion between the people promoting the proposed change and area residents. Council Member Mercer seconded the motion, which passed by unanimous vote.

Mayor Pro-Tem Kittrell requested that he be excused from discussion and voting on Area 7 due to a conflict of interest. Council Member Joyner moved to approve Mayor Pro-Tem Kittrell's request, seconded by Council Member Mercer, and the motion was approved by unanimous vote.

Council Member Joyner moved to approve the proposed change to Area 7, seconded by Council Member Blackburn. The motion was approved by unanimous vote.

Council Member Blackburn stated she would like the Council to designate every place in the City where there is a City-owned park as conservation/open space. Some are not currently designated as such. She stated she feels this is one of the housekeeping issues that should be addressed in a plan review such as the one currently being done.

City Attorney Holec recommended referring Council Member Blackburn's suggestion to the Planning and Zoning Commission for consideration and a recommendation since that is the usual process.

Council Member Blackburn moved to refer the matter to the Planning and Zoning Commission for review and recommendation. Mayor Pro-Tem Kittrell seconded the motion, which passed by unanimous vote.

Council Member Joyner moved to adopt the revised plan with the exclusion of Area 6.

City Attorney Holec clarified that the ordinance retains text amendments and Areas 1 and 2. Area 4 was deleted. Area 5 was retained. Area 6 was continued to the November 8<sup>th</sup> meeting, so it is effectively deleted for now. Area 7 was retained, and Council Member Blackburn's park item is not in this motion. Council Member Glover seconded the motion,



which passed by a vote of 4 to 2, with Council Members Mercer and Blackburn casting the dissenting votes.

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**COMMENTS FROM MAYOR AND CITY COUNCIL**

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The Mayor and Members of the Council made general comments about past and future events.

In addition, Council Member Mercer moved to ask Staff to give a report at a future meeting related to tree cutting because of recent complaints on clearcutting. Council Member Blackburn seconded the motion, which passed by unanimous vote.

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**CITY MANAGER'S REPORT**

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City Manager Bowers had nothing to report.

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**ADJOURNMENT**

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Council Member Joyner moved to adjourn the meeting, seconded by Mayor Pro-Tem Kittrell. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 11:43 pm.

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, OCTOBER 11, 2010



A regular meeting of the Greenville City Council was held on Monday, October 11, 2010 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm. Council Member Rose Glover gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; and Carol L. Barwick, City Clerk

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**APPROVAL OF THE AGENDA**

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City Manager Wayne Bowers stated it will be necessary to make certain changes to the wording originally listed on the Consent Agenda for two items. The findings resolution submitted by the Greenville Utilities Commission for bond refunding requires that the full title of the bond be read. Also budget ordinance amendment #3 needs a title correction to insure use of the correct fund, but there is no change to the dollar figures contained in the ordinance.

Council Member Blackburn moved to approve the agenda with wording changes referenced by the City Manager. Council Member Joyner seconded said motion, which passed by unanimous vote.

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**CONSENT AGENDA**

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Mr. Bowers introduced items on the Consent Agenda, reading out the title of each as follows:



- Minutes from the August 23, 2010 joint City Council-Greenville Utilities Commission meeting
- First reading of an ordinance granting a bus franchise to Christopher Rupp, d/b/a The Buccaneer Transportation Service (Scheduled for second reading/final adoption on October 14, 2010)
- First reading of an ordinance granting a limousine franchise to Elliott Land, d/b/a Signature Limousine & Transport Service, Inc. (Scheduled for second reading/final adoption on October 14, 2010)
- First reading of an ordinance granting a limousine franchise to Melvin Lynn Elam, d/b/a Red, White & Blue (Scheduled for second reading/final adoption on October 14, 2010)
- First reading of an ordinance granting a taxicab franchise to Martin Tanski, d/b/a Peddlin' Pirates (Scheduled for second reading/final adoption on October 14, 2010)
- First reading of an ordinance granting a taxicab franchise to Sani Bello, d/b/a Unity Cab Company (Scheduled for second reading/final adoption on November 8, 2010)
- First reading of an ordinance granting a taxicab franchise to Valentine Perkins, d/b/a Earlybirds Taxicab Company (Scheduled for second reading/final adoption on November 8, 2010)
- Agreement for federal lobbying services with The Ferguson Group (Contract 1215-H)
- Amendment #5 to the contract with Kimley-Horn and Associates, Inc. to perform the survey and data collection portion of the final design phase of the Stantonsburg Road/Tenth Street Connector Project (Contract 1429-E)
- Resolution declaring police canine Sam as surplus property and authorizing his disposition to Officer Bruce Groccia (Resolution 10-56A)
- Resolution authorizing the abandonment of utility easements for The Province at Greenville (Resolution 10-57)
- Resolution relating to the authorization and issuance of the Greenville Utilities Commission combined enterprise system revenue refunding bond, series 2010, of the City of Greenville, North Carolina to refund callable portions of certain outstanding Greenville Utilities Commission revenue bonds (Resolution 10-59)
- Budget ordinance amendment #3 to the 2010-2011 City of Greenville budget [Ordinance No. 10-57], amendment to the Convention Center Expansion/Streetscape Capital Project Fund [Ordinance No. 07-139], amendment to



the Reade Street/Hodges Parking Lot Capital Project Fund [Ordinance No. 06-65], and amendment to the Health Insurance Fund [Ordinance No. 10-18] (Ordinance 10-79)

Following a brief discussion about the benefits of federal lobbying initiatives, the Consent Agenda was unanimously approved upon motion by Council Member Joyner, which was seconded by Council Member Blackburn.

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**OLD BUSINESS**

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- Resolution approving an amendment to the Board and Commission Policy relating to nominations to certain boards and commissions. (Resolution 10-59)

City Attorney Holec summarized changes prepared in response to a request by Council at a previous Council meeting relative to the appointment process for five of the City’s Boards and Commissions. The change impacts the filling of vacancies by switching from nominations being made by the council liaison assigned to that board or commission to a rotation amongst Council Members. Boards included in the change are the Board of Adjustment, the Greenville Utilities Commission, the Pitt-Greenville Airport Authority, the Planning and Zoning Commission and the Recreation and Parks Commission. He stated the Council’s approval recognized that some appointments are done by the County and this change would not impact those. There are other provisions made by state statute or charter and this change does not impact these. There is a provision to insure that alternate members move up to regular status.

Mr. Holec stated this was a complicated process, but he believed he had addressed all concerns raised by the Council. He summarized how the rotation would work on boards with varying numbers of members and offered the following illustration of how the process will begin:

CITY OF GREENVILLE, NC CITY COUNCIL MEETING	
ROTATION STARTING POINTS and ROTATION ORDER	
<u>Elected Official</u>	<u>Board Which Has the First Nomination</u>
Council Member, At-large	Housing Authority
Council Member, District 1	Recreation and Parks Commission
Council Member, District 2	Planning and Zoning Commission
Council Member, District 3	Pitt-Greenville Airport Authority
Council Member, District 4	Greenville Utilities Commission
Council Member, District 5	Board of Adjustment
Mayor	None





Mr. Holec was careful to point out that the Council is not obligated to approve the person nominated. If the initial nominee is not appointed, the Council may request an additional nomination from the elected official making the nomination. If no appointment is made and an additional nomination is not requested, any Council Member or the Mayor may make a nomination.

After extensive discussion of potential scenarios for nominations and clarification as to how those would be handled under the revised policy, Council Member Blackburn applauded the City Attorney's work in putting the policy together. She stated she was still concerned that the Council was putting together a policy with some inherent problems and moved to defer a final decision until the January planning session. Council Member Mercer seconded the motion, which failed by a vote of 2 to 4 with Council Members Blackburn and Mercer being the only affirmative votes.

Council Member Joyner moved to adopt the resolution approving amendment to the Board and Commission Policy, seconded by Council Member Glover.

Council Member Mercer argued against what he classified as a drastic change. He stated that if the purpose of the change is to increase diversity, it should apply to all the City's boards and commissions. He then moved to amend the initial motion to extend the changes to all of the City's boards and commissions. Council Member Blackburn seconded the motion.

Following additional discussion, Council Member Joyner called for the question, seconded by Council Member Glover.

Mr. Holec restated Council Member Mercer's amendment to the initial motion, which would make proposed changes applicable to all of the City's boards and commissions. The motion failed by a vote of 2 to 4 with Council Members Blackburn and Mercer casting the only affirmative votes.

Council Member Joyner called for the question on the main motion, seconded by Mayor Pro-Tem Kittrell. The vote was 4 to 2 in favor, with Council Members Blackburn and Mercer casting the dissenting votes.

Vote on the main motion, which was to adopt the resolution approving amendment to the Board and Commission Policy, was 4 to 2 in favor, with Council Members Blackburn and Mercer voting in opposition.





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**NEW BUSINESS**

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- Presentations by boards and commissions

Ryan Webb, of the Historic Preservation Commission, thanked the Council for the opportunity to introduce the group's members and discuss their role in Greenville. He displayed a map identifying the City's five nationally recognized historic districts, and another which is locally recognized, then discussed recent projects in the various districts. Mr. Webb explained the Façade Grant Program, which is held bi-annually to help preserve and enhance business properties and a community outreach exhibit at Emerge Gallery showcasing the lost architectural treasures of Greenville. He closed by summarizing the Commission's plans for the upcoming year, which will include a review and update to current design guidelines, establishing an historic preservation loan pilot program, and establishing a procedure for bringing National Register recommendations to the Council.

- Redevelopment Commission authorization to sell real property located at 814 West Fifth Street

Senior Planner Carl Rees stated he has what he believes to be good news. He explained that the City purchased a building at 814 West Fifth Street in 2007 as a means of addressing an issue where the property didn't fit with the neighborhood. The building was in poor condition and was ultimately demolished. There was much discussion at the time and input from citizens as to appropriate uses for the property, and one of the more prevalent desires appeared to be a restaurant. Arthur Wallace, who owns adjoining property, has proposed a lease/purchase arrangement at the property's appraised value over a ten-year period which would allow him to address the problem of having insufficient parking for his restaurant. Mr. Wallace will make the necessary improvements to use the land for parking. Mr. Rees stated the property has appraised at \$14,250, and that the Redevelopment Commission recommends selling the property to Mr. Wallace in accordance with proposed terms, subject to provisions of the upset bid process.

Mayor Pro-Tem Kittrell asked if the property deed would be transferred outright to Mr. Wallace, or if this was more like a long-term rental and whether the City would bear any liability if the lot is used for parking purposes. Mr. Rees stated Mr. Wallace would make monthly payments of \$133 over a 10-year period, but would have the option to pay in full sooner if he chose to do so. Once the full amount is paid, the deed would be transferred free and clear to Mr. Wallace. City Attorney Dave Holec stated the property would remain in the City's name until all debt is paid and the lease agreement requires Mr. Wallace to maintain liability coverage which names the City as an additional insured. The lease also restricts use of the property to use as a parking lot. Any improvements to the property will be at Mr. Wallace's expense.



Council Member Joyner moved to authorize the sale of subject property in accordance with recommended terms. Council Member Mercer seconded the motion, which passed by unanimous vote.

- Center City Parking Pay Station Project (Ordinances 10-80 and 10-81)

Planner Niki Jones stated this project originated during the design phase for the Reade and Cotanche Street parking improvement project. He explained the concept of utilizing pay stations in lieu of single post parking meters and highlighted the advantages, along with potential locations for usage. He discussed recommendations of the Public Transportation and Parking Commission to place pay stations in the Hodges Lot, along Reade Street and on the 300 and 400 blocks of Evans Street, along with their recommendations for fees. He stated there would be no charge for handicapped parking for those with appropriate documentation of their handicapped status. He stated that Staff recommends approval of the Commission's recommendations at a cost of \$81,000 for 10 pay station units, inclusive of necessary installation and training.

Following a general discussion of parking conditions in the downtown area, Council Member Mercer moved to approve recommendations of Staff by adopting necessary ordinances and authorizing execution of appropriate contracts. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Funding to install a pedestrian refuge island where the Green Mill Run Greenway crosses Tenth Street

City Manager Bowers stated this crossing is dangerous for bicyclists and pedestrians and the City has secured Department of Transportation approval to install a refuge island at the City's cost. He recommends the Council approve an expenditure of \$22,950 from the current year's contingency to do so.

Council Member Blackburn moved to approve the City Manager's recommendation. Upon second by Council Member Mercer, the motion passed by unanimous vote.

- Amendment to Employee Dental Benefit Program

Human Resources Director Gerry Case stated the City and GUC adopted a dental reimbursement program for their employees in the 1980's at a time when very few employers offered any type of dental coverage. She briefly explained how the program worked. It has been in effect since that time, but dental insurance has changed significantly over the years. Because the reimbursement program requires the employee to pay dental bills up front then apply for reimbursement, nearly 75% of employees do not use the benefit. The proposal before the Council eliminates the reimbursement aspect, which is so detrimental to employees getting the care they need. The proposed program will be administered by Cigna, but will be self-funded.



She briefly summarized plan details and benefits, stating there would be a slight additional cost to the City. She stated the vendor who provides the software used to administer the current reimbursement program has notified the City they will no longer support the software after December 22<sup>nd</sup>, so if the program change is not approved, it will be necessary to purchase new software to continue the current program. The target effective date for the proposed coverage is January 1, 2011.

Following a discussion of program costs to both employees and the City, and discussion of concerns about vendor selection, the City Manager suggested continuing this item until the next Council meeting and having someone come in to explain the due diligence process and what would be involved in getting additional quotes.

Mayor Pro-Tem Kittrell moved to table the matter until October 14, 2010 per the City Manager's recommendation. Council Member Smith seconded the motion, which passed by unanimous vote.

- Downtown security requirements and costs

City Manager Bowers stated the Council received 15 potential actions to consider for addressing downtown security costs in August 2009. In October 2009, an ordinance was presented to require downtown clubs to hire security officers. In November 2009, the Council asked Staff to take the proposed ordinance, along with a proposal received from J. J. McLamb to consider a "pool arrangement" for club security, and bring it back at a future date with recommendations and projected costs. Since that time, Staff has met with representatives of various clubs and made appropriate adjustments to the proposed ordinance.

Mayor Dunn called a short recess at 8:23 pm, reconvening the meeting at 8:35 pm.

City Attorney Holec stated the original ordinance proposal applied to security for public or private clubs under certain circumstances, and contained a provision related to criminal record checks for Bouncers. Mr. McLamb's proposal requested that the ordinance be applicable to all establishments and not just public and private clubs. The version of the ordinance currently before the Council addresses some of the discussion with bar owners or representatives, as well as direction from the Council. It applies to restaurants and dining and entertainment establishments, in addition to bars and clubs, that are in the downtown area or that are within 500 feet of a residential boundary.

Extensive discussion ensued relative to potential methods of funding downtown security, and to the appropriateness of City funding versus owner funding, or some combination of the two, along with the feasibility of implementing an alcohol tax. A number of alternative proposals for things like the addition of cameras and lighting,



utilization of off-duty law enforcement personnel to provide security, and the possibility of hiring additional police officers.

Mr. Holec reminded the Council that imposition of an alcohol tax would require special legislation. Council Member Blackburn moved to instruct staff to seek the needed legislation, which will allow for a cost share arrangement. Council Member Mercer seconded the motion.

Mayor Pro-Tem Kittrell asked if Council Mercer was suggesting legislation to pursue a tax on alcohol earmarked to go toward costs of downtown security, or to explore the more narrow option of taxing only the bars/clubs in downtown Greenville. He suggested requesting two proposals so that Council Members would have a choice.

Council Member Glover proposed a friendly amendment to include having officers inside the clubs. Mayor Pro-Tem Kittrell indicated he supported the idea, but Police Chief Anderson has previously stated the department does not have enough officers to provide that additional level of coverage.

Council Member Blackburn indicated her willingness to accept recommended amendments to her original motion, with the hope that once Staff returned with their recommendations, a decision could be made.

City Attorney Holec summarized Council Member Blackburn's amended motion as follows: To seek legislation authorizing the City to impose a bar or entertainment tax/fee with staff to provide information on a potential tax/fee on the sale of alcohol by establishments citywide with the proceeds being dedicated for law enforcement purposes in the downtown area, on a potential tax/fee on public or private clubs in the downtown area with the proceeds being dedicated for law enforcement purposes in the downtown area, and the potential requirement that establishments provide off-duty law enforcement officers and licensed security personnel with the information addressing the expense to the business, the ability of the City to provide off-duty law enforcement officers, and the potential reduction in law enforcement deployment expense in the downtown area. Mayor Dunn then called for a vote, which was unanimous to approve the stated motion.

- Ordinance to establish a minimum waiting period between the date a petition to amend the Future Land Use Plan Map (FLUPM) is denied and the initiation of a subsequent similar petition

Council Member Mercer moved to refer the proposed ordinance to the Planning and Zoning Commission for review and recommendation relative to a 12 month waiting period. Council Member Joyner seconded the motion.



Mayor Pro-Tem Kittrell stated he would not oppose the motion, but asked about the waiting period applicable to rezoning requests. City Planner Harry Hamilton indicated that waiting period is 6 months.

Council Member Mercer stated he felt the 12 month waiting period would be appropriate for rezoning matters as well, and expressed a desire to amend his motion to include review and recommendation of a similar ordinance related to rezoning requests. Council Member Joyner stated he felt a 12 month period was too long and he withdrew his second of the original motion. Council Member Blackburn then seconded the amended motion.

Mayor Pro-Tem Kittrell offered a friendly amendment to have planning and zoning consider both 6 and 12 month waiting periods for each type of request. Council Member Mercer restated his motion to refer to the Planning and Zoning Commission for review and recommendation on establishing 6 or 12 month waiting periods for amending the FLUPM and to review and make recommendation on amending the waiting period for rezoning from 6 months to 12 months. Council Member Blackburn indicated her second of the motion stands, and the motion was approved by a vote of 4 to 2 with Council Members Joyner and Glover casting the dissenting votes.

- Discussion of Code of Ethics

City Attorney Holec stated this item was for discussion only and that Council would be asked to consider adoption of an official Code of Ethics at their November meeting. He reviewed legal requirements for adopting a Code of Ethics and required annual training which has been completed by the Council. The School of Government drafted a model Code of Ethics which was utilized as the base for the proposal before Council. He reviewed the required language in the code, as well as optional provisions and his recommendations on each. Following a general discussion of components of the proposed Code of Ethics, Mr. Holec stated he felt the draft was a good Code which complies with the State's requirement and will serve as guidance for Council.

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**REVIEW OF OCTOBER 14, 2010 AGENDA**

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The Council did a cursory review of the October 14, 2010 City Council agenda and reviewed nominations for appointments to Boards and Commissions.



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**COMMENTS FROM MAYOR AND CITY COUNCIL**

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The Mayor and Members of the Council made general comments about past and future events.

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**CITY MANAGER'S REPORT**

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City Manager Bowers gave no report.

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**CLOSED SESSION**

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Upon recommendation of the City Attorney, Council Member Mercer moved to enter closed session in accordance with G.S. § 143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and G.S. § 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body. Council Member Joyner seconded the motion, which passed by unanimous vote. Mayor Dunn declared the City Council in closed session at 10:54 pm.

Following conclusion of closed session discussion, motion was made by Council Member Blackburn and seconded by Council Member Smith to return to open session. Motion was approved unanimously, and Mayor Dunn returned the City Council to open session at 11:45 pm.

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**ADJOURNMENT**

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Council Member Joyner moved to adjourn the meeting, seconded by Mayor Pro-Tem Kittrell. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 11:46 pm.

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, OCTOBER 14, 2010



A regular meeting of the Greenville City Council was held on Thursday, October 14, 2010 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 7:00 pm. Council Member Marion Blackburn gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; Carol L. Barwick, City Clerk and Patricia A. Sugg, Deputy City Clerk

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**APPROVAL OF THE AGENDA**

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Mr. Bowers stated a minor change was needed to an item already on the agenda and requested that three additional items be included. For the Consent item related to a bus franchise for The Buccaneer Transportation Service, the applicant's name should be changed to The Rupp Group, LLC. Additional items requested include an amendment to the Employee Dental Program; Downtown Cameras and Lighting; and a carry-over of the closed session held on October 11, 2010.

Council Member Joyner moved to approve the agenda with the recommended changes. Council Member Blackburn seconded said motion, which passed by unanimous vote.

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**SPECIAL RECOGNITION**

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- Presentation from ReLeaf

Inez Fridley stated ReLeaf is celebrating its 20<sup>th</sup> year of collecting funds for the planting of trees from citizens, membership fees, and through partnerships with several local agencies. During that time, they have collected \$220,000 for this





worthwhile program and they would like to recognize the generosity of those individuals and organizations by presenting a commemorative check to the City.

Mayor Dunn accepted the commemorative check, stating the City is grateful for these donations which came from the hearts and wallets of the community, rather than from tax funding.

- Housing North Carolina Award

Community Development Director Merrill Flood presented Mayor Dunn with the Housing North Carolina Award awarded to the City in September in recognition of Nathaniel Village, which was one of several projects under consideration for best achievement in affordable housing. Mr. Flood stated this represents the third time Greenville has received a Housing North Carolina Award, but the first time one has been received for Affordable Housing.

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## APPOINTMENTS

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### **APPOINTMENTS TO BOARDS AND COMMISSIONS**

#### Community Appearance Commission

Motion was made by Council Member Smith and seconded by Council Member Joyner to appoint Joanne Robertson to fill an unexpired term expiring April 2012, replacing Kathryn Swope who resigned; and to continue the replacement of LaRonda Hodges who moved out of state.

#### Human Relations Council

Motion was made by Council Member Joyner and seconded by Mayor Pro-Tem Kittrell to appoint Loyd Horton for a three-year term expiring September 2013, replacing Ann Marie Alderman who resigned; to appoint Franchine Pena to fill an unexpired term expiring September 2011 replacing Kimberly Boyd-Mohammad who resigned; to appoint Angel Mondragon for a first three-year term expiring September 2013, replacing Manolita Buck who is ineligible for reappointment; to appoint Emily Carter for a three-year term expiring September 2013, replacing Janette Cox who resigned; to appoint Corey Rhodes to fill an unexpired term expiring September 2011, replacing John Pierpont who resigned; to reappoint Martha Brown and Byung Lee for a first three-year term expiring September 2013; to reappoint Guillaume Bagal Blount as the student representative of East Carolina University for a first one-year term; and to reappoint Issac Blount as the student representative of Shaw University for a second one-year term.





### Investment Advisory Committee

Motion was made by Mayor Pro-Tem Kittrell and seconded by Council Member Joyner to reappoint David Damm for a second three-year term expiring October 31, 2013.

### Pitt-Greenville Convention and Visitors Authority

Motion was made by Council Member Glover and seconded by Council Member Blackburn to appoint Earnestine Haselrig to fill the "resident not involved in tourist or convention-related business" slot for a first three-year term expiring July 2013, replacing James Streeter, who is ineligible for reappointment.

### Police Community Relations Committee

Mayor Pro-Tem Kittrell announced the reappointment of Richard Crisp for a second two-year term expiring October 2012.

Council Member Glover continued the reappointment of Bari Muhammed until November.

Council Member Blackburn continued the reappointment of Patricia Peralion until November.

Mayor Pat Dunn announced the reappointment of Dennis Winstead for a second two-year term expiring October 2012.

### Sheppard Memorial Library Board

Motion was made by Mayor Pro-Tem Kittrell and seconded by Council Member Blackburn to appoint Janice Lewis for a first three-year term expiring October 2013, replacing Brian Cooper who is ineligible for reappointment, and to appoint Ray Spears for a first three-year term expiring October 2013, replacing Edna English who is ineligible for reappointment.

### Youth Council

Motion was made by Council Member Glover and seconded by Council Member Blackburn to appoint Layla Quaran for a first one-year term expiring September 30, 2011, to reappoint Ajay Ajmera, Tawanna Franklin, Romeo Garcia, Brittany Murphy, La'Quon Rogers, and Urban Turnage for a third one-year term expiring September 30, 2011; to reappoint Sue Forrest, Lorenzo Person, Anassa Thompson, and Joseph Wobbleton for a second one-year term expiring September 30, 2011; and to reappoint Christine Hong for a first one-year term expiring September 30, 2011.



## Redevelopment Commission

Motion was made by Council Member Mercer and seconded by Mayor Pro-Tem Kittrell to appoint Mark Woodson for a five-year commencing November 15, 2010 and ending November 14, 2015, replacing Dennis Mitchell who is ineligible for reappointment.

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### **NEW BUSINESS**

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## **PUBLIC HEARINGS**

Mayor Dunn explained procedures to be followed for each of the upcoming Public Hearings.

- Ordinance requested by Phoenix Redevelopment, LLC to amend the dining and entertainment establishment criteria to allow dining and entertainment establishments located in the CD (Downtown Commercial) zoning district to have amplified audio entertainment after 11:00 p.m. on any Thursday in addition to Friday and Saturday as permitted under the current City Code (Ordinance No. 10-83)

Chief Planner Harry Hamilton explained the proposed amendment, which he stated would only apply in the downtown area, then discussed the differences between this group and private clubs. He also discussed setback and security requirements. Mr. Hamilton then discussed factors the Council should consider in making a decision.

Mayor Dunn opened the public hearing at 7:21 pm and invited comment from the public in favor of the request.

### Don Edwards – Managing member of Phoenix Redevelopment, LLC

Mr. Edwards stated they are making this request on behalf of O'Malley's Bar and Grille, who is a prospective tenant for the Brody Building. He stated City Staff has raised no objection, the Planning and Zoning Commission has approved the request and the proposed tenant will bring 40 jobs to Greenville, but utilize only 10 parking spaces. He stated the business will offer a full service menu, but they specialize in live entertainment.

### Michael Glenn – Representing owners of the Blount Harvey Building

Mr. Glenn stated the Blount Harvey Building is a neighbor of this property and they are in favor of the request. The building has been beautifully restored and they are glad to have O'Malley's in the downtown area.

Mayor Dunn then invited comment in opposition to the request. Hearing none, she closed the public hearing at 7:33 pm.

Council Member Mercer moved to approve the ordinance, seconded by Council Member Blackburn. The motion was approved by unanimous vote.



- Ordinance requested by Alicia Speight Hawk to amend the CH (Heavy Commercial) and CG (General Commercial) zoning districts public street right-of-way building setback from not less than 50 feet to not less than 20 feet (Ordinance No. 10-84) Mr. Hamilton explained the request, stating that it applies only to the General Commercial and Heavy Commercial zoning districts which are located throughout the City. It does not reduce any street or perimeter bufferyard area or reduce the minimum vegetation and screening requirement.

Following initial discussion by the Council, Mayor Dunn opened the public hearing at 7:50 pm and invited comment in favor of the request.

Mike Baldwin – Representing Alicia Speight Hawke

Mr. Baldwin stated Ms. Hawke was initially gearing toward a single site, but began to look at things through a bigger lens. The proposal will possibly change how properties are developed and bring parking to the sides or rear of buildings, with buildings being closer to the road. It will challenge builders to develop nicer facades on structures and promote a sense of closeness. He stated he feels this is a request that will benefit Greenville.

Mayor Dunn then invited comment in opposition to the request. Hearing none, she closed the public hearing at 7:55 pm.

Upon motion by Council Member Blackburn and second by Council Member Mercer, the motion was approved by unanimous vote.

- Ordinance to annex the Midgette Investments, LLC property involving 1.810 acres located east of Allen Road approximately 200 feet north of its intersection with Dickinson Avenue (Ordinance No. 10-85)

Community Development Director Merrill Flood described the property location, which is currently vacant with no population. The proposed use is a cell tower, and as such there is no associated population.

Council Member Smith asked if it was located behind the Hess Station. Mr. Flood stated it was located on the opposite corner from the Hess Station.

Mayor Dunn opened the public hearing at 7:56 pm, inviting comment in support or opposition from the public. Hearing none, she closed the public hearing at 7:57 pm.

Council Member Blackburn moved to adopt the proposed ordinance. Council Member Glover seconded the motion, which passed by unanimous vote.

- Second reading and final adoption of an ordinance granting a bus franchise to The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service (Ordinance No. 10-86)



City Clerk Carol Barwick stated that The Rupp Group, LLC has applied to establish a bus franchise, and plans to operate one vehicle under the trade name of The Buccaneer Transportation Service. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.

Mayor Dunn opened the public hearing at 8:00 pm, inviting comment either for or against the proposed franchise application.

Christopher Rupp

Mr. Rupp stated he and his parents propose a business to provide safe and affordable transportation between area housing and downtown businesses. When asked by Council Member Joyner if his business was in competition with East Carolina University (ECU), Mr. Rupp replied that his service would operate on different nights from ECU and would operate during the summer as well. He stated they want their service to be affordable for students and they plan to charge \$1.00 per person for a one-way trip. They will operate from around 9:00 pm or 10:00 pm until 3:00 am.

Stacey Anderson

Ms. Anderson stated she is a taxi franchise owner and she feels there is no need for buses or any additional forms of transportation downtown. The economy is bad and the money is not there for customers to support the transportation opportunities that already exist.

There being no one else who wished to speak, Mayor Dunn declared the public hearing closed at 8:06 pm.

Council Member Joyner moved to adopt the ordinance granting a bus franchise to The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Second reading and final adoption of an ordinance granting a limousine franchise to Elliott Land, d/b/a Signature Limousine & Transport Service, Inc. (Ordinance No. 10-87)

Ms. Barwick stated that Elliott Land has applied to establish a limousine franchise, under the trade name of Signature Limousine & Transport Service, Inc. He plans to operate two limousines. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.

Mayor Dunn opened the public hearing at 8:07 pm, inviting comment either for or against the proposed franchise application. Hearing none, she declared the public hearing closed at 8:09 pm.



Council Member Mercer moved to adopt the ordinance granting a limousine franchise to Elliott Land, d/b/a Signature Limousine & Transport Service, Inc. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Second reading and final adoption of an ordinance granting a taxicab franchise to Melvin Lynn Elam, d/b/a Red, White & Blue (Ordinance No. 10-88)

Ms. Barwick stated that Melvin Lynn Elam has applied to establish a taxicab franchise, under the trade name of Red, White & Blue. He plans to operate eight taxicabs. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.

Mayor Dunn opened the public hearing at 8:10 pm, inviting comment either for or against the proposed franchise application.

#### Stacey Anderson

Ms. Anderson, who spoke earlier about the bus franchise, stated she would raise the same objections in this case against establishing a new taxicab franchise.

Mayor Dunn asked if there is a limit on the number of authorized taxicab franchises, to which City Attorney Holec replied there is not. The Council may grant the franchise, or not, at its discretion.

#### Melvin Elam

Mr. Elam stated he is the applicant and he proposes a business which will provide jobs for college students. He said he understands the economy is bad, but he is pursuing this as a way to earn a living. He stated he plans to operate 24 hours daily from Wednesday through Saturday and perhaps only from 8:00 am until 9:00 pm Sunday through Tuesday. He stated he would like to amend his request to just four vehicles because he had not previously been aware of the requirement to have all vehicles authorized in operation within 60 days of the approval.

There being no one else present who wished to speak, Mayor Dunn closed the public hearing at 8:23 pm. Mayor Pro-Tem Kittrell moved to approve grant a taxicab franchise for four vehicles to Melvin Lynn Elam, d/b/a Red, White & Blue. Upon second by Council Member Blackburn, the motion passed by unanimous vote.

- Second reading and final adoption of an ordinance granting a taxicab franchise to Martin Tanski, d/b/a Peddlin' Pirates (Ordinance No. 10-89)

Ms. Barwick stated that Martin Tanski has applied to establish a taxicab franchise, under the trade name of Peddlin' Pirates. He plans to operate six rickshaws. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.



Mayor Dunn opened the public hearing at 8:24 pm, inviting comment either for or against the proposed franchise application.

Martin Tanski

Mr. Tanski he and his partner, Griffin Cox, have made arrangements to store rickshaws in separate locations based on direction from Community Development. He stated they will be housed at the homes of their operators.

Stacey Anderson

Ms. Anderson, who spoke on two prior occasions, stated she would raise the same objections in this case against establishing a new franchise. She then expressed the opinion that this type of vehicle was better suited to a beach environment and said she is concerned that someone will be injured if they are operating in Greenville. They are difficult to see at night and they are a holdup to other traffic.

There being no one else present who wished to speak, Mayor Dunn closed the public hearing at 8:31 pm. Council Member Blackburn moved to grant a taxicab franchise for six vehicles to Martin Tanski, d/b/a Peddlin' Pirates. Upon second by Council Member Mercer, the motion passed by unanimous vote.

**PUBLIC COMMENT PERIOD**

Mayor Dunn opened the Public Comment Period at 8:32 pm and explained procedures to be followed by those wishing to speak. She then invited the first person registered with the City Clerk to come forward.

Carol Williams – 617 Kara Court

Ms. Williams thanked the Council for what they are doing for Greenville, but stated she lives just outside the City in Brittany Ridge. She stated she was speaking on behalf of her neighbors who live across Highway 33 from her and asked that the Council reconsider the issue of changing the land use plan map from Residential Office to Commercial in that area. She said it appears that development in Greenville is way ahead of its infrastructure. The Tenth Street Extension is dangerous for people on foot and on bicycles. There are at least three partially hidden mobile home parks and many of those residents walk or bike to work and shopping and she is seriously concerned about their safety.

There being no one else who wished to address the City Council, Mayor Dunn closed the Public Comment Period at 8:37 pm.



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## OTHER ITEMS OF BUSINESS

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- Presentation on eco/nature based tourism

City Manager Bowers introduced Dr. Pat Long, Director of the ECU Center for Sustainable Tourism, who is here to make a presentation on eco/nature based tourism in response to one of the Council's goals and objectives for the current year.

Dr. Long stated ECU's Center for Sustainable Tourism is the only such entity in the country and consists of faculty and staff who are focused on research, community engagement and outreach, and training and education. They concentrate on five major initiatives which include 1) climate, weather and tourism, 2) community sense of place, 3) sustainable practices in tourism, 4) renewable energy in tourism, and 5) engagement and community outreach.

Dr. Long provided an overview of nature-based ecotourism, and discussed other communities that have an outdoor identity. He provided a cursory review of some of Greenville's assets and offered the following suggestions for possible actions the Council might wish to consider in the future: 1) establish an internal city government working group, 2) confirm nature-based tourism assets and identify their current use, 3) identify demand trends by both residents and non-residents, 4) host a summit, and 5) establish a steering committee and action plan.

In closing, Dr. Long stated that eastern North Carolina has a diverse and rich set of nature based resources.

Council Member Blackburn thanked him for a great presentation and practical action steps.

- Progress update on the Greenville Urban Area Metropolitan Planning Organization Bicycle and Pedestrian Master Plan

Transportation Planner Daryl Vreeland stated the Greenville Urban Area Metropolitan Planning Organization Bicycle and Pedestrian Master Plan includes Ayden, Winterville, Simpson and Greenville and is now in the public input/involvement phase. He then introduced Matt Hayes of Greenways, Inc. , who was selected as the consultant to prepare the plan.

Mr. Hayes gave a brief overview of their project team, citing their bike and pedestrian planning experience with other North Carolina cities, and described their program of work and the project timeline. He stated there is currently talk at the Federal level about a new transportation bill and expressed a hope that it will focus





on livability and multi-modal transportation toward a more equitable distribution of projects. At the State level, the Department of Transportation is in process of going through new standards for design. On the local level, there is much demand for better access/opportunity for walking and biking.

Mr. Hayes identified 10 tasks to be accomplished:

 <p><b>B. Work Program</b> For the Greenville Urban Area MPO Bicycle and Pedestrian Master Plan</p>	Task 1:	Project Kick-off Meeting
	Task 2:	Existing Conditions Analysis
	Task 3:	Public Involvement
	Task 4:	Draft Bicycle and Pedestrian Network
	Task 5:	Design Guidelines
	Task 6:	Implementation Plan
	Task 7:	Comprehensive Draft Bicycle and Pedestrian Master Plan
	Task 8:	Client Review
	Task 9:	Final Bicycle and Pedestrian Master Plan & Presentations
	Task 10:	Bike Friendly Community Application

Mr. Hayes stated project kickoff was about a month ago and they have drafted a vision statement which identifies biking and walking as not only a healthy activity, but one that is environmentally sound. They are beginning to analyze existing conditions in terms of sidewalks and trails and to develop maps showing where certain features already exist and where they are needed. Field work is a key component. He discussed other ongoing activities and stated there would be a series of public involvement workshops over the next few weeks. The discussed additional work which would be necessary to produce detailed recommendations which will go into the comprehensive draft plan, which will then go out again for public comment and will incorporate all elements required by the NC-DOT. He then responded to general questions from the City Council.

- Resolution approving an agreement with the State of North Carolina to lease the school building at the Lucille W. Gorham Intergenerational Center (Resolution No. 10-60 and Contract No. 1907)

City Attorney Holec stated the school building located at the Intergenerational Center has been leased since 2007 by Pitt Community College (PCC). ECU and PCC are now proposing a shared use with ECU being the entity to actually hold the lease. ECU will have an agreement with PCC for conducting certain activities at the facility and ECU will sponsor programs consistent with the purpose of the Intergenerational Center. Under a Memorandum of Understanding (MOU), ECU serves as the Site





Manager for the Intergenerational Center in accordance with the MOU and with input from an Advisory Board, ECU has recommended this lease agreement. The proposed lease tracks with the previous agreement with PCC. He recommended approval of the resolution to authorize the lease agreement.

Upon motion of Council Member Joyner, seconded by Council Member Glover, the Council voted unanimously to adopt the resolution approving an agreement with the State of North Carolina to lease the school building at the Lucille W. Gorham Intergenerational Center.

- Contract award for the development of the Eastside Park Master Plan (Contract No. 1899)

Parks Superintendent Mark Gillespie stated the ultimate goal of the plan is to develop a schematic level design somewhat similar to what is being done for the Town Common. The plan will determine what types of facilities should go into what locations. The Request for Quote went out in August and 29 firms responded. Staff recommends the contract be awarded to Rivers and Associates because they have prior experience on this property, which has a unique topography. They are prepared to begin the design process in about six months and will hold community meetings to insure citizen involvement. The Recreation and Parks Commission enthusiastically endorses the recommendation to award the contract to Rivers and Associates.

Council Member Blackburn moved to award a contract for the development of the Eastside Park Master Plan to Rivers and Associates. Mayor Pro Tem Kittrell seconded the motion, which passed by unanimous vote.

- Conveyance of City-owned property located at 408 Cadillac Street by private sale to Streets to Home (Resolution No. 10-60A)

Housing Director Sandra Anderson requested that the Council convey the property located at 408 Cadillac Street by private sale to Streets to Home to provide transitional housing for those in need of emergency shelter. Eligible families could reside there for up to 24 months, during which counseling would be provided as needed. The need for this type of shelter is well-documented and without it, victims often return to abusive environments.

Upon motion by Council Member Glover and second by Council Member Blackburn, the Council voted unanimously to convey property located at 408 Cadillac Street by private sale to Streets to Home.



- Status of the Thomas Langston Road Extension Project

Public Works Director Wes Anderson gave a brief update on the status of the Thomas Langston Road Extension Project from Memorial Drive to Greenville Boulevard. He discussed requirements of the Federal Rail Road Administration and the North Carolina Department of Transportation relative to at-grade projects. He stated the current schedule projects completion in November 2010, but cautions that is subject to weather conditions.

Mr. Anderson stated the bid process for Phase II, along with advertisement and obtaining easements, could begin after approval of all CSX crossings. Mr. Anderson, the City Manager and the City Attorney then answered questions and addressed concerns raised by the City Council.

- (Added) Amendment to the Employee Dental Program

Assistant City Manager Thom Moton and Human Resources Director Gerry Dail summarized the presentation at the last Council meeting relative to proposed changes in the City's dental program. Mr. Moton stated the Pay and Benefits Committee has reviewed the plan and approval was unanimous. He stated the Council had requested additional information regarding the competitiveness of the proposal and reported that three companies provided quotation for administering the plan. Cigna provided the low quote, with Delta Dental and Met Life charging higher monthly fees. He stated the goal of making this change was to find a better arrangement for the City's employees. Ms. Case summarized the differences between the current reimbursement plan and the proposed insurance plan and offered examples as to how a claim would be handled under each.

Following discussion by the City Council, Mayor Pro-Tem Kittrell moved to approve the proposed change in employee dental benefits, but asked that staff continue to look at benefits in a comprehensive manner. Council Member Glover seconded the motion, which passed by unanimous vote.

- (Added) Downtown Cameras and Lighting

Police Chief William Anderson stated his report is offered in response to a request from the Council at their last meeting. He gave an overview of locations of ten security cameras and discussed plans for adding six more. He stated twelve additional cameras are needed.

Council Member Smith asked if use of the cameras would help decrease staffing needs in the downtown area. Chief Anderson indicated that the effectiveness would have to be evaluated over a period of time.



Council Member Glover asked about cameras in other “hot spots” throughout the City. Chief Anderson stated there were about 77 cameras in use overall, but he couldn’t divulge all their locations.

Assistant City Manager Moton stated street lighting is another component related to the effectiveness of cameras. Eighteen new lights have been installed and 12 have been upgraded. Measurements have been taken on publically controlled areas and some private areas so that a plan can be developed for additional lighting. He stressed that the responsibility to fund lighting for private parking rests with the property owner. He stated that Staff is working on a lighting standard to require certain minimum lighting requirements.

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**COMMENTS FROM MAYOR AND CITY COUNCIL**

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The Mayor and Members of the Council made general comments about past and future events.

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**CITY MANAGER’S REPORT**

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City Manager Bowers reminded the City Council there will be a Council meeting on November 8<sup>th</sup>, but there will not be a meeting on November 11<sup>th</sup> due to the Veterans holiday. As such, public hearings will be conducted at the November 8<sup>th</sup> meeting.

Mr. Bowers also noted there is a meeting scheduled for November 22<sup>nd</sup> and recommended it be cancelled.

Upon motion by Council Member Joyner and second by Council Member Blackburn, the November 22, 2010 City Council meeting was cancelled.

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**CLOSED SESSION**

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Upon recommendation by City Attorney Holec, motion was made by Council Member Joyner to enter closed session in accordance with G.S. §143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and G.S. §143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege



between the attorney and the public body. Council Member Blackburn seconded the motion, which passed by unanimous vote.

Upon conclusion of closed session discussion, motion was made by Council Member Joyner and seconded by Council Member Glover to return to open session. Motion was approved unanimously, and Mayor Dunn returned the City Council to open session at 12:10 pm.

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**ADJOURNMENT**

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Council Member Joyner moved to adjourn the meeting, seconded by Mayor Pro-Tem Kittrell. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 12:11 am.

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, NOVEMBER 8, 2010



A regular meeting of the Greenville City Council was held on Monday, November 8, 2010 in the Council Chambers, located on the third floor at City Hall, with Mayor Patricia C. Dunn presiding. Mayor Dunn called the meeting to order at 6:00 pm. Council Member Calvin Mercer requested those present observe a moment of silence, followed by the Pledge of Allegiance.

Those Present:

Mayor Patricia C. Dunn; Mayor Pro Tem J. Bryant Kittrell, III; Council Member Marion Blackburn; Council Member Rose H. Glover; Council Member Max R. Joyner, Jr.; Council Member Calvin R. Mercer; Council Member Kandie Smith

Those Absent:

None

Also Present:

Wayne Bowers, City Manager; David A. Holec, City Attorney; and Carol L. Barwick, City Clerk

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**APPROVAL OF THE AGENDA**

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City Manager Wayne Bowers stated the Council had been provided copies at their seats of a request received that afternoon from John F. Moyer, Sr., property owner, requesting that Item 9 on the agenda, amendment to the future land use map, be carried over until the December 6<sup>th</sup> Council meeting.

Council Member Joyner moved to approve the agenda with change presented by the City Manager. Council Member Mercer seconded the motion, which passed by unanimous vote.

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**CONSENT AGENDA**

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Mr. Bowers introduced the following items on the Consent Agenda:

- Minutes from the August 9, 2010 City Council meeting



- Resolution accepting dedication of rights-of-way and easements for Carrington Square, Section Two; Carrington Square; Upton Tract, Phase 1; Westpointe, Section 7; Westpointe Duplexes, Section 2; Westpointe, Section 8; and Westpointe, Section 4, Phase 1 (Resolution No. 10-61)
- Right-of-way encroachment agreement with The Clark Group to allow the construction of a groundwater monitoring well in the right-of-way of West Thirteenth Street, east of Washington Street
- Resolution approving a municipal agreement with the North Carolina Department of Transportation for Section 5303 Planning Grant Funds (Resolution No. 10-62)
- Budget ordinance amendment #4 to the 2010-2011 City of Greenville budget [Ordinance No. 10-57] and amendment to the Drew Steele Center Capital Project Fund [Ordinance No. 09-42] (Ordinance No. 10-90)
- Various tax refunds

Payee	Description	Amount
Pitt County Tax Collector	Refund of City Taxes Paid	\$132.33
Mary Dawson	Refund of City Taxes Paid	\$107.16
Wheels Lt.	Refund of City Taxes Paid	\$258.95

There being no discussion, the Consent Agenda was unanimously approved upon motion by Council Member Joyner, which was seconded by Council Member Blackburn.

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**OLD BUSINESS**

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- (RESCHEDULED TO 12/06/10) Ordinance amending Horizons Plan 2009-2010 Update: Planning and Zoning Commission recommended change to the Future Land Use Plan Map, Area of Interest 6 located on SW Greenville Boulevard
- Resolution Adopting a Code of Ethics for the City Council of the City of Greenville (Resolution 10-63)

City Attorney Holec explained that, during its 2009 Session, the North Carolina General Assembly passed a law which requires that City Council adopt, no later than January 1, 2011, a resolution or policy containing a code of ethics to guide actions by the governing board members in the performance of the member's official duties as a member of the governing board. The law provides that the resolution or policy shall address at least all of the following:



- The need to obey all applicable laws regarding official actions taken as a board member.
- The need to uphold the integrity and independence of the board member's office.
- The need to avoid impropriety in the exercise of the board member's official duties.
- The need to faithfully perform the duties of the office.
- The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

Mr. Holec stated the draft Code of Ethics presented to the Council in October was based on a model code prepared by the University of North Carolina's School of Government and complies with all statutory requirements. He recommended the Council approve the resolution to adopt the Code.

Upon motion by Council Member Mercer, seconded by Council Member Joyner, the City Council voted unanimously to approve the resolution adopting a Code of Ethics for the City Council of the City of Greenville.

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### NEW BUSINESS

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#### Public Hearings

- Second reading and final adoption of an ordinance granting a taxicab franchise to Sani Bello, d/b/a Unity Cab Company (Ordinance No. 10-91)

City Clerk Carol Barwick stated that Sani Bello has applied to expand an existing taxicab franchise, which was initially approved by the City Council in May 2009. He currently operates two vehicles under the trade name of Unity Cab Company and has applied to add two additional vehicles to his business. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.

Mayor Dunn opened the public hearing at 6:10 pm, inviting comment either for or against Mr. Bello's franchise application. Hearing none, she declared the public hearing closed at 6:11 pm.

Council Member Glover moved to adopt the ordinance granting a taxicab franchise to Sani Bello, d/b/a Unity Cab Company. Council Member Blackburn seconded the motion, which passed by unanimous vote.



- Second reading and final adoption of an ordinance granting a taxicab franchise to Valentine Perkins, d/b/a Earlybirds Taxicab Company (Ordinance No. 10-92)

Ms. Barwick stated that Valentine Perkins has applied to expand an existing taxicab franchise, which was initially approved by the City Council in February 2010. She currently operates one vehicle under the trade name of Earlybirds Taxicab Company, and has applied to add two additional vehicles to her business. The Council approved first reading of this franchise ordinance at its October 11<sup>th</sup> meeting.

Mayor Dunn opened the public hearing at 6:12 pm, inviting comment either for or against Ms. Perkins' franchise application. Hearing none, she declared the public hearing closed at 6:12 pm.

Council Member Glover moved to adopt the ordinance granting a taxicab franchise to Valentine Perkins, d/b/a Earlybirds Taxicab Company. Council Member Blackburn seconded the motion, which passed by unanimous vote.

- Ordinance to annex Langston Farms, Section 11, Phase 1, involving 6.4380 acres located north of Langston Farms, Phase 8A, located off Honeysuckle Drive (Ordinance No. 10-93)

Community Development Director Merrill Flood showed a map depicting the proposed annexation area, which is located within voting district #5. The property is currently vacant with no population. The proposed use is 13 single-family dwellings, with an estimated population of 31 at full build-out.

Mayor Dunn opened the public hearing at 6:14 pm, inviting comment either for or against the proposed annexation. Hearing none, she declared the public hearing closed at 6:15 pm.

Council Member Blackburn moved to adopt the annexation ordinance, seconded by Council Member Glover. There being no discussion, the annexation ordinance was adopted by unanimous vote.

- Ordinance to annex Firetower Commercial Village, Lot 3, involving 0.6488 acres located north of Fire Tower Road approximately 463 feet east of South Memorial Drive (Ordinance No. 10-94)

Community Development Director Merrill Flood showed a map depicting the proposed annexation area, which is located within voting district #5. The property is currently vacant with no population. The proposed use is a commercial building, and as such there is no associated population.





Mayor Dunn opened the public hearing at 6:16 pm, inviting comment either for or against the proposed annexation. Hearing none, she declared the public hearing closed at 6:17 pm.

Council Member Blackburn moved to adopt the annexation ordinance, seconded by Council Member Glover. There being no discussion, the annexation ordinance was adopted by unanimous vote.

- Ordinance initiated by City Council to amend the Future Land Use Plan Map to designate all City-owned parkland as CO (Conservation/Open Space) and to amend Horizons: Greenville's Community Plan directing the Director of Community Development to amend the Future Land Use Plan Map to include all future municipal parkland in the CO category (Ordinance No. 10-95)

Planner Tom Wisemiller stated the Council reviewed proposed updates to the Horizons Plan at its September 20<sup>th</sup> meeting. As a part of that discussion, the Council directed Staff to draft an ordinance amending the Future Land Use Plan Map to designate all City-owned parkland as Conservation/Open Space and to amend the Horizons plan directing the Director of Community Development to amend the Future Land Use Plan Map to include all future municipal parkland in the Conservation/Open Space category.

The ordinance automatically designates all parklands on the future land use map as Conservation/Open Space, and allows the Director of Community Development to update the Future Land Use Plan Map when new park property is acquired and to return it to its previous use if park property is disposed of.

Mayor Dunn opened the public hearing at 6:19 pm, inviting comment either for or against the proposed ordinance. Hearing none, she declared the public hearing closed at 6:20 pm.

Council Member Blackburn moved to adopt the proposed ordinance, seconded by Council Member Glover. There being no discussion, the ordinance was adopted by unanimous vote.

- Ordinance initiated by City Council to establish a minimum waiting period between the date a petition to amend the Future Land Use Plan Map is denied and the initiation of a subsequent similar petition, and to consider revision to the minimum waiting period between the date of denial of a petition to amend the Zoning Map and the initiation of a subsequent similar rezoning petition (Ordinance No. 10-96)

Planner Chantae Gooby stated the proposed ordinance is presented based on the Council's request for Staff to draft an ordinance establishing a minimum waiting period between the date a petition to amend the Future Land Use Plan Map is denied and the initiation of a subsequent similar petition. The Council also



expressed a desire to consider a revision to the minimum waiting period between the date of denial of a petition to amend the Zoning Map and the initiation of a subsequent similar rezoning petition.

Mayor Dunn opened the public hearing at 6:22 pm, inviting comment either for or against the proposed ordinance. Hearing none, she declared the public hearing closed at 6:23 pm.

Council Member Mercer moved to adopt the proposed ordinance establishing a minimum waiting period of six months between the date a petition to amend the Future Land Use Plan Map is denied and the initiation of a subsequent similar petition and to keep the minimum waiting period of six months between the date of denial of a petition to amend the Zoning Map and the initiation of a subsequent similar rezoning petition; however, he stated he was amenable to a period of twelve months for each if that was the Council's preference. Council Member Joyner seconded the motion for six month waiting periods, and the ordinance was adopted by unanimous vote.

Public Comment Period

Mayor Dunn explained procedures to be followed during the public comment period and at 6:25 pm, she invited anyone wishing to address the City Council to come forward.

Cass Wigent – 2301 E. Fifth Street

Mr. Wigent stated he keeps bees at this home and during the past summer, Animal Control advised him that his hives must be moved into his back yard. He cited a number of reasons for his desire to maintain his hives in the front yard and presented the City Council with a model bee keeping ordinance from another municipality, asking that they consider adopting a similar ordinance.

Diane Hucks – 103 Nichols Drive

Ms. Hucks stated recent rains have caused the loss of even more of their land. Their storage building now extends over the stream, and City workers have come out to cut the bank. She stated she would appreciate any assistance the City could give toward preventing further property loss for her and her neighbors.

There being no one else present who wished to address the City Council, Mayor Dunn closed the public comment period at 6:31 pm.



**OTHER ITEMS OF BUSINESS**



- Presentations by boards and commissions
  - Public Transportation and Parking Commission



Vice-Chair Marsha Wyly recognized members of the Public Transportation and Parking Commission and discussed how their appointments are made. She stated their membership reflects the diversity of Greenville and its citizens. Council Member Smith serves as the Council Liaison and Staff Liaisons include Wes Anderson, Nancy Harrington, Stacy Pigford and Geraldine Teal. Ms. Teal serves as the Commission's secretary.

Ms. Wyly provided an overview of the Commission's focus during the previous year, including topics such as the Intermodal Transportation Agreement, discussions with Federal Transit to address the handling of historic properties, a partnership between ECU and the City to improve services and bus routes, and the advertising and promotion of public transportation. She reported that ridership has increased approximately 15% over the previous year, which she attributes to a combination of service quality and difficult economic conditions. She stated that public parking throughout the City is being added to the Commission's scope and they plan to focus initially on the downtown area. She recommended that the City Council consider renaming the Texaco Lot to the Courthouse Lot because there is no longer a Texaco Station in that area and the lot is located near the Courthouse.

- Recreation and Parks Commission

Chair Sue Aldridge stated the Commission and Staff envision themselves as positively impacting the health, well-being and natural environment of Greenville. She summarized a number of projects accomplished during the previous year, some of which were funded as City initiatives and others which were accomplished through public/private partnerships. She cited in particular, grants totaling \$25,000 from the Cal Ripkin Senior Foundation enabled significant improvement in both the Jackie Robinson and the Exceptional Community Baseball Leagues.

Ms. Aldridge stated the Commission also provides support for special activities like Sunday in the Park, the Slash and Dash Kids' Triathlon, Pirate Fest and a community celebration of Black History. Several tournaments were hosted during the year and a contract has been awarded for another tournament in 2011.

Ms. Aldridge stated the Commission is very excited about the Town Common Master Plan. While the cost of making recommended improvements is significant, such an investment in the heart of the community will have a tremendous impact on the lives of all of Greenville's citizens.



- Town Common Master Plan

Recreation and Parks Director Gary Fenton stated Greenville is truly blessed to have such a magnificent piece of land in the heart of the City for a greenspace. He then introduced Michael Cole and Brian O'Haver from ColeJenest and Stone, P.A. who provided an overview of the master planning process for the Town Common.

Mr. Cole stated the potential in Greenville is tremendous. Downtown parks can have substantial impact on the downtown area and are more than just an amenity. Mr. O'Haver gave a visual presentation showcasing key features of the Master Plan for this 25 acre park. He discussed the due diligence and site analysis phases, which were followed by development of a design statement and design principles. Many public meetings were held and comments from citizens were factored into creation of the master plan. One such objective was to focus on historic themes in the area and a means of incorporating them into the design.

Following an extensive question and answer session between the Council, Mr. Cole and Mr. O'Haver, Council Member Blackburn moved to adopt, but not yet fund, the Town Common Master Plan, and to incorporate it by reference into the Comprehensive Recreation and Parks Master Plan, and the Center City Redevelopment Plan. Council Member Smith seconded the motion, which passed by unanimous vote.

- Ordinance amending the Manual of Fees for Recreation and Parks facility rentals (Ordinance No. 10-97)

Director Fenton stated facilities are available for rental for private or public events sponsored by people other than the City. Reasons for rentals and types of renters vary and the Recreation and Parks Department cannot subsidize cost due to nobility of purpose; however, Staff does feel there should be an option for a reduced rental rate for 501(c)(3) organizations. The proposed fee is a 3-tiered structure, with the lowest being for those types of organizations, and the highest being for groups that are charging a fee for their event. The Recreation and Parks Commission approved the proposal at their October meeting.

Upon motion by Council Member Blackburn and second by Council Member Glover, the Ordinance was adopted by unanimous vote.

- Agreement with The Little Willie Center, Inc. of Pitt County to lease portions of the Lucille W. Gorham Intergenerational Center (Resolution 10-64)

City Attorney Holec stated that the Rectory and Annex located at the Lucille W. Gorham Intergenerational Center have been leased by The Little Willie Center, Inc. of Pitt County since 2007. The lease has expired.



In accordance with the provisions of the Memorandum of Understanding (MOU) between the City and East Carolina University, ECU serves as the site manager for the Intergenerational Center and is to recommend to the City the tenants for the buildings located at the Center. The MOU provides that in determining the tenants, ECU is to receive input from an advisory board consisting of representatives of the community, Lucille W. Gorham Intergenerational Community Center, Inc., the City, and ECU. ECU has advised the City that the Advisory Board recommended that The Little Willie Center be the tenant for the Rectory and the Annex and that the lease commence on December 1, 2010, and expire on February 28, 2012.

The lease is for a 15-month period from December 1, 2010, to February 28, 2012, which the same date the State's lease of the first floor of the Lessie Bass Building and the State's lease of the school building expires. The lease payment is \$1 per year. The Little Willie Center is responsible for all utility expenses and all housekeeping, cleaning, and janitorial expenses for the building. The Little Willie Center is responsible for maintenance and repairs for the building except that repairs greater than \$500 are to be shared equally and only occur upon agreement of both the City and the Little Willie Center. The City is responsible for maintenance of the heating and air conditioning system, maintenance of lawns and parking areas, and fire extinguisher servicing, pest control, and outside trash disposal.

In the previous lease, the Little Willie Center also leased the playground. However, having the playground available only to one tenant created a limitation on the Intergenerational Center. So the playground is not included in the area leased, but it is included within the list of the areas which the Little Willie Center will be able to use on the same basis and pursuant to the same regulations and requirements as other persons leasing other portions of the Intergenerational Center.

Mr. Holec recommended adoption of a resolution approving the lease and authorizing the City Manager to sign the lease agreement.

A motion to adopt the proposed resolution passed unanimously upon motion by Council Member Glover and second by Council Member Blackburn.

- Adoption of series resolution for Greenville Utilities Commission bond refunding (Resolution 10-65)

City Manager Bowers read the full legal title of the item: Series resolution authorizing the issuance of a Greenville Utilities Commission combined enterprise system revenue refunding bond, Series 2010, of the City of Greenville, North Carolina in an aggregate principle amount not to exceed \$11.1 million pursuant to the provisions of Section 211 of the bond order adopted by the City Council on August 11, 1994 as amended and restated on April 13, 2000, and requesting the Local Government Commission of North Carolina to award the Series 2010 bonds at



private sale. Mr. Bowers explained this is a refunding of an outstanding bond to take advantage of lower interest rates. He recommended adoption of the required series resolution.

A motion to adopt the resolution as recommended by the City Manager passed unanimously upon motion by Council Member Joyner and second by Council Member Smith.

- Erosion of stream banks located on private properties

Senior Engineer Lisa Kirby stated that staff presented a follow-up report on stream bank erosion and stream degradation at the August 9th City Council meeting which included a set of criteria and a decision tree to assist in categorizing projects as either bank stabilization or stream restoration.

After determining there were 15 bank stabilization projects, staff proceeded to rank each project. A point system ranging from 0-200 (200 being the most severe) was used to rank each project. This process assessed the type of project; such as habitable structure, office/commercial structure, outbuildings with a permanent foundation, property access, and loss of land. Points were deducted for the level of difficulty associated with property access, permitting, and mitigation. There were six projects that received a rating of 160 or better. Staff developed preliminary cost estimates for these six projects.

Ms. Kirby said Staff continued to recommend a hybrid approach that would address a number of stream bank stabilization projects on an annual basis, but would be subject to available resources. The City's participation in stream restoration projects would primarily involve seeking and applying for grants and, if necessary, provide a required cost share. Stream restoration projects would be dependent upon available grant opportunities and receipt of adequate grant funds.

The City Council directed the staff to assess, prioritize, and provide cost estimates for the 10 stream restoration projects involving 18 properties and to merge the stabilization and restoration projects into one list, prioritize them, and analyze the budgetary impacts.

With the assistance of a consultant, Staff has completed cost estimates for the 10 restoration projects and has ranked them. The ranking resulted in the stream running parallel to Nichols Drive in the Eastwood Subdivision (201 Kent Road, 103 Nichols Drive, and 99 Nichols Drive) being the highest priority. This is primarily due to the proximity of the house on Kent Road, ease of access, and the small number of properties involved. In contrast, the project that ranked the lowest is the stream running through Woodridge Park off of Allen Road (967 Woodridge Park). There are no improvements or structures in danger at this location.



Estimates for project costs range from \$115,865 to \$1,099,195 based on the following assumptions:

- 100% property owner participation by providing necessary easements.
- Access to all project areas can be obtained.
- A minimum of 30' is available for buffer on both sides of the stream.
- Existing private improvements within the buffer area will be relocated at the property owner's expense.
- Typical restoration methods are used at all locations.
- State/Federal regulations will remain consistent throughout the project.
- Projects all qualify for Nationwide Permits and no mitigation is required.

Staff utilized a benefit/cost analysis to determine how bank stabilization projects and stream restoration projects would compare and rank against each other. This would result in the delay of several bank stabilization projects until funding for restoration projects is acquired. Staff anticipates that the delay may cause some projects that could be corrected by bank stabilization to become areas that can only be corrected by stream restoration. Based on this and other concerns, staff does not believe it is appropriate to compare stabilization and restoration projects.

Following extensive discussion of the information presented, City Manager Bowers stated it did appear that the Council wishes to adopt a program which does not leave mitigation responsibility solely to property owners. He suggested they consider allowing Staff to provide information at the next meeting on different approaches for a cost sharing program with variations in cap and percentages and to provide cost information on bank stabilization and potential impact on the Capital Improvement Program.

Council Member Joyner moved to accept the City Manager's recommendation. The motion was seconded by Council Member Glover and approved by unanimous vote.

- Presentation on Title 6, Chapter 5 of the City Code relating to "Tree Protection Prior to Development"

Public Works Operations Manager Ken Jackson stated his presentation was in response to the Council's September 20<sup>th</sup> request current City regulations related to the clear cutting of trees. He reported that in March 2007, the City Council approved an ordinance amending the City Code by adding an article entitled "Tree Protection Prior to Development". The purpose of this amendment is to preserve trees 6" in diameter or





greater within perimeter buffers of undeveloped property until a development plan is approved. Preservation of trees is important because they decrease surface runoff by absorbing moisture, help to clean the air, reduce energy costs when strategically placed near structures and they improve aesthetics.

By requiring development plans to be approved prior to cutting trees in the perimeter buffers, owners and developers/builders have an opportunity to consider the benefits of retaining trees as part of their development and evaluate the potential use of regulatory credits available for saving trees. The provisions of this article apply only to undeveloped property greater than two acres within the corporate limits and extraterritorial jurisdiction of the city.

The perimeter buffers are measured fifty feet from public road rights-of-way, fifty feet from property lines adjacent to developed property, and twenty-five feet from property lines adjacent to undeveloped property. The total area of perimeter buffers shall not exceed 20% of the total area of the property. Once a development plan is approved, the removal of trees is at the discretion of the owner or developer/builder.

Development of this code amendment began in late 2004 when a committee made up of environmentalists, developers/builders, a Community Appearance Commission member, and an Environmental Advisory Commission member met to discuss a framework for legislation that would prevent clear cutting of trees on undeveloped property. After a series of meetings, the committee produced a "Framework for Limiting Clear Cutting on Private Property." This framework was utilized to draft the language for the tree preservation legislation request that was submitted by the City Council for consideration by the General Assembly and was approved by the State Legislature in July 2006.

A tree ordinance was drafted in August 2006 and was reviewed by both the Environmental Advisory Commission and the Community Appearance Commission. In December 2006, a citizen meeting was held to obtain comments on the proposed Tree Preservation Ordinance. The Community Appearance Commission and the Environmental Advisory Commission passed resolutions of support for the proposed Tree Ordinance amendment. The Planning and Zoning Commission recommended approval as well.

Staff reviewed the current tree preservation policies posted on the websites of 14 other cities within North Carolina. Ten of those cities have tree preservation requirements for development and the remaining four have ordinances which encourage preservation of trees.

The sections of the Greenville City Code on Building, Planning, and Development have requirements for site vegetation, vegetative screening/buffers, and parking/drive area vegetation for any lot or tract of land that is to be developed. These code sections allow for credits on vegetative/buffer planting requirements for preserving existing trees.





Following general discussion by the City Council, Council Member Mercer made the following three-part motion for action by City Staff: (1) to get input from the local development community, the Environmental Advisory Commission, the Community Appearance Commission, ReLeaf and any other organization or stakeholders they deem appropriate, (2) to come back with a recommendation for upgrading the tree ordinance, and (3) to provide a list of suggestions made by stakeholders that are not necessarily in the recommended ordinance. Council Member Blackburn seconded the motion.

City Attorney Holec stated there could be an issue with the City's statutory authority. In order to regulate prior to development, the City had to get a local act. The current ordinance goes as far as that allows, so it may be necessary to petition for additional authority.

Mayor Pro-Tem Kittrell stated he is fine with the first part of Council Member Mercer's motion, but feels the second part is presumptuous in that stakeholders may not recommend changing the existing ordinance.

Council Member Mercer stated he would accept that as a friendly amendment and revised part two of his motion to say "come back with a recommendation based on input from stakeholders." Council Member Blackburn said her second stands, and the City Council voted unanimously to approve the amended motion.

- 2011 Schedule of City Council Meetings

City Clerk Barwick presented the proposed schedule of City Council meetings for 2011, noting that dates listed were based on Section 2-1-11 of the Greenville City Code. She noted potential conflicts with City-observed holidays and certain meetings/events frequently attended by Council.

Following a general discussion of proposed dates and suitable alternatives for those having conflicts, Council Member Joyner moved to adopt the schedule which appears hereunder. Mayor Pro-Tem Kittrell seconded the motion, which passed by unanimous vote.



**2011 SCHEDULE OF CITY COUNCIL MEETINGS**  
(All meetings are held in the Council Chambers unless otherwise noted)

January 10 - 6:00 PM	July – No meetings
January 13 - 7:00 PM	
January 24 – 6:00 PM	
February 10 – 7:00 PM	August 8 – 6:00 PM
February 21 – 6:00 PM	August 11 – 7:00 PM
	August 22 – 6:00 PM
March 3 – 7:00 PM	September 8 – 7:00 PM
March 21 – 6:00 PM	September 19 – 6:00 PM
April 11 – 6:00 PM	October 10 – 6:00 PM
April 14 – 7:00 PM	October 13 – 7:00 PM
April 25 – 6:00 PM	
May 9 – 6:00 PM	November 14 – 6:00 PM
May 12 – 7:00 PM	November 17 – 7:00 PM
May 23 – 6:00 PM	November 21 – 6:00 PM
June 6 – 6:00 PM	December 5 – 6:00 PM (Organizational meeting)
June 9 – 7:00 PM	December 8 – 7:00 PM
June 20 – 6:00 PM	December 19 – 6:00 PM

- Fiscal Year 2011-2012 Budget Schedule

Financial Services Director Bernita Demery presented the following budget schedule:

CITY OF GREENVILLE, NC  
BUDGET SCHEDULE  
FISCAL YEAR 2011 - 2012  
**DRAFT**

Monday	November 8, 2010	Budget schedule presented to City Council.
Saturday	January 22 or 29, 2010	City Council Planning Retreat
Wednesday	April 11, 2011	City Council Preview of Proposed City budget
Wednesday	May 4, 2011	Proposed City, GUC, SML, and CVA budgets distributed to City Council
Monday	May 9, 2011	Proposed City, GUC, SML, and CVA budgets presented to City Council
Monday	May 23, 2011	City Council Budget Review (if needed)
Monday	May 23, 2011	Public display of balanced budgets prior to the Public Hearing
Monday	June 6, 2011	Public Hearing - Fiscal Year 2011 - 2012 Budget
Thursday	June 9, 2011	Adoption of the Fiscal Year 2011 - 2012 Budget



She stated the budget schedule is based on the Council's meeting schedule which was just adopted.

Upon motion by Council Member Joyner and second by Mayor Pro-Tem Kittrell, the Fiscal Year 2011-2012 Budget Schedule was adopted.

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**COMMENTS FROM MAYOR AND CITY COUNCIL**

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The Mayor and Members of the Council made general comments about past and future events.

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**CITY MANAGER'S REPORT**

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City Manager Bowers reminded the Council that a public officials meeting would be held on November 16<sup>th</sup> at 12:45 pm in Room 337 at City Hall related to the Tenth Street Connector Project.

Mr. Bowers asked the Council to consider scheduling a joint meeting with the Greenville Utilities Commission in the GUC Board Room at 6:30 pm on December 14<sup>th</sup>. Council Member Joyner moved to schedule the requested meeting, seconded by Council Member Blackburn. The motion passed by unanimous vote.

---

**CLOSED SESSION**

---

Upon recommendation of the City Attorney, Motion was made by Council Member Blackburn to enter closed session in accordance with G.S. § 143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes and G.S. § 143-318.11(a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body including consultation relating to the lawsuit entitled City of Greenville v. Charlie Gregory Edwards and Sheila B. Edwards. Council Member Joyner seconded the motion, which passed by unanimous vote. Mayor Dunn declared the City Council in closed session at 10:21 pm.



Following conclusion of closed session discussion, Motion was then made by Council Member Joyner and seconded by Mayor Pro-Tem Kittrell to return to open session. Motion was approved unanimously, and Mayor Dunn returned the City Council to open session at 11:38 pm.

---

**ADJOURNMENT**

---

Council Member Joyner moved to adjourn the meeting, seconded by Mayor Pro-Tem Kittrell. There being no further discussion, the motion passed by unanimous vote and Mayor Dunn adjourned the meeting at 11:39 pm.

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

---

**Title of Item:** Resolution accepting dedication of rights-of-way and easements for Fire Tower Commercial Park, Phase 2

**Explanation:** In accordance with the City's Subdivision regulations, rights-of-way and easements have been dedicated for Fire Tower Commercial Park, Phase 2 (Map Book 73 at Page 195). A resolution accepting the dedication of aforementioned rights-of-way and easements is attached for City Council consideration. The final plat showing the rights-of-way and easements is also attached.

**Fiscal Note:** Funds for the maintenance of these rights-of-way and easements are included within the fiscal year 2010-2011 budget.

**Recommendation:** Adopt the attached resolution accepting dedication of rights-of-way and easements for Fire Tower Commercial Park, Phase 2.

---

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Fire Tower Commercial Park](#)
- [February 2011 Right of Way Resolution 887954](#)

RESOLUTION NO.  
A RESOLUTION ACCEPTING DEDICATION TO THE PUBLIC OF  
RIGHTS-OF-WAY AND EASEMENTS ON SUBDIVISION PLATS

WHEREAS, G.S. 160A-374 authorizes any city council to accept by resolution any dedication made to the public of land or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction; and

WHEREAS, the Subdivision Review Board of the City of Greenville has acted to approve the final plats named in this resolution, or the plats or maps that predate the Subdivision Review Process; and

WHEREAS, the final plats named in this resolution contain dedication to the public of lands or facilities for streets, parks, public utility lines, or other public purposes; and

WHEREAS, the Greenville City Council finds that it is in the best interest of the public health, safety, and general welfare of the citizens of the City of Greenville to accept the offered dedication on the plats named in this resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina:

Section 1. The City of Greenville accepts the dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes offered by, shown on, or implied in the following approved subdivision plats:

Fire Tower Commercial Park, Phase 2      Map Book 73      Page 195

Section 2. Acceptance of dedication of lands or facilities shall not place on the City any duty to open, operate, repair, or maintain any street, utility line, or other land or facility except as provided by the ordinances, regulations or specific acts of the City, or as provided by the laws of the State of North Carolina.

Section 3. Acceptance of the dedications named in this resolution shall be effective upon adoption of this resolution.

Adopted the 10<sup>th</sup> day of February, 2011.

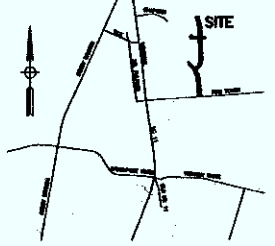
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Patricia C. Dunn, Mayor

ATTEST:

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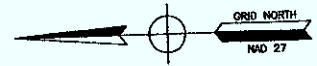
Carol L. Barwick, City Clerk



VICINITY MAP

**CURVE TABLE**

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREES	CHORD	CH BEARING
C-1	650.00'	288.48'	843.00'	47°31'31"	8°45'53"	527.35'	N 22°55'36" W
C-2	710.00'	106.87'	217.82'	17°33'42"	8°04'11"	218.77'	S 39°05'00" E
C-3	30.00'	33.12'	50.00'	85°39'14"	18°09'00"	44.47'	S 77°07'44" E
C-4	315.00'	147.89'	278.67'	50°17'16"	18°11'21"	287.86'	N 52°53'58" E
C-5	25.00'	25.00'	35.27'	80°00'00"	22°10'50"	36.36'	N 40°14'30" W
C-6	50.00'	70.71'	218.63'	25°21'44"	11°43'35"	81.65'	N 40°11'37" E
C-7	25.00'	17.68'	30.77'	70°31'44"	22°10'50"	28.87'	S 49°58'47" E
C-8	25.00'	25.00'	35.27'	80°00'00"	22°10'50"	36.36'	N 49°45'21" E
C-9	840.00'	33.00'	85.98'	4°03'18"	8°05'43"	85.98'	N 02°44'52" E
C-10	1000.00'	31.72'	83.43'	3°38'03"	8°43'48"	83.42'	02°08'20" W
C-11	25.00'	25.00'	35.27'	80°00'00"	22°10'50"	36.36'	S 40°14'30" E
C-12	175.00'	83.92'	104.61'	34°14'54"	32°44'28"	103.08'	S 80°07'12" E
C-13	125.00'	38.44'	74.58'	34°11'03"	45°50'12"	73.49'	N 89°00'07" W
C-14	25.00'	25.00'	35.27'	80°00'00"	22°10'50"	36.36'	S 44°42'71" W
C-15	375.00'	185.61'	349.35'	53°22'35"	19°18'44"	338.85'	S 31°28'40" W
C-16	30.00'	24.30'	40.85'	78°01'34"	19°28'09"	37.77'	S 18°07'12" W
C-17	710.00'	130.81'	258.90'	20°53'30"	8°04'11"	257.41'	S 02°28'47" E

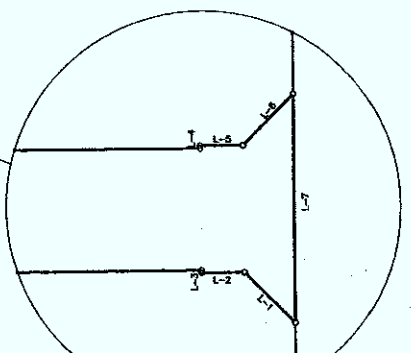
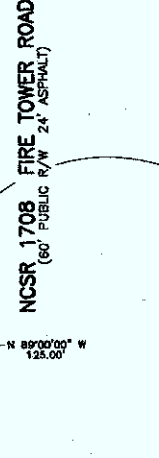
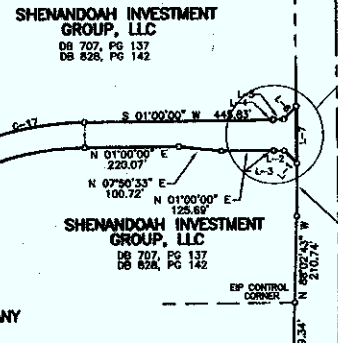
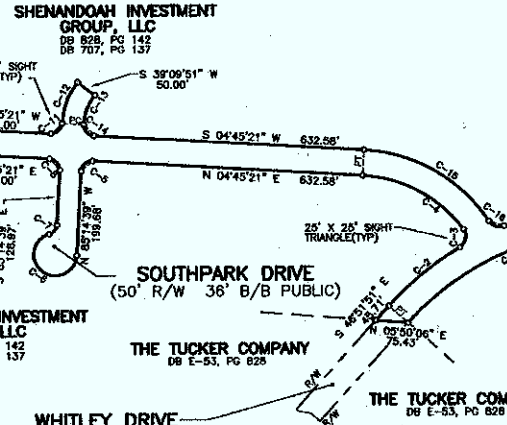
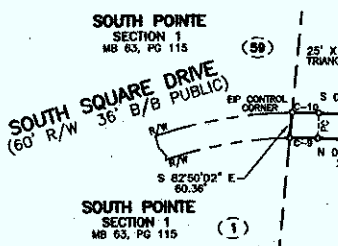


**LEGEND**  
 R/W = RIGHT-OF-WAY  
 B/B = BACK OF CURB TO BACK OF CURB  
 EIP = EXISTING IRON PIPE  
 SIP = SET IRON PIPE  
 ~ = NOT TO SCALE

**SITE DATA**

TOTAL AREA	3.998 AC
NUMBER OF LOTS CREATED	0
AREA IN COMMON AREA	0
AREA IN PARKS, RECREATION AREAS, CEMETERIES AND THE LIKE	0

Doc ID: 040813720001 Type: CDP  
 Recorded: 11/06/2010 at 11:31:50 AM  
 Fee Amt: \$21.00 Page 3 of 4  
 Pitt County, NC  
 Deborah T. Barrington REG OF DEEDS  
 BK 73 PG 195



DETAIL "A"  
SCALE: 1" = 50'

**CALL TABLE**

L-1	N 46°10'22" E	42.13'
L-2	N 01°02'25" E	25.00'
L-3	S 89°57'03" E	1.41'
L-4	S 89°57'03" E	1.59'
L-5	S 01°02'25" W	25.00'
L-6	S 43°57'03" E	42.43'
L-7	N 88°48'49" W	134.91'

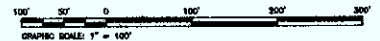
WHITLEY DRIVE  
(60' R/W 40' B/B PUBLIC)

**GENERAL NOTES**

1. ALL AREAS CALCULATED BY COORDINATE GEOMETRY.
2. THIS MAP IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND.
3. THIS PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARDOUS AREA AS DETERMINED BY FEDERAL EMERGENCY MANAGEMENT AGENCY, REF: 3720487600 J DATED JANUARY 2, 2004.
4. THE DESIGNATION NOTED OVER WATER, SANITARY SEWER, GAS OR ELECTRICAL LINES IS FOR THE PURPOSE OF ESTABLISHING THE WIDTH OF SAID EASEMENT. THE EASEMENTS ARE NOT EXCLUSIVE AND WILL PERMIT THE INSTALLATION OF WATER, SANITARY SEWER GAS AND ELECTRIC LINES WITHIN THOSE DESIGNATED WIDTHS.
5. NO BUILDINGS, STRUCTURES, OR OTHER IMPROVEMENTS, MATERIALS AND SURFACES, INCLUDING BUT NOT LIMITED TO PRINCIPAL AND ACCESSORY STRUCTURES AND APPURTENANCES (THEY), SIGNAGE, FENCES, WALLS, MECHANICAL EQUIPMENT, CANOPIES, ANTENNAS, MASTS, AERIALS, MONUMENTS, LANDSCAPE PLANTINGS, FILL MATERIALS, DEBRIS, SOLID WASTE COLLECTION CONTAINERS, MAIL RECEPTACLES AND IMPROVED SURFACES, SHALL ENCROACH WITHIN ANY DEDICATED EASEMENT WITHOUT PRIOR APPROVAL OF THE CITY OF GREENVILLE.
6. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES, NO GRID FACTORS HAVE BEEN APPLIED.
7. FINAL PLAT WAS MODIFIED TO REFLECT SOUTH PARK DRIVE, ALL OTHER INFORMATION RECORDED IN MAP BOOK 66, PAGE 72 REMAINS THE SAME.

A PORTION OF PARCEL #13361  
TAX MAP #4675.07-69-0084

A PORTION OF PARCEL #8387  
TAX MAP #4676.19-50-6966



FINAL PLAT SHEET 1 OF 1

**MINOR ALTERATION  
FIRE TOWER  
COMMERCIAL PARK  
PHASE 2**

REFERENCE: BEING A PORTION OF THE PROPERTY DESCRIBED IN DEED BOOK 707, PAGE 137 AND DEED BOOK 828, PAGE 142 OF THE PITT COUNTY REGISTRY, GREENVILLE, WINTERTVILLE TOWNSHIP, PITT COUNTY, NORTH CAROLINA

OWNER: SHENANDOAH INVESTMENT GROUP, LLC  
 ADDRESS: 1696 E. ARLINGTON BLVD. (P.O. BOX 3075)  
 GREENVILLE, N.C. 27858  
 PHONE: (252) 355-0752

**Baldwin Design Consultants, PA**  
 DESIGN - LAND PLANNING - SURVEYING  
 709-D CORNELIUS DR. GREENVILLE, NC 27606 252.758.1300

SURVEYED: DF	APPROVED: MWB
DRAWN: JAM	DATE: 10/26/2010
CHECKED: MWS	SCALE: 1" = 200'

**SOURCE OF TITLE**  
 THIS IS TO CERTIFY THAT THE LAST INSTRUMENT(S) IN THE CHAIN OF TITLE(S) OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTRY AT GREENVILLE, NORTH CAROLINA IS:

DEED BOOK 707 PAGE 137  
 DEED BOOK 828 PAGE 142  
 DEED BOOK 2 PAGE 1  
 NC REGISTRATION NO. L-3082

**OWNERS STATEMENT**  
 THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE AT THE REQUEST OF

*James L. Powell*  
 SIGNED AND SUBSCRIBED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_ 2010.

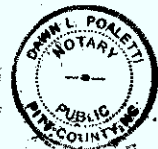
*James L. Powell*  
 NOTARY PUBLIC  
 MY COMMISSION EXPIRES: 03/28/2014

**APPROVAL**  
 THIS FINAL PLAT NO. 10-57 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 9, CHAPTER 5 OF THE GREENVILLE CITY CODE ON THE \_\_\_\_ DAY OF 2010. (MINOR ALTERATION)

*Ann H. Hester*  
 SIGNED: CITY PLANNER # 3

**DEDICATION**  
 THE UNDERSIGNED HEREBY ACKNOWLEDGES THIS PLAT AND ALLOTMENT TO BE THEIR FREE ACT AND DEED, AND HEREBY DEDICATES TO PUBLIC USE AS STREETS, PARKS, PLAYGROUNDS, OPEN SPACES AND EASEMENTS FOREVER ALL AREAS AS SHOWN OR SO INDICATED ON SAID PLAT.

*James L. Powell*  
 SIGNED: ATTEST



**CERTIFICATION**

I, MICHAEL W. BALDWIN CERTIFY THAT UNDER MY DIRECT SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION (BEST DESCRIPTION RECORDED IN BOOK PAGE, ETC.) OTHERS THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DAWN FROM INFORMATION FOUND IN BOOK PAGE. THAT THE BASIS OF PRECISION AS CALCULATED IN WRITINGS AND DEPARTURES IS 1:10,000. THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH GS 17-03 AS AMENDED. WITHIN MY HAND AND SEAL THIS 28th DAY OF OCTOBER, 2010.

SIGNED: *Michael West Baldwin*  
 REGISTRATION NO. L-3082

**REVIEW OFFICER'S CERTIFICATE**

*Andrew Thomas, Jr.*  
 REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS ATTACHED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

*Andrew Thomas, Jr.*  
 REVIEW OFFICER DATE

NORTH CAROLINA, PITT COUNTY  
 FILED FOR REGISTRATION THIS \_\_\_\_ DAY OF \_\_\_\_ AT \_\_\_\_ O'CLOCK \_\_\_\_ M.  
 JUDY J. TART, REGISTER OF DEEDS  
 BY: \_\_\_\_\_ DEPUTY REGISTER OF DEEDS



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Contract for design of the Green Mill Run Greenway Phase II Extension

**Explanation:** The project begins at the western terminus of the first phase of the Green Mill Run Greenway at Charles Boulevard and continues along Green Mill Run, across Evans Street and along Arlington Boulevard to Evans Park. Requests for Qualifications were received for the design of the Green Mill Run Greenway Phase 2 extension project in September 2010. Five of the firms were selected for interviews. Kimley Horn and Associates, Inc. of Raleigh, NC, was selected as the most qualified firm by the review committee, which included representatives from the Public Works Department and the Recreation and Parks Department.

This extension is the second phase of the overall Green Mill Run Greenway project. The scope of work on this project includes, but is not limited to, project planning, environmental assessments, permitting, public involvement, surveying, and development of construction documents.

The City was awarded a federal grant for the construction of this greenway. The grant is a 70% Federal, 30% City match. Initial staff estimates indicate that the majority of the remaining grant funds will be used for construction of the project.

**Fiscal Note:** In accordance with the Federal grant for this project, the City shall be reimbursed 70% of the costs up to a maximum amount of \$1,200,000. The proposed budget for this project is as follows:

**Expenditures**

Design	\$235,823.06
Total	\$235,823.06

**Revenue**

Federal Grant	\$165,076.14
---------------	--------------



City	<u>\$ 70,746.92</u>
Total	\$235,823.06

**Recommendation:** Award a design contract (copy attached) for the Green Mill Run Greenway Phase II Extension to Kimley Horn & Associates, Inc. in the amount of \$235,823.06.

---

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Contract](#)

---

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



---

AMERICAN COUNCIL OF ENGINEERING COMPANIES

---

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

---

AMERICAN SOCIETY OF CIVIL ENGINEERS

---

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE  
A Practice Division of the  
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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American Council of Engineering Companies  
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(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
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(800) 548-2723  
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Associated General Contractors of America  
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[www.agc.org](http://www.agc.org)

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ , \_\_\_\_\_ (“Effective Date”) between  
City of Greenville, North Carolina (“Owner”) and  
Kimley-Horn and Associates, Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: EB -5129 Green Mill Run Greenway/Bikeway Phase 2 Extension (“Project”)

Engineer's services under this Agreement are generally identified as follows:

Surveying, geotechnical investigations, project coordination, environmental permits, NEPA documentation, greenway design, hydraulic design, stream modeling, traffic signal design, structure design and bid phase services.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to

Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### 3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

#### 3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### 4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. Amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. Disputed Invoices: If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. Legislative Actions: If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

## **ARTICLE 5 – OPINIONS OF COST**

### 5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

### 5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

### 5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

## **ARTICLE 6 – GENERAL CONSIDERATIONS**

### 6.01 Standards of Performance

- A. Standard of Care: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

- time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. **Consultants:** Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures:**
1. Engineer and Owner shall comply with applicable Laws and regulations.
  2. Prior to the Effective Date, Owner must provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any



failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 Design Without Construction Phase Services

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.11. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.11.

#### 6.03 Use of Documents

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely on that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between

the electronic files and the hard copies, the hard copies govern. ~~If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.~~

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in

the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. ~~Owner and~~ Engineer shall ~~each deliver to the other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 Suspension and Termination

- A. Suspension:
  - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
  - 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. Termination: The obligation to provide further services under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. Effective Date of Termination: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. Payments Upon Termination:

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.

2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 Controlling Law

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

#### 6.07 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 Dispute Resolution

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to ~~invoking the procedures of Exhibit H or other provisions of this Agreement, or~~ exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

## 6.09 Environmental Condition of Site

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.10 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~



- B. ~~Indemnification by Owner: Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. Environmental Indemnification: To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. Percentage Share of Negligence: To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. Mutual Waiver: To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  2. Agreement – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  5. Construction Contract – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  7. Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.



8. Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. Contract Documents – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. Contractor – The entity or individual with which Owner has entered into a Construction Contract.
11. Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. Drawings – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. Engineer – The individual or entity named as such in this Agreement.
15. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. Owner – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. PCBs – Polychlorinated biphenyls.
19. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. Record Drawings – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. Resident Project Representative – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. Site – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### 8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services, consisting of 15 pages.
- B. Exhibit B, Owner’s Responsibilities, consisting of 3 pages.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses, consisting of 1 page.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative (not included).
- E. Exhibit E, Notice of Acceptability of Work (not included).
- F. Exhibit F, Construction Cost Limit (not included).
- G. Exhibit G, Insurance, consisting of 1 page.
- H. Exhibit H, Dispute Resolution (not included).
- I. Exhibit I, Limitations of Liability (not included).
- J. Exhibit J, Special Provisions (not included).
- K. Exhibit K, Amendment to Owner-Engineer Agreement (not included).

### 8.02 Total Agreement:

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 Designated Representatives:

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 Engineer's Certifications:

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

City of Greenville

By: Patricia C. Dunn

Title: Mayor

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Engineer:

Kimley-Horn and Associates, Inc.

By: Richard C. Adams, PE

Title: Senior Vice President

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

Engineer License or Firm's  
Certificate No. F-0102

State of: North Carolina

Address for giving notices:

Public Works Department

1500 Beatty Street / PO Box 7207

Greenville, NC 27834

Designated Representative (Paragraph 8.03.A):

Wesley B. Anderson, P.E.

Title: Director of Public Works

Phone Number: 252-329-4522

Facsimile Number: 252-329-3545

E-Mail Address: wbanderson@  
greenvillenc.gov

Address for giving notices:

Kimley-Horn and Associates, Inc.

Post Office Box 33068

Cary, NC 27636

Designated Representative (Paragraph 8.03.A):

Jeffrey W. Moore, P.E.

Title: Vice President

Phone Number: 919-677-2000

Facsimile Number: 919-677-2050

E-Mail Address: jeff.moore@kimley-horn.com

This is **EXHIBIT A**, consisting of 15 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

## **Engineer's Services**

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Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

### **PART 1 – BASIC SERVICES**

#### **A1.01 Surveying**

The Engineer will utilize a subconsultant for surveying services for the Project as outlined below. Engineer will prepare all data in MicroStation V8i format in accordance with NCDOT Location and Survey Standards and Specifications. All survey services will be completed by the standards as set forth by the Rules of Standard Practice as outlined by the North Carolina Board of Engineers and Land Surveyors and North Carolina General Statutes to include GS 47- 30 (Mapping Requirements) and North Carolina Administrative Code - 21 NCAC 56.1606 (Specifications for Topographic and Planimetric Mapping, Including Ground, Airborne, and Spaceborne Surveys).

- 1.1. **Property Data:** Engineer will provide property data consisting of Tax Office, GIS information, and Register of Deeds data to retrieve current ownership of parcels (41 parcels) within the project survey limits. Engineer will utilize this information to determine the existing property lines and public right-of-way.

Engineer will perform field surveys of existing parcels adjacent to the proposed greenway alignment. Locations at existing parcels are limited to apparent existing property corners. For parcels less than one acre, Engineer will survey all property corners. For parcels greater than 2 acres, Engineer will survey only the two corners adjacent to the corridor. All property lines, existing right-of-way lines, property owner names and parcel identification numbers will be mapped into a separate property CAD (PRL) file.

Property boundary locations will be shown giving length and bearing on each straight line and interior angles radius and length of curved lines will be shown for the subject parcel and associated rights-of-way. Property lines not surveyed will be shown but will be clearly indicated as being "from records only". Visible encroachments and easements of record where readily obtainable will be located and shown. Adjacent properties will be noted with owner name and legal reference.

- 1.2. **Property Owner Contact List:** Engineer will coordinate with the City of Greenville to provide names and addresses of each property owner (41) within the project limits. Engineer will draft a letter for the City of Greenville to send out on their letterhead notifying property owners of the anticipated start date, survey phase duration, and need for property access by Engineer. All questions and comments should be addressed to the City

of Greenville and shall be noted in the letter. Property owner contact list will be developed based on Tax Office, GIS information, and Register of Deeds data.

- 1.3 Control Surveys: Engineer will establish four (4) GPS control points horizontally tied to the North Carolina State Plane Coordinate System under the North American Datum of 1983 (NAD83). The project's units will be the U.S. Survey Foot. GPS Control Points are to be placed at beginning and end of the project route.

Engineer will perform a control survey of the entire project area. This control system will be used as a basis for all surveys, design and construction of the project. Control stations will be inter-visible and monumented with iron rebar for future use at approximately 500 feet intervals throughout the project area per NCDOT Standards. These points may be referenced throughout the lifespan of the project. Engineer will provide project coordinates (northing, easting and elevation) for each point.

- 1.4. Establish Temporary Benchmarks: Engineer will establish project vertical control on the ground for the project. Temporary benchmarks are to be spaced approximately 500 feet apart and set as a spike or lag bolt in a tree or other like feature/structure. The Project will be tied to the North American Vertical Datum of 1988 (NAVD88).

- 1.5 Topographic Survey: Engineer will perform field survey of existing planimetric and topographic features inside the project limits. The project limits (survey corridor) are approximately 23 acres. The survey includes existing buildings, parking areas, sidewalks, concrete pads, curb/gutter, paving, pavement markings in parking lots and streets, driveways, street signage, walls, fences, ditches and visible improvements within the project area. Edges of wooded areas will be field located. Buildings on-site will be dimensioned and shown with corresponding finish floor elevations at entrances. Survey will also include the horizontal location of the ECU Challenge Course Stations and course access paths on ECU property adjacent to the survey corridor. Engineer will field locate individual trees flagged and/or tagged by the Engineer or its representatives. Up to eighty (80) trees are estimated for the Scope of Services.

The topographic survey will include but not be limited to spot elevations on paving and other hard surfaces and will be to the nearest 0.01 foot. On other surfaces, spot elevations will be shown to the nearest 0.1 foot. Contours will be generated at one (1) foot intervals. Error of contours shall not exceed applicable National Map Accuracy Standards (plus or minus one-half contour interval). Engineer will also prepare a MicroStation Digital Terrain Model (DTM) file.

- 1.6 Utility Data: Engineer will field survey utilities in the project area using record information provided by the City or its representatives and visible surface evidence solely. Engineer will contact the North Carolina One-Call Center (NCOCC) for Utility Location on the project. Any utility paint markings provided by the One-Call process will be located and shown on the final drawings. Upon notification by One-Call, Engineer will contact each utility provider to ascertain available record information. Survey will include visible above ground utility features within the survey corridor limits, including sanitary sewer manholes, tops, inverts, pipe materials, diameter, and appropriate labels.



- 1.7 Storm Drain Data: Engineer will perform field surveys of visible storm pipe and structures within the survey limits including tops, inverts, pipe materials, diameter, and appropriate labels. Pipe sizes entering and exiting these structures will also be noted where accurately attainable. Storm drainage and sanitary systems will be traced and located to one structure beyond the survey limits of the project. Engineer will coordinate with the City of Greenville or Greenville Utility Commission to obtain access to all blocked or inaccessible structures as needed.
- 1.8 Easement Maps: Engineer will prepare recordable plats in accordance with NC GS 47-30 for use in the City's acquisition of easements and rights-of-way necessary for the construction of the Project. It is estimated that eight (8) plat exhibits (sheets) will be required to map the property impacts throughout the Project. Plats will be prepared at a scale conducive to showing an entire parcel on one plat exhibit and shall include proposed right-of-way, permanent and temporary drainage, utility and construction easements. The first plat submittal will be included with the 75% plans submittal (A1.10). Three (3) copies of the final plats shall be submitted for property acquisition and recordation.
- 1.9 Wetland Maps: Engineer will field locate the wetland/stream flags and incorporate into the final survey file. The Engineer will prepare one Jurisdictional Determination Map for certification by the US Army Corps of Engineers. Sheet size is to be 11" X 17" and at drawing scale to clearly depict the wetlands where it affects the properties. The Engineer will relate the wetland/stream areas to a boundary survey and sign and seal the map.
- 1.10 Right-of-Way and Easement Staking: Engineer will perform field survey to stake up to 50 easement points throughout the project. Easement points are to be flagged with 48" white top stakes.

#### A1.02 Geotechnical Investigations

The Engineer will utilize a subconsultant for geotechnical investigations and the subsurface report and provide the following:

- 2.1. Two (2) borings for the proposed bridge, one at each end bent location, advanced to depths of approximately 70 feet. Engineer anticipates the structure will consist of a single span. These borings will be located in a densely wooded area and will require clearing in order to gain access.
- 2.2. Six (6) borings for the section of greenway trail located between Evans Street and Charles Boulevard, advanced to depths of approximately 10 feet. These borings are also located in wooded areas and will require clearing.
- 2.3. One 20-foot deep boring will be drilled for each 100 feet of proposed boardwalk. Based on an assumed length of 200 feet of boardwalk at each approach, a total of four (4) 20-foot deep borings are proposed for boardwalk areas.
- 2.4. Laboratory testing on selected soil samples.



- 2.5. Preparation of subsurface investigation report in accordance with NCDOT Geotechnical Unit procedures and guidelines for bridge foundations and greenway trail construction recommendations.

All borings will be laid out in the field using GPS coordinates established from electronic drawings provided by others. Ground surface elevations for the test borings will be estimated from site topographic maps. Clearing will be needed to provide access for the drill rig to all of the boring locations. Depending on site conditions at the time of the geotechnical investigation, clearing may be performed by hand or using a Fecon Bullhog or similar rotating hydraulic drum mulcher. Regardless of the method, clearing will be limited to the minimum amount needed to provide the required access.

Engineer does not anticipate crossing wetlands to access these boring locations. Engineer will seek permission to cut vegetation to gain access on East Carolina University (ECU) property with the drill rig.

All borings will be drilled using an all-terrain-vehicle (ATV) mounted drill rig equipped with mud rotary drilling equipment and an automatic hammer. Standard penetration tests will be performed in accordance with the American Association of State Highway Transportation Officials (AASHTO T-206-87).

Engineer will contact the NCOCC to request that utilities be located on site. Some damage to the ground surface will occur. Engineer will minimize the damage as much as possible. Engineer will backfill the soil borings with soil cuttings prior to demobilizing from the site.

#### *Laboratory Testing*

Soil samples collected using the split-barrel sampler during drilling will be visually classified in the field in general accordance with the AASHTO Soil Classification System. Select soil samples will be tested in the Engineer's laboratory for natural moisture (AASHTO T-265), Atterberg limits (AASHTO T-98 & T-90), gradation analysis (AASHTO T-88) and organic content (AASHTO T-267).

#### *Report Preparation*

After completion of the subsurface exploration, Engineer will prepare a Structure Foundation Investigation report to include: field and laboratory test results, boring logs, subsurface cross sections, color photographs of the site, and foundation recommendations for each bridge bent and boardwalk supports. The Engineer anticipates the proposed boardwalks will be supported by timber piles.

The engineering report generated by Engineer will adhere to Section 100-6 of the NCDOT Geotechnical Unit Procedures and Guidelines Manual (Guidelines), except it will have less detailed subsurface descriptions and will have "final" foundation recommendations. A summary sheet of the recommendations along with notes/comments for each bridge bent and boardwalks will be generated. LRFD foundation analysis and design will be performed in accordance with the NCDOT Geotechnical Engineering Unit Bridge Foundation Design and current AASHTO

procedures. Final logs for the greenway borings will be included with the structure foundation report along with general construction recommendations for the greenway trail.

### A1.03 Meetings and Coordination

The Engineer will conduct miscellaneous coordination with City staff and provide project administration through the anticipated eight-month project duration. The coordination will include regular transmittals of project correspondence and records; review of analyses, documents and designs; and telephone contact for items requiring attention. Other specific meetings and coordination include the following:

- 3.1 Conduct a kickoff meeting with City, NCDOT, and East Carolina University (ECU) staff to establish the project schedule, discuss critical milestones, and review the proposed MUP alignment in the field.
- 3.2 Conduct up to four (4) monthly progress meetings with City staff.
- 3.3 Provide up to eight (8) monthly progress reports.
- 3.4 Two (2) design review meetings at 30% and 60% milestones with City, NCDOT, ECU, and Greenville Utilities Commission (GUC) staff.
- 3.5 Two (2) stakeholder meetings including representatives from the City, NCDOT, ECU, Friends of Greenville Greenway (FROGGS), and the Greenville Bicycle Pedestrian Commission. These meetings will occur during the 30% and 60% plans preparation.
- 3.6 Presentation of project information, location, and costs to the City Council.
- 3.7 Coordination with NCDOT to ensure input throughout the project duration.
- 3.8 Coordination with CSX Transportation and the City to apply for the railroad encroachment permit.
- 3.9 Conduct Citizen Informational Workshop at a location near the project. Up to three (3) staff members would be made available to attend. The Engineer will assist the City with organizing the workshop. The Engineer will be responsible for preparing handouts (75 copies) and workshop map (3 copies) (see A1.06) which illustrate the preliminary design of the project. The workshop would be open to the general public allowing the Engineer, City officials, and adjacent property owners to discuss and review the proposed plan. The workshop format will be informal in nature without a presentation. The City will develop the project mailing list; develop and produce the flyers; and mail the flyer invitations to property owners, stakeholders, and City officials.
- 3.10 Develop a project work plan, summarize the project schedule, and maintain the schedule for the anticipated eight-month project duration.

### A1.04 Environmental Permits

The Engineer will field delineate both the jurisdictional wetland and stream features within the project study area. Critical information and data forms required for certification by the US Army Corps of Engineers (USACE) will be completed during the initial field reviews. Coordination with the USACE and the NCDENR Division of Water Quality (DWQ) will take place prior to finalizing the limits of the jurisdictional features. The approved limits of the jurisdictional features will be flagged using the guidelines presented in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and the I2008 Interim Regional Supplement to the Corps of Engineers Manual: Atlantic and Gulf Coast Plain Region. Jurisdictional streams will be classified as either perennial or intermittent. The Engineer will conduct a pre-application field meeting with representatives from the USACE and NCDWQ to discuss any permitting issues and concerns.

The Engineer will seek to obtain certification of the wetland boundaries and streams from the USACE. An application will be made to the USACE consisting of a letter, the wetland survey and the required Data Forms. It is anticipated that one site inspection may be required with the USACE and another inspection with NCDWQ. The Engineer will review the final delineation in the field with USACE and NCDWQ representatives. The Engineer will perform any minor modifications to the jurisdictional line that may be deemed necessary by the USACE and NCDWQ in order to obtain their concurrence.

The Engineer will collect data from various federal and state agencies to identify important environmental resources and issues. During the field visit, the Engineer will verify and supplement key information regarding existing environmental conditions. The Engineer will provide an environmental screening document that includes summary information for the environmental resources and issues. The screening will include physical resources, including soils, geology, and water resources such as jurisdictional creeks, streams, and wetlands; required state and federal permits and certifications; floodplain, floodway, and water quality; and impacts to neighborhoods and communities. The field assessment and environmental screening document will form the basis for completing the Categorical Exclusion Action Classification checklist (see A1.05).

Green Mill Run is subject to the Tar-Pamlico River Riparian Buffer regulations. The Engineer will provide an agent authorization form to the City for signature. The Engineer will calculate wetland, stream, and buffer impacts; prepare permit drawings; and submit a Pre-Construction Notification to the USACE for a Section 404 Nationwide Permit and the DWQ for a Section 401 Water Quality Certification and Tar-Pamlico River Riparian Buffer Certification.

Green Mill Run is a Nutrient Sensitive Water (NSW) and is subject to nutrient loading limits. The Engineer will seek to use a use a Low Impact Development (LID) approach for the Project, which would seek to provide stormwater treatment to the maximum extent practicable by providing diffused stormwater flow through the existing woodlands, vegetation, and riparian buffers along the project corridor. The vegetative areas would serve as a filter strip and be designed to meet the requirements of the NCDWQ Stormwater BMP Manual. It is assumed that there will be a single post construction stormwater review process by either by NCDWQ or the City for a single approval of the entire project.

The Endangered Species Act of 1973 mandates that federal agencies ensure that any actions authorized, funded, or carried out by that agency do not jeopardize the “continued existence” of

listed species or result in the destruction or adverse modification of critical habitat. The Engineer will conduct a review for threatened and endangered species, including the U.S. Fish & Wildlife Service (USFWS) list of endangered species, threatened species, federal species of concern, candidate species for Pitt County, and the North Carolina Natural Heritage Program list of state and federal protected species for Pitt County. The Engineer will coordinate with the USFWS to endeavor to obtain a “not likely to adversely affect” determination, or concurrence from USFWS that the project has “No Effect” on the listed species or critical habitat in order to satisfy the National Environmental Policy Act (see A1.05).

#### A1.05 NEPA Documentation

The Engineer will prepare a Scoping/Start of Study Letter and accompanying figures/graphics. The Start of Study Letter will include the project description, the TIP number, anticipated project schedule, and the type of documentation proposed for the project. The Engineer will distribute the letter to regulatory agencies for collecting input on anticipated environmental permitting issues.

The Engineer will prepare environmental documentation consistent with the National Environmental Policy Act (NEPA) of 1969, as amended, as federal funds may be used for construction of this section of the Green Mill Run Greenway. This task is based on our understanding that this project will be considered a Categorical Exclusion (CE), an action which defined in 23 CFR 771.117: does not induce significant impacts to planned growth or land use of an area; does not require the relocation of significant numbers of people; does not have a significant impact on the natural, cultural, recreational, historic, or other resources; does not involve significant air, noise, or water quality impacts; does not have significant impacts on travel patterns; and does not otherwise, either individually or cumulatively, have any significant impacts.

It is anticipated that a Type II (B) CE will be the appropriate documentation for this project. In cases where there is one or more box checked (threshold values exceeded) in Part E of the “Categorical Exclusion Action Classification Form,” the Federal Highway Administration (FHWA) may individually approve the project as a CE upon receipt of the completed CE Action Classification Form and documentation that those threshold values exceeded will not have a significant effect on the environment. The Engineer will prepare a Type II (B) CE in accordance with current NCDOT and FHWA procedures. The Engineer will provide the following information and services in preparing a Type II (B) CE for the proposed project:

- 5.1. Part A: Project Description – Engineer will describe the project, including the project scope and location.
- 5.2. Part B: Purpose and Need – Engineer will describe the purpose of and the need for the project. Engineer will discuss the project’s compatibility with approved local plans and other programmed projects.
- 5.3. Part C: Proposed Improvements – Engineer will indicate the type of improvement(s) which apply to the proposed project.
- 5.4. Part D: Special Project Information – Engineer will note special design features, environmental information, or commitments, in addition to any permits that are anticipated.

- 5.5. Part E: Threshold Criteria – Engineer will complete an evaluation of threshold criteria as contained in the Categorical Exclusion Action Classification Form checklist for Type II actions.
- 5.6. Part F. Additional Documentation Required for Unfavorable Responses in Part E – Engineer will briefly elaborate on issues addressed in Section E requiring additional documentation, indicated by an unfavorable response (yes or no answer outside of the provided box).
- 5.7. Part G. CE Approval – Engineer will complete Section G of the document, including project numbers and the appropriate signature from a representative staff member. It is likely that this document will classify as a Type II (B) Categorical Exclusion due to anticipated permits needed and potential impacts. For Type II (B) projects, a signature is required from FHWA. Engineer will endeavor to obtain the NCDOT and FHWA signatures on this document.

The Engineer will submit two (2) copies of the CE document to the City and NCDOT for review and comment. Engineer will revise the document once per City and NCDOT comments. Engineer will submit the revised document to FHWA for review and comment. Upon receiving one set of comments from FHWA, Engineer will revise the document and submit a final copy for signatures. The Engineer will provide the City and NCDOT with an electronic copy and up to 30 (total) printed copies of the signed CE.

#### A1.06 25% Preliminary Plans

Before surveying services commence, the Engineer will conduct a field meeting with City and ECU staff to identify and mark the desired preliminary multi-use path location through the wooded section between Charles Boulevard and Evans Street. Trees will be marked with flagging to represent the general path alignment. The Engineer will locate the flagged trees as described in A1.01.

The Engineer will coordinate the survey information with the City and incorporate the survey into the CADD system. The Engineer will conduct a survey site visit to verify the survey and assess existing conditions as they relate to the greenway design.

The Engineer will prepare a 25% preliminary alignment map for the multi-use path based on the location determined in the field meeting and information provided in the survey. The Engineer will hand sketch the optimal trail alignment with input from our wetland scientists and landscape architects. The Engineer will illustrate the alignment in computer rendered format, superimposed on the survey data and aerial photography at a 1" = 100' scale. One copy (each) of the alignment map will be submitted to the City, NCDOT, ECU, and GUC for review. The alignment will be revised based on comments received at the 25% plans review meeting (see A1.03) and displayed on a roll plot to serve as the workshop map.

The Engineer will include a 25% preliminary opinion of probable construction cost with this submittal. The Engineer has no control over the cost of labor, materials, equipment, or over the

Contractor's methods of determining prices or over competitive bidding or market conditions. All provided opinions of probable costs are based on the information known to Engineer at the time and represent only the Engineer's judgment as a design professional familiar with the construction industry. The Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from its opinions of probable costs.

#### A1.07 Hydraulic Design

The Engineer will perform preliminary hydraulic analysis for drainage pipe crossings and linear ditches along the proposed alignment for incorporation into the multi-use path plans. This preliminary analysis will be based upon the topographical information included in the survey and base information available for drainage designs such as GIS contour information, USGS Quad maps, and FEMA information. All hydraulic designs will be completed in accordance with the City of Greenville and NCDOT requirements for Hydraulic Design, whichever is more stringent. The anticipated tasks associated with the drainage evaluation concurrent with the 60% plans include:

- 7.1. Conduct field reconnaissance of existing and proposed drainage features and patterns associated with proposed trail pipe crossings and existing ditches. Supplemental hydraulic surveys will be performed in addition to the provided survey, to be used to set proposed culvert inverts.
- 7.2. Size all cross pipes along trail alignment and determine critical trail profile minimums to allow for the proposed cross pipes. Communicate these critical profile control points to trail design staff to facilitate establishing the vertical profile grade.
- 7.3. Design proposed ditches necessary to appropriately drain low areas adjacent to proposed trail and to replace existing ditches impacted by the proposed trail.
- 7.4. Evaluate and design necessary revisions to existing hydraulic structures (drop inlets, cross pipes, headwalls) that may be impacted by the proposed trail.
- 7.5. Finalize hydraulic designs for ditches, storm drainage systems, drop inlet locations, outfall analyses, and final cross pipe designs.
- 7.6. Draft the proposed drainage features (ditches, cross pipes, inlets, etc.) and all associated labeling.
- 7.7. Draft the anticipated ditches and final cross pipes into the multi-use path profile sheets. These ditch profiles will be processed in Geopak to generate the proposed trailside ditches in cross section.

#### A1.08 Stream Modeling

The Project will require two (2) separate stream models – one for Green Mill Run for associated greenway improvements in the floodplain/floodway, and one for an unnamed tributary (UT) to Green Mill Run for a proposed pedestrian bridge crossing.

Green Mill Run is a FEMA regulated stream studied by detailed methods. Sections of the proposed alignment will encroach into the effective FEMA floodway requiring hydraulic modeling and analysis. Based on the preliminary alignment of the greenway, the Engineer anticipates that the floodway/floodplain encroachment can be approved by the City Floodplain Administrator as a No-



Rise Certification and not require submittals and coordination with FEMA. The Engineer will perform hydraulic modeling and prepare a No-Rise Certification submittal package as follows:

- 8.1. Utilize the HEC-RAS Stream Model to evaluate the proposed greenway improvements along the stream corridor. Areas of proposed fill and boardwalk that encroach into the floodway will be evaluated. The modeling effort will include a duplicate effective, corrective effective and proposed conditions model run. This model will incorporate corrections to the received HEC-RAS model, as well as survey data. Engineer will also perform a field investigation and gather supplemental hydraulic surveys, which will be incorporated into the model.
- 8.2. Complete the No-Rise Certification submittal package and submit to the City Floodplain Administrator for approval.

The unnamed tributary to Green Mill Run is not a FEMA regulated stream, but requires modeling to accurately size the proposed pedestrian bridge. The Engineer will perform hydraulic modeling for this proposed crossing as follows:

- 8.3. Determine the drainage area and discharges for the proposed crossing location. to evaluate the hydraulic structure size options for the proposed path crossing of the unnamed tributary (UT) to Green Mill Run.
- 8.4. Coordinate the survey (cross sections) of the UT to Green Mill Run with the City. Approximately six cross sections (three upstream and three downstream) will be required.
- 8.5. Develop a detailed HEC-RAS Stream Model for the proposed pedestrian bridge and boardwalk system that will include a duplicate effective, corrective effective and proposed conditions model run. This model will evaluate the hydraulic structure size options for the proposed path crossing including various bridge replacement structure types, span arrangements, bridge length, and vertical grades (see A1.11).
- 8.6. The stream model will also evaluate the theoretical scour for the proposed pedestrian bridge for the 100 and 500-yr storm event.

The results of the hydraulic modeling and bridge sizing will be communicated to City staff including the City Floodplain Administrator for approval prior to beginning structural design of the pedestrian bridge. Although not anticipated, if the results of the Green Mill Run hydraulic analysis demonstrate that a No-Rise cannot be achieved, then a Conditional Letter of Map Revision (CLOMR) will be required.

#### A1.09 Traffic Signal Design

The proposed greenway crosses through the Evans Street (SR 1702) and Arlington Boulevard (SR 1323) signalized intersection. The Engineer will develop revised traffic signal plans to add high visibility crosswalks to guide path users through the intersection safely. The revised plans will

show the addition of crosswalks, relocation of stop lines and new traffic detection loops. In addition, countdown pedestrian signal heads will be installed and new timings will be implemented for the pedestrian movements and the relocated stop lines. No revisions to the traffic signal cabinet, controller, poles, vehicular signal heads, or phasing are anticipated.

The Engineer will develop the application for the City of Greenville to enter into a Municipal Agreement with NCDOT to review the traffic signal plans and electrical programming details and inspect the signal construction of the state-owned traffic signal. Any review fees required by NCDOT will be paid by the City.

Signal plans will be prepared in English units and will include the preparation of the following items:

- 9.1. Intersection Layout Plan
- 9.2. Intersection Timing and Phasing Plans
- 9.3. Electrical Details Plan
- 9.4. Metal Pole Details Plan

The Engineer will prepare Project Special Provisions for items not included in the 2006 NCDOT Standard Specifications based on the latest version of the electronic file available on the NCDOT website (currently version 6.7). The Engineer will prepare and submit 90% signal and electrical plans to the City and NCDOT. Upon receipt of review comments, the Engineer will revise plans as needed and submit 100% signed and sealed signal and electrical plans.

#### A1.10 75% Right-of-Way Plans

Based on comments received at the citizen informational workshop and stakeholder meetings, the Engineer will prepare preliminary right-of-way plans consisting of multi-use path plans, centerline, vertical alignment, cross sections, construction limits, grading plans; proposed easements; pavement marking, trail marker and signing plans. The designs will be performed in accordance with applicable City, NCDOT, and AASHTO standards and guidelines. The Engineer will reference appropriate NCDOT Roadway Standard Drawings to indicate how vehicular and pedestrian traffic is to be maintained during construction of the project.

The Engineer will prepare the multi-use path plans on combined plan and profile sheets at a scale of 1" = 20' horizontal and 1" = 2' vertical. The Engineer will prepare preliminary cross sections at a scale of 1" = 10'. This submittal will include an opinion of probable construction cost. The Engineer will submit six (6) sets of plans to the City, one (1) set to ECU, and one (1) set to NCDOT for review. The Engineer will provide a Quality Control/Quality Assurance review of the preliminary right-of-way plans prior to submittal.

#### *Landscape Design*

Preliminary landscape design, master plant list, and details will be provided concurrent with the preliminary right-of-way plans. The landscape design will be limited to the proposed trail head at Evans Park, trail connections from ECU and private properties, and to replace existing landscaping impacted by the construction of the Project. The Engineer will specify native, drought-tolerant, low maintenance sustainable plant material with final selection to be coordinated with the City.



Irrigation design, wayfinding signage, site furnishings and lighting are not included in the Scope of Services and would be considered Additional Services. The Engineer will provide conduit and handholes locations, details, and specifications for street lighting.

#### *Erosion and Sediment Control Design*

The Engineer will design and specify erosion control measures which minimize erosion and limit off-site sedimentation during construction. Erosion control plans will include temporary construction access points using GUC access roads where possible. The design will be in accordance with the requirements of the NCDENR and the City. The Engineer will submit the necessary application, calculations, and erosion control plans to the NCDENR Division of Land Quality Regional Engineer to apply for a grading permit.

#### *75% Final Right-of-Way Plans*

Engineer will participate in a “Plans in Hand” field review and revise the final plans in accordance with the field review. The plans will also be revised based on comments received at the preliminary right-of-way plans review meeting (A1.03) and comments from environmental agencies. The Engineer will submit three (3) sets of 75% final right-of-way plans to the City for easement acquisition.

#### *Parking Lot Design*

The Engineer will perform research on the allowable uses for the City-owned FEMA buyout property adjacent to the intersection of Evans Street and Deck Street. If permitted, the Engineer will design a gravel parking area at this location. The design will include lot layout and landscape design.

### A1.11 Structure Design

#### *Pedestrian Bridge and Timber Boardwalk*

The Engineer assumes that the pedestrian bridge over the Unnamed Tributary of Green Mill Run will have a prefabricated main span with timber boardwalk approaches. The Engineer will investigate a maximum of three (3) options for the prefabricated main span structure that meet the site requirements and constraints. The Engineer will attend a meeting with the City to select the pedestrian bridge main span structural type. A general list of various structural materials, architectural features, constructability issues, and probable construction costs will be prepared for the meeting.

The prefabricated bridge supplier will design the bridge main span. The Engineer will design the timber boardwalk and foundations for the main span. The design of the bridge will be in accordance with the latest edition of the AASHTO LRFD Bridge Design Manual and based on the requirements from the geotechnical report, foundation recommendations, and hydraulic study. The Engineer will also produce performance specifications for the bridge main span and will provide plans, details, and specifications for the pedestrian bridge suitable for bidding.

#### *90% Final Structure Plans*

After City selection of the desired bridge type and completion of the 75% plans, the Engineer will complete design of the pedestrian bridge and boardwalks by developing 90% final structure plans. The following items will be considered when developing the final structure plans:

- 11.1. Bridge length, span options, and height above Unnamed Tributary of Green Mill Run based on hydraulic requirements
- 11.2. The maximum walkway width for the pedestrian bridge and boardwalks shall be 10 feet
- 11.3. The maximum vehicle live load on the pedestrian bridge and boardwalks shall be H-5 (small pickup loading)
- 11.4. The pedestrian bridge anticipated span range is 30 to 50 feet
- 11.5. The boardwalks will extend approximately 200 feet each end of the pedestrian bridge

#### *Structure Shop Drawing Review*

The Engineer will review and take appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit for the proposed pedestrian bridge and timber boardwalks, but only for conformance with the information given in the Contract Documents. Such review and approvals or other action will not extend to means, methods, techniques, equipment choice and usage, sequences, schedules, or procedures of construction or to related safety precautions and programs.

#### A1.12 100% Final Construction Plans

##### *90% Final Plans*

The Engineer will prepare 90% final plans, final structure plans (A1.11), technical specifications and bid documents including construction-ready drawings, special conditions, and unit price proposal page. Three (3) copies of 90% final plans, Technical Specifications, and final Opinion of Probable Construction Cost will be submitted to the City for approval. The Engineer will provide a Quality Control/Quality Assurance review of the 90% final construction plans prior to submittal. The Engineer will prepare an NCDOT Two-Party Encroachment Agreement and submit to the City for signature.

##### *100% Final Sealed Plans*

Upon receipt of comments or approval of the 90% final plans, Engineer will furnish one reproducible set of 100% final sealed construction plans and documents for use by the City in the bidding and construction phases. Reproducible drawings will be 22" by 34" in accordance with NCDOT standards. Six (6) copies of 100% final sealed plans and signed NCDOT Two-Party Encroachment Agreement will be submitted to NCDOT for approval. The Engineer will provide a CD with one (1) electronic set (in PDF format) of the plans and all applicable CADD files.

#### A1.13 Bid Phase Services

The Engineer will conduct a pre-bid conference, issue up to one addendum, provide clarifications and information as requested by bidders, attend the bid opening, and facilitate the Pre-Construction Conference prior to commencement of the Project.

The City will provide all other bidding phase services including preparation of construction bidding documents, proposal bid forms, and bond forms; reproduction of the plans and documents for bidding, advertise the project, maintenance of the bidder's log, conducting the bid opening, tabulation of the bids received, reviewing the bid packages for compliance with the contract requirements, and selection of the contractor.

## A1.14 Schedule

- 14.1. Engineer will provide 25% Plans to the City within 45 calendar days following receipt of written notice to proceed from the City.
- 14.2. Engineer will provide 75% plans within 45 calendar days following notification of approval of the 25% Plans from the City.
- 14.3. Engineer will provide final construction plans to the City within 60 calendar days following notification of approval of the 75% Plans from the City.

## PART 2 – ADDITIONAL SERVICES

### A2.01 Additional Services Requiring Owner's Written Authorization

If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.

1. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
3. Furnishing services of Consultants for other than Basic Services.
4. Hydrographic Surveys and -T- Lines, Data for Appraisal Report, Subsurface Utility Engineering/Designation (SUE) Services, and property owner material and mailings.
5. Application for an Individual Permit from the US Army Corps of Engineers.
6. Services resulting from multiple review processes or approvals associated with storm water permitting.
7. Historic Architectural and Archaeological Resource studies requested by the State Historic Preservation Office in Raleigh.
8. Hydraulic modeling associated with a Conditional Letter of Map Revision and Letter of Map Revision after the completion of construction.
9. Irrigation design, wayfinding signage, site furnishings and lighting associated with the landscape design.

10. Roadway Inventory Report.
11. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
12. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
13. Construction phase services including inspection, administration, or shop drawing reviews (except as described in Task A1.11).
14. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
15. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

## **Owner's Responsibilities**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  1. Property descriptions.
  2. Zoning, deed, and other land use restrictions.
  3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
  5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
  6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
  - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
  - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties,

responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Pay all applicable permit or advertising fees.

This is **EXHIBIT C**, consisting of 20 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated January 4, 2011.

## **Payments to Engineer for Services and Reimbursable Expenses**

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Article 2 of the Agreement is supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER’S RESPONSIBILITIES**

#### **C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment**

- A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:
1. A Lump Sum amount of \$235,823.06 based on the estimated distribution contained in the following “Exhibit C – Computation of Manday Requirements and Fees”.
  2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
  3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
  4. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.
- B. Period of Service: The compensation amount stipulated is conditioned on a period of service not exceeding eight (8) months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.



## EXHIBIT C

# COMPUTATION OF MANDAY REQUIREMENTS AND FEES

prepared for the North Carolina Department of Transportation

TIP NO.: EB-5129

COUNTY: Pitt

DESCRIPTION: Green Mill Run Greenway/Bikeway Phase 2 Extension

ENGINEERING AGREEMENT

SUPPLEMENTAL AGREEMENT NUMBER \_\_\_\_\_

PROFESSIONAL SERVICES CONTRACT

LIMITED SERVICES CONTRACT

### CONTENTS:

COVER	<u>1</u>
SUMMARY	<u>2</u>
SURVEY ESTIMATE	<u>3 to 4</u>
GEOTECHNICAL ESTIMATE	<u>5 to 12</u>
GREENWAY ESTIMATE	<u>13 to 19</u>

ENGINEERING FIRM: Kimley-Horn and Associates, Inc.

PREPARED BY: Jeffrey W. Moore, P.E.

DATE: December 20, 2010

<b>SUMMARY</b>					
<b>TIP NUMBER :</b>		<u>EB-5129</u>			
<b>COUNTY:</b>		<u>Pitt</u>			
<b>SCOPE :</b>		<u>Location surveys, geotechnical investigations, coordination, environmental permits, environmental documentation, greenway design, hydraulic design, traffic signal design, structure design, and bid phase services.</u>			
PRIVATE ENGINEERING FIRM		INITIAL		FINAL	
ITEM	MD	COST	MD	COST	
** Location Surveys		\$ 68,671.63		\$ 32,000.00	
Direct Costs		\$ 1,436.00		\$ 2,880.00	
** Geotechnical Engineering	11.125	\$ 16,916.50	10.000	\$ 15,046.43	
Direct Costs				\$ 1,354.18	
** Meetings and Coordination	22.500	\$ 24,457.25	21.000	\$ 22,865.29	
Direct Costs					
** Environmental Permits	28.000	\$ 27,022.58	26.500	\$ 25,776.77	
Direct Costs					
** NEPA Documentation	9.500	\$ 8,943.39	9.500	\$ 8,943.39	
Direct Costs					
** 30% Preliminary Plans	15.000	\$ 12,378.71	13.500	\$ 10,770.76	
Direct Costs					
** Hydraulic Design	16.750	\$ 14,349.34	14.000	\$ 12,313.89	
Direct Costs					
** Stream Modeling	16.250	\$ 15,500.53	14.750	\$ 14,221.28	
Direct Costs					
** Traffic Signal Design	9.000	\$ 8,592.46	9.000	\$ 8,592.46	
Direct Costs					
** 75% Right-of-way Plans	37.250	\$ 29,482.48	37.250	\$ 28,978.48	
Direct Costs					
** Structure Design	43.250	\$ 38,031.08	27.500	\$ 24,838.57	
Direct Costs					
** 100% Final Sealed Plans	22.000	\$ 18,352.63	20.500	\$ 17,067.01	
Direct Costs					
** Bid Phase Services	6.000	\$ 6,280.06	6.000	\$ 6,280.06	
Direct Costs					
<b>Direct Costs</b>		\$ 3,894.50		\$ 3,894.50	
<b>TOTAL</b>	<b>236.625</b>	<b>\$ 294,309.12</b>	<b>209.500</b>	<b>\$ 235,823.06</b>	
<b>NOTES:</b>					
** Labor, Overhead & Fee					

**ENGINEERING FIRM:** Kimley-Horn and Associates, Inc.

**PREPARED BY:** Jeffrey W. Moore, P.E.

**DATE:** 12/20/10

**APPROVED BY:** Richard Adams, P.E.

**DATE:** 12/20/10



# STEWART

## COMPENSATION

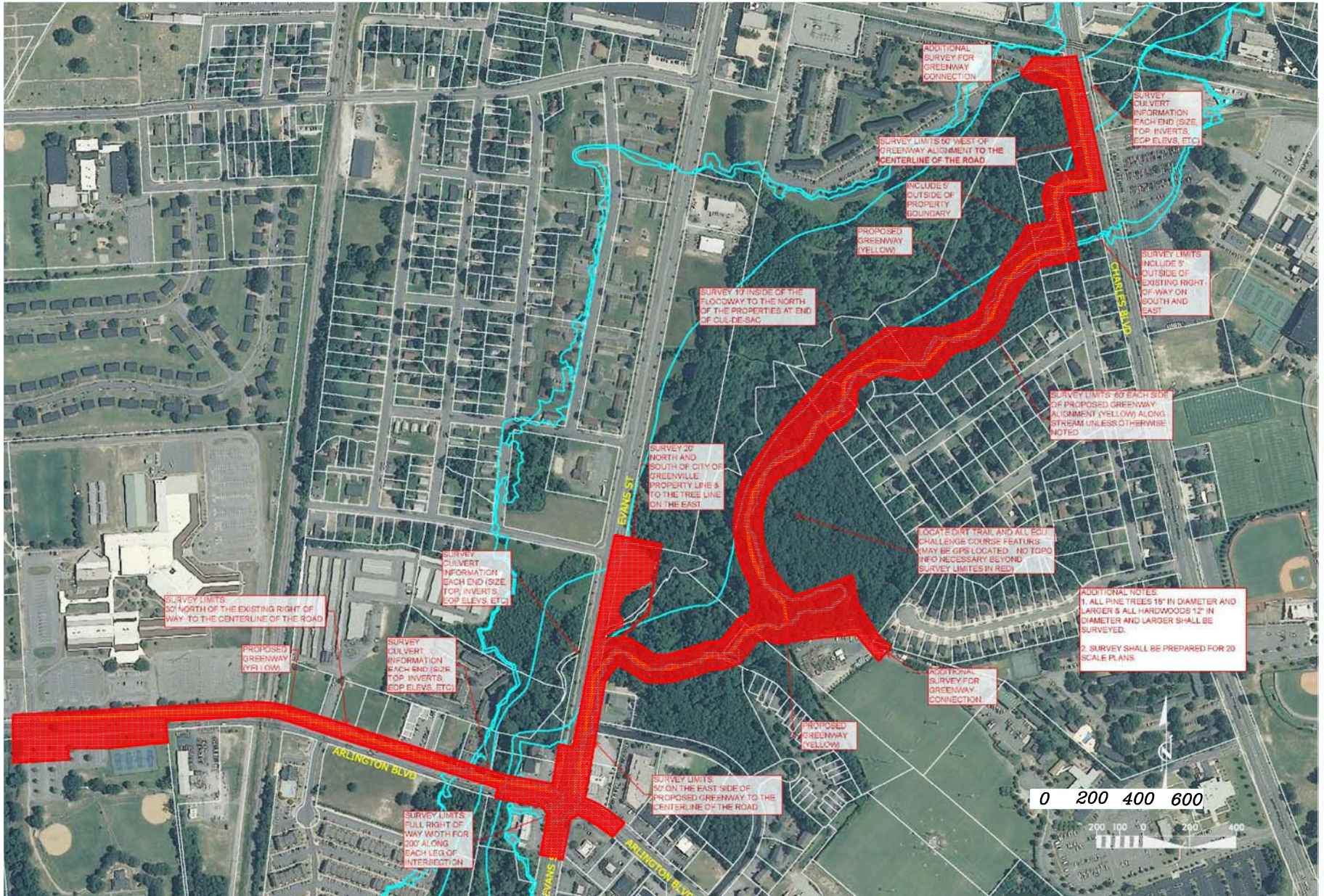
Stewart agrees to provide professional services as outlined above in the Scope of Services. We have calculated these fees given the scope stated above using our current hourly billing rates with expected man-hours for the tasks set forth. To the best of our abilities, we have tried to properly evaluate the man-hours required to complete the tasks. We propose a lump sum fee unless outlined differently below, invoiced as a percent complete as follows:

<b>Description: Scope of Services</b>	<b>Fee</b>
Task 1 - Project Coordination	\$ 500
Task 2- Control Survey	\$ 3,500
Task 3 – Existing Conditions/Topographic Survey	\$ 12,500
Task 4 – Property Boundary Confirmation Survey	\$ 6,000
Task 5 – Wetland Flag Location Survey	\$ 3,400
Task 6 – Easement Maps	\$ 3,800
Task 7 – Right-of-Way/Easement Staking	\$ 2,300
<b>SURVEY SERVICES</b>	<b>\$ 32,000</b>



**EXHIBIT**  
**City of Greenville Greenway- TOPOGRAPHIC SURVEY**  
**GREENVILLE, PITT COUNTY, NORTH CAROLINA**  
**REVISED 11/10/10**

1" = 600'





**COST ESTIMATE FOR GEOTECHNICAL INVESTIGATION**

Prepared By: Falcon  
Submitted By: J. Hamm

Proposal No: F2010-130  
Date: 12/9/2010

TIP - - - - - EB-5129  
PROJECT NO. - - - -: \_\_\_\_\_  
COUNTY - - - - - Pitt  
F.A.NUMBER - - - -: \_\_\_\_\_  
DESCRIPTION - - - -: Green Mill Run Greenway

UNITS = feet

**BRIDGE** 1

ASSUMED LENGTH 50  
ASSUMED WIDTH 10  
NUMBER OF SPANS 1  
NUMBER OF BENTS 2  
NO. OF BORINGS 2  
AVG.DEPTH BORING 70  
FOOTAGE 140

**BOARDWALK** 2

ASSUMED LENGTH 400  
ASSUMED WIDTH 10  
NUMBER OF SPANS N/A  
NUMBER OF BENTS N/A  
NO. OF BORINGS 4  
AVG.DEPTH BORING 20  
FOOTAGE 80

**GREENWAY TRAIL**

ASSUMED LENGTH 1.4 miles  
NO. OF BORINGS 6  
AVG.DEPTH BORING 10  
TOTAL FOOTAGE = 60

TOTAL FOOTAGE = 280

EB-5129

**ESTIMATED MAN HOURS**

TASK	CLASSIFICATION						
	Senior Project Manager	Senior Geologist	Project Engineer	Staff Engineer	Field Engineer	CADD Technician	Clerical
Coord., Site recon, Prop. Owners, etc.				3			
Boring Layout					8		
Site Visit							
Boring/Clearing Observation					32		
Preparation of final logs, profiles, & cross sections				3		4	
Review Field/Lab Data				3			
Foundation Design	3			8			
Prepare Final Report	3			8		2	1
Project Management/ Response to Comments	1			1			
<b>TOTAL</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>26</b>	<b>40</b>	<b>6</b>	<b>1</b>

EB-5129

**I. ENGINEERING**<sup>(1)</sup>

EMPLOYEE	CLASSIFICATION	BILLING RATE	HOURS	COST
Margaret A. Robertson	Principal Geologist	\$168.10	0	\$0.00
Mahalingam Bahiradhan	Senior Project Manager	\$134.47	7	\$941.29
Mahalingam Bahiradhan	Project Engineer	\$134.47	0	\$0.00
Jeremy Hamm	Staff Engineer	\$75.62	26	\$1,966.12
Jeremy Hamm/Tommy Evans	Field Engineer	\$67.23	40	\$2,689.20
Tommy Evans	CADD Operator	\$67.23	6	\$403.38
Dani Folmar	Clerical	\$55.94	1	\$55.94
TOTAL DIRECT LABOR =				<u>\$6,055.93</u>

TOTAL ENGINEERING = \$6,055.93

\*: Billing rates include approved 2008 overhead rate, facilities cost of capital, and 9% fee.

EB-5129

II.a. FIELD INVESTIGATION SERVICES -	LAND		
1. Auger Borings without SPT (2)			
<u>\$7.25</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
2. Soil Test Borings with SPT (AASHTO T206-81) (2)			
0-60 ft. <u>\$11.00</u> RATE x LENGTH	<u>210</u>	FEET =	<u>\$2,310.00</u>
60-100 ft. <u>\$13.50</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
3. Hard Drilling (2)			
0-60 ft. <u>\$14.00</u> RATE x LENGTH	<u>50</u>	FEET =	<u>\$700.00</u>
60-100 ft. <u>\$16.50</u> RATE x LENGTH	<u>20</u>	FEET =	<u>\$330.00</u>
4. Rock Coring - Crystalline Rock (NQ2)			
0-60 ft. <u>\$42.50</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
60-100 ft. <u>\$50.30</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
4.1 Rock Coring - Partially Indurated Rock			
0-60 ft. <u>\$36.00</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
60-100 ft. <u>\$44.00</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
4.2 Rock Coring - Crystalline Rock (H size - HQ typical)			
0-60 ft. <u>\$45.00</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
60-100 ft. <u>\$55.00</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
5. SPT Samples Between Rock Core Runs			
a) 0 to 30' <u>\$13.60/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
b) 30' to 60' <u>\$26.40/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
c) 60' to 100' <u>\$46.90/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
d) 100' to 150' <u>\$52.00/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
e) 150' to 200' <u>\$60.00/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
f) 200' to 250' <u>\$60.00/sample</u> RATE x _____	_____	SAMPLES =	<u>\$0.00</u>
6. Crew time after 5 minutes per piece (5' ) of drill steel per boring (2 people)			
<u>\$160.00</u> RATE x HOURS	<u>10</u>	=	<u>\$1,600.00</u>
7. Crew time after 5 minutes per piece (5' ) of drill steel per boring (1 person)			
<u>\$ 80.00</u> RATE x HOURS	_____	=	<u>\$0.00</u>
8. Grouting with Bentonite			
<u>\$5.00</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
9. Grouting with Portland Cement Slurry			
<u>\$7.50</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
10.1 Installing Casing (temporary) (3 or 4")			
<u>\$6.10</u> RATE x LENGTH	<u>40</u>	FEET =	<u>\$244.00</u>
10.2 Installing Casing From Collar to Termination (3 or 4")			
<u>\$8.50</u> RATE x LENGTH	_____	FEET =	<u>\$0.00</u>
10. Obtaining Undisturbed Soil Samples with 3" O.D. Shelby Tube: (2)			
<u>\$90.00</u> RATE PER TUBE	_____	TUBES	<u>\$0.00</u>
TOTAL FIELD INVESTIGATION SERVICES -	LAND		<u>\$5,184.00</u>



EB-5129**III. ESTIMATE OF LABORATORY TESTING SERVICES <sup>(6)</sup>**

TYPE TEST	Unit Price	X	No. of Tests	=	Cost
Triaxial Shear, UU (AASHTO T 234-74)	<u>\$440.00</u>		<u>          </u>		<u>\$0.00</u>
Triaxial Shear, UU Remolded (AASHTO T 234-74)	<u>\$550.00</u>		<u>          </u>		<u>\$0.00</u>
Triaxial Shear, UU (AASHTO T 296-94 w/o pore pressure and standard proctor)	<u>\$400.00</u>		<u>          </u>		<u>\$0.00</u>
Triaxial Shear, UU Remolded (AASHTO T 296-94 w/o pore pressure and standard proctor)	<u>\$475.00</u>		<u>          </u>		<u>\$0.00</u>
Triaxial Shear, CU (AASHTO T 234-74)	<u>\$575.00</u>		<u>          </u>		<u>\$0.00</u>
Triaxial Shear, CU, Remolded (AASHTO T 234-74)	<u>\$650.00</u>		<u>          </u>		<u>\$0.00</u>
Consolidation (AASHTO T 216-81)	<u>\$350.00</u>		<u>          </u>		<u>\$0.00</u>
Gradation and Atterberg Limits (AASHTO T 88, 89, 90-81)	<u>\$115.00</u>		<u>14</u>		<u>\$1,610.00</u>
Grain Size (ASTM D-422-63, D-1140-92, C-136)	<u>\$80.00</u>		<u>          </u>		<u>\$0.00</u>
Organic Content (AASHTO T 267-80)	<u>\$25.00</u>		<u>3</u>		<u>\$75.00</u>
Natural Moisture Content (AASHTO T 265-79)	<u>\$8.50</u>		<u>14</u>		<u>\$119.00</u>
Standard Proctor (AASHTO T 99-81)	<u>\$180.00</u>		<u>          </u>		<u>\$0.00</u>
California Bearing Ratio (CBR, AASHTO T 193-81)	<u>\$385.00</u>		<u>          </u>		<u>\$0.00</u>
PH (AASHTO T-289-93)	<u>\$24.50</u>		<u>          </u>		<u>\$0.00</u>
Modified Proctor Compaction Test (AASHTO T-180-93)	<u>\$190.00</u>		<u>          </u>		<u>\$0.00</u>

Item # 4

**ESTIMATE OF LABORATORY TESTING SERVICES (continued)**

Specific Gravity (AASHTO T-288-91)	<u>\$50.00</u>	_____	<u>\$0.00</u>
Soil Resistivity (AASHTO T-288-91)	<u>\$60.00</u>	_____	<u>\$0.00</u>
Soil Resistivity (California Test) California Test - 643	<u>\$65.00</u>	_____	<u>\$0.00</u>
Unconfined Compress Strength of Cohesive Soil (AASHTO T-208-92)	<u>\$170.00</u>	_____	<u>\$0.00</u>
Unconfined Compression Testing of Rock (QU ONLY) (ASTM D-2938-86)	<u>\$135.00</u>	_____	<u>\$0.00</u>
Spitting Tensile Strength of Intact Rock Core Specimens (ASTM D-3967-92)	<u>\$110.00</u>	_____	<u>\$0.00</u>
Elastic Moduli of Intact Rock Core (QU w/ Possion's Ratio) (ASTM D-3148-93)	<u>\$475.00</u>	_____	<u>\$0.00</u>
Triaxial Compressive Strength of Undrained Rock Core Specimens (ASTM D-2664-86)	<u>\$1,000.00</u>	_____	<u>\$0.00</u>

ESTIMATED TOTAL LABORATORY TESTING SERVICES COST = \$1,804.00

EB-5129

**IV. MISCELLANEOUS FIELD ITEMS**

1a.	MOBILIZATION/DEMOBILIZATION DRILL RIG AND CREW - TRUCK MOUNT/ATV						
	a.	Within 50-mile radius of base: <sup>(7)</sup>	<u>\$ 350.00</u>	LS	=	<u>                    </u>	
		b.	Outside 50-mile radius of base (round trip): <sup>(8)</sup>				
			<u>\$3.25</u> RATE x DISTANCE	<u>260</u> MILES	=	<u>\$ 845.00</u>	
		c.	Crew Travel Time (2 Man Crew)				
			<u>\$140.00</u> RATE PER HOUR	HOURS	=	<u>\$ -</u>	
1b.	MOBILIZATION/DEMOBILIZATION DRILL RIG AND CREW - TRACK						
		a.	Within 50-mile radius of base: <sup>(7)</sup>	<u>\$ 450.00</u>	LS	=	<u>                    </u>
		b.	Outside 50-mile radius of base (round trip): <sup>(8)</sup>				
			<u>\$4.00</u> RATE x DISTANCE	MILES	=	<u>\$ -</u>	
		c.	Crew Travel Time (2 Man Crew)				
			<u>\$140.00</u> RATE PER HOUR	HOURS	=	<u>\$ -</u>	
2.	MOBILIZATION/DEMOBILIZATION DRILL RIG AND CREW - WATER						
		a.	Within 50-mile radius of base: <sup>(7)</sup>	<u>\$ 500.00</u>	LS	=	<u>\$ -</u>
		b.	Outside 50-mile radius of base (round trip): <sup>(8)</sup>				
			<u>\$5.00</u> RATE x DISTANCE	MILES	=	<u>\$ -</u>	
		c.	Crew Travel Time (3 Man Crew)				
			<u>\$210.00</u> RATE PER HOUR	HOURS	=	<u>\$ -</u>	
3.	MOBILIZATION/DEMOBILIZATION DRILL RIG AND CREW - SPECIAL						
		a.	Within 50-mile radius of base: <sup>(7)</sup>	LS	=	<u>                    </u>	
		b.	Outside 50-mile radius of base (round trip): <sup>(8)</sup>				
			<u>\$5.00</u> RATE x DISTANCE	MILES	=	<u>\$ -</u>	
		c.	Crew Travel Time (2 Man Crew)				
			<u>\$ 90.00</u> RATE PER HOUR	HOURS	=	<u>\$ -</u>	
4.	Subsistence, not to exceed \$105.5 per person <sup>(8)</sup>						
			<u>9</u> Man Days X Rate	<u>\$105.50</u>	=	<u>\$ 949.50</u>	
5.	MILEAGE <sup>(9)</sup>						
		CAR	<u>\$0.500</u> RATE x DISTANCE	MILES	=	<u>\$ -</u>	
		TRUCK	<u>\$0.520</u> RATE x DISTANCE	<u>400</u> MILES	=	<u>\$ 208.00</u>	
6.	Equipment Rental & Supplies & Materials: <sup>(10)</sup>						
		Item	Units	Rate			
		_____	_____	_____		<u>\$ -</u>	
		_____	_____	_____		<u>\$ -</u>	
		_____	_____	_____		<u>\$ -</u>	
		_____	_____	_____		<u>\$ -</u>	
		_____	_____	_____		<u>\$ -</u>	
				TOTAL		<u>\$ -</u>	
7.	Outside Hired Help (Flagman, Local Labor, Survey Crew, etc) <sup>(10)</sup>						
		type	Units	Rate			
		_____	_____	_____		<u>\$ -</u>	
		_____	_____	_____		<u>\$ -</u>	
				TOTAL		<u>\$ -</u>	
		ESTIMATED TOTAL MISCELLANEOUS FIELD COST =				<u>\$ 2,002.50</u>	

EB-5129

**V. MISCELLANEOUS OFFICE ITEMS**

1.a.	Color Photographs (per page per set of	Pages	Rate	
	Item			
				\$ -
				\$ -

1.b.	Other (10)	units	rate	
	Item			
				\$ -
				\$ -
				\$ -
				\$ -
				\$ -

ESTIMATED TOTAL MISCELLANEOUS OFFICE COST =				\$ -
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**SUMMARY**

I.	ENGINEERING SERVICES . . . . .	<u>\$6,055.93</u>
II.a.	FIELD INVESTIGATION SERVICES - LAND . . . . .	<u>\$5,184.00</u>
II.b.	FIELD INVESTIGATION SERVICES - WATER . . . . .	<u>\$0.00</u>
II.c.	FIELD INVESTIGATION SERVICES - SPECIAL. . . . .	<u>\$0.00</u>
III.	LABORATORY SERVICES . . . . .	<u>\$1,804.00</u>
IV.	MISCELLANEOUS FIELD ITEMS . . . . .	<u>\$2,002.50</u>
V.	MISCELLANEOUS OFFICE ITEMS . . . . .	<u>\$0.00</u>
VI.	GEOTECHNICAL INVESTIGATION FEE . . . . .	<u>\$0.00</u>
VII.	SOILS AND FOUNDATION DESIGN . . . . .	<u>\$0.00</u>
	TOTAL ESTIMATED COST . . . . .	<u><u>\$15,046.43</u></u>

**FEE ESTIMATE**

MANHOURS BY CLASSIFICATION							TOTAL		PROJECT PHASE
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	Task 3 - Meetings and Coordination
	8			8		8	24	3.00	Project Administration and Miscellaneous Coordination (8 months)
	8	8		8			24	3.00	Project kick-off meeting
	16						16	2.00	Monthly Progress Meetings (4)
	2			8			10	1.25	Monthly Progress Reports (8)
	6			6			12	1.50	25% Design Review Meeting
	6	6		6			18	2.25	75% Design Review Meeting
	12						12	1.50	Stakeholder Meetings (2)
	8						8	1.00	City Council Presentation
	4			4			8	1.00	Coordination with NCDOT
	2			4			6	0.75	Coordination with CSXT
				4		2	6	0.75	Develop citizens informational workshop handout
	6			6			12	1.50	Attend and conduct citizens informational workshop
	4			8			12	1.50	Develop and maintain project schedule (8 months)
0	82	14	0	62	0	10			
							SUBTOTAL		
							168	21.00	
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	Task 4 - Environmental Permits
				2			2	0.25	Agent authorization form
		40		40			80	10.00	Wetland and stream delineation
		10		10			20	2.50	Agency field verification meeting
				8	4		12	1.50	Draft letter, data forms to DWQ/USACE
		6					6	0.75	JD Map review and coordination
		6		12	8		26	3.25	Environmental Screening
		4			12		16	2.00	Prepare Permit Drawings
		4		8	4		16	2.00	Pre-Construction Notification
		4					4	0.50	401 Water Quality Certification
		4					4	0.50	Section 404 Nationwide Permit
		8		6			14	1.75	Miscellaneous Coordination with environmental agencies
		4		8			12	1.50	Coordination with USFWS
0	0	90	0	94	28	0			
							SUBTOTAL		
							212	26.50	
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	Task 5 - NEPA Documentation
	4		8				12	1.50	Coordinate with appropriate State and Federal Agencies
	2		4			8	14	1.75	Prepare and Distribute Scoping Letter
			6	2			8	1.00	Summarize Project Description and Prepare Figures
			2				2	0.25	Summarize Project Purpose and Need
			2				2	0.25	Indicate Type(s) of Project Improvements
			2				2	0.25	Note comments provided by State/Federal Agencies and Responses
			4				4	0.50	Complete Section E (Threshold Criteria Checklist)
			4				4	0.50	Elaborate on Issues in Section E (Receiving Unfavorable Response)
	4		2				6	0.75	PCE QC/QA and revise
			4				4	0.50	Complete Section G
			2			2	4	0.50	Submit 4 Copies of PCE to City/NCDOT
			4				4	0.50	Revise PCE per City and NCDOT comments
			2			2	4	0.50	Submit one (1) copy of PCE to FHWA
			2				2	0.25	Revise PCE per FHWA comments
			2			2	4	0.50	Provide 30 copies of PCE to City/NCDOT/FHWA
0	10	0	50	2	0	14			
							SUBTOTAL		
							76	9.50	

**FEE ESTIMATE**

ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	
<b>Task 6 - 25% Preliminary Plans</b>									
	8			8			16	2.00	Site Visit to verify survey / assess existing conditions
	2		8	12	6		28	3.50	Multi-Use Path (MUP) Centerline
				4	10		14	1.75	MUP edges of pavement, design drafting
				16	12		28	3.50	Workshop map rendering
				8	4		12	1.50	Revisions to workshop map rendering
	2			8			10	1.25	25% Opinion of Probable Construction Cost
0	12	0	8	56	32	0			
SUBTOTAL							108	13.50	
<b>Task 7 - Hydraulic Design</b>									
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	
			2				2	0.25	Data Collection, Research
			12	12			24	3.00	Field Recon/ evaluate exist survey/hydraulic supplemental surveys
		2	20	16			38	4.75	Drainage Design (ditches/cross pipes/systems)
			8	10	12		30	3.75	Cadd Work (plan & profile view)
		4	6	8			18	2.25	Hydraulic Review and Rework
0	0	6	48	46	12	0			
SUBTOTAL							112	14.00	
<b>Task 8 - Stream Modeling</b>									
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	
		4	20	12			36	4.50	Hydraulic Stream Modeling
		2	4	4			10	1.25	Bridge Sizing/Layout Analysis
		4	16	12			32	4.00	Floodplain Modeling (Duplicate, Corrective, Proposed Conditions)
		6	4	4			14	1.75	Coordination with Structures, City, NCDOT, NCFPM
		2	8	12			22	2.75	Submit No-Rise Certification
			4				4	0.50	Coordinate with City Floodplain Administrator
0	0	18	56	44	0	0			
SUBTOTAL							118	14.75	
<b>Task 9 - Traffic Signal Design</b>									
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	
		2	6				8	1.00	Request TSA and coordinate with City and NCDOT
		2	2	6			10	1.25	Review and verify survey, signal and MUP plans
		4	8	12		2	26	3.25	Prepare 90% plans and submit to City and NCDOT
		2	2	4		2	10	1.25	Address 90% comments and prepare 100% plans and submit
		4	12	2			18	2.25	Quantities, opinion of probable cost, and special provisions
0	0	14	30	24	0	4			
SUBTOTAL							72	9.00	
<b>Task 10 - 75% Right-of-Way Plans</b>									
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	
	4			16	4		24	3.00	MUP existing ground and proposed profiles
				8	4		12	1.50	MUP cross sections / layout to sheets
					6		6	0.75	MUP construction limits
				14	28		42	5.25	Set up plan/profile sheets (14)
				2	4		6	0.75	Title sheet
				6	12		18	2.25	Pavement marking, signing, and trail marker plans
				4	4		8	1.00	Construction details
4				12			16	2.00	Landscape plans
	4		36		12		52	6.50	Erosion control plans and submit to DLQ
				6	8		14	1.75	Draft Right-of-Way and Easements on Plans
	6			6	12		24	3.00	Internal QC/QA review and Revise
	4			10			14	1.75	75% Opinion of Probable Construction Cost
				2		2	4	0.50	Submit 75% Preliminary Right-of-way Plans
	4			2			6	0.75	Plat review and coordination
	2			8	10		20	2.50	Revise plans per comments
				2		2	4	0.50	Submit 75% Final Right-of-way Plans
			4	8	16		28	3.50	FEMA parking lot research, design and landscaping
4	24	0	40	106	120	4			

Item # 4

**FEE ESTIMATE**

							SUBTOTAL	298	37.25	
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	<b>Task 11 - Structure Design</b>	
			2	2		1	5	0.63	Coordination with Geotechnical Engineer	
2			2	2			6	0.75	Internal coordination	
6	6					1	13	1.63	Meeting with City	
2			3	2			7	0.88	Typical Boardwalk layout/Design (Prelim)	
			2	2		1	5	0.63	Report & Cost estimate	
2				2		1	5	0.63	Internal QC/QA and revisions	
			4	20			24	3.00	Design Boardwalk	
2			8				10	1.25	Check Boardwalk	
2			3	12			17	2.13	Design End Bents and Wing Walls	
2			8				10	1.25	Check End Bent and Wall Designs	
2			4	8	60		74	9.25	Main Span Load Calculations, Geometry, and Details	
2			2	2			6	0.75	Specification/Special Provision	
3							3	0.38	Internal QC/QA and revisions	
1			2	2	2		7	0.88	Final Comments/Revisions	
6			12	8		2	28	3.50	Shop Drawings	
32	6	0	52	62	62	6				
							SUBTOTAL	220	27.50	
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	<b>Task 12 - 100% Final Sealed Plans</b>	
				2	2		4	0.50	General notes and list of roadway standard drawings	
	12			12	16		40	5.00	Final Internal QC/QA and Revise	
	8		16	4		4	32	4.00	Final Technical Specifications	
				4		4	8	1.00	Special conditions and unit price proposal page	
				4		2	6	0.75	Prepare Encroachment Agreement	
				2		2	4	0.50	Submit 90% Plans	
	2			6	12		20	2.50	Revise 90% Plans per comments	
	4			12	12		28	3.50	Finalize Pay Items and Quantity Calculations	
	4			8			12	1.50	Final Opinion of Probable Construction Cost	
				2		2	6	0.75	Submit 100% Sealed Plans	
				4			4	0.50	CD of Project Files	
0	32	0	16	60	42	14				
							SUBTOTAL	164	20.50	
ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (EI)	TECH	CLERICAL	MANHOURS	MANDAYS	<b>Task 13 - Bid Phase Services</b>	
	2			4		2	8	1.00	Assist City with advertisement, contact bidders	
	6		6			2	14	1.75	Attend and conduct Pre-Bid Conference	
	4		8	4		2	18	2.25	Bid Clarifications and Addenda	
	8						8	1.00	Pre-Construction Conference	
0	20	0	14	8	0	6				
							SUBTOTAL	48	6.00	
36	186	142	314	564	296	58				

Item # 4

## EMPLOYEE CLASSIFICATION

TIP NO.: EB-5129  
 COUNTY: Pitt

CLASSIFICATION		MANHOURS	MANDAYS		RATE	COST
Associate Engineer	Cecil Narron	36	4.50	x	\$ 61.55	\$ 2,215.80
Senior Professional II	Jeff Moore	186	23.25	x	\$ 51.45	\$ 9,569.70
Senior Professional I	Dan Robinson	142	17.75	x	\$ 49.04	\$ 6,963.68
Engineer I	Jason Pace	314	39.25	x	\$ 37.74	\$ 11,850.36
Design Engineer (EI)	Elizabeth Lynch	564	70.50	x	\$ 29.33	\$ 16,542.12
Technician	Jason Johnson	296	37.00	x	\$ 21.40	\$ 6,334.40
Clerical	Tracie Jacobs	58	7.25	x	\$ 16.83	\$ 976.14
Total		1596	199.50			
Total Direct Salary						\$ 54,452.20
Escalation (per year)						
Overhead						202.39% \$ 110,205.81
Subtotal						\$ 164,658.01
Fee						9% \$ 14,819.22
Overhead (Cost of Capital)						2.15% \$ 1,170.72
<b>TOTAL DIRECT AND INDIRECT SALARY COSTS</b>						<b>\$ 180,647.95</b>



**REPRODUCTION COSTS**

<b>(A) BONDS</b>					
<b>SUBMITTAL</b>	<b>SHEETS</b>	<b>SETS</b>		<b>TOTAL</b>	
<b>PRELIMINARY REVIEW (25%)</b>					
Plans	25	x	17	=	425
Interchange		x	17	=	0
* X-Sects	40	x	17	=	680
<b>Geotechnical</b>					
Plans	25	x	1	=	25
Interchange		x	1	=	0
* X-Sects	40	x	1	=	40
<b>Drainage</b>					
Plans	25	x	2	=	50
Interchange		x	2	=	0
* X-Sects	40	x	2	=	80
<b>PRELIM. OR COMB. FIELD INSPECTION</b>					
<b>Pre-PFI/CFI Review</b>					
Plans	30	x	8	=	240
Interchange		x	8	=	0
* X-Sects	40	x	8	=	320
** Prelim. or Comb. Field Inspection					
Plans		x	30	=	0
Interchange		x	30	=	0
* X-Sects		x	30	=	0
<b>RIGHT-OF-WAY (75%)</b>					
<b>Pre-R/W Review</b>					
Plans	35	x	2	=	70
Interchange		x	2	=	0
* X-Sects	40	x	2	=	80
<b>Geotechnical</b>					
Plans	35	x	1	=	35
Interchange		x	1	=	0
X-Sects (22"x34")	40	x	1	=	40
<b>FINAL FIELD INSPECTION</b>					
<b>Pre-FFI Review</b>					
Plans		x	1	=	0
Interchange		x	1	=	0
* X-Sects		x	1	=	0
** Final Field Inspection					
Plans		x	23	=	0
Interchange		x	23	=	0
* X-Sects		x	9	=	0
<b>FINAL ROADWAY</b>					
<b>Final Review (90%)</b>					
Plans	45	x	6	=	270
Interchange		x	6	=	0
* X-Sects	40	x	6	=	240
<b>Pre-Sealed (100%)</b>					
Plans	45	x	2	=	90
Interchange		x	2	=	0
* X-Sects	40	x	2	=	80
<b>OTHER</b>					
R/W Revisions	20	x	1	=	20
Const. Revisions		x	1	=	0
Strip Maps (36"x36")		x	1	=	0
<b>Work Sets</b>					
Plans	40	x	8	=	320
Interchange		x	8	=	0
* X-Sects	40	x	8	=	320
+ TOTAL BOND PLANS & FULL-SIZE X-SECTS (22"x34")	1585	x	\$ 0.42 /sheet=		\$ 665.70
+ TOTAL BOND INTERCHANGE (34"x68")	0	x	\$ 3.50 /sheet=		\$ -
+ TOTAL BOND X-SECTS (11"x17")	1840	x	\$ 0.10 /sheet=		\$ 184.00

**REPRODUCTION COSTS**

<b>(B) RECORD SETS (BOND)</b>					
<b>SUBMITTAL</b>	<b>SHEETS</b>	<b>SETS</b>		<b>TOTAL</b>	
<b>*** PRELIMINARY APPROVED (25%)</b>					
Plans	25	x	8	=	200
Interchange		x	8	=	0
* X-Sects	40	x	8	=	320
<b>*** PRELIM. OR COMB. FIELD INSPECTION</b>					
Plans	30	x	1	=	30
Interchange		x	1	=	0
* X-Sects	40	x	1	=	40
<b>*** RIGHT-OF-WAY (75%)</b>					
Plans	35	x	2	=	70
Interchange		x	2	=	0
* X-Sects	40	x	2	=	80
<b>*** FINAL FIELD INSPECTION</b>					
Plans		x	1	=	0
Interchange		x	1	=	0
* X-Sects		x	1	=	0
<b>*** FINAL ROADWAY (100%)</b>					
Plans	45	x	2	=	90
Interchange		x	2	=	0
* X-Sects	40	x	2	=	80
+ TOTAL BOND PLANS & FULL-SIZE X-SECTS (22"x34")	390	x	\$ 0.42 /sheet=		\$ 163.80
+ TOTAL BOND INTERCHANGE (34"x68")	0	x	\$ 3.50 /sheet=		\$ -
+ TOTAL BOND X-SECTS (11"x17")	520	x	\$ 0.10 /sheet=		\$ 52.00
<b>(C) XEROX COPIES</b>					
+ TOTAL XEROX COPIES (Say)	5000	x	\$ 0.04 /sheet=		\$ 200.00
+ COVERS & BINDING (Say)	50	x	\$ 1.00 /set=		\$ 50.00
<b>TOTAL REPRODUCTION A + B + C</b>				<b>=</b>	<b>\$ 1,315.50</b>
<b>NOTES:</b>					
* Full Size Cross-Sections if 30 sheets or less					
** Include 2 sets of additional prints if project is in Charlotte					
*** Includes Firm's Record Set					
+ See Engineering Guidelines for the most up-to-date max. allowable non-salary direct costs					

**TRAVEL AND MISCELLANEOUS COSTS**

<b>(A) TRAVEL</b>									
PURPOSE of TRIP		TRIPS	MILES	TOTAL	RATE	COSTS			
+	Preliminary Field Review	4	x 210.00	= 840.00	x \$ 0.550	=	\$	462.00	
+	Public Meeting/Hearing/Workshops	1	x 210.00	= 210.00	x \$ 0.550	=	\$	115.50	
+	Field Inspections (Preliminary, Combined, Final)		x	=	x \$ 0.550	=			
+	Scheduled Reviews/Miscellaneous Meetings	12	x 210.00	= 2520.00	x \$ 0.550	=	\$	1,386.00	
+	Miscellaneous Local Meetings	10	x 40.00	= 400.00	x \$ 0.550	=	\$	220.00	
+	Other		x	=	x \$ 0.550	=			
PER DIEM		TRIPS	# ATTEND	TOTAL	RATE	COSTS			
+	Breakfast		x	=	x \$ 6.50	=			
+	Lunch	16	x 2	= 32	x \$ 8.50	=	\$	272.00	
+	Dinner	1	x 3	= 3	x \$ 14.50	=	\$	43.50	
+	Lodging		x	=	x \$ 61.50	=			
<b>(B) EQUIPMENT</b>									
LIST								COSTS	
<b>(C) COMMUNICATIONS</b>									
LIST								COSTS	
<b>(D) POSTAGE</b>									
LIST								COSTS	
<b>(E) OTHER</b>									
LIST		# ROLLS		RATE		COSTS			
+	Film & Developing	4	x \$ 20.00	=	\$	80.00			
<b>TOTAL TRAVEL &amp; MISCELLANEOUS COSTS A + B + C + D + E</b>						<b>= \$ 2,579.00</b>			
<b>TOTAL REPRODUCTION</b>						<b>= \$ 1,315.50</b>			
<b>TOTAL DIRECT NON-SALARY COSTS</b>						<b>= \$ 3,894.50</b>			
<b>NOTES:</b>									
*	Use Only Items That Are Not Included In Overhead								
+	See Engineering Guidelines for the most up-to-date max. allowable non-salary direct costs								

This is **EXHIBIT D**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

**Duties, Responsibilities, and Limitations of Authority of Resident Project Representative**

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This Exhibit not used.

This is **EXHIBIT E**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

**Notice of Acceptability of Work**

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This Exhibit not used.

This is **EXHIBIT F**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

### **Construction Cost Limit**

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This Exhibit not used.

This is **EXHIBIT G**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

## Insurance

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Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

### G6.04 Insurance

A. The limits of liability for the insurance required by Paragraph 6.04.A of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation: Statutory

b. Employer's Liability --

1) Each Accident:	<u>\$1,000,000</u>
2) Disease, Policy Limit:	<u>\$1,000,000</u>
3) Disease, Each Employee:	<u>\$1,000,000</u>

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage):	<u>\$1,000,000</u>
2) General Aggregate:	<u>\$1,000,000</u>

d. Excess or Umbrella Liability --

1) Each Occurrence:	<u>\$1,000,000</u>
2) General Aggregate:	<u>\$1,000,000</u>

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident	<u>\$1,000,000</u>
---------------	--------------------

f. Professional Liability --

1) Each Claim Made	<u>\$1,000,000</u>
2) Annual Aggregate	<u>\$1,000,000</u>

g. Other (specify):

2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT H**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

## **Dispute Resolution**

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This Exhibit not used.



This is **EXHIBIT I**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

## **Limitations of Liability**

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This Exhibit not used.

This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

### **Special Provisions**

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This Exhibit not used.

This is **EXHIBIT K**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated January 4, 2011.

**Amendment to Owner-Engineer Agreement**

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This Exhibit not used.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Memorandum of Understanding with East Carolina University relating to the Lucille W. Gorham Intergenerational Center

**Explanation:** The City of Greenville acquired the property in the Fall of 2006, which now comprises the Lucille W. Gorham Intergenerational Center. Since September 15, 2006, the City and East Carolina University have had a Memorandum of Understanding for the provision of services, lease of a building, and site management of the Intergenerational Center. The cooperative effort between the City of Greenville and East Carolina University is for the purpose of providing a multidisciplinary community center in an attempt to meet needs that exist in West Greenville.

The current Memorandum of Understanding is for a one-year period beginning on March 1, 2010, with a provision that it could be extended for additional terms upon mutual agreement. ECU has requested that the MOU be extended for an additional one year commencing on March 1, 2011.

The MOU provides that the University will lease the first floor of the Lessie Bass Building. It provides that the University will provide services and activities at the Lessie Bass Building and that it will coordinate with a planning team relating to the services and activities. The planning team consists of persons appointed by the University and members of the Board of Directors of the Lucille W. Gorham Intergenerational Community Center, Inc. (a recently formed nonprofit corporation whose representatives have been working closely with the University in the activities and services at the Lessie Bass Building). The MOU recognizes that the second floor of the Lessie Bass Building may be leased to this nonprofit and provides that the University will cooperate with the shared use of the building. The MOU also provides that the University will provide site management for the Center by developing regulations relating to the use of the Center by the tenants of the Center. Currently, the State of North Carolina, the Little Willie Center, Inc., and the Lucille W. Gorham Intergenerational Community Center, Inc. are tenants on the property. A copy of the Memorandum of Understanding is attached.

**Fiscal Note:**

There are expenses to the City included in the Public Works Department budget for maintaining the buildings and grounds at the Lucille W. Gorham Intergenerational Center.


**Recommendation:**

Approval of the extension of the Memorandum of Understanding with East Carolina University relating to the Lucille W. Gorham Intergenerational Center.

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**Attachments / click to download**

 [Memorandum of Understanding](#)

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NORTH CAROLINA  
PITT COUNTY

MEMORANDUM  
OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING made and entered into this the 12<sup>th</sup> day of February, 2010, by and between the City of Greenville, a municipal corporation organized and existing pursuant to the laws of the State of North Carolina, Party of the First Part and hereinafter referred to as the CITY, and East Carolina University, a constituent institution of the University of North Carolina pursuant to N. C. GEN. STAT. 116-1, *et seq.*, Party of the Second Part and hereinafter referred to as the UNIVERSITY;

WITNESSETH:

WHEREAS, North Carolina General Statute 160A-456 authorizes the CITY to engage in community development programs and activities, North Carolina General Statute 160A-492 authorizes the CITY to undertake and engage in human relations programming and activities, and North Carolina General Statute 160A-353 authorizes the CITY to operate recreational facilities;

WHEREAS, North Carolina General Statute 160A-274 authorizes the CITY to lease, upon such terms and conditions it deems wise, to any other governmental unit any interest in real property and North Carolina General Statute 160A-20.1 authorizes the CITY to contract with any person, association, or corporation to carry out a public purpose that the CITY is authorized by law to engage in;

WHEREAS, the UNIVERSITY'S involvement in this cooperative effort is part of its mission of service to promote economic development, community engagement, and to provide educational and service opportunities for its faculty and students; and

WHEREAS, the CITY and the UNIVERSITY have agreed to partner and cooperate with each other in order to operate the facilities known as the Lucille W. Gorham Intergenerational Center.

NOW, THEREFORE, for and in consideration of the mutual benefits, covenants, and promises contained herein, the CITY and the UNIVERSITY agree as follows:

- I. Purpose. The purpose of this Memorandum of Understanding is to provide for a

cooperative effort between the CITY and the UNIVERSITY for the operation of the Lucille W. Gorham Intergenerational Center in order to provide a multidisciplinary community center in an attempt to meet needs that exist in West Greenville. To the extent possible and consistent with the missions, resources, and operational limitations of the parties, this purpose will be accomplished by providing services and activities in such areas which may include, but are not necessarily limited to, the following: youth development, adult education, job training and placement, home ownership readiness counseling, and social work.

2. Definition of Center. For the purpose of this Memorandum of Understanding, the Lucille W. Gorham Intergenerational Center is defined as the property and buildings shown on the attached Exhibit A which is incorporated herein by reference. Buildings located upon the property, as shown on Exhibit A, are the former Sanctuary, former Rectory, former Annex, former School, and the Lessie Bass Building. The Lucille W. Gorham Intergenerational Center is hereinafter referred to as the CENTER. Whenever the CENTER is referred to in this Memorandum of Understanding it does not mean the legal entity of the Lucille W. Gorham Intergenerational Community Center, Inc.

3. Lease. The UNIVERSITY shall lease from the CITY the first floor of the Lessie Bass Building. The lease shall be on the terms as established in a separate lease agreement attached hereto as Exhibit B. It is understood and agreed that the second floor of the Lessie Bass Building, in part or whole, may be leased to the Lucille W. Gorham Intergenerational Community Center, Inc. In the event of such a lease for all or part of the second floor, the UNIVERSITY will cooperate with the Lucille W. Gorham Intergenerational Community Center, Inc. in connection with access to the Lessie Bass Building, the provision of services at the Lessie Bass Building, and other matters relating to the shared use of the Lessie Bass Building.

4. Services at the Lessie Bass Building. During the term of the lease agreement between the CITY and the UNIVERSITY described in Paragraph 3, above, the UNIVERSITY will operate programs and activities at the Lessie Bass Building in order to meet the objective of providing a multidisciplinary community center in an attempt to meet needs that exist in West Greenville by providing services and activities in the sole discretion of the UNIVERSITY, after

receipt and consideration of input from the planning team hereinafter described, in such areas which may include, but are not necessarily limited to, the following: youth development, adult education, job training and placement, home ownership readiness counseling, social work services, student support (interns, service learning), interior design services, assessment and evaluation services, health services, business services, culture and fine arts services, and grant writing support. Subject to availability of appropriate and adequate resources, including but not limited to funding and personnel, the specific programs and activities proposed to be provided by the UNIVERSITY at the Lessie Bass Building are as follows:

- Availability of social work services via UNIVERSITY faculty and/or students;
- Coordination of a planning team to convene on-site at the CENTER on the second Friday of each month. The planning team will consist of the director of UNIVERSITY programs and activities at the Lessie Bass Building, five (5) UNIVERSITY faculty members, appointed by the UNIVERSITY, with at least one (1) of the five (5) being from the UNIVERSITY College of Human Ecology, and five (5) members of the Board of Directors of the Lucille W. Gorham Intergenerational Community Center, Inc., appointed by the Board of Directors of the Lucille W. Gorham Intergenerational Community Center, Inc. The planning team will provide consultation and advice regarding issues that pertain to the development of proposals for, administration and delivery of the services and activities of the CENTER and report those issues to the UNIVERSITY and the CITY;
- Provision of programmatic assessment and evaluation services to all tenants who occupy space and propose to deliver services and activities at the CENTER;
- Requirement of semi-annual service reports from all tenants of the CENTER. The service reports will become a part of the annual service provider evaluation and assessment report generated by the UNIVERSITY;
- Coordination of funding possibilities and grant proposals for the UNIVERSITY and, as appropriate, other tenants relating to use of the CENTER based on needs that exist in West Greenville;
- Provision of assistance for an advisory board relating to the CENTER to consist of representatives from the community, Lucille W. Gorham Intergenerational Community Center, Inc., CITY and UNIVERSITY, said advisory board to provide input to the UNIVERSITY on the tenants as provided in Paragraph 5; and
- Provision of such other services and programs determined to be appropriate by the UNIVERSITY after receipt and consideration of input from the planning team hereinbefore described.



5. Other Tenants. If vacancies occur, the UNIVERSITY will recruit, assess, and approve the tenants that will be providing services and activities at the buildings located at the CENTER other than the first floor of the Lessie Bass Building which will be used by the UNIVERSITY and other than the former Sanctuary which will not be leased to a tenant but, instead, will be used as a community building for meetings, programs and events approved by the UNIVERSITY. In determining the tenants, the UNIVERSITY will establish and utilize a process which includes input from an advisory board consisting of representatives from the community, Lucille W. Gorham Intergenerational Community Center, Inc., CITY and UNIVERSITY. The tenants, if any, shall be chosen by the UNIVERSITY upon the recommendation of the advisory board with the objective of providing a multidisciplinary community center in an attempt to meet needs that exist in West Greenville by providing services and activities in such areas which may include, but are not necessarily limited to, the following: youth development, adult education, job training and placement, home ownership readiness counseling, and social work. The CITY will be the lessor in the lease with each tenant located at the CENTER.

6. Utilities, Maintenance and Repairs. The CITY or the tenant as provided in a lease will be responsible for the expense for the utilities (not including telephone services and network connections), maintenance, and repairs of all buildings located at the CENTER except that, during the term of the lease agreement described in Paragraph 3, above, the UNIVERSITY will be responsible for the expense for telephone and network connections serving or used for that portion of the Lessie Bass Building leased to UNIVERSITY and the UNIVERSITY will be responsible for the expense of utilities at the Lessie Bass Building. The lease of each tenant of a building, or portion of a building, located at the CENTER shall provide that the tenant is responsible, at the tenant's expense, for utilities, telephone and network connections unless the CITY determines otherwise. The lease of each tenant of a building, or portion of a building, located at the CENTER shall provide that the tenant leases the property in its existing condition and that the tenant shall make no material alterations, additions, improvements, or renovations to the property without the prior approval of the CITY.

7. Operation Expenses. During the term of the lease agreement described in

Paragraph 3, above, the UNIVERSITY will be responsible for providing, at its expense, the staffing, furniture, equipment, supplies, and other items necessary for its programs and activities in that portion of the Lessie Bass Building leased by the UNIVERSITY. The lease of each tenant of a building, or portion of a building, located at the CENTER shall provide that the tenant is responsible for providing, at the tenant's expense, the staffing, furniture, equipment, supplies and other items necessary for the programs and activities which they conduct.

8. Housekeeping Services. During the term of the lease agreement described in Paragraph 3, above, the UNIVERSITY will be responsible, at its expense, for housekeeping, cleaning, and janitorial services for that portion of the Lessie Bass Building leased by the UNIVERSITY. The lease of each tenant of a building, or portion of a building, located at the CENTER shall provide that the tenant is responsible, at the tenant's expense, for housekeeping, cleaning, and janitorial services at the buildings or portions of building used by them for the provision of programs and activities at the CENTER.

9. Report. The UNIVERSITY will provide a written report to the CITY on an annual basis which describes the services being provided at the CENTER, describes issues related to the CENTER, and evaluates the activities and effectiveness of the programs and activities being provided at the CENTER.

10. Site Management Duties. In addition to recruiting, assessing, and approving tenants, the UNIVERSITY will develop regulations relating to the use of the CENTER by the tenants, said regulations to include, but not be limited to, the manner to resolve any disputes or conflicts involving the tenants and the manner to respond to complaints by the tenants, which shall be made binding upon the tenants under the terms of their respective leases. It is understood and agreed that said regulations shall not result in a fee or a charge to a tenant unless the tenant expressly agrees. Additionally, the UNIVERSITY will advise the CITY of any needed repairs or maintenance. The CITY will make repairs in an expedient manner. The payment of any rental amounts from tenants shall be made directly to the CITY and will be retained by the CITY.

11. Hold Harmless. To the extent permitted and limited by the laws of North Carolina, the CITY will indemnify and hold the UNIVERSITY harmless from any liabilities which are associated with its activities as the owner of the CENTER, and its activities relating to its responsibilities as described in this Memorandum of Understanding to the extent that such liability for damages is caused by or results from the acts of the CITY, its officers or employees. The UNIVERSITY will be responsible for the conduct of its officers and employees arising out of the performance of this Memorandum of Understanding to the extent permitted and limited by the laws of North Carolina, including the North Carolina Tort Claims Act, the Defense of State Employees Act, the Excess Liability Policy administered through the North Carolina Department of Insurance, subject to the availability of appropriations and in proportion to and to the extent that such liability for damages is caused by or results from the acts of the UNIVERSITY, its officers or employees. The lease of each tenant located at the Intergenerational Center shall provide that, to the extent permitted and limited by the laws of North Carolina, the tenant will indemnify and hold the CITY and the UNIVERSITY harmless from any liabilities associated with the programs and activities conducted by the tenant at the CENTER.

12. Naming of Center and Buildings. The CITY shall have the sole right to name the CENTER and the individual buildings located at the CENTER. No signs shall be erected at the CENTER without the express written approval of the CITY. The CITY will consult with the UNIVERSITY prior to naming the CENTER and the individual buildings located at the CENTER and prior to approving the erection of any signs at the CENTER. The lease of each tenant located at the CENTER shall provide that the CITY has the sole right to name the CENTER and the individual buildings located at the CENTER and that no signs shall be erected at the CENTER without the express written approval of the CITY.

13. Duration. The term of this Memorandum of Understanding shall be for a period of one (1) year commencing on March 1, 2010. This Memorandum of Understanding may be extended for an additional term(s) upon the mutual written agreement of the parties.


14. Amendment. This Memorandum of Understanding contains the entire understanding of the parties and shall not be altered, amended, or modified, except by an

agreement in writing executed by the duly authorized officials of both the UNIVERSITY and the CITY.

15. Governance. This Memorandum of Understanding shall be governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereby have caused this Memorandum of Understanding to be executed in duplicate originals, as of the day and year first above written.


CITY OF GREENVILLE

By:   
Patricia C. Dunn, Mayor

ATTEST:

  
Wanda T. Elks, City Clerk

EAST CAROLINA UNIVERSITY

By:   
Steve Ballard, Chancellor

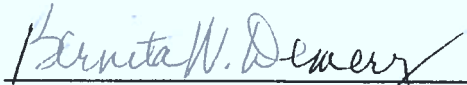
APPROVED AS TO FORM:



David A. Holec, City Attorney

PRE-AUDIT CERTIFICATION

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



Bernita W. Demery, Director of Financial Services



**Exhibit A: Lucille W. Gorham Intergenerational Center**



Item # 5

**Boundary of Property**



**EXHIBIT B**

**THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED  
BY THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION**

STATE OF NORTH CAROLINA

**LEASE AGREEMENT**

COUNTY OF PITT

THIS LEASE AGREEMENT, made and entered into this the 12<sup>th</sup> day of February, 2010, by and between the **City of Greenville**, hereinafter designated as Lessor, and the **State of North Carolina**, hereinafter designated as Lessee;

**WITNESSETH:**

THAT WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and as amended on September 8, 1999 and December 7<sup>th</sup>, 1999, and

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the **City of Greenville, County of Pitt, North Carolina**, more particularly described as follows:

**Being ±1,806 square feet of office space located at the Lessie Bass Building, First Floor, 1100 Ward Avenue, Greenville, Pitt County, North Carolina. (Exhibit A – Floor Plan Attached)**

( ECU – Intergenerational Center )

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of one (1) year commencing on the **1<sup>st</sup> day of March, 2010**, or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **28<sup>th</sup> day of February, 2011**.

2. The Lessee shall pay to the Lessor as rental for said premises the sum of **\$24,999.00** per annum, which sum shall be paid in equal monthly installments of **\$2,083.25**, said rental to be payable within fifteen (15) days from receipt an original invoice.

The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.



## RENEWAL

This lease agreement may be renewed for two (2) additional one (1) year periods upon mutual agreement in writing by Lessor and Lessee and in the event of such renewal, all of the terms and conditions of this lease agreement shall continue in full force and effect.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

- A Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.
- B. Maintenance and cleaning of lawns, shrubbery, sidewalks and parking areas.
- C. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal, including provision for the handling of recyclable items such as aluminum cans, cardboard and paper.
- D. Parking.
- E. The leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.
- F. Any fire or safety inspection fee and stormwater fee will be paid by Lessor.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee, in addition to any other remedy the Lessee may have, to make such repair at its own cost and to deduct the amount thereof from the rent that may then be or thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease



**EXHIBIT B**

is an extension or renewal shall be and remain the property of the Lessee, and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises were destroyed by fire or other casualty without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term, or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premises leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at **c/o City Manager, Post Office Box 7207, Greenville, North Carolina 27835-7207** and the Lessee, **c/o Associate Vice Chancellor for Administration and Finance – Business Services, ECU, 224 Ragsdale Building, Greenville, North Carolina 27858-4353**. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

STATE OF NORTH CAROLINA

\_\_\_\_\_  
Speros J. Fleggas  
Deputy Secretary

City of Greenville

\_\_\_\_\_  
Wayne Bowers  
City Manager

**EXHIBIT B**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, \_\_\_\_\_, a Notary Public in and for the County and State  
aforesaid, do hereby certify that Speros J. Fleggas, personally appeared before me this date  
and acknowledged the due execution of the foregoing instrument as the Deputy Secretary of the  
Department of Administration of the State of North Carolina, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My Commission Expires:

\_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in and for the County and  
State aforesaid, do hereby certify that Wayne Bowers, personally came before me this day and  
acknowledged the due execution of the foregoing instrument as City Manager of the City of  
Greenville for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My Commission Expires:

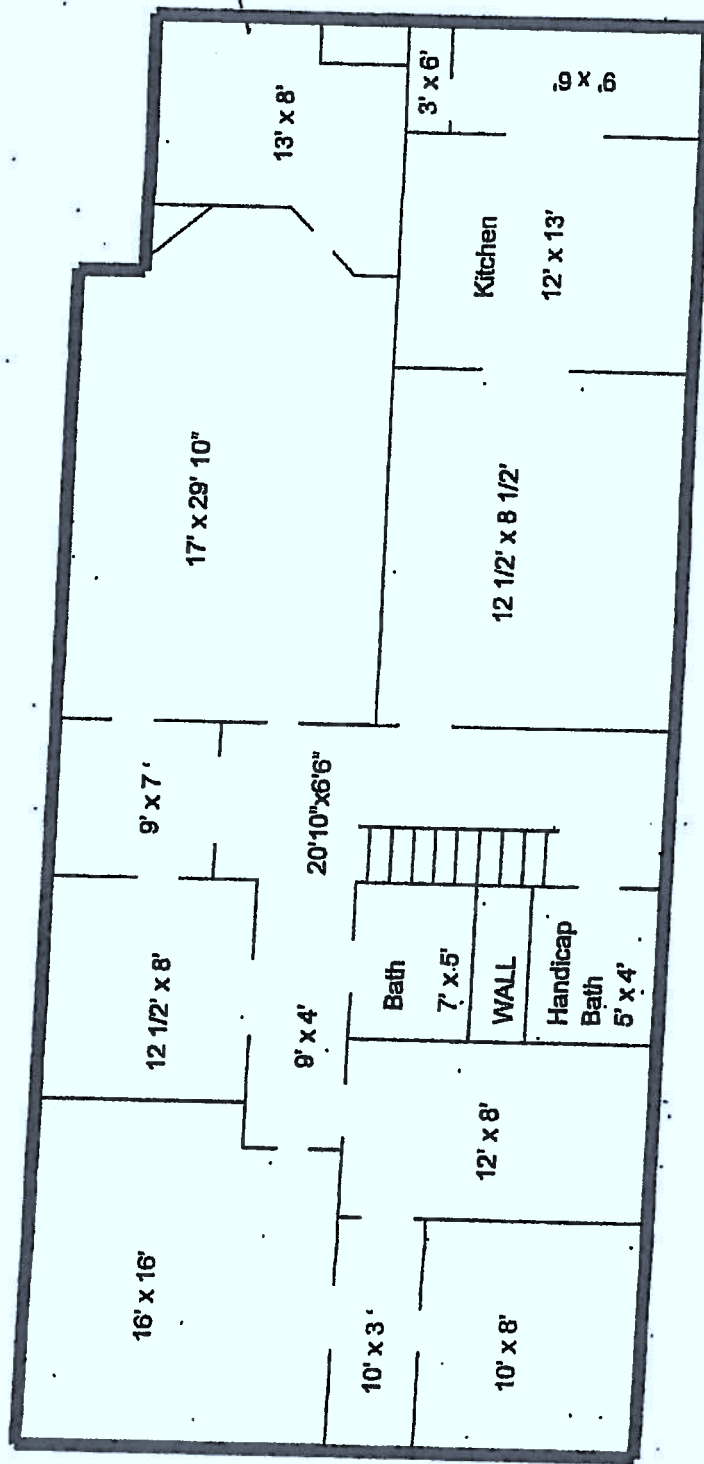
\_\_\_\_\_

**EXHIBIT B**

**Exhibit A**

**LESSIE BASS BUILDING**

**First Floor Plan**







# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Resolution approving the extension of the lease agreement with the State of North Carolina for the first floor of the Lessie Bass Building located at 1100 Ward Street

**Explanation:** The State of North Carolina has been leasing the first floor of the Lessie Bass Building at the Lucille W. Gorham Intergenerational Center since November 2006. The building has been leased for the purpose of East Carolina University offering programs and activities in order to meet the objective of providing a multidisciplinary community center in an attempt to meet needs that exist in West Greenville. The current lease is for a one-year period with the provision for an extension for two additional one-year periods upon mutual agreement. East Carolina University seeks a one-year extension.

The extension for the lease is for a one-year term with a provision for an extension for one additional one-year term upon mutual agreement. The terms and conditions of the previous lease remain the same. This includes an annual rental payment to the City in the amount of \$24,999. The required notice of intent to authorize the extension of this lease has been published. A copy of the lease is attached.

By the attached letter dated January 24, 2011, East Carolina University expresses its support for the extension of the lease.

The attached resolution approves the extension of the lease agreement with the State of North Carolina for the property located on the first floor of the Lessie Bass Building located at 1100 Ward Street, Greenville, North Carolina, for a term of one year with a provision for one extension for an additional one-year term upon mutual agreement, and for an annual rental payment of \$24,999, and does further authorize the City Manager to execute said lease agreement.

**Fiscal Note:** \$24,999 is to be received as an annual rental payment each year.

**Recommendation:** Approval of the attached resolution which approves the extension of the lease agreement with the State of North Carolina.


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**Attachments / click to download**

 [Lease](#)

 [ECU letter](#)

 [Resolution approving renewal of Lease Agreement with State for Lucille W. Gorham 887661](#)

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RESOLUTION \_\_\_\_\_ - 11  
RESOLUTION APPROVING THE EXTENSION OF THE LEASE AGREEMENT  
WITH THE STATE OF NORTH CAROLINA

WHEREAS, North Carolina General Statute 160A-272 authorizes the City Council of the City of Greenville to approve a lease of property for a term of less than ten (10) years for any property owned by the City for such terms and upon such conditions as City Council may determine; and

WHEREAS, City Council does hereby determine that the property herein described will not be needed by the City for the term of the lease.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the extension of the Lease Agreement with the State of North Carolina, for the property located on the first floor of the Lessie Bass Building located at 1100 Ward Street, Greenville, North Carolina, for a term of one (1) year with a provision for an extension for one additional one-year term upon mutual agreement, and for an annual rental payment of twenty-four thousand nine hundred ninety-nine dollars (\$24,999), and does further authorize the City Manager to execute said Lease Agreement.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



**THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED  
BY THE NORTH CAROLINA DEPARTMENT OF ADMINISTRATION**

STATE OF NORTH CAROLINA

**LEASE AGREEMENT**

COUNTY OF PITT

THIS LEASE AGREEMENT, made and entered into this the 12<sup>th</sup> day of February, 2010, by and between the **City of Greenville**, hereinafter designated as Lessor, and the **State of North Carolina**, hereinafter designated as Lessee;

**WITNESSETH:**

THAT WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and as amended on September 8, 1999 and December 7<sup>th</sup>, 1999, and

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the **City of Greenville, County of Pitt, North Carolina**, more particularly described as follows:

**Being ±1,806 square feet of office space located at the Lessie Bass Building, First Floor, 1100 Ward Avenue, Greenville, Pitt County, North Carolina. (Exhibit A - Floor Plan Attached)**

( ECU - Intergenerational Center )

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of one (1) year commencing on the **1<sup>st</sup> day of March, 2010**, or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **28<sup>th</sup> day of February, 2011**.

2. The Lessee shall pay to the Lessor as rental for said premises the sum of **\$24,999.00** per annum, which sum shall be paid in equal monthly installments of **\$2,083.25**, said rental to be payable within fifteen (15) days from receipt an original invoice.

The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

## RENEWAL

This lease agreement may be renewed for two (2) additional one (1) year periods upon mutual agreement in writing by Lessor and Lessee and in the event of such renewal, all of the terms and conditions of this lease agreement shall continue in full force and effect.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

- A Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.
- B. Maintenance and cleaning of lawns, shrubbery, sidewalks and parking areas.
- C. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal, including provision for the handling of recyclable items such as aluminum cans, cardboard and paper.
- D. Parking.
- E. The leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.
- F. Any fire or safety inspection fee and stormwater fee will be paid by Lessor.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee, in addition to any other remedy the Lessee may have, to make such repair at its own cost and to deduct the amount thereof from the rent that may then be or thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease

is an extension or renewal shall be and remain the property of the Lessee, and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises were destroyed by fire or other casualty without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

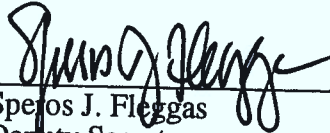
12. Any hold over after the expiration of the said term, or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premises leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

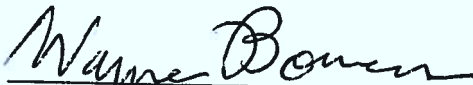
14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at **c/o City Manager, Post Office Box 7207, Greenville, North Carolina 27835-7207** and the Lessee, **c/o Associate Vice Chancellor for Administration and Finance – Business Services, ECU, 224 Ragsdale Building, Greenville, North Carolina 27858-4353**. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

STATE OF NORTH CAROLINA

  
\_\_\_\_\_  
Spiros J. Fleggas  
Deputy Secretary *SR*

City of Greenville

  
\_\_\_\_\_  
Wayne Bowers  
City Manager

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, JOE G CREECH JR, a Notary Public in and for JOHNSTON County and State

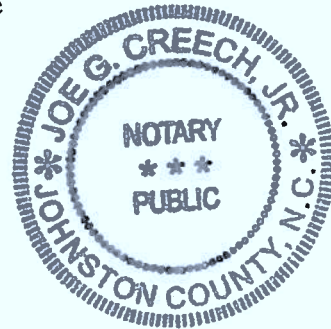
aforesaid, do hereby certify that Speros J. Fleggas, personally appeared before me this date and acknowledged the due execution of the foregoing instrument as the Deputy Secretary of the Department of Administration of the State of North Carolina, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 26<sup>th</sup> day of MARCH, 2010.

Joe G Creech Jr  
Notary Public

JOE G CREECH JR  
Print Name

My Commission Expires:  
9-8-2012



STATE OF NORTH CAROLINA  
COUNTY OF Pitt

I, Donna H. Raynor, a Notary Public in and for the County and State aforesaid, do hereby certify that Wayne Bowers, personally came before me this day and acknowledged the due execution of the foregoing instrument as City Manager of the City of Greenville for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 16<sup>th</sup> day of February, 2010.

Donna H. Raynor  
Notary Public

Donna H. Raynor  
Print Name

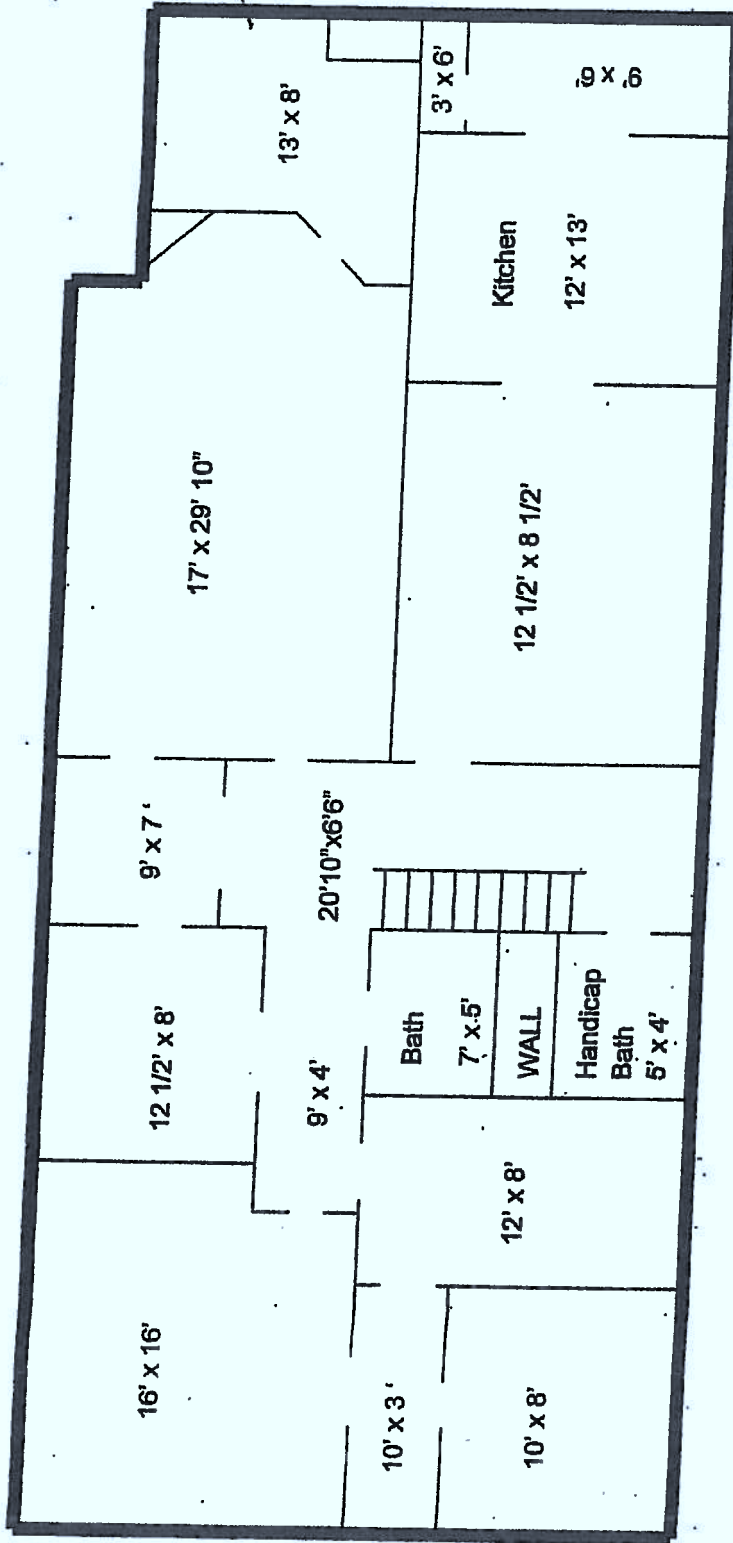
My Commission Expires:  
12/25/2010



Exhibit A

LESSIE BASS BUILDING

First Floor Plan





**College of  
Human Ecology**

Office of the Dean  
RW-238 Rivers Building  
East Carolina University  
Greenville, NC 27858-4353

**252-328-1098** office  
**252-328-0909** fax

**CHE Advancement**  
RW-309 Rivers Building  
328-6903

**CHE International Affairs**  
RW-238 Rivers Building  
328-1098

**Child Development  
and Family Relations**  
108 Rivers Building  
328-4273

**Criminal Justice**  
245 Rivers Building  
328-4192

**Lucille W. Gorham/  
Intergenerational  
Community Center**  
1100 Ward Street  
328-5800

**Hospitality Management**  
152 Rivers Building  
737-1603

**Interior Design and Merchandising**  
249 Rivers Building  
328-6929

**Nutrition and Dietetics**  
148 Rivers Building  
328-4274

**Social Work**  
224 Rivers Building  
328-5650

**Student Services Center**  
140 and 142 Rivers Building  
328-2502

January 24, 2011

Mr. Wayne Bowers  
City Manager  
200 West Fifth Street  
P.O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Bowers:

I am writing to advise that, in accordance with the 12 February 2010 Memorandum of Understanding between the City and East Carolina University, the University recommends that the lease for the first floor of the Lessie Bass Building, expiring on the 28th day of February, 2011, be extended for an additional one year, commencing on the 1st day of March 2011 and expiring on the 28th day of February, 2012.

The University also supports the extension of the lease of the second floor of the Lessie Bass Building for the Lucille W. Gorham Intergenerational Community Center, Inc. The University recommends that the lease commence on the 1st day of March 2011 and expire on the 28th day of February, 2012. The University believes that this tenancy best meets the objective of providing a multidisciplinary community center, with services and activities that may include, but are not necessarily limited to: youth development, adult education, job training and placement, home ownership, readiness counseling, and social work.

Please let me know if I may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads 'Judy A. Siguaw'.

Judy A. Siguaw  
Dean and Professor



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Resolution approving the extension of the lease agreement with Lucille W. Gorham Intergenerational Community Center, Inc. for the second floor of the Lessie Bass Building located at 1100 Ward Street

**Explanation:** The Lucille W. Gorham Intergenerational Community Center, Inc. has leased the second floor of the Lessie Bass Building since March 1, 2010. The lease is for a one-year period with a provision for an extension for two additional one-year periods upon mutual agreement. The nonprofit corporation seeks a one-year extension.

The extension for the lease is for a one-year term with a provision for an extension for an additional one-year term upon mutual agreement. This term and the other terms and conditions of the lease basically parallel the provisions of the lease with the State of North Carolina for the first floor except that the annual rental amount is a nominal amount of \$1. The lease also provides for the nonprofit to cooperate with East Carolina University relating to matters involving the shared use of the Lessie Bass Building. The required notice of the intent to authorize the extension of the lease has been published. A copy of the lease is attached.

By the attached letter dated January 24, 2011, East Carolina University expresses its support for the extension of the lease.

The attached resolution approves the extension of the lease agreement with the Lucille W. Gorham Intergenerational Community Center, Inc., for the property located on the second floor of the Lessie Bass Building located at 1100 Ward Street, Greenville, North Carolina, for a term of one (1) year with a provision for an extension for one additional one-year term upon mutual agreement, and for an annual rental payment of one dollar, and does further authorize the City Manager to execute said lease agreement.

**Fiscal Note:** \$1 to be received as an annual lease payment each year.



**Recommendation:** Approval of the resolution which approves the extension of the lease agreement with the Lucille W. Gorham Intergenerational Community Center, Inc.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

[Lease](#)

[ECU Letter](#)

[Resolution approving Renewal of Lease Agreement with Lucille Gorham Intergenerational Center \\_\\_\\_1st Floor 887605](#)

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RESOLUTION - 11  
RESOLUTION APPROVING THE EXTENSION OF THE LEASE AGREEMENT WITH  
LUCILLE W. GORHAM INTERGENERATIONAL COMMUNITY CENTER, INC.

WHEREAS, North Carolina General Statute 160A-272 authorizes the City Council of the City of Greenville to approve a lease of property for a term of less than ten (10) years for any property owned by the City for such terms and upon such conditions as City Council may determine; and

WHEREAS, City Council does hereby determine that the property herein described will not be needed by the City for the term of the lease.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the extension of the Lease Agreement with the Lucille W. Gorham Intergenerational Community Center, Inc., for the property located on the second floor of the Lessie Bass Building located at 1100 Ward Street, Greenville, North Carolina, for a term of one (1) year with a provision for an extension for one additional one-year term upon mutual agreement, and for an annual rental payment of one dollar, and does further authorize the City Manager to execute said Lease Agreement.

This the 10th day of February, 2011.

---

Patricia C. Dunn, Mayor

ATTEST:

---

Carol L. Barwick, City Clerk

**NORTH CAROLINA  
COUNTY OF PITT**

**LEASE  
AGREEMENT**

THIS LEASE AGREEMENT, made and entered into this the 12th day of February, 2010, by and between the City of Greenville, a North Carolina municipal corporation, Party of the First Part and hereinafter referred to as LESSOR, and Lucille W. Gorham Intergenerational Community Center, Inc., a North Carolina non-profit corporation, Party of the Second Part and hereinafter referred to as LESSEE;

Subject to the terms and conditions of this Lease Agreement, LESSOR does hereby let and lease unto the LESSEE, and LESSEE does hereby lease from the LESSOR, the following described premises located in Greenville, North Carolina:

The office space located on the second floor of the Lessie Bass Building located at 1100 Ward Avenue, Greenville, North Carolina, said office space shall only include the non-hatched area as shown on Exhibit A until the Chief Building Inspector determines that the second floor of the Lessie Bass Building has at least two (2) Building Code compliant exits.

The terms and conditions of this Lease Agreement are as follows:

1. Term.

The term of this Lease Agreement is for a period of one (1) year, commencing on the 1st day of March, 2010, and expiring on the 28th day of February, 2011. The term of this Lease Agreement may be extended for two (2) additional one year periods upon mutual agreement in writing by the LESSOR and LESSEE and in the event of such extension, all of the terms and conditions of this Lease Agreement shall continue in full force and effect.

2. Rent.

The annual rent shall be ONE DOLLAR, and shall be paid by the first day of March of each year. Rent payments shall be delivered to the Director of Financial Services of the City of Greenville, P.O. Box 7207, Greenville, NC 27835.

3. Use of Leased Premises.

During the term of this Lease Agreement, LESSEE shall conduct programs and activities at the leased premises which relate to a multidisciplinary community center in order to meet the needs of West Greenville including, but not limited to, youth development, adult education, job training and placement, home ownership counseling, and social work. LESSEE shall make no other use of the leased premises without the prior written consent of the LESSOR. LESSEE shall be responsible, at its expense, for providing the staffing, furniture, equipment, supplies and other items necessary for the programs and activities which the LESSEE conducts.

4. Parking Lot and Common Areas.

LESSEE shall have the use of the parking lot at the Lucille W. Gorham Intergenerational Center and the common areas, as designated by the LESSOR, of the Lucille W. Gorham Intergenerational Center on the same basis and pursuant to the same regulations and requirements as applicable to other persons and entities that are leasing portions of the Lucille W. Gorham Intergenerational Center. For the purpose of this Lease Agreement, the Lucille W. Gorham Intergenerational Center is defined as the property and buildings shown on the attached Exhibit A which is herein incorporated by reference.

5. Intergenerational Center.

LESSOR and LESSEE understand and agree that this Lease Agreement and the programs and activities being provided by the LESSEE at the leased premises are a component of the efforts of the LESSOR and East Carolina University to provide, at the Lucille W. Gorham Intergenerational Center, a multidisciplinary community center in an attempt to meet needs that exist in West Greenville by providing services and activities in such areas which may include, but are not necessarily limited to, the following: adult education, job training and placement, home ownership readiness counseling, and social work. LESSEE understands and agrees that East Carolina University will develop regulations relating to the use of the Lucille W. Gorham Intergenerational Center by the tenants of the Lucille W. Gorham Intergenerational Center. It is understood and agreed that said regulations shall not result in a fee or a charge to the LESSEE unless the LESSEE expressly agrees. The LESSEE agrees that the regulations relating to the use of the Lucille W. Gorham Intergenerational Center which are developed by East Carolina University shall be binding upon the LESSEE. The LESSEE shall comply with the regulations relating to the use of the Lucille W. Gorham Intergenerational Center which are developed by East Carolina University. Additionally, the LESSEE shall cooperate with East Carolina University and the other tenants of the Lucille W. Gorham Intergenerational Center in order to assist in the effort to provide a multidisciplinary community center at the Lucille W. Gorham Intergenerational Center in order to meet needs that exist in West Greenville.

6. Activities Report.

LESSOR and LESSEE understand and agree that the leased premises will be actively used by the LESSEE. Within thirty (30) days of a request, the LESSEE shall provide a written report to the LESSOR or its designee of the programs, activities, and services being provided on the leased premises so that a report about the Lucille W. Gorham Intergenerational Center can be generated.

7. Signage.

No signs shall be erected on the leased premises or the Lucille W. Gorham Intergenerational Center without the prior written approval of the LESSOR. It is understood and agreed that the LESSOR has the sole right to name the Lucille W. Gorham Intergenerational Center and the buildings located at the Lucille W. Gorham Intergenerational Center.

8. Shared Use of Building.

It is understood that the LESSEE is only leasing the second floor of the Lessie Bass Building and that the first floor of the Lessie Bass Building is being leased by the State of North

Carolina for use by East Carolina University. The LESSEE will cooperate with East Carolina University in connection with access to the Lessie Bass Building, the provision of services at the Lessie Bass Building, and other matters relating to the shared use of the Lessie Bass Building. In the event there is a conflict relating to any matter involving the shared use of the Lessie Bass Building which cannot be resolved by the LESSEE and East Carolina University, the LESSEE shall comply with the decision of East Carolina University relating to the unresolved matter involving the shared use of the Lessie Bass Building since it is understood and agreed that East Carolina University has the primary use of the Lessie Bass Building and LESSEE has a supplemental use of the Lessie Bass Building.

9. Repairs and Maintenance.

LESSEE agrees to accept the leased premises in its existing condition. The LESSOR shall, at its expense, be responsible for the following maintenance at the leased premises:

- (a) Maintenance of heating and air conditioning systems, electrical facilities, lighting fixtures and sockets, hot and cold water facilities, and toilet facilities.
- (b) Maintenance of lawns and parking areas.
- (c) Fire extinguisher servicing, pest control, and outside trash disposal.

The LESSOR shall be responsible for the maintenance and repairs to the leased premises so that the leased premises are kept in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to, furnishing and replacing electrical light fixture ballasts, heating and air conditioning filter pads, and broken glass.

The LESSEE shall, at its sole cost and expense, be responsible for keeping the leased premises in a good, clean, neat, attractive, pleasant and sanitary condition at all times. The LESSEE shall be responsible for providing and paying for all charges for housekeeping, cleaning, and janitorial services at the leased premises.

10. Alterations and Improvements.

No alterations, additions, improvements, or renovations shall be made to the leased premises without the prior written consent of the LESSOR.

11. Utilities.

It is understood that East Carolina University is responsible for the utility expense at the Lessie Bass Building. Therefore, the LESSEE shall not be responsible for providing and paying for any charges for electricity, lighting, heating, water, air conditioning, and sewer used by LESSEE in connection with the occupancy of the leased premises. The LESSEE shall be responsible, at its expense, for the telephone charges, network connection charges, and all similar charges in connection with the occupancy of the leased premises.

12. Insurance.

The LESSEE will at all times during the term of this Lease Agreement, at its own cost and expense, insure and keep in effect insurance on the leased premises against claims for personal injury or property damage under a policy of general liability insurance with a combined single limit of not less than \$1,000,000 with the LESSOR named as an additional named insured, written by an insurance company or companies authorized to do business in the State of North Carolina. The LESSEE shall provide the LESSOR with a certificate of insurance evidencing said coverage.

13. Damage or Destruction by Fire or Other Casualty.

In the event that the building located on the leased premises is destroyed by fire or other casualty or act of God, then this Lease Agreement shall terminate as of the time of such destruction without action on the part of either the LESSOR or the LESSEE. In the event that the building located on the leased premises is so damaged by fire, other casualty, or act of God that more than fifty percent (50%) of the floor space of the building cannot reasonably be used by LESSEE in the conduct of its activities, or the building is so damaged by fire or other casualty or act of God that it cannot, in the LESSOR's opinion, be economically repaired, then either party shall have the option to terminate this Lease Agreement by the provision of written notice to the other party.

14. Assignment and Subletting.

LESSEE may not assign or transfer this Lease Agreement or sublet the leased premises or any part of the leased premises without the prior written consent of the LESSOR.

15. Indemnity.

To the extent permitted and limited by the laws of North Carolina, LESSEE agrees to indemnify and hold harmless the LESSOR and its officers and employees from and against any and all liabilities, claims, and demands whether from injury to person, loss of life, or damage to property, associated with the programs and activities conducted by the LESSEE on or within the demised premises. To the extent permitted and limited by the laws of North Carolina, LESSEE agrees to indemnify and hold harmless East Carolina University and its officers and employees from and against any and all liabilities, claims, and demands whether from injury to person, loss of life, or damage to property, associated with the programs and activities conducted by the LESSEE on or within the demised premises.

16. Surrender on Termination.

Upon the termination of this Lease Agreement for any reason, the LESSEE shall yield and deliver peaceably to the LESSOR possession of the leased premises and any alterations, additions, and improvements made by LESSEE thereto, promptly and in good condition, order, and repair, except for reasonable wear and tear and acts of God.

17. Default.



If LESSEE shall neglect to pay any annual installment of rent when due, or shall neglect to do and perform any other matter agreed to be done, and shall remain in default for a period of thirty (30) days after receiving written notice from LESSOR calling attention to the non-payment or default, LESSOR may declare this Lease Agreement terminated and take possession of the leased premises without prejudice to any other legal remedy it may have on account of such default. If LESSOR neglects to do or perform any matter agreed to be done in this Lease Agreement and shall remain in default for a period of thirty (30) days after written notice from the LESSEE calling attention to such default, the LESSEE may declare this Lease Agreement terminated without prejudice to any other legal remedy it may have on account of such default.

18. Liens.

The LESSEE agrees that it will not permit the claim of any contractor, sub-contractor, mechanic, laborer or materialmen to become and remain a lien on the leased property or upon the right, title or interest of the LESSEE created by this Lease Agreement after the indebtedness secured by such lien shall become due unless the same is in the process of actually being contested in good faith on the part of the LESSEE and in any event the LESSEE will protect, indemnify and save harmless the LESSOR from and in respect of any and all such claims.

19. Access.

LESSEE will be able to secure and restrict access to the leased premises when not in use for its activities except in connection with access relating to the shared use of the Lessie Bass Building with East Carolina University. Notwithstanding the foregoing, LESSOR and LESSOR's officers and employees shall have full access to enter the leased premises anytime to examine the condition thereof or make repairs, additions or alterations as may be necessary for the safety, preservation or improvement of the property which the LESSOR, in its sole discretion, determines to make or for any other purpose which the LESSOR deems appropriate as it relates to the physical facility and equipment. In addition, East Carolina University shall have the right to access the leased premises in what reasonably appears to be an emergency situation (e.g. the presence of smoke) for purposes of taking action believed necessary to preserve the health or safety of persons or property. East Carolina University will make a good faith effort to contact a representative of LESSEE by telephone prior to accessing the leased premises if the situation allows, but in any event will notify LESSEE that such access has been made immediately afterward. LESSEE will provide emergency contact information to East Carolina University and update the same as necessary.

20. Quiet Enjoyment.

LESSOR agrees that LESSEE, upon payment of rent and performing the agreements in this Lease Agreement may peacefully and quietly have, hold and enjoy the said leased premises in accordance with all the terms of this Lease Agreement.

21. Notices.

Any notice provided for herein shall be deemed to have been served sufficiently when presented personally or sent by first class mail addressed as follows:

If to LESSOR:  
City Manager  
City of Greenville  
P.O. Box 7207  
Greenville, NC 27835

If to LESSEE:  
Lucille W. Gorham Intergenerational  
Community Center, Inc.  
Gracie Vines, Registered Agent  
1104 Ward Street  
Greenville, NC 27834

Addresses for the purpose of this section can be changed by written notice to the other party by certified mail with returned receipt requested.

22. Legal and Regulatory Duties.

The LESSEE shall observe all applicable local, state, and federal laws and regulations as they pertain to LESSEE's use and occupation of the leased premises. LESSEE shall indemnify and hold harmless the LESSOR from and against any liability arising from such laws or regulations caused by LESSEE's use or occupation of the leased premises.

23. Amendment.

This Lease Agreement shall not be altered, amended or modified except by an agreement in writing executed by the duly authorized officials of the LESSOR and LESSEE.

24. Memorandum of Understanding.

It is understood that the LESSOR and East Carolina University have entered into a Memorandum of Understanding for the purpose of providing a cooperative effort between the LESSOR and East Carolina University for the operation of the Lucille W. Gorham Intergenerational Center in order to provide a multidisciplinary community center in an attempt to meet needs that exist in West Greenville.

25. Entire Agreement.

This Lease Agreement is the only agreement between the parties hereto with respect to the subject matter hereof and contains all of the terms agreed upon, and there are no other agreements, oral or written, between the parties hereto with respect to the subject matter thereof.



IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be executed in duplicate originals as of the day and year first above written.

**CITY OF GREENVILLE**

BY: Wayne Bowers  
Wayne Bowers, City Manager

**LUCILLE W. GORHAM  
INTERGENERATIONAL  
COMMUNITY CENTER, INC.**

BY: Mrs. Grace M. Vines  
Printed Name: Grace M. Vines  
Title: Co Chair

**NORTH CAROLINA  
PITT COUNTY**

I, Donna H. Raynor, Notary Public in and for the aforesaid County and State, do hereby certify that Wayne Bowers, City Manager for the City of Greenville, personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the 16<sup>th</sup> day of February, 2010.

Donna H. Raynor  
Notary Public

My Commission Expires: 12/25/2010

**NORTH CAROLINA  
PITT COUNTY**

I, Rhonda B. Wilkerson, Notary Public in and for the aforesaid County and State, do hereby certify that Gracie M. Vines, Co Chair of the Lucille W. Gorham Intergenerational Community Center, Inc., personally appeared before me on this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the 19<sup>th</sup> day of May, 2010.

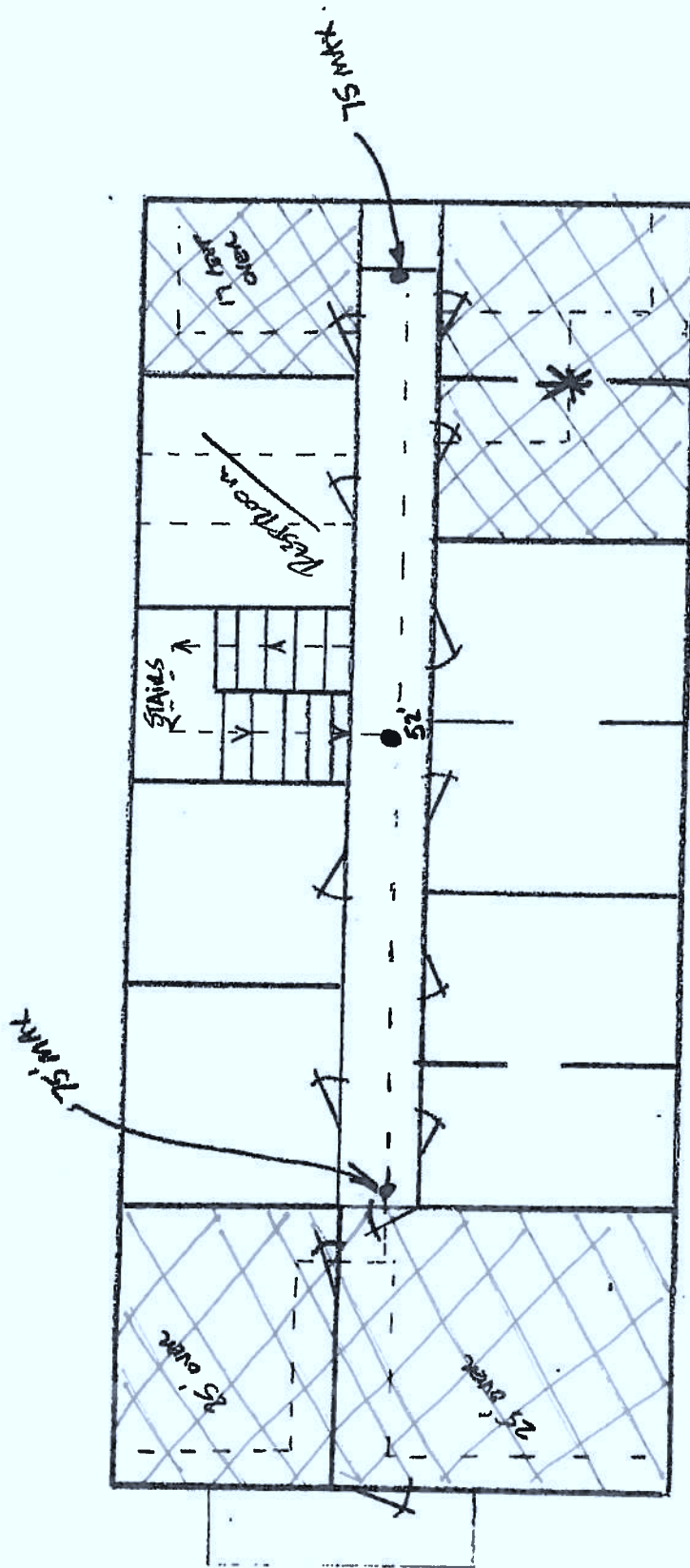
Rhonda B. Wilkerson  
Rhonda B. Wilkerson Notary Public

My Commission Expires: May 21, 2012

Exhibit A

LESSIE BASS BUILDING

Second Floor Plan





**College of  
Human Ecology**

Office of the Dean  
RW-238 Rivers Building  
East Carolina University  
Greenville, NC 27858-4353

252-328-1098 office  
252-328-0909 fax

**CHE Advancement**  
RW-309 Rivers Building  
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RW-238 Rivers Building  
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**Child Development  
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**Nutrition and Dietetics**  
148 Rivers Building  
328-4274

**Social Work**  
224 Rivers Building  
328-5650

**Student Services Center**  
140 and 142 Rivers Building  
328-2502

January 24, 2011

Mr. Wayne Bowers  
City Manager  
200 West Fifth Street  
P.O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Bowers:

I am writing to advise that, in accordance with the 12 February 2010 Memorandum of Understanding between the City and East Carolina University, the University recommends that the lease for the first floor of the Lessie Bass Building, expiring on the 28th day of February, 2011, be extended for an additional one year, commencing on the 1st day of March 2011 and expiring on the 28th day of February, 2012.

The University also supports the extension of the lease of the second floor of the Lessie Bass Building for the Lucille W. Gorham Intergenerational Community Center, Inc. The University recommends that the lease commence on the 1st day of March 2011 and expire on the 28th day of February, 2012. The University believes that this tenancy best meets the objective of providing a multidisciplinary community center, with services and activities that may include, but are not necessarily limited to: youth development, adult education, job training and placement, home ownership, readiness counseling, and social work.

Please let me know if I may be of further assistance.

Sincerely,

A handwritten signature in black ink that reads 'Judy A. Siguaw'.

Judy A. Siguaw  
Dean and Professor



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Ordinance amending Greenville Utilities Commission's Water Capital Project Budget for the Tar River Available Water Supply Project

**Explanation:** Since the Tar River at Greenville is unique in that it is the only location in North Carolina where a run-of-the-river surface water intake is under tidal influence, normal criteria used by the North Carolina Department of Environment and Natural Resources (NCDENR) to determine available water supply may not be adequate. NCDENR informed Greenville Utilities that approval to withdraw water in excess of 22.5 million gallons per day (MGD) would require a special engineering analysis.

In order to determine the volume of the Tar River water supply that the NCDENR will approve for GUC's future water supply needs, it was necessary for GUC to hire a consulting firm to perform a complex engineering analysis that consists of (1) developing and interpreting results from a Tar Basin hydrologic model, (2) developing and interpreting a lower river hydrodynamic/water quality model, and (3) developing and interpreting an aquatic habitat analysis model. The results of this analysis will serve as a guide for GUC's future water supply planning as well as documentation for regulatory action required for capital projects related to water supply.

Additional work outside of the original scope was and is being required to complete the modeling effort and produce a final report to realize the stated primary goals and objectives of the project.

The GUC Board, at their meeting on January 18, 2011, amended the Water Capital Projects Budget and recommended similar action by the City Council.

**Fiscal Note:** No cost to the City.


**Recommendation:** Approve ordinance amending Greenville Utilities Commission's Water Capital

## Project Budget for the Tar River Available Water Supply Project.

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### Attachments / click to download

 [Water Capital Project Budget Ordinance](#)

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ORDINANCE NO. \_\_\_\_\_  
AMENDING ORDINANCE NO. 08-77  
FOR WATER CAPITAL PROJECT BUDGET  
TAR RIVER AVAILABLE WATER SUPPLY PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. The Water Capital Project Budget is amended, so that as amended, it shall read as follows:

	<u>Current Budget</u>	<u>Change</u>	<u>Proposed Revised</u>
<b>Revenue:</b>			
Debt Financing	<u>\$885,000</u>	<u>\$275,000</u>	<u>\$1,160,000</u>
<b>Total Revenue</b>	<u>\$885,000</u>	<u>\$275,000</u>	<u>\$1,160,000</u>
<b>Expenditures:</b>			
Project Cost	<u>\$885,000</u>	<u>\$275,000</u>	<u>\$1,160,000</u>
<b>Total Expenditures</b>	<u>\$885,000</u>	<u>\$275,000</u>	<u>\$1,160,000</u>

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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**Title of Item:** Ordinance amending the Sewer Capital Project Budget and a reimbursement resolution relating to Greenville Utilities Commission's Wastewater Treatment Plant Headworks Improvement Project

**Explanation:** The Wastewater Treatment Plant's (WWTP) Headworks Improvement Project is included in Greenville Utilities Commission's (GUC's) Five-Year Capital Outlay Plan, and the cost of this project has been included in the sewer fund financial rate planning. The headworks structure, constructed in 1996, provides preliminary screening for large debris and grit removal. A chemical odor control system was added in 2000 to reduce hydrogen sulfide odors.

The proposed project consists of (1) replacement of the painted steel climber screen bar rake and support structure with new corrosion resistant equipment, (2) upgrade of the odor control system to adequately treat increasing hydrogen sulfide concentrations, and (3) installation of a dedicated septage receiving station to accommodate increasing discharge from septage haulers.

At their meeting on January 18, 2011, the GUC Board took action to amend the Sewer Capital Project Budget for this work and recommend similar approval by the City Council. In addition, the GUC Board adopted a reimbursement resolution and recommended similar action by City Council.

**Fiscal Note:** No cost to the City.

**Recommendation:** Adopt attached ordinance amending GUC's Sewer Capital Project Budget for WWTP Headworks Improvement Project and adopt attached reimbursement resolution.



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 [Sewer Capital Project Budget Amendment Ordinance](#)

 [Reimbursement Resolution](#)

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ORDINANCE NO. \_\_\_\_\_  
AMENDING ORDINANCE NO. 10-09  
FOR SEWER CAPITAL PROJECT BUDGET  
WWTP HEADWORKS IMPROVEMENTS PROJECT

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:

Section 1. The Sewer Capital Project Budget is amended, so that as amended it shall read as follows:

	<u>Current Budget</u>	<u>Change</u>	<u>Proposed Revised</u>
<b>Revenue:</b>			
Long-term Financing	<u>\$180,000</u>	<u>\$1,800,000</u>	<u>\$1,980,000</u>
<b>Total Revenue</b>	<u>\$180,000</u>	<u>\$1,800,000</u>	<u>\$1,980,000</u>
<b>Expenditures:</b>			
Design & Engineering	<u>\$180,000</u>	<u>\$1,800,000</u>	<u>\$1,980,000</u>
<b>Total Expenditures</b>	<u>\$180,000</u>	<u>\$1,800,000</u>	<u>\$1,980,000</u>

Section 2. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

**RESOLUTION NO. 10-\_\_\_**

**RESOLUTION DECLARING THE INTENTION OF THE  
CITY COUNCIL OF THE CITY OF GREENVILLE  
TO REIMBURSE THE CITY FROM THE PROCEEDS  
OF ONE OR MORE TAX EXEMPT FINANCINGS FOR  
CERTAIN EXPENDITURES MADE AND TO BE MADE IN CONNECTION WITH THE  
ACQUISITION AND CONSTRUCTION OF CERTAIN CAPITAL IMPROVEMENTS**

WHEREAS, the City of Greenville, North Carolina (the “City”) has paid, beginning, January 18, 2011, which date is no more than 60 days prior to the date hereof, certain expenditures in connection with the acquisition and construction of certain improvements (the “Improvements”) more fully described in Exhibit A attached hereto, consisting of improvements to its electric, gas, sanitary sewer and water systems (collectively, the “System”); and

WHEREAS, the City Council of the City (the “City Council”) has determined that those moneys previously advanced no more than 60 days prior to the date hereof to pay such expenditures in connection with the acquisition and construction of the Improvements (the “Expenditures”) are available only on a temporary period and that it is necessary to reimburse the City for the Expenditures from the proceeds of one or more tax exempt financings (the “Tax-Exempt Financing”);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL as follows:

Section 1. The City Council hereby declares its intent to reimburse the City from the proceeds of the Tax-Exempt Financing for the Expenditures made on and after January 18, 2011, which date is no more than 60 days prior to the date hereof. The City Council reasonably expects on the date hereof that it will reimburse the City for the Expenditures from the proceeds of a like amount of the Tax—Exempt Financing.

Section 2. Each Expenditure was or will be either (a) of a type chargeable to capital account under general federal income tax principles (determined as of the date of the Expenditures), (b) the cost of issuance with respect to the Tax-Exempt Financing, (c) a non-recurring item that is not customarily payable from current revenues of the System, or (d) a grant to a party that is not related to or an agent of the City so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the City.

Section 3. The principal amount of the Tax-Exempt Financing estimated to be issued to reimburse the City for Expenditures for the Improvements is estimated to be not more than \$1,800,000.

Section 4. The City will make a reimbursement allocation, which is a written allocation by the City that evidences the City’s use of proceeds of the Tax-Exempt Financing to reimburse an Expenditure no later than 18 months after the later of the date on which such

Expenditure is paid or the Improvements are placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, (expenditures by "small issuers" based on the year of issuance and not the year of expenditure), and expenditures for construction projects of at least 5 years.

Section 5. The resolution shall take effect immediately upon its passage.

Adopted this the \_\_ day of \_\_\_\_\_ 2011.

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Patricia C. Dunn, Mayor

ATTEST:

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Carol L. Barwick, City Clerk

## **EXHIBIT A**

### **THE IMPROVEMENTS**

The Improvements referenced in the resolution include, but are not limited to, all operating and capital expenditures associated with the improvements for:

- 1) Replacement of the painted steel climber screen bar rake and support structure with new corrosion resistant equipment.
- 2) Upgrade of the odor control system to adequately treat increasing hydrogen sulfide concentrations.
- 3) Installation of a dedicated septage receiving station to accommodate increasing discharge from septage haulers this fiscal year.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Multilingual welcome sign at Pitt-Greenville Airport

**Explanation:** The City Council adopted a recommendation by the Human Relations Council to establish a "Welcome to Greenville" sign at the airport. That action item was part of the City Council's 2010 goal to enhance diversity.

Pitt-Greenville Airport Executive Director Jerry Vickers met the Community Development Department staff to discuss this action item shortly after his tenure at PGV began. Mr. Vickers received the City Council's recommended action item positively and pledged to consider how such a sign could be erected during the airport terminal expansion project.

At the January 10, 2011, City Council meeting, Mr. Vickers presented to the City Council a design drawing of the multilingual sign (nine languages identified with guidance from the Greenville Human Relations Council) that is to be included in the airport terminal. The sign will be prominently featured in the new terminal area and it will be viewed by thousands of travelers. Such a beacon will distinguish our community from other similar airport facilities because the sign will be a significant indicator of the City Council's adoption of the National League of Cities' Inclusive Communities initiative.

Mr. Vickers advised staff that the cost of the sign was not included in the PGV terminal expansion budget. The Community Development Department does not have funds appropriated for this action item either, as the cost was unknown at the time the City Council adopted its goals. Accomplishment of this goal would not be feasible had it not been for the Airport Authority partnering with the City to carry out the City Council's goal.

Staff believes the Greenville community will benefit from the erection of the sign symbolizing our value of being a welcoming community for persons from other origins. Consequently, staff proposes that the cost of the sign design, construction, and installation be jointly shared between the Airport and the City.

**Fiscal Note:**

Funds are available in the General Fund contingency account for this expenditure of \$7,065. The current balance in the base General Fund contingency is \$127,050.


**Recommendation:**

Approve paying 50% of the cost of designing, constructing, and installing the multilingual welcome sign at the Pitt-Greenville Airport up to \$7,065.

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Attachments / click to download

 [Photo of Sign](#)

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*Welcome to*  
**Greenville, North Carolina**

Benvenuto a Greenville

به گریویل خوست آمدید

Bienvenido a Greenville

グリーンビルへようこそ

Willkommen in Greenville

그린빌에 오신 것을 환영합니다

欢迎访问 Greenville

أهلاً وسهلاً في غرينفيل

Bienvenu ā Greenville

Ground Transportation

Restrooms

← Exit

Airline Ticketing →





# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Ordinance granting an extension of the time granted to The Rupp Group, LLC, d/b/a/ The Buccaneer Transportation Service, to establish a bus franchise

**Explanation:** The City Council granted a bus or mass transit franchise to The Rupp Group, LLC, d/b/a/ The Buccaneer Transportation Service, on October 14, 2010 by Ordinance No. 10-86. In accordance with Section 3 of said ordinance, the franchise holder was expected to comply with all requirements of Title 10, Chapter 1, of the Greenville City Code, before operations began, and within 60 days of the granting of the franchise. As this ordinance was adopted on October 14, 2010, the 60-day period to begin operations expired on December 13, 2010.

Christopher Rupp made contact with the City Clerk's Office on January 24, 2011 to clarify restrictions on operating hours for the franchise and indicated they would be ready to begin operations soon. Because the deadline to begin operations had passed, the Assistant City Attorney responded to Mr. Rupp the following day and advised him that under the terms of the ordinance granting his franchise, the franchise had expired.

On January 31, 2011, a letter was delivered to the City Clerk's Office from Alan W. Rupp explaining the current status of their effort to begin operations and requesting an extension of the time allowed to do so until February 13, 2011. Mr. Rupp indicated they had not realized there was a deadline to begin operations.

A copy of Mr. Rupp's letter requesting the extension is attached, along with copies of Ordinance 10-86 granting the franchise and Chapter 1 of Title 10 of the Greenville City Code as relates to bus and mass transit systems.

**Fiscal Note:** No direct cost to the City.

**Recommendation:** Approve the attached ordinance which grants a time extension to The Rupp

Group, LLC, to begin operation of their bus franchise to February 13, 2011.

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 [Request for Time Extension](#)

 [AN\\_ORDINANCE\\_GRANTING\\_AN\\_EXTENSION\\_OF\\_TIME\\_TO\\_THE\\_RUPP\\_GROUP\\_LLC\\_D\\_B\\_A\\_THE\\_BUCCANEER\\_TRANSPORTATION](#)

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**ORDINANCE NO. 11-**  
**AN ORDINANCE GRANTING AN EXTENSION OF TIME TO THE RUPP GROUP, LLC**  
**D/B/A THE BUCCANEER TRANSPORTATION SERVICE TO BEGIN OPERATION**  
**OF A BUS OR MASS TRANSIT FRANCHISE**

WHEREAS, The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service, was issued a franchise permitting the operation of one (1) bus or mass transit unit within the City limits by Ordinance No. 10-86 finally adopted on October 14, 2010; and

WHEREAS, The Rupp Group, LLC d/b/a has requested an extension of time to begin operations of the franchise to February 13, 2011;

NOW, THEREFORE, BE IT ORDAINED by the Greenville City Council that:

Section 1. Ordinance No 10-86 is hereby amended by granting an extension of time to February 13, 2011, in which the franchise holder must begin operations, said Ordinance No. 10-86 issued a bus or mass transit franchise to The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service, to permit the operation within the City of Greenville of not more than one (1) bus or mass transit unit for a period of one (1) year.

Section 2. All other terms and conditions of Ordinance No.10-86 finally adopted on October 14, 2010, shall remain in full force and effect.

Section 3. This ordinance shall become effective upon its adoption.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

*Alan W. Rupp*

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January 28, 2011

Carol Barwick  
City Clerk  
City of Greenville

Dear Carol:

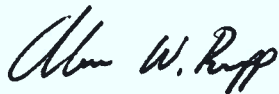
This letter is a follow up to the discussion we've been having over email and by phone between Chris Rupp, Bill Little, you and me. Chris and I have been working diligently to get our bus operation up and running. We've purchased our first bus, had the bus inspected and extensively maintained, hired our initial driver and completed all the regulatory hurdles necessary to ensure our safe operation.

Unfortunately as we've been working towards our launch of operations, we didn't realize we needed to be in operation by December 13<sup>th</sup> to comply with a City ordinance. We are now at the point where we are completely ready to begin operations but need your assistance so we can begin.

Could you please grant us an extension of time to begin our operation to February 13<sup>th</sup>, 2011? We've invested a great deal into the business and really need to begin operations as soon as possible. With your approval of the extension request, we will move forward and begin operations.

If there is anything else you need regarding our request, please let Chris or me know.

Sincerely,



Alan W. Rupp  
The Rupp Group, LLC

**ORDINANCE NO. 10- 88**  
**AN ORDINANCE GRANTING A BUS OR MASS TRANSIT FRANCHISE**  
**TO THE RUPP GROUP, LLC**  
**D/B/A THE BUCCANEER TRANSPORTATION SERVICE**

WHEREAS, the City of Greenville is authorized by G.S. §160A-311 to license and regulate all vehicles operated for hire within the City of Greenville; and

WHEREAS, the City of Greenville has adopted an ordinance, Chapter 1 of Title 10 of the Greenville City Code, requiring the operators of bus or mass transit businesses within the City to obtain a franchise from the City permitting said operation, and said ordinance sets forth certain requirements and criteria that must be satisfied in order to obtain and maintain the franchise for the operation of a bus or mass transit business; and

WHEREAS, The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service, is an applicant for a franchise permitting the operation of 1 bus or mass transit unit within the City limits; and

WHEREAS, following investigation into the qualifications of the applicant, the City Council has determined that the applicant satisfies the requirements and conditions for the operation of a bus or mass transit business within the City and has presented evidence substantiating the public convenience and necessity of such a business;

NOW, THEREFORE, BE IT ORDAINED by the Greenville City Council that:

Section 1. A bus or mass transit franchise is hereby issued to The Rupp Group, LLC, d/b/a The Buccaneer Transportation Service, to permit the operation within the City of Greenville of not more than 1 bus or mass transit unit for a period of one (1) year. The franchise may be renewed pursuant to §10-1-11 of the Greenville City Code.

Section 2. That the franchise is granted subject to the following conditions:

- a. The franchise must comply with all requirements of the Americans with Disabilities Act concerning public transportation.
- b. The operational periods of the franchise shall be Sunday evenings thru Wednesday evenings after the operation of the GREAT bus service has ceased.
- c. The franchise holder may use the pickup and drop off station on Reade Street as long as such operations do not interfere with GREAT bus or ECU Transit operations and that the applicant will keep the pickup and drop off station on Reade Street free from litter, trash and debris.
- d. The franchise holder will provide back up or alternative transportation if the bus breaks down or becomes nonoperational during operation.

Section 3. The franchise holder must comply with all requirements of Title 10, Chapter 1, of the Greenville City Code, before operations can begin and within 60 days of the grant of the franchise. Failure to comply with the requirements of Title 10, Chapter 1 shall make this ordinance and franchise null and void.

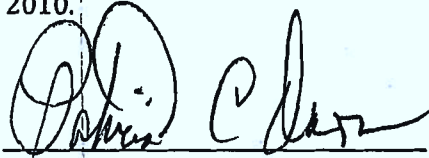
Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 6. This ordinance shall become effective immediately upon its adoption following its second reading.

First reading approved on the 11<sup>th</sup> day of October, 2010.

Second reading and final adoption on the 14<sup>th</sup> day of October, 2010.



Patricia C. Dunn, Mayor

ATTEST:



Carol L. Barwick, City Clerk

## CHAPTER 1: BUSES AND MASS TRANSIT SYSTEMS

### Section

#### *Article A. General Provisions*

10-1-1	Definition
10-1-2	Franchise required
10-1-3	Smoking tobacco products or consuming alcoholic beverages on city buses

#### *Article B. Certificates of Convenience and Necessity*

10-1-11	Required
10-1-12	Application
10-1-13	Investigation
10-1-14	Hearing
10-1-15	Burden of proof to be upon the applicant
10-1-16	Proof of inspection
10-1-17	Issuance
10-1-18	Factors to be considered by City Council
10-1-19	Agreement with the city required
10-1-20	Time limit on start of operations
10-1-21	Transferability
10-1-22	Revocation

#### *Cross-reference:*

*Failure to pay fare, see § 11-1-2*

*Liability insurance for vehicles transporting passengers for remuneration, see § 11-1-1*

*Regulation of parades, see §§ 11-2-1—11-2-13*

#### *Editor's note:*

*Ord. No. 98-136, § 2, repealed § 10-1-2 dealing with the Public Transportation Commission in its entirety. Section 10-2-12 was also amended by Ord. No. 98-136, § 3, deleting the Parking Authority. A new Public Transportation and Parking Commission was established by Ord. No. 98-136, § 4 and can be found in Chapter 3 of Title 2.*

*Former § 10-1-3 was repealed by Ord. No. 98-136, § 2, dated Nov. 9, 1998.*

*Section 10-1-5 was deleted at the request of the city.*

#### *Statutory reference:*

*Operation of bus lines and mass transit systems as public enterprises authorized, see G.S. 160A-311 et seq.*

### ARTICLE A. GENERAL PROVISIONS

#### SEC. 10-1-1 DEFINITION.

(A) "Regularly scheduled bus lines" and "mass transit systems" shall be defined as those bus lines and mass transit systems which either charge a fee for rides or operate within the city on a regularly scheduled weekday basis and whose primary purpose is to serve part of or all of the citizens and residents of the city.



10-4

**Greenville - Transportation and Traffic**

(B) It shall not include:

- (1) Church buses, recreation buses and like systems of transportation used primarily for transportation to worship services on a nondaily basis or used on an irregular or occasional basis, and any bus system operated by East Carolina University for the exclusive use of East Carolina University students and for which no funds or fees are received from any outside source except East Carolina University; and
- (2) Interstate transportation systems, intrastate transportation systems or other like systems operated under franchises granted by federal or state authority.

**SEC. 10-1-2 FRANCHISE REQUIRED.**

No bus line or mass transit system shall be regularly operated within the city without first obtaining a franchise from the city.

**SEC. 10-1-3 SMOKING TOBACCO PRODUCTS OR CONSUMING ALCOHOLIC BEVERAGES ON CITY BUSES.**

(A) It shall be unlawful for any person while a passenger on any bus system operated by the city to either:

- (1) Smoke tobacco products, tobacco-substitute products or products similarly used or consumed through the aid of a burning or fire consuming process; or
- (2) Consume alcoholic beverages.

(B) Violation of this section shall constitute a misdemeanor and shall be punishable as prescribed in G.S. 14-4. (1971 Code, § 10-1-4)

***ARTICLE B. CERTIFICATES OF CONVENIENCE AND NECESSITY***

**SEC. 10-1-11 REQUIRED.**

It shall be unlawful for any person to operate a bus line or mass transit system over the streets of the city without having first applied for and secured from the City Council a certificate of convenience and necessity in accordance with the provisions of this chapter. A certificate of convenience and necessity shall constitute a franchise from the city for the operation of a bus line or mass transit system within the city limits, subject to the provisions of this chapter, for one year, unless a shorter period of time is specified in the certificate. Applications for renewal shall be filed annually and hearings conducted thereon as herein provided.

**SEC. 10-1-12 APPLICATION.**

Every person desiring to operate a bus line upon and over the streets of the city shall file, on a form supplied by the City Clerk, an application for a certificate of convenience and necessity.

**SEC. 10-1-13 INVESTIGATION.**

Before making any decision with respect to the issuance of a certificate of convenience and necessity, pursuant to this chapter, the City Council shall make a full and complete investigation of all facts in connection with the application and may subpoena witnesses and make such further investigation as the City Council shall deem necessary.

**Buses and Mass Transit Systems**

10-5

**SEC. 10-1-14 HEARING.**

Each application pursuant to this chapter for a certificate of convenience and necessity shall be scheduled for a hearing not later than 60 days after it is filed. The applicant shall be notified by the City Clerk by mail to the business address set forth in the application of the date and time of the hearing, which notification to be sent at least five days before the date set for the hearing. The City Clerk shall also, within this same time, notify all persons, who at that time hold certificates of convenience and necessity for the operation of a bus line within the city, of the date and time of the hearing and the name of the applicant. In addition, the City Clerk shall cause to be published at least once in a newspaper of general circulation, at least ten days before the hearing, a notice setting forth the name of the applicant and the date and time of the hearing. The cost of this publication shall be paid for by the applicant at the time the application is filed.

**SEC. 10-1-15 BURDEN OF PROOF TO BE UPON THE APPLICANT.**

The burden of proof shall be upon the applicant to establish the existence of public convenience and necessity for the operation of a bus line specified in its application and all other facts required for the granting of the certificate.

**SEC. 10-1-16 PROOF OF INSPECTION.**

Before any certificate of convenience and necessity has been issued under the provisions of this chapter, the applicant shall file proof with the city of the due inspection of the condition of the buses to be operated by the applicant.

**SEC. 10-1-17 ISSUANCE.**

The City Council shall have the power and it shall be its duty to order certain certificates of convenience and necessity issued or to refuse to issue certain certificates of convenience and necessity or to issue certificates of convenience and necessity for partial exercise only of the privileges sought and may attach to the exercise of the rights granted only by such certificates those terms and conditions as in its judgment the public convenience and necessity require.

**SEC. 10-1-18 FACTORS TO BE CONSIDERED BY CITY COUNCIL.**

In determining whether the public convenience and necessity requires the franchising of any bus line, the City Council shall, among other things, take into consideration the following factors:

- (A) Whether or not the public convenience and necessity requires the proposed or additional bus line service within the city;
- (B) The financial responsibility of the applicant and the likelihood of the proposed service being permanent, responsible and satisfactory;
- (C) The number and condition of equipment;
- (D) The existing or proposed bus lines being operated by the city and the demand for increased service, if any, and whether or not the safe use of the streets by public, both vehicular and pedestrian, would be preserved, and whether or not adequate provision has been made for off-street parking of such bus lines;
- (E) The experience of the applicants in the bus line business; and
- (F) Any other relevant facts as may be deemed necessary and advisable.

**SEC. 10-1-19 AGREEMENT WITH THE CITY REQUIRED.**

When a franchise is granted, the holder of the franchise shall enter into an agreement with the city providing that the franchise holder shall indemnify, defend and hold the city free and harmless from all liability for damages, loss, cost and expenses caused by reason of the operation of the vehicles and equipment in any bus service or mass transportation system.

**SEC. 10-1-20 TIME LIMIT ON START OF OPERATIONS.**

If a certificate of convenience and necessity is granted to an applicant pursuant to this chapter and the applicant shall fail, in accordance with the provisions of the certificate, to begin operations within 60 days after the date of the certificate, then the certificate shall become null and void.

**SEC. 10-1-21 TRANSFERABILITY.**

A certificate of convenience and necessity under this chapter is not transferable without the consent of the City Council. Applications for a permit to transfer such a certificate shall be filed in the same manner as an application for a certificate of convenience and necessity. The proceedings upon the application for a transfer shall be the same as those described for the issuance of a certificate, except that the question of public convenience and necessity need not be proved.

**SEC. 10-1-22 REVOCATION.**

(A) The City Council may, at any time after a public hearing, revoke any certificate of convenience and necessity issued by authority of this chapter for any one or more of the following causes:

- (1) Failure to operate the buses specified in the certificate;
- (2) Failure to maintain motor equipment in good repair;
- (3) Failure to carry liability insurance or bond as required by the certificate;
- (4) Failure to pay to the city taxes or license fees levied or imposed on the buses;
- (5) Repeated and persistent violation by the bus drivers of traffic and safety ordinances or state law relating to alcoholic beverages or prostitution;
- (6) Failure to report accidents; and
- (7) Willful failure to comply with any provisions of this chapter or other ordinances or state laws relating to operation of buses.

(B) No certificate of convenience and necessity shall be revoked until the owner has had at least five days' notice by personal service or registered mail of the charges against him or her and of the time and place of hearing. If, after the hearing, it is found that the owner is guilty of one or more of the offenses listed herein, the City Council shall have the power to revoke the certificate or to condition a revocation upon compliance with its order within any time fixed by it.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Budget ordinance amendment #7 to the 2010-2011 City of Greenville budget (Ordinance No. 10-57)

**Explanation:** 1) Attached is an amendment to the 2010-2011 budget ordinance for consideration at the February 10, 2011, City Council meeting. For ease of reference, a footnote has been added to each line item of the budget ordinance amendment, which corresponds to the below explanation:

**A** To appropriate Federal Forfeiture funds to complete renovation of the ComStat room in the Municipal Building (Total - \$11,700).

**B** To appropriate Federal Forfeiture funds to complete renovation of the warehouse on Hooker Road (Total - \$11,970).

**C** To appropriate funds for the Urban Search and Rescue Grant through the Department of Crime Control and Public Safety to purchase equipment and provide training to ensure adequate preparedness for a response to all hazard events in this state. (Total - \$92,000).

**D** To appropriate federal grant funds to be received from NCDOT from the safe routes to school program to construct sidewalks. The sidewalk will be located along Red Banks Road from Charles Boulevard to Fourteenth Street. (Total - \$259,782).

**E** To carry over unused funds received as donations as of June 30, 2010. These funds were received on behalf of Recreation and Parks, Fire/Rescue, Police, Financial Services, and Community Development (Total - \$95,168).

**F** To appropriate additional funds needed for the Vehicle Replacement Fund to complete current year purchases whose actual costs have come in over budget (i.e. street sweeper and hybrid vehicles) (Total - \$60,000).

**Fiscal Note:**

The budget ordinance amendment affects the following funds: increases General Fund by \$470,619 and Vehicle Replacement Fund by \$60,000.

<b><u>Fund Name</u></b>	<b><u>Adj. / Orig. Budget</u></b>	<b><u>Proposed Amendment</u></b>	<b><u>Adjusted Budget</u></b>
General Fund	\$ 76,327,953	\$ 470,619	\$76,798,572
Vehicle Replacement Fund	\$ 4,268,500	\$ 60,000	\$ 4,328,500

**Recommendation:**

Approve the attached budget ordinance amendment #7 to the 2010-2011 City of Greenville budget (Ordinance No. 10-57).

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[Budget Amendments FY 2010 2011 872820](#)

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ORDINANCE NO. 11-  
CITY OF GREENVILLE, NORTH CAROLINA  
ORDINANCE (#7) AMENDING THE 2010-2011 BUDGET (ORDINANCE NO. 10-57)

**THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES ORDAIN:**

Section I: Estimated Revenues and Appropriations. **General Fund**, of Ordinance 10-57, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ORIGINAL 2010-2011 BUDGET</b>		<b>#7 Amended 2/10/11</b>	<b>Total Amendments</b>		<b>Amended 2010-2011 Budget</b>
<b><u>ESTIMATED REVENUES</u></b>						
Property Tax	\$ 30,453,036		\$ -	\$ -		\$ 30,453,036
Sales Tax	13,125,147		-	-		13,125,147
Utilities Franchise Tax	5,770,350		-	-		5,770,350
Other Unrestricted Intergov't Revenue	2,513,907		-	-		2,513,907
Powell Bill	1,910,210		-	-		1,910,210
Restricted Intergov't Revenues	1,565,038	A,B,C,D	375,452	1,533,566		3,098,604
Building Permits	715,570		-	-		715,570
Other Licenses, Permits and Fees	2,771,954		-	-		2,771,954
Rescue Service Transport	2,626,000		-	-		2,626,000
Other Sales & Services	976,309		-	-		976,309
Other Revenues	212,085		-	-		212,085
Interest on Investments	1,865,731		-	-		1,865,731
Transfers In GUC	5,521,506		-	-		5,521,506
Other Financing Sources	789,786		-	500,000		1,289,786
Appropriated Fund Balance	2,983,066	E	95,167	965,311		3,948,377
<b>TOTAL REVENUES</b>	<b>\$ 73,799,695</b>		<b>\$ 470,619</b>	<b>\$ 2,998,877</b>		<b>\$ 76,798,572</b>
<b><u>APPROPRIATIONS</u></b>						
Mayor/City Council	\$ 383,212		\$ -	\$ -		\$ 383,212
City Manager	1,091,722		-	-		1,091,722
City Clerk	300,600		-	-		300,600
City Attorney	445,528		-	-		445,528
Human Resources	2,514,736		-	(75,000)		2,439,736
Information Technology	3,200,339		-	-		3,200,339
Fire/Rescue	12,652,643	C,E	124,186	139,186		12,791,829
Financial Services	2,285,851	E	127	127		2,285,978
Recreation & Parks	6,186,925	E	48,318	48,318		6,235,243
Police	22,393,782	A,B,E	36,138	883,654		23,277,436
Public Works	8,661,389	D	259,782	796,232		9,457,621
Community Development	1,628,061	E	2,068	285,849		1,913,910
OPEB	250,000		-	-		250,000
Contingency	949,440		-	(22,950)		926,490
Capital Improvements	5,141,327		-	352,800		5,494,127
Total Appropriations	\$ 68,085,555		\$ 470,619	\$ 2,408,216		\$ 70,493,771
<b><u>OTHER FINANCING SOURCES</u></b>						
Debt Service	\$ 4,021,368		\$ -	\$ -		\$ 4,021,368
Transfers to Other Funds	1,692,772		-	590,661		2,283,433
	\$ 5,714,140		\$ -	\$ 590,661		\$ 6,304,801
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 73,799,695</b>		<b>\$ 470,619</b>	<b>\$ 2,998,877</b>		<b>\$ 76,798,572</b>

Section II: Estimated Revenues and Appropriations. **Vehicle Replacement Fund**, of Ordinance 10-57, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ORIGINAL 2010-2011 BUDGET</b>		<b>#7 Amended 01/31/09</b>		<b>Total Amendments</b>		<b>Amended 2010-2011 Budget</b>
<b><u>ESTIMATED REVENUES</u></b>							
Appropriated Fund Balance	\$ -	<b>F</b>	\$ 60,000	\$	154,397	\$	154,397
Transfer from Other Funds	4,100,902		-		73,201		4,174,103
<b>TOTAL REVENUES</b>	<b>\$ 4,100,902</b>		<b>\$ 60,000</b>	<b>\$</b>	<b>227,598</b>	<b>\$</b>	<b>4,328,500</b>
<b><u>APPROPRIATIONS</u></b>							
Vehicle Replacement Fund	\$ 4,100,902	<b>F</b>	\$ 60,000	\$	227,598	\$	4,328,500
Total Expenditures	\$ 4,100,902	\$ -	\$ 60,000	\$	227,598	\$	4,328,500
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 4,100,902</b>		<b>\$ 60,000</b>	<b>\$</b>	<b>227,598</b>	<b>\$</b>	<b>4,328,500</b>

Section III: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section IV: This ordinance will become effective upon its adoption.

Adopted this 10th day of February, 2011

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk





# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Ordinance revising Title 11, Chapter 1 - Vehicles for Hire section of the City Code

**Explanation:** This revision is designed to streamline the procedures for obtaining and granting franchises for taxis and limousines, placing the responsibility for oversight with the Police Department, adding regulations for transport services and other vehicles for hire, updating the inspection and equipment requirements, adding a provision concerning conduct of drivers, clarifying insurance requirements, and clarifying suspension and revocation procedures.

I. Franchises – Certificates of Convenience and Necessity.

Current Procedure. The applicant obtains the application for a certificate of public convenience and necessity from the City Clerk's Office. The applicant completes, provides the requested information, makes necessary corrections, and the application is forwarded to the Police Department for background check, license check, and pre-vehicle inspections. If the application satisfies the requirements, the request would be placed on the agenda for two Council hearings and approval. Council was required to determine if there was a need for another franchise and if it was in the City's best interest for another franchise. If the applicant is awarded a certificate but cannot complete the requirements, then Council must either grant an extension of time or revoke the certificate after a public hearing.

Proposed Procedure. The application contains the requirements for determining whether a certificate of public convenience and necessity should be issued. If the applicant provides appropriate responses to the questions, the Chief of Police or designee will issue the certificate. If the applicant is denied a certificate, then the applicant could appeal to the City Council.

Certificates would be issued twice a year – July and January.

The applicant must be able to demonstrate on the application that if approved within 60 days of the certificate's issuance, they will have all vehicles inspected, comply with the vehicle equipment requirements, have insurance in place with mandatory notice to the Chief of Police if it lapses, and have the required operational location and equipment.

If the applicant cannot comply with the requirements within 60 days after issuance, the certificate is void, unless an extension is granted. No further action would be required.

## II. Vehicle Inspections

**Current Procedures.** Taxicabs are inspected every six months. Not clear what items or equipment are inspected. Limousines comply with the same inspection requirements.

**Proposed Procedure.** Inspections are conducted each year in February and August. The items that are inspected are specifically listed. If a vehicle fails, then it must be removed from service and must be re-inspected within 30 days of the failure. If two consecutive inspections are failed, then the certificate of convenience and necessity can be revoked or suspended. Limousines comply with the same inspection requirements.

## III. Conduct of Drivers

**Current Procedure - None.**

**Proposed Procedure.** All taxi, limousine, and vehicle for hire drivers will be required to conduct themselves in an appropriate manner--no smoking without passenger consent, no standing except at any designated cab stand, requiring the use of seatbelts and infant seats, clean appearance, mandatory accident reports, and preparation of daily manifests to show the number of trips taken each day.

Manifests will be maintained and are subject to inspection. Such inspections will be used to determine if additional franchises are needed during the franchise review months and whether there is a reasonable return in the public's interests to determine if another certificate of public convenience and necessity should be issued.

Limousines comply with the same inspection requirements.

## IV. Revocations and Suspensions.

**Current Procedure.** Driver suspensions or revocations are done by the Chief of Police and may be appealed to the Taxicab Appeal Board. Franchise suspensions and revocations must be placed on the City Council agenda for action by City Council.

**Proposed Procedure.** All revocations and suspensions, drivers and franchises, will be initially addressed by the Chief of Police. Appeal can be

made to the Taxicab Appeal Board. Limousines will comply with these procedures also.

#### V. Vehicles for Hire

Current Procedure. None.

Proposed Procedure. This change will include all other types of vehicles for hire such as shuttles and vans that charge fees for transport but are not taxis or limousines. Transport vehicles of this nature currently are not regulated, required to have a license, or subject to inspections.

The amendment will require these businesses to have an annual privilege license, be inspected, have the required insurance, and comply with the rules of the road that are imposed on limousines and taxis. This change is designed to prevent unregulated businesses from operating within the city limits.

**Fiscal Note:** There is no fiscal impact expected.

**Recommendation:** Approval of the attached ordinance revising Title 11, Chapter 1 - Vehicles for Hire section of the City Code.

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[Ordinance Revising Vehicles for Hire Section of City Code 885921](#)

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ORDINANCE NO. 11-

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 11 OF THE GREENVILLE CITY  
CODE SAID CHAPTER BEING ENTITLED VEHICLES FOR HIRE

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES  
HEREBY ORDAIN:

Section 1. That Chapter 1 of Title 11 of the Code of Ordinances, City of Greenville, is hereby  
amended by rewriting said chapter to read as follows:

**CHAPTER 1. VEHICLES FOR HIRE**

**ARTICLE A. IN GENERAL**

**Sec. 11-1-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the  
meanings ascribed to them in this section, except where the context clearly indicates a different  
meaning:

*Certificate* shall mean a certificate of public convenience and necessity which has been  
issued to a holder in accordance with the provisions of this chapter, unless otherwise defined  
herein.

*Chief of police* shall mean chief of police or designee.

*Contract vehicle* means any passenger vehicle for hire that provides contract  
transportation to passengers for compensation by written prearrangement with a business,  
facility, institution or group. The contract vehicle for hire does not accept other passengers  
indiscriminately between points along streets, roads and highways and does not accept  
compensation from any passenger. No contract vehicle shall engage in cruising or be operated on  
call or demand.

*Cruising* means the operation of a vehicle on the streets of the city in search of or  
soliciting prospective passengers for hire. No passenger vehicle for hire, other than a taxicab,  
shall engage in cruising or be operated on call or demand.

*Driver's permit* means the license issued to any person to enable that person to operate a  
taxicab vehicle upon the streets of the City of Greenville.

*Exclusive-ride service* means the operation of a taxicab by transporting one passenger, or  
a group of passengers, from one trip origin to one destination and not allowing additional  
passengers to board until the prescribed destination is reached.

*For-hire vehicle* means any motor vehicle or non-motorized vehicle including, but not limited to, full sized station wagon, transport vehicle, handicap accessible transport vehicle or van style vehicle, used for the purpose of transporting passengers for a set charge or fee, based upon the origin or destination requested. For-hire vehicle services shall be prearranged and not on demand. For purposes of this chapter, for-hire vehicles also shall include such vehicles that accept donations and do not have a set rate charge. For the purpose of this chapter, the term "for-hire vehicle" shall not include "medical transport" or "private ambulance" as herein defined. For the purposes of this chapter, all for-hire vehicles shall be required to possess a privilege license.

*Holder* shall mean an individual(s), trustee, fiduciary, corporation, partnership, or other entity to whom a certificate of public convenience and necessity has been issued in accordance with the provisions of this chapter, unless otherwise defined herein.

*Limousine* means any motor vehicle that meets the manufacturer's specifications for a luxury limousine and that provides limousine service as defined in this section. Every limousine shall have a minimum of four seats or one continuous sofa-styled seating area located behind the operator of the vehicle. No limousine shall engage in cruising or be operated on call or demand.

*Limousine company* means any passenger vehicle for hire company issued a company operating certificate that engages in the business of operating limousines or providing limousine service as an owner or franchisor.

*Limousine sedan* means those vehicles that provide executive transportation services and are necessarily limited to full-sized luxury sedans.

*Limousine service* means the service regularly rendered to the public, not over fixed routes, which furnishes transportation by limousines for hire, based on a fee determined by increments of time and contracted for by telephone or other prearrangement with a limousine company.

*Manifest* means a daily record, prepared by the owner, of all trips made by the taxicab(s) which the owner operates, showing time and place of origin and destination of each trip and the amount of fare.

*Medical transport or private ambulance* means those vehicles designed to carry medical patients requiring special medical equipment including but not limited to oxygen, intravenous systems or ventilators, stretcher or bed bound patients, using trained emergency medical technicians or paramedics to transport and care for those in their care and licensed by the North Carolina Department of Health and Human Services pursuant to N.C.G.S. §131E, Article 7.

*Owner/holder* means any person, firm or corporation to whom a certificate of public convenience and necessity has been issued under this chapter.

*Pedi-cab* means any business or individual who operates a small-scale local means of transport that is human powered but also may be powered in whole or part by an electric or small gasoline motor.

*Privilege license* means the business license required and issued to all businesses that operate within the City of Greenville.

*Shared-ride service* means the operation of a taxicab by transporting passengers from one or several different origins to one or several different destinations, not necessarily using the most direct route, but using a route that will allow the driver to deviate in order to pick up or discharge passengers other than, and in addition to, the first or original passenger.

*Shuttle van* means any passenger vehicle for hire that provides shuttle transportation to passengers to or from prescribed locations such as hotels, motels, shopping centers, schools to after school daycare, business or commercial buildings, stadiums, convention center or theaters by prearrangement for a fee, pursuant to a contract or agreement, and that does not accept or discharge passengers indiscriminately between prescribed locations. No shuttle van shall engage in cruising or be operated on call or demand. Shuttle service charges **may not** be collected from the passenger.

*Taxicab* means and includes any motor driven vehicle, seating nine or fewer passengers, for which public patronage is solicited and which calculates the fare by means of the schedule of fares as approved by the City Council. For the purposes of this chapter, the term "taxicab" shall not include "limousine" or "for-hire vehicle" but shall include pedi-cab as herein defined.

*Taxicab inspector* means the person designated by the chief of police or designee who is charged with the duties required under this chapter, including the inspection and licensing of taxicabs and the drivers thereof.

*Taxi Fare Service Zones* shall mean the map used to reflect the zones in which the corporate limits of the City of Greenville is divided and shall designate the applicable rate for each zone and as set out in the Manual of Fees for the City of Greenville.

*Taxi service or limousine service* shall mean the holder of one of the certificates of public convenience and necessity issued under this chapter.

*Transport services* shall include contract vehicles for hire, vehicles for hire that carry 15 passengers or less, or for-hire vehicles that carry persons with disabilities exclusively. Transport services do not accept other passengers indiscriminately between points along streets, roads and highways and do not accept compensation directly from any passenger. Unless under written contract or agreement with a restaurant, club or other business, no transport service may wait outside a business to pick up passengers on a for-hire basis or donation basis. No contract vehicle shall engage in cruising or be operated on call or demand.

## **Sec. 11-1-2. Insurance**

(A) **Liability insurance policy prerequisite to operation.** The owners or operators of any and all taxicabs, limousines, contract vehicles, transport services or other vehicles for hire and used for the transportation of passengers for remuneration, and operating within the

corporate limits of the city or within five (5) miles in each direction from the corporate limits, shall, before engaging in such business, procure liability insurance in a minimum amount of one hundred thousand dollars (\$100,000.00) for one (1) person and three hundred thousand dollars (\$300,000.00) for more than one (1) person for the protection of all passengers transported against personal injuries and fifty thousand dollars (\$50,000.00) property damage, against liability for damages to the person and property of others.) No person shall operate or cause to be operated any passenger vehicle for hire over the streets of the city or between the city and points not incorporated within a radius of five (5) miles of the city, without first furnishing proof of financial responsibility. It shall be unlawful for any person to violate any provision of this section.

**(B) Proof of financial responsibility.** The operator and driver of every taxicab, limousine, contract vehicle, transport service and vehicle for hire shall furnish and keep in effect for each vehicle operated under this chapter proof of financial responsibility. The insurance policy shall contain a clause obligating the insurance company to give 15 days' written notice to the chief of police prior to the cancellation of such insurance. The certificate of convenience and necessity for any taxicab, limousine, and the privilege license for any contract vehicle, transport service and vehicle for hire shall be automatically revoked upon the lapse, cancellation or termination of the insurance on that vehicle unless the same has been renewed or replaced and a new certificate filed with the chief of police. The operator shall also furnish proof of payment of the City of Greenville's privilege license.

**(C) Filing of policies of insurance.** The certificate or privilege license holder shall file with the chief of police a copy of the insurance policy insuring the liability of the vehicle, as a condition precedent to the operation of any taxicab, limousine, contract vehicle, transport service or vehicle for hire on the city streets. The policy filed shall, among other things, set forth a description of every vehicle operating under the terms of such policy.

**(D) Contents of policy.** Such liability policy shall contain a further provision that the insolvency or bankruptcy of the person insured shall not release the insurance company from payment of damages for injuries sustained, or death by wrongful act, or loss incurred, and in case of recovery against the insured on account of any such injury, death or loss that the insurance company will pay on account of the judgment recovered in any such action an amount equal to, but not exceeding, the amount of the policy or of the judgment, and that the policy may be sued upon at any time.

### **Sec. 11-1-3. Failure to pay fare.**

It shall be unlawful for any person to retain the services of the operator or driver of a taxicab, licensed under this chapter or any other provision of the Greenville Code regulating taxicabs or limousines to transport passengers for hire, for the purpose of transporting such person from one place to any other place, and to fail to pay such operator or driver the regular transportation fare upon reaching his destination, provided that there was no agreement that the fare should be paid at some later date.



**Sec. 11-1-4. Application of provisions to for-hire vehicles.**

Unless otherwise provided, all provisions of this chapter shall apply to for-hire vehicles and the owners and operators thereof.

**Sec. 11-1-5. Designation of a taxicab inspector.**

The chief of police shall designate one or more taxicab inspectors from within the police department who shall be responsible for the inspection of taxicabs, limousines, contract carriers and all other for-hire vehicles and the administration of this chapter. The taxicab inspector may be a civilian or sworn law enforcement employee of the police department. Enforcement of this chapter shall be the responsibility of the taxicab inspectors and any city police officer. A taxicab inspector or sworn law enforcement officer is hereby given authority to issue a civil penalty for violations of this chapter.

**Secs. 11-1-6--11-1-11. Reserved.**

**ARTICLE B. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY**

**Sec. 11-1-12. Required.**

It shall be unlawful for any person to operate a taxicab or limousine upon and over the streets of the city without having first applied for and secured from the chief of police a certificate of public convenience and necessity in accordance with the provisions of this article or to be a designated driver under the holder of a certificate as provided elsewhere in this chapter.

**Sec. 11-1-13. Certificate of public convenience and necessity; limited number; renewal.**

(A) A certificate of public convenience and necessity shall constitute an authorization from the city for the operation of taxicabs or limousines within the city limits subject to the provisions of this article for three (3) years, unless a shorter period of time is specified in the certificate. Applications for renewals shall be filed either by the 10<sup>th</sup> day of January unless such day falls on a weekend day and if so, then on the next business day that the City of Greenville is open for business, for those certificates expiring during the period from February 1 – July 31 or by the 10<sup>th</sup> day of July unless such day falls on a weekend day and if so, then on the next business day that the City of Greenville is open for business, for those certificates expiring during the period from August 1 – January 31.

(B) The chief of police shall review in January and then again in July the conduct of the holder with regard to his compliance with the provisions of section 11-1-22. Thereafter, if the chief of police believes there are grounds for the revocation of the certificate, he shall forward his recommendations in writing, with supporting documentation and findings, to the city council for consideration and decision in accordance with this chapter.

(C) For the purpose of administering the provisions of this article, it is determined and declared that a maximum number of fifteen (15) taxicab including pedi-cab franchises with a maximum number of ten (10) taxicabs or pedi-cabs under each franchise are all that the public

convenience and necessity require at this time and until the city council shall determine that public convenience and necessity require a greater number, business licenses will not be issued to exceed that number.

(D) A franchise issued under this article is not transferable. However, the assignment of a taxi certificate under a “family business” request to assign a certificate from one family member to another immediate family member may be considered. Application for a permit to transfer shall be filed in the same manner as an application for a franchise. The proceedings upon the application for a transfer shall be the same as those described for the issuance of a franchise.

(E) When the maximum number of franchises has been issued, any person or business desiring to obtain a franchise shall complete an application for franchise and be placed on a waiting list. When a franchise vacancy occurs, the chief of police shall conduct a drawing from the names on the waiting list to fill the available vacant franchise. Such drawings as are needed to fill the remaining vacancies shall occur. The person or business selected shall be required to comply with the requirements of this article within sixty (60) days of such drawing or the franchise will be withdrawn.

#### **Sec. 11-1-14. Application.**

An application for a taxicab or limousine certificate, including any amendments thereto and including applications for transfer of certificates, shall be filed with the taxicab inspector upon forms provided by the taxicab inspector and a filing fee as established in the manual of fees. Such application and amendments shall be verified under oath and shall furnish the following information:

(A) The name and address of the applicant, and if an applicant is:

- (1) A corporation, a certified copy of the articles of incorporation;
- (2) An association, a certified copy of the bylaws of the association; or
- (3) A partnership, a certified copy of the partnership agreement.

(B) The number of vehicles to be owned, operated and controlled by the applicant, including the make, type, year of manufacture, serial number and passenger capacity of each taxicab or limousine, provided however, the number of vehicles to be owned, operated and controlled shall not be less than three. The applicant also shall provide the name and completed application for each person designated to drive under the applicant’s certificate of public convenience and necessity. This vehicle number requirement shall not apply to existing certificate holders on the effective date of the ordinance from which this section derives.

(C) The proposed hours of operation.

(D) The applicant's complete record of criminal arrests and convictions, including those for traffic violations, during the past five years. If an applicant is a corporation, association or partnership, the criminal record of the officers, directors, partners and supervising employees thereof, including general manager, if any.

(E) The experience of the applicant in the transportation of passengers for hire.

(F) The location of a depot or terminal on private property that is in compliance with city zoning ordinance and which has sufficient private off-street parking to accommodate those vehicles to be owned, operated and controlled by the applicant during times of nonuse.

(G) The ability to provide dispatch taxi service with centralized dispatching through the use of a radio; the ability to provide 24-hour dispatch taxi service with centralized dispatching when the requested number of taxicabs is to exceed ten.

(H) The ability to provide adequate supervision of taxicabs or limousines and drivers operating under the certificate.

(I) An assurance that the telephone number of the taxicab or limousine company will be listed in the next city telephone directory issued.

(J) An assurance that the applicant will meet the insurance requirements of this chapter.

(K) An assurance that each vehicle operating under the certificate shall be kept clean and in good mechanical condition and in good physical condition at all times.

(L) A criminal background records check of the applicant(s) and all proposed drivers. The applicant(s) and drivers shall report to the taxicab inspector for fingerprinting.

Failure to furnish required or requested information shall be grounds for denial, revocation or suspension of certificates.

#### **Sec. 11-1-15. Issuance standards and procedures.**

(A) In determining whether public convenience and necessity require the operation of a taxicab or taxicabs or limousines and in issuing certificates for which applications are made, the chief of police shall consider in addition to the information set forth in the applications:

- (1) The financial responsibility, experience and quality of service being rendered, if any, by each applicant.
- (2) The ability to provide continuity of service regarding certificates surrendered by associates of applicant.
- (3) The number, kind and type of equipment.

- (4) The ability of each applicant to provide an efficient level of service.
- (5) Any other considerations that will tend to improve taxicab service in the city.

(B) The chief of police shall not issue a certificate of public convenience and necessity to any applicant unless the chief of police is satisfied that the applicant is qualified pursuant to the provisions of this chapter, and shall conform to and comply with the provisions, terms and conditions of this article, and the applicant has been determined to meet the following requirements:

- (1) The applicant is at least eighteen (18) years of age or is otherwise legally emancipated.
- (2) The applicant is not a habitual user of drugs or intoxicating liquors.
- (3) There are no unpaid judgments of record against the applicant; or, if unpaid judgments of record exist, the applicant has established and maintained regular periodic payments in discharge of the liability, which payments are designed to discharge the liability within a reasonable period of time considering the amount of the liability.
- (4) The applicant is not in default in the payment of any indebtedness secured by lien, mortgage or any other encumbrance on the vehicle intended to be operated pursuant to the certificate; or, if the vehicle intended to be operated pursuant to the certificate has not yet been purchased, the applicant has demonstrated the financial ability through projected revenues, or otherwise, to make the regularly scheduled payments of any indebtedness arising from any expected liens, mortgages or any other encumbrances, on the said vehicle.
- (5) The applicant has demonstrated the ability to purchase insurance within sixty (60) days as required by this chapter.
- (6) The applicant has demonstrated the ability to place in service within sixty (60) days of the issuance of the certificate a vehicle adequate to provide and maintain the quality of service required by this chapter and meeting all of the requirements of this chapter for a taxicab or limousine.
- (7) The applicant has demonstrated the ability to establish within sixty (60) days of the issuance of the certificate, a depot, terminal, or other base of operation for receiving of requests for service and the dispatching of vehicles in response to requests for service adequate to provide and maintain the quality of service required by this chapter, and has demonstrated the ability to obtain within sixty (60) days of the issuance of the certificate the necessary recording and office equipment and other necessary equipment and things adequate to provide and maintain the quality of service required by this chapter and

sufficient to comply with all of the provisions of this chapter including all the record keeping and reporting provisions.

- (8) The applicant has registered properly with the state the correct and true owner's name of any vehicle intended to be operated pursuant to the certificate.
- (9) There has not been a revocation of any certificate of public convenience and necessity previously issued to the applicant within the twelve (12) months preceding application.
- (10) Issuance of the certificate to the applicant will not result in the applicant holding such number of certificates or such percentage of all issued certificates that a pernicious effect on competition will result or that the quality of service to the public sought and required by the provisions of this chapter will be impaired.
- (11) The applicant is a legal resident of the United States.
- (12) The applicant is not addicted to or does not habitually use any alcoholic beverage as defined by Chapter 18 of the North Carolina General Statutes or use of any controlled substances as defined by Chapter 90 of the North Carolina General Statutes not therapeutically prescribed.
- (13) The applicant has not been involved in repeated and persistent acts impugning his truthfulness or veracity, including, but not limited to, fraud or deception.
- (14) The applicant has not entered a plea of guilty or no contest to nor has been convicted of:
  - (a) A felony against the state or conviction of any offense against another state, which would have been a felony if committed in this state. This section shall not apply to felony convictions (as defined herein) which occurred ten (10) years from the date of the application;
  - (b) Violation of any federal or state law relating to the use, possession or sale of any alcoholic beverage as defined by Chapter 18 of the North Carolina General Statutes or any controlled substance as defined by Chapter 90 of the North Carolina General Statutes;
  - (c) Any federal or state law relating to prostitution or gambling;
  - (d) Three (3) convictions including any action which results in a prayer for judgment or continuation of the judgment within a one-year period of time, of any city, county or state traffic or safety ordinance or law. For purposes of this subsection, a conviction is a violation. Violations

resulting in not guilty verdicts are not counted for purposes of this section;

- (e) A single city, county, or state traffic or safety ordinance or law that grossly endangers the lives of the driver, his passenger(s), or the community;
- (f) Any crime involving the use of a weapon of any type.
- (g) Any charge alleging assault, domestic violence; or
- (h) Any crime which may reasonably be interpreted as involving moral turpitude or is so offensive to the public morals or of a sexual perversion as to justify the conclusion that the applicant is not of good moral character, including but not limited to those offenses listed in Chapter 14, Article 26 and Article 27 of the North Carolina General Statutes, relating to offenses against public morality and decency and crimes related to prostitution within ten (10) years preceding the application.

(C) If the applicant, whether initial or for renewal, shall refuse to submit to a controlled substance test or if the applicant's controlled substance test result reveals a positive level for any of the controlled substances listed in § 90-89--§ 90-94 of the North Carolina Controlled Substances Act, the application for permit or renewal shall be denied. If the applicant, whether for initial permit or for renewal, is denied a permit as a result of a positive controlled substance test, the driver may not operate a vehicle for hire until a permit is issued and must wait six months from the date of the denial before re-applying for a permit. Any re-application shall be treated for fee purposes as an initial application.

(D) The applicant shall provide to the chief of police or designee any and all facts, evidence, information or documents within the possession or control of the applicant or available to the applicant that shall be reasonably related to the determination of the qualifications of the applicant and as the chief of police shall request. Further, the submission of the application shall constitute a waiver of all applicant's privileges and rights of privacy with respect to any document in existence reasonably related to the determination of the applicant's qualifications and shall serve as an authorization to the chief of police or designee to make inquiry of any person or entity, and to receive any oral or written reports from any person or entity, regarding any facts, evidence or information reasonably related to the determination of the applicant's qualifications. The applicant shall sign any separate written authorization that any person or entity shall require prior to the release of any documents or information concerning the applicant.

(E) The issuance of certificates of convenience and necessity shall be done semiannually. All of those persons interested in obtaining a certificate of public convenience and necessity shall submit an application during the first ten (10) days in January and the first ten (10) days in July. The chief of police or designee shall review the applications to determine whether or not the applicants meet the requirements of this chapter by February 15 and August

15. If the chief of police determines an applicant meets the requirements of this chapter, the applicant will be placed on a list in chronological order.

(F) If the chief of police finds that one (1) applicant is more qualified than the other applicants after considering the requirements of this chapter, then the applicant who is more qualified shall be awarded the certificate of public convenience and necessity. However, if after reviewing the applications, the chief of police or designee feels that some of the applicants are equally qualified, a list of the equally qualified applicants shall be maintained in prioritized order based upon the date and time of application, and each certificate will be awarded according to the sequence of a certificate of public convenience and necessity available semiannually. Any certificate of public convenience and necessity available shall be awarded according to the priority of the applicant on the list, when the chief of police finds the applicants to be equally qualified.

(G) If any person shall refuse the offer of a certificate of public convenience and necessity or fails, refuses, or neglects to furnish such service within sixty (60) days after the certificate is offered him, the chief of police shall withdraw the certificate of public convenience and necessity.

(H) No taxicab or limousine may be operated by any person, owner, or holder of a certificate until all inspections, proof of insurance and other requirements of this chapter are completed. If any person, owner or holder of such certificate fails to comply with the requirements of this chapter within sixty (60) days of award of the certificate of public convenience and necessity, then certificate shall be revoked immediately.

(I) A certificate of public convenience and necessity, when granted, shall be issued in the name of the city by the chief of police.

**11-1-16. Burden of proof to be upon the applicant.**

The burden of proof shall be upon the applicant to establish the existence of public convenience and necessity for the operation of a taxicab or limousine business as specified in this application, and all other facts required for the granting of such certificate.

**Sec. 11-1-17. Appeals of denials of certificates of public convenience and necessity.**

(A) An applicant may appeal the denial of an application for a taxicab or limousine franchise certificate of public convenience and necessity by the chief of police or designee. Such appeal will be to the city council, be in writing and state the specific reason(s) for the appeal. The appeal must be received in the office of the city clerk within 10 business days after the date of the denial. The applicant must include the reason for the appeal, any documents, the names and addresses of any person(s) that the applicant contends or asserts are sufficient to support the appeal and reverse the decision to deny.



(B) If a timely notice of appeal and the required submissions stated in (A) above are received, a public hearing on the denial and issue(s) raised in the appeal will be held before the city council within thirty (30) days of the receipt of the appeal.

(C) Any request to continue the hearing must be submitted to the city clerk, and a decision to approve or deny the request will be made by the city clerk.

**Sec. 11-1-18. Expiration or cessation of operation; death of franchisee.**

(A) If a holder shall for any period of time, in excess of sixty (60) days, fail to operate such franchise, that holder shall offer in writing to the chief of police an explanation for such failure to so operate. If such explanation fails to satisfy the chief of police of its reasonableness, the chief of police shall notify the city council and the council may, after a hearing, revoke the certificate or condition a revocation upon compliance with any reasonable order in relation thereto it deems advisable.

(B) Upon the death of a holder, the certificate of public convenience and necessity shall continue in effect for a period of sixty (60) days, provided that a responsible person, as approved by the chief of police, shall be placed in charge of the taxicab or limousine operation. At the expiration of the sixty (60) days, such certificate shall become null and void.

**Sec. 11-1-19. Transfer.**

A certificate of public convenience and necessity under this article is not transferable without the consent of the chief of police. Applications for a transfer of such a certificate shall be filed in the same manner as an application for a certificate of public convenience and necessity. The proceedings upon such application for a transfer shall be the same as those described for the issuance of a certificate, except that the question of public convenience and necessity need not be proved.

**Sec. 11-1-20. Substitution of vehicles.**

A holder, by appropriate endorsement on the certificate by the chief of police, may substitute another vehicle for the vehicle for which the certificate was granted. Before any such vehicle may be approved as a substitute vehicle, it shall first meet the inspection requirements and any other inspection required by the state. In such instance, the liability insurance or bonds shall also be transferred to such substitute vehicle.

**Sec. 11-1-21. Revocation.**

(A) The chief of police may, at any time after a hearing, revoke any certificate of public convenience and necessity issued by authority of this article for any one (1) or more of the following causes:

- (1) Failure to operate the taxicabs or limousines specified in the certificate issued to the holder in accordance with this article; or operating taxicabs or limousines other than those specified on the certificate;
- (2) Failure to maintain motor equipment in good repair, in accordance with the requirements of this article and/or state law;
- (3) Failure to carry liability insurance or bond as is required by this chapter;
- (4) Failure to pay to the city taxes or license fees levied or imposed upon such taxicabs or limousines;
- (5) More than three (3) violations in a calendar year, not necessarily resulting in convictions, by the holder's drivers of city, county or state traffic and safety ordinances or laws, or state laws relating to alcoholic beverages or prostitution;
- (6) Failure to report accidents as required by Chapter 20 of the North Carolina General Statutes;
- (7) Repeated and persistent acts by one or more of the holder or holder's drivers impugning their truthfulness or veracity, including but not limited to acts of fraud and deception;
- (8) Willful failure to comply with any provision of this chapter or other ordinances or state laws relating to the operation of taxicabs or limousines; or
- (9) Any charge alleging assault or domestic violence.

(B) No certificate shall be revoked until the holder has had at least ten (10) days' notice by personal service or registered mail of the charges against him and of the time and place of hearing.

(C) Any holder of a certificate of public convenience and necessity that is revoked may appeal to the city council within ten (10) days of the date of the notice of the revocation, by providing a written notice of appeal to the city clerk. No appeal will be permitted if the written notice is not received by the city clerk within the time limits stated. The appealing party must include the reason for the appeal, any documents, the names and addresses of any person(s) that the applicant contends or asserts are sufficient to support the appeal and reverse the decision to revoke.

The city clerk will schedule the hearing before the city council and provide notice of the hearing to the appealing party.

**Sec. 11-1-22. Records; collection of fees.**

All records relative to the issuance of certificates, inspection of vehicles, assignments of taxicab numbers and substitution of vehicles shall be kept and maintained by the police department, provided that the responsibility for collection of all privilege license fees shall be retained by the Financial Services Department. It shall be the responsibility of the owner to report any changes in contact information for the owner or the driver to the taxicab inspector within ten (10) days of the change. It shall also be the responsibility of the owner to notify the taxicab inspector when new drivers are hired or when drivers are no longer employed by the owner. Failure to do so will subject the offender to a \$100 civil penalty.

**Secs. 11-1-23—11-1-50. Reserved.**

## **ARTICLE C. INSPECTIONS**

### **Sec. 11-1-51. Inspection of vehicles as prerequisite; subsequent inspections.**

(A) Before any certificate of public convenience and necessity will be issued under the provisions of this chapter, it shall be the duty of the taxicab inspector to make an inspection of the condition of the taxicabs or limousines to be operated by the applicant. A report of inspection shall be prepared by the taxicab inspector.

(B) Each taxicab, limousine, contract service, transport service or other vehicle for hire operated in the city shall be inspected at least once every six (6) months during the months of February and August. Each approved taxicab, limousine, contract service, transport service or other vehicle for hire shall have affixed to the lower left side of the rear glass, a city police department inspection sticker. A list of all approved taxicabs, limousines, contract services, transport services or other vehicles for hire shall be furnished to the financial services department and no privilege license shall be issued for any taxicab, limousine, contract service, transport service or other vehicle for hire failing this inspection. Each vehicle owned, operated or controlled by the certificate holder, the contract service, transport service or other vehicle for hire that is not inspected shall be subject to a civil penalty in the amount of \$250. This inspection shall be in addition to all other inspections required by the state for the operation of a motor vehicle.

### **Section 11-1-52. Inspection items.**

The inspection may include and cover the brakes, lights, horn, tires, all other safety features of the vehicle, a road test of the vehicle, and an inspection of the interior of the taxicab, limousine or vehicle for hire with respect to the general condition of the upholstery, rugs, or floor covering and general cleanliness thereof and an inspection of the exterior condition of the vehicle which must be free of torn, flaking or protruding metal which could constitute a safety hazard. Additionally, the following, in good working order, is required on every taxicab, limousine, contract service, transport service or vehicle for hire:

(A) A standard speedometer, visible to passengers, properly installed and maintained in good working order. No taxicab, limousine, contract service, transport service or vehicle for hire shall be operated if such speedometer is out of repair or disconnected;

(B) A heater and air conditioner sufficient to adequately heat and cool the interior of the vehicle in cold or warm weather, respectively;

(C) A frame or other device to display the driver's permit, memorandum operating permit and rate schedule to passengers;

(D) Approved and working seat belts available to any passenger within the taxicab, contract service, transport service or other vehicle for hire;

(E) Windshields, side and rear glass clear and free of dirt, discoloration and cracks;

(F) A two-way radio providing direct communication for immediate dispatching of taxicabs;

(G) Tires with a tread of at least three-thirty-seconds of an inch;

(H) Removable floor mats of rubber or other nonabsorbent material;

(I) Neat and sanitary interior with upholstery that is free of stains and tears and of original manufacturer's design and type with no temporary seat covers;

(J) Such other items as may be required by this chapter.

**Sec. 11-1-53. Removal from service.**

The discovery of any inadequacy in any of the items required to be inspected or tested by this chapter shall cause the taxicab, limousine or vehicle for hire to be removed from service until the defective item has been repaired or replaced and complies with the requirements of this chapter. Re-inspections shall be no later than thirty (30) days from the date of the inspection in which the defects or inadequacies were discovered and the vehicle may not operate until the inspection is passed.

**Sec. 11-1-54. Signs.**

No signs of any shape, size, design or for any purpose may be installed on a vehicle for hire that interferes with or blocks the front, rear or side windows or blocks or interferes with any safety lights or equipment. Violations will result in the imposition of a civil penalty as provided by this chapter.

**Secs. 11-1-55—11-1-60. Reserved.**

**ARTICLE D. TAXICABS**

Division 1. General Provisions

**Sec. 11-1- 61. Annual license for operation of taxicab business.**

Every person before operating any taxicab business within the city, or within a distance of five (5) miles thereof, shall apply to and procure from the city an annual license for the privilege of operating such business and shall pay for such annual license a tax in such sum as may be required by the provisions of Title 3, Chapter 2 of this Code. This license shall be in addition to any and all other certificates, permits or documents required by this article.

**Sec. 11-1-62. Duty to transport persons and property; exceptions.**

It shall be unlawful for any taxicab holder or driver, while on duty, to refuse to transport any person or property from the point of origin of any trip to the intended destination, provided such holder or driver shall, at the time of such request for transportation, have adequate seating capacity or space in his taxicab for such person or property and not be engaged in proceeding to a destination to transport a prior fare. Every holder or driver shall have a right to refuse transportation if:

(A) Such holder or driver believes that his safety or that of his passenger(s) will be placed in jeopardy;

(B) Such holder or driver knows from previous experience that the person seeking transportation has contributed to the disruption of taxicab service, has caused damage to property, has failed to pay a fare, or committed any violation of this article.

(C) The person being transported jeopardizes the safety of the driver or passengers or otherwise disrupts service during the transport; or

(D) The person seeking transport is under the influence of an impairing substance.

**Sec. 11-1-63. Operating Condition of Vehicles.**

Every taxicab, limousine, contract service, transport service or vehicle for hire operating under this chapter shall be kept in a clean and sanitary condition. The owner and driver shall keep the body of the vehicle, both interior and exterior, safe and clean and its general appearance with respect to sheet metal and finish of car, normal wear and tear exempted. In addition, when any vehicle is wrecked or damaged so as to be unsafe for operation, the owner and/or driver shall make such repairs and alterations as may be required and shall not operate, or cause or permit to be operated, any such vehicle until such repairs and alterations have been completed and the vehicle has been re-inspected for compliance with this chapter.

**Sec. 11-1-64. Conduct of drivers.**

(A) No driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall deceive or attempt to deceive any passenger or prospective passenger as to the passenger's destination or rate of fare to be charged nor shall he convey or cause to be conveyed any passenger to a place other than directed by the passenger. No driver providing for hire service shall take a longer route to the requested destination than is necessary, unless he is so

requested by the passenger, except for shared ride service as provided in subsection (f) of this section.

(B) While any passenger is being carried, no driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall have in his possession a lighted cigarette, cigar or pipe, without consent of the passenger.

(C) No driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall park, stand or operate a for hire vehicle at any time in such a manner as to obstruct the movement of traffic. Nothing in this subsection shall prohibit drivers or operators of a taxicab, limousine, contract service, transport service or vehicle for hire from alighting to the street or sidewalk for the purpose of assisting passengers and their belongings into or out of a for hire vehicle.

(D) No driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall park or stand a for hire vehicle upon any public street or public ground in the city for the purpose of receiving calls, directions or instructions over the dispatch system, except in areas that the city may subsequently establish as taxicab stands and those areas where parking is not regulated.

(E) No driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall allow the seating capacity of his for hire vehicle to be exceeded, including driver. Drivers must ensure that all seatbelt and infant seat requirements imposed by law are followed by all passengers. Children may not be held in the arms of the passenger. No more passengers than the number of seatbelts which are available for use within the vehicle shall be permitted.

(F) If agreed to by the first passenger, a taxicab may answer other calls or pick up additional passengers prior to taking the first passenger to his destination, provided the first passenger agrees to the amount of additional time above the time normally required for the exclusive ride service as estimated in advance by the driver. Taxicab drivers shall specify any fare discounts to passengers participating in shared ride service. If a child under 16 years of age and unaccompanied by a person 16 years or age or older is the original passenger, no other passengers shall be permitted in the taxicab.

(G) No driver shall refuse or neglect to convey any person because of the person's race, color, national origin, religion, sex, age or handicap.

(H) Drivers shall be clean in dress and in person.

(I) No driver or operator of a taxicab, limousine, contract service, transport service or vehicle for hire shall be under the influence of drugs or alcohol, which impairs judgment, performance or behavior while on duty.

(J) The driver shall inspect each for hire vehicle daily for articles left by passengers and make every reasonable effort to return such to the rightful owners as soon as possible after their discovery. If the owner cannot be located or determined, the lost article shall be turned

over to the Greenville Police Department not later than 48 hours after the article is found along with the record of attempts to locate the rightful owner.

(K) When requested by a passenger, every driver shall give a receipt showing the company's name, driver's name, date, place and time of trip, origin and destination and the amount of fare charged. Any citation issued for overcharging or failing to provide a receipt shall be issued to the driver of the taxicab.

(L) No driver shall monitor the dispatch frequencies of other taxicab businesses.

#### **Section 11-1-65. Accident Reports.**

Every accident involving the operation of a for hire vehicle shall be reported to the taxicab inspector within 48 hours of the accident, excluding Saturdays, Sundays and legal holidays. The certificate holder for the vehicle for hire involved in an accident and the driver of the vehicle for hire so involved shall be jointly and individually responsible for making the required report, which report shall be on a form to be furnished by the taxicab inspector. Upon receipt of the report, the taxicab inspector shall determine whether the damage renders the vehicle unsafe for operation and, if so, shall immediately order the vehicle out of service until repaired and re-inspected.

#### **Section 11-1-66. Manifest.**

(A) A daily manifest shall be maintained by the owner of each taxicab noting all trips made each day, showing the driver's name, cab number, place and time of origin and destination of each trip and the amount of fare. Each driver shall complete an entry on the manifest for each fare incurred whether the driver is dispatched by phone or radio communication.

(B) Every owner shall retain and preserve all drivers' manifests in a safe place for at least 180 days and such manifests shall be made available upon demand for inspection by the taxicab inspector.

(C) All such completed manifests shall be returned to the holder by the driver at the conclusion of his tour of duty and shall be open for inspection at any reasonable time to any Greenville police officer whose duty it is to enforce the provisions of this chapter. The forms for such records shall be furnished to the driver by the holder and shall be of a character approved by the chief of police.

#### **Sec. 11-1-67. Taxicabs used for private purposes.**

No taxicab shall be used other than as a vehicle for hire, unless the driver's permit is first removed therefrom and an "off-duty" sign is thereon prominently displayed.

#### **Secs. 11-1-68—11-1-80. Reserved.**

Division 2. Driver's Permits



**Sec. 11-1-81. Driver's permit required.**

No person shall drive any taxicab carrying passengers for hire from place to place within the city, or within a distance of five (5) miles thereof, unless that person shall have first applied to and secured from the chief of police a permit to drive a taxicab. Permits are valid only for the holder named on the permit. An application for a permit to drive for another holder within six (6) months of the date of initial issuance or subsequent renewal will constitute a transfer and shall be applied for on a form supplied by the city police department. An application for a permit to drive for another holder in excess of six (6) months from the date of initial issuance or subsequent renewal shall constitute a renewal and the applicant shall comply with all provisions of this article. Upon receipt of an application for a permit to operate a taxicab within the city, the chief of police shall, within fourteen (14) calendar days, issue a permit, if consistent with this article.

**Sec. 11-1-82. Permit application; fingerprints and photograph as part thereof.**

(A) The application for a permit or renewal to drive a taxicab shall be made upon forms furnished by the chief of police.

(B) No driver's permit shall be issued to any person until and unless such person shall have made and filed with the chief of police an application, sworn to before a notary public or other officer authorized to administer oaths. The sworn application for such permit or renewal thereof shall contain the following information:

- (1) The name and address of the applicant;
- (2) Whether there are any unpaid judgments of record against such owner, and if so, the title of all actions and the amount of all judgments unpaid, and reference to the judgment docket and page where the judgment is recorded;
- (3) The make, type, year of manufacture, serial number, engine number and passenger capacity of each taxicab to be operated under the driver's permit applied for;
- (4) The applicant shall further appear at the city police department for the purpose of having his fingerprints taken and photograph made, both of which constitute part of his application;
- (5) The applicant shall provide proof of insurance in the amounts required by this chapter.
- (6) Whether there are any liens, mortgages or other encumbrances on such taxicabs, and, if so, the amount and character thereof;
- (7) The experience of the applicant in the transportation of passengers for hire;

- (8) Any person applying for a driver's permit or renewal under this division shall produce a completed drug screen report with a date not less than ten (10) calendar days prior to submission of the completed application or renewal. Such drug screen tests shall be at the expense of the applicant and at the drug screen testing facility directed by the chief of police.

(C) Each applicant shall submit to a controlled substance test as directed by the chief of police and provide authorization for release of the results of such testing to the chief of police and those involved in the permitting process or any appeals. The test must be not less than the full 10-panel test required by the Department of Transportation. The cost of the testing shall be borne by the applicant. The request for testing and the results of the test both shall constitute and become part of the application.

**Sec. 11-1-83. Chief of police to investigate.**

The chief of police shall investigate the facts stated in the application, taking into account the factors set forth in section 11-1-84. A criminal history shall be requested from sources permitted by law. The chief of police shall report his findings in writing, including all supporting documentation, with his determination as to whether a permit is issued to the applicant. The chief of police shall notify the applicant in writing whether the application is approved or denied and if denied, the reason or reasons for the denial.

**Sec. 11-1-84. Refusal and revocation.**

The following factors shall be deemed sufficient grounds upon which the chief of police may refuse to issue a driver's permit or may revoke a permit of any driver already issued such permit:

(A) Conviction of a felony against the state or conviction of any offense against another state, which would have been a felony if committed in this state. This section shall not apply to felony convictions (as defined herein) which occurred more than ten (10) years from the date of the application or revocation;

(B) Violation of any federal or state law relating to the use, possession or sale of any alcoholic beverage as defined by Chapter 18 of the North Carolina General Statutes or any controlled substance as defined by Chapter 90 of the North Carolina General Statutes within five (5) years of the application for a driver's permit. Such permit may be revoked if the violation occurred during the issuance period;

(C) Conviction, no contest plea, judgment continued or deferred for operation of any motor vehicle while under the influence of an impairing substance and/or the receipt of a restricted driving privilege by the North Carolina Department of Motor Vehicles as a result of such arrest, conviction, judgment continued or deferred for driving while under the influence of an impairing substance. Any permit issued will be revoked and no initial application or application for reinstatement may be submitted until unrestricted driving privileges are granted

by the North Carolina Department of Motor Vehicles and the applicant has no other violations of federal or state law;

(D) Addiction to or habitual use of any alcoholic beverage as defined by Chapter 18 of the North Carolina General Statutes or use of any controlled substances as defined by Chapter 90 of the North Carolina General Statutes not therapeutically prescribed;

(E) Conviction of any federal or state law relating to prostitution;

(F) Not being a legal resident of the United States;

(G) Three (3) convictions including any prayer for judgment or continuation of the judgment within a one-year period of time, of any city, county or state traffic or safety ordinance or law. For purposes of this subsection, a conviction is a violation. Violations resulting in not guilty verdicts are not counted for purposes of this section;

(H) A single conviction of a city, county, or state traffic or safety ordinance or law that grossly endangers the lives of the driver, his passenger(s), or the community;

(I) Conviction of any crime involving the use of a weapon of any type;

(J) Repeated and persistent acts impugning the driver's truthfulness or veracity, including but not limited to fraud or deception;

(K) If the applicant, whether initial or for renewal, shall refuse to submit to a controlled substance test or if the applicant's controlled substance test result reveals a positive level for any of the controlled substances listed in § 90-89--§ 90-94 of the North Carolina Controlled Substances Act, the application for permit or renewal shall be denied. If the applicant, whether for initial permit or for renewal, is denied a permit as a result of a positive controlled substance test, the driver may not operate a vehicle for hire until a permit is issued and must wait six months from the date of the denial before re-applying for a permit. Any re-application shall be treated for fee purposes as an initial application;

(L) Any charge alleging assault or domestic violence.

(M) Any crime which may reasonably be interpreted as involving moral turpitude or is so offensive to the public morals or of a sexual perversion as to justify the conclusion that the applicant is not of good moral character, including but not limited to those offenses listed in Chapter 14, Article 26 and Article 27 of the North Carolina General Statutes, relating to offenses against public morality and decency and crimes related to prostitution within ten (10) years preceding the application or revocation.

**Sec. 11-1-85. Fee; term; renewal.**

Upon issuance of a taxicab driver's permit, subject to the provisions of this article, the person to whom such permit is issued shall pay therefore such fee as may be required by the city

Manual of Fees. Such permit shall be renewed annually. Upon the application for renewal, the applicant for renewal shall be subject to the same investigation as required for initial issuance and shall pay such renewal fee as may be required by the city Manual of Fees.

**Sec. 11-1-86. Posting in taxicab.**

The driver of every taxicab while on duty shall prominently post and display in such taxicab, so as to be visible to the passengers therein, his permit to drive a taxicab, which shall contain the driver's photograph, fingerprint and such other information as required by the chief of police.

**Sec. 11-1-87. Assignment or Transfer.**

No owner's permit granted and issued under this chapter shall be assigned or transferred. In the event any taxicab operated pursuant to an owner's permit issued under this chapter shall become damaged or worn out or for other reason is rendered unfit for use and its use for taxicab purposes is discontinued by the holder of the owner's license pursuant to which such taxicab was operated, and such licensee desires to operate another vehicle in its place, then such licensee shall file an affidavit with the taxicab inspector setting forth the fact that such vehicle has been discontinued in use and that such other vehicle has replaced it. Such affidavit shall also contain the make, model, serial number and body style of the vehicle that is being replaced and the same information for the replacement vehicle.

**Sec. 11-1-88. Revocation upon change of ownership: Issuance to new owner.**

Change of ownership or title to any taxicab shall automatically revoke any owner's permit previously granted to the extent applicable to the operation of such taxicab or taxicabs. The purchaser of any such taxicab shall not operate such vehicle as a taxicab unless and until he has applied for and has been granted an owner's permit in the manner provided by this chapter. For the purposes of this chapter a change of ownership is deemed to have taken place if, in addition to other methods usually employed, the owner of any taxicab leases the same to any person under any lease or other arrangement whereby such person shall have the right upon the payment of an amount of money or other consideration of any other thing of value to acquire title at any future date to such taxicab.

**Sec. 11-1-89. Appeal to appeal board.**

(A) Any person who makes application to the chief of police and who is refused a driver's permit shall have the right of appeal to the appeal board as hereinafter constituted. The applicant must give notice of appeal in writing within ten (10) calendar days of the notification from the chief of police as set forth in section 11-1- 83. The notice of appeal shall be directed to the office of the city manager. If such application is a renewal of a currently valid permit, the refusal to renew by the chief of police shall be stayed during the pendency of the appeal. If the application is for an initial permit, no stay will be issued. The stay of a refusal to renew can be dissolved pending the appeal by request of the chief of police and a showing that the refusal to renew was a direct result of a gross act by the applicant that jeopardized the safety of the applicant, his passengers or the community while he or she was operating a taxicab vehicle. The

request of the chief of police to dissolve a stay shall be made to the city manager and the applicant shall have a reasonable and timely opportunity to respond to the same before ruling by the city manager.

(B) The appeal to the appeal board shall be conducted within fifteen (15) calendar days of the date of the notice of appeal. The appeal shall be an informal administrative hearing in which the rules of evidence shall not apply, but the applicant's right to confront and cross-examine witnesses against him or her shall be enforced. The applicant shall be entitled to be represented by counsel and shall have the right to present evidence, call witnesses and confront and cross-examine witnesses against him or her. Witnesses shall testify under oath. The hearing shall be conducted in accordance with the principles of due process.

(C) The appeal board shall be constituted of three (3) members who shall be the current city manager or his designee, an elected member from the Greenville Taxicab Association, and a designated member from the city council. There shall be an alternate elected member from the Greenville Taxicab Association to serve in the event that the applicant is employed by or for the initial elected member. Each appeal board member shall have the right to question witnesses. The city manager shall be the chairman and conduct the hearing and govern procedural questions. The decision of the appeal board shall be by majority vote and said decision shall be made at the conclusion of the hearing, unless the appeal board requests additional evidence. The appeal board may issue probationary or conditional licenses if the mitigating or extenuating evidence outweighs the decision to revoke, suspend or deny a driver's permit. The decision of the appeal board shall be documented by the city manager in writing, including findings to support their decision, and forwarded to the applicant within ten (10) calendar days of the conclusion of the hearing.

**Sec. 11-1-90. Suspension and revocation; causes and hearings.**

(A) An owner's permit may be suspended or revoked by the appeal board at any time in case the appeal board finds and determines:

- (1) That the past record of the holder of the owner's permit is unsatisfactory and that it is detrimental to and not in the public interest to permit the continued operation of a taxicab business by such person; or
- (2) That the owner has failed to operate the taxicab or taxicabs in accordance with the provisions of this chapter; or
- (3) That the taxicab or taxicabs of the owner have been operated at a rate of fare other than that provided by this chapter; or
- (4) That the holder of a permit has failed to register properly with the State, in the correct and true owner's name, any taxicab covered by the owner's permit; or
- (5) That the holder of an owner's permit has been convicted of a felony; or violation of any federal or state statute or city ordinance relating to the

possession or sale of intoxicating liquors; or violation of any federal or state statute or city ordinance relating to prostitution; or any federal or state statute or city ordinance relating to the use, possession or sale of narcotic drugs; or repeated violations of traffic laws or ordinances; or becomes a habitual user of intoxicating liquors or narcotic drugs; or

- (6) That the holder of any owner's permit has made a false or misleading statement on his application.

(B) An owner's permit may be temporarily suspended by the chief of police when it is found that there has been a violation of subsection (A). Notice of suspension will be delivered to the owner in person or through registered mail. The notice shall state that the owner may have a hearing before the chief of police within ten (10) days upon the written request of the owner. The owner will have the right to appeal to the appeal board in writing within ten (10) days of the decision of the chief of police. It shall be unlawful for an owner to operate a taxicab business regulated by this article during the pendency of an appeal taken pursuant to this section.

**Secs. 11-1-91—11-1-99. Reserved.**

Division 3. Vehicle Requirements

**Sec. 11-1-100. Taxicab numbers.**

Whenever a certificate shall be granted under the provisions of this article, the chief of police shall designate upon the certificate a number for each taxicab to be operated by the holder. Each taxicab shall be given a different number. It shall be the duty of each holder, before operating such taxicab, to imprint, legibly and visibly, upon each side and the rear of the exterior of the body of the taxicab, the number given it by the chief of police in figures at least three and one-half (3 ½) inches in size.

**Sec. 11-1-101. Illuminated signs on taxicabs.**

Each taxicab operated in the city shall have an illuminated sign on top of the taxicab with the name of the taxicab company and the number of the taxicab legibly and visibly imprinted thereon. Such sign shall be no less than eighteen (18) inches in length and lettering thereon shall be no less than three and one-half (3 ½) inches in height. The taxicab operator shall not be required to have the sign on the top of the taxicab illuminated during daylight hours, which shall be that period from one hour after sunrise to one hour before sunset.

**Sec. 11-1-102. Solicitation of passengers by driver.**

(A) No driver shall solicit passengers for a taxicab except when sitting in the driver's compartment of such taxicab or while standing immediately adjacent to the curbside thereof. The driver of any taxicab shall remain in the driver's compartment or immediately adjacent to his vehicle at all times when such vehicle is upon the public street, except upon request to assist in the handling of baggage of a passenger or prospective passenger.

(B) No driver shall solicit patronage in a loud or annoying tone of voice or by sign or in any manner annoy any person, obstruct the movement of any person, or follow any person for the purpose of soliciting patronage.

(C) No driver shall solicit passengers at the terminal of any other common carrier.

(D) No driver shall solicit passengers from private property without a notarized written statement granting permission from the property owner. Such notarized written statement must be maintained inside the vehicle and be available to be presented to a police officer upon request.

**Sec. 11-1-103. Lost articles.**

The driver of a taxicab shall make every effort possible to return any lost article that may be found in the taxicab to the rightful owner as soon as possible after discovery of such article. If the owner cannot be located or determined, the lost article shall be turned over to the police department within 48 hours of discovery.

**Sec. 11-1-104. Unauthorized passengers.**

No taxicab shall be used other than as a vehicle for hire unless the driver is off duty. No individual except the holder or driver shall be allowed to ride in a taxicab which is in service unless such individual is a fare-paying passenger.

**Sec. 11-1-105. Compliance of passenger's request required.**

(A) Each taxicab driver shall comply with all reasonable and lawful requests of the passenger as to the speed of travel and the route to be taken.

(B) The driver of a taxicab shall, upon the request of any passenger, give to such passenger the correct name and address of such driver and such other information as will identify the vehicle, driver and owner thereof.

**Secs. 11-1-106—11-1-118. Reserved**

Division 4. Fares

**Sec. 11-1- 119. Authority of city council to establish.**

The schedule of fares charged by all taxicabs operating within the city shall be as fixed by the city council from time to time.

**Sec. 11-1-120. Schedule of fares.**

(A) **Adopted; zone map; rates.** Under the provisions of the General Statutes of North Carolina, Section 160A-304 and section 11-1-119 of this Code, the city council shall adopt a schedule of maximum fares which taxicab operators may lawfully charge for their services within the city:



- (1) The corporate limits of the city shall be divided into at least eight (8) zones, and these zones shall be reflected on a map entitled “Taxi Fare Service Zones”. The map shall periodically be revised to reflect expansion of the city’s corporate limits. Said map and any subsequent revisions to it are hereby incorporated by reference in this section as if fully set forth.
- (2) The eight (8) zones created for the city shall have applicable rates for each zone. These rates shall be set out in the Manual of Fees for the City of Greenville.

(B) **Additional rates.** Additional rates may be in effect in certain situations. These additional rates are described and set forth in the Manual of Fees for the city.

(C) **Franchise holders.** Use of meters under this section may not be imposed on a franchise holder and will be on a voluntary basis only.

**Sec. 11-1-121. Prior notice and payment of fare.**

The driver of every taxicab shall inform the passenger of the lawful fare prior to transporting the passenger and may, if he so desires, demand the payment of his lawful fare prior to transporting any person or property.

**Secs. 11-1-122—11-1-127. Reserved.**

**ARTICLE E. LIMOUSINES**

**Sec. 11-1-128. License required; fee.**

Every person, firm or corporation shall apply to and receive from the chief of police an annual license for the privilege of operating a limousine service within the city, or within the distance of five (5) miles thereof, before operating such business and shall pay an annual license fee in a sum established by the city council. Renewals of a license issued by the city council may be issued by the collector of revenue.

**Sec. 11-1-129. Certificate of public convenience and necessity required.**

It shall be unlawful for any person, firm or corporation to operate a limousine upon the streets of the city without having first applied for and secured from the chief of police a certificate of public convenience and necessity in accordance with the provisions of Article B of this chapter. For purposes of insurance, operations, inspections, and licensing limousines, all provisions of Articles A, B and C also shall apply to limousines.

**Sec. 11-1-130. Driver’s permit required.**

It shall be unlawful for any person to drive a limousine carrying passengers for hire from place to place within the city, or within a distance of five (5) miles thereof, unless that person

shall have first applied to and secured from the chief of police a permit to drive a limousine in accordance with the provisions of Division 2 of Article D of this chapter.

**Sec. 11-1-131. Application of Conditions.**

All limousines and limousine services operated under the chapter shall comply with the same requirements for insurance; vehicle maintenance, condition and inspections; applications; and will be subject to the same grounds for suspension or revocation of certificates of public convenience and necessity as taxicabs.

**ARTICLE F. CONTRACT VEHICLES, TRANSPORT SERVICES AND OTHER VEHICLES FOR HIRE.**

**Sec. 11-1-132. Compliance with state laws and city ordinances.**

(A) Every vehicle for hire shall be operated in accordance with the laws of this state and the ordinances of this city and with due regard for the safety, comfort and convenience of passengers and for the safe and careful transportation of property and for the safety of the general public.

(B) No vehicle for hire shall be operated at a rate of speed inconsistent with existing traffic regulations, road conditions, and the hazard at intersections and any other conditions then existing, nor in such manner or condition to endanger or to be likely to endanger the safety of passengers, pedestrians, vehicles or the person and property of others.

(C) Vehicles identified under this Article will comply with the requirements and duties imposed by Article A, Article C, and Article D of this chapter.

(D) No vehicle for hire identified under this article shall operate without a privilege license as required by Title 3, Chapter 2, Article C of the Greenville City Code.

(E) All drivers of vehicles for hire identified under this Article shall secure a permit to drive from the chief of police in accordance with the provisions of Division 2 of Article D of this chapter.

(F) No signs of any shape, size, design or for any purpose may be installed on a vehicle for hire that interferes with or blocks the front, rear or side windows or blocks or interferes with any safety lights or equipment. Violations will result in the imposition of a civil penalty as provided by this chapter.

(G) Transport services provide an unusual and unique service essentially different from typical taxicab services and require a special service permit issued by the chief of police or designee. Services under this subsection include, but are not limited to, fixed route service, para-transit service, geographically or time-of-day/limited service or any other innovative services. A special service permit shall be issued under the following conditions:

- (1) Application for a special service permit shall be addressed in writing to the chief of police and shall designate the proposed service in detail and shall provide reasons why a regular vehicle operating permit is inadequate.
- (2) Approval and subsequent operation under a special service permit shall be contingent upon any conditions of this article placed in the special service permit by the chief of police. Failure to carry out the conditions of the special service permit shall be grounds for revocation of the permit.
- (3) Fees for the application of special service permits shall be set out in the Manual of Fees.
- (4) A special service permit holder must also obtain a vehicle operating permit for the service to be provided.
- (5) Unless specifically exempted in the special service permit, each service operating pursuant to a special service permit shall be subject to every section of this article, including driver permits for each person operating the transport service vehicle.

**Sec. 11-1-133. License required; fee.**

Every person, firm or corporation shall apply to and receive from the city an annual license for the privilege of operating a vehicle for hire service within the city, or within the distance of five (5) miles thereof, before operating such business and shall pay an annual license fee in a sum established by the city council as provided in the Manual of Fees for the City of Greenville. Gross receipts from tax or business tax filings will be used to determine such license fees. Renewals of a license issued may be issued by the Financial Services Department, Collections Division.

**ARTICLE G. PENALTIES AND ENFORCEMENT ACTIONS**

(A) Any person operating a taxicab, limousine, contract service, transport service or other vehicle for hire as defined in this chapter without a privilege license shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days as provided and set forth in Sec. 3-2-42 of the Greenville City Code in addition to any taxes, interest, penalties and other civil remedies that may be available including but not limited to injunctions, garnishment, attachment and levy and sale of real and personal property as further provided in Sec. 3-2-43 of the Greenville City Code.

(B) Unless provided for elsewhere in this chapter, all other violations shall subject the offender to a civil penalty and, where applicable, suspension of any certificate of public convenience and necessity or privilege license as provided elsewhere in this chapter as follows:

- (1) For a first offense, a civil penalty will be assessed in the amount of \$100.00.

- (2) In the event there is more than one (1) violation within any thirty (30) days period, then the civil penalty shall be increased for each additional violation over one (1) during such period as follows:
- (a) The date of the first violation shall establish the beginning for the initial thirty (30) days period. The next violation within that thirty (30) days period shall be considered a second violation and shall subject the offender to a civil penalty of \$250.00.
  - (b) Third and subsequent violations within the same thirty (30) days period shall subject the offender to a civil penalty of \$500.00 for each violation.

(C) Once the thirty (30) days period has run from the “first violation,” the next violation shall be considered the first violation for establishing a new thirty (30) days period. Each subsequent violation that follows more than thirty (30) days from the previous first violation shall be a new first violation for the purpose of establishing a new thirty (30) days period.

(D) The levying of civil penalties shall be initiated by any police officer or the taxicab inspector giving written notice of the infraction committed to the vehicle for hire owner or driver, along with a statement that a civil penalty is being imposed.

(E) Civil penalties shall be paid within seventy-two (72) hours of the issue date to Financial Services, Collections Division. If not paid within the seventy-two (72) hours of the date of issue, an additional fifty (\$50) dollars delinquency charge will be added for each seventy-two (72) hours period thereafter upon nonpayment until paid in full.

(F) The city attorney or designee is authorized to file suit on behalf of the city to collect any unpaid citations and any delinquency charge, and the police chief or designee is authorized to verify and sign the complaints on behalf of the city in such suits. If litigation is required to recover the penalties and delinquency charges, the city attorney or designee may recover, in addition to the penalties and delinquency charges, reasonable attorneys fees and other costs incurred in bringing the action and collecting the judgment.

(G) Additionally, this chapter may be enforced through available equitable remedies including but not limited to enjoining the operation of any taxi, limousine, contract service, transport service or other vehicle for hire as issued by a court of competent jurisdiction. Citations issued to any driver or operator of any taxi, limousine, contract service, transport service or other vehicle for hire and not paid when the driver or operator leaves employment of the business or franchise holder shall be the responsibility of the franchise holder or business.

(H) Any permit required to be issued and renewed under the terms of this Chapter shall not be issued or renewed in the event civil penalties for violations remain unpaid by the applicant or by an employee of the applicant.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

Section 4. This ordinance will become effective on \_\_\_\_\_.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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**Title of Item:** Resolution authorizing the sale of City-owned property located at 909 Douglas Avenue

**Explanation:** The purpose of this request is to authorize the sale of the City-owned property located at 909 Douglas Avenue to Ms. Martha M. Gorham. The property is a new construction three bedroom, two bath, single-family house. Fair market value was established by action of the City Council on August 11, 2008, at \$95,000. The buyer proposes a closing date on or after February 18, 2011.

Ms. Gorham has provided the required earnest money deposit and she has received her mortgage lender pre-approval. The purchase price offered is \$95,000.

The 1992 and 2004 bond funds were funds for the home's development and construction expenses.


City Council must hold a public hearing prior to considering approval of a resolution authorizing the conveyance of the home to Ms. Martha M. Gorham.


**Fiscal Note:** The purchase price offered is \$95,000, which equals the established fair market value. Proceeds from the sale will be used to reimburse the 1992 and 2004 bond funds for expenses associated with the home's development and construction costs.

**Recommendation:** Conduct a public hearing and approve the attached resolution accepting the buyer's offer to purchase the home and authorizing the City Manager or his designee to sign the required documents for the sale of the home to Ms. Martha Gorham.

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 [Photo of Property](#)

 [Martha\\_Gorham\\_resolution\\_887558](#)

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RESOLUTION NO. 11-\_\_\_\_  
RESOLUTION AUTHORIZING THE SALE OF CERTAIN REAL PROPERTY TO  
MARTHA M. GORHAM FOR HOMEOWNERSHIP

WHEREAS, the City of Greenville has established the West Greenville Certified Redevelopment Area and a program to increase homeownership within this area; and

WHEREAS, the City of Greenville recognizes the importance of homeownership for low and moderate income persons and intends to dispose of certain properties owned by the City of Greenville for this purpose; and

WHEREAS, the City of Greenville is authorized pursuant to North Carolina General Statute 160A-456 to undertake community development programs and activities and to exercise powers granted by law to municipal housing authorities and is authorized pursuant to North Carolina General Statute 160A-457 to acquire and dispose of property for redevelopment as a part of a community development program; and

WHEREAS, pursuant to the aforesaid authority, the City of Greenville has acquired and developed certain properties for the purpose of resale for development of housing for ownership by low and moderate income persons, including the property located at 909 Douglas Avenue; and

WHEREAS, the City Council, at its February 10 , 2011, meeting, held a public hearing on the proposed sale of property located at 909 Douglas Avenue to Martha M. Gorham for the purposes described herein, and notice of said public hearing was published and the public hearing was held in accordance with the provisions G.S. 160A-457;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the sale of the property located at 909 Douglas Avenue to Martha M. Gorham for \$95,000, said amount being not less than the appraised value of said property.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the City Manager or his designee be and is hereby authorized to execute the deed and any other necessary documents to accomplish the conveyance of said property to said person.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L Barwick, City Clerk



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# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Proposed Fiscal Year 2011-2012 Annual Action Plan

**Explanation:** The Community Development Department, Housing Division is in the process of identifying activities for the upcoming 2011-2012 fiscal year Annual Action Plan. As a requirement of receiving Community Development Block Grant (CDBG) and HOME Investment Partnership funds, the Housing Division must prepare the annual action plan every year of its 2008-2013 Consolidated Plan. The Consolidated Plan outlines scheduled activities and funding amounts.

The City of Greenville is an Entitlement City under the CDBG program and a Participating Jurisdiction under the HOME program. Those designations result in an annual formula allocation of CDBG and HOME funds to the City by the U.S. Department of Housing and Urban Development.

Entitlement Cities are required to hold two public hearings prior to the City Council's adoption of the Annual Action Plan. The first hearing held is considered a "planning" hearing to identify possible activities that might be carried out in the program year. Following the first public hearing, Housing Division staff develop the Annual Action Plan draft. Then, the second public hearing is held to receive comment on the draft Annual Action Plan; following public comment, the City Council may adopt the plan.

Staff is submitting the following existing activities for consideration for the 2011-2012 Annual Action Plan as found in the Consolidated Plan:

- Administration
- Housing Rehabilitation
- Downpayment Assistance
- New Construction
- Acquisition of Substandard Property
- Public Services Activities
- Public Facility Improvements
- Demolition and Clearance

The following activities represent new activities proposed for 2011-2012:

- Affordable Rental Housing Production
- Economic Development
- Rental Rehabilitation Assistance

The proposed planning process schedule is attached for review.

**Fiscal Note:**

The federal government is currently operating under a continuing budget resolution until March 4, 2011; therefore, precise funding awards have not been announced. However, HUD has advised entitlement cities to plan on using last year's CDBG and HOME award levels, which were \$887,849 for CDBG and \$575,192 for HOME.

**Recommendation:**

City Council hold the first of two public hearings to provide for citizen participation on the proposed list of Community Development Block Grant and HOME Investment Partnership activities.

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 [2011\\_AA\\_Schedule\\_852270](#)

## **2011-2012 ANUAL ACTION PLAN** **PROPOSED COMPLETION SCHEDULE**

January 7, 2011	Deadline for Submission of Subrecipient Applications for funding
January 31, February 7, 2011	Notice of Public Hearing Publication
February 9, 2011	Subrecipient Organizations present funding request to Affordable Housing Loan Committee
February 9, 2011	Community Meeting to receive comments
February 10, 2011	First Public Hearing
February 11, 2011	Deadline for Submission of Community Housing Development Organization (CHDO) Applications for funding
March 1, 2011	Redevelopment Commission Review of Draft Annual Action Plan
March 9, 2011	Continuum of Care Group Review of Draft Annual Action Plan
March 9, 2011	Affordable Housing Loan Committee Review/Recommendation of Subrecipient Funding
March 9, 2011	Affordable Housing Loan Committee Review of Draft Annual Action Plan
March 10, 2011	Draft of Annual Action Plan/Staff review
March 14-April 11, 2011	Thirty (30) Day Public Comment Period
March 28, April 4, 2011	Notice of Public Hearing Publication
April 14, 2011	Second and Final Public Hearing
April 14, 2011	City Council Adoption/Resolution
April 21, 2011	Submission to U.S. Dept. of H.U.D.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Resolution to close a portion of Pitt Street south of Fourteenth Street and north of the Carolina Coastal Railway

**Explanation:** Attached for City Council's consideration is a resolution adopting an Order to Close a portion of Pitt Street lying south of Fourteenth Street and north of the Carolina Coastal Railway. The attached map illustrates the segment of roadway requested to be closed. City Council adopted a Resolution of Intent to close the street segment during their January 10, 2011 meeting establishing a public hearing on the subject matter to be held during the February 10, 2011 City Council meeting .

In accordance with State Statute, the Resolution of Intent was advertised in the Daily Reflector four consecutive Mondays (January 17, 24, & 31, 2011 and February 7, 2011). Signs displaying the notice of a public hearing, the adopted Resolution of Intent, and a site map were posted on January 13, 2011 at two prominent locations on the street section to be closed. The resolution was also delivered by certified mail to adjoining property owners as listed on the Pitt County tax records.

The Pitt Street crossing of Carolina Coastal Railway was removed during the construction of the new wye track at Fourteenth and Beatty Streets. The portion of Pitt Street requested to be closed only serves the properties of Norfolk Southern Railway Company. When this section of the street is closed, the abandoned right of way would become property of Norfolk Southern Railway Company. The City would maintain a drainage and utility easement upon the abandoned right of way.

Staff of the City and Greenville Utilities have reviewed the proposed closing and no objections or adverse comments were provided.

**Fiscal Note:** Budgeted funds for the maintenance of this street section will no longer be required upon adoption of the resolution to close by City Council. The City will

no longer receive Powell Bill (state gas tax) funds for this section of Pitt Street.

**Recommendation:** Conduct a public hearing and approve the attached resolution adopting an Order to Close a Portion of Pitt Street lying south of Fourteenth Street and north of the Carolina Coastal Railway.

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- [Pitt Street Cad](#)
  - [Pitt Street GIS](#)
  - [Resolution to Close a Portion Pitt Street 887706](#)
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STATE OF NORTH CAROLINA  
COUNTY OF PITT

Prepared by: City of Greenville Attachment number 1  
Return to: City of Greenville Page 1 of 2  
PO Box 7207  
Greenville, NC 27834

**STREET CLOSING RESOLUTION  
PORTION OF PITT STREET**

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**RESOLUTION NO. \_\_\_\_\_  
AN ORDER OF THE CITY COUNCIL  
OF THE CITY OF GREENVILLE, NORTH CAROLINA  
TO CLOSE A PORTION OF PITT STREET**

WHEREAS, the City Council of the City of Greenville, at its January 10, 2011 meeting, adopted a resolution declaring its intent to close a portion of Pitt Street and

WHEREAS, pursuant to the provisions of G.S. 160A-299, said resolution was published once a week for four (4) successive weeks in The Daily Reflector setting forth that a hearing will be held on the 10<sup>th</sup> day of February, 2011, on the question of the closing a portion of said street; and

WHEREAS, a copy of the Resolution of Intent to Close was sent by certified mail to all owners of the property adjoining the portion Pitt Street as shown on the County tax records, and a notice of the closing and the public hearing was prominently posted in at least two (2) places along said portions of streets; and

WHEREAS, a hearing was conducted on the 10<sup>th</sup> day of February, 2011, at which time all persons interested were afforded an opportunity to be heard on the question of whether or not the closing will be detrimental to the public interest or the property rights of any individual; and

WHEREAS, it appears to the satisfaction of the City Council of the City of Greenville, North Carolina, after conduction of said hearing, that the closing of a portion of Pitt Street was not contrary to the public interest, and that no individual owning property in the vicinity of said street or in the subdivision in which said street is located would thereby be deprived of reasonable means of ingress and egress to their property; and

IT IS NOW THEREFORE ORDERED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE that, upon the adoption of this Order, the property described below be and the same is closed, and all right, title and interest that may be vested in the public to said area for street purposes is released in accordance with the provisions of G.S. 160A-299:

- To Wit: The 50 foot wide right of way portion of the 1400 block of Pitt Street, as shown on the plat entitled, "Street Closing Map, Portion of Pitt Street", prepared by the City of Greenville, dated December 7<sup>th</sup>, 2010.
- Location: Lying and being in the City of Greenville, Pitt County, North Carolina, south of West Fourteenth Street, north of Carolina Coastal Railway and generally bounded on the east and west by the property of Norfolk Southern Railway Company with said street section being more accurately described as follows:
- Description: BEGINNING at an iron pipe set at the intersection of the eastern right of way line of Pitt Street with the southern right of way of Fourteenth Street, thence from said located POINT OF BEGINNING and running along the eastern right of way of Pitt Street, S10°45'55" W -314.42 feet to an iron pipe set in the northern right of way line of Carolina Coastal Railway; thence with the railroad right of way, N78°55'36"W - 50.00 feet to an iron pipe set in the western right of way line of Pitt Street; thence with the western right of way of Pitt Street, N10°45'55" E -314.23 feet to an iron pipe set in the southern right of way of Fourteenth Street; thence running along the projection of the right of way of Fourteenth Street, S 79°08'21" E - 50.02 feet to the POINT OF BEGINNING; containing 0.3608 acres more or less as shown on a map titled "Street Closing Map, Portion of Pitt Street", prepared by the City of Greenville, dated December 7<sup>th</sup>, 2010.

IS FURTHER ORDERED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE that the City of Greenville does hereby reserve its right, title, and interest in any utility improvement or easement within the street closed pursuant to this order. Such reservation also extends, in accordance with the provisions of G.S. 160A-299(f), to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the City of Greenville.

IT IS FURTHER ORDERED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE that, upon the adoption of this Order, the Mayor and City Clerk are authorized to execute quit-claim deeds or other legal documents to prove vesting of any right, title or interest to those persons owning lots or parcels adjacent to the street in accordance with G.S. 160A-299(c), provided all costs shall be paid by any adjoining landowner requesting such action, all documents must be approved by the City Attorney and all documents, when appropriate, must reserve to the City any easements retained by the City. The intent of this paragraph is to authorize the execution of quit-claim deeds when requested by adjacent property owners; however, none are required and this paragraph is not intended to alter the vesting of title by operation of law as established by G.S. 160A-299(c). Attachment number 1  
Page 2 of 2

IT IS FURTHER ORDERED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE that a copy of this Order shall be filed in the Office of the Register of Deeds of Pitt County.

ADOPTED this the 10<sup>th</sup> day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

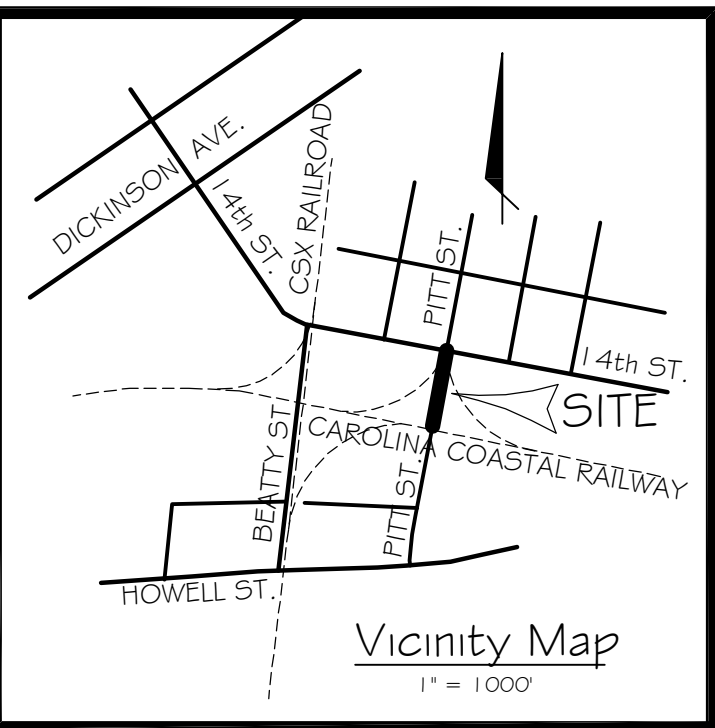
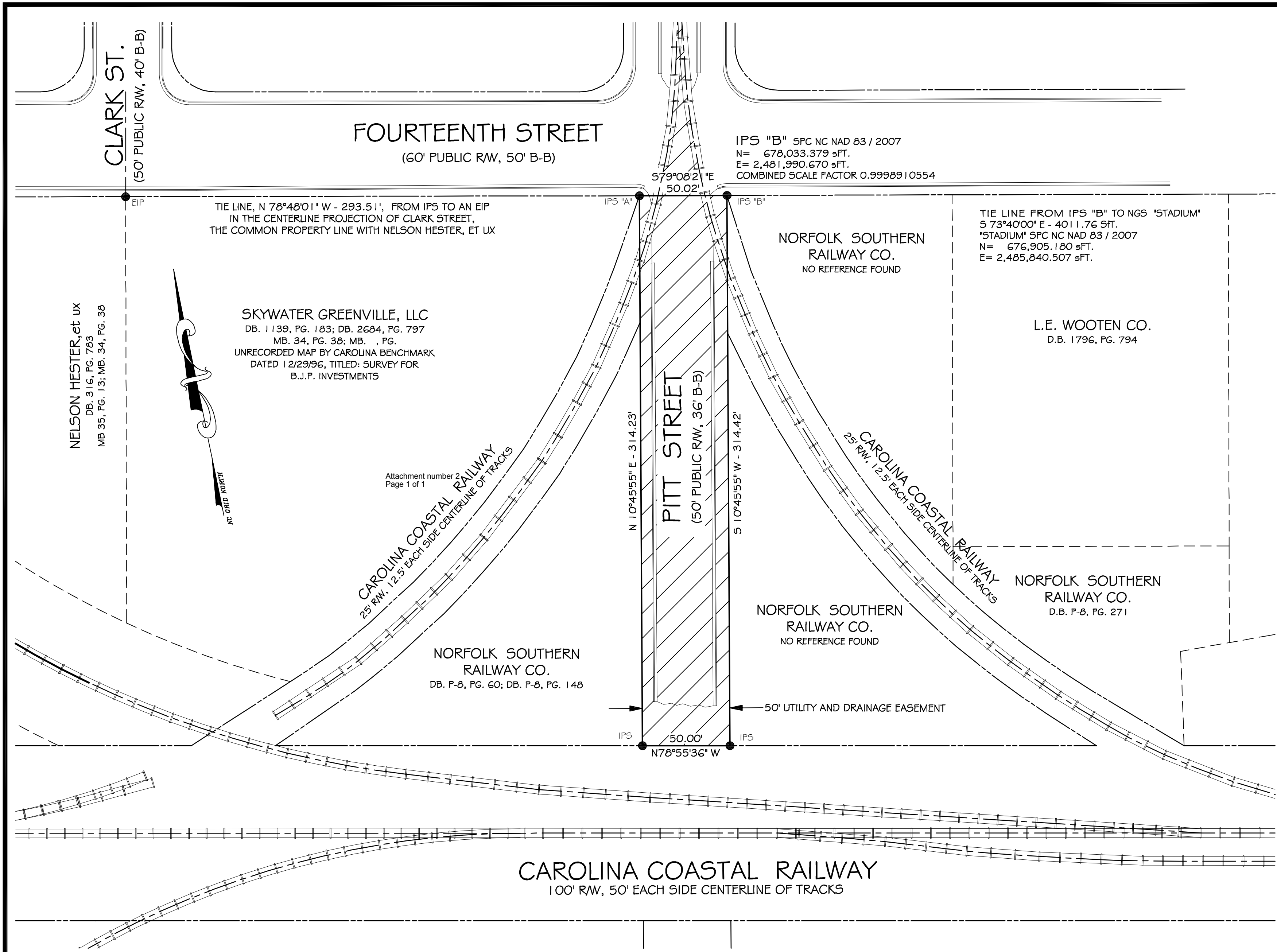
STATE OF NORTH CAROLINA  
COUNTY OF PITT

I, Patricia A. Sugg, a Notary Public, do hereby certify that Carol L. Barwick, City Clerk, personally appeared before me this day and acknowledged the due execution of the foregoing certification, for the purposes therein expressed.

WITNESS my hand and notarial seal this 10<sup>th</sup> day of February, 2011.

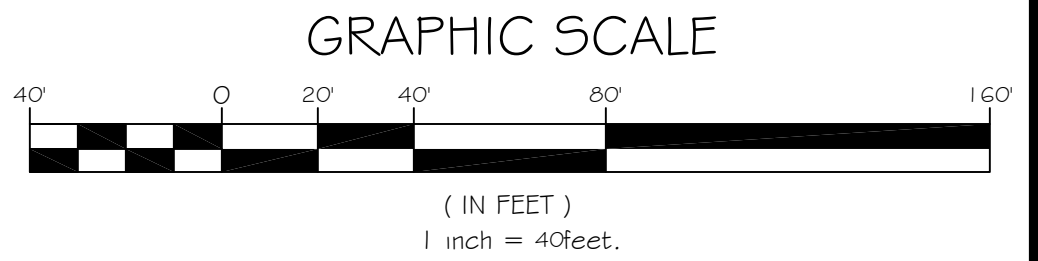
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_



- LEGEND**
- ▲ - NCGS CONTROL MONUMENT
  - - PKS = P.K. NAIL SET
  - - IPS = IRON PIPE SET
  - - EIP = EXISTING IRON PIPE
  - - NPS = NO POINT SET (POINTS NOT LABELED)
  - - ERB = EXISTING REBAR
  - DB. = DEED BOOK
  - MB. = MAP BOOK
  - PG. = PAGE
  - RW = RIGHT OF WAY

- GENERAL NOTES**
1. ALL AREAS CALCULATED BY COORDINATE GEOMETRY.
  2. ALL BEARINGS ARE NC GRID; ALL DISTANCES ARE GROUND MEASUREMENTS UNLESS OTHERWISE NOTED.
  3. PROPERTY IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA AS DETERMINED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. REF: FIRM 3720468700J, DATED JANUARY 2, 2004.
  4. THE CITY OF GREENVILLE RESERVES A DRAINAGE AND UTILITY EASEMENT UPON THE AREA OF THE RIGHT-OF-WAY OF PITT STREET AFTER CLOSURE AND RECORDATION OF THE RESOLUTION AND THIS PLAT.



**PRELIMINARY MAP  
FOR REVIEW ONLY**

**STREET CLOSING MAP  
PORTION OF PITT STREET  
BEING SOUTH OF FOURTEENTH STREET  
AND NORTH OF CAROLINA COASTAL RAILWAY**

GREENVILLE, GREENVILLE TOWNSHIP, PITT COUNTY NORTH CAROLINA

**City of Greenville**  
Public Works Dept., Engineering Division  
1500 BEATTY STREET  
GREENVILLE NC, 27834  
(252) 329-4467

SURVEYED: BLM	APPROVED: WBA
DRAWN: BLM	DATE: 12/07/10
CHECKED: TEC	SCALE: 1" = 40'

Item # 16

**SUBDIVISION  
EXEMPTION CERTIFICATE**

THE CITY OF GREENVILLE HEREBY ACKNOWLEDGES THAT THIS SURVEY IS EXEMPT FROM THE DEFINITION OF A SUBDIVISION.

CITY OF GREENVILLE PLANNING DEPARTMENT

DATE

**REVIEW OFFICER'S CERTIFICATE**

I, \_\_\_\_\_, REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER \_\_\_\_\_ DATE \_\_\_\_\_

**MAYORS CERTIFICATION**

THIS IS TO CERTIFY THAT THE CITY COUNCIL OF THE CITY OF GREENVILLE HAS PASSED A RESOLUTION TO CLOSE A PORTION OF PITT STREET.

RESOLUTION NO. \_\_\_\_\_

SIGNED \_\_\_\_\_  
PATRICIA C. DUNN, MAYOR

ATTEST \_\_\_\_\_  
CAROL BARWICK, CITY CLERK

**SURVEYOR'S CERTIFICATION**

I, BILLY LEE MERRILL, CERTIFY THAT THIS PLAT WAS DRAWN BY ME FROM AN ACTUAL FIELD SURVEY PERFORMED BY ME. DEED DESCRIPTIONS RECORDED IN BOOKS REFERENCED HEREON; THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOKS REFERENCED HEREON; THAT THE RATIO OF PRECISION FOR TRADITIONAL SURVEY METHODS IS 1 : 10,000; THAT THE GLOBAL POSITIONING SYSTEM (GPS) OBSERVATIONS WERE PERFORMED TO THE GEOSPATIAL POSITIONING ACCURACY STANDARDS, PART 2: STANDARDS FOR GEODETIC NETWORKS AT THE CLASS "A" ACCURACY CLASSIFICATION (95% CONFIDENCE) AND THE FOLLOWING INFORMATION WAS USING TO PERFORM THE GPS SURVEY:

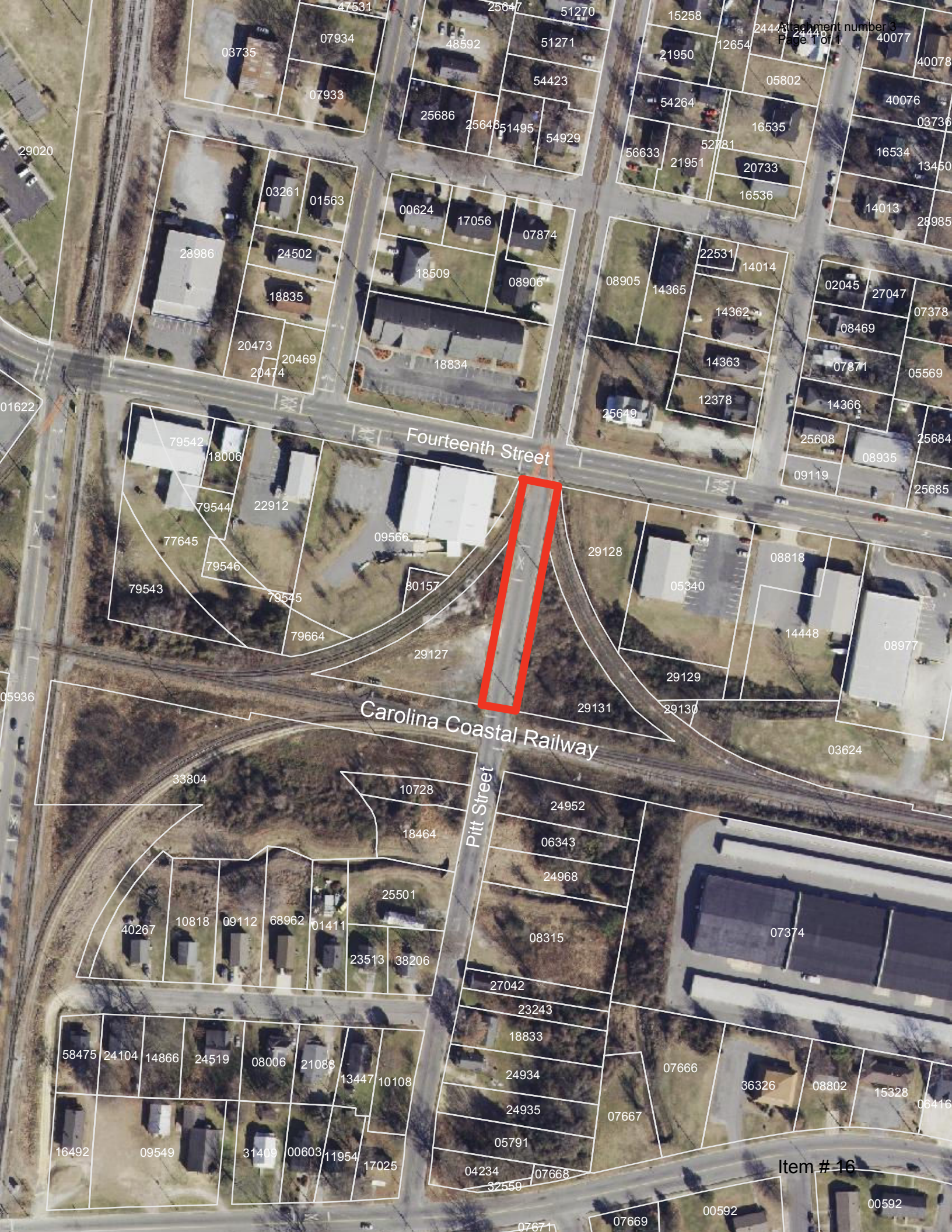
POSITIONAL ACCURACY: 0.07 FEET +/- 50 PPM TYPE OF GPS FIELD PROCEDURE: REAL-TIME KINEMATIC NETWORK UNITS: US SURVEY FOOT  
 DATE(S) OF SURVEY: DEC. 2, 2010 PUBLISHED/FIXED-CONTROL MONUMENTS USED: "STADIUM", "LURTON", "OLIN"  
 DATUM / EPOCH: NAD 83 (2007) GEOD MODEL: GEOD08 COMBINED GRID FACTOR: 0.9998910554

THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. I, FURTHER CERTIFY PURSUANT TO G.S. 47-30 (b) (1) (d), THIS SURVEY IS OF ANOTHER CATEGORY AND IS AN EXEMPTION TO THE DEFINITION OF A SUBDIVISION.

WITNESS MY ORIGINAL SIGNATURE AND SEAL THIS THE \_\_\_\_ DAY OF DECEMBER, 2010.

SIGNED \_\_\_\_\_  
PROFESSIONAL LAND SURVEYOR No. L-2956





Fourteenth Street

Carolina Coastal Railway

Pitt Street

Item # 16





# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Resolution supporting the Pitt County Board of Health resolution for a comprehensive strategy to promote healthy eating and active living in Pitt County

**Explanation:** The Pitt County Health Department received \$1.3 million in grant funding under the American Recovery and Reinvestment Act of 2009 from the National Center for Disease Control. The National Program is entitled, "Communities Putting Prevention To Work". The purpose of the funding is to assist local health departments in the development of jurisdictional wide plans and programs that will improve the health of citizens. A primary focus is to address the growing rates of obesity and increases in chronic diseases such as diabetes and heart disease.

The program supports development of comprehensive strategies that impact many sectors of a community in the prevention of chronic diseases due to "inactivity, lack of proper diets, and other lifestyles habits. Health officials, school administrators, health care professionals, planners, engineers, business sector representatives and others work together to address the health of a community. This blended approach creates opportunities for communities to examine policies affecting healthy food choices, recreational opportunities, work place wellness opportunities, and modifications to the built environment that will lead to improved health of citizens.

This initiative includes members of local governments (Pitt County, City of Greenville, and the Towns of Winterville and Ayden), Greenville-Pitt County Chamber of Commerce, University Health Systems, and Pitt County Schools. Representatives from each organization attended a required training program held in Atlanta, Georgia on November 15-17, 2010. Best practice programs and policies were presented during the training program to help communities identify options to consider that would positively impact the health disparities identified. Communities were provided with strategies in the following areas:

1. Employer based Wellness Programs,
2. Provision of Healthy Food Options in Communities and Schools,
3. Development of Healthy Communities Using Smart Growth Principles,
4. Increasing Physical Activity,
5. Reduction of Tobacco Use, and
6. Education of Communities on the Cost/Benefit of Healthy Choices

The Pitt County Board of Health requests that communities throughout Pitt County "sign on" as partners in this initiative by endorsing the Board's resolution *Recommending a Comprehensive Strategy to Promote Healthy Eating and Active Living in Pitt County*, which the Board approved on January 11, 2011.

**Fiscal Note:** No direct cost associated with this request.

**Recommendation:** Adopt the attached resolution supporting the Pitt County Board of Health Resolution *Recommending a Comprehensive Strategy to Promote Healthy Eating and Active Living in Pitt County*.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

[Board of Heath Resolution](#)

[Resolution supporting Pitt County Board of Health Healthy Stragety Program 887317](#)

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RESOLUTION NO. 11-  
RESOLUTION SUPPORTING AND ENDORSING THE PITT COUNTY BOARD OF  
HEALTH RESOLUTION RECOMMENDING A COMPREHENSIVE STRATEGY TO  
PROMOTE HEALTHY EATING AND ACTIVE LIVING IN PITT

WHEREAS, the Pitt County Board of Health is committed to improve the health of Pitt County Residents; and

WHEREAS, the Pitt County Board of Health recently adopted a resolution entitled, "RECOMMENDING A COMPREHENSIVE STRATEGY TO PROMOTE HEALTHY EATING AND ACTIVE LIVING IN PITT COUNTY", and is developing multi-jurisdictional programs for all of Pitt County; and,

WHEREAS, the Greenville City Council is committed to insuring that healthy options and environments are available to all of Greenville's residents; and

WHEREAS, the City Council of the City of Greenville recognizes the importance of the health and social well-being of the community; and

WHEREAS, the City of Greenville develops programs and policies that affect the well being of its citizens;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby support and endorses the Pitt County Board of Health's program for the development of strategies to promote healthy eating and active living in Pitt County.

This 10<sup>th</sup> day of February, 2011.

Patricia C. Dunn, Mayor

ATTEST:

Carol Barwick, City Clerk





## Pitt County Board of Health

### Pitt County Board of Health Resolution

#### RECOMMENDING A COMPREHENSIVE STRATEGY TO PROMOTE HEALTHY EATING AND ACTIVE LIVING IN PITT COUNTY

WHEREAS, obesity due to sedentary behavior and excessive calorie intake is now the second leading cause of preventable death;

WHEREAS, obesity increases the risk of heart disease, Type 2 diabetes and some cancers, reduces life expectancy, increases disability, increases social stigma, decreases work productivity and school achievement and greatly increases health care costs;

WHEREAS, less than one-fourth of Pitt County adults eat the recommended five or more servings of vegetables and fruit per day;

WHEREAS, more than one in four Pitt County adults reports eating fast foods four or more times per week;

WHEREAS, less than half of Pitt County adults meet recommendations for physical activity on a regular basis;

WHEREAS, approximately two-thirds of the Pitt County adult population and one-third of children ages 2-18 years are overweight or obese;

WHEREAS, regular physical activity and eating a variety of foods, including vegetables, fruits and whole grain products, low-fat dairy products, lean meats, poultry, fish and legumes and only small amounts of salt, sugar and saturated fat is associated with healthier and longer lives and can reduce the risk of heart disease, high blood pressure, diabetes, obesity and some types of cancer;

WHEREAS, breastfeeding is associated with reduced rates of obesity and is promoted by the Center for Disease Control and Prevention as a strategy to reduce childhood obesity and related chronic diseases;

WHEREAS, Pitt County has the potential to implement changes that will improve the health of its residents, and is home to a broad group of talented and committed people interested in promoting better nutrition and greater physical activity levels;

WHEREAS, the purpose of the Pitt County Board of Health is to protect, promote and assure the health of the people in Pitt County;

NOW, THEREFORE, LET IT BE RESOLVED, that the Pitt County Board of Health hereby declares obesity to be a major public health problem and a serious threat to the health and well being of children, adults and families in Pitt County.

BE IT FURTHER RESOLVED that the Pitt County Board of Health declares that immediate action must be taken to improve individual habits related to diet and physical activity that are established early in life and tend to persist through adulthood. Preventive action must be taken now, especially on behalf of children and youth, in order to avoid harmful effects that will undermine their health and their future.

BE IT FURTHER RESOLVED that the Pitt County Board of Health declares that individual knowledge, motivation and skills are necessary, but insufficient by themselves to fully address the problem of obesity. Individual behavior is significantly influenced by the environment in which people live, as well as the policies and practices of organizations and institutions throughout the community.

BE IT FURTHER RESOLVED that the Pitt County Board of Health calls upon everyone, including elected officials, government agencies, private businesses, the food industry, health care providers, schools, parents and community organizations to act in a strategic and concerted effort to impede and reverse these negative trends in Pitt County by promoting policies and programs and by pursuing environmental changes that encourage healthy eating and promote active living, making the healthy choice the easy choice.

Such actions may include, but are not limited to the following:

1. Participate in a community-wide campaign to promote healthy eating including promotion of healthy food and drink choices and active living, including promotion of physical activity.
2. Increase access to fruits and vegetables through the support of farmers' markets, community supported agriculture and community gardens.
3. Work with local convenience stores to expand access to healthy foods.
4. Evaluate local government planning documents and amend as necessary development standards to support access to healthy foods and physical activity.
5. Enhance employers' efforts to promote nutrition and physical activity through worksite wellness programs.
6. Promote breastfeeding friendly policies at worksites.
7. Support the implementation of safe and active routes to schools.
8. Support public transportation programs that allow for access to sources for fresh, healthy foods, parks and recreation spaces.
9. Support Pitt County Schools Student Wellness Policy that provides access to healthy food and drink, limits unhealthy food and drink availability and promotes daily physical activity including active recess and physical education.
10. Support the adoption of policies and best practices that promote daily physical activity in after-school settings.
11. Continue to support use of private and public facilities for physical activity, including community and senior centers and schools.
12. Support the Greenville Urban Area Metropolitan Planning Organization's (MPO) Bicycle and Pedestrian Master Plan.
13. Partner with academia and our communities to promote evidence-based practices and evaluate and disseminate results regularly and rapidly to the public.

PITT COUNTY BOARD OF HEALTH

  
\_\_\_\_\_  
Robert Ogden, Chair

1-11-2011  
\_\_\_\_\_  
Date of Adoption





# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Resolution adopting the Greenville Urban Area Bicycle and Pedestrian Master Plan

**Explanation:** The Bicycle and Pedestrian Master Plan provides the Greenville Urban Area Metropolitan Planning Organization (MPO) and its members (City of Greenville, Town of Ayden, Town of Winterville, Village of Simpson, and Pitt County) recommendations for improving the pedestrian and bicycle environment in the urban area. The plan accomplishes this goal by providing recommendations for infrastructure improvements and policy changes, and by providing a reference manual for implementing these changes.  
The plan:

- Evaluates existing conditions
- Recommends a bicycle and pedestrian network
- Recommends standards and guidelines for the development of bicycle and pedestrian facilities
- Provides a prioritized list of recommended strategic and low cost improvements
- Recommends changes to policies to support bicycling and walking as an alternate form of transportation
- Recommends programs, maintenance requirements, and funding

Development of the bicycle and pedestrian master plan began in August 2010. Greenways, Inc. was the planning consultant selected to develop the master plan. Greenways, Inc. specializes in the development of non-motorized transportation plans. Public outreach efforts included 6 public information workshops, Facebook and Twitter updates, a “Community Walk” online-mapping tool available for public use, along with a public comment and review period for the draft plan and network. Over 700 people submitted comment forms, and 175 people attended public workshops.

The Bicycle and Pedestrian Commission at their January 20, 2011 meeting reviewed the plan and recommended that City Council adopt the plan. By adopting this plan, City Council begins the staff process that will result in City

staff implementation of this plan. City staff will work with the City's stakeholders on the plan's policy recommendations and on prioritization of projects.

The Bicycle and Pedestrian Master Plan, when adopted by the MPO, will establish the MPO's policy for addressing the planning of facilities and programs to enhance the role of walking and bicycling as alternate forms of transportation throughout the MPO's Urban Area. The MPO's Technical Advisory Committee will consider adoption of the plan at their March 17, 2011 meeting.

The consultant will brief City Council on the plan at the Council meeting.

**Fiscal Note:**

There are no costs associated with adoption of the plan. The various infrastructure recommendations of the plan will be considered as part of the City's development process for future budgets. Additionally, infrastructure projects associated with this plan will be recommended for inclusion in the MPO's Transportation Improvement Plan.


**Recommendation:**

Approve the attached resolution adopting the Greenville Urban Area Bicycle and Pedestrian Master Plan and recommending adoption by the MPO's Technical Advisory Committee

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Resolution Adopting Bicycle and Pedestrian Master Plan 886650](#)

**RESOLUTION NO.**

**A RESOLUTION ADOPTING THE GREENVILLE URBAN AREA BICYCLE AND PEDESTRIAN MASTER PLAN AND RECOMMENDING ADOPTION BY THE METROPOLITAN PLANNING ORGANIZATION'S TRANSPORTATION ADVISORY COMMITTEE**

WHEREAS, the Greenville Urban Area Metropolitan Planning Organization (MPO), participating local governments, and its subcontractor Greenways Incorporated, have prepared the Greenville Urban Area Bicycle and Pedestrian Master Plan (the Plan); and

WHEREAS, the purpose of the Plan is to study the feasibility of establishing an interconnected network of bicycle and pedestrian routes throughout the entire Greenville Urban Area; and

WHEREAS, the Plan process involved multiple methods and opportunities for public participation; and

WHEREAS, the Plan was financed by Federal planning funds and a per-capita cost-share methodology by all MPO-member communities for the local share; and

WHEREAS, the Bicycle and Pedestrian Master Plan will establish the City's official policy addressing the planning of facilities and programs to enhance the role of walking and bicycling throughout the MPO; and

WHEREAS, increasing walking and bicycling offers the potential for cleaner air, greater health of the population, reduced traffic congestion, more livable communities, less reliance on fossil fuels and their foreign supply sources and more efficient use of road space and resources; and

WHEREAS, the Transportation Equity Act for the 21st Century (TEA-21) calls for the mainstreaming of bicycle and pedestrian projects into the planning, design and operation of our Nation's transportation system;

WHEREAS, at their January 20, 2011 meeting, the Greenville Bicycle and Pedestrian Commission reviewed and recommended that City Council adopt the Bicycle and Pedestrian Master Plan.

NOW, THEREFORE, BE IT RESOLVED that the Greenville Urban Area Bicycle and Pedestrian Master Plan and related materials are hereby adopted by the City of Greenville and will be used to guide future bicycle and pedestrian transportation development, operations, and maintenance. The City of Greenville recommends the Metropolitan Planning Organization's Transportation Advisory Committee adopt the Greenville Urban Area Bicycle and Pedestrian Master Plan and related materials.

This 10<sup>th</sup> day of February, 2011.

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Patricia C. Dunn, Mayor

ATTEST:

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Carol L. Barwick, City Clerk





# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Contract to complete the environmental assessment for the Intermodal Transportation Center

**Explanation:** The proposed site for the Intermodal Transportation Center is on the two blocks bounded by Evans Street to the west, Cotanche Street to the east, 8<sup>th</sup> Street to the north, and 9<sup>th</sup> Street to the south.

The construction of the Intermodal Transportation Center will be funded primarily through a federal grant. The City currently has grants in the sum of \$2,867,772 for property acquisition and design. This sum includes both the State and City matching funds. The City, prior to beginning the acquisition and design process, must complete the appropriate studies required by the National Environmental Protection Act (NEPA). Initial guidance from the Federal Transit Agency (FTA) was that a categorical exclusion document should be sufficient to meet the NEPA requirements.

The City contracted with Moser/Mayer/Phoenix and Associates (MMPA) to perform a site selection and conceptual design study. MMPA organized their consultant team to complete this scope of work. FTA's guidance on the required NEPA documentation changed as Moser/Mayer/Phoenix progressed with their work. The extent of the work required to complete the environmental assessment was beyond the scope of the work with MMPA.

Staff, after reviewing the status of the document and FTA requirements, determined that there were two options. The City could amend the contract with MMPA or issue a request for qualifications to obtain a consultant to complete the environmental assessment. Staff's analysis determined that it was in the City's best interest to issue a request for qualifications.

A request for qualifications was announced, and five firms with experience in environmental assessments were contacted directly. The identified scope of work in the request for qualifications included:

- Review current environmental assessment and complete the documentation in order to obtain FTA's concurrence with the document.
- Complete Section 106 coordination and potentially Section 4(f) evaluation if determined necessary.
- Assist in resolving use for Jones-Lee House.
- Assist with the efforts to modify the Memorandum of Agreement (MOA) with the FTA, NCDOT, City of Greenville and NC State Historic Preservation Office (SHPO) as part of the Section 106 process.
- Assist in resolving any issues with FTA.
- Prepare Findings Document upon completion of environmental assessment.

One firm, Martin/Alexiou/Bryson (MAB), P.C., submitted a proposal. Staff has reviewed MAB's qualifications and determined that MAB and their team of sub-consultants are more than qualified to perform the work required by the City. The team includes MMPA, and Mattson, Alexander and Associates, Inc., which specializes in historic preservation and historic consultant services. Additionally, MAB performed the initial feasibility study for the Intermodal Transportation Center so they are already familiar with the project. Staff has coordinated with the FTA on the limited number of firms proposing, and their representative has stated that there are no issues with only receiving one proposal.

Staff has completed negotiations with MAB. Their proposed fee is \$57,033.28. In coordination with the consultant, staff has determined that there are still many unknown requirements which will not be identified until after their initial meeting with the NC SHPO and FTA. Therefore, staff is proposing an hourly rate contract with a not-to-exceed amount of \$53,777.42. Staff and the consultant will review the scope of work after the initial meeting with SHPO and FTA to determine if additional requirements support a modification of the contract. If there are sufficient changes, staff will negotiate any changes to the scope of work and will recommend an amendment to the contract.

A draft contract is attached for your review. Staff will present to City Council the final contract for consideration prior to the City Council meeting.

**Fiscal Note:**

Funds are available in grant #NC-04-0032-01 in the amount of \$62,500. The City's 10% match requirement will be funded from the Intermodal Transportation Center's capital account. This grant was awarded to the City specifically for the Intermodal Transportation Center project.

**Recommendation:**

Award a contract in the sum of \$57,033.28 to Martin/Alexiou/Bryson, P.C. to complete the environmental assessment for the Intermodal Transportation Center.

**Attachments / click to download**

 [Draft Contract](#)

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## **PROFESSIONAL SERVICES AGREEMENT**

THIS Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the City of Greenville with offices at 1500 Beatty Street, Greenville, NC 27834 (hereinafter called the "OWNER") and MARTIN/ALEXIOU/BRYSON, P.C. with offices at 4000 Westchase Boulevard, Suite 530, Raleigh, North Carolina 27607 (hereinafter called "M/A/B")

### **WITNESSETH THAT:**

WHEREAS, the OWNER desires professional planning and engineering services (hereinafter called the "SERVICES").

### **AND**

WHEREAS, the OWNER has solicited the services of M/A/B to complete the *Greenville Intermodal Environmental Assessment*, (hereinafter called the "PROJECT");

NOW, THEREFORE, for the considerations hereinafter set forth, the parties hereto do mutually agree as follows:

#### **FIRST:                    EMPLOYMENT OF M/A/B**

The OWNER retains and employs M/A/B to act for and represent it in all engineering and planning matters involved in the performance of the SERVICES, subject to the terms, conditions, and stipulations as hereinafter stated and pursuant to the regulations found in Attachments A - C.

#### **SECOND:                 PROJECT DESCRIPTION**

The City of Greenville has completed a study to determine the need and location for an Intermodal Center in the City of Greenville. The Intermodal Center will support the operation of the Greenville Area Transit System (GREAT), Eastern Carolina University (ECU) transit system, Pitt Area Transit System (PATs) as well as Greyhound bus service, and taxis. Initial guidance from Federal Transit Administration (FTA) was that a categorical exclusion should apply to the project; later guidance changed the document to an Environmental Assessment (EA).

The EA was drafted, however, remains incomplete and has not yet been approved by the appropriate agencies. The professional services for this project will include the completion of Section 106 coordination through the North Carolina State Historic Preservation Office (NCSHPO) and FTA. Additionally, M/A/B will review the Draft EA document and studies to date and complete the document.

**THIRD: SCOPE OF SERVICES**

M/A/B shall render in a satisfactory and proper manner the SERVICES set forth in Attachment D, attached hereto and made part of this Agreement.

**FOURTH: COMPENSATION**

For the performance of the SERVICES set forth in Article THIRD, M/A/B shall be compensated on a **time and materials** basis, in an amount not to exceed Fifty-Seven Thousand, Thirty-Three Dollars, Twenty-Eight cents (\$57,033.28) for labor expenses and Nine Hundred Eighty-Three Dollars, Fifty cents (\$983.50) for direct expenses. The fee for each service is explained in the fee estimate, included as Attachment E.

**FIFTH: SCHEDULE**

M/A/B shall complete the SERVICES by April 1, 2011.

**SIXTH: PAYMENT**

M/A/B shall submit, at the end of each monthly period, invoices on an M/A/B standard form for reimbursable costs and labor fees incurred in or before such period. All invoices for reimbursable costs shall be taken from books of account kept by M/A/B, and M/A/B shall maintain and have available copies of payroll distribution, receipted bills, and other documents for OWNER's review. Such invoices shall be paid to M/A/B within fourteen (14) days of presentation to the OWNER. Notwithstanding the foregoing, in no event shall the OWNER be obliged to pay to M/A/B an amount greater than the compensation established in Article FOURTH of this Agreement.

**SEVENTH:                    DATA TO BE FURNISHED BY OWNER**

The OWNER shall furnish to M/A/B at no cost to M/A/B all existing reports and documents pertinent to the Intermodal Center project. These data needs will likely be met through the documentation provided on the GREAT website.

**EIGHTH:                    INDEPENDENT CONTRACTOR**

M/A/B represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the OWNER. M/A/B, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be, officers or employees of the OWNER by reason of this Agreement.

**NINTH:                    INSURANCE**

M/A/B shall effect and maintain insurance at its own cost and expense to protect itself from claims under Workers' Compensation Acts; from claims for damages because of bodily injury including sickness, disease, or death of any of its employees; from claims for damages because of injury to or destruction of tangible property; and from claims arising out of the performance of professional services caused by errors, omissions or negligent acts for which it is legally liable, each in the amount of \$1,000,000.

If requested, M/A/B shall furnish the OWNER with a certification (s) of insurance showing M/A/B has complied with this Article, which certificates shall provide that thirty (30) days written notifications of cancellation of the policies shall be given to the OWNER.

**TENTH:                    INDEMNITY AND LIMITATION**

M/A/B shall indemnify, defend, and hold harmless the OWNER from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of M/A/B, its officers, employees, agents, or representatives in the performance of SERVICES under this Agreement. M/A/B's liability to OWNER shall not exceed the total compensation to be received by M/A/B in accordance with the provisions of this Agreement, and M/A/B shall in no event be liable in contract, tort, or otherwise, for any indirect or consequential damages, including but not limited to loss

of estimated profits, loss of use, loss of revenue, cost of capital, loss of good will, or similar damages arising out of its performance of the SERVICES hereunder.

In the event of any reuse or other use by the OWNER of the drawings, specifications, and other documents furnished by M/A/B hereunder, the OWNER shall indemnify, defend, and hold harmless M/A/B from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused by, resulting from, or arising out of such reuse or other use.

**ELEVENTH:            CHANGES AND EXTRA SERVICES**

The OWNER may request M/A/B to perform extra services not covered by the SCOPE OF SERVICES as set forth in Attachment A, and M/A/B shall perform such extra services and will be compensated for such extra services when they are reduced to a writing mutually agreed to and signed by the parties hereto amending this Agreement accordingly. Additionally, if review of existing documentation results in significant additional technical analysis, M/A/B shall perform such extra services and will be compensated for such extra services when they are reduced to a writing mutually agreed to and signed by the parties hereto amending this Agreement accordingly.

The OWNER shall not be liable for payment of any extra services nor shall M/A/B be obligated to perform any extra services except upon such written amendment.

**TWELFTH:            DELAYS**

M/A/B shall perform its services with due diligence upon receipt of a written Notice to Proceed from the OWNER. The OWNER may authorize costs to be incurred prior to such written Notice to Proceed. In the event that performance of its SERVICES is delayed by causes beyond the reasonable control of M/A/B and without the fault or negligence of M/A/B, the time for the performance of the SERVICES shall be equitably adjusted by written amendment to reflect the extent of such delay.

**THIRTEENTH:        TERMINATION**

This Agreement may be terminated by either party hereto upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the



OWNER for its convenience or because the PROJECT has been permanently abandoned, but only upon fourteen (14) days written notice to M/A/B.

In the event of termination, M/A/B shall be compensated for all services performed and costs incurred up to the effective date of termination for which M/A/B has not been previously compensated.

Upon receipt of notice of termination from the OWNER or upon the provision of notice of termination by M/A/B to the OWNER, M/A/B shall discontinue the SERVICES unless otherwise directed and upon final payment from the OWNER deliver to the OWNER the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by M/A/B in the performance of this Agreement, whether completed or in process.

**FOURTEENTH: OWNERSHIP OF DOCUMENTS**

The parties hereto agree that M/A/B shall retain possession of all drawings, specifications, and other documents and electronic files when its services have been completed. The OWNER will be provided with reproducible copies of all such drawings, specifications, and other documents and electronic files, without restriction or limitation on their use for the purposes intended in this PROJECT.

M/A/B shall not be liable for use by the OWNER of said plans, documents, studies, or other data for any purpose other than intended by the terms of this Agreement. Any reuse of products (final drawings, plans, calculations, specifications, studies, electronic data and information, software programs, etc.) on any extension of the PROJECT or on any other project by OWNER without written verification or adaptation by M/A/B for the specific purpose intended will be at OWNER's sole risk, and without liability or legal exposure to M/A/B.

**FIFTEENTH: SUCCESSORS AND ASSIGNS**

M/A/B shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without the prior written approval of the OWNER.

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

**SIXTEENTH:            NONWAIVER**

No failure or waiver or successive failures or waivers on the part of M/A/B or the OWNER or their successors or permitted assigns, in the enforcement of any condition, covenant, or article of this Agreement shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

**SEVENTEENTH:       NOTIFICATION**

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO OWNER:                     City of Greenville  
                                      1500 Beatty Street  
                                      Greenville, North Carolina 27834  
                                      ATTENTION: Wes Anderson, Director of Public Works

TO M/A/B:                     Martin/Alexiou/Bryson, P.C.  
                                      4000 Westchase Boulevard, Suite 530  
                                      Raleigh, North Carolina 27607  
                                      ATTENTION: Mr. George Alexiou, PE

**EIGHTEENTH:        APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

**NINETEENTH:       EXTENT OF AGREEMENT**

This Agreement represents the entire and integrated agreement between the OWNER and M/A/B and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.

IN WITNESS WHEREOF, this Agreement has been executed by the OWNER and M/A/B, effective from the day and year first written above.

**CITY OF GREENVILLE**

By: \_\_\_\_\_  
(Wesley B. Anderson, Director of Public Works)

**MARTIN/ALEXIOU/BRYSON, P.C.**

By: \_\_\_\_\_  
(George Alexiou, Principal)

APPROVED AS TO FORM:

\_\_\_\_\_  
David A. Holec, City Attorney

**PRE-AUDIT CERTIFICATION**

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

\_\_\_\_\_  
Bernita W. Demery, Director of Financial Services

:::ODMA\PCDOCS\COG\578930\2

### Attachment A


#### NORTH CAROLINA DEPARTMENT OF TRANSPORTATION PRIME CONSULTANT TO BE USED WITH PROFESSIONAL SERVICES CONTRACT ONLY RACE AND GENDER NEUTRAL

Completion of the Environmental Assessment for Construction of an Intermodal Transportation Center in Greenville, North Carolina

*TIP No. and/or Type of Work (Limited Services)*

Martin/Alexiou/Bryson, P.C. – 27-1618743

*(Consultant/Firm Name and Federal Tax Id)*

<i><b>SERVICE / ITEM DESCRIPTION</b></i>	<i><b>Anticipated Utilization</b></i>
Project management, environmental assessment, Section 106 consultation	53%
<b>TOTAL UTILIZATION:</b>	<b>53%</b>
<b>RECOMMENDED BY:</b>	
CONSULTANT:	Martin/Alexiou/ Bryson, P.C.
	
*BY:	George Alexiou
TITLE:	<span style="border: 1px solid black; padding: 2px;">Principal</span>
SPSF Status:	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

#### **“PRIME CONCONSULTANT” (FORM RS-2)** **RACE AND GENDER NEUTRAL**

**Instructions for completing the Form RS-2:**

1. Complete a Prime Consultant Form RS-2 for the prime consultant firm.
2. Insert TIP Number and /or Type of Work (Limited Services)
3. Complete the Consultant/Firm name and Federal Tax ID Number for the primary firm information.
4. Enter Service/Item Description – describe work to be performed by the Prime Firm
5. Enter Anticipated Utilization – Insert dollar value or percent of work to the Prime Firm
6. \*Signature of the Prime Consultant **is required** on each RS-2 Form to be submitted with the Letter of Interest (LOI) to be considered for selection
7. Complete “SPSF Status” section - Check the appropriate box regarding SPSF Status, check Yes if SPSF or No if not SPSF

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
 SUBCONTRACTOR  
 TO BE USED WITH PRIME CONTRACTS  
 RACE AND GENDER NEUTRAL**

Completion of the Environmental Assessment for Construction of an Intermodal Transportation Center in  
 Greenville, North Carolina

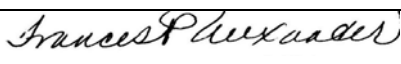

*TIP No. and/or Type of Work (Limited Services)*

Martin/Alexiou/Bryson, P.C. – 27-1618743

*(Firm Name and Federal Tax Id)*

Mattson Alexander and Associates, Inc. - 56-1896895

*(Subcontractor/Sub-Firm Name and Federal Tax Id)*

<i>SERVICE / ITEM DESCRIPTION</i>		<i>Anticipated Utilization</i>
Historic resources and Section 106 consultation		37%
<b>TOTAL UTILIZATION:</b>		<b>37%</b>
<b>SUBMITTED BY:</b> SUBCONTRACTOR: Mattson Alexander and Associates, Inc	<b>RECOMMENDED BY:</b> FIRM: Martin/Alexiou/Bryson, P.C.	
		
*BY: Frances Alexander	*BY: George Alexiou	
TITLE: President	TITLE: <span style="border: 1px solid black; padding: 2px;">Principal</span>	
SPSF Status: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		

**“SUBCONTRACTOR” (FORM RS-2-DBE)  
 RACE AND GENDER NEUTRAL**

**Instructions for completing the Form RS-2-DBE:**

1. Complete a Subcontractor Form RS-2-DBE for each Subcontractor to be utilized by your firm.
2. Insert TIP Number and /or Type of Work (Limited Services) – if applicable
3. Complete the Firm name and Federal Tax ID Number for the primary firm information.
4. Complete the Subcontractor/Sub-firm name and Federal Tax ID Number for the sub firm information.
5. Enter Service/Item Description – describe work to be performed by the Subcontractor.
6. Enter Anticipated Utilization – Insert dollar value or percent of work to the Subcontractor/Sub Firm
7. \*Signatures of both Subcontractor and Prime Consultant **are required** on each RS-2-DBE Form to be submitted with the Letter of Interest (LOI) to be considered for selection
8. Complete “SPSF Status” section - Subcontractor shall check the appropriate box regarding SPSF Status, check Yes if SPSF or No if not SPSF

In the event the firm has **no** subcontractors, it is **required** that this be indicated on the Subcontractor Form RS-2 form by entering the word “None” or the number “ZERO” and signing the form. Item # 19

**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
 SUBCONTRACTOR  
 TO BE USED WITH PRIME CONTRACTS  
 RACE AND GENDER NEUTRAL**

Completion of the Environmental Assessment for Construction of an Intermodal Transportation Center in Greenville, North Carolina



*TIP No. and/or Type of Work (Limited Services)*

Martin/Alexiou/Bryson, P.C. – 27-1618743

*(Firm Name and Federal Tax Id)*

Moser Mayer Phoenix Associates, PA – Tax ID: 56-1524577

*(Subcontractor/Sub-Firm Name and Federal Tax Id)*

<b>SERVICE / ITEM DESCRIPTION</b>		<b>Anticipated Utilization</b>
Project background and continuity consulting		10%
<b>TOTAL UTILIZATION:</b>		<b>10%</b>
<b>SUBMITTED BY:</b>		<b>RECOMMENDED BY:</b>
SUBCONTRACTOR:	Moser Mayer Phoenix Associates, PA	FIRM: Martin/Alexiou/ Bryson, P.C.
		
*BY:	Kenneth Mayer	*BY: George Alexiou
TITLE:	Principal	TITLE: <span style="border: 1px solid black; padding: 2px;">Principal</span>
SPSF Status: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

**“SUBCONTRACTOR” (FORM RS-2-DBE)  
 RACE AND GENDER NEUTRAL**

**Instructions for completing the Form RS-2-DBE:**

1. Complete a Subcontractor Form RS-2-DBE for each Subcontractor to be utilized by your firm.
2. Insert TIP Number and /or Type of Work (Limited Services) – if applicable
3. Complete the Firm name and Federal Tax ID Number for the primary firm information.
4. Complete the Subcontractor/Sub-firm name and Federal Tax ID Number for the sub firm information.
5. Enter Service/Item Description – describe work to be performed by the Subcontractor.
6. Enter Anticipated Utilization – Insert dollar value or percent of work to the Subcontractor/Sub Firm
7. \*Signatures of both Subcontractor and Prime Consultant **are required** on each RS-2-DBE Form to be submitted with the Letter of Interest (LOI) to be considered for selection
8. Complete “SPSF Status” section - Subcontractor shall check the appropriate box regarding SPSF Status, check Yes if SPSF or No if not SPSF

In the event the firm has **no** subcontractors, **it is required that this be indicated on the Subcontractor Form RS-2 form by entering the word “None” or the number “ZERO” and signing the form.**

## Attachment B

### **DISADVANTAGED, MINORITY, WOMEN BUSINESS ENTERPRISES (RACE AND GENDER NEUTRAL) PROFESSIONAL SERVICES CONTRACTS ONLY**

(9-30-09)

SP1G69

#### **Policy**

It is the policy of the North Carolina Department of Transportation that businesses shall have an equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by federal and state funds.

The Department is committed to its annual aspirational goal(s) set on all federally-assisted and state funded contracts. Professional Services Contracts are race and gender neutral and do not contain goals; however, the firm is encouraged to give every opportunity to allow DBE/MBE/WBE subconsultant participation on all contracts and supplemental agreements.

#### **Obligation**

In compliance with *Title VI, 23 CFR 200, 230, 635, 117 (d)* and (e) and *49 CFR Parts 21 and 26*, the Firm and subconsultant shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this contract. Failure by the Firm to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

#### **Definitions**

*Professional Services* – Services such as, but not limited to, project management, construction engineering and inspection, feasibility studies, planning and environmental studies, preliminary engineering, design and redesign, surveying, mapping, geotechnical investigations, architectural related services, visualization, simulation studies, technical assistance and transportation services studies.

*Department* - North Carolina Department of Transportation

*Disadvantaged Business Enterprise (DBE)* – A firm certified through the federally-mandated North Carolina Unified Certification Program administered by the Department.

*Minority-Owned and Women-Owned Business Enterprises (MBE/WBE)* - Firms certified through the state-mandated North Carolina Unified Certification Program administered by the Department.

*Small Professional Services Firm (SPSF)* – Small professional consultant firms who have been certified by the Department. Any business established for profit and meets the certification standards outlined in 13 CFR Part 121, Sector 54 under the North American Industrial Classification system (NAICS) is eligible for participation in the Department's SPSF program.

*Form RS-2* - Form to be completed showing the participation of all known consultants and subconsultants (SPSFs) who will participate in the performance of the identified work



*Form DBE-IS* – Form required to record payments made to subconsultants, including material suppliers. The accounting shall be listed on the Department’s Subcontractor Payment Information Form (Form DBE-IS).

*North Carolina Unified Certification Program (UCP)* - A program that provides comprehensive information to applicants for certification, such that an applicant is required to apply only once for DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

*Race and Gender-Neutral* – Measure or program in which goals are not consciously set in order to achieve significant participation by historically underutilized groups. In a race and gender-neutral program, other methods are used to achieve participation, such as but not limited to aggressive outreach, targeted advertising and unbundling of work items.

*USDOT* - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

## **Participation**

Specific project goals are not established for Professional Services agreements as identified in the scope of work for this contract. The Department encourages the utilization of Small Professional Services Firms (SPSF) subconsultants and/or suppliers on professional services contracts let by NCDOT or subgrantees.

## **Listing of Subconsultants**

The firm, at the time the Letter of Interest is submitted, shall submit a listing of all known small professional services firms that will participate in the performance of the identified work. The participation of each SPSF shall be submitted on a separate Form RS-2. In the event the firm has no SPSF/subconsultant participation, the firm shall indicate this on the Form RS-2 by entering the word ‘**none**’ or the number ‘**zero**’ and the form shall be signed and submitted with the Letter of Interest. Form RS-2 may be accessed on the website at: <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>

## **Directory of Approved Transportation Firms**

Real-time information about firms doing business with the Department, and firms that are prequalified and certified DBEs through North Carolina’s Prequalification Unit, is available in the Directory of Transportation Firms. The Directory can be accessed by the link on the Department’s homepage or by entering <https://apps.dot.state.nc.us/vendor/directory/> in the address bar of your web browser. Only firms identified as small business professional consulting firms (SPSF) and approved (certified DBE) in the Directory will be considered for subconsultant utilization.

## **Reporting Participation**

When payments are made to subconsultants, including material suppliers, firms at all levels (Firm, subconsultant or subfirm) shall provide the Contract Administrator with an accounting of

said payments. The accounting shall be listed on the Department's Subcontractor Payment Information Form (Form DBE-IS). In the event the firm has no subconsultant participation, the firm shall indicate this on the Form DBE-IS by entering the word '**None**' or the number '**zero**' and the form shall be signed. Form DBE-IS may be accessed on the website <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Firm, or subconsultant, who can attest to the date and amount of the payments shall certify that the accounting is correct on the Form DBE-IS by affixing their signature. This information shall be submitted as part of the requests for payments made to the Department or subgrantee.

## Attachment C

# **FEDERAL AND STATE REQUIREMENTS AND SPECIAL CONDITIONS**

*for*

*PROFESSIONAL and ARCHITECTURAL and ENGINEERING SERVICES*

### **1. General**

The work performed under this contract will be financed, in part, by grants provided under programs of the Federal Transit Administration. Citations to federal law, regulation, and guidance references include, but are not limited to, the Master Agreement FTA MA (17), dated October 1, 2010; FTA Circular 4220.1F, dated November 1, 2008; "Best Practices Procurement Manual", updated March 13, 1999 with revisions through October 2005; 49 CFR Part 18 (State and Local Governments) and 49 CFR Part 19 (Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) and any subsequent amendments or revisions thereto.

**THE FOLLOWING MAY BE USED SYNONYMOUSLY:**

**"BIDDER" AND "CONTRACTOR"**

**"PURCHASER", "PROCURING AGENCY" AND "OWNER"**

### **2. Federal Changes**

Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

### **3. Notification of Federal Participation**

To the extent required by Federal law, the State of North Carolina agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project that it will identify the FTA grant source by listing the Catalog of Federal Domestic Assistance Number of the program. The following FTA grant programs will be eligible to participate in this bid, 20.505, 20.507, 20.500, 20.513, 20.509, 20.516, and 20.521. Federal funding assistance up to eighty (80%) percent may be provided.

### **4. Conflict of Interest**

No employee, officer, board member, or agent of the Owner shall participate in the selection, award, or administration of a contract supported by Federal Transit Administration (FTA) funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, board member, or agent, any member of his or her immediate family, his or her partner, or an organization that employs, or is about to employ any of the above, has a financial or other interest in the firm selected for award.

## 5. Lobbying

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

***The requisite "Lobbying Certification" is included as ATTACHMENT A (attach Standard Form-LLL if necessary) and must be executed for contracts of \$100,000 or more and prior to the award of the contract.***

## 6. Civil Rights

(1) **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(a) The third party contractor and all lower tiers shall comply with all provisions of FTA Circular 4701.1A, "Title VI and Title VI Dependent Guidelines for Federal Transit Administration recipients", May 13, 2007.

(2) **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for

training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Contractor agrees to comply and assures the compliance of each subcontractor at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

(3) **Nondiscrimination on the Basis of Age** – The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

(4) **Nondiscrimination on the Basis of Sex** - The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.

(5) **Access for Individuals with Disabilities** - The Contractor agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Contractor also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Contractor agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- (1) U.S. DOT regulations "Transportation Services for Individuals with Disabilities (ADA)" 49 C.F.R. Part 37;

- (2) U.S. DOT regulations "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." 28 C.F.R. Part 36;
- (6) U.S. GSA regulations "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 49 C.F.R. Part 64, Subpart F;
- (9) U.S. Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards." 36 C.F.R. Part 1194;
- (10) FTA regulations, "Transportation of Elderly and Handicapped Persons," 49 C.F.R. part 609; and
- (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.

(6) **Access to Services for Persons with Limited English Proficiency.** The Contractor agrees to comply with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that the Federal Government determines otherwise in writing.

(7) **Environmental Justice.** The Contractor agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note; and DOT Order 5620.3, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 *Fed. Reg.* 18377 *et seq.*, April 15, 1997, except to the extent that the Federal Government determines otherwise in writing.

(8) **Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections.** To the extent applicable, the Contractor agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism **Item # 19**

Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.

(9) **Other Nondiscrimination Laws.** The Contractor agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable directives prohibiting discrimination, except to the extent that the Federal Government determines otherwise in writing.

(10) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## 7. **Contracting with Disadvantaged Business Enterprises**

The newest version on the Department of Transportation's Disadvantaged Business Enterprise (DBE) program became effective October 1, 2004.

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. The NC Department of Transportation/Public Transportation Division's overall goal for DBE participation is **8.6%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the **Department** deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

c. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the **Department**. In addition, **[the contractor may not hold retainage from its subcontractors.] [is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.] [is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the Department and contractor's receipt of the partial retainage payment related to the subcontractor's work.]**

d. The contractor must promptly notify the **Department** whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the **Department**.

## 8. **Clean Air Act**



(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 306 of the Clean Air Act as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. The Contractor agrees to report any violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the State and/or FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance provided by FTA.

**9. Clean Water**

(a) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377, The Contractor agrees to report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

**10. Environmental Protection**

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S. C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; and other applicable Federal environmental protection regulations that may be promulgated at a later date. The Contractor agrees to comply with the applicable provisions of 23 U.S.C. § 139 pertaining to environmental procedures, and 23 U.S.C. § 326, pertaining to Purchaser's responsibility for categorical exclusions, in accordance with the provisions of joint FHWA/FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576 *et seq.* November 15, 2006 and any applicable Federal directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing.

**11. Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Sect. 6321 et seq.

**12. Fly America**

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier is used, a fly America report to the Purchaser.

carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

### 13. **Debarment and Suspensions**

This contract is a covered transaction for purposes of 2 CFR Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940, 180.935 and 180.945.

The contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the **Procuring Agency**. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to **Procuring Agency**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Procuring Agency agrees and assures that its third party contractors and lessees will review the "Excluded Parties Listing System" at <http://epls.gov/> before entering into any subagreement, lease or third party contract.

The Procuring Agency will be reviewing all third party contractors under the Excluded Parties Listing System at <http://epls.gov/> before entering into any contracts.

***The requisite Debarment and Suspension Certification is included as ATTACHMENT B (attach additional statement if necessary) and must be executed for contracts of \$25,000 or more and prior to the award of the contract.***

### 14. **Termination or Cancellation of Contract**

The Owner, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the project. If this contract is terminated, the Owner shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

The Owner may terminate this contract in whole or in part, for the Owner's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Owner shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Owner all data, drawings, specifications,

reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Owner shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Owner may complete the work by issuing another contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Owner.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Owner.

#### **15. Breach of Contract**

If the Contractor does not deliver the required services or the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Owner may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Owner, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

The Owner in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If the Contractor fails to remedy to Owner's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by Contractor of written notice from Owner setting forth the nature of said breach or default, The Owner shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Owner from also pursuing all available remedies against Contractor and its sureties for said breach or default.

#### **16. Resolution of Disputes**

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Owner. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the authorized representative of the Owner. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the authorized representative of the Owner shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the Owner, the Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Owner and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

#### **17. Protest Procedures**

To ensure that protests are received and processed effectively the Purchaser shall provide written bid protest procedures upon request. In all instances information regarding the protest shall be disclosed to the N.C. Department of Transportation (NCDOT). All protest requests and decisions must be in writing. A protester must exhaust all administrative remedies with the Purchaser before pursuing remedies through the NCDOT. Reviews of protests by the NCDOT will be limited to the Purchaser's failure to have or follow its protest procedures, or its failure to review a complaint or protest. An appeal to the NCDOT must be received by the Department within three (3) working days of the date the protester knew or should have known of the violation. An appeal to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. Violations of Federal law or regulation will be handled by the complaint process stated within that law or regulation. Violations of State or local law or regulations will be under the jurisdiction of State or local authorities.

#### **18. No Federal Government Obligations to Third Parties**

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **19. False or Fraudulent Statements or Claims**

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(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its activities in connection with this Project. Accordingly, upon execution of the underlying contract or agreement the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may apply, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement involving a project authorized under 49 U.S.C. chapter 53 or any other Federal statute, the Federal Government reserves the right to impose on the Contractor the penalties of 18 U.S.C. § 1001 or other applicable Federal statute to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **20. Access to Records and Reports**

The Contractor agrees to permit, and require its subcontractors to permit, the U.S. Secretary of Transportation, and the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its subcontractors pertaining to the Project, as required by 49 U.S.C. § 5325(g).

Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S. D. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5303, 5307, 5309, 5310, 5311, 5316, or 5317.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 C.F.R. 18.39 (i)(11).

The State of North Carolina, Office of the State Auditor, now requires that all records now be retained for five (5) years after that date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the

performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all such litigation, appeals, claims or exceptions related thereto.

## **21. Patents and Rights in Data**

A. Rights in Data - These following requirements apply to each contract involving experimental, developmental, or research work:

(1) The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

(2) The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:

(a) Except for its own internal use, the Purchaser or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Purchaser or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

(b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes", any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.

1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
2. Any rights of copyright purchased by the Purchaser or Contractor using Federal assistance in whole or in part provided by FTA.

(c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the Purchaser and the Contractor performing experimental developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal item # 19

Government may direct. This subsection (e), however, does not apply to adaptations of automatic data processing equipment or programs for the Purchaser or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

(d) Unless prohibited by state law, upon request by the Federal Government, the Purchaser and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the -Purchaser or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition, of any data furnished under that contract. Neither the Purchaser nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents, of the Federal Government.

(e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

(f) Data developed by the Purchaser or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the Purchaser or Contractor identifies that data in writing at the time of delivery of the contract work

(g) Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

(3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(4) Therefore, when the Project is completed, the Contractor agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Contractor agrees to provide other reports pertaining to the Project that FTA may request. The Contractor agrees to identify clearly any specific confidential, privileged, or proprietary information it submits to FTA.

(5) The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

B. Patent Rights - These following requirements apply to each contract involving experimental, developmental, or research work:

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and Contractor



agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

## **22. Privacy**

To the extent that the Contractor, or its subcontractors, if any, or any to their respective employees administer any system of records on behalf of the Federal Government, Contractor agrees to comply with, and assure the compliance of its subcontractors, if any, with the information restrictions and other applicable requirements of the Privacy Act of 1974, as amended, 5 U.S.C. Sect. 552, (the Privacy Act).

The Contractor shall obtain the express consent of the Department and the Federal Government before the Contractor, and any subcontractors, or any of their respective employees operate a system of records on behalf of the Federal Government. Failure to do so may result in termination of the Contract and civil and criminal penalties for violation of the Privacy Act.

The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **23. National Intelligent Transportation Systems Architecture and Standards**

To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and follow the provisions of FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing. (*applicable to ITS projects*)

## **24. Architectural, Engineering or Related Services**

In accordance with 49 U.S.C. § 5325(b), the Contractor agrees to comply with the following requirements pertaining to the procurement of architectural engineering or related services that will be financed with Federal assistance authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

- (1) When procuring architectural engineering, or related services, the Contractor agrees that it and its subcontractors at any tier will:
  - (a) Negotiate for architectural engineering or related services in the same manner as a contract for architectural engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

- (b) Comply with an equivalent State qualifications-based requirement for contracting for architectural engineering, or related services, provided the State has adopted by law such requirement before August 10, 2005.
- (2) Upon awarding a contract for architectural engineering or related services, the Contractor agrees that it and its subcontractors at any tier will:
  - (a) Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.
  - (b) Accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.
  - (c) Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection 15.p(2)(b) of this Master Agreement.
  - (d) In compliance with 49 U.S.C. § 5325(b)(2)(D), the Recipient agrees and assures that it and the members of any group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Master Agreement shall:
    - 1. Notify any affected firm before requesting or using that data,
    - 2. Maintain the confidentiality of that data, and assure that it is not accessible or provided to others, and
    - 3. Not disclose that data under any circumstances if doing so is prohibited by 49 U.S.C. § 5325(b) or other law.

**25. Seismic Safety**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41, and will certify to compliance to the extent required by the regulation the contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. *(applicable to A&E contracts)*

**26. State and Local Disclaimer**

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the grantees procurement documents, the grantees should consult with their local attorney.

**27. Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**28. Hold Harmless**

Except as prohibited or otherwise limited by State law, the Contractor agrees to indemnify, save, and hold harmless the Owner of this Contract and its officers, agents, and employees acting within the scope of their official duties against any liability, including all claims, losses, costs and expenses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the contractor or subcontractor in the performance of this contract and that are attributable to the negligence or intentionally tortuous acts of the contractor.

The Contractor represents and warrants that it shall make no claim of any kind or nature against the Owner or it's agents who are involved in the delivery or processing of contractor goods to the Owner. The representation and warranty in the preceding sentence shall survive the termination or expiration of this contract.

**29. Safe Operation of Motor Vehicles**

a. Seat Belt Use.

Pursuant to Executive Order No. 13043, April 16, 1997, 23 U. S. C. § 402, the Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally-operated vehicles and include this provision in any third party subcontracts, leases or similar documents in connection with this project.

b. Distracted Driving, Including Texting While Driving.

Consistent with Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. Section 402 note, and DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, FTA encourages each third party contractor to promote policies and initiatives for its employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in any third party subcontract leases or similar documents in connection with this project.

c. Safety. The Contractor is encouraged to:

- (a) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

Company-owned or rented vehicles; Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or any vehicle, on or off duty, and using an electronic device.

- (b) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c. Definitions

- (1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor

running) in a location off the roadway where it is safe and legal to remain stationary.

- (2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

**30. Metric System**

To the extent required by U.S. DOT or FTA, the Contractor agrees to use the metric system of measurement in its Contract activities as may be required by 49 U.S.C. Sect. 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. Sect. 205a; and other regulations, guidelines and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, the Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

**31. Geographic Information and Related Spatial Data.**

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Contractor agrees to implement this Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, are consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

**32. Exclusionary or Discriminatory Specifications or Requirements**

The Contractor agrees that it will comply with the requirements of 49 U.S.C. Sect. 5325(h) by refraining from using any funds derived from FTA in performance of this Contract to support any sub-contracts using exclusionary or discriminatory specifications or requirements.

**33. North Carolina State Ethic's Requirement**

Pursuant to Governor Perdue's Executive Order # 24, this section should be included in the terms and conditions of all contracts let by the Governor's Cabinet Agencies and the Office of the Governor:

- 1) "By Executive Order 24, issued by Governor Perdue, and N.C. G.S. § 133-32, it is unlawful for any vendor or contractor ( i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

Item # 19

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.”

To be added near the signature portion of all contracts let by the Governor’s Cabinet Agencies and the Office of the Governor:

“N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.”

**34. Sensitive Security Information**

Each third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, “sensitive security information” made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, “Protection of Sensitive Security Information,” 49 CFR Part 1520.

ATTACHMENT A

CERTIFICATION REGARDING LOBBYING

**(To be submitted with all bids or offers exceeding \$100,000; must be executed prior to Award)**

The undersigned M/A/B certifies, to the best of his or her knowledge and belief, that:  
(Contractor)

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding to any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*.)]
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transactions imposed by 31, U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.]

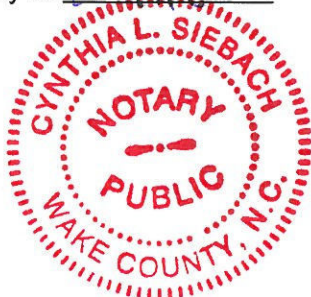
The Contractor, Martin/Alexiou/Bryson, PC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section A 3801 *et seq.* apply to this certification and disclosure, if any.

1-31-2011  
Date

[Signature]  
Signature of Contractor's Authorized Official  
George Alexiou, Principal  
Name and Title of Contractors Authorized Official

Subscribed and sworn to before me this 31<sup>st</sup> day of January, 2011, in the State of North Carolina and the County of Wake.

Notary Public Cynthia L. Siebach  
My Appointment Expires Nov. 30, 2013





**ATTACHMENT B**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY and VOLUNTARY EXCLUSION  
LOWER TIER COVERED TRANSACTION**

**(To be submitted with all bids exceeding \$25,000.)**

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor) Martin/Alexiou/Bryson, PC certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

DATE 1/31/2011  
 SIGNATURE *GA*  
 COMPANY Martin/Alexiou/Bryson P.C.  
 NAME George Alexiou  
 TITLE Principal

State of North Carolina  
 County of Wake

Subscribed and sworn to before me this 31<sup>st</sup> day of January, 2011.



Notary Public *Cynthia Siebach*  
 My Appointment Expires Nov 30, 2011



**Attachment D**  
**Scope of Services**  
**Martin/Alexiou/Bryson, P.C.**  
**February 1, 2011**

**Completion of Environmental Assessment for the  
Greenville Intermodal Transportation Center**

The project approach will follow the outline of items and issues to be addressed below for a process to complete the Environmental Assessment and Section 106 Consultation to obtain concurrence from FTA and SHPO. This includes the following:

1. Conduct a review of existing work completed to date.
  - a. Draft Environmental Assessment (EA)
  - b. Historic Resource studies (Assessment of Effects Report, MOA, etc.) and past consultation
  - c. Conduct a Project Kick-off Meeting with FTA, NCDOT, City of Greenville, and NCSHPO to review past issues and action items to move forward.
2. Prepare a detailed understanding of what is needed for completion of the EA, Section 106 Consultation and approvals.
3. Continue with Section 106 Consultation and determine whether a Section 4(f) Evaluation is needed.
  - a. Coordinate and assist in determining the use of the Jones Lee House.
  - b. Coordinate and assist in the efforts to modify the MOA including the FTA, NCDOT, City of Greenville, and NCSHPO.
  - c. If necessary, prepare Section 4(f) Evaluation and related analyses.
4. Complete the required analyses for the EA.
  - a. Transit Noise Analysis – The Noise Analysis will be updated utilizing the “Transit Noise and Vibration Impact Assessment” (Harris Miller Miller & Hanson, Inc., 2006). It is likely that a General Noise Assessment would need to be prepared.
  - b. Vibration Analysis – Provide a vibration screening to determine whether an assessment is required. A rubber-tired transit system and other existing conditions should determine that a full assessment is not required. However, the screening and its results should be documented in the EA.
  - c. Air Quality Analysis – A review of the Air Quality statements in the EA, site conditions, and requirements would be made to determine whether further action needed to be made.
  - d. Other analyses – A full review of the EA document and guidelines would be made to determine the need for verifications, updates, and revisions.
5. Submit EA for review by FTA, NCDOT, City of Greenville, and NCSHPO. The review time should be minimal with the continuous coordination and involvement that would take place through previous tasks and efforts.
6. Approvals for Section 106 Consultation and the Environmental Assessment.
7. Prepare Finding of No Significant Impacts (FONSI) documentation.

Continuous coordination and communication with project representatives from FTA, NCDOT, City of Greenville, NCSHPO, and others as necessary will be conducted throughout the duration of the project.

**ATTACHMENT E**

PROJECT DESCRIPTION: Greenville Intermodal Center EA Completion	FIRM: Martin/Alexiou/Bryson, P.C.	TASK ORDER NUMBER: 1	DATE PREPARED: January 26, 2011
PREPARED BY: George Alexiou, PE, Than Austin, AICP, and Lauren Triebert, EI	TIP NUMBER: -	WBS NUMBER:	REVISION DATE:

TASK NUMBER	TASK DESCRIPTION	Project	Sr. Traffic	Trans/Env	Sr. Trans.	Trans.	Historic	Background	Admin.	Total Days
		Manager	Engineer	Designer	Planning Eng.	Planner	Consultant	Consultant	Assistant	
ENVIRONMENTAL										
1	REVIEW OF EXISTING WORK	3.25	0.00	5.00	0.00	0.00	6.75	1.00	0.00	16.00
2	UNDERSTANDING OF WHAT IS NEEDED FOR COMPLETION	0.75	0.00	3.00	1.00	0.00	2.50	0.00	0.00	7.25
3	SECTION 106 CONSULTATION	0.00	0.00	0.00	0.00	0.00	18.00	0.00	0.00	18.00
4	COMPLETE REQUIRED ANALYSES FOR EA	2.75	1.00	5.75	0.00	1.00	0.00	0.00	0.00	10.50
5	SUBMIT EA FOR REVIEW	0.00	0.00	0.75	0.00	0.00	1.75	0.00	0.00	2.50
6	APPROVALS FOR SECTION 106 CONSULTATION AND EA	0.50	0.00	0.50	0.00	0.00	2.00	0.00	0.00	3.00
7	PREPARE FONSI	1.00	0.00	2.00	0.00	0.00	0.00	0.00	0.00	3.00
8	ADMIN, COORDINATION, AND MANAGEMENT	1.00	0.00	2.00	0.00	0.00	0.00	4.00	0.50	7.50

<b>TOTAL WORKDAYS/CATEGORY:</b>	9.25	1.00	19.00	1.00	1.00	31.00	5.00	0.50	67.75
<b>RATES PER DAY:</b>	\$600.00	\$315.36	\$211.52	\$315.36	\$211.52	\$680.00	\$1,200.00	\$192.00	
<b>PAYROLL BURDEN:</b>	\$5,550.00	\$315.36	\$4,018.88	\$315.36	\$211.52	\$21,080.00	\$6,000.00	\$96.00	
<b>TOTAL WORKDAYS:</b>	67.75								
<b>TOTAL PAYROLL BURDEN:</b>	\$10,507.12								
<b>AVERAGE COST PER HOUR:</b>	\$69.35								
<b>GENERAL OVERHEAD @ 159.16 %:</b>	\$16,723.13								
<b>SUBTOTAL:</b>	\$27,230.25								
<b>COMPARATIVE FEE @ 10%:</b>	\$2,723.03								
<b>TOTAL:</b>	\$29,953.28								
<b>SUBCONSULTANT FEES:</b>	\$27,080.00								

Note: [Grey Box] = Approved NCDOT daily rates for subconsultants

<b>Total Mandays*</b>	<b>67.75</b>
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Name of Subconsultant(s)
Mattson, Alexander and Associates, Inc.; Historic Analysis
Moser Mayer Phoenix and Associates, PA; Background Information

\* Consultant and all Subconsultants

<b>GRAND TOTAL:</b>	<b>\$57,033.28</b>
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## Attachment E DIRECT EXPENSES

PROJECT DESCRIPTION: Greenville Intermodal Center EA Completion

PREPARED BY: George Alexiou, PE, Than Austin, AICP, and Lauren Triebert, EI

FIRM: Martin/Alexiou/Bryson, P.C.

DATE PREPARED: January 26, 2011

GENERAL PROJECT WORK:	ITEM	QTY	DESCRIPTION	UNIT COST	UNIT COST	UNIT COST
	Travel:					
Kickoff Site Visit/Meeting	Sedan	3	Trip(s) @	200 miles @	\$0.500	\$300.00
Field Visit	Sedan	3	Trip(s) @	200 miles @	\$0.500	\$300.00
	Full day site visits	8	Lunch		\$10.10	\$80.80
	2 @ 2 LOM/CIW	4	Dinner		\$17.30	\$69.20
	Reproduction:					
		1050	8 1/2 x 11 B & W Copies @		\$0.04	\$42.00
		50	8 1/2 x 11 Color Copies @		\$0.83	\$41.50
	Site visit, data, env. screen, cult. res.	100	SQ. FT. of Plots (B & W or Color)	≥65 SQ. FT.*	\$1.50	\$150.00
			<b>Subtotal</b>			<b>\$983.50</b>



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Recommendation to approve the list of highway projects for inclusion in the Metropolitan Planning Organization's (MPO) transportation improvement project priority list

**Explanation:** On January 14, 2011, the North Carolina Department of Transportation (NCDOT) released a new methodology and tentative timeline on developing the bi-annual transportation project priorities list. MPO staff has analyzed the process and determined that it is a significant change to the project submittal process.

NCDOT's new methodology now provides MPOs NCDOT's quantitative score for each project an MPO submits for consideration in the State's Transportation Improvement Plan (TIP) prior to the MPO's prioritization process. This change impacts the process for both committees of the MPO. The critical change in the system is that the MPO now submits an unprioritized list of projects in March and will submit a prioritization of that list in October 2011.

This new process/schedule provides the MPO the opportunity to prioritize the projects to maximize the points these projects earn which increases their potential for funding.

Another critical change in the new system is that NCDOT has established a formal system for MPOs to use in prioritizing their projects. Each MPO is given a total of 1300 points that can be spread among all of the highway transportation projects. Each project can be given no more than 100 points by an MPO. It is through this mechanism that MPO's will effectively "rank" candidate projects.

Conceptually, an MPO can improve the funding potential of a project by awarding more points to those projects that have received a higher score through NCDOT's quantitative scoring process. For example: The MPO is considering the ranking of two roadway widening projects, project x and project y. NCDOT calculates a quantitative score of 90 for project x and 50 for project y. The MPO may choose to strategically rank project x higher than project y to maximize the project's funding potential.

The following is a tentative schedule for the new process focusing on when critical activities occur:

1. Public involvement process (Jan)
2. TCC/TAC meeting to develop eligible projects for priorities list submission (Jan-March)
3. MPO staff submits the projects to NCDOT (June)
4. NCDOT calculates quantitative score for each project and makes it available to MPO staff (Aug)
5. TCC/TAC rank projects with consideration to NCDOT's score (Sept – Oct)

Attached is the Greenville-specific list of highway transportation projects under consideration. At a future meeting, Council will be asked to approve a prioritization of these projects for submission to the MPO as part of the combined, MPO area-wide prioritized list of projects. Other non-highway transportation projects are not subject to this new point-distribution system and are simply considered in a standard, numerically-ranked manner. The City's Bicycle and Pedestrian Commission will submit a recommended list of bicycle and pedestrian projects for Council's consideration at a future Council meeting.

**Fiscal Note:**

There are no costs associated with endorsement of the transportation improvement project list. The list is submitted to NCDOT, which will then compute a quantitative score for each project.

**Recommendation:**

Recommend to the MPO the attached non-prioritized list of highway transportation improvement projects.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [COG\\_Hwy\\_Trans\\_Projects\\_for\\_MPO\\_Consideration\\_887493](#)

LOCAL RANK	SPOT rank entry	TIP # (will be prequalified by SPOI)	LOCAL ID	COUNTY	ROUTE	FROM	TO	DESCRIPTION	GOAL	TIER	PROJECT TYPE (see additional info)	Length	IMPROVEMENT TYPE (see additional info)	CON_COST (if NEW project attach spreadsheet)	ROW_COST (if NEW project attach spreadsheet)	Question # 1 (see additional info)	Question # 2 (see additional info)	Question # 3 (see additional info)	Other Pertinent Project Info		
1	loop project	R-2250			SW Bypass																
2	fully-funded	U-3315			10th Street Connector																
3	1	U-2817			SR 1700 Evans St/Old Tar Rd	US 264A Greenville Blvd	SR-1711 Worthington Rd/Cooper St	widen to multi-lane with sidewalk/bicycle accommodations	mobility	subregional	Highway		Capacity existing in the TIP			yes	yes	no			
4	fully-funded	U-5018			NC-43	NC 11	US 264	widen 2L to 4L	mobility	regional	Highway		Capacity existing			yes	yes	no			
5	2		PIT0001-H		US 264A	NC 11	NC 33	widen 4L to 6L	mobility	statewide	Highway	4.5 mi		\$519,750							
6	3	U-5006			SR 1708 Firetower Rd ph 2		SR 1126 Forlines Rd (FROG LEVEL in TIP)	new 4L	mobility	subregional	Highway		Capacity-Part Existing, Part New Location			yes	yes	no			
7	4		PIT0002-H		SR 1133 Main Street	NC 11	End of existing Pavement East of Old Tar Rd SR 1700	widen 2L to 4L	mobility	subregional	Highway	1.77 mi	capacity existing	\$4,730,000		yes	yes	no			
8	5		PIT0003-H		SR 1127 Frog Level Rd	US 13/264A	NC 903	widen to tolerable lane width and add continuous 2W/TL	mobility	subregional	Highway	3.75 mi	capacity existing	\$14,062,500	\$433,125	yes	no	no			
9	6	R-3407C			NC 33		US 64 in Tarboro (SR 1415 Briley Rd-MPO boundary)-NC222 at Belvoir Crossroads to US264 Bypass	widen 2L to 4L	mobility	regional	highway		capacity existing			yes	no	no			
10	7		PIT0004-H		SR 1708 Firetower Rd ph 3	NC 43	SR 1704 Fourteenth St	widen 2L to 4L	mobility	subregional	highway	0.6 mi	capacity existing	\$3,690,000	\$69,300	yes	yes	no			
11	8		PIT0005-H		SR 1704 Fourteenth St	Red Banks Rd	SR 1708 Firetower Rd	widen 2L to 4L	mobility	subregional	highway	1.12 mi	capacity existing	\$7,190,400	\$129,360	yes	yes	no			
not ranked	9	U-3430			264-NC33 bridge																
12	10		PIT0006-H		Northeast Bypass	US 264	NC 33	new 4L	mobility	statewide	highway	12.13 mi	capacity-new location	\$186,159,000	\$8,488,000	yes	no	no			
13	11		PIT0007-H		SR 1708/1726 Firetower Rd ph 4	SR 1704 Fourteenth St	NC 33	widen 2L to 4L	mobility	subregional	highway	2.18 mi	capacity existing	\$13,995,600	\$335,790	yes	yes	no			
14	12		PIT0008-H		NC-43	Approx 500 ft North of Signature Drive	SR 1711 Worthington Rd	widen 2L to 4L	mobility	regional	highway	3.0 mi	capacity existing	\$346,500		yes	yes	no			
15	13		PIT0009-H		SR 1203 Allen Road	SR 1467 Stantonburg Rd	US 13/264A	widen 2L to 4L	mobility	subregional	highway	2.3 mi	capacity existing	\$517,650		yes	yes	no			
16	14		PIT0010-H		SR2241/SR1759/SR1723	NC 102	NC 33	align intersections / lane width widening	mobility	subregional	Highway	11.46 mi	safety	\$27,788,400	\$1,673,630	yes	no	no			
17	15		PIT0011-H		NC 102	NC 11	Verna Ave	widen 2L to 4L	mobility	regional	Highway	0.5 mi	capacity existing	\$3,270,000	\$57,750	yes	yes	no			
18	Do not rank	U-3839		DO NOT RANK	SR 1704 Fourteenth St	Al Beatty Street		RR Grade Separation	safety	subregional	Highway		DO NOT RANK								
19	16		PIT0012-H		SR 1126 Forlines Rd	SW Bypass Interchange	NC 11	widen 2L to 4L	mobility	subregional	Highway	3.2 mi	capacity existing	\$21,065,700	\$369,600	yes	no	no			
20	17		PIT0013-H		NC 903	NC 11	Greene County Line (Abbott Farm Rd-MPO Boundary)	widen pavement to 32 ft, utility improvement, intersection improvements	infrastructure health	regional	Highway	7.46 mi	safety	\$18,081,150	\$1,080,475	yes	no	no			
not ranked	18	U-3407A			NC33	US 264A Greenville Blvd	US 64 in Tarboro - NC42 at Scott's Crossroads														
not ranked	19	U-3407B			NC33	US 264A Greenville Blvd	US 64 in Tarboro - NC42 at Scott's Crossroads to NC222 at Belvoir Crossroads														
not ranked same as U-5006!!!	Do not rank	U-3613A			Firetower Road	NC11	Davenport Farm Road														

## Highway Improvement Priorities Oct. 2009 SPOT template entry

LOCAL RANK	SPOT rank entry	TIP # (will be prepopulated by SPOT)	LOCAL ID	ROUTE	FROM	TO	DESCRIPTION
1	loop project	R-2250		SW Bypass			
2	fully-funded	U-3315		10th Street Connector			
3	1	U-2817		SR 1700 Evans St/Old Tar Rd	US 264A Greenville Blvd	SR-1711 Worthington Rd/Cooper St	widen to multi-lane with sidewalk/bicycle accomodations
4	fully-funded	U-5018		NC 43	NC 11	US 264	widen 2L to 4L
5	2		Pitt0001-H	US 264A	NC 11	NC 33	widen 4L to 6L
6	3	U-5006		SR 1708 Firetower Rd ph 2	NC 11	SR 1126 Forlines Rd (FROG LEVEL in TIP)	new 4L
7	4		Pitt0002-H	SR 1133 Main Street	NC 11	End of existing Pavement East of Old Tar Rd SR 1700	widen 2L to 4L
8	5		Pitt0003-H	SR 1127 Frog Level Rd	US 13/264A	NC 903	widen to tolerable lane width and add continuous 2WLTl
9	6	R-3407C		NC 33	US 264A Greenville Blvd	US 64 in Tarboro (SR 1415 Briley Rd-MPO boundary)-NC222 at Belvoir Crossroads to US264 Bypass	widen 2L to 4L
10	7		Pitt0004-H	SR 1708 Firetower Rd ph 3	NC 43	SR 1704 Fourteenth St	widen 2L to 4L
11	8		PITT0005-H	SR 1704 Fourteenth St	Red Banks Rd	SR 1708 Firetower Rd	widen 2L to 4L
not ranked	9	U-3430		264-NC33 bridge			Construct Bridge on new location Item # 20



## Highway Improvement Priorities Oct. 2009 SPOT template entry

LOCAL RANK	SPOT rank entry	TIP # (will be prepopulated by SPOT)	LOCAL ID	ROUTE	FROM	TO	DESCRIPTION
12	10		PITT0006-H	Northeast Bypass	US 264	NC 33	new 4L
13	11		PITT0007-H	SR 1708/1726 Firetower Rd ph 4	SR 1704 Fourteenth St	NC 33	widen 2L to 4L
14	12		PITT0008-H	NC 43	Approx 500 ft North of Signature Drive	SR 1711 Worthington Rd	widen 2L to 4L
15	13		PITT0009-H	SR 1203 Allen Road	SR 1467 Stantonsburg Rd	US 13/264A	widen 2L to 4L
16	14		PITT0010-H	SR2241/SR 1759/SR1723	NC 102	NC 33	align intersections / lane width widening
17	15		PITT0011-H	NC 102	NC 11	Verna Ave	widen 2L to 4L
18	<b>Do not rank</b>	U-3839		SR 1704 Fourteenth St	At Beatty Street		RR Grade Separation
19	16		PITT0012-H	SR 1126 Forlines Rd	SW Bypass Interchange	NC 11	widen 2L to 4L
20	17		PITT0013-H	NC 903	NC 11	Greene County Line (Abbott Farm Rd--MPO Boundary)	widen pavement to 32 ft, utility improvement, intersection improvements
not ranked	18	U-3407A		NC33	US 264A Greenville Blvd	US 64 in Tarboro - US64 in Tarboro to NC42 at Scott's Crossroads	widen 2L to 4L
not ranked	19	U-3407B		NC33	US 264A Greenville Blvd	US 64 in Tarboro - NC42 at Scott's Crossroads to NC222 at Belvoir Crossroads	widen 2L to 4L
same as U-5006	<b>Do not rank</b>	U-3613A		Firetower Road	NC11	Davenport Farm Road	

## Highway Transportation Projects for MPO Consideration

ROUTE	FROM	TO	DESCRIPTION
SR 1708 Firetower Rd ph 3	NC 43	SR 1704 Fourteenth St	widen 2L to 4L
SR 1700 Evans St/Old Tar Rd	US 264A Greenville Blvd	SR-1711 Worthington Rd/Cooper St	widen to multi-lane with sidewalk/bicycle accomodations
SR 1203 Allen Road	SR 1467 Stantonsburg Rd	US 13/264A	widen 2L to 4L
SR 1704 Fourteenth St	Red Banks Rd	SR 1708 Firetower Rd	widen 2L to 4L
US 264A	NC 11	NC 33	widen 4L to 6L
SR 1708/1726 Firetower Rd ph 4	SR 1704 Fourteenth St	NC 33	widen 2L to 4L
SR 1708 Firetower Rd ph 2	NC 11	SR 1126 Forlines Rd (FROG LEVEL in TIP)	new 4L
SR 1598 Dickinson Ave	NC11	SR1610	Modernization
NC 43	Approx 500 ft North of Signature Drive	SR 1711 Worthington Rd	widen 2L to 4L
SR 1127 Frog Level Rd	US 13/264A	NC 903	widen to tolerable lane width and add continuous 2WLT
NC 33	US 264A Greenville Blvd	US 64 in Tarboro (SR 1415 Briley Rd-MPO boundary)- NC222 at Belvoir Crossroads to US264 Bypass	widen 2L to 4L

## Highway Transportation Projects for MPO Consideration

ROUTE	FROM	TO	DESCRIPTION
NC33	US 264A Greenville Blvd	US 64 in Tarboro -US64 in Tarboro to NC42 at Scott's Crossroads	widen 2L to 4L
NC33	US 264A Greenville Blvd	US 64 in Tarboro -NC42 at Scott's Crossroads to NC222 at Belvoir Crossroads	widen 2L to 4L
SR 1133 Main Street	NC 11	End of existing Pavement East of Old Tar Rd SR 1700	widen 2L to 4L
SR 1126 Forlines Rd	SW Bypass Interchange	NC 11	widen 2L to 4L
NC 903	NC 11	Greene County Line (Abbott Farm Rd--MPO Boundary)	widen pavement to 32 ft, utility improvement, intersection improvements
SR2241/SR1759/SR 1723	NC 102	NC 33	align intersections / lane width widening
Northeast Bypass	US 264	NC 33	new 4L

**PROJECT INFO TAB**

**PROJECT INFO TAB**

**Project Type OPTIONS**

**(examples on page 26 of Instructional Guide)**

Highway  
Highway-Bridge  
Highway-High Hazard Safety  
Highway-Rest Area  
Highway-Spot Safety  
Highway-Weigh Stations  
Bicycle and Pedestrian  
Public Transportation  
Rail  
Ferry Aviation  
CMAQ  
Direct Attributable Funded Only  
Other Enhancement  
Feasibility Studies  
Landscaping

**Improvement Type OPTIONS**

**(examples on page 15 of Instructional Guide)**

Capacity-Existing  
Capacity-New Location  
Capacity-Part Existing, Part New Location  
Traveler Services  
Intersection/Interchange  
Signal System-Corridor  
Signal System-Area  
Corridor Management  
Safety  
Pavement  
Other

**PROJECT NEED TAB**

**PROJECT NEED TAB**

**Question # 1)**

Is this project included in the area's most recently adopted Transportation Plan (such as a Long Range Transportation Plan, Comprehensive Transportation Plan, Thoroughfare Plan, or mode-specific plan such as a Comprehensive Bicycle or Pedestrian Plan)?

**Question # 2)**

Please check if this highway project has a multimodal component that is included in the area's most recently adopted Transportation Plan (such as a Long Range Transportation Plan, Comprehensive Transportation Plan, or mode-specific plan such as a Comprehensive Bicycle Plan or Comprehensive Pedestrian Plan).

**PROJECT NEED TAB**

**PROJECT NEED TAB**

If you click "Yes" for Question # 2 the following appears:

**Multimodal Options:** HOV / HOT, light rail, or bus rapid transit within the highway right-of-way

**Multimodal Connections:** Direct connection to a transportation terminal (airport, seaport, rail depot, intermodal terminal, ferry terminal, transit terminal)

**Multimodal Design Features:** Sidewalks, pedestrian crossings, striped bicycle lanes, wide outside shoulders (greater than or equal to two feet), bus pullouts, transit bypass lanes, transit signal prioritization, bus shelters

**Question # 3)**

Is this highway project regionally significant (for non-attainment areas)? If this highway project is not located in a non-attainment area, please select No.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Acquisition of property for construction of a new road near the West Dudley Street railroad crossing

**Explanation:** The interagency agreement implementing the recommendations of the Greenville Traffic Separation Study was approved by all parties on November 20, 2010. This agreement includes the closing of five existing at-grade railroad crossings on City streets. Three of the crossings are on the CSX rail line which runs generally north-south through the City and two are on the Norfolk-Southern rail line which runs generally west-east through the City. The following is a list of the at-grade crossings that will be closed:

- CSX: W. Gum Road, W. Dudley Street, Alley Street
- Norfolk-Southern: Pitt Street, Skinner Street

One of the crossings, Pitt Street, has a nearby alternative (Beatty Street) that provides similar access. Pitt Street is effectively closed due to the construction of the new railroad wye. Two of the crossings, based on their locations, do not have any options for alternative routes to provide similar access once the crossings are closed. These locations are:

- Skinner Street - Norfolk-Southern rail line blocks any other option except Hooker Road to the west and Beatty Street to the east.
- Alley Street – CSX rail line blocks any other option except Dickinson Avenue to the south and West 5th Street to the north.

Two areas have impacts that can be minimized when their at-grade crossing is closed. When the at-grade crossing at W. Dudley Street is closed, residents of the West Meadowbrook area's only access to the east will be via Legion Street which is the west end of the development to Old River Road to Airport Road.

The other area is W. Gum Street between Memorial Drive and Greene Street. Residents in this area to go east will have to go north on Memorial Drive to turn east onto W. Belvoir Road. Access to the east can be improved for these two groups of residents by constructing connector streets from W. Dudley Street and



W. Gum Road to Airport Road. A map of the area is at Attachment 1. The City presently has an existing right-of-way north of Airport Road to W. Gum Street. The City will have to coordinate its use with CSX as it is an overlapping right-of-way. To construct the road from W. Dudley Street to Airport Road, the City must obtain right-of-way. To obtain the land for this right-of-way, the City must acquire two parcels. One parcel (PN 39038) does not have any buildings on it. The other parcel (PN 39432) has one building. This building is unusable as it was heavily damaged by Hurricane Floyd and must meet current City flood damage prevention ordinances if it is repaired. The City had the properties appraised, provided copies of the appraisals to the owners, and then entered into negotiations. The City has completed negotiations with the owners of the two parcels (PN 39038 and PN 39432). The agreed-upon price for parcel number 39038, the property without the building, is \$47,500. This amount is the greater of the appraised value (\$47,500) and the tax value (\$28,500). The agreed-upon price for the parcel with the building (PN 39432) is \$23,627. This amount is 10% above the greater of the appraised value (\$12,500) and the tax value (\$21,536).

The estimated cost of constructing the road to include purchasing the property is:

	Melody Lane from W. Dudley Street to Airport Road	Melody Lane from Airport Road to W. Gum Street
Property purchase	\$71,127	\$0
Construction	\$204,000	\$136,000
Subtotal	\$275,127	\$136,000
Total	\$411,127	

City staff recommends that City Council fund the purchase price of \$71,127 from the funds remaining from the railroad connector project.

**Fiscal Note:**

The funds remaining from the railroad connector project will be used to fund the purchase of the two parcels. Funds required to construct the two sections of road will have to be identified later and approved by the City Council.

**Recommendation:**

Approve the purchase of two parcels of property, parcel number 39342 for \$23,627 and parcel number 39038 for \$47,500.

Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

Attachments / click to download

 [Melody Lane Map](#)









# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Consultant for redistricting project

**Explanation:** Census data is required by law to be provided to the City no later than April 1, 2011. Upon receipt of the data, a determination will need to be made as to whether population changes within Greenville require the redrawing of the district lines which are utilized to elect Council Members. If a determination is made that the district lines must be redrawn in order to comply with the constitutional requirement of one-person, one-vote, then the City will need to redistrict and have the redistricting plan precleared by the United States Department of Justice in sufficient time to be implemented prior to the commencement of the filing period for candidates for municipal office.

A consultant to assist in the City's redistricting project will need to be retained. The consultant will have the tools and skills necessary to assess and apply the census data in order to determine whether redistricting is required and then to develop a redistricting plan.

The School of Government provided the names of redistricting consultants consisting of North Carolina law firms which will be able to provide legal advice on redistricting, as necessary, and have the redistricting software to prepare the necessary maps. These were contacted and requested to provide information on their qualifications and the manner they would structure a redistricting project for Greenville as to planned work and fee structure. Responses were received from two law firms--Tharrington Smith, LLP, and Mel Black and Associates. The consultant which assisted the Pitt County School Board in their recent redistricting effort was also contacted, but they responded that they would not be able to assist in this project.

Tharrington Smith, LLP, has extensive experience with redistricting, having assisted 33 local jurisdictions (including 14 City Councils) following the 2000 census. They have proposed a flat fee arrangement in the amount of \$12,500 which includes the services necessary to accomplish the project. If additional services are required beyond those specified, additional rates are specified in the

proposal. Attached is a copy of the proposal by Tharrington Smith, LLP.

Mel Black & Associates will be providing redistricting services for the initial time when the 2010 census results are released. Chris Heagarty is their lead attorney in this effort, and he is a former State Representative and the former Executive Director for the North Carolina Center for Voter Education. They have proposed a flat fee arrangement in the amount of \$9,500 which includes the services necessary to accomplish the project. If additional services are required beyond those specified, additional rates are specified in the proposal. Attached is a copy of the proposal by Mel Black & Associates.

Mel Black & Associates has submitted the least expensive proposal. However, there is no requirement that Council retain the firm which submits the lowest proposal since the provision of consulting services is a service. Tharrington Smith, LLP, has more experience in redistricting than Mel Black & Associates. However, both law firms have the ability to provide the services necessary to accomplish the project. After consideration of the proposals, it is recommended that Mel Black & Associates be retained as the consultant for the redistricting project.

After the consultant is retained, the next step will be City Council consideration and approval of the criteria to be utilized by the consultant in developing the redistricting. Attached is a memo from City Attorney Holec which provides information relating to redistricting and a potential delay of the 2011 municipal election.

**Fiscal Note:**

There is \$30,000 budgeted for the redistricting project. The flat fee arrangement of \$9,500 is within the budgeted amount.

**Recommendation:**

Approve retaining Mel Black & Associates to serve as the consultant on the redistricting project.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [Tharrington Smith Proposal Letter](#)
- [MEMO from City Attorney](#)
- [Mel Black Proposal](#)



209 Fayetteville Street  
P.O. Box 1151  
Raleigh, NC 27602-1151

ADAM MITCHELL  
amitchell@tharringtonsmith.com

## MEMORANDUM

TO: Dave Holec  
City Attorney, City of Greenville

FROM: Adam S. Mitchell and Deborah R. Stagner

RE: Proposal for Legal Services—Redistricting

DATE: January 26, 2011

We are pleased to respond to your request for a proposal for legal services. The purpose of this memorandum is to describe Tharrington Smith, L.L.P. and to outline the legal services that we can provide in connection with your upcoming redistricting.

### **Brief History of Tharrington Smith, L.L.P.**

Tharrington Smith, L.L.P. was founded in 1964 and has enjoyed 46 years of distinction in the practice of law in North Carolina. In addition to election law, our firm's practice areas include education law, family law, criminal defense, business and employment law, and civil litigation. The firm and its individual members have received the highest professional rating in the most recognized national listing of law firms, and several members of the firm are listed in *Best Lawyers In America*. Unlike many top-ranked North Carolina firms, Tharrington Smith, L.L.P. has consciously resisted the trend of mergers, expansions and multiple offices in order to maintain the close relationship among attorneys and clients and the professional atmosphere for which it is known.

### **Redistricting and Election Law Practice**

Over the years, our firm has represented counties, school boards, and cities across North Carolina on a variety of redistricting matters. Tharrington Smith, L.L.P. assisted thirty-three local jurisdictions (13 County Boards of Commissioners, 14 City Councils, and 6 Boards of Education) with redistricting following the 2000 census. We are familiar with the legal issues and principles involved in redistricting. We have the technology, including sophisticated mapping software, to identify population shifts and produce alternative redistricting plans to bring the jurisdiction into compliance. We have guided jurisdictions through the preclearance process under Section 5 of the Voting Rights Act. We have experience assisting public entities conduct public hearings. In sum, we have the expertise to offer cost-effective redistricting solutions to clients across the state.

### **Packages and Rates for Redistricting**

For this round of redistricting, we are pleased to offer clients a full package of redistricting services on a flat-fee basis.

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January 26, 2011  
Page 2

### Standard Package

Our standard package includes the following services:

- Unlimited phone and email consultations during plan development
- Development of redistricting plan using Maptitude for Redistricting software, including the creation of up to three alternative plans
- Exporting final plan electronically to County GIS system, County Board of Elections, or other relevant entity, if requested
- Up to two visits to the jurisdiction, which can be used for meeting with the Board and/or conducting a public hearing
- Drafting resolution or ordinance necessary for adoption of new districts
- All necessary work related to submitting the redistricting plan for preclearance under Section 5 of the Voting Rights Act, if applicable

Please note that our standard package does not include any legal defense or litigation related to the creation, adoption, or implementation of redistricting plans.

For your jurisdiction, our fee for the standard redistricting package is **\$12,500**.

### Additional Features

Additional features are billed as described below:

- Creation of alternative plans beyond three
  - \$1,500 per additional plan
- Additional visits
  - If your jurisdiction requires more than two visits from our team, we will bill at an hourly rate of \$250/hour plus mileage.

### **Our Team**

**Adam Mitchell** graduated Magna Cum Laude and Phi Beta Kappa from Duke University in 1998. Prior to attending law school, Mr. Mitchell taught third grade in East Palo Alto, California. During his time in the classroom, he earned a master's degree in Educational Leadership from the University of San Francisco. After teaching for three years, he was elected to the school board as part of a community-wide effort dedicated to improving student achievement and restoring fiscal stability. Mr. Mitchell served a four-year term on the board, and was elected president during his first year in office.

While serving on the school board, Mr. Mitchell entered law school at the University of California at Berkeley School of Law (Boalt Hall). He graduated in 2007 and was awarded academic prizes in civil procedure and trial advocacy.

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January 26, 2011  
Page 3

Mr. Mitchell's practice is focused on education and election law. In his education law practice, Mr. Mitchell assists school systems across North Carolina with a variety of legal issues. He regularly handles complex personnel matters and investigations. Mr. Mitchell advises clients on matters related to open meetings, public records, policy revisions, special education, school construction, and other matters. He has also handled litigation in both state and federal courts on behalf of school system clients.

Mr. Mitchell has assisted individuals and candidates in a variety of elections matters, including successful election protests and residency challenges. He has also represented a political party in litigation concerning ballot access and has handled a variety of matters under the Voting Rights Act, including seeking preclearance under Section 5. Mr. Mitchell is knowledgeable about redistricting issues and looks forward to working with cities, counties, and school districts on redistricting matters following the 2010 census.

Mr. Mitchell lives with his wife and daughter in Raleigh.

**Contact Adam Mitchell:**

919-821-4711 ext. 230  
[amitchell@tharringtonsmith.com](mailto:amitchell@tharringtonsmith.com)

**Deborah Stagner** is originally from Missouri and received her undergraduate degree in political science from the University of Kansas in 1992. Ms. Stagner attended the University of North Carolina School of Law, where she was a published staff member of the *North Carolina Law Review* and earned her Juris Doctor with Honors in 1997. Prior to joining Tharrington Smith, Ms. Stagner served for three years as a law clerk to Chief Justice Henry E. Frye of the North Carolina Supreme Court.

Ms. Stagner's practice includes education and election law and appeals. She has represented local school boards in a wide range of cases in the state and federal trial courts, in administrative proceedings, and on appeal before both the North Carolina Court of Appeals and the Fourth Circuit Court of Appeals in Richmond, Virginia. Ms. Stagner also regularly assists school system clients on matters involving the Equal Employment Opportunity Commission and the U.S. Department of Education Office for Civil Rights. In addition to litigation, Ms. Stagner's practice includes advising clients on employment matters, policy development, special education issues, student records and discipline, and other matters.

Ms. Stagner advised local government entities across North Carolina on redistricting issues following the 2000 census. She has worked with cities, counties and school boards to develop redistricting plans and to obtain pre-clearance under Section 5 of the Voting Rights Act. Ms. Stagner's election law practice also includes representation of clients before the State and county boards of elections.



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Ms. Stagner is a member of the Education Section of the North Carolina Bar Association and the North Carolina Council of School Attorneys.

**Contact Deborah Stagner:**

919-821-4711 ext. 255  
[dstagner@tharringtonsmith.com](mailto:dstagner@tharringtonsmith.com)

**MEL BLACK & ASSOCIATES**  
Attorneys at Law

A. Melton Black, Jr.  
J. Christopher Heagarty

107 Glenwood Avenue  
Raleigh, North Carolina 27603

Telephone  
(919) 865-2577  
Facsimile  
(800) 498-3022

TO: Mr. David Holec, City of Greenville

FR: Chris Heagarty, Mel Black & Associates

RE: Proposal for Redistricting Services

DATE: January 27, 2011

Thank you for your invitation to provide a proposal for redistricting services. I have briefly outlined the legal services that we can provide in connection with redrawing your existing election districts and submitting them for U.S. Justice Department approval. Should you require any additional information, or if you are interested in any services not described within this proposal, please contact us and we would be delighted to discuss these matters in more detail.

**Background**

Mel Black and Associates has built a solid reputation in the field of administrative law. With the addition of Chris Heagarty, the firm is now pleased to offer counseling services in the area of election law. Mr. Heagarty has assembled a team of veteran election law attorneys and political scientists to aid and assist clients in a variety of matters. The firm has remained true to its roots, carefully selecting its clients and turning away other business so that it can guarantee the time and individual attention necessary for quality representation. Our goal is not to have the most clients in North Carolina, but to have the most satisfied clients in North Carolina.

**The Redistricting Process and Our Role**

North Carolina has been a national epicenter for major United States court decisions related to redistricting law. Whether this results from overreaching on the part of some district drafters or overly litigious activists and special interest groups, our state has spawned numerous lawsuits that have been carried all the way to the North Carolina Supreme Court for resolution. Mr. Heagarty has studied the redistricting process since the early 1990's, actively consulting with the insiders involved in these disputes and working to analyze the legal arguments advocated by the litigants.

## Mel Black & Associates - 2

In order to help clients navigate through potential legal challenges, Mel Black & Associates has invested in the technology and personnel necessary to deliver effective redistricting services at an efficient cost.

To address the issue of population shifts and changes to an area's demographic and racial composition, the firm utilizes the industry-standard GIS and mapping software used by state and local governments nationwide. Clients may choose the level of mapping expertise they require, with dedicated GIS professionals available to resolve any complex issues that may arise. Our firm has also retained the services of experienced drafters of redistricting plans used at the state and local level.

For legal matters, including the submission of district plans to the U.S. Department of Justice if required under Section V of the Voting Rights Act, we employ a team approach with experienced litigators and election law attorneys associating with our firm to provide high quality representation in a cost-efficient manner.

### **Scope of Work**

For your consideration, we would propose the following bundle of services on a flat fee basis. We can customize this package as needed to make sure that you receive exactly the services you require and do not pay for unnecessary representation or the duplication of a function best left to your own counsel.

#### **2011 Redistricting Services**

- Development of a redistricting plan for the jurisdiction that complies with the direction provided by the client and conforms to state and federal law, including maps of each district and a map of the whole unit of government.
- All data associated with development of the plan delivered upon mutually agreed media, and maintenance of a database back-up of the data associated with the plan throughout the duration of the project.
- Drafting of a model resolution or ordinance necessary for adoption of the new district plan.
- Preparation and submission of the redistricting plan to the United States Department of Justice, if required by Section V of the Voting Rights Act.
- Up to three alternative plans, in addition to the base plan, with dedicated GIS support for the production of alternative maps and plans.
- Unlimited consultations with the lead attorney by phone or e-mail during the plan development phase.
- Two visits to the jurisdiction for purposes of public hearings, meeting with elected officials and/or staff, and consultation with local elections officials.

## Mel Black & Associates - 3

**This proposal does not include:** expenditures for legal services associated with litigation arising from the creation, adoption, or implementation of the redistricting plan. Such representation is available from Mel Black & Associates and may be negotiated separately.

For your jurisdiction, our proposed legal fee would be: \$9500.

### **Additional Services**

Additional services that you might be interested in are priced out separately as described below:

- Additional plans, beyond the base plan and three alternatives:
  - \$ 1400/plan
- Additional visits to the jurisdiction:
  - \$ 195/hour + mileage
- Additional copies of maps, laminating, bound, or mounting:
  - at cost

### **About our Election Law Team**

Attorney, and former North Carolina State Representative, **Chris Heagarty** joined the firm of Mel Black & Associates following his tenure in the legislature. Chris was the founding executive director of the North Carolina Center for Voter Education, a non-partisan non-profit organization dedicated to improving the quality and responsiveness of our election system, and is regarded as a national expert in the field of campaign and elections. A seasoned political veteran with over 15 years of hands-on experience in public policy development and advocacy, Chris is the author of two law journal articles on the subject of judicial selection methods, has helped develop several significant changes to North Carolina's election laws during the past decade, and has consulted with other state governments on proposed changes to their own election systems. Chris has hosted a statewide symposium of election law experts on behalf of North Carolina Central University's School of Law dedicated specifically to legal issues likely to emerge in this decade's redistricting, and has organized several public meetings on the subject during the last decade's redistricting.

Early in his career, Chris worked for the North Carolina Association of Electric Cooperatives and represented cooperative members in 93 of North Carolina's 100 counties, traveling extensively through rural and small-town communities around the state, working to promote rural economic development and infrastructure improvements in those areas.

## Mel Black & Associates - 4

Chris retired from the Center in 2007 and obtained his juris doctorate degree at the North Carolina Central University School of Law, graduating Magna Cum Laude at the age of 40. He remains a frequent commentator on North Carolina's election laws, advising state governments on issues of judicial selection and campaign reform, and speaking before such groups as the American Bar Association, the American Judicature Society, the Justice at Stake Campaign, the Lawyers Committee for Civil Rights under the Law, and the National Center for State Courts. He is a member of the American Bar Association and North Carolina Bar Association, including the NCBA's section on Constitutional Rights and Responsibilities.

Mel Black & Associates is proud to associate with attorney **John Wallace** of Wallace Nordan LLP. John has over thirty-five years of legal experience in the fields of commercial litigation and election law. He represents a variety of corporate clients, as well as trade associations, nonprofit organizations, political party committees, state and federal PACs, and candidate committees. As such, he is active in federal courts, state courts and in administrative forums, including the State Board of Elections and the Federal Election Commission.

In his election law practice, John represents political parties and candidates, state and federal trade associations and business affiliated committees, and various nonprofit organizations and their affiliated political committees. John advises his clients on compliance with state ethics and campaign finance laws and regulations and represents clients before the State Ethics Commission. John speaks frequently at continuing legal education seminars and other gatherings. Recent presentation topics included business litigation issues, unfair trade practices, fraud, election protests, campaign finance issues and I.R.C. § 527 political organizations.

Mel Black & Associates is proud to associate with political scientist **Kevin LeCount**. Kevin has consulted for North Carolina clients since 1996 and currently provides political management service for a large state membership association. Mr. LeCount gained experience from 2001-2003 assisting the leadership of the North Carolina General Assembly in the redistricting of state legislative and congressional district maps.

Mel Black and Associates is also proud to associate with **Christopher Ketchie**. Christopher is originally from Lexington, North Carolina, the son of a small business owner. After Christopher graduated with his undergraduate degree from the University of North Carolina at Chapel Hill in 2002, he went on to receive his master's degree from North Carolina State University with a concentration in Geographic Information Systems. He has worked in qualitative social research with North Carolina State University, US Forest Service, and National Incident Management Organization (NIMO), in matters of population, government efficiency, and public safety. Christopher currently specializes in incorporating demographic data with current U.S. Census statistical and political boundaries to create redistricting plans that comply with state and federal laws, including the Voting Rights Act of 1965.


## Mel Black & Associates – 5

### **Contact Information**

For more information about this proposal, please contact Chris Heagarty at:

(919) 582-2126  
[Chris@MelBlackLaw.com](mailto:Chris@MelBlackLaw.com)  
107 Glenwood Avenue  
Raleigh, NC 27603

Thank you for your consideration of this proposal.

TO: Mayor and City Council Members  
FROM: David A. Holec, City Attorney   
DATE: February 2, 2011  
SUBJECT: Redistricting/Potential Delay of 2011 Municipal Election

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Census data is required by law to be provided to the City no later than April 1, 2011. Upon receipt of the data, a determination will need to be made as to whether population changes within Greenville require the redrawing of the district lines which are utilized to elect Council Members. If a determination is made that the district lines must be redrawn in order to comply with the constitutional requirement of one-person, one-vote, then the City will need to redistrict and have the redistricting plan precleared by the United States Department of Justice in sufficient time to be implemented prior to the commencement of the filing period for candidates for municipal office.

#### **When is Redistricting Required**

The equal protection clause of the United States Constitution requires that each electoral district must be substantially equal in population so that each person's vote counts about the same. In general, if the overall deviation from the ideal district of the most populous district and the least populous district is greater than 10%, redistricting will be required.

The 10% rule works as follows:

The new population for the City (based upon the census data) is divided by the total number of seats which are elected by districts. That gives the "ideal" population per seat elected by a district. Next, the new census numbers are applied to the current electoral districts. The new population of the most populous district is determined and the percentage by which it exceeds the ideal population is determined. Next, the population of the least populous district and the percentage by which it is short of the ideal district is determined. Those two percentages are then added. If the total is 10% or more, then redistricting is required.

#### **Potential Delay of Municipal Election**

The filing period for the November 8, 2011, Greenville municipal election will commence at noon on the fourth Monday in July (July 25, 2011) and conclude at noon on the second Friday in August (August 12, 2011). In recognition that the time may be too short to accomplish the redistricting and preclearance prior to the commencement of the filing period, the municipal election statutes provide for the possibility of delaying the 2011 elections. City Council has the authority to approve a resolution, after notice and a public hearing, to delay the election if it determines (1) that the population imbalances are so significant that it would not be lawful to hold the next election using the current electoral districts and (2) that it most likely will not be possible to adopt the changes to the electoral districts and obtain federal approval before the third business day prior to the opening of the filing period taking into consideration the time that will



be required to afford ample opportunities for public input. If the election is delayed from November 8, 2011, it would be held on the primary election date for county officers in 2012 (May 8, 2012). The filing period for the May 8, 2012, election will commence at noon on February 13, 2012, and conclude at noon on February 29, 2012.

Using this procedure to adopt a resolution to delay the election has occurred with Greenville in the past. After the 2000 Census, City Council approved a resolution which delayed the election. However, redistricting was able to be accomplished and precleared in sufficient time prior to the commencement of the filing period so that the election was held on the regular date.

### **Non-Retrogression**

If the City is required to redistrict, Section 5 of the Voting Rights Act of 1965 requires that the redistricting plan is to be precleared by the United States Department of Justice. The Justice Department has a sixty (60) day period after the filing of a submission requesting preclearance in which to determine whether to preclear unless it grants a request for expedited consideration. Due to the number of redistricting plans the Justice Department will be considering after the census data is released, the grant of expedited consideration is difficult to obtain. However, in 2000, expedited consideration was granted for Greenville which allowed the election to be held on the regular date.

The Justice Department reviews the redistricting plan to determine whether the change makes it less likely that minorities will be able to elect candidates of their choice. This standard is known as "retrogression."

The City's redistricting plan must meet non-retrogression analysis under Section 5 of the Voting Rights Act of 1965. The City's current districts basically allocate one-third of the full-voting seats on the City Council to electable minority districts. The plan should basically allocate one-third of the seats to electable minority districts. It is possible that in order to meet the non-retrogression analysis that the City will need to consider changing its current system of electing five (5) Council Members by district and one (1) Council Member at-large to electing six (6) Council Members by district and none at-large. Whether this will be necessary will not be known until the census data is received and efforts to establish districts under the current system, while meeting non-retrogression analysis, have been undertaken and determined to not be achievable. The goal will be to develop a redistricting plan which retains the current system.

### **Next Step**

City Council is scheduled to consider retaining a redistricting consultant at its February 10, 2011, meeting. After a redistricting consultant is retained, the next step in the process will be consideration and approval by City Council of the criteria to be utilized by the consultant in developing the redistricting plan. For your information, attached are the criteria approved by City Council for the redistricting which occurred after the 2000 census data was received.

cc: Wayne Bowers, City Manager



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

**Title of Item:** Legislative initiatives for the 2011 Session of the North Carolina General Assembly

**Explanation:** The North Carolina General Assembly reconvened at noon on January 26, 2011. The deadline for submitting bills to the General Assembly's Legislative Bill Drafting and the deadline for the introduction of bills have been established. For the House, local bills are to be submitted to Bill Drafting no later than March 16, 2011, and filed no later than March 30, 2011, and public bills are to be submitted to Bill Drafting no later than March 1, 2011, and filed no later than March 9, 2011. For the Senate, local bills are to be submitted to Bill Drafting no later than March 1, 2011, and filed no later than March 9, 2011, and public bills are to be submitted to Bill Drafting no later than March 11, 2011, and filed no later than March 23, 2011.

Discussion by Council of issues and local acts which it desires to pursue with our local legislative delegation during this Session should occur at this time so that the City's legislative initiatives can be developed and identified. Resolutions which request the City's local legislative delegation to seek enactment of identified initiatives during the Session are included for Council's consideration for the initiatives identified below. Also included is a blank resolution to utilize if Council identifies another initiative not on this list.

The City is not alone in its efforts to secure legislation which will assist it in providing services to its citizens. The North Carolina League of Municipalities, in representing its more than 530 member cities, towns, and villages, promotes the common interests of municipalities in the General Assembly. Attached is a copy of the NCLM Advocacy Agenda 2011-2012 and the NCLM Core Municipal Principles 2011-2012. These were approved by the membership of the League at its Advocacy Goals Conference on January 20, 2011.

Some potential legislative initiatives for Council to consider for this session or future sessions have been developed and are as follows:

### **Preservation of Municipal Revenue Sources**

Support efforts to preserve the existing revenue sources of cities. A major issue of the 2011 Session will be approval of the budget for the State. There will be a significant revenue shortfall for the State which will need to be addressed. This will result in either a reduction of State expenditures or an increase in State revenues. In past sessions, proposals were considered which involved transferring municipal revenue sources to State revenue sources. Cities are reliant upon these revenue sources in order to provide services to their citizens. Any transfer of municipal revenue sources from cities will result in passing the State's budget problems on to cities. Cities, in turn, would then be required to either reduce services provided to citizens or increase revenues. It is important that existing municipal revenue sources be preserved.

### **Update of Current Law on City-Initiated Annexation**

Support the enactment of reasonable adjustments to the current law on City-initiated annexation while retaining the general framework and principles of the current law. North Carolina's annexation laws have helped keep tax rates low for city residents and businesses, attract new jobs, and protect property values, the environment, and bond and credit ratings. Cities provide services and amenities such as transportation, public safety, recreation, economic development, shopping, and jobs which benefit not only city residents, but also those living outside the city. The current law is based on the principle that urban areas near a city which benefit from city services and amenities should become a part of the city and help pay for the cost of the benefits which they are enjoying. The North Carolina League of Municipalities has pledged to work with legislators to develop reasonable amendments to the law. However, opponents to City-initiated annexations are seeking more extensive amendments which would result in many appropriate annexations not being accomplished. It is important that cities maintain the ability to annex on their own initiative when the area is developed to specified urban standards and the city is committed to providing municipal services.

### **Enforcement of ABC Laws by Local Law Enforcement**

Seek legislation to grant more flexible authority for local law enforcement officers to enforce ABC laws. There is a need to supplement and enhance the enforcement efforts of the ABC laws. There are a limited number of ABC officers and ALE officers. In Pitt County there are only 3 ABC officers and in the 9-county ALE district which includes Pitt County, there are 6 ALE officers, a supervisor and a deputy supervisor. This limited number of ABC and ALE officers is not sufficient to adequately enforce the ABC laws with the number of permitted establishments and the geographic area involved. Local law enforcement involvement would provide additional resources to enforce the ABC laws. Compliance with the ABC laws by establishments would reduce the likelihood of illegal activities at the establishments and potential violence.

### **Local Act: Revenue Source from Establishments Having ABC Permits**

Seek legislation to provide the authority for the City of Greenville to levy a tax or fee on the sale of alcoholic beverages at all or a class of establishments having ABC permits with the proceeds being dedicated for law enforcement purposes. The City of Greenville is required to expend significant resources to address the adverse impacts caused by certain establishments which have ABC permits. The City of Greenville incurs annual expense of approximately \$500,000 for law enforcement personnel in order to maintain public safety in the downtown area due to the concentration of private clubs in the downtown area. It is equitable to fairly apportion the expense borne by the City of Greenville to the establishments causing the need for the expenditure.

**Local Act: Protection of Email Subscriber Lists**

Seek legislation which provides that an email address list of individual subscribers maintained by the City of Greenville is opened to public inspection but a copy of the list is not required to be provided. Under current law, upon receipt of a public records request, the City would be required to provide copies of its email address lists of individual subscribers to a requester. Wake County, Yadkin County, and certain local governments in Wake County received a local act (Session Law 2010-83) preventing this. Adding Greenville to the coverage of this local act would improve the effectiveness of these lists as communications resources and reduce the privacy concerns of citizens.

**East Carolina University School of Dental Medicine**

Support East Carolina University in its efforts to receive the start-up operating funds necessary for the ECU School of Dental Medicine. The new School of Dental Medicine must have \$3.5 million of recurring operating funds in FY 11-12 and \$1.5 million in FY 12-13 in order to open the school and begin serving students in the Fall of 2011. The School of Dental Medicine will have a significant economic impact on the City of Greenville and provide dental services to underserved populations of North Carolina. The information sheets for ECU's Legislative Priorities for 2011-2013 are attached.

\* \* \*

The potential legislative initiatives listed above do not include any which may arise as a result of Council discussion of items which are scheduled to be considered at City Council's February 21, 2011 meeting. Items on the agenda for the February 21, 2011 meeting which may result in a request for General Assembly action include Senator for Pitt County, City Council Terms, Citizens Police Review Board, and Mayor Pro-Tempore Selection Process.

**Fiscal Note:**

The development of the Legislative Initiatives will not have a fiscal impact.

**Recommendation:** Identify the initiatives which Council desires to include in its legislative initiatives and approve the resolutions relating to these identified initiatives.

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Viewing Attachments Requires Adobe Acrobat. [Click here](#) to download.

**Attachments / click to download**

- [NCLM 2011/12 Municipal Advocacy Goals](#)
  - [NCLM 2011/12 Core Municipal Principles](#)
  - [ECU Legislative Priorities](#)
  - [RESOLUTION SUPPORTING THE PRESERVATION OF MUNICIPAL REVENUE SOURCES 862647](#)
  - [RESOLUTION SUPPORTING LEGISLATION UPDATING CURRENT LAW ON CITY INITIATED ANNEXATION 862631](#)
  - [Resolution Enforcement of ABC Laws by Local Law Enforcement 887971](#)
  - [Establishments Having ABC Permits 887958](#)
  - [Resolution re Protection of Email Subscriber Lists 887972](#)
  - [Resolution re ECU School of Dental Medicine Funds 887993](#)
  - [2011 Legislative Initiative Blank Resolution 887976](#)
-

RESOLUTION NO. \_\_\_\_\_ - 11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE SUPPORTING  
THE PRESERVATION OF MUNICIPAL REVENUE SOURCES

WHEREAS, cities are reliant upon municipal revenue sources in order to provide services to its citizens such as public safety, recreation, economic development, and transportation;

WHEREAS, although it is expected that there will be a significant revenue shortfall which the North Carolina General Assembly will be required to address as it approves the State budget, the State's budget problems should not be passed on to cities by transferring municipal revenue sources to become State revenue sources;

WHEREAS, it is important that existing municipal revenue sources be preserved for cities; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to take the necessary action during the 2011 Session of the North Carolina General Assembly which will preserve municipal revenue sources;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby express its support for the preservation of municipal revenue sources and that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to take the necessary action during the 2011 Session to preserve municipal revenue sources.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

RESOLUTION NO. \_\_\_ -11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SUPPORTING THE ENACTMENT OF LEGISLATION UPDATING THE CURRENT LAW  
ON CITY-INITIATED ANNEXATION

WHEREAS, North Carolina's annexation laws have helped keep tax rates low for city residents and businesses, attract new jobs, and protect property values, the environment, and bond and credit ratings;

WHEREAS, cities provide services and amenities such as transportation, public safety, recreation, economic development, shopping, and jobs which benefit not only city residents, but also those living outside the city;

WHEREAS, the current law on city-initiated annexation is based upon the principle that urban areas near a city which benefit from city services and amenities should become a part of the city and help pay for the cost of the benefits which they are enjoying;

WHEREAS, it is important that cities maintain the ability to annex on their own initiative when the area is developed to specified urban standards and the city is committed to providing municipal services; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to enact legislation which would improve the current law on city-initiated annexation while retaining the general framework and principles of the current law;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to enact legislation containing reasonable adjustments to the current law on city-initiated annexations while retaining the general framework and principles of the current law.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



RESOLUTION NO. \_\_\_ -11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SEEKING THE ENACTMENT OF LEGISLATION GRANTING MORE  
FLEXIBLE AUTHORITY TO LOCAL LAW ENFORCEMENT OFFICERS  
FOR ENFORCEMENT OF ABC LAWS

WHEREAS, there is a need to supplement and enhance the enforcement efforts of the ABC laws since there are a limited number of ABC and ALE officers to adequately enforce the ABC laws due to the number of permitted establishments and the geographic area involved;

WHEREAS, local law enforcement involvement would provide additional resources to enforce the ABC laws;

WHEREAS, compliance with the ABC laws by establishments would reduce the likelihood of illegal activities at the establishments and potential violence; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to enact legislation which would grant more flexible authority for local law enforcement officers to enforce ABC laws;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to enact legislation granting more flexible authority for local law enforcement officers to enforce ABC laws.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

RESOLUTION NO. \_\_\_\_\_ - 11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SEEKING ENACTMENT OF LEGISLATION RELATING TO A REVENUE SOURCE  
FROM ESTABLISHMENTS HAVING ABC PERMITS

WHEREAS, the City of Greenville is required to expend significant resources to address the adverse impacts caused by certain establishments which have ABC permits including incurring an annual expense of approximately \$500,000 for law enforcement personnel in order to maintain public safety in the downtown area due to the concentration of private clubs in the downtown area;

WHEREAS, an equitable manner to provide the funds for the expenses incurred by the City of Greenville for law enforcement purposes relating to ABC permitted establishments is by a tax or fee on the establishments causing the need for the expenditure; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to enact legislation which would authorize the City of Greenville to levy a tax or fee on the sale of alcoholic beverages at all or a class of establishments having ABC permits with the proceeds being dedicated for law enforcement purposes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to enact legislation which will authorize the City of Greenville to levy a tax or fee on the sale of alcoholic beverages at all or a class of establishments having ABC permits with the proceeds being dedicated for law enforcement purposes.

This the 10<sup>th</sup> day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

RESOLUTION NO. \_\_\_ -11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SUPPORTING THE ENACTMENT OF LEGISLATION RELATING TO THE PROTECTION  
OF EMAIL SUBSCRIBER LISTS

WHEREAS, under current law, upon receipt of a public records request, the City of Greenville would be required to provide copies of its email address lists of individual subscribers to a requestor;

WHEREAS, Wake County, Yadkin County, and certain local governments in Wake County received a local act (Session Law 2010-83) preventing this and adding Greenville to the coverage of this local act would improve the effectiveness of email address lists of individual subscribers as communications resources and reduce the privacy concerns of citizens; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to enact legislation which would provide that email address list of individual subscribers maintained by the City of Greenville is opened to public inspection but a copy of the list is not required to be provided;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to enact legislation which provides that an email address list of individual subscribers maintained by the City of Greenville is opened to public inspection but a copy of the list is not required to be provided.

This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

RESOLUTION NO. \_\_\_\_\_ - 11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SUPPORTING EAST CAROLINA UNIVERSITY IN ITS EFFORTS TO  
RECEIVE THE OPERATING FUNDS NECESSARY FOR THE  
ECU SCHOOL OF DENTAL MEDICINE

WHEREAS, the North Carolina General Assembly will be considering, during the 2011 Session, a request by East Carolina University for funding for the new ECU School of Dental Medicine;

WHEREAS, the new School of Dental Medicine must have \$3.5 million of recurring operating funds in FY 11-12 and \$1.5 million in FY 12-13 in order to open the school and begin serving students in the Fall of 2011;

WHEREAS, the City Council of the City of Greenville recognizes the significant economic impact and benefits to the City of Greenville and its citizens which would be generated by the School of Dental Medicine and provide dental service to underserved populations of North Carolina; and

WHEREAS, it would be appropriate for the North Carolina General Assembly to take the necessary action which would provide funds for the new School of Dental Medicine at East Carolina University;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby express its support of East Carolina University in its effort to receive funding for the new ECU School of Dental Medicine and that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to take the necessary action to provide the operating funds necessary for the ECU School of Dental Medicine sought by East Carolina University.

This the 10<sup>th</sup> day of February, 2011.

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Patricia C. Dunn, Mayor

ATTEST:

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Carol L. Barwick, City Clerk

RESOLUTION NO. \_\_\_ -11  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
SEEKING THE ENACTMENT OF LEGISLATION RELATING TO

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BE IT RESOLVED by the City Council of the City of Greenville that it does hereby respectfully request the North Carolina General Assembly, through the delegation representing the House and Senate districts of which Greenville is a part, to enact legislation which \_\_\_\_\_

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This the 10th day of February, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

# NCLM 2011-12 Municipal Advocacy Goals

*Adopted January 20, 2011*

**T**HE LEAGUE MEMBERSHIP ADOPTED THE FOLLOWING TOP PRIORITY GOALS FOR THE 2011-2012 GENERAL ASSEMBLY. The Advocacy Goals Conference on January 20 was the final step in a deliberative, inclusive, member-driven process. The League's three standing legislative action committees will go back to work and consider recommendations to the League Board of Directors on other issues that affect our municipalities.

Municipal officials all across North Carolina and the League advocacy staff look forward to working with all members of the General Assembly to accomplish these goals. All North Carolinians have a stake in assuring that our cities and towns remain vibrant and open for business. As the League's new tag line says, it's about good government and great hometowns.

- 1** Seek legislation reforming annexation laws that ensures the ability of a city to grow in a reasonable manner, while providing quality municipal services on a timely basis.
- 2** Seek legislation to allow municipal creation or extensions of extra-territorial jurisdictions (ETJ) without county approval.
- 3** Support a system of liquor sales that maintains a local referendum about the decision to sell liquor, preserves local control over the location and density of liquor outlets, preserves the local revenue stream from liquor sales, and increases the authorized local permit fees statewide.
- 4** Support legislation to expand the sales tax base to include services.
- 5** Seek legislation to protect the privacy of municipal residents by limiting public access to lists of email addresses submitted by citizens to municipalities.
- 6** Seek legislation to strengthen the role of municipalities in the approval, renewal and revocation of ABC permits.
- 7** Seek legislation to allow Powell Bill funds to be used for sidewalks and walking paths that are adjacent to, but not located within, the right-of-way of State-maintained roads.
- 8** Seek legislation enhancing the authority of cities to own and operate broadband systems for their citizens, and providing incentives for last mile public-private partnerships. Include authority for cities that currently have operating broadband systems to continue.
- 9** Seek legislation to allow all municipalities to adopt a prepared meals and beverage tax.
- 10** Seek legislation creating a state bond program for upgrades to water and wastewater treatment systems, expansion of stormwater programs and assured water supplies.
- 11** Seek legislation ensuring significant municipal decision-making authority and respect for local ordinances in the design of transportation projects across all NCDOT Divisions, to lower congestion, enhance quality of life, improve aesthetics, improve public safety and bolster public health for city residents, regardless of the city's financial participation in a project.

MORE

- 12** Support legislation permitting a governmental entity to seek an order of abatement where a property may have some legitimate use, but is also the source of regular criminal nuisance activity.
- 13** Support the equal application of water quality management rules that impact cities to N.C. municipalities, counties, state agencies and private operations, require payment of city stormwater fees by all state agencies, and require maintenance of all stormwater structures by permitted entities.
- 14** Seek legislation to: 1) require that counties conduct a public hearing before approving a resolution choosing the method of sales tax distribution; 2) delay the implementation of a change in method until July 1 of the calendar year following the adoption of the change; and 3) phase in the change in method over four years.
- 15** Seek legislation to increase the existing municipal vehicle fee for public transportation from \$5 to a maximum of \$20, and allow it to also be used for pedestrian and bicycle projects.
- 16** Seek legislation to grant more flexible authority for local public safety officers to enforce ABC-related laws.
- 17** Seek legislation to allow all municipalities to adopt impact fees to pay for growth-related infrastructure and services.
- 18** Support legislation to increase funding for the State Mobility Fund in order to support regional congestion mitigation projects, interstate maintenance and a Powell Bill supplement; and to provide additional funding sources for State transportation projects.
- 19** Seek legislation to revise the local land transfer tax so that: 1) it can be adopted without a referendum; and 2) municipalities receive a share of the revenues.
- 20** Support legislation to reform the municipal business privilege license tax by: 1) eliminating exemptions and caps for specific categories of businesses; 2) specifying the appropriate bases for the tax; 3) requiring municipalities to adopt a rate schedule that applies to all types of businesses within a municipality; 4) limiting the amount of taxes paid by businesses that have business activity within a municipality but no business location within it; and 5) capping the amount of tax that can be imposed on any single business location.
- 21** Seek legislation to allow municipalities to establish vacant housing receivership programs for the purpose of rehabilitating structures not meeting minimum housing standards and transferring them to responsible ownership.
- 22** Support legislation establishing a water permitting system that protects existing municipal withdrawals, allows for future growth, includes all withdrawers and accounts for all downstream users.
- 23** Support legislation providing municipalities with the authority to impose a fee to recover the costs of vehicle accident and fire response from at-fault drivers and parties responsible for fires, up to a statutory maximum amount.
- 24** Support legislative and regulatory efforts for efficiencies in water, wastewater and stormwater permitting processes.
- 25** Seek legislation to classify reclaimed water as a resource water, and study the injection of treated water into aquifers.



## **NCLM Core Municipal Principles 2011–2012**

*The following principles provide a foundation for advocacy and strategic planning to ensure excellence in municipal government as our North Carolina cities and towns serve their citizens and promote a “hometown” quality of life unique to North Carolina communities:*

### **Adequate Municipal Authority**

*Municipalities need a broad grant of authority and flexibility to allow elected officials to make decisions that effectively and efficiently meet the ever-expanding needs of their citizens.*

Voters elect municipal officials to decide significant issues in the public interest, which varies within the unique context of each municipality. Accordingly, the League stands opposed to legislation preempting municipal authority and to measures designed to otherwise erode local control of significant municipal issues. Municipal grants of authority should be broadly construed to include supplemental powers reasonably necessary to carry out the functions.

### **Municipal Revenues**

*Sound municipal government requires preservation and enhancement of the existing tax and revenue structure.*

The property tax, state-collected local taxes and revenues, and various local option revenue sources are all integral components of a stable, reliable and balanced revenue stream for municipalities. State-collected revenues should be distributed reasonably and equitably, providing local elected officials autonomy to best determine their use. New revenues, including those that may be obtained through local option revenue sources, are essential to meet the future needs of municipal citizens, to provide the infrastructure necessary for vital public services, and to fairly apportion the costs of growth. It is also imperative that any lost or repealed revenues be replaced, retroactively if necessary.

### **Municipal Expenditures**

*Fiscal integrity and sound financial management require flexibility to borrow, invest and expend funds for public purposes.*

Cities are challenged to use the funds entrusted to them in the most efficient and responsible manner possible. Flexibility in financing options and expansion of municipal investment authority provide basic tools to help meet that challenge. The capacity to determine the nature and amount of an expenditure, based upon the totality of factors involved within the unique context of each city, is essential to economic efficiency and management. Cities need discretion to fund investments in infrastructure and local improvements such as affordable housing, redevelopment projects, and business and economic incentives.

### **Mandates**

*The state and federal governments should not enact burdensome and expensive mandates without adequate local authority, flexibility and additional financial resources for implementation and continuation.*

Mandates to perform functions or activities placed upon cities by the state or federal governments, either directly or through agency or administrative action, should be accompanied by funds for their implementation and continuation. Cities should not be required to appropriate funds for particular programs or functions, or to contract with private companies for public services. Management and human resources decisions must remain in the sound discretion of the municipal governing body.

MORE

## Open Government and Ethical Conduct

*All levels of government should adhere to principles of responsible open government and ethical conduct.*

The League supports the principle of openness in government and endorses the concept that meetings of governmental bodies should be open to the public. There are reasonable exceptions that should permit closed sessions when such limitations are in the public interest. Public records should also be available to the public with reasonable exceptions for protection of confidentiality that are in the public interest. Elected and appointed officials should adhere to standards of conduct that promote public confidence in our system of governance. Additional requirements regarding openness, access to records, conflicts of interest and ethical conduct should not be applied to local governments only.

## Municipal Liability

*Fundamental rules pertaining to the liability of governmental entities should apply across all levels of government.*

Municipalities continually seek to provide a wide range of services to meet the needs of their citizens in furtherance of the public health, safety, and welfare. Accordingly, the League stands opposed to proposals placing burdensome liability upon municipalities, including measures that seek to erode well-established principles of immunity or other defenses, and to proposals unfairly imposing cost-shifting upon municipal taxpayers.

## Municipal Growth

*Healthy municipal centers are essential to the economic viability of the state. Municipalities must maintain the ability to expand and provide the higher level of services demanded by the citizens.*

Cities and towns are the economic engines of the state and must be permitted to grow in an orderly and reasonable manner that supports the continued economic development of the state. New growth in and around existing municipalities should utilize existing infrastructure for the most efficient use of public revenue. Annexation ensures that all those who benefit from a municipality through use of the infrastructure, municipal amenities, proximity to jobs, commerce, and cultural resources, bear a fair share of the cost of providing those services. The legislature should not permit a new incorporation whose primary purpose is to prevent a proposed annexation without evidence of its ability to provide the necessary services. Municipalities are encouraged to enter into agreements to foster inter-local cooperation and long-range planning.

## Municipal Services

*Municipalities require adequate authority and flexibility to finance, operate and manage essential services to protect public safety, promote sanitation, health and welfare, and improve the quality of life.*

In order to serve growing urban populations with water, sewer, transportation, police protection, fire protection, solid waste, stormwater, electricity, parks and recreation, public housing, and other services, municipalities need the autonomy to make appropriate management, human resources, financial, and operational decisions. With regard to enterprise services, municipalities must be free to determine appropriate rates and service areas, and free to determine when it is appropriate to enter into regional or multi-jurisdictional arrangements. State taxes or fees should not be imposed on municipal enterprise services. Furthermore, the power of eminent domain must be preserved as a means of acquiring property to provide municipal infrastructure, facilities, and services for the public benefit.

MORE

## Planning and Land Use

*Municipal planning authority must be maintained for sound growth, long-range planning and growth management.*

Long range municipal planning is an essential aspect of municipal health and economic viability. Vibrant, well-planned cities are the economic engines of the state, attracting new businesses and industries, while providing the quality of life expected by residents in and around municipalities. Public participation and private property rights are key elements of growth management. For this reason, the government closest to the people is the best venue for making land use decisions. Municipal authority must be maintained and enhanced to allow for more flexibility and options. Necessary tools for planning include the ability to zone, to review and approve buildings and new development, exercise extraterritorial jurisdiction, urban redevelopment, and economic development strategies. Municipalities must have the capability to protect and plan for infrastructure, as well as ensure that the public health, safety and welfare of the citizens are preserved.

## Environmental Protection

*For municipalities to be successful partners in environmental protection, environmental laws, practices and regulations must be science-based, feasible, and equitable, with flexibility to comply in the most cost-effective manner.*

Local governments are partners with state and federal agencies in protecting the environment and quality of life for our citizens, serving as both regulators and members of the regulated community. As regulators, municipalities need adequate authority to set standards, enforce requirements, and perform inspections. The discretion to impose more stringent requirements than the state when necessary to protect public health or the environment must not be impaired, and delegation of any state regulatory programs must be voluntary. The state should continue to provide technical assistance to local governments as well as its share of financial resources for the implementation of environmental programs. In supporting environmental programs, local governments as well as the state should maintain the ability to make reasonable, equitable, and justifiable adjustments in permitting and compliance fees to help recover the costs of regulatory programs.

As members of the regulated community, municipalities must be allowed full participation in the development of new environmental laws and regulations. Environmental laws, practices and regulations should be based on sound science, be technologically and economically feasible, apply equitably to all contributors of pollution, allow the flexibility to attain standards using those practices best suited to the topographical, hydrological, atmospheric, and other characteristics of the jurisdiction and provide incentives that recognize existing environmental programs. The state and federal governments should fully analyze costs associated with environmental requirements before adopting them.

*This League endorses and supports the current National Municipal Policy and will actively support NLC efforts with respect to federal legislation and issues unless there is a clear conflict with the adopted policies of this League.*



**LEGISLATIVE PRIORITIES\***  
**2011 – 2013**

**OPERATING BUDGET**

- School of Dental Medicine
  - Request \$3.5 million in recurring state appropriations for FY11-12 and \$1.5 million for FY12-13. This funding will assist in the implementation of the new School of Dental Medicine and help us secure accreditation.

**POLICY PROPOSALS**

- ECU Rental Receipts
  - Allow ECU to retain rental receipts from health care service providers co-located in campus facilities owned by the state to improve access to health care.
  
- Board of Governors Dental Scholarship-Loan Program
  - Add ECU School of Dental Medicine students as eligible recipients of the UNC Board of Governors Dental Scholarship Loan Program.

\*The legislative priorities above have been formally approved by the UNC Board of Governors.

East Carolina University... Tomorrow starts here.  
*2011 North Carolina General Assembly*

**ISSUE: START-UP OPERATING FUNDS – ECU SCHOOL OF DENTAL MEDICINE**

**REQUIRED OUTCOME:** The new School of Dental Medicine at ECU must have \$3.5 million of recurring operating funds in FY11-12 and \$1.5 million in FY12-13 in order to open the school and begin serving students in the fall of 2011.

**OUR CHALLENGE:** The new dental school's primary mission is to prepare the next generation of dentists to serve in rural and other dentally underserved areas of North Carolina. To accomplish that mission, the new dental school will:

- Recruit students from rural and underserved communities in our state;
- Provide students with an innovative curriculum that gives them the special knowledge and experience needed to deliver care in underserved communities;
- Create community service learning centers to both educate the dental students and deliver much needed dental and oral health services in dentally underserved communities across North Carolina;
- Employ approximately 67 faculty + 95 staff members in Greenville and in rural communities across North Carolina;
- Purchase services and supplies needed to operate our dental clinics from North Carolina companies.

**FACING THE FACTS:** During the last legislative session, the dental school was fortunate to receive approximately \$6 million to continue the implementation of our national model for dental education. Due to this investment by the state, the school received a positive report from the accreditation site visitors and additional funding was promised to maintain our commitment to North Carolina students. Thus, in FY2012, a total of **\$3.5 million is required** to move forward.

In order to maintain accreditation, the school must be able to show accreditors that it has the operating funds to support four full years of dental education. Without these operating funds, we will be unable to continue to recruit and hire the faculty needed to create the curriculum and implement this "break the mold" model of dental education. In addition, the employees needed to support the faculty and help run the community service learning centers cannot be hired without the requested funds.

**THE BOTTOM LINE:** In spite of being one of the most populated yet rural states, North Carolina ranks 47<sup>th</sup> in the US in dentists per capita. The diversity of NC dentists is also low. Approximately 32 out of 100 NC counties have two or fewer dentists per 10,000 people, and most dentists in rural communities are near or at retirement age. Dental disease (pain) is the leading cause of kids missing school. Dental disease is the most common health problem in the U.S. North Carolina must have the new ECU dental school up and running as soon as possible to fix these problems and serve the unmet dental needs of our State. Without required operating funds, it will not happen.





## UNC POLICY AGENDA IMPROVING HEALTH SERVICES

The University of North Carolina is committed to efficiency and effectiveness as we deliver on our mission to educate and prepare the workforce of tomorrow. In light of the current budget challenges, the Board of Governors recommends the following policy agenda items to improve health services for our state.

### 1. ECU Rental Receipts: Co-location with Health Care Service Providers

- In order to dramatically improve patients' access to high quality care, and thus improve patient outcomes and patient satisfaction, ECU periodically enters into joint health care ventures with external health care providers. The best practice model is for these external providers to co-locate on our campus and make rental payments for the use of facilities at ECU.
- ECU requests the authority to retain rental proceeds paid by these health care service providers that co-locate in any clinical facility allocated to ECU and constructed or purchased in whole or part with funds provided by the State of North Carolina.
- While the most developed plan at the present is for a joint venture for ambulatory cancer services with Pitt County Memorial Hospital and ECU, the university anticipates there will be other clinical programs which may call for the leasing of clinical facilities to outside entities.
- In a difficult economic climate, we fully understand that funding will be limited for the state to cover our indigent care needs to the fullest extent; however, allowing the university to retain lease payments on joint ventures with health care service providers offers an indirect opportunity for the State to support the dire needs of the Brody School of Medicine and the medical needs of indigent patients in the east.

### 2. UNC Board of Governors Dental Scholarship-Loan Program

- ECU requests that the legislature add ECU dental students as eligible recipients of the UNC Board of Governors Dental Scholarship-Loan Program. Currently, the program is funded by the General Assembly and eligibility requirements include acceptance to the UNC School of Dentistry.
- In addition to making ECU dental students eligible to apply for this program, we request additional language requiring recipients to practice dentistry in rural or underserved areas of North Carolina, or to work as a full-time faculty member at one of the two North Carolina dental schools.



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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**Title of Item:** Auditor's management letter for fiscal year ended June 30, 2010

**Explanation:** Council Member Joyner requested that the auditor's management letter for fiscal year ended June 30, 2010 be placed on the February 10, 2011 City Council agenda for discussion. A copy of the auditor's management letter and the management response is attached.

**Fiscal Note:** No direct cost to discuss the letter.

**Recommendation:** Discuss the auditor's management letter for fiscal year ended June 30, 2010 and the management response.

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Attachments / click to download

[Auditor Letter](#)

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# Memorandum

**Date:** January 14, 2011  
**To:** Wayne Bowers, City Manager  
**From:** Thom Moton, Assistant City Manager *T.M.*  
**Subject:** Auditor Letter for FY 2010 about Internal Control Deficiency

The Comprehensive Annual Financial Report for Fiscal Year Ended June, 30, 2010, was delivered to our office on December 17, and copies were distributed to the City Council in Notes to Council on December 22, 2010. At the time of the audit books' receipt, a letter dated October 26, 2010, was received from McGladrey and Pullen, L.L.P, (city auditor). A copy of that letter is attached. The letter's purpose was to advise the City Council of financially related practices or policy matters that could adversely impact the City and those items were reported by the auditor to the City Council at the September 9, 2010, City Council meeting.

You will notice that the auditor advised that it identified three comment areas: one non-material control deficiency and two comments and suggestions. The non-material control deficiency involved a budget violation within several funds and the Police Department. The two comments and suggestions were: need for Drug-Free Workplace documentation and Financial Services Department staffing. All three issues have been addressed by staff with the auditors. Below is a recap of the auditor comment items and management responses.

## 1. Budget Violation

Financial Services will develop an automated system to detect potential expenditures that exceed appropriations. If account expenditures are inconsistent with expectations, Financial Services staff will contact the department director or designee to inquire about the nature of the expenditure variance and whether the variance is likely to cause the department's expenditures to exceed its budget. If it is determined that the variance cannot be resolved and that the expenditure account will be overspent, Financial Services will work with the department director or designee to identify reductions in other expenditure areas, or develop justification for a budget amendment.

Auditor Memo Dated January 14, 2011  
Page 2 of 2

**2. Drug-Free Workplace**

After staff discussions with the auditors, the Human Resources Department modified its new employee orientation program to include Drug-Free Workplace Policy information and a form for the new employee to acknowledge receipt of the policy with the employee's signature. This documentation will be kept in each employee's personnel file.

**3. Staffing Levels in Financial Services**

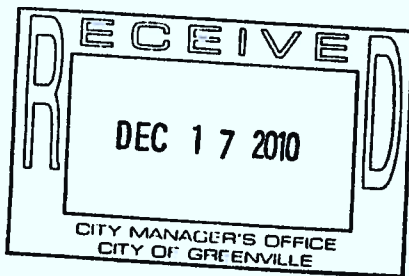
The Assistant City Manager is studying the auditor's comment about the adequacy of the Financial Services Department staffing level and continues to explore with Lou Cannon, Audit Partner, the comment that the department is under-staffed by a potential count of five full-time employees. At present, more information is needed from the auditor about its methodology, and I have received some of that information about the methodology used to support its comment. In the coming weeks, consideration will be given to engaging a firm with expertise in assessing financial operations, operating efficiency, and providing options that may include process improvements, reassignment of duties to others, and/or staffing plan recommendations.

Please contact me if you have any questions.

Attachment

886740

Item # 24



**McGladrey & Pullen, LLP**  
Certified Public Accountants  
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To the Honorable Mayor and City Council  
City of Greenville  
Greenville, North Carolina

In connection with our audit of the basic financial statements of City of Greenville, North Carolina (the "City") as of and for the year ended June 30, 2010, we identified a deficiency in internal control over financial reporting (control deficiency).

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A deficiency in design exists when a control necessary to meet the control objective is missing, or when an existing control is not properly designed so that, even if the control operates as designed, the control objective would not be met. A deficiency in operation exists when a properly designed control does not operate as designed, or when the person performing the control does not possess the necessary authority or qualifications to perform the control effectively.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the financial statements will not be prevented, or detected and corrected on a timely basis.

A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Following is a description of an identified control deficiency that we determined did not constitute a significant deficiency or material weakness:

### **Budget Violation**

During the course of our audit, we noted that the expenditures to several funds and the police department in the general fund exceeded the authorized appropriations made by the governing board. According to General Statute 159-8, no local government may expend any moneys, regardless of their source, except in accordance with a board approved budget ordinance or project ordinance. The City needs to strengthen their controls related to the monitoring of appropriations to ensure that all expenditures are properly recorded.

Additionally, this letter includes comments and suggestions with respect to matters that came to our attention in connection with our audit of the basic financial statements of City of Greenville, North Carolina for the year ended June 30, 2010. These items are offered as constructive suggestions to be considered part of the ongoing process of modifying and improving the City of Greenville's practices and procedures.

### **Drug-Free Workplace Documentation**

The United States Department of Labor requirements for the Drug-Free Workplace Act include the notification of all new and existing employees of the City's policy concerning drug use and drug testing. This policy is provided to each new employee as part of employee orientation and is documented by the City on a checklist used by the human resources department as part of the orientation process. During our testing, we noted that employees who had been hired prior to the implementation of the Act did not have documentation maintained in their files regarding their proper notification of the City's policies as required under the Act. While the checklist does provide an adequate documentation trail with regard to the notification requirements, the US Department of Labor recommends as a best practice that the City should obtain a signed representation from every employee that they have been notified of the City's policy, that they have read the City's policy and they understand the policy. This signed representation would then be maintained in the employee's personnel file. We recommend that the City implement this best practice as prescribed by the US Department of Labor.

### **Finance Department Staffing Levels**

Adequate staffing levels for the finance department are critical to the City's ability to maintain proper internal control and process transactions in a timely fashion. We noted that compared to other finance departments from like-size cities, the City of Greenville's finance department had 20 to 30% less staff. While the finance department is currently capable of meeting its obligations on a daily basis, reductions in staff due to extended medical leave, terminations or other losses of employees could result in a disruption of the ability of the entity to process transactions in a timely fashion. This is particularly true if the staff reduction would be at the supervisory level or higher and were for an extended period of time. Additionally, we noted that both the finance officer and financial services manager have to initiate transactions into the ledger as opposed to performing only review and other higher level tasks. This is an inefficient use of those resources and skills of those individuals. When compared to other entities of the same size, the finance officer and managers generally only review transactions and perform other control features as well as work on other "big picture" type projects. Based on our concern that the City could be subjected to potential disruptions in workflow if two or more employees were to be out for an extended period of time and also, based on our comparisons with other entities and our observation of the duties of the high level employees of the department, we recommend that the City consider creating and hiring additional positions in the finance department to alleviate our concerns and make more efficient use of the skills of the higher level employees.

This letter is intended solely for the information and use of the City of Greenville, North Carolina's management, City Council and others within the City and is not intended to be and should not be used by anyone other than those specified parties. We appreciate serving the City of Greenville, North Carolina and would be happy to assist you in addressing and implementing any of the suggestions in this letter.

*McGladrey & Pullen, LLP*

Morehead City, North Carolina  
October 26, 2010



# City of Greenville, North Carolina

Meeting Date: 2/10/2011  
Time: 7:00 PM

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**Title of Item:** Additional One-Stop early voting site for 2011 municipal election

**Explanation:** The City Clerk's Office received the attached letter from the Pitt County Board of Elections inquiring as to whether the City would like to host an additional One-Stop site for early voting in the 2011 municipal election.

In accordance with the 2009 agreement regarding conduct of municipal elections, two One-Stop sites will be in operation from October 20th through November 5th with operational costs being shared proportionally by all Pitt County municipalities based on their number of registered voters. Sites are located at the Pitt County Agricultural Center and the Center at Alice F. Keene Park (formerly Community Schools Building).

A municipality may request an additional One-Stop site located within their jurisdiction and, if approved, said municipality shall be responsible for all expenses related to the operation of the additional One-Stop site(s).

The City hosted one additional One-Stop site in 2009 at the Municipal Building for a period of 5-1/2 days at a cost of \$2,404.92, or about \$400 per day. It is anticipated that costs for 2011 would be similar.

**Fiscal Note:** Operation of an additional One-Stop voting site is estimated at \$400 per day.

**Recommendation:** Determine if the City will request the Board of Elections to provide a cost estimate for an additional One-Stop early voting site(s) and the number of days for each to be in operation.

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 [One-Stop Voting Site](#)

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David P. Conradt, Chair

Patrick M. Nelson, Secretary

David P. Davis, Director

Lisa A. Taylor, Member

**To: Pitt County Municipalities**  
**From: Dave Davis**  
**Date: January 6, 2011**  
**Re: One-Stop Sites for 2011**

As budget preparation time approaches we must begin planning for costs related to the upcoming November 8<sup>th</sup> election. Most costs are standard and can be estimated based on previous elections. However, one aspect related to election costs is the number of One-Stop sites. Per paragraph six of the 2009 municipal agreement two sites will be in operation from October 20<sup>th</sup> through November 5<sup>th</sup> with the costs being shared among all ten municipalities. These sites are located at the Pitt County Agricultural Center and the Center at Alice F. Keene Park (formerly Community Schools Building). Each municipality also has the option to "host" an additional One-Stop site provided that the requesting municipality is responsible for the entire cost of said site.

In order to prepare an accurate estimate of your municipality's election expenses please notify our office if your municipality has a desire to host a One-Stop site for the 2011 election. Pursuant to paragraph two of the 2009 municipal agreement we ask that you notify us by March 1<sup>st</sup>. In turn, we will provide an estimate of your municipality's election expenses by March 15<sup>th</sup>.

Please feel free to contact me if you have any questions or concerns.

