



# Agenda

## Greenville City Council

September 8, 2011  
7:00 PM  
City Council Chambers  
200 West Fifth Street

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Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

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**I. Call Meeting To Order**

**II. Invocation - Council Member Smith**

**III. Pledge of Allegiance**

**IV. Roll Call**

**V. Approval of Agenda**

**VI. Special Recognitions**

- Remembrance of 10-Year Anniversary of 9/11
- Presentation by Pitt County Schools Superintendent Dr. Beverly Reep

**VII. Appointments**

1. Appointments to Boards and Commissions

**VIII. Consent Agenda**

2. Contract award for construction management services for the Dickinson/Chestnut and Skinner/Beatty Street projects
3. Changes to the Facade Improvement Grant program
4. Amendment to Greenville Utilities Commission's agreement with US Cellular for Westside Communications Tower

5. Resolution designating the Plan Administrator for the City's Other Post-Employment Benefits (OPEB) Irrevocable Trust Fund

**IX. Old Business**

6. Report on alternatives for zoning ordinance modifications related to spacing requirements for public or private clubs

**X. New Business**

**Public Hearings**

7. Second reading and final approval of an ordinance granting a taxicab franchise to Michael Levon Long, d/b/a K & M Cab Service
8. Ordinance requested by Ward Holdings, LLC et. al. to amend the Future Land Use Plan Map from office/institutional/multi-family (OIMF) and medium density residential (MDR) designations to commercial (C) designation for the properties located at the southeast corner of the intersection of Greenville Boulevard and East 14th Street containing 3.96 acres
9. Ordinance requested by Frank Hart Trust c/o Robert D. Parrott, Trustee, to rezone 0.2868 acres located along the eastern right-of-way of Charles Boulevard and adjacent to The Province Apartments from OR (Office-Residential [High Density Multi-family]) to CDF (Downtown Commercial Fringe)
10. Ordinance requested by Steve Mills to amend the Zoning Ordinance regulations applicable to wine shops
11. Resolution to rename a portion of Thomas Langston Road to Regency Boulevard
12. Community Development Block Grant and Home Investment Partnership Consolidated Annual Performance and Evaluation Report

**Public Comment Period**

- The Public Comment Period is a period reserved for comments by the public. Items that were or are scheduled to be the subject of public hearings conducted at the same meeting or another meeting during the same week 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**

13. Resolution approving the Operational Management Agreement for the Greenville Convention Center
14. Special Task Force on Public Safety recommendations
15. Possible modifications to sign regulations
16. Report on standards for Dining and Entertainment Establishments
17. Resolution of intent to close a portion of West Gum Road
18. Update of the Municipal Agreement with the North Carolina Department of Transportation for the 10th Street Connector Project
19. Resolution authorizing the conveyance of 509 Watauga Avenue to the Greenville Housing Development Corporation
20. Recommendations from the Joint City/GUC Committee for Employee Pay and Benefits concerning employee health and dental insurance programs, the employee wellness program, and individual retirement account options
21. Budget ordinance amendment #2 to the 2011-2012 City of Greenville budget (Ordinance 11-038) and an ordinance establishing the Emergency Operations Center Project Fund

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

**XII. City Manager's Report**

**XIII. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Appointments to Boards and Commissions

**Explanation:** City Council appointments need to be made to the Affordable Housing Loan Committee, Community Appearance Commission, Historic Preservation Commission, Human Relations Council, and Pitt-Greenville Convention and Visitors Authority. In addition, a recommendation needs to be made to fill the County available slot for "owner/operator of hotel/motel" on the Pitt-Greenville Convention and Visitors Authority.

**Fiscal Note:** No fiscal impact.

**Recommendation:** Make appointments to the Affordable Housing Loan Committee, Community Appearance Commission, Historic Preservation Commission, Human Relations Council, and Pitt-Greenville Convention and Visitors Authority; and make a recommendation to fill the County available slot for "owner/operator of hotel/motel" on the Pitt-Greenville Convention and Visitors Authority.

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

# Appointments to Boards and Commissions

September 8, 2011

## Affordable Housing Loan Committee

**Council Liaison:** Council Member Kandie Smith

Name	District #	Current Term	Reappointment Status	Expiration Date
John Martin (Alternate)	4	Filling unexpired term	Resigned	February 2012

## Community Appearance Commission

**Council Liaison:** Council Member Kandie Smith

Name	District #	Current Term	Reappointment Status	Expiration Date
Dana Coles	1	Second term	Resigned	April 2013

## Historic Preservation Commission

**Council Liaison:** Council Member Calvin Mercer

Name	District #	Current Term	Reappointment Status	Expiration Date
John Weitz	3	First term	Resigned	January 2014

## Human Relations Council

**Council Liaison:** Council Member Max Joyner, Jr.

Name	District #	Current Term	Reappointment Status	Expiration Date
Robert Thompson	1	Filling unexpired term	Resigned	September 2011

## Pitt-Greenville Convention and Visitors Authority

**Council Liaison:** Council Member Rose Glover

Name	District #	Current Term	Reappointment Status	Expiration Date
Available Slot (Deceased; City (3))	1	First term	Deceased	July 2013
Thomas Hines (County (3))	1	Second term	Ineligible	July 2011

(3) Residents not involved in tourist or convention-related business

# 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

Fred E. Wright  
3740 Bostic Drive, Apt. 102  
Greenville, NC 27834

**Application Date:** 6/6/2011

**Home Phone:** (910) 308-3627

**Business Phone:** (252) 744-1000

**Email:** wrightf04Wstudents.ecu.edu

**District #:** 1

## Applicants for Historic Preservation Commission

Terry King  
1310 Thomas Langston Rd. #7  
Winterville, NC 28590

**Application Date:** 2/11/2011

**District #:** 5

**Home Phone:** (252) 412-5228

**Business Phone:**

**Email:** terryeu2@aol.com

Richard Weir  
2074-3 Old Firetower Rd.  
Greenville, NC 27858

**Application Date:** 8/21/2011

**District #:** 5

**Home Phone:** (252) 565-5663

**Business Phone:** (252) 216-9347

**Email:** raw03@gmailcom

Maurice York  
2001 East 5th Street  
Greenville, NC 27858

**Application Date:** 8/16/2011

**District #:** 3

**Home Phone:** (252) 752-5260

**Business Phone:** (252) 328-0252

**Email:** mc york@embarqmail.com



## Applicants for Human Relations Council

Wanda Carr  
2304 British Court  
Greenville, NC 27834

**District #:** 1

Aaron Lucier  
1516 Thayer Drive  
Winterville, NC 28590

**District #:** 5

Angela Marshall  
2609B Boone Court  
Greenville, NC 27834

**District #:** 1

Brittney Partridge  
925 Spring Forest Road, Apt. 9  
Greenville, NC 27834

**District #:** 1

Richard Weir  
2074-3 Old Firetower Rd.  
Greenville, NC 27858

**District #:** 5

Fred E. Wright  
3740 Bostic Drive, Apt. 102  
Greenville, NC 27834

**District #:** 1

**Application Date:** 10/13/2010

**Home Phone:** (252) 321-1409

**Business Phone:**

**Email:** carrwdc@hotmail.com

**Application Date:** 2/23/2011

**Home Phone:** (252) 321-3910

**Business Phone:** (252) 328-2758

**Email:** luciera@ecu.edu

**Application Date:** 4/29/2011

**Home Phone:** (252) 258-4104

**Business Phone:** (252) 328-4173

**Email:** marshalla@ecu.edu

**Application Date:** 7/15/2010

**Home Phone:** (252) 489-8390

**Business Phone:**

**Email:** partridgeb06@students.ecu.edu

**Application Date:** 8/21/2011

**Home Phone:** (252) 565-5663

**Business Phone:** (252) 216-9347

**Email:** raw03@gmail.com

**Application Date:** 6/6/2011

**Home Phone:** (910) 308-3627

**Business Phone:** (252) 744-1000

**Email:** wrightf04Wstudents.ecu.edu

# Applicants for Pitt-Greenville Convention and Visitors Authority (City)

Brian Brown  
2237 Penncross Drive  
Greenville, NC 27834

**District #:** 5

**Application Date:** 2/23/2011

**Home Phone:** (252) 414-3943  
**Business Phone:** (252) 353-7379  
**Email:** bbrown@myrepexpress.com  
**Occupation:** President/CEO, Rep Express  
Catering

Wanda Carr  
2304 British Court  
Greenville, NC 27834

**District #:** 1

**Application Date:** 10/13/2010

**Home Phone:** (252) 321-1409  
**Business Phone:**  
**Email:** carrwdc@hotmail.com  
**Occupation:** Unemployed

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

**District #:** 5

**Application Date:** 3/5/2011

**Home Phone:** (252) 439-0651  
**Business Phone:** (252) 439-0651  
**Email:** brianevans\_99@yahoo.com  
**Occupation:** Self-employed; Bk. Author/  
Writer-Editor/Communications Consultant

Ann Eleanor  
102 Lindenwood Drive  
Greenville, NC 27834

**District #:** 5

**Application Date:** 2/13/2011

**Home Phone:** (252) 227-4240  
**Business Phone:**  
**Email:** aeleonor@suddenlink.net  
**Occupation:** Retired

Bridget Moore  
4128A Bridge Court  
Winterville, NC 28590

**District #:** 1

**Application Date:** 7/13/2011

**Home Phone:** (252) 355-7377  
**Business Phone:** (252) 756-1002  
**Email:** bmoore2004@netzero.com  
**Occupation:** Billing Specialist  
Carolina East Medical Associates

# Applicants for Pitt-Greenville Convention and Visitors Authority (County)

**Little, Steve**

3314 NC 33 W  
Greenville NC 27834

Day Phone: 2527143559

Gender: M

Evening Phone: 2527582040

Race: White

Fax:

District: 2

Email: [steve.little@nashfinch.com](mailto:steve.little@nashfinch.com)

Priority:

Applied for board on: 1/5/2007

Application received/updated: 7/30/2010

Applicant's Attributes: District 2

County Planning Jurisdiction

North of the River

<u>Experience (Educ./Vol./Prof. Assoc./Military/Other Appointed Positions, etc.)</u>			
	<u>Organization</u>	<u>Description</u>	<u>Date(s)</u>
Education	East Carolina University		
Education	Belvoir Elementary		
Experience		NC Real Estate Broker License	
Experience	Nash Finch	Division Manager	
Volunteer/Prof. Associations	Pitt County Planning Board		6 years

<u>Boards Assigned To</u>	
ABC Board	9/22/2009 to 6/30/2012
Pitt County Board of Adjustment North of the River	1/11/2010 to 1/1/2013

**Avery, Debbie S**

3010 Sapphire Lane  
Winterville NC 28590

Day Phone: 2525314590  
Evening Phone: 2527569832  
Fax:

Gender: F  
Race: White  
District: 4  
Priority:

Email: davery60@hotmail.com

Applied for board on: 1/16/2009

Application received/updated: 1/20/2011

Applicant's Attributes: County Planning Jurisdiction  
District 4

<u>Experience (Educ./Vol./Prof. Assoc./Military/Other Appointed Positions, etc.)</u>			
	<u>Organization</u>	<u>Description</u>	<u>Date(s)</u>
Education	East Carolina	BS - Education	
Education	Ayden Grifton High		
Experience	First State Bank		1978-1984
Experience	ECU School of Medicine	Standardized Patient	2007-present
Experience	Pitt County Schools	Middle School Science Teacher	30 years
Experience	Winterville Chamber of Commer	Executive Director	
Volunteer/Prof. Associations	Winterville Kiwanis Club		
Volunteer/Prof. Associations	Winterville Watermelon Festival		

<u>Boards Assigned To</u>	
Development Commission	2/7/2011 to 12/31/2013

**STATEMENT OF INTEREST TO SERVE**

If you are a Pitt County resident and would like to volunteer your time and expertise to your community, please complete and return to:

Pitt County Board of Commissioners  
c/o Clerk to the Board  
1717 W. 5th Street  
Greenville, N.C. 27834

Please list in order of preference the Boards and Commissions for which you would be willing to serve:

**Convention & Visitors Authority**  
**Pitt - Greenville Airport Authority**  
**Greenville Utilities Commission**

Full name: Elizabeth Weidner Date Of Birth: 8/13/1958

Residence Address: 116 Knight Drive Gender: F  
City and Zip Code: Winterville NC 28590 Race: White

Mailing Address (if different):

Home (Night) Phone No. :  
Work (Day) Phone No. : 2523214034  
Fax No.  
Email : demrs5@suddenlink.net

Attributes: Greenville ETJ  
South of the River  
GUC Customer  
District 5

Please list your County Commissioner District: 5  
(This information can be obtained from the Board of Elections at 252-902-3300.)

Please list educational background, military experience, work experience and/or volunteer experience you have had which may be beneficial in evaluating your qualifications:

Experience (Educ./Vol./Prof. Assoc./Military/Other Appointed Positions, etc.)			
	Organization	Description	Date(s)
Education	University of Alabama-Birmingham		
Education	Albemarle High School		

Friday, May 27, 2011

If I am appointed to serve on one or more boards, I will agree by signing an Affirmation of Understanding, to attend the required number of meetings each calendar year and not to exceed unexcused absences by more than 25%, three (3) meetings in any calendar years.

Signature:

Application Date: 6/22/2010

**\*\*Note: When applying for a Pitt County Board or Commission, your application is considered a public record. The Board Appointment policy requires that applications be on file in the Clerk's Office 30 days prior to consideration for appointment.**

**\*\*\*Interest to Serve forms remain current for two full years. Following that the applicant may wish to contact the Clerk to the Board's Office for an updated form.**

Pitt County Board of Commissioners  
1717 W. 5th Street  
Greenville, N.C. 27834  
(252) 902-2950

**STATEMENT OF INTEREST TO SERVE**

If you are a Pitt County resident and would like to volunteer your time and expertise to your community, please complete and return to:

Pitt County Board of Commissioners  
c/o Clerk to the Board  
1717 W. 5th Street  
Greenville, N.C. 27834

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Please list in order of preference the Boards and Commissions for which you would be willing to serve:

**Pitt Community College Board Of Trustees**  
**Pitt - Greenville Airport Authority**  
**Convention & Visitors Authority**  
**Committee for Employment of People w/Disabilities**

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Full name: Edward Sontag Date Of Birth: 1/5/1938

Residence Address: 3902 Brookstone Drive Gender: M  
City and Zip Code: Winterville NC 28590 Race:

Mailing Address (if different):

Home (Night) Phone No. :  
Work (Day) Phone No. : 2523648198  
Fax No.  
Email : edsbadger@gmail.com

Attributes: Greenville City Limits  
South of the River  
District 5

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Please list your County Commissioner District: 5  
(This information can be obtained from the Board of Elections at 252-902-3300.)

---

Please list educational background, military experience, work experience and/or volunteer experience you have had which may be beneficial in evaluating your qualifications:

Experience (Educ./Vol./Prof. Assoc./Military/Other Appointed Positions, etc.)			
	Organization	Description	Date(s)
Education	Syracuse U		1971
Education	Buffalo State	BS; MS	1964, 1967
Education	Bennett High School; Buffalo N		
Experience	US Dept. of Education	Director of Special Education	

*Friday, May 27, 2011*

Experience	Governor Tommy Thompson	Policy Advisor	
Experience	CDC	Chief Management Official	2005-2010
Experience	HHS	Assistant Secretary	2001-2005
Volunteer/Prof. Associations	National Guard - NY State		

If I am appointed to serve on one or more boards, I will agree by signing an Affirmation of Understanding, to attend the required number of meetings each calendar year and not to exceed unexcused absences by more than 25%, three (3) meetings in any calendar years.

Signature:

Application Date: 1/21/2011

**\*\*Note: When applying for a Pitt County Board or Commission, your application is considered a public record. The Board Appointment policy requires that applications be on file in the Clerk's Office 30 days prior to consideration for appointment.**

**\*\*\*Interest to Serve forms remain current for two full years. Following that the applicant may wish to contact the Clerk to the Board's Office for an updated form.**

Pitt County Board of Commissioners  
1717 W. 5th Street  
Greenville, N.C. 27834  
(252) 902-2950

<p><i>Reviewed for accuracy</i></p> <p><i>Signature:</i> _____</p> <p><i>Date:</i> _____</p>
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*Friday, May 27, 2011*





Experience	PCMH	Vice-President of Facilities	1973-2001
Volunteer/Prof. Associations	N.C. Bio-Medical Association		
Volunteer/Prof. Associations	N.C. Association of Health Care		
Volunteer/Prof. Associations	American Society of Health Care		
Volunteer/Prof. Associations	American Cancer Society		
Volunteer/Prof. Associations	State Board of Directors		

If I am appointed to serve on one or more boards, I will agree by signing an Affirmation of Understanding, to attend the required number of meetings each calendar year and not to exceed unexcused absences by more than 25%, three (3) meetings in any calendar years.

Signature:

Application Date: 2/26/2003

**\*\*Note: When applying for a Pitt County Board or Commission, your application is considered a public record. The Board Appointment policy requires that applications be on file in the Clerk's Office 30 days prior to consideration for appointment.**

**\*\*\*Interest to Serve forms remain current for two full years. Following that the applicant may wish to contact the Clerk to the Board's Office for an updated form.**

Pitt County Board of Commissioners  
1717 W. 5th Street  
Greenville, N.C. 27834  
(252) 902-2950

<p><i>Reviewed for accuracy</i></p> <p><i>Signature:</i> _____</p> <p><i>Date:</i> _____</p>
--

Friday, May 27, 2011

### STATEMENT OF INTEREST TO SERVE

If you are a Pitt County resident and would like to volunteer your time and expertise to your community, please complete and return to:

Pitt County Board of Commissioners  
c/o Clerk to the Board  
1717 W. 5th Street  
Greenville, N.C. 27834

Please list in order of preference the Boards and Commissions for which you would be willing to serve:

**P. C. M. H. Board of Trustees**  
**Pitt - Greenville Airport Authority**  
**Pitt Community College Board Of Trustees**  
**Development Commission**  
**Convention & Visitors Authority**

Full name: Brian Cooper Date Of Birth: 9/2/1946

Residence Address: 1149 Mulberry Lane #34G Gender: M  
City and Zip Code: Greenville NC 27858 Race: White

Mailing Address (if different):

Home (Night) Phone No. : 2524390651

Work (Day) Phone No. : 2524390651

Fax No.

Email : Brianevans\_99@yahoo.com

Attributes: District 5  
Greenville City Limits  
South of the River

Please list your County Commissioner District: 5  
(This information can be obtained from the Board of Elections at 252-902-3300.)

Please list educational background, military experience, work experience and/or volunteer experience you have had which may be beneficial in evaluating your qualifications:

Experience (Educ./Vol./Prof. Assoc./Military/Other Appointed Positions, etc.)			
	Organization	Description	Date(s)
Education	Princeton University	AB-History	
Education	University of Michigan	MA	
Education	Sewanhaka High		

Friday, May 27, 2011

Experience	Self-Employed - Cooper Pearson	Writer-Editor & Marketing	currently
Experience	Air Force	ROTC	2 years
Experience	Hill & Knowlton/New York	Senior Account Executive	1984-1985
Experience	St. Regis Paper Company/New Y	PR Project Manager	1978-1984
Experience	Harcourt Brace Jovanovich/New	Asst. to the CEO	1976-1978
Experience	The Port Authority		1972
Experience	Industry Experience	Publishing,Media, Airport Mang., Hea	
Experience	Treadway Ins. & Resorts	Marketing & Communications Directo	1976
Volunteer/Prof. Associations	Princeton Club of New York	Member, Board of Governors	1975-1990
Volunteer/Prof. Associations	The International Center	English/language tutor	
Volunteer/Prof. Associations	The Network of Independent Pub		1986-1988
Volunteer/Prof. Associations	Literacy Tutor/Orange County		
Volunteer/Prof. Associations	Radio Reading Services of Easter		
Volunteer/Prof. Associations	Greenville Writers Group	Member	
Volunteer/Prof. Associations	American Society of Journalists	Member	

*Friday, May 27, 2011*



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Contract award for construction management services for the Dickinson/Chestnut and Skinner/Beatty Street projects

**Explanation:** Due to the complexity of both the Dickinson/Chestnut and Skinner/Beatty Street stormwater drainage projects and the number of projects under construction, a full-time construction manager will be necessary to manage the construction of these projects. Public Works solicited qualifications from engineering firms interested in providing construction management services for both the Dickinson/Chestnut and Skinner/Beatty Street projects. These two projects are the last remaining 2004 General Obligation Bonds projects. Construction management services will include, but are not limited to, surveying, scheduling, review of traffic control plans and material submittals, quality assurance inspections, public relations, environmental compliance, and site safety.

In response to the Request for Qualifications, five consulting firms/teams submitted proposals. After reviewing the proposals, the selection committee deemed Rivers & Associates as the firm best qualified to manage the Dickinson/Chestnut and Skinner/Beatty Street Projects. The contract for Construction Management Services is attached. The contract has a guaranteed maximum cost of \$219,000.

**Fiscal Note:** The cost of the proposed consultant's services contract (\$219,000) will be funded from the Stormwater Utility Fund.

**Recommendation:** Approve the attached professional services contract with Rivers & Associates for Construction Management Services for the Dickinson/Chestnut and Skinner/Beatty Street projects.

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 [Contract](#)

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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

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

THIS IS AN AGREEMENT effective as of August 22 , 2011 ("Effective Date") between  
City of Greenville, NC ("Owner") and  
Rivers & Associates, Inc. ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Construction Management Services for the City of Greenville, NC ("Project").  
Engineer's services under this Agreement are generally identified as follows:

construction phase and resident project representative services for storm drainage improvement projects.

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 provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. 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 A1.05. 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 A1.05.

#### 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 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.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. ~~Exhibit F, Construction Cost Limit. **Not included.**~~
- G. Exhibit G, Insurance.
- 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

Engineer: Rivers & Associates, Inc.

By: Patricia C. Dunn

By: Donnie W. Brewer, P.E.

Title: Mayor

Title: President

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

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

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

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

Firm's Certificate No. F-0334

State of: North Carolina

Address for giving notices:

Address for giving notices:

Public Works Department

107 East Second Street

1500 Beatty Street / PO Box 7207

PO Box 929

Greenville, NC 27835

Greenville, NC 27835

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Scott P. M. Godefroy, P.E.

F. Durward Tyson, Jr., P.E.

Title: City Engineer

Title: Project Manager

Phone Number: 252-329-4522

Phone Number: 252-752-4135

Facsimile Number: 252-329-4535

Facsimile Number: 252-752-3974

E-Mail Address: sgodefroy@greenvillenc.gov

E-Mail Address: dytson@riversandassociates.com

APPROVED AS TO FORM:

THIS DISBURSEMENT HAS BEEN APPROVED AS  
REQUIRED BY THE LOCAL GOVERNMENT BUDGET  
AND FISCAL CONTROL ACT.

By: David A. Holec

By: Bernita W. Demery

Title: City Attorney

Title: City Finance Director

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

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

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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This is **EXHIBIT A**, consisting of 12 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

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**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 Study and Report Phase~~

#### ~~A. Engineer shall:~~

- ~~1. Consult with Owner to define and clarify Owner's requirements for the Project and available data.~~
- ~~2. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B which are not part of Engineer's Basic Services.~~
- ~~3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in the environmental assessment.~~
- ~~4. Identify and evaluate *[insert specific number or list here]* alternate solutions available to Owner and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for the Project.~~
- ~~5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed to requirements, considerations involved, and those alternate solutions available to Owner which Engineer recommends. For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a summary of allowances for other items and services included within the definition of Total Project Costs.~~
- ~~6. Perform or provide the following additional Study and Report Phase tasks or deliverables: *[here list any such tasks or deliverables]*~~
- ~~7. Furnish \_\_\_ review copies of the Report and any other deliverables to Owner within \_\_\_ calendar days of the Effective Date and review it with Owner. Within \_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Report and any other deliverables.~~

- ~~8. Revise the Report and any other deliverables in response to Owner's comments, as appropriate, and furnish \_\_\_ copies of the revised Report and any other deliverables to the Owner within \_\_\_ calendar days of receipt of Owner's comments.~~

~~B. Engineer's services under the Study and Report Phase will be considered complete on the date when the revised Report and any other deliverables have been delivered to Owner.~~

#### ~~A1.02 Preliminary Design Phase~~

~~A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:~~

- ~~1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.~~
- ~~2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.~~
- ~~3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.~~
- ~~4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.~~
- ~~5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:  
[here list any such tasks or deliverables]~~
- ~~6. Furnish \_\_\_ review copies of the Preliminary Design Phase documents and any other deliverables to Owner within \_\_\_ calendar days of authorization to proceed with this phase, and review them with Owner. Within \_\_\_ calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.~~
- ~~7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner \_\_\_ copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within \_\_\_ calendar days after receipt of Owner's comments.~~

~~B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.~~

~~A1.03—Final Design Phase~~

- ~~A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:~~
- ~~1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.~~
  - ~~2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.~~
  - ~~3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.~~
  - ~~4. Perform or provide the following additional Final Design Phase tasks or deliverables: [here list any such tasks or deliverables]~~
  - ~~5. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within \_\_\_ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.~~
  - ~~6. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit \_\_\_ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within \_\_\_ calendar days after receipt of Owner's comments and instructions.~~
- ~~B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.~~
- ~~C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.~~
- ~~D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is \_\_\_\_\_. If more prime~~

~~contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.~~

~~A1.04 Bidding or Negotiating Phase~~

~~A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:~~

- ~~1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.~~
- ~~2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.~~
- ~~3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.~~
- ~~4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.~~
- ~~5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
- ~~6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.~~
- ~~7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [here list any such tasks or deliverables]~~

~~B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).~~

A1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:

1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act

on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.

2. *Resident Project Representative (RPR)*: Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
3. *Selecting Independent Testing Laboratory*: Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
4. *Pre-Construction Conference*: Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
5. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
6. *Baselines and Benchmarks*: As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
7. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
  - b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract



Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.

8. *Defective Work*: Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders*: Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives*: Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples*: Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests*: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply

with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.

14. *Disagreements between Owner and Contractor:* Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
  - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).
  - b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not

be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
  17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
  18. *Additional Tasks:* ~~Perform or provide the following additional Construction Phase tasks or deliverables: [here list any such tasks or deliverables].~~
  19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

## A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
  2. ~~Together with Owner or Owner's representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.~~
  3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
    - a. Record Drawings – collect, review and incorporate Contractor's data.
    - b. Final Report – prepare final report to include lessons learned.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

## ~~PART 2 – ADDITIONAL SERVICES~~

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

- A. ~~If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below:~~
1. ~~Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.~~
  2. ~~Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.~~
  3. ~~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.~~
  4. ~~Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.~~

5. ~~Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.~~
6. ~~Providing renderings or models for Owner's use.~~
7. ~~Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.~~
8. ~~Furnishing services of Consultants for other than Basic Services.~~
9. ~~Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.~~
10. ~~Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.~~
11. ~~Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.~~
12. ~~Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.~~
13. ~~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.~~
14. ~~Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.~~
15. ~~Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.~~
16. ~~Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.~~
17. ~~Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.~~

- ~~18. Preparation of operation and maintenance manuals.~~
- ~~19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.~~
- ~~20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.~~
- ~~21. Assistance in connection with the adjusting of Project equipment and systems.~~
- ~~22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.~~
- ~~23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.~~
- ~~24. Overtime work requiring higher than regular rates.~~
- ~~25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.~~

~~A2.02—Additional Services Not Requiring Owner's Written Authorization~~

~~A. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.~~

- ~~1. Services in connection with work change directives and change orders to reflect changes requested by Owner.~~
- ~~2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
- ~~3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
- ~~4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.~~

5. ~~Services (other than Basic Services during the Post Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.~~
6. ~~Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.~~
7. ~~Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.~~
8. ~~Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.~~
9. ~~While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.~~

This is **EXHIBIT B**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 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. Perform or provide the following additional services: *[Here list any such additional services]*.~~

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This is **EXHIBIT C**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-2: Basic Services – Standard Hourly Rates**

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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) – Standard Hourly Rates 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. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s personnel times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultants’ charges, if any.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendices 1 and 2.
3. The total compensation for services under Paragraph C2.01 is estimated to be \$ 219,000.00 (not to exceed).

a. Study and Report Phase	\$ _____
b. Preliminary Design Phase	\$ _____
e. Final Design Phase	\$ _____
d. Bidding or Negotiating Phase	\$ _____
e. Construction Phase	\$ <u>210,000.00</u>
f. Post-Construction Phase	\$ <u>9,000.00</u>
4. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C.2 below.

5. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultants' charges.
6. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultants' charges.
7. ~~The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of \_\_\_) to reflect equitable changes in the compensation payable to Engineer.~~

*C2.02 Compensation For Reimbursable Expenses*

- ~~A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
- ~~C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a factor of \_\_\_\_.~~

*C2.03 Other Provisions Concerning Payment*

- ~~A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of \_\_\_\_.~~
- ~~B. Factors. The external Reimbursable Expenses and Engineer's Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~

*C. Estimated Compensation Amounts:*

1. ~~Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~
2. ~~When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice, Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend the Engineer's services during the negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~

- D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

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**COMPENSATION PACKET RPR-2:  
Resident Project Representative—Standard Hourly Rates**

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

~~C2.04 Compensation for Resident Project Representative Basic Services—Standard Hourly Rates  
Method of Payment~~

~~A. Owner shall pay Engineer for Resident Project Representative Basic Services as follows:~~

- ~~1. Resident Project Representative Services: For services of Engineer's Resident Project Representative under Paragraph A1.05A of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any. The total compensation under this Paragraph is estimated to be \$\_\_\_\_\_ based upon full-time RPR services on an eight-hour workday, Monday through Friday, over a \_\_\_ day construction schedule.~~

~~B. Compensation for Reimbursable Expenses:~~

- ~~1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01, and are directly related to the provision of Resident Project Representative or Post-Construction Basic Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; ; providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representative and assistants; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
- ~~3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be those internal expenses related to the Resident Project Representative Basic Services that are actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such services, the latter multiplied by a factor of \_\_\_\_\_.~~
- ~~4. The Reimbursable Expenses Schedule will be adjusted annually (as of \_\_\_) to reflect equitable changes in the compensation payable to Engineer.~~



~~C. Other Provisions Concerning Payment Under this Paragraph C2.04:~~

- ~~1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of \_\_\_\_\_.~~
- ~~2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~
- ~~3. *Estimated Compensation Amounts:*~~
  - ~~a. Engineer's estimate of the amounts that will become payable for specified services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.~~
  - ~~b. When estimated compensation amounts have been stated herein and it subsequently becomes apparent to Engineer that the total compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof, allowing Owner to consider its options, including suspension or termination of Engineer's services for Owner's convenience. Upon notice Owner and Engineer promptly shall review the matter of services remaining to be performed and compensation for such services. Owner shall either exercise its right to suspend or terminate Engineer's services for Owner's convenience, agree to such compensation exceeding said estimated amount, or agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. If Owner decides not to suspend Engineer's services during negotiations and Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, then Engineer shall be paid for all services rendered hereunder.~~
- ~~4. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.~~

## COMPENSATION PACKET AS-1: Additional Services – Standard Hourly Rates

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

### C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

~~A. Owner shall pay Engineer for Additional Services, if any, as follows:~~

- ~~1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.~~

~~B. *Compensation For Reimbursable Expenses:*~~

- ~~1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.~~
- ~~2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.~~
- ~~3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of \_\_\_\_\_.~~
- ~~4. The Reimbursable Expenses Schedule will be adjusted annually (as of \_\_\_\_ ) to reflect equitable changes in the compensation payable to Engineer.~~

~~C. *Other Provisions Concerning Payment For Additional Services:*~~

- ~~1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of \_\_\_\_\_.~~

2. ~~Factors: The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.~~
3. ~~To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.~~

This is **Appendix 1 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

**Reimbursable Expenses Schedule**

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

Fax	\$ _____/page
8"x11" Black & White Copies	_____ 0.06 /page
8"x11" Color Copies	_____ 1.00 /page
Blue Print Copies	_____ 0.42 /sq. ft.
Reproducible Copies (Mylar)	_____ /sq. ft.
Reproducible Copies (Paper)	_____ /sq. ft.
Mileage (auto)	_____ 0.55 /mile
Field Truck Daily Charge	_____ /day
Mileage (Field Truck)	_____ 0.55 /mile
Field Survey Equipment	_____ /day
Confined Space Equipment	_____ /day plus expenses
Resident Project Representative Equipment	_____ /month
Specialized Software	_____ /hour
CAD Charge	_____ /hour
CAE Terminal Charge	_____ /hour
Video Equipment Charge	_____ /day, \$ _____ /week, or \$ _____ /month
Electrical Meters Charge	_____ /week, or \$ _____ /month
Flow Meter Charge	_____ /week, or \$ _____ /month
Rain Gauge	_____ /week, or \$ _____ /month
Sampler Charge	_____ /week, or \$ _____ /month
Dissolved Oxygen Tester Charge	_____ /week
Fluorometer	_____ /week
Laboratory Pilot Testing Charge	_____ /week, or \$ _____ /month
Soil Gas Kit	_____ /day
Submersible Pump	_____ /day
Water Level Meter	_____ /day, or \$ _____ /month
Soil Sampling	_____ /sample
Groundwater Sampling	_____ /sample
Health and Safety Level D	_____ /day
Health and Safety Level C	_____ /day
Electronic Media Charge	_____ /hour
Long Distance Phone Calls	at cost
Mobile Phone	_____ /day
Meals and Lodging	at cost

*[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this specific Project]*

This is **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

## **Standard Hourly Rates Schedule**

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### *A. Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

### *B. Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

Principal	\$ <u>165.00</u> /hour
Project Manager	<u>140.00</u> /hour
Project Engineer II	<u>120.00</u> /hour
Design Engineer	<u>85.00</u> /hour
Project Surveyor II	<u>105.00</u> /hour
Project Surveyor	<u>90.00</u> /hour
Surveyor Technician II	<u>50.00</u> /hour

This is **EXHIBIT D**, consisting of 6 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

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

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

### D1.01 *Resident Project Representative*

- C. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- D. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- E. The duties and responsibilities of the RPR are as follows:
  - 1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
  - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
  - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
  - 4. *Liaison:*

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
  - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
  - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
- a. Record date of receipt of Samples and approved Shop Drawings.
  - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
  - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
9. *Inspections, Tests, and System Start-ups:*
- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.

- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.



- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.
12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
  13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.
  14. *Completion:*
    - a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
    - b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
    - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

F. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
2. Exceed limitations of Engineer’s authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.

6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 2011.

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NOTICE OF ACCEPTABILITY OF WORK

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PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

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To: \_\_\_\_\_  
Owner

And To: \_\_\_\_\_  
Contractor

From: \_\_\_\_\_  
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_, and the terms and conditions set forth in this Notice.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

## **CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 22, 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 and 6.04.B of the Agreement are as follows:

1. By Engineer:

- |  |             |
|--|-------------|
| a. Workers' Compensation:  | Statutory   |
| b. Employer's Liability --   |             |
| 1) Each Accident:  | \$100,000   |
| 2) Disease, Policy Limit:  | \$500,000   |
| 3) Disease, Each Employee:   | \$100,000   |
| c. General Liability --  |             |
| 1) Each Occurrence (Bodily Injury and Property Damage):                              | \$1,000,000 |
| 2) General Aggregate:  | \$2,000,000 |
| d. Excess or Umbrella Liability --   |             |
| 1) Each Occurrence:  | \$2,000,000 |
| 2) General Aggregate:  | \$2,000,000 |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): |             |
| Each Accident  | \$1,000,000 |
| f. Professional Liability --   |             |
| 1) Each Claim Made   | \$1,000,000 |
| 2) Annual Aggregate  | \$2,000,000 |
| g. Other (specify):  | \$ N/A      |

2. ~~By Owner:~~

a. ~~Workers' Compensation:~~ \_\_\_\_\_ ~~Statutory~~

b. ~~Employer's Liability~~ --

- 1) ~~Each Accident~~ \_\_\_\_\_ \$ \_\_\_\_\_
- 2) ~~Disease, Policy Limit~~ \_\_\_\_\_ \$ \_\_\_\_\_
- 3) ~~Disease, Each Employee~~ \_\_\_\_\_ \$ \_\_\_\_\_

c. ~~General Liability~~ --

- 1) ~~General Aggregate:~~ \_\_\_\_\_ \$ \_\_\_\_\_
- 2) ~~Each Occurrence (Bodily Injury and Property Damage):~~ \_\_\_\_\_ \$ \_\_\_\_\_

d. ~~Excess Umbrella Liability~~ \_\_\_\_\_`

- 1) ~~Each Occurrence:~~ \_\_\_\_\_ \$ \_\_\_\_\_
- 2) ~~General Aggregate:~~ \_\_\_\_\_ \$ \_\_\_\_\_

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

Each Accident:  
\$ \_\_\_\_\_

f. ~~Other (specify):~~ \_\_\_\_\_ \$ \_\_\_\_\_

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

a. \_\_\_\_\_  
Engineer

b. \_\_\_\_\_  
Engineer's Consultant

c. \_\_\_\_\_  
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.



This is **EXHIBIT H**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

## **Dispute Resolution**

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Paragraph 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

***[NOTE TO USER: Select one of the two alternatives provided]***

### *H6.08 Dispute Resolution*

~~A. *Mediation:* Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by *[insert name of mediator, or mediation service]*. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.~~

[or]

~~A. *Arbitration:* All Disputes between Owner and Engineer shall be settled by arbitration in accordance with the *[here insert the name of a specified arbitration service or organization]* rules effective at the Effective Date, subject to the conditions stated below. This agreement to arbitrate and any other agreement or consent to arbitrate entered into in accordance with this Paragraph H6.08.A will be specifically enforceable under prevailing law of any court having jurisdiction.~~

- ~~1. Notice of the demand for arbitration must be filed in writing with the other party to the Agreement and with the *[specified arbitration service or organization]*. The demand must be made within a reasonable time after the Dispute has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitations.~~
- ~~2. All demands for arbitration and all answering statements thereto which include any monetary claims must contain a statement that the total sum or value in controversy as alleged by the party making such demand or answering statement is not more than \$\_\_\_\_\_ (exclusive of interest and costs). The arbitrators will not have jurisdiction, power, or authority to consider, or make findings (except in denial of their own jurisdiction) concerning any Dispute if the amount in controversy in such Dispute is more than \$\_\_\_\_\_ (exclusive of interest and costs), or to render a monetary award in response thereto against any party which totals more than \$\_\_\_\_\_ (exclusive of interest and costs). Disputes that~~

- ~~are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~
- ~~3. The award rendered by the arbitrators shall be in writing, and shall include: (i) a precise breakdown of the award; and (ii) a written explanation of the award specifically citing the Agreement provisions deemed applicable and relied on in making the award.~~
  - ~~4. The award rendered by the arbitrators will be consistent with the Agreement of the parties and final, and judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to appeal or modification.~~
  - ~~5. If a Dispute in question between Owner and Engineer involves the work of a Contractor, Subcontractor, or consultants to the Owner or Engineer (each a "Joinable Party"), and such Joinable Party has agreed contractually or otherwise to participate in a consolidated arbitration concerning this Project, then either Owner or Engineer may join such Joinable Party as a party to the arbitration between Owner and Engineer hereunder. Nothing in this Paragraph H6.08.A.5 nor in the provision of such contract consenting to joinder shall create any claim, right, or cause of action in favor of the Joinable Party and against Owner or Engineer that does not otherwise exist.~~

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

## Limitations of Liability

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

*A. Limitation of Engineer's Liability*

**[NOTE TO USER: Select one of the three alternatives listed below for I6.10 A.1]**

- ~~1. *Engineer's Liability Limited to Amount of Engineer's Compensation:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total compensation received by Engineer under this Agreement.~~

[or]

- ~~1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$ \_\_\_\_\_ [or]~~

1. ~~Engineer's Liability Limited to the Amount of \$ \_\_\_\_\_: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants shall not exceed the total amount of \$ \_\_\_\_\_.~~

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~~***[NOTE TO USER: If appropriate and desired, include I6.10.A.2 below as a supplement to Paragraph 6.10, which contains a mutual waiver of damages applicable to the benefit of both Owner and Engineer]***~~

2. ~~Exclusion of Special, Incidental, Indirect, and Consequential Damages: To the fullest extent permitted by law, and notwithstanding any other provision in the Agreement, consistent with the terms of Paragraph 6.10, the Engineer and Engineer's officers, directors, members, partners, agents, Consultants, and employees shall not be liable to Owner or anyone claiming by, through, or under Owner for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to any such damages caused by the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, and including but not limited to:~~

~~***[NOTE TO USER: list here particular types of damages that may be of special concern because of the nature of the project or specific circumstances, e.g., cost of replacement power, loss of use of equipment or of the facility, loss of profits or revenue, loss of financing, regulatory fines, etc. If the parties prefer to leave the language general, then end the sentence after the word "employees"]***~~

~~***[NOTE TO USER: the above exclusion of consequential and other damages can be converted to a limitation on the amount of such damages, following the format of Paragraph I6.10.A.1 above, by providing that "Engineer's total liability for such damages shall not exceed \$ \_\_\_\_\_."]***~~

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~~***[NOTE TO USER: If appropriate and desired, include I6.10.A.3 below]***~~

3. ~~Agreement Not to Claim for Cost of Certain Change Orders: Owner recognizes and expects that certain Change Orders may be required to be issued as the result in whole or part of imprecision, incompleteness, errors, omissions, ambiguities, or inconsistencies in~~

~~the Drawings, Specifications, and other design documentation furnished by Engineer or in the other professional services performed or furnished by Engineer under this Agreement (“Covered Change Orders”). Accordingly, Owner agrees not to sue or to make any claim directly or indirectly against Engineer on the basis of professional negligence, breach of contract, or otherwise with respect to the costs of approved Covered Change Orders unless the costs of such approved Covered Change Orders exceed \_\_\_\_\_% of Construction Cost, and then only for an amount in excess of such percentage. Any responsibility of Engineer for the costs of Covered Change Orders in excess of such percentage will be determined on the basis of applicable contractual obligations and professional liability standards. For purposes of this paragraph, the cost of Covered Change Orders will not include any costs that Owner would have incurred if the Covered Change Order work had been included originally without any imprecision, incompleteness, error, omission, ambiguity, or inconsistency in the Contract Documents and without any other error or omission of Engineer related thereto. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, Engineer is liable for the cost of Covered Change Orders in excess of the percentage of Construction Cost stated above or for any other Change Order. Wherever used in this paragraph, the term Engineer includes Engineer’s officers, directors, members, partners, agents, employees, and Consultants.~~

~~***[NOTE TO USER: The parties may wish to consider the additional limitation contained in the following sentence.]***~~

~~Owner further agrees not to sue or to make any claim directly or indirectly against Engineer with respect to any Covered Change Order not in excess of such percentage stated above, and Owner agrees to hold Engineer harmless from and against any suit or claim made by the Contractor relating to any such Covered Change Order.]~~

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~~***[NOTE TO USER: Many professional service agreements contain mutual indemnifications. If the parties elect to provide a mutual counterpart to the indemnification of Owner by Engineer in Paragraph 6.10.A, then supplement Paragraph 6.10.B by including the following indemnification of Engineer by Owner as Paragraph 16.10.B.]***~~

~~B. ***Indemnification by Owner:*** 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) 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 Owner or Owner’s officers, directors, members, partners, agents, employees,~~

~~consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.~~

This is **EXHIBIT J**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

**Special Provisions**

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Paragraph(s) \_\_\_\_\_ of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of \_\_\_\_\_ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

**~~AMENDMENT TO OWNER-ENGINEER AGREEMENT~~**

**Amendment No. \_\_\_\_\_**

1. *Background Data:*

a. ~~Effective Date of Owner-Engineer Agreement:~~ \_\_\_\_\_

b. ~~Owner:~~ \_\_\_\_\_

c. ~~Engineer:~~ \_\_\_\_\_

d. ~~Project:~~ \_\_\_\_\_

2. *Description of Modifications:*

~~[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]~~

~~a. \_\_\_\_\_ Engineer shall perform or furnish the following Additional Services:~~

~~b. \_\_\_\_\_ The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:~~

~~c. \_\_\_\_\_ The responsibilities of Owner are modified as follows:~~

~~d. \_\_\_\_\_ For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:~~

~~e. \_\_\_\_\_ The schedule for rendering services is modified as follows:~~

~~f. \_\_\_\_\_ Other portions of the Agreement (including previous amendments, if any) are modified as follows:~~

~~*{List other Attachments, if any}*~~

5. ~~Agreement Summary (Reference only)~~



_____ a. Original Agreement amount:	\$ _____
_____ b. Net change for prior amendments:	\$ _____
_____ c. This amendment amount:	\$ _____
_____ d. Adjusted Agreement amount:	\$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is \_\_\_\_\_.

OWNER:

ENGINEER:

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Changes to the Facade Improvement Grant program

**Explanation:** Planning staff is regularly contacted by parties interested in pursuing Facade Improvement Grant (FIG) funding for projects scheduled to begin prior to the next available grant cycle. While it is readily possible for some property owners to schedule proposed projects around the existing spring and fall grant cycle program, for others it is not feasible. This is particularly true for applicants undertaking projects that require the coordination of multiple contractors over an extended period of time.

Recently it has become clear to Planning staff that opportunities for the Historic Preservation Commission (HPC) to assist and guide in these projects are regularly being missed due to the six-month lag time of the current spring/fall grant cycle. The recommended alternative is the use of an open grant cycle process, which would allow interested parties to submit applications at any time during the year provided funds are available.

Application deadlines would be structured in the same way as Certificate of Appropriateness applications: *20 working days prior to the next regular meeting*. The remaining elements of the FIG process would not change. For example, applications would still be reviewed by the Design Review Committee, who would make a recommendation to the HPC for final recommendations to the City Manager's Office. The HPC would continue to be under no obligation to fund applications regardless of funding availability.

The intent of the FIG program is to encourage redevelopment based on good design. By increasing the grant program's flexibility, the City will be in a better position to achieve this goal.

**Fiscal Note:** This proposed change will create no additional direct costs. Indirect costs, such as staff time devoted, may increase.

**Recommendation:** The Historic Preservation Commission recommended approval of these changes at their June 28 and July 26, 2011, regular meetings.

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

**Attachments / click to download**

[Facade Improvement Grant area map](#)

[HPC FIG Program Guidelines with markups 2011\\_905088](#)

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## CITY OF GREENVILLE

### FACADE IMPROVEMENT GRANT PROGRAM

\*\*\***Bold underlined text** depicts additions to existing standards. depicts deletions from existing standards.

#### INTRODUCTION:

The architectural quality of Greenville's center city area is important to the entire city, its history, image, and economy. Proper improvements to the exterior appearances of individual buildings will help develop the appropriate image and foster revitalization. Therefore, it is important that an organized and coordinated approach to exterior improvements be followed.

The City of Greenville has developed the following guidelines to provide a coordinated approach to property owners, tenants, architects, and contractors involved in exterior improvements or rehabilitations of buildings in the center city area. The guidelines will be used by staff of the Community Development Department in evaluating applications for grants. Applicants who follow the guidelines can ensure that their projects are eligible to utilize available center city rehabilitation incentives and enhance the image of Greenville's center city as a special place to work, shop and socialize. This grant program is available to eligible property owners and tenants within the bounds of the target areas highlighted in the map on the following page.

The Facade Improvement Grant Program (FIG) is an opportunity to obtain grant funds. Applications will be considered on the basis of available funds and compliance with the Design Guidelines. Both commercial and non-profit entities are eligible to participate in this program.

**FIG applications are considered under an "open cycle" program, meaning that interested parties may submit applications at any time during the year provided that funds are available. All applications for the FIG Program are due in the City of Greenville Community Development Department Office (Phone 252-329-4486), located at 201 W. Fifth Street, twenty (20) work-days prior to the next regular meeting of the Historic Preservation Commission at which the application is to be considered.**

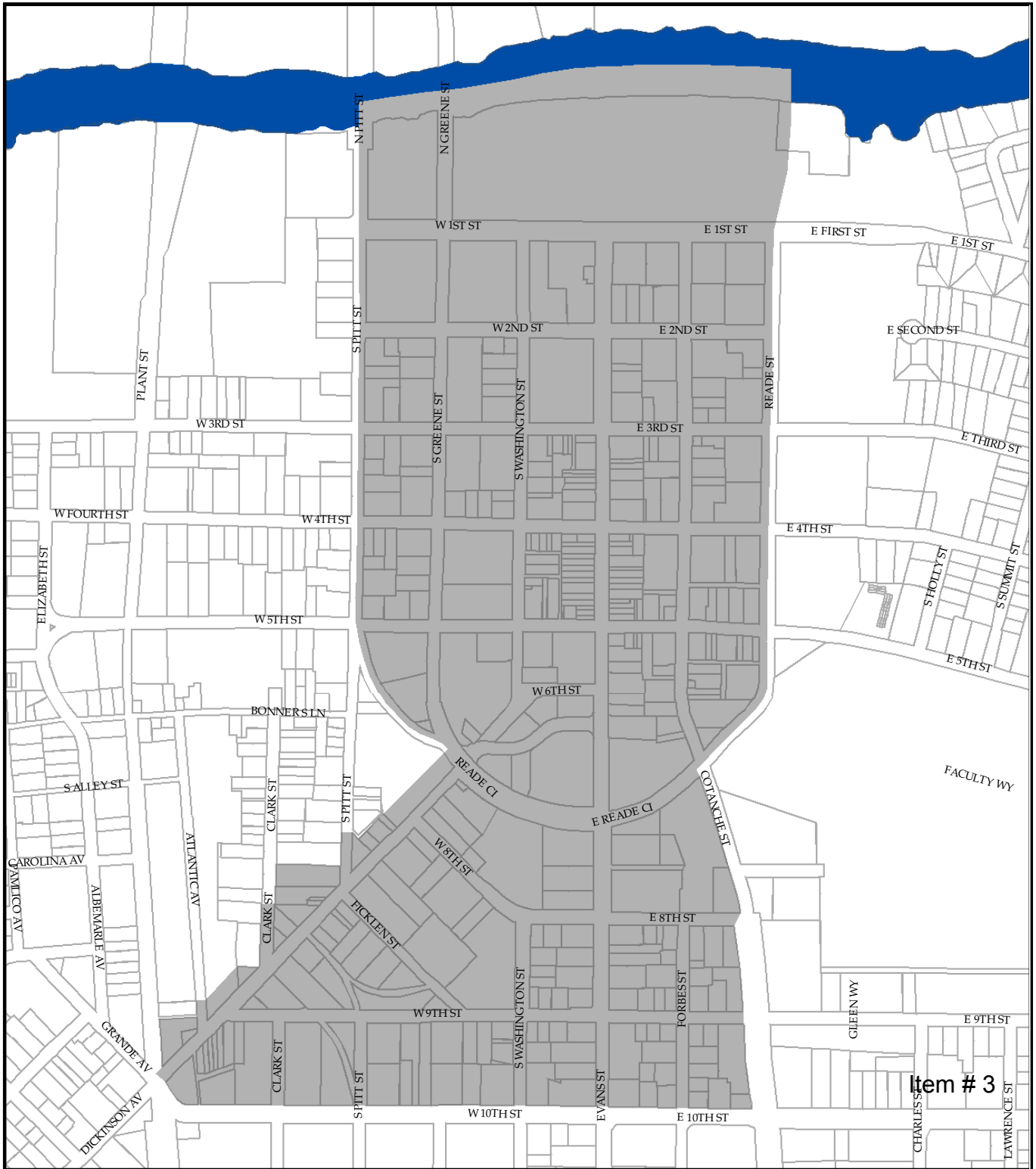
#### PURPOSE:

The purpose of the Facade Improvement Grant Program is to provide an economic incentive to:

- 1) Complete substantial renovations to building facades within the core of the City's central business district ("facade" is defined as "the face of a building; that is, the front, side or rear elevation of a building"; first priority will be given to the street and or public parking area fronts of buildings) and;
- 2) Encourage good design projects that capitalize on rehabilitation of the original fabric or

design of existing properties; and

- 3) Preserve the unique character of Greenville's historic central business district.



- 1) Any owner or tenant of a building within the described target area is eligible for the facade grant. Buildings that are solely used as a private dwelling are not eligible unless originally functioning as a commercial building and later converted to residential use.
- 2) Owners and tenants may request incentive grants separately; however, any tenant must have the owner's written permission attached to the application, and only one application per facade is eligible for approval (subdivided buildings will be reviewed according to building code specifications).
- 3) If a building or qualified unit is occupied by one tenant occupant, the maximum number of applications is one per facade. If a building has multiple independent units, each unit, with a separate entrance, which has a wall that qualifies as an exterior facade, may make separate application on the basis of one application per facade. Where a single tenant occupies multiple qualified units, each unit shall qualify to apply for grant funds. See attached examples. For buildings with multiple tenant spaces and one tenant has applied for FIG funds for a portion of the building, the proposed work should be consistent with the historic fabric of the building. If a portion of a building has been improved with FIG funds, subsequent applications for the remaining portions of the building should be consistent with the prior grant work.
- 4) All rehabilitation design proposals will: meet code requirements of the City of Greenville; meet construction and material guidelines established by the Community Development Department and adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation (see below for eligible and ineligible activities; the design guidelines and standards can be found at the end of this program description).
- 5) Any exterior renovation proposal--from an entire facade rehabilitation to maintenance items, such as repainting or the replacement of building parts--is eligible for funding, but top priority will be given to projects that would make a highly visible contribution to the enhancement of downtown Greenville. Simple sign changes are not eligible.

Examples of projects eligible for funding include:

- a) Cleaning of brick store fronts (chemical stripping, water wash, scraping);
- b) Painting;
- c) Repair/replacement of non-historic doors and/or windows;
- d) Installation of approved awnings (required encroachment agreement with City);
- e) Repointing of brick;
- f) Structural repairs;
- g) Installation of appropriate signs as part of an overall project;
- h) Authentic reconstruction and replacement of original architectural details; and
- i) Removal of false fronts.

Examples of projects that cannot be funded, either in whole or part by the grant program:

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- a) Sandblasting of exterior bricks, which causes them to deteriorate;
  - b) Removal of historic features; and
  - c) Roof repairs.
- 6) City/county taxes for a building where grant funds are requested cannot be delinquent. For any building with delinquent city/county taxes for years prior to the grant cycle year, the owner(s) must attach a receipt to show ad valorem taxes are current or must attach a copy of the work-out agreement with the Pitt County Tax Collector's Office.<sup>1</sup>
- 7) Commercial and non-profit entities are eligible to participate in this program.

### **FUNDING:**

Based on the availability of funds, recipients of a facade grant will receive a maximum \$1 matching grant for each \$2 expended by the owner/tenant on approved facade improvements consistent with the goals of the facade grant program. Depending on the availability of funds, the maximum grant that may be awarded per facade is \$5,000 on a minimum of \$10,000 of expended facade improvements/repairs by the owner/tenant.<sup>2</sup>

### **PROCESS FOR RECEIVING GRANT:**

- 1) Applicant must attend a Grant Workshop sponsored by the Community Development Department, **or have attended a past workshop. Attendance at a previous workshop must be capable of being verified.**
- 2) Applicant completes application with owner's signature (consent of mortgage holder or lien holder may be required) and returns it to the Facade Grant Coordinator. Applicant must also complete and sign the IRS W-9 and other financial forms attached to the application. The applicant is encouraged to seek the services of the State Historic Preservation Office (SHPO), including restoration consultations, before an application is completed and designs are formulated. The office is located at 117 West Fifth Street, Greenville, North Carolina. Appointments are recommended and can be arranged by calling (252) 830-6580.
- 3) Two professional estimates on cost, picture of the façade, a diagram and a paragraph illustrating the proposed work are to be included with the application.
- 4) Applications will be reviewed by staff of the Community Development Department to ensure completeness. The Design Review Committee of the Historic Preservation Commission (HPC) will review all FIG applications and make recommendations to the

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<sup>1</sup> Amended as of 1/25/05 (approved by City Manager & City Council)

<sup>2</sup> Amended as of 8/11/08 (approved by City Manager & City Council)  
DOC # 905088

HPC. The entire HPC will make recommendations for the applications. Those applications will be forwarded to the City Manager's Office for final approval or denial. The City Manager reserves the right to determine the number of applications per structure. The improvements must adhere to the Design Guidelines noted above and the Secretary of Interior Standards. This review may include a credit check on the applicant.

If a member of the HPC has or may have a personal or financial interest in a FIG application, the member will recuse him or herself from participating or voting on any application.

- 5) A notification letter will be sent to applicants concerning the approval or denial of the application. A contract form will be included with the approval letter. Applicants have 30 days from the date of the contract to apply for a building permit or have a plan in the Site Plan Review process, if required, for the approved work. Applicants must provide a copy of their building permit to the Community Development Department. Grant applications for Locally Designated Landmarks should include an application(s) for a Certificate of Appropriateness (COA) or a Minor Work Certificate of Appropriateness (MWCOA). COA's and MWCOA's are required for any type of exterior work on Locally Designated Landmarks. The Design Guidelines provide a list of exterior work that qualifies as a MWCOA. If the proposed grant work is not listed as a MWCOA, a COA is required.
- 6) Contracts must be signed **BEFORE** any work begins.
- 7) All approved work must be completed within nine (9) months of the date on the contract. Failure to meet this date may result in the loss of the grant.
- 8) Upon project completion, copies of paid statements and canceled checks along with photos of the completed work must be submitted to the City of Greenville to claim reimbursement. Failure to submit a reimbursement request along with paid statements and canceled checks, etc., within 6-months of the date of project completion may result in forfeiture of potential reimbursement funds.
- 9) The Facade Grant Coordinator (Community Development Department employee or consultant) and the SHPO staff (upon request) will inspect work completed and request checks to be issued for the amount of the grant or one-half the actual cost of the project, whichever is less, provided the work is accomplished in accordance with the agreement.
- 10) A building or qualified unit may receive no more than two (2) grant awards for the same façade within two consecutive fiscal years, thereafter, applicants may apply for grant funds for the same façade after two years. For example, the front façade of a building receives a grant award for removal of a false front in January 2000, and in September 2000 the same façade of the same building receives a grant award to paint and install a canvas awning. This façade of the building is not eligible for additional grant funds until the expiration of a 2-year period from the date of the last award.



## REQUESTING AN EXTENSION:

- 1) Applicants may be granted an extension, upon written request, if they have a compelling reason(s) based on extenuating circumstances for why they were unable to complete the work within the contracted period.
- 2) Upon transfer of a property or business from one party to another, the new property or business owner is eligible to assume an *active* façade grant award attached to that property, upon written request indicating that said property or business owner understands the terms of the FIG contract and will assume any responsibilities pertaining therein. Transfer of ownership of a property or business is not sufficient grounds, by itself, for an extension to be granted; if the previous owner failed to complete the work within the contracted period and the new property or business owner cannot provide a compelling reason(s) based on extenuating circumstances for why the work was not completed, an extension will not be granted. However, the new property or business owner would be encouraged to resubmit a grant proposal for the facade.
- 3) In the event that an application is granted an extension, the façade associated with that application will be considered to have received a grant award in the same **year** in which the extension was granted for purposes of determining whether a façade is eligible for additional future grants. For example, if an application was originally awarded funding in **January of 2010** and then was granted an extension through **May of 2011**, the façade associated with that award would be considered to have effectively received its Façade Improvement Grant award during **2011**. During the following Fiscal Year (which would begin July 1, **2012**), the applicant who had received the extension would then be eligible to apply for another façade grant for the same façade, but it would be considered his second grant within two consecutive fiscal years (see above: Process for Receiving Grant, Item 10).

## FACADE IMPROVEMENT DESIGN GUIDELINES:

The following standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

### The Secretary of the Interior's Standards for Rehabilitation

- 1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

#### Construction Methods and Materials of the Community Development Department

- 1) New construction, additions, and remodeling of existing buildings should maintain established proportion and spacing of window openings.
- 2) The quality of building materials varies widely, and it is the quality of the finish materials and their application that determines compatibility. Use the highest quality facing materials possible. Materials that are compatible in quality, color, texture, finish, and dimension to those existing in the project area are encouraged.
- 3) Color should coordinate with neighboring buildings. The more intense hues of a color are discouraged. The use of more than one vivid color per building is discouraged. The use of colors that are disharmonious with other colors used on the building or found on the adjacent buildings is discouraged. Contrasting colors that accent architectural details

and entrances are encouraged.

- 4) The retention and repair of existing cornices is strongly encouraged whenever possible. The re-creation of missing cornices should be done with care, using historic photographs as a guide.
- 5) Sign guidelines for the central business district have been developed to prevent visual clutter and to improve general visual quality. Within these guidelines, individuality and creativity are encouraged. Signs should relate to each other through quality, not necessarily through the use of uniform materials, lettering, or size. All signs are controlled by the City of Greenville's sign ordinance. Good signs have the following characteristics: legibility, clarity, attractiveness, durability, and good placement. Most buildings are designed with a defined sign space. The location of signs of appropriate size in these spaces is strongly encouraged. Plastic, illuminated signs are strongly discouraged. Consider attached, flat, or hanging signs lit with outside direct lighting. All signs should meet code requirements for materials, size, projection, etc. Hanging or projecting signs or hand-painted window signs of good quality are encouraged. (Sign permit may be required – check with City zoning official).
- 6) Awnings should be related to the shape and color of the building. First floor awnings should terminate no higher than one (1) foot below the second floor windows. Metal canopies are strongly discouraged, and their removal and replacement with fabric awnings are strongly encouraged. If installed or retained, they should be designed or treated in a manner that adds to the visual quality of the building. All awnings must meet code requirements for size, materials, projection, etc.

#### **GRANT FUND AVAILABILITY NOTIFICATION:**

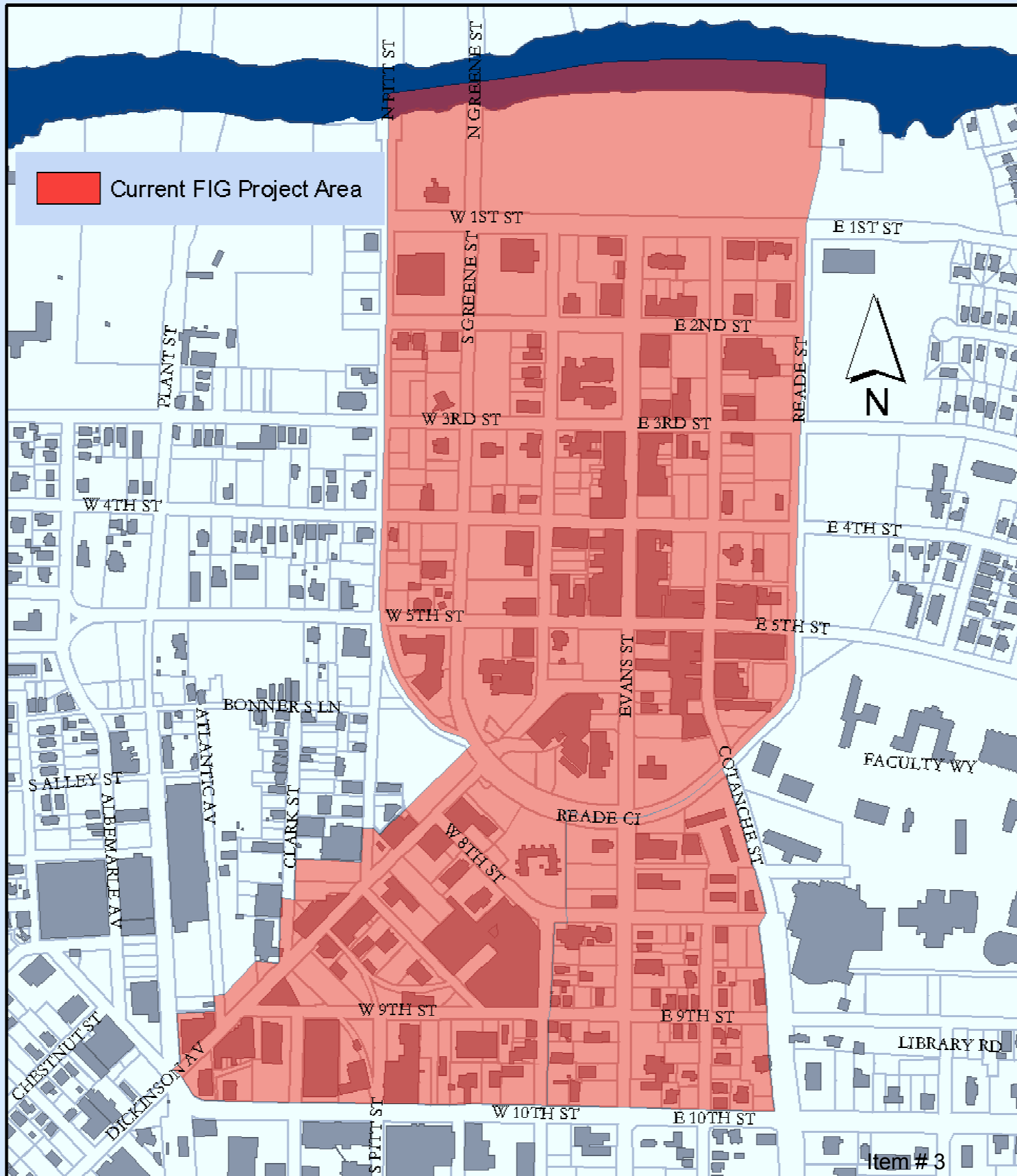
An advertisement will be placed in the City Page of The Daily Reflector, and fliers or postcards will be distributed to businesses within the grant area and Uptown Greenville to notify potential recipients that grant funds are available as provided for in the adopted city budget.



# City of Greenville



## Facade Improvement Grant Project Area





## City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Amendment to Greenville Utilities Commission's agreement with US Cellular for Westside Communications Tower

**Explanation:** Greenville Utilities Commission and US Cellular have a 10-year License Agreement for a US Cellular building structure and three (3) antennas mounted at 110 feet on the Greenville Utilities' Westside Communication Tower. This amendment will increase the number of US Cellular antennas on the tower at 110 feet from three (3) to six (6).

Greenville Utilities received a 120-foot communications tower valued at \$100,000 and 14,400 feet of fiber optic cable valued at \$115,700 in exchange for 104 months of abatement on a \$2,000 monthly license agreement for three (3) antennas at 110 feet. Greenville Utilities has access at the 120-foot level for its use. This amendment increases the monthly License Agreement to \$2,600 for a total of six (6) US Cellular antennas reducing the abatement period to 88 months.

In December of 2008, the Greenville Utilities Commission Board and the City Council approved the License Agreement. The Greenville Utilities Commission Board approved the First Amendment to the License Agreement with US Cellular at its August 18, 2011 regular meeting and recommended similar action by the City Council.

**Fiscal Note:** No costs to the City.

**Recommendation:** Approve the first amendment to the License Agreement between US Cellular and Greenville Utilities Commission.

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# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Resolution designating the Plan Administrator for the City's Other Post-Employment Benefits (OPEB) Irrevocable Trust Fund

**Explanation:** On June 6, 2011, City Council reviewed and approved the local Trust Fund and Contribution Agreements for the City's Irrevocable OPEB Trust Fund. As part of the Plan Agreement, the City by resolution must designate a Plan Administrator. The job of the Plan Administrator is to act on behalf of the City in all matters relating to the Trust.

Attached is a resolution designating the City Manager as the City's Plan Administrator. This action shall be effective until the Trustee is notified by resolution that the City has changed its Plan Administrator.

**Fiscal Note:** No fiscal impact.

**Recommendation:** Approve the attached resolution designating the City Manager as the Plan Administrator for the City of Greenville's Irrevocable OPEB Trust Fund.

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[Resolution for Plan Administrator OPEB Trust Fund 905052](#)

RESOLUTION NO.  
A RESOLUTION DESIGNATING A PLAN ADMINISTRATOR  
FOR THE CITY OF GREENVILLE OTHER POST-EMPLOYMENT BENEFITS (OPEB)  
IRREVOCABLE TRUST FUND

WHEREAS, the City Council has established the City of Greenville OPEB Trust Fund;  
and,

WHEREAS, Section 3.4 of the Plan Document, adopted by the City Council, provides  
that the Plan Administrator be designated by the City Council;

NOW, THEREFORE, BE IT RESOLVED by the City Council that:

1. The City Manager of the City of Greenville is hereby designated as the Plan Administrator for the City of Greenville OPEB Trust Fund.
2. The Plan Administrator designated herein shall serve at the pleasure of the City Council.
3. The Plan Administrator shall perform such duties and responsibilities as set forth in the Plan Document.

ADOPTED this the 8th day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

Attest:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Report on alternatives for zoning ordinance modifications related to spacing requirements for public or private clubs

**Explanation:** The topic of public or private clubs was discussed at the June 9, 2011, City Council meeting. More specifically, the City Council discussed the standards applicable to said uses, including various spacing requirements. One of the results of this meeting was City Council directing the City Attorney to work with Community Development Department staff to develop alternatives for City Council to review related to potential modifications to the current club spacing requirements.

Staff presented City Council with a detailed report (attached) that included the alternatives developed by staff for their review and consideration at their August 8, 2011, meeting. The report also identified the location of existing public or private clubs; summarized the existing standards applicable to public or private clubs; identified where public or private clubs can be located based on the current standards; provided background information related to how the standards for public or private clubs have been modified, particularly since 1977; and provided a survey of the spacing requirements applicable to public or private clubs in 18 other North Carolina municipalities. The alternatives presented to City Council included the following:

**Alternative 1**

Modify the existing separation requirements for public or private clubs. This alternative could involve reductions to any of the current separation standards.

**Alternative 2**

Modify the existing separation requirements for public or private clubs so that the existing separation requirements remain in place, but could be reduced a set distance provided that additional standards are met which are designed to reduce adverse impacts on surrounding properties.

**Alternative 3**



Create an Overlay District along a specified portion of the Dickinson Avenue corridor with a different set of standards for public or private clubs than is applicable within the rest of the City's jurisdiction.

**Alternative 4**

Leave the existing standards for public or private clubs in their current form.

Upon receiving the report from staff, and after significant discussion, City Council voted to table the matter for thirty days to allow Council Member Glover to host a meeting in her district to gather public input on the topic and to allow the Neighborhood Advisory Board to review the topic and provide City Council with a recommendation. To this end, Council Member Glover scheduled a public input meeting for August 29, 2011, beginning at 6:00 p.m. at the American Legion building located at 1710 Chestnut Street. Due to damage to the building and disruption to the neighborhood caused by Hurricane Irene, this meeting was postponed. The meeting will be rescheduled, and the results will be reported at a future City Council meeting.

The Neighborhood Advisory Board discussed this topic at their August 18, 2011, meeting. In summary, the Board does not support any reduction in the existing 500-foot separation requirements (i.e. they support Alternative 4). They also provided three additional recommendations related to the separation requirements. A detailed review of the Neighborhood Advisory Board's recommendations and rationale are provided via the attached Memo from the Board's Chair, Ann Maxwell, to Community Development Director Merrill Flood, dated August 23, 2011.

**Fiscal Note:** No direct cost.

**Recommendation:** Consider input from District 2 community, City of Greenville Neighborhood Advisory Board, and staff about public or private night club zoning ordinance standards.

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**Attachments / click to download**

[Report on Public or Private Club Standards 902095](#)

[Neighborhood Advisory Board Memo](#)

## **Report on Alternatives for Zoning Ordinance Modifications Related to Standards for Public or Private Clubs**

### Contents:

- Section I. City Council Directive – Page 2
- Section II. Identification of Existing Public or Private Clubs – Page 2
- Section III. Summary of Existing Standards – Page 5
- Section IV. Acceptable Locations for a Public or Private Club with a Special Use Permit Based on Existing Standards– Page 9
- Section V. History and Background Information – Page 11
- Section VI. Survey of Public or Private Club Spacing Requirements for 18 other North Carolina Municipalities– Page 14
- Section VII. Alternatives for Zoning Ordinance Modifications– Page 16

**Report Developed by the City of Greenville  
City Attorney's Office and  
Community Development Department - Planning Division  
July 20, 2011**

## **SECTION I – City Council Directive**

At the June 9, 2011, Greenville City Council meeting the topic of Public or Private Clubs was discussed. More specifically, the City Council discussed the standards applicable to said uses including various spacing requirements. This topic was placed on the meeting agenda as a result of Mr. Keith Frizzell's desire to open a club at 1809 Dickinson Avenue, a location that does not meet the City's current spacing standards because of its proximity to existing single family dwellings and a single family zoning district.

The result of this discussion included (1) City Council advising Mr. Frizzell to follow the standard process for requesting a Zoning Ordinance Text Amendment, which includes filing an application with the Community Development Department; and (2) City Council directing the City Attorney to work with the Community Development Department to develop options for City Council to review related to alternative modifications to the current club spacing requirements that would allow new facilities, such as the one proposed by Mr. Frizzell, to be legally developed and operated. The purpose of this report is to provide the alternatives requested, thus meeting City Council's directive.

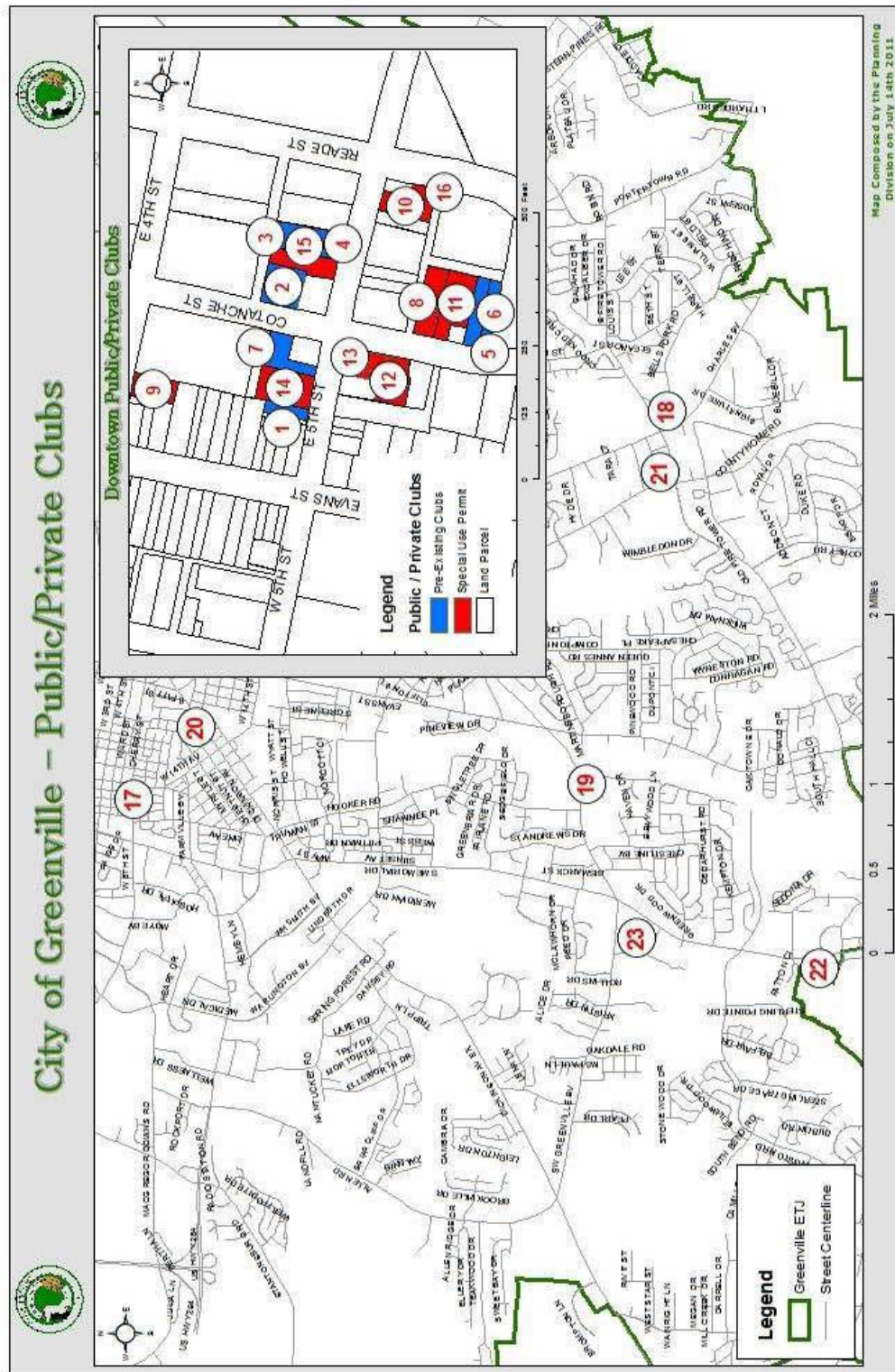
## **SECTION II – Identification of Existing Public or Private Clubs**

Establishments classified as Special Use Permit Dependent have been issued a special use permit by the Greenville Board of Adjustment. All establishments included under this category are reviewed annually for compliance with permit requirements.

Establishments classified as Pre-existing/Non-Conforming were in operation prior to any special use permit requirement. Such legal uses may continue to operate provided the public/private club use is not discontinued for more than 180 continuous days. The right to continue the public/private club runs with the land and a change in ownership does not affect the legal non-conforming status. If such establishment is discontinued for more than 180 continuous days, a special use permit is required prior to resuming the use. Any expansion or enlargement of such use, including additional parking area, is subject to special use permit approval.

<b>ID</b>	<b>Name</b>	<b>Location</b>	<b>Type</b>
1	Levels	109 E. 5 <sup>th</sup> St.	Pre-existing / Non-conforming
2	Rumors	417 Cotanche St.	Pre-existing / Non-conforming
3	The Phoenix	209 E. 5 <sup>th</sup> St.	Pre-existing / Non-conforming
4	Paradise	209 E. 5 <sup>th</sup> St.	Pre-existing / Non-conforming
5	Five 19	519 S. Cotanche St.	Pre-existing / Non-conforming
6	Mac's Billiards	517 S. Cotanche St.	Pre-existing / Non-conforming
7	The Tank	420 Cotanche St.	Pre-existing / Non-conforming
8	Still Life	511 S. Cotanche St.	Special Use Permit Dependent
9	Tavern on 4 <sup>th</sup>	110 E. 4 <sup>th</sup> St.	Special Use Permit Dependent
10	Rehab Lounge	218 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
11	Pantana Bob's	513 S. Cotanche St.	Special Use Permit Dependent
12	5 <sup>th</sup> Street Distillery	120 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
13	5 <sup>th</sup> Street Annex	122 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
14	Pirates Den	113 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
15	The Other Place	207 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
16	The Boiler Room	220 E. 5 <sup>th</sup> St.	Special Use Permit Dependent
17	Club Fusion	1311 W. 5 <sup>th</sup> St.	Pre-existing / Non-conforming
18	Live	2120 E. Firetower Rd.	Special Use Permit Dependent
19	City Hotel & Bistro	203 SW Greenville Blvd.	Special Use Permit Dependent
20	Great American Mining Co.	1008 Dickinson Ave.	Pre-existing / Non-conforming
21	Tie Breakers	1920-B Symthewyck Dr.	Special Use Permit Dependent
22	Player's Choice Billiard's	4052 S. Memorial Dr.	Special Use Permit Dependent
23	Pastimes Billiards and Pub	3400 S. Memorial Dr.	Pre-existing / Non-conforming

Map 1: Location of Existing Public or Private Clubs



ID# corresponds to table on page 3.

## **SECTION III – Summary of Existing Standards**

### **Section 9-4-78: Table of Uses**

Public or private clubs are subject to special use permit approval of the Board of Adjustment in the following zoning districts:

- CD (Downtown Commercial)
- CDF (Downtown Commercial Fringe)
- CG (General Commercial)
- CH (Heavy Commercial)

**Note:** Public/private clubs are not a by-right (permitted) use in any district.

### **Section 9-4-22. Definitions.**

*“Public or private club.*

- (1) An establishment of which the principal use is entertainment and which meets all of the following:
  - (a) May be open to the general public;
  - (b) May require a membership, cover, or minimum charge for admittance or service during regular or special periods of operation;
  - (c) May provide live or recorded amplified music;
  - (d) May provide a floor show;
  - (e) May provide a dance area;
  - (f) May offer a full service bar;
  - (g) May offer food services;
  - (h) May provide food attendant (waiter/waitress) table ordering and busboy services; and
  - (i) Does not qualify under the definition of restaurant, fast food; restaurant, conventional; or dining and entertainment establishment as contained in this section.
- (2) Any proposed or established “dining and entertainment establishment” that does not comply with the definition, standards, or requirements applicable to “dining and entertainment establishments” as contained herein shall be classified as a “public or private club” for purposes of zoning regulation.

**Section 9-4-86(f). Specific Criteria:**

Note: The following requirements are applicable to all public/private clubs that are special use permit dependent. The requirements are in addition to reasonable conditions of approval required by the Board of Adjustment in the individual case.

*(F) Public or private club.*

- (1) (a) A special use permit for a public or private club is subject to revocation in accordance with the provisions of this subsection (F)(1). Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a public or private club in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a public or private club which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a public or private club for which the annual review includes a finding of one or more instances of non-compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
  1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
    - a. The use of the property is inconsistent with the approved application;

- b. The use is not in full compliance with all specific requirements set out in this chapter;
  - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
  - d. The use is not compliant with any additional conditions of approval established by the board and set out in the order granting the permit.
2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F) and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a public or private club.
- (e) The requirements and standards set forth in this subsection (F)(1) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a public or private club shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a public or private club shall comply with the provisions of Title 11, Chapter 9 of the City Code whether or not the establishment is a nightclub, bar or tavern.
- (3) In addition to subsection (F)(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a public or private club, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the



- permit. The acknowledgement shall be made on forms provided by the planning office.
- (5) Any public or private club that has been issued a special use permit by the Board of Adjustment, that is subject to mandatory annual renewal, shall continue under the terms and conditions of the issued special use permit, until the expiration of said permit. All subsequent special use permit approvals for said location shall be subject to the specific criteria set forth under this subsection (F).
  - (6) No public or private club located in any district shall be located within a 500-foot radius of an existing or approved public or private club as measured from the nearest lot line in accordance with the following. When a public or private club is located or to be located on a lot exclusive to itself, the measurement shall be from the perimeter lot line of the exclusive lot. When a public or private club is located or to be located in a separate structure exclusive to itself on a lot containing multiple uses, the measurement shall be from the perimeter lot line of the lot containing multiple uses. When a public or private club is located or to be located in a common structure with other uses such as a shopping center on a common lot, the measurement shall be from the perimeter lot line of the common lot.
  - (7) At the time of special use permit approval, a public or private club shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the public or private club to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this section, the term “single-family residential zoning district” shall include any RA20; R15S; R9S; R6S; and MRS district.

### **Horizon’s – Greenville’s Community Plan:**

Vision Area H, Management Actions, Subsection 9 of the Comprehensive Plan provides the basis for prohibiting (additional) public and/or private clubs within an area bound by First, Washington, Dickinson, Reade and Cotanche Streets.(i.e. sub-districts overlay).

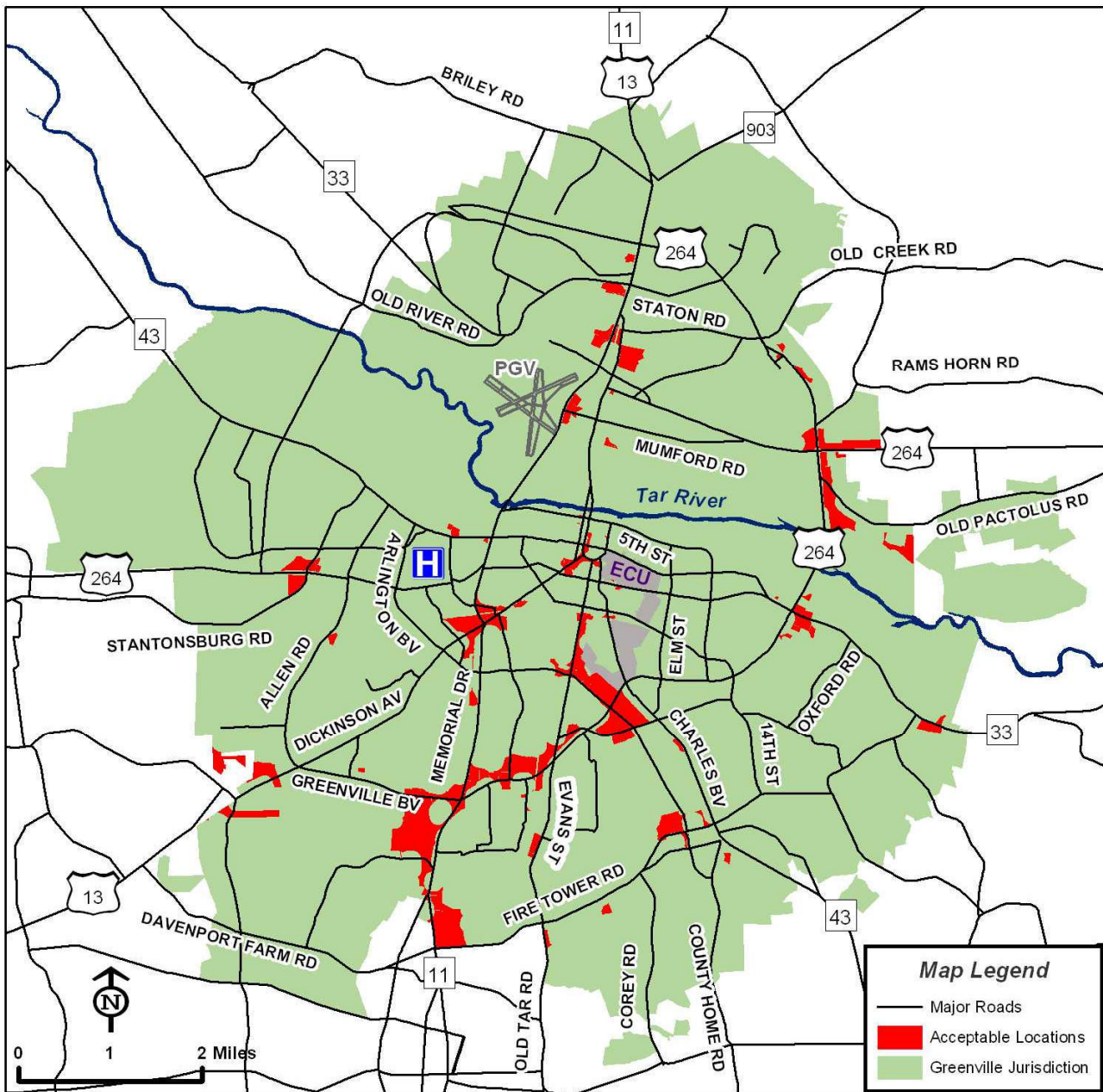
#### **SECTION IV. Acceptable Locations for a Public or Private Club with a Special Use Permit Based on Existing Standards**

Based on the current standards outlined above, Planning Division Staff has identified the areas within the City's jurisdiction in which a public or private club could be developed with a Special Use Permit. These areas include:

- Approximately **1,207 acres of property** (1.88 square miles);
- **346 addressed locations** (includes individual buildings and buildings with multiple addresses); and
- **187 vacant parcels.**

Much of this property is located along the city's primary thoroughfares (see Map 2) including, but not limited to, Greenville Boulevard, Memorial Drive, Dickinson Avenue, Arlington Boulevard, Red Banks Road, Fire Tower Road, and Evans Street; and within nodes where these primary thoroughfares intersect one another and other collector streets. It should be recognized that these areas have a combination of stand-alone commercial structures and shopping centers, with some being occupied and some vacant, as well as undeveloped property. It should be further recognized that some of these areas include small portions of lots that may not be conducive to the development of a club facility.

Map 2: Acceptable Locations for a Public or Private Club with a Special Use Permit  
Based on Current Standards



**Note:** Map and information provided in this Section of Report is based on June, 2011 data.

**SECTION V – History and Background Information**

Prior to 1977 public/private clubs were regulated as a special use under either “dine or dance establishments” or as “other activity” determined by the Board of Adjustment to be compatible with other district uses. The “other activities” category was deleted in 1991.

See Description (below) for ordinance/amendment explanation.

<b>Year</b>	<b>Applicant</b>	<b><u>Description</u></b>	<b>Ord. # And Other</b>
1977	unknown	Amendment Sec. 32-3 Re: Defining "Nightclub, beer hall, coffeehouse, cocktail lounge, private club and other similar activities"	676
1977	unknown	Ordinance deleting "Dine & Dance Establishments" as special uses in Downtown Commercial and Downtown Commercial Fringe zoning districts	677
1977	unknown	Amendment Sec. 32-56 Re: Adding as a special use "Nightclub, beer hall, coffeehouse, cocktail lounge, private club and other similar activities in the CDF district"	678
1977	unknown	Amendment Sec. 32-79.1, Requiring special use permit to be granted by City Council for all "Nightclub, beer hall, coffeehouse, cocktail lounge, private club and other similar activities"	679
1977	unknown	Amendment to Chapter 32, Article VII by adding "Nightclub, beer hall, coffeehouse, cocktail lounge, private club and other similar activities" to Sec. 32-106 - parking requirements	680
1980	unknown	Ordinance requiring owners of nightclubs, bars, and taverns to provide or pay for litter control in their parking lots and surrounding areas	1033

<b>Year</b>	<b>Applicant</b>	<b><u>Description</u></b>	<b>Ord. # And Other</b>
1983	unknown	Ordinance authorizing the Board of Adjustment to issue special use permits for nightclubs, and to include an annual renewal requirement and 500 foot spacing requirement between nightclubs	1253
1992	Board of Adjustment	Amend the zoning ordinance to allow automatic annual renewal of public/private club special use permits	Denied
1992	City Manager, City Attorney, and Planning	Amend the zoning ordinance to remove the 500 foot spacing (separation) requirement between public/private clubs	2511
1993	CDD Planning	Amend the table of uses by deleting "Public or private club" as a special use within the RA-20 district	2564
1996	CDD Planning	Amend the Parking Regulations to delete "Public or Private Club" from the "Civic or Fraternal Organization" category listing	96-75
1998	CDD Planning	Amend the <u>Comprehensive Plan</u> (Horizons), Vision Area H further described as the downtown Greenville central focus area, management actions to include a new subsection 9 prohibiting (additional) public and/or private clubs within an area bound by First, Washington, Dickinson, Reade and Cotanche Streets.(i.e. sub-districts overlay)	98-50 4/20/98
2000	CDD Planning (per recommendation of the Board of Adjustment)	Amend the public/private club special use permit criteria to require that a designated area within proximity of the business be policed for trash each night after closing.	00-66 5/11/00
2003	Public/Private Club Study Committee – Deputy City Manager Bill Richardson, Chair	Amend the special use permit criteria for public and private clubs (all districts) and pool halls (CD only).	Held by Study Committee - 10/03

<b>Year</b>	<b>Applicant</b>	<b><u>Description</u></b>	<b>Ord. # And Other</b>
2005	City Council	Amend the standards and criteria for public or private club special use permits, including annual review report and rehearing procedures and requirements.	05-90 8/11/05
2006	Michael Glenn (Jefferson Blount Harvey Building) & CDD Planning	Amend the CD district to allow public and private clubs in the downtown overlay as a special use subject to compliance with performance standards including building design standards and to amend Horizons to delete the downtown sub-districts overlay	Withdrawn
2009	City Council	Ordinance requiring public or private clubs to conduct criminal background checks on bouncers to ensure that they meet minimum specified requirements and to require a minimum level of training for all bouncers.	09-98 12/10/09
2010	City Council	Amend the standards and criteria for public or private clubs to include a 500-foot separation from existing or approved public or private clubs	10-11 2/11/10
2010	CDD (at the direction of City Council)	Amend the standards and criteria for public or private clubs to include a 500-foot separation from any conforming single family dwelling and any single family residential zoning district.	10-68 8/12/10

## **SECTION VI – Survey of Public or Private Club Spacing Requirements for 18 other North Carolina Municipalities**

City staff surveyed 18 other North Carolina municipalities to determine whether they have any separation standards associated with Public or Private Clubs (the term Public or Private Clubs includes the term Nightclub in other municipalities). Below are the results of this survey:

### **Cary**

- Nightclub outdoor activity areas cannot be located within 100 feet of any residential zoning district.

### **Elizabeth City**

- Nightclubs cannot be located within 500 feet (except in the Central Business District) of any other nightclub or residential zoning district.

### **Fayetteville**

- Nightclubs cannot be located within 500 feet of a school, daycare and/or church.

### **Garner**

- Nightclubs cannot be located within 500 feet of a dwelling or residential zoning district.

### **Goldsboro**

- Nightclubs (except in the Central Business District) cannot be located within 200 feet of any residentially zoned or developed property, church or school. Where the proposed establishment is separated from residentially zoned or developed property by a four-lane highway, the two-hundred-foot separation shall only apply to the properties along the sides and rear of the establishment.
- No nightclub shall be located within 150 feet of any other such establishment.

### **Greensboro**

- Nightclubs cannot be located within 200 feet of public parks, residential zoning districts, churches, day cares, institutional uses and elementary and secondary schools. On sites greater than 5,000 sq. ft., the distance is measured from the building. On site less than 5,000 sq. ft., distance is measured from property lines.

**Kinston**

- Nightclubs cannot be located within 300 feet of any other nightclub.

**Morganton**

- Nightclubs cannot be located within 200 feet of a church, elementary or secondary school, public park, or residentially zoned property.

**Mount Airy**

- Nightclubs cannot be located within 50 feet of any residential zoning district.

**Washington**

- Nightclubs cannot be located within 500 feet of any other nightclub.

**Wilson**

- Nightclubs cannot be located within 500 feet of a dwelling, church or public park.

**Cities surveyed that do not have any spacing requirements (7 total):**

**Chapel Hill**

**Jacksonville**

**Laurinburg**

**Rocky Mount**

**Siler City**

**Wilmington**

**Havelock**

New standards that are scheduled to be considered on July 25, 2011: Nightclubs cannot be located within 50 feet of a residential use or residentially-zoned lot.



## **SECTION VII – Alternatives for Zoning Ordinance Modifications**

The alternatives provided below are general in nature and are intended to provide City Council with a range of policy options available in modifying the current standards for public or private clubs. Specific details associated with the preferred alternative will be developed upon direction from City Council.

### **Alternative 1**

Modify the existing separation requirements for public or private clubs. This alternative could involve reductions in any of the following separation standards:

- Public or private club to public or private club (currently 500-feet);
- Public or private club to conforming single family dwelling (currently 500-feet);
- Public or private club to single family zoning district (currently 500-feet).

The application and impact of this alternative would be throughout the City's jurisdiction or in specified zoning classifications; not confined to one particular area.

### **Alternative 2**

Modify the existing separation requirements for public or private clubs so that the separation requirements remain in place, but could be reduced to a set distance (upon application and receipt of a special use permit) provided that additional standards are met which are designed to reduce the adverse impacts on surrounding properties. This alternative could involve reductions in any of the following separation standards:

- Public or private club to public or private club (currently 500-feet);
- Public or private club to conforming single family dwelling (currently 500-feet);
- Public or private club to single family zoning district (currently 500-feet).

Additional standards which would allow the reduction of the separation requirements could include:

- A security standard requiring the employment of a specified number of off-duty law enforcement officers or licensed security guards who are visible outside the establishment during specified periods of time;
- A prohibition on sound being audible at a specified distance from the establishment;

- The development of a traffic plan that addresses traffic flow and routing for patrons leaving the establishment at specified times;
- A security monitoring plan for surrounding parking areas; and
- More frequent review by the Board of Adjustment.

The application and impact of this alternative would be throughout the City's jurisdiction or in specified zoning classifications; not confined to one particular area.

### **Alternative 3**

Create an Overlay District along a specified portion of the Dickinson Avenue corridor that has different standards for public and private clubs than are applicable in the rest of the City's jurisdiction. There must be a rational basis for the area covered by the Overlay District (i.e. it must be a reasonable size, have logical boundaries, etc...). An example of an Overlay District that has already been created in the city is the Urban Core Overlay District which has modified setback standards and was used to facilitate the development of The Province on Charles Boulevard.

This alternative could involve reductions in any of the following separation standards:

- Public or private club to public or private club (currently 500-feet);
- Public or private club to conforming single family dwelling (currently 500-feet);
- Public or private club to single family zoning district (currently 500-feet).

The different standards which would apply in the Overlay District could include:

- A security standard requiring the employment of a specified number of off-duty law enforcement officers or licensed security guards who are visible outside the establishment during specified periods of time;
- A prohibition on sound being audible at a specified distance from the establishment;
- The development of a traffic plan that addresses traffic flow and routing for patrons leaving the establishment at specified times;
- A security monitoring plan for surrounding parking areas; and
- More frequent review by the Board of Adjustment.

The application and impact of this alternative would be confined or limited to the area covered by the Overlay District.

**Alternative 4**

Leave the existing standards for public and private clubs in their current form.

# Memo

**To:** Merrill Flood, Director, City of Greenville Community Development Department

**From:** Ann Maxwell, Chair, City of Greenville Neighborhood Advisory Board

**CC:** NAB membership; Thom Moton, Assistant City Manager; David Holec, City Attorney; Carl Rees, Senior Planner; Chris Padgett, Chief Planner; and Laura Searfoss, Neighborhood Liaison

**Date:** 8/23/2011

**Re:** Neighborhood Advisory Board's Input on Modifications to the 500-separation Rule

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## Background

At the Greenville City Council meeting on August 8, 2011, Chris Padgett, Chief Planner in the Planning Division of the city's Community Development Department, and Dave Holec, City Attorney, presented four alternatives to modifying the separation requirements in Ordinance No. 10-11 (Club to Club Separation) and Ordinance No. 10-68 (Club to Single-Family Residential Use or Zoning District Separation). At that time, City Council asked for the Neighborhood Advisory Board (NAB) to respond to these alternatives as part of the motion to table the vote and solicit more input from citizens.

Since July 2011, Ann Maxwell, chair of the NAB, received calls or emails opposing any modifications from several concerned residents throughout the City of Greenville. Specifically, citizens from District 2, where a nightclub proposed at 1807 Dickinson Avenue created the impetus for City Council to explore this issue, expressed worries that the club would bring unwanted noise and traffic into the neighborhood, as well as potentially create threats to residents' safety. Residents who lived within less than 500 feet from the proposed nightclub location also felt that the presence of this club would threaten the existing peace and quiet of their neighborhood, as nightclub owners cannot regulate what happens once patrons leave their property. Councilmember Rose Glover of District 2 also planned a separate meeting on Monday, August 29, 2011, to gather more feedback on this specific project.

The NAB—which aims to preserve and strengthen neighborhoods in the City of Greenville—recognizes the broader implications that any modification would have on neighborhoods. For this reason, on August 18, 2011, the NAB solicited additional input on this topic, where several residents spoke in opposition to modifying the ordinance. The NAB unanimously voted to endorse Alternative 4: Leave the existing standards for public or private clubs in their current form (of the four alternatives presented to City Council at its August 8th meeting).

## NAB's Response and Recommendations

The consensus of the NAB is that Alternative 4, which does not modify the ordinance in whole or in part, is the only effective way to protect this—and any—neighborhood from the unpleasant effects of crime, noise, traffic, and litter that often accompany nightclubs. We, the NAB, do not want any

neighborhood to suffer the adverse effects of a nightclub, and not modifying the existing ordinance is the only way to ensure these effects do not occur.

The ordinance should not be changed, because it seems too restrictive in one case. Since the current separation requirements between nightclubs and residential areas are approximately 1 year old, it is too early to determine their effectiveness, or conversely, their restrictiveness. Additionally, reducing any of the separation standards in one case would open City Council to similar requests, rendering most ordinances ineffective. As city staff pointed out during its August 8, 2011, presentation to City Council, other locations within the city would allow a nightclub to open without altering the ordinance.

It has not been the experience of this board that additional criteria, as proposed in Alternative 2, would mitigate the unwanted by-products of nightclubs. These plans require strict monitoring to ensure compliance, and the process for revoking the special-use permit required to open a nightclub is very costly and time-consuming. We do not want to burden Greenville's city staff and police officers. More importantly, we do not want citizens of our city to be kept awake at night, to pick up unnecessary litter, and to be afraid for their safety.

Finally, an overlay district applies to all cases which meet the lessened criteria—however narrow. Thus, it cannot ensure clubs do not locate less than 500 feet from other residential areas along the Dickinson Avenue corridor (or any other area the overlay may encompass).

After considering the proposed alternatives, the NAB feels strongly that the current separation ordinance does not need to be altered.

In addition to endorsing Alternative 4, the NAB would also like City Council to consider the following additional recommendations:

1. The spacing requirements should include all permitted residential dwelling and zoning districts (compared with single-family residential areas).
2. The spacing requirements should be measured from lot-line to lot-line (compared with building to lot-line).
3. The spacing requirements should be increased to a distance greater than 500 feet.

Thank you for seeking citizen input on this matter through the NAB. Members of the NAB care about all of our neighbors' needs and welcome any opportunity to comment on issues that affect neighborhoods in the City of Greenville. Members of the NAB will be available at City Council's September 8, 2011 meeting to answer questions related to this memo.



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Second reading and final approval of an ordinance granting a taxicab franchise to Michael Levon Long, d/b/a K & M Cab Service

**Explanation:** Michael Levon Long, d/b/a K & M Cab Service, has made application to establish a taxicab franchise to operate a total of one (1) taxicab. The Financial Services, Community Development, and Police Departments have all reviewed the application packet and support approval of the applicant's request. A public hearing on this request is scheduled for September 8, 2011 after being advertised on The City Page in The Daily Reflector on August 29, 2011 and September 5, 2011. Notification of the public hearing was mailed to all current vehicle for hire franchise owners.

**Fiscal Note:** There is no direct cost to the City.

**Recommendation:** Consider second reading and final approval of the attached ordinance granting a taxicab franchise to Michael Levon Long, d/b/a K & M Cab Service.

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

**Attachments / click to download**

- [Application Packet from K & M Cab Service](#)
- [Ordinance granting taxicab franchise for K M Cab Service 2nd Final reading 903346](#)

**ORDINANCE NO. \_\_\_\_\_**  
**AN ORDINANCE GRANTING A TAXICAB FRANCHISE**  
**TO MICHAEL LEVON LONG, D/B/A K & M CAB SERVICE**

WHEREAS, the City of Greenville is authorized by G.S. §160A-304 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 11 of the Greenville City Code, requiring the operators of taxicab 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 taxicab business; and

WHEREAS, Michael Levon Long, d/b/a K & M Cab Service, is an applicant for a franchise permitting the operation of one (1) taxicab 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 taxicab 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 taxicab franchise is hereby issued to Michael Levon Long, d/b/a K & M Cab Service, to permit the operation within the City of Greenville of not more than one (1) taxicab.

Section 2. The franchise holder must comply with the requirements of Chapter 1 of Title 11 of the Greenville City Code or successor ordinance, including but not limited to inspection, equipment and insurance requirements, and must begin operations within sixty (60) days of the grant of this franchise. These requirements apply to all vehicles under the franchise. Failure to comply with the requirements and begin operations within sixty (60) shall render the franchise null and void without further action of the Greenville City Council or loss of a vehicle authorized under the franchise if all vehicles do not comply with the requirements within the sixty (60) days period.

Section 3. The franchise holder has requested to operate the franchise as an incidental home occupation. Only one vehicle may be stored and/or parked at the franchise holder's residence. The franchise holder must provide a copy of the lease for the vehicle that is not to be maintained as an incidental home occupation to the City Clerk. Only the franchise holder may work out of the residence. No other taxi operator may operate out of or visit the franchise holder's residence incidental to the operation of the franchise.

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 22<sup>nd</sup> day of August, 2011.

Second reading and final adoption on the 8<sup>th</sup> day of September, 2011.

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Patricia C. Dunn, Mayor

ATTEST:

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Carol L. Barwick, City Clerk



APPLICATION FOR TAXICAB FRANCHISE

(NOTE: \$30 application fee must be presented with application in order for application to be considered.)

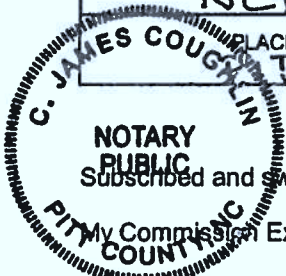
To the Mayor and City Council of the City of Greenville

The undersigned hereby makes application for a taxicab franchise under the provisions of Chapter 564, Session Laws 1945, and presents the following information:

1. The applicant is familiar with the ordinances of the City of Greenville relating to liability insurance, drivers regulations, regulations of rates, and other matters pertaining to the operation of taxicabs.
2. The individual, corporate or trade name and business address of the applicant is: MICHAEL LEVON LONG  
K & M Cab Service - 3835 - RR 7 Sterling Pointe Dr - Winterville, NC
3. The Applicant is:
  - A. An individual and sole owner of the taxicab business to be operated under the above name.
  - B. A corporation chartered under the laws of the State of North Carolina in the year \_\_\_\_\_, and the officers of the corporation are \_\_\_\_\_
  - C. A partnership, as shown by articles hereto attached, and the names of partners are: N/A
4. The Applicant operates in the following cities: GREENVILLE
5. The Applicant is requesting franchise to operate 1 taxicabs.
6. In support of this application, the following Exhibits are attached.
  - Exhibit A. A full statement of facts which, if supported by substantial testimony at the hearing, will support a finding of public convenience and necessity for this operation.
  - Exhibit B. A complete list of Applicant's motor equipment showing year, make, model, and carrying capacity of each unit.
  - Exhibit C. Financial statement showing assets, liabilities and net worth of applicant.
  - Exhibit D. Statement showing applicant has made complete arrangement for off-street parking of all motor vehicles.
  - Exhibit E. Statement of proposed fares for transportation of persons and property.
  - Exhibit F. Statement of experience of applicant in conducting taxicab business.
  - Exhibit G. For persons who plan to be a driver: Official results of a drug screening for the applicant(s) from a practicing licensed physician AND a waiver from the physician who conducted the drug screening releasing those results to the Greenville Police Department

HAND PRINT OR TYPE

LAST NAME <u>LONG</u>		FIRST NAME <u>MICHAEL</u>		MIDDLE NAME <u>LEVON</u>	
ALIAS OR NICKNAME <u>MIKE</u>	SEX <u>M</u>	AGE <u>46</u>	WEIGHT <u>200</u>	HEIGHT <u>6'1</u>	ID NO.
ADDRESS <u>3835 - RR 7 Sterling Pointe Dr Winterville</u>		HAIR <u>Black</u>	EYES <u>B</u>	COMPLEXION <u>BROWN</u>	
OCCUPATION <u>NCDOT</u>		<u>38590</u>	DRIVERS LICENSE NO.	IDENTIFICATION NO.	
PLACE OF BIRTH <u>IT COUNTY</u>		DATE OF BIRTH <u>12-1-64</u>	SOCIAL SECURITY NO.		



Signature of Applicant Michael Long

Subscribed and sworn to before me this 29th day of June, 2011

My Commission Expires: 12/18/2013

[Signature]  
Notary Public

### CITY OF GREENVILLE OFFICIAL RECEIPT

City of Greenville  
CITY OF GREENVILLE RECEIPT \*\*\*

Batch ID: J007E      4/20/11      Receipt no: 88888

Description: City of Greenville  
Amount: \$30.00  
POLICE DEPARTMENT F 01000000000015  
CASH / CASH      01000001010000  
GREENVILLE LEAS  
TAXI LICENSE APPLICATION  
158

Total debit: 2011      30.00  
Total credits:      30.00  
Total payment:      30.00

Transaction: 4/20/11      Time: 9:48:03

**EXHIBIT A:**

**FACTS TO SUPPORT PUBLIC CONVENIENCE AND NECESSITY FOR:**

**K & M CAB SERVICE**

1. THERE HAVE BEEN NUMEROUS ACCIDENTS IN THE GREENVILLE AREA PRIMARILY DUE TO INTOXICATED DRIVERS. K & M CAB SERVICE WILL DRASTICALLY REDUCE THIS RATE BY PROVIDING CLEAN RELIABLE TRANSPORTATION TO THE CITIZENS OF GREENVILLE.
2. THERE HAVE BEEN MANY PEDESTRIANS STRUCK AND KILLED BY MOTOR VEHICLES IN GREENVILLE. THESE INDIVIDUALS NEED ACCESS TO SAFE TRANSPORTATION LIKE K & M CAB SERVICE. WE CAN GO TO THEM PICK THEM UP AND THEREFORE REDUCE A GREAT NUMBER OF PEDESTRIANS FROM POTENTIALLY GETTING HIT BY MOTOR VEHICLES.
3. A LARGE SEGMENT OF THE SENIOR POPULATION IN GREENVILLE IS NO LONGER COMPETENT TO SAFELY DRIVE. K & M CAB SERVICE WILL SAFELY TRANSPORT THEM TO THEIR DESTINATION WITHOUT THEM FEARING FOR THEIR SAFETY ON THE ROAD.
4. MANY INDIVIDUALS IN THE GREENVILLE AREA DO NOT OWN CARS DUE TO THE EXPENSE OF GAS, INSURANCE, TAXES AND COSTLY MAINTENANCE OF MOTOR VEHICLES. K & M CAB SERVICE WILL OFFER THE CONVENIENCE OF TRANSPORTATION WITHOUT THE HIGH EXPENSE OF VEHICLE OWNERSHIP.

5. GREENVILLE HAS LIMITED PUBLIC TRANSPORTATION OPTIONS. IT'S DIFFICULT FOR INDIVIDUALS TO FIND RELIABLE TRANSPORTATION. K&M WILL GIVE THE CITIZENS OF GREENVILLE ONE MORE MODE OF TRANSPORTATION, THEREFORE REDUCING THE AMOUNT OF TIME THEY WILL HAVE TO SOMETIMES WAIT OUTSIDE IN INCLEMENT WEATHER TO OBTAIN TRANSPORTATION.

**EXHIBIT B.**

**LIST OF MOTOR EQUIPMENT**

**2004 FORD CROWN VICTORIA**

**CARRYING CAPACITY IS THREE ADULTS IN THE BACK AND ONE ADULT IN THE FRONT PASSENGER SIDE.**

EXHIBIT C.

FINANCIAL STATEMENT

1. CLEAN RETAIL VALUE OF 2004 CROWN VICTORIA- \$6,000.00- PAID FOR. WILL BE USED FOR K & M CAB SERVICE.
2. I ALSO OWN A 2000 BUICK PARK AVE, CLEAN RETAIL VALUE OF \$4,000.00 WHICH IS ALSO PAID FOR.
3. I CURRENTLY WORK FOR THE DEPARTMENT OF TRANSPORTATION AS A RIGHT OF WAY AGENT. I HAVE BEEN EMPLOYEED FULL TIME FOR 19 YEARS.
4. I DO NOT OWN ANY PROPERTY AND I AM CURRENTLY RENTING A TOWNHOUSE IN WINTERVILLE.
5. THIS BUSINESS WILL BE A PART TIME VENTURE MOSTLY IN THE EVENING HOURS AND LATE NIGHT HOURS. INCME GENERATED WILL BE UTILIZED TO PURCHASE ANOTHER VEHICLE AND EXPAND OUR SERVICE TO GREENVILLE AND SURROUNDING AREAS.
6. OUR CAB BUSINESS WILL GENERATE INCOME IN LINE WITH THE CURRENT TAXI CAB RATES AS MANDATED BY THE CITY OF GREENVILLE.

EXHIBIT D.

ARRANGEMENT FOR OFF-STREET PARKING

OUR CAB WILL BE PARKED IN A PARKING LOT AT MY HOME AT 3835  
RR7 STERLING POINTE DR., WINTERVILLE, NC.

**EXHIBIT E**

**TAXICAB FARES**

The following rates shall be applicable for each standard zone fare:

ZONES	1	2	3	4	5	6	7	8
1	4.00	4.35	4.70	5.05	5.40	5.75	6.10	6.50
2	4.35	4.35	4.70	5.05	5.40	5.75	6.10	6.50
3	4.70	4.70	4.70	5.05	5.40	5.75	6.10	6.50
4	5.05	5.05	5.05	5.05	5.40	5.75	6.10	6.50
5	5.40	5.40	5.40	5.40	5.40	5.75	6.10	6.50
6	5.75	5.75	5.75	5.75	5.75	5.75	6.10	6.50
7	6.10	6.10	6.10	6.10	6.10	6.10	6.10	6.50
8	6.50	6.50	6.50	6.50	6.50	6.50	6.50	6.50

The fare charged shall be the amount of the highest zone which is traveled through.  
Only one fare shall be charged for one or two persons traveling from the same point of origin to the same point of destination

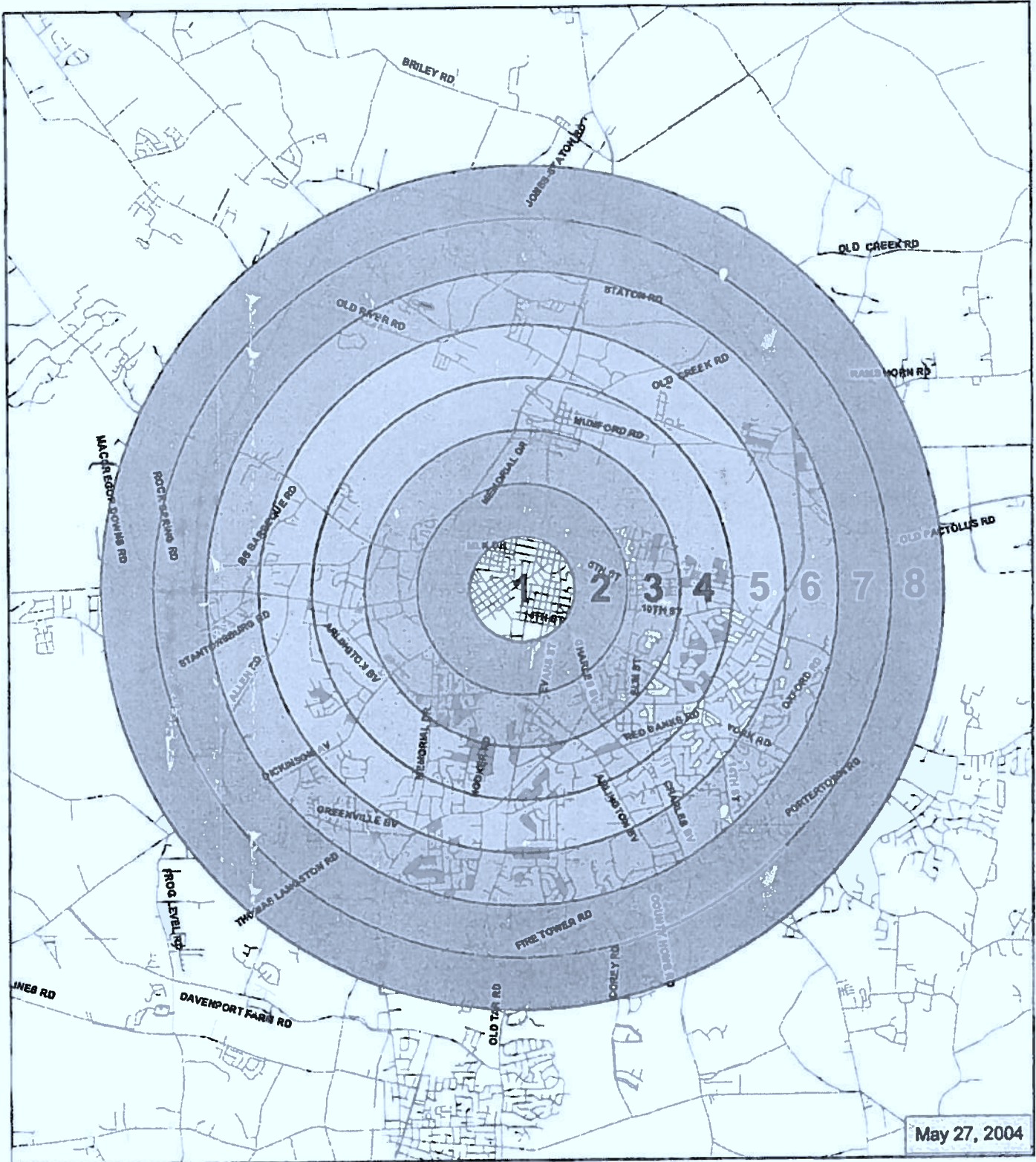
The following rates are for fares across town:

ZONES	1	2	3	4	5	6	7	8
1	4.00	4.60	5.20	5.80	6.40	7.00	7.60	8.20
2	4.60	5.20	5.80	6.40	7.00	7.60	8.20	8.80
3	5.20	5.80	6.40	7.00	7.60	8.20	8.80	9.40
4	5.80	6.40	7.00	7.60	8.20	8.80	9.40	10.00
5	6.40	7.00	7.60	8.20	8.80	9.40	10.00	10.60
6	7.00	7.60	8.20	8.80	9.40	10.00	10.60	11.20
7	7.60	8.20	8.80	9.40	10.00	10.60	11.20	11.80
8	8.20	8.80	9.40	10.00	10.60	11.20	11.80	12.50

Ironwood/Bradford Creek	Standard Fare	6.50
	Across Town	12.50
Over two persons (per person extra)		1.50
Stops en route to destination		1.50
Waiting time (per hour)		16.50
Trunks or footlockers (each)		2.00
Baggage (each)		1.25
Rates outside zones unless previously specified (per mile)		2.00



# Taxi Fare Service Zones Greenville



### Map Legend

- |             |             |             |             |       |
|-------------|-------------|-------------|-------------|-------|
| Taxi Zone 1 | Taxi Zone 3 | Taxi Zone 5 | Taxi Zone 7 | Roads |
| Taxi Zone 2 | Taxi Zone 4 | Taxi Zone 6 | Taxi Zone 8 |       |

0 0.5 1 2 Miles



**EXHIBIT F.**

**STATEMENT OF EXPERIENCE IN CONDUCTING TAXI CAB BUSINESS**

1. I DROVE A SCHOOL BUS IN 1985 AT DH CONLEY HIGH SCHOOL FOR TWO YEARS.
2. I DROVE LIMOUSINES AT RDU AND THE TRIANGLE AREA IN 1987 FOR ABOUT A YEAR.
3. IN 1990 I DELIVERED PACKAGES FOR RPS FOR THREE YEARS. I DROVE A DELIVERY TRUCK AS AN INDEPENDENT CONTRACTOR. I WAS RESPONSIBLE FOR TAKING CARE OF THE TRUCK, FINDING DELIVERY LOCATIONS AND TAKING CARE OF MY TAXES.
4. I HAVE DRIVEN CHURCH MEMBERS TO SPECIAL EVENTS AS WELL AS TO AND FROM CHURCH FOR SEVERAL DIFFERENT CHURCHES FOR MANY YEARS.
5. I CURRENTLY DRIVE TO HIGHWAY PROJECTS IN EASTERN NC TO MEET WITH PROPERTY OWNERS AND ACQUIRE PORTIONS OF THEIR PROPERTY FOR THE NC DEPARTMENT OF TRANSPORTATION.



## FINANCIAL SERVICES MEMORANDUM

TO: Carol L. Barwick, City Clerk's Office

FROM: Brenda Matthews, Financial Services Collections

DATE: July 28, 2011

SUBJECT: Franchise Applications for:  
K & M Cab Service, Michael Levon Long

We have checked Collections records for taxes, licenses, citations, parking fees, rescue transports, and miscellaneous receivables owed in the names above. We did not find any debt owed in any of the names list.

There were no unpaid property tax records in the names and/or addresses of the above individual or business name.

If I can provide further assistance, please call.

CC: Bernita Demery, Director of Financial Services  
Kimberly Branch, Financial Services Manager

Doc # 177282 v 12

## Carol Barwick

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**From:** Michael Dail  
**Sent:** Wednesday, July 20, 2011 2:49 PM  
**To:** Carol Barwick  
**Cc:** Christopher Padgett; Merrill Flood  
**Subject:** Taxi Cab Franchise Zoning Comments

Michael Long can operate a taxi franchise with one vehicle out of his home at 3835 Sterling Pointe Drive, Unit RR-7 as an incidental home occupation. It is important to note that only one cab can be stored at his property and it must be a vehicle that is typically associated with a residence. Also no other individuals may work out of or visit his home concerning work related matters.

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**From:** Carol Barwick  
**Sent:** Wednesday, July 20, 2011 12:35 PM  
**To:** William Anderson; Chris Viverette; Bernita Demery; Brenda Matthews; Michael Dail; Merrill Flood  
**Subject:**

Hello all,

I've attached an application packet to establish a taxicab franchise under the name of K & M Cab Service. Please review and let me know your findings at your first convenience. I'd like to get this on the agenda for our August meetings (deadline July 29<sup>th</sup>). Thanks!

Hope you all have a great afternoon!

Thanks,  
Carol

Carol L. Barwick, CMC  
City Clerk  
City of Greenville  
PO Box 7207  
Greenville, NC 27835  
[www.greenvillenc.gov](http://www.greenvillenc.gov)  
[cbarwick@greenvillenc.gov](mailto:cbarwick@greenvillenc.gov)  
Phone: (252) 329-4422  
Fax: (252) 329-4435



## GREENVILLE POLICE DEPARTMENT

### MEMORANDUM

July 25, 2011

TO: Chief William Anderson  
FROM: Cpl. C.B. Viveette  
SUBJECT: Taxi/Limousine Operator Application for Michael Levon Long d.b/a K & M Cab Service

DMV

\*\*\* DRIVER LICENSE STATUS: CLS C ACTIVE \*\*\*

04-04-11	ACDNT: PITT COUNTY, NC ACDNT: CASE ID:103189105	PERS INJ
02-17-10 04-16-10	CONV: (313)SPEEDING ( 64 MPH IN A 55) COURT: BEAUFORT COUNTY COURT, NC COURT: AOC #: 2010IF 700650 CITATION ID: 01502E87	3
12-12-08	ACDNT: LENOIR COUNTY, NC ACDNT: CASE ID:102469286	PERS INJ
07-17-08	ACDNT: PITT COUNTY, NC ACDNT: CASE ID:102370172	PERS INJ
07-21-06	ACDNT: PITT COUNTY, NC ACDNT: CASE ID:101790015	PERS INJ
03-18-05	ACDNT: CAMDEN COUNTY, NC ACDNT: CASE ID:101400278	PERS INJ

AOC

No Record

DCI

No Record

NEW WORLD

No New Record

NCAWARE

No Record

Mr. Long has applied requesting a taxi franchise consisting of one (1) vehicle. While the number of vehicle crashes is cause for concern, the majority are from 2008 and prior. Mr. Long has only been cited once for speeding, which occurred in 2010.

Based on the above information, I recommend approval of the franchise by Mr. Michael Levon Long d/b/a K & M Cab Service.



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Ordinance requested by Ward Holdings, LLC et. al. to amend the Future Land Use Plan Map from office/institutional/multi-family (OIMF) and medium density residential (MDR) designations to commercial (C) designation for the properties located at the southeast corner of the intersection of Greenville Boulevard and East 14th Street containing 3.96 acres

**Explanation:** **History/Background:**

In 1969, the subject properties were zoned R9 (single-family and duplex). In 1990, the owners of eight lots (6 acres) along Greenville Boulevard, between East 14th Street and Adams Boulevard, requested their properties to be rezoned from R9 (single-family and duplex) to O (Office). The Planning and Zoning Commission, at the request of these property owners, sponsored the rezoning request; however, the Commission recommended denial at the public meeting. A valid protest petition (91.7% of the adjoining property owners) was filed by property owners within 100 feet of the request. The City Council unanimously voted to deny the request at their February 1990 public hearing.

The current FLUPM was adopted on February 12, 2004.

In 2006, the subject properties were included in the Eastwood Neighborhood Rezoning plan where properties were rezoned to R9S (single-family only). These rezonings were part of recommendations from the Task Force on Preservation of Neighborhoods and Housing. The purpose of these rezonings was to eliminate multi-family housing intrusion into single-family neighborhoods. As a result, the recommended zoning under the current Future Land Use Plan Map (FLUPM) is office (O) because the multi-family component was removed by the above action.

In November 2007 and May 2008, the City Council denied requests by Ward Holdings, LLC to amend the FLUPM from an OIMF designation to a C designation for three parcels (1.52 acres) at the corner of SE Greenville Boulevard and East 14th Street. See attached map.

2010 marked the completion of the five-year Comprehensive Plan Review. As part of that process, the Planning and Zoning Commission was asked by Ward Holdings, LLC to consider changing the FLUPM from an OIMF designation to a C designation for the area beginning at the southeast corner of Greenville Boulevard and East 14th Street extending northeast along Greenville Boulevard just beyond David Drive. This area contained nine parcels (4.7± acres). See attached map.

The Planning and Zoning Commission voted to recommend the change at its March 16, 2010, meeting. That request was denied by City Council.

### **Comprehensive Plan:**

The subject area is located in Vision Area C.

The FLUPM recommends OIMF along the southern right-of-way of Greenville Boulevard, east of the Norfolk Southern Railroad and adjacent to the neighborhood focus area at the intersection of Greenville Boulevard and Eastbrook Drive.

There are designated neighborhood focus areas at the intersections of Greenville Boulevard and East 14th Street and Greenville Boulevard and Eastbrook Drive. These areas generally contain less than 40,000 square feet of conditioned floor space.

Greenville Boulevard is designated as a connector corridor from its intersection at East 14th Street and continuing north. Connector corridors are anticipated to contain a variety of higher intensity activities and uses, whereas residential corridors are preferred to accommodate lower intensity residential uses.

The Comprehensive Plan states: "Office/Institutional/Multi-family land uses should be developed along transportation thoroughfares to provide transition between commercial nodes and to preserve vehicle carrying capacity. Office/Institutional/Multi-family development should be used as a buffer between light industrial and commercial development and adjacent lower density residential land uses."

The Comprehensive Plan states that "location and size of commercial nodes included in the plan are not intended to be static. As the area surrounding commercial nodes develop, larger node definitions ...may be warranted. "In addition, as the commercial nodes of outlying areas of the City's planning jurisdiction develop, they should be buffered from surrounding areas by office, institutional and multi-family and residential land uses and open spaces. Again, the exact size of the required buffer has not been predetermined. The required buffer width should be determined when the ultimate extent of the commercial node is known.

### **Environmental Conditions/Constraints:**



There are no known environmental constraints.

**Surrounding Land Uses and Zoning:**

North: CG -Trade/Wilco Convenience Store, Home Town Pharmacy, First Citizens Bank

South: R9S - Eastwood Subdivision, Teen Center, Sports Connection

East: R9S - Eastwood Subdivision

West: CN - professional office building

**Thoroughfare/Traffic Volume (Summary):**

Based on possible uses permitted by the requested land use plan designation, the proposed designation could generate 4,398 trips to and from the site on Greenville Boulevard, which is a net increase of 2,082 additional trips per day.

During the review process, measures to mitigate traffic impacts will be determined. Prior to development approval, a Traffic Impact Study will be required to assess the impacts. The "Area of Influence" will be determined at the time of the site plan review. Mitigation measures may include limiting access onto Greenville Boulevard, constructing turn lanes into the development, and intersection improvements at the Greenville Boulevard/14th Street intersection such as the construction of additional turns and/or through lanes.

**Fiscal Note:**

No cost to the City.

**Recommendation:**

Staff does not recommend expansion of commercial development in the area adjacent to the Eastwood Subdivision. The current OIMF designation will afford adaptive reuse of the properties fronting the SE Greenville Boulevard corridor while minimizing negative impacts on the interior neighborhood. Since the lot that does not front Greenville Boulevard, staff recommends no change. While this lot does experience traffic due to the Teen Center and the Perkins Baseball Complex, traffic is not of a scale that non-residential use is recommended.

One of the purposes of the OIMF designation is to protect the interests of the Eastwood neighborhood. Any change to the FLUPM should be supported by the neighborhood as part of an effective strategy that protects the neighborhood's interests. However, consideration should also be given to limiting and/or avoiding adverse impacts on streets and linear expansion of commercial development along a major thoroughfare to an equal or greater degree than is achieved by the current FLUPM configuration.

*To make changes to the Future Land Use Plan Map for the subject area, it should be first established that it is necessary as a result of changed conditions, in the local development pattern, street system, environment, or other major feature or plan, which impacts the site in a manner or to a degree not previously anticipated at the time of adoption of the current Future Land Use Plan Map. In the opinion of staff, the subject area(s) did not experience changed conditions*

that impacted the site in a manner or to a degree not previously anticipated by the community at the time of adoption of the current Future Land Use Plan Map; therefore, no change is warranted. Moreover, changing the FLUPM from OIMF to C would not satisfy the other criteria used to evaluate the appropriateness of proposed FLUPM amendments:

- *The location of the proposed designation supports the intent and objective of the current Future Land Use Plan Map, Focus Area Map, and Transportation Corridor Map and other contextual considerations of the comprehensive plan.*
- *The resulting anticipated land use is properly located with respect to existing and future adjoining and area uses and the proposed change is not anticipated to cause undue negative impacts on localized traffic, the natural environment or existing and future neighborhoods and businesses within and in proximity to the area of proposed amendment.*
- *The amendment is anticipated to result in a desirable and sustainable land use pattern to an equal or greater degree than existed under the previous plan recommendation.*

The Planning and Zoning Commission voted to approve the request at its August 16, 2011, meeting.

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

**Attachments / click to download**

- [Location Map](#)
  - [Survey](#)
  - [2007 and 2008 Request](#)
  - [2010 Request](#)
  - [Ordinance Ward Holdings Comp Plan 903860](#)
  - [Land Use Plan Amendment 11 01 Ward Holdings LLC et al 903596](#)
  - [Draft Minutes Ward Land Use 905140](#)
-

ORDINANCE NO. 11-\_\_\_\_\_  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
AMENDING HORIZONS: GREENVILLE'S COMMUNITY PLAN

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on September 8, 2011, at 7:00 p.m. in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the Future Land Use Plan Map for the following described territory;

WHEREAS, the Horizons: Greenville's Community Plan was adopted on January 9, 1992 by the Greenville City Council per Ordinance 2412; and

WHEREAS, the Horizons: Greenville's Community Plan will from time to time be amended and portions of its text clarified by the City Council; and

WHEREAS, Future Land Use Plans are to be prepared to expand and clarify portions of the Horizons: Greenville's Community Plan; and

WHEREAS, the City Council of the City of Greenville has per Ordinance No. 97-73 adopted the Greenville Future Land Use Plan Map and associated text dated June 4, 1997 as an amendment to the Horizons: Greenville's Community Plan; and

WHEREAS, the City Council of the City of Greenville has per Ordinance No. 04-10 amended the Horizons: Greenville's Community Plan and Future Land Use Plan Map pursuant to the 2004 Update; and

WHEREAS, the Planning and Zoning Commission and the City Council have reviewed the Future Land Use Plan Map and a public hearing has been held to solicit public comment.

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1. The Future Land Use Plan Map is hereby amended by re-designating from "Office/Institutional/Multi-family" and "Medium Density Residential" categories to a "Commercial" category for the area described as being located at the intersection of Greenville Boulevard and East 14<sup>th</sup> Street running along the southern right-of-way of SE Greenville Boulevard for 730± feet in an easterly direction, thence running along the eastern property line of tax parcel 23076 as identified at the Pitt County Tax Assessor's Office for 200± feet in a southerly direction, thence running along the southern property lines of tax parcels 23076, 10029, 12053 as identified at the Pitt County Tax Assessor's Office for 315± feet in a westerly direction, thence running along the western property line of tax parcel 17351 as identified at the Pitt County Tax Assessor's Office for 20± feet in a northerly direction, thence running along the southern property lines of tax parcels 17351 and 23209 as identified at the Pitt County Tax

Assessor's Office for 200± feet in a westerly direction, thence running along the western property line of tax parcel 00919 as identified at the Pitt County Tax Assessor's Office for 145± feet in a southerly direction, thence running along the northern right-of-way of Hardee Road for 125± feet in a westerly direction, thence running along the eastern right-of-way of Leon Hardee Road for 330± feet in a northerly direction, thence running along the northern right-of-way of East 14<sup>th</sup> Street for 80± feet running in a westerly direction and returning to the point of beginning containing 3.96 acres.

Section 2. That the Director of Community Development is directed to amend the Future Land Use Plan Map of the City of Greenville in accordance with this ordinance.

Section 3. That all ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. That this ordinance shall become effective upon its adoption.

ADOPTED this 8<sup>th</sup> day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

#903860

# LAND USE PLAN AMENDMENT THOROUGHFARE/TRAFFIC VOLUME REPORT

**Case No:** 11-01

**Applicant:** Ward Holdings, LLC et al

**Property Information**

**Current**

**Designations:** OIMF (office/institutional/multi-family) and MDR (medium density residential)

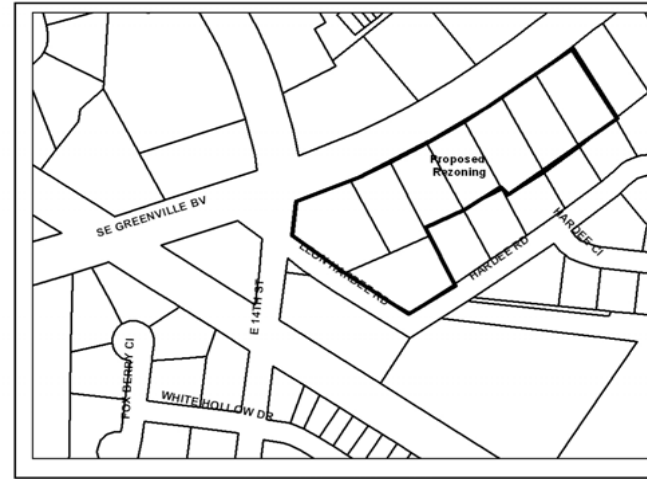
**Proposed**

**Designation:** C (commercial)

**Current Acreage:** 3.96 acres

**Location:** Corner of 14th Street & Greenville Boulevard

**Points of Access:** Greenville Boulevard & Leon Hardee Road



**Location Map**

**Transportation Background Information**

**1.) Greenville Boulevard- State maintained**

	<u>Existing Street Section</u>	<u>Ultimate Thoroughfare Street Section</u>
Description/cross section	5 lanes with curb & gutter	6 lanes - curb & gutter with raised median
Right of way width (ft)	100	150
Speed Limit (mph)	45	45
<b>Current ADT:</b>	36,080 (*)	Ultimate Design ADT: 45,000 vehicles/day (**)
<b>Design ADT:</b>	33,500 vehicles/day (**)	
<b>Controlled Access</b>	<b>No</b>	
<b>Thoroughfare Plan Status:</b>	Major Thoroughfare	

**Other Information:** There are no sidewalks along Greenville Boulevard that service this property.

**Notes:** (\*) 2008 NCDOT count adjusted for a 2% annual growth rate  
 (\*\*) Traffic volume based an operating Level of Service D for existing geometric conditions  
 ADT – Average Daily Traffic volume

**Transportation Improvement Program Status:** No planned improvements.

**Trips generated by proposed use/change**

<b>Current</b>			<b>Proposed</b>	
<b>Designation:</b>	<b>2,316</b>	-vehicle trips/day (*)	<b>Designation:</b>	<b>4,398</b> -vehicle trips/day (*)

**Estimated Net Change: increase of 2082 vehicle trips/day (assumes full-build out)**

(\* - These volumes are estimated and based on an average of the possible uses permitted by the current and proposed zoning.)

**Impact on Existing Roads**

**The overall estimated trips presented above are distributed based on current traffic patterns. The estimated ADTs on Greenville Boulevard are as follows:**

**1.) Greenville Boulevard , East of Site:                    “No build” ADT of 36,080**

Estimated ADT with Proposed Designation (full build) – 38,279

Estimated ADT with Current Designations (full build) – 37,238

**Net ADT change = 1,041 (3% increase)**

**Case No: 11-01**

**Applicant: Ward Holdings, LLC et al**

**2.) Greenville Boulevard , West of Site:                    “No build” ADT of 36,080**

Estimated ADT with Proposed Designation (full build) – 38,279

Estimated ADT with Current Designations (full build) – 37,238

**Net ADT change = 1,041 (3% increase)**

**Staff Findings/Recommendations**

Based on possible uses permitted by the requested land use plan designation, the proposed designation could generate 4398 trips to and from the site on Greenville Boulevard, which is a net increase of 2082 additional trips per day.

During the review process, measures to mitigate traffic impacts will be determined. Prior to development approval, a Traffic Impact Study will be required to assess the impacts. The "Area of Influence" will be determined at the time of the site plan review. Mitigation measures may include limiting access onto Greenville Boulevard, constructing turn lanes into the development, and intersection improvements at the Greenville Boulevard/14th Street intersection such as the construction of additional turn and/or through lanes.

**Excerpt from the DRAFT Planning and Zoning Commission meeting minutes (8/16/2011)**

REQUEST BY WARD HOLDINGS, LLC ET AL - APPROVED

Ordinance requested by Ward Holdings, LLC et al to amend the Future Land Use Plan Map (FLUPM) from office/institutional/multi-family (OIMF) and medium density residential (MDR) designations to commercial (C) designation for the properties located at the southeast corner of the intersection of Greenville Boulevard and East 14th Street containing 3.96 acres.

Ms. Chantae Gooby, Planner, delineated the location of the property. The property is located at the corner of Greenville Boulevard and East 14<sup>th</sup> Street. The area contains 3.96 acres. She stated the area contains vacant lots, single-family residences and one duplex. Greenville Boulevard is a connector corridor which is designed to contain a variety of uses. There is a commercial focus area at the intersection of Greenville Boulevard and East 14<sup>th</sup> Street. This rezoning could generate a net increase of 2,000 trips per day. The trips will be split 50% in both directions on Greenville Boulevard. There have been several versions of this request over the past few years. The area was zoned single-family and duplex in 1969. In 1990, there was a request to rezone eight lots that fronted onto Greenville Boulevard to office zoning. There was a protest petition and the request was denied. In 2006, the property was included in the Eastwood Neighborhood rezoning to single-family only zoning. This was part of the recommendations from the Task Force on Preservation of Neighborhoods and Housing (TFPNH). In 2007 and 2008, there were two identical requests (3 lots) to change the OIMF designation to a C designation. These requests were denied. There was a similar request during the five-year comprehensive plan update that included nine lots. The request was to change the OIMF designation to a C designation, this request was also denied. The property was zoned to single-family as part of the TFPNH to single-family only zoning. The only zoning district allowed within the OIMF category for this area is office zoning. The office zoning would allow for the homes fronting Greenville Boulevard to be converted to office use while insulating the interior homes from Greenville Boulevard, minimize traffic impacts and linear expansion of commercial along Greenville Boulevard. The single-family homes fronting along Greenville Boulevard have diminished long-term livability. The OIMF category gives a buffer along Greenville Boulevard and preserves carrying capacity since office generates less traffic than commercial. The interior lot experiences traffic due to the Teen Center and the Perkins Baseball Complex, but not of a scale that non-residential is recommended. For any change to the FLUPM, there should a change that was not anticipated at the time of the adoption of its adoption such as, street changes or new development. In this instance, the FLUPM was adopted in 2004. It is staff's opinion, that there has not been a change that would warrant the FLUPM being changed.

Mr. Parker asked if Hardee Road could be connected to Leon Hardee Road in the future.

Ms. Gooby explained that since the right-of-way has been dedicated to the city, it would be up to the City if and when that would happen.

Mr. Gordon asked for the Commission's voting record for the past three requests.

Ms. Gooby stated that the Commission had recommended approval for all three requests and Council had denied all three requests.

Ms. Bellis asked what uses would be allowed under the Office zoning.

Ms. Gooby explained the property was not zoned office. Examples of uses in that district are medical offices, banks, and an urgent care facility.

Mr. Jim Ward, applicant, spoke in favor of the request. Mr. Ward stated that he has developed a close relationship with the neighborhood. Recently, the family that owns the interior lot has decided to include their lot in this request. This request will allow more flexibility with setbacks, deceleration lanes, and access onto East 14<sup>th</sup> Street. This request will enhance this corner. Most likely any traffic increase would be pass-by traffic. The three remaining corners of this intersection are shown as commercial on the FLUPM. This request shows the proposed commercial to align with the commercial across Greenville Boulevard. He has the support of adjoining property owners and overwhelming support of the Eastwood Neighborhood Association. This support demonstrates the basis for a change on the land use plan map.

Mr. Randall asked Mr. Ward what changed occurred that would warrant the land use plan map to be changed.

Mr. Ward stated that the support of the neighborhood is the change. He stated that there has been a precedent that neighborhood support is a basis for change.

Mr. Parker asked Mr. Ward of his intentions for the vacant lot he owns on Hardee Road.

Mr. Ward stated he intends to let the neighborhood use the lot as green space or as they see fit. He stated that the addition of the interior lot on Leon Hardee Road would not allow Hardee Road to be connected because it is protected by deed.

Scott Hucks, President of the Eastwood Neighborhood Association, spoke in favor of the request. He stated that the association held a meeting on Thursday. The association feels that the change in the FLUPM would be beneficial to the neighborhood and that traffic will be a problem no matter what use is there.

Wayne Caldwell, resident of Brook Valley Subdivision, stated that Brook Valley depends on Adams Boulevard and East 14<sup>th</sup> Street for access. He is concerned that commercial will be negative. He stated that the East 14<sup>th</sup> Street and Greenville Boulevard intersection is inadequate. He has police reports that show that there are as many auto accidents as at this intersection as East 10<sup>th</sup> Street and Greenville Boulevard. This is a problem that needs to be resolved. Egress and ingress for the Teen Center and Perkins Baseball Complex is problematic, especially for left-hand turns. There needs to be a re-design of



this intersection before adding additional traffic. Left-hand turns from Adams Boulevard are problematic and the addition of more trips will make it worse. There will be an increase in accidents.

Dr. James Kenny, resident of Eastwood Subdivision, wants awareness for the East 14<sup>th</sup> Street traffic congestion onto Greenville Boulevard. He stated there is traffic congestion at the entrance of the Perkins Baseball Complex. He is concerned about emissions that cause health problems. He asked that 18-wheelers be prohibited on Leon Hardee Road. He spoke about the principles of Smart Growth.

Mr. Ward spoke in rebuttal. He stated that he has an outstanding relationship with the neighborhood. The concerns can be addressed if the request is granted.

No rebuttal from the opposition.

Mr. Randall ask Mr. DiCesare for more information about traffic.

Mr. Rik DiCesare, City Traffic Engineer, explained that Greenville Boulevard and East 14th Street are owned by NCDOT. Any plans related to this intersection will be reviewed by the City and NCDOT. The City can also request a Traffic Impact Study. Under the current zoning, the traffic is of a destination nature. Under the proposed zoning, the traffic may be more of a pass-by nature. He has stated that it is possible there will be very little difference in actual traffic. It depends on what the specific use is. Design and mitigation would be addressed when a site specific development plan is submitted.

Mr. Parker asked if it was possible to prevent Hardee Road from being connected to Leon Hardee Road.

Wes Anderson, Public Works Director, stated that a street closure could be requested. The process could be initiated by the city or property owners.

Mr. Schrade stated that two concerns had been addressed: neighborhood concern and traffic.

Mr. Parker stated that his father lives on Hardee Road and supports the request.

Motion was made by Mr. Parker, seconded by Ms. Basnight, to recommend approval of the proposed amendment. Those voting in favor: Smith, Maxwell, Parker, Gordon, Basnight, and Rich. Those voting to deny: Bellis.

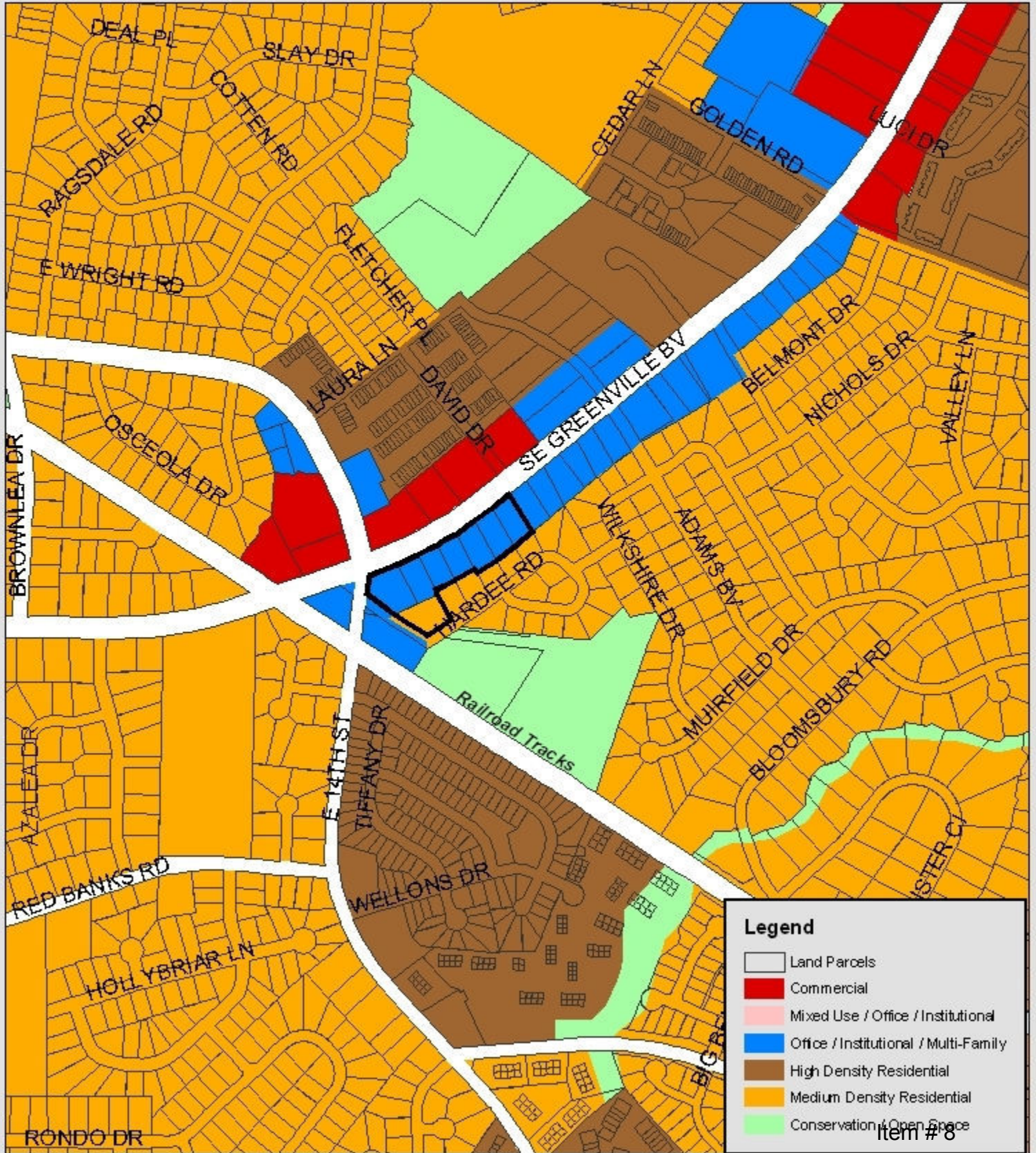
Ward Holding, LLC et al (11-01)

From: Office/Institutional/Multi-Family (OIMF) and Medium Density Residential (MDR)

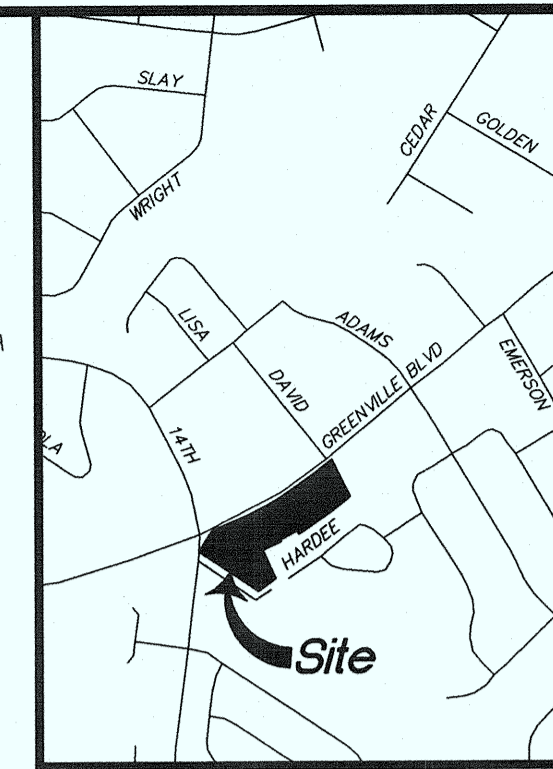
To: Commercial (C)

3.96 acres

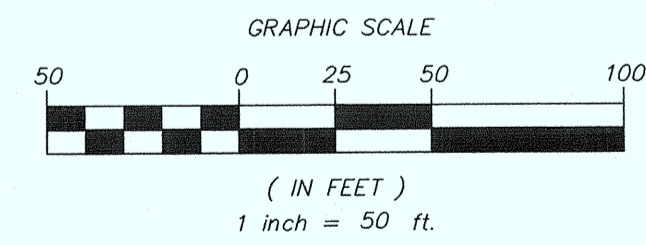
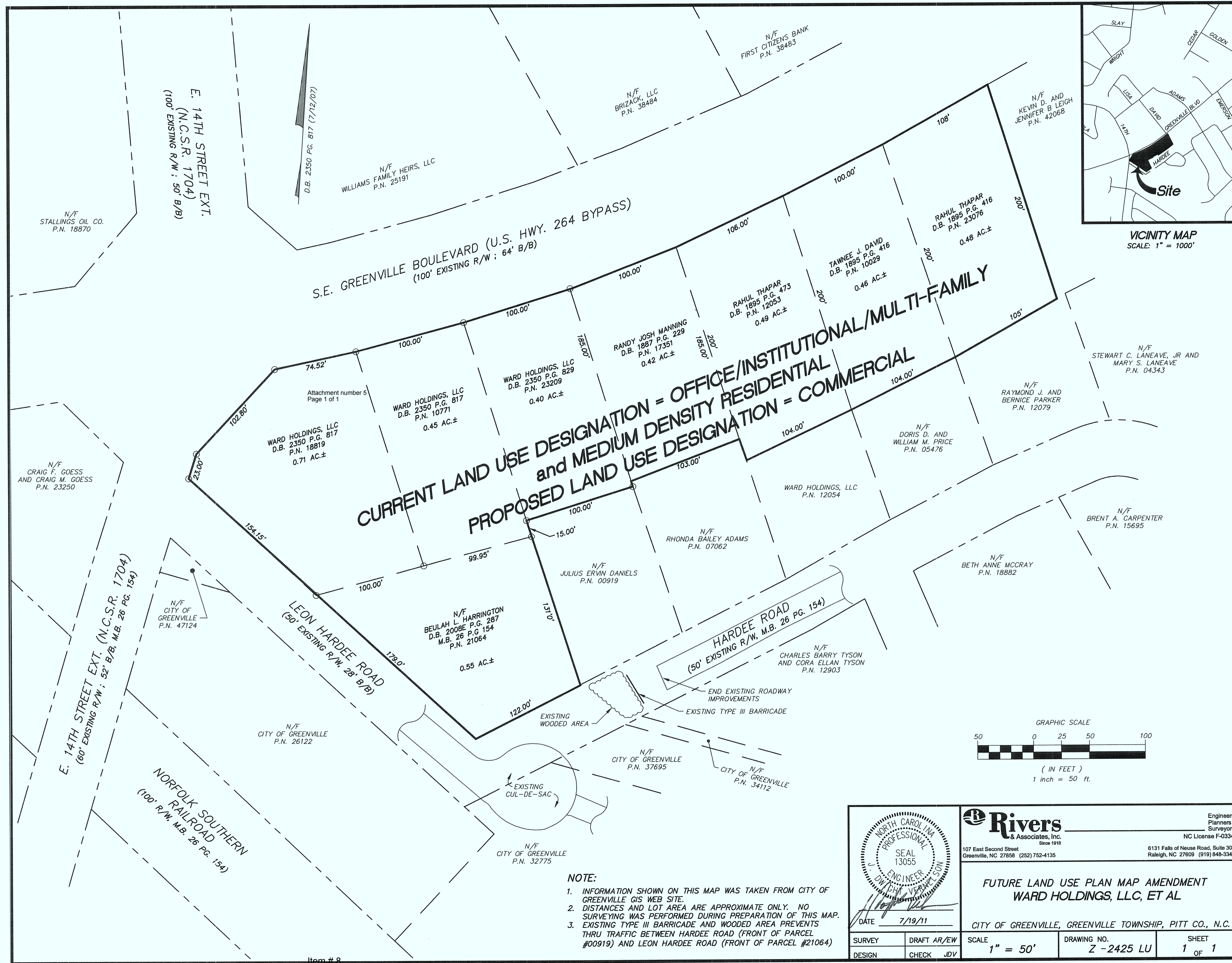
August 2, 2011



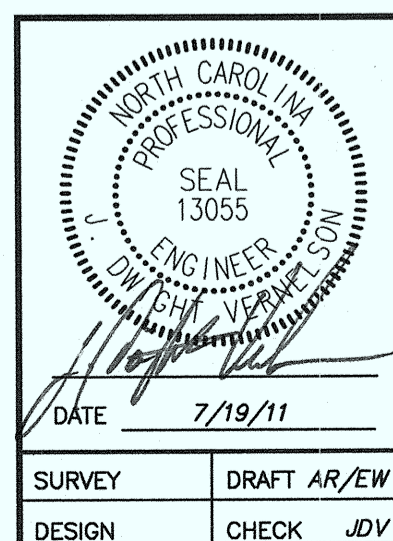
Item # 8



VICINITY MAP  
SCALE: 1" = 1000'



- NOTE:**
1. INFORMATION SHOWN ON THIS MAP WAS TAKEN FROM CITY OF GREENVILLE GIS WEB SITE.
  2. DISTANCES AND LOT AREA ARE APPROXIMATE ONLY. NO SURVEYING WAS PERFORMED DURING PREPARATION OF THIS MAP.
  3. EXISTING TYPE III BARRICADE AND WOODED AREA PREVENTS THRU TRAFFIC BETWEEN HARDEE ROAD (FRONT OF PARCEL #00919) AND LEON HARDEE ROAD (FRONT OF PARCEL #21064)

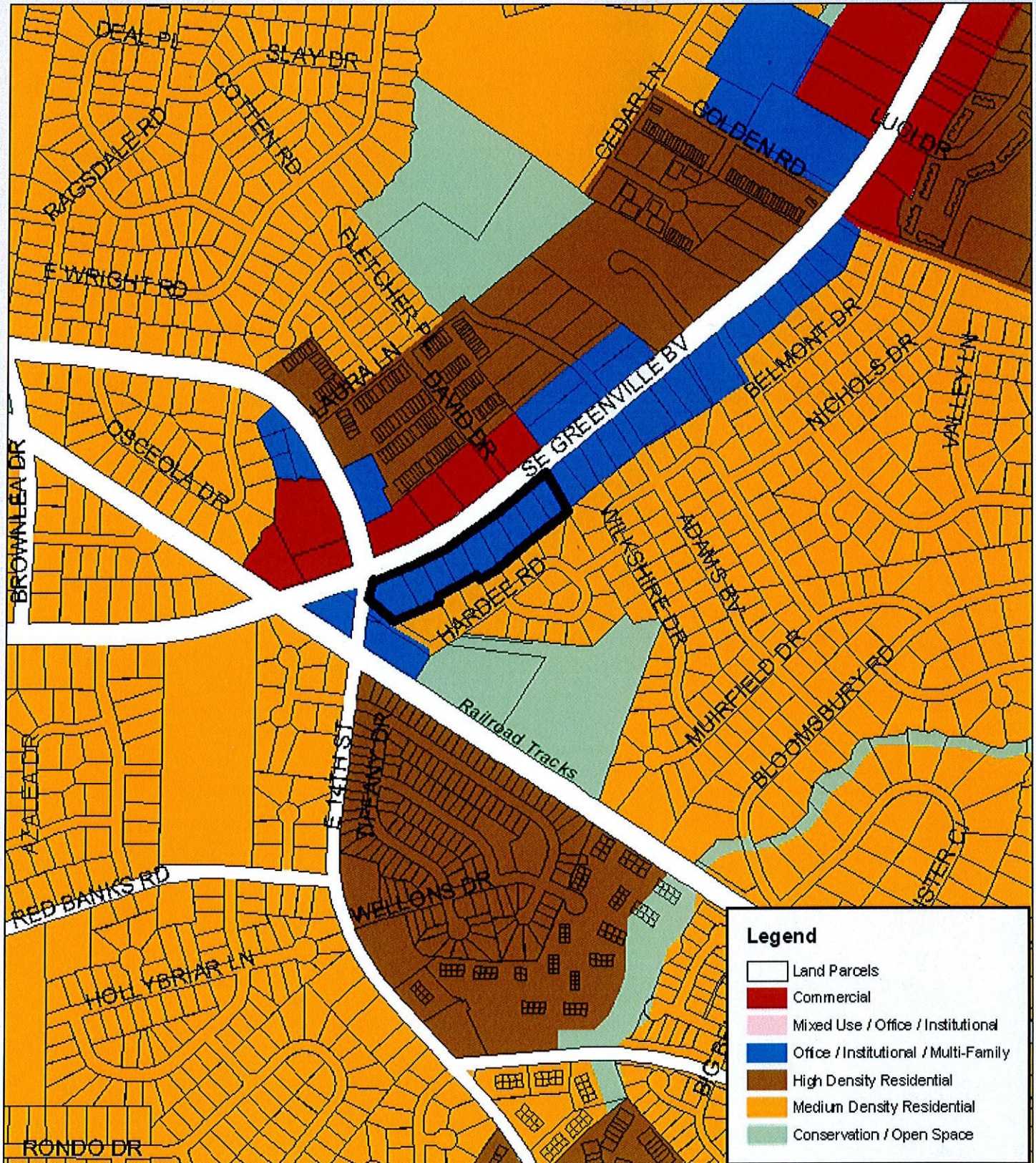


		Engineers Planners Surveyors NC License F-0334	
107 East Second Street Greenville, NC 27858 (252) 752-4135		6131 Falls of Neuse Road, Suite 300 Raleigh, NC 27609 (919) 848-3347	
<b>FUTURE LAND USE PLAN MAP AMENDMENT WARD HOLDINGS, LLC, ET AL</b>			
CITY OF GREENVILLE, GREENVILLE TOWNSHIP, PITT CO., N.C.			
SURVEY DESIGN	DRAFT AR/EW CHECK JDV	SCALE 1" = 50'	DRAWING NO. Z-2425 LU SHEET 1 OF 1

J:\survey\2002\WARD\_01M (GREENVILLE BLVD & 14TH ST) (LU) (Land Use Plan Amendment).dwg, LANDUSE, robera, Wed Aug 03, 2011 at 9:11am



From: Office/Institutional/Multi-Family (OIMF)  
To: Commercial (C)  
4.7 acres  
( 2010 Request )





# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Ordinance requested by Frank Hart Trust c/o Robert D. Parrott, Trustee, to rezone 0.2868 acres located along the eastern right-of-way of Charles Boulevard and adjacent to The Province Apartments from OR (Office-Residential [High Density Multi-family]) to CDF (Downtown Commercial Fringe)

**Explanation:**

**Required Notices:**

Planning and Zoning meeting notice (property owner and adjoining property owner letter) mailed on August 2, 2011.  
On-site sign(s) posted on August 2, 2011.  
City Council public hearing notice (property owner and adjoining property owner letter) mailed on August 23, 2011.  
Public hearing legal advertisement published on August 29 and September 5, 2011.

**Comprehensive Plan:**

The subject site is located in Vision Area I.

Charles Boulevard is considered a connector corridor from Reade Circle to Fire Tower Road. Connector corridors are anticipated to contain a variety of higher intensity activities and uses.

The Future Land Use Plan Map recommends office/institutional/multi-family (OIMF) in the interior areas along the eastern right-of-way of Charles Boulevard between East 14th Street and East 10th Street.

The subject property is located within the area proposed for the Urban Core (UC) Overlay District. See below for standards of the UC Overlay District.

**Thoroughfare/Traffic Report Summary (PWD- Engineering Division):**

Based on possible uses permitted by the requested rezoning, the proposed

rezoning classification could generate 180 trips to and from the site on Charles Boulevard, which is a net increase of 60 additional trips per day.

During the review process, measures to mitigate the traffic will be determined.

**History/Background:**

On the 1969 zoning series map, the subject property was zoned OR.

**Present Land Use:**

Domino's Pizza

**Water/Sewer:**

Water and sanitary sewer are located in the right-of-way of Charles Boulevard.

**Historic Sites:**

There are no known effects on designated sites.

**Environmental Conditions/Constraints:**

There are no known environmental conditions/constraints.

**Surrounding Land Uses and Zoning:**

North: OR-UC - Masonic Lodge  
South: OR-UC - The Province Apartments  
East: OR-UC - The Province Apartments  
West: CDF - ECU Building #198

**Density Estimates:**

Under the current zoning (OR), the site could yield 1,840 square feet of office space.

Under the proposed zoning (CDF), the site could yield 1,840 square feet of retail space.

The anticipated build-out time is within one year.

**Standards for the Urban Core (UC) Overlay District**

Excerpt from the Greenville City Code.

Section 9-4-200.1 URBAN CORE (UC) OVERLAY DISTRICT STANDARDS.

(A) Purpose and intent; definition; designated area.

(1) Purpose and intent. The purpose and intent of the Urban Core (UC) Overlay District and requirements set forth under this section is to allow modification of specific site development standards of the underlying zoning district(s) which are designed to facilitate development and redevelopment of in-fill sites in the designated area under subsection (3) below.

(2) Definition. An Urban Core (UC) Overlay District is defined as an overlay zoning district adopted in conjunction with an OR, and/or CDF underlying general purpose district as listed under Article D, Part 2, sections 9-4-62 and 9-4-66 wherein in zoning rights, standards, restrictions, and requirements as set forth for the common general purpose district shall extend to the Urban Core (UC) Overlay District zoned area in accordance with subsection (b) below.

(3) Designated area. All Urban Core (UC) Overlay District(s) shall be restricted to the land area located within the following boundary: South of 10th Street, east of CSXT Railroad, north of Fourteenth Street, west of Green Mill Run and ECU Easement (tax parcel 73545, DB 2215, PG 597 (as existing on March 4, 2010) No Urban Core (UC) Overlay District shall be established within the designated area upon City Council adoption of an individual zoning ordinance which defines the boundary of the specific Urban Core (UC) Overlay District located within the designated area boundary.

#### **Additional Staff Comments**

In 1994, there was a text amendment to remove restaurant, fast food, and restaurant; outdoor activities from the list of uses in the OR district. The Domino's Pizza was already in operation. Therefore, it is a legal non-conforming use.

**Fiscal Note:** No cost to the City.

**Recommendation:** In staff's opinion, the request is not in compliance with Horizons: Greenville's Community Plan and the Future Land Use Plan Map.

"Not in compliance with the comprehensive plan" should be construed as meaning the requested zoning (i) is specifically non-compliant with plan objectives and recommendations including the range of allowable uses in the proposed zone, etc. and/or is of a scale, dimension, configuration or location that is not objectively in keeping with plan intent and (ii) does not promote or preserve the desired urban form. The requested zoning is considered undesirable and not in the public interest and staff recommends denial of the requested rezoning.

The Planning and Zoning Commission voted to approve the request at its August 16, 2011, meeting.

If City Council determines to approve the rezoning request, a motion to adopt the attached rezoning ordinance will accomplish this. The ordinance includes



the statutorily required statement describing whether the action taken is consistent with the comprehensive plan and explaining why Council considers the action taken to be reasonable and in the public interest.

If City Council determines to deny the rezoning request, in order to comply with this statutory requirement, it is recommended that the motion be as follows: Motion to deny the request to rezone and to make a finding and determination that the denial of the rezoning request is consistent with the adopted comprehensive plan and the denial of the rezoning request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

Note: In addition to the other criteria, the Planning and Zoning Commission and City Council shall consider the entire range of permitted and special uses for the existing and proposed zoning districts as listed under Title 9, Chapter 4, Article D of the Greenville City Code.

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

**Attachments / click to download**

- [Location Map](#)
- [Survey](#)
- [Bufferyard and Residential Charts](#)
- [Ordinance \\_\\_\\_ Frank Hart Trust rezoning 903535](#)
- [Rezoning 11\\_07 \\_\\_\\_ Frank Hart Trust 903582](#)
- [Minutes \\_\\_\\_ Frank Hart Trust 904871](#)
- [List of Uses OR 896518](#)

ORDINANCE NO. 11-  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
REZONING TERRITORY LOCATED WITHIN THE PLANNING AND ZONING JURISDICTION OF THE  
CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on September 8, 2011, at 7:00 p.m., in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance rezoning the following described territory;

WHEREAS, the City Council has been informed of and has considered all of the permitted and special uses of the districts under consideration; and,

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that although the proposed amendment is not consistent with the comprehensive plan, in this instance it is an appropriate zoning classification and therefore, approval is reasonable and in the public interest.

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1. That the following described territory is rezoned from OR (Office-Residential) to CDF (Downtown Commercial Fringe).

TO WIT: Robert D. Parrott, Trustee for Frank Hart Trust Property.

LOCATION: Located along the eastern right-of-way of Charles Boulevard and adjacent to The Province Apartments.

DESCRIPTION: Lying and being situated in the City of Greenville, Greenville Township, Pitt County, North Carolina and being more particularly described as follows:

Beginning at a point in the eastern right-of-way of Charles Boulevard said point being located S 10°42'38" W, 124.00', thence S 35°53'01" E, 25.07' from the intersection of the southern right-of-way of Charles Street and the eastern right-of-way of Charles Boulevard thence from said point of beginning leaving the eastern right-of-way of Charles Boulevard with the southern line of the Greenville Masonic Lodge #284 property S 79°01'13" E, 151.96' to the western line of the University Residences ECU, LLC property as recorded in deed book 2762, page 44, thence with the western line of the University Residences ECU, LLC property S 10°56'25" W, 105.83', thence N 78°59'59" W, 102.26' to the eastern right-of-way of Charles Boulevard, thence with the eastern right-of-way of Charles Boulevard N 02°03'44" W, 77.56', thence N 35°53'01" W, 44.22' to the point of beginning containing 0.2868 acres.

Section 2. That the Director of Community Development is directed to amend the zoning map of the City of Greenville in accordance with this ordinance.

Section 3. That all ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. That this ordinance shall become effective upon its adoption.

ADOPTED this 8<sup>th</sup> day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

Doc. # 903535

**Case No:** 11-07

**Applicant:** Frank Hart Trust

**Property Information**

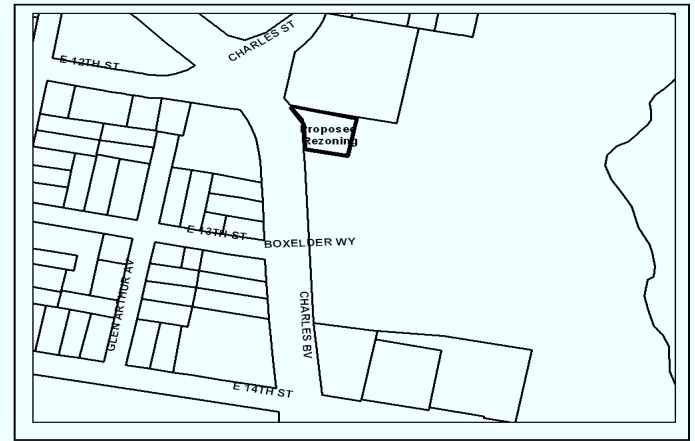
**Current Zoning:** OR (Office-Residential)

**Proposed Zoning:** CDF (Commercial Downtown Fringe)

**Current Acreage:** 0.1921 net acres (0.2868 gross acres)

**Location:** Charles Boulevard, between 14th Street & Charles Street

**Points of Access:** Charles Boulevard



**Location Map**

**Transportation Background Information**

**1.) Charles Boulevard- State maintained**

	<u>Existing Street Section</u>	<u>Ultimate Thoroughfare Street Section</u>
Description/cross section	5-lane with curb & gutter	no change
Right of way width (ft)	100	100
Speed Limit (mph)	35	35
<b>Current ADT:</b>	16,980 (*)	Ultimate Design ADT: 33,500 vehicles/day (**)
<b>Design ADT:</b>	33,500 vehicles/day (**)	
<b>Controlled Access</b>	<b>No</b>	

**Thoroughfare Plan Status:** Major Thoroughfare

**Other Information:** There are sidewalks and a City bus route along this section of Charles Boulevard.

**Notes:** (\*) 2008 NCDOT count adjusted for a 2% annual growth rate  
 (\*\*) Traffic volume based an operating Level of Service D for existing geometric conditions  
 ADT – Average Daily Traffic volume

**Transportation Improvement Program Status:** No planned improvements.

**Trips generated by proposed use/change**

**Current Zoning: 120** -vehicle trips/day (\*)                      **Proposed Zoning: 180** -vehicle trips/day (\*)

**Estimated Net Change: increase of 60 vehicle trips/day (assumes full-build out)**

(\* - These volumes are estimated and based on an average of the possible uses permitted by the current and proposed zoning.)

**Impact on Existing Roads**

**The overall estimated trips presented above are distributed based on current traffic patterns. The estimated ADTs on Charles Boulevard are as follows:**

**1.) Charles Boulevard , North of Site:                      “No build” ADT of 16,980**

Estimated ADT with Proposed Zoning (full build) – 17,070

Estimated ADT with Current Zoning (full build) – 17,040

**Net ADT change = 30 (<1% increase)**

Case No: 11-07

Applicant: Frank Hart Trust

**2.) Charles Boulevard , South of Site:****“No build” ADT of 16,980**

Estimated ADT with Proposed Zoning (full build) – 17,070

Estimated ADT with Current Zoning (full build) – 17,040**Net ADT change = 30 (<1% increase)****Staff Findings/Recommendations**

Based on possible uses permitted by the requested rezoning, the proposed rezoning classification could generate 180 trips to and from the site on Charles Boulevard, which is a net increase of 60 additional trips per day.

During the review process, measures to mitigate the traffic will be determined.

**Excerpt from the DRAFT Planning and Zoning Commission meeting minutes (8/16/2011)**

**REQUEST BY THE FRANK HART TRUST C/O ROBERT D. PARROTT, TRUSTEE - APPROVED**

Ordinance requested by the Frank Hart Trust c/o Robert D. Parrott, Trustee to rezone 0.2868 acres located at the eastern right-of-way of Charles Boulevard and adjacent to The Province Apartments from OR (Office-Residential [High Density Multi-family]) to Downtown Commercial Fringe (CDF).

Ms. Chantae Gooby, Planner, delineated the location of the property. A photograph of the property was presented. She stated the area contains a variety of uses. Charles Boulevard is a connector corridor which is designed to contain a variety of uses. There is a commercial focus area at the intersection of Charles Boulevard and 14<sup>th</sup> Street. This rezoning could generate a net increase of 60 trips per day. The trips will be split 50% in both directions on Charles Boulevard. This property was zoned OR in 1969. At a point in time, the Domino's Pizza was built. In 2004, restaurants were deleted as a use in the OR district. Therefore, Domino's became a legal non-conforming use, which means the building can't be expanded. The Future Land Use Plan Map recommends office/institutional/multi-family (OIMF) east of Charles Boulevard between 10<sup>th</sup> and 14<sup>th</sup> Streets. The requested zoning is CDF, which is not a zoning district within the OIMF Future Land Use Plan Map category. In staff's opinion, this request is not in compliance with the Horizons: Greenville's Community Plan and the Future Land Use Plan Map.

Ken Malpass, Malpass and Associates, spoke in favor of the request. He stated that the existing building has been there for around 30 years and is out-of-date.

No one spoke in opposition of the request.

Motion was made by Mr. Gordon, seconded by Mr. Smith, to recommend approval of the proposed amendment, to advise that, although the proposed amendment is not consistent with the comprehensive plan, in this instance it is an appropriate zoning classification, and to adopt the staff report which addresses plan consistency. Motion passed unanimously.

## **EXISTING ZONING**

### **OR (Office-Residential)**

#### ***Permitted Uses***

##### *(1) General:*

- a. Accessory use or building
- b. Internal service facilities
- c. On- premise signs per Article N
- f. Retail sales incidental

##### *(2) Residential:*

- b. Two-family attached dwelling (duplex)
- c. Multi-family development per Article 1
- k. Family care home (see also section 9-4-103)
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility
- p. Board or rooming house
- q. Room renting

##### *(3) Home Occupations (see all categories):*

\*None

##### *(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)
- c. County or state government building or use not otherwise listed; excluding outside storage and major or minor repair
- d. Federal government building or use

##### *(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)

##### *(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreation facility

##### *(7) Office/ Financial/ Medical:*

- a. Office; professional and business, not otherwise listed
- b. Operational/processing center
- c. Office; customer service not otherwise listed, including accessory service delivery vehicle parking and indoor storage
- d. Bank, savings and loan or other savings or investment institutions
- e. Medical, dental, ophthalmology or similar clinic, not otherwise listed

##### *(8) Services:*

- c. Funeral home
- e. Barber or beauty shop
- f. Manicure, pedicure, or facial salon
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- j. College or other institutions of higher learning
- k. Business or trade school
- n. Auditorium
- o. Church or place of worship (see also section 9-4-103)
- p. Library

- q. Museum
- r. Art Gallery
- u. Art studio including art and supply sales
- v. Photography studio including photo and supply sales
- w. Recording studio
- x. Dance studio
- bb. Civic organizations
- cc. Trade or business organizations

*(9) Repair:*

\* None

*(10) Retail Trade:*

- s. Book or card store, news stand
- w. Florist

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

\* None

*(12) Construction:*

- a. Licensed contractor; general, electrical, plumbing, mechanical, etc. excluding outside storage
- c. Construction office; temporary, including modular office (see also section 9-4-103)

*(13) Transportation:*

\* None

*(14) Manufacturing/ Warehousing:*

\* None

*(15) Other Activities (not otherwise listed - all categories):*

\* None

**OR (Office-Residential)**

***Special Uses***

*(1) General:*

\* None

*(2) Residential:*

- d. Land use intensity multifamily (LUI) development rating 50 per Article K
- e. Land use intensity dormitory (LUI) development rating 67 per Article K
- i. Residential quarters for resident manager, supervisor or caretaker; excluding mobile home
- o.(1). Nursing, convalescent center or maternity home; minor care facility
- r. Fraternity or sorority house

*(3) Home Occupations (see all categories):*

\* None

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:*

\* None

*(6) Recreational/ Entertainment:*



- c.(1). Tennis club; indoor and outdoor facilities
- h. Commercial recreation; indoor only, not otherwise listed

*(7) Office/ Financial/ Medical:*

- f. Veterinary clinic or animal hospital (also see animal boarding; outside facility, kennel and stable)

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- l. Convention center; private
- s. Hotel, motel, bed and breakfast inn; limited stay lodging (see also residential quarters for resident manager, supervisor or caretaker and section 9-4-103)
- ff. Mental health, emotional or physical rehabilitation center

*(9) Repair:*

- \* None

*(10) Retail Trade:*

- h. Restaurant; conventional
- j. Restaurant; regulated outdoor activities

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

- \* None

*(12) Construction:*

- \* None

*(13) Transportation:*

- h. Parking lot or structure; principle use

*(14) Manufacturing/ Warehousing:*

- \* None

*(15) Other Activities (not otherwise listed - all categories):*

- a. Other activities; personal services not otherwise listed
- b. Other activities; professional services not otherwis

## **PROPOSED ZONING**

### **CDF (Downtown Commercial Fringe)**

#### ***Permitted Uses***

*(1) General:*

- a. Accessory use or building
- b. Internal service facilities
- c. On- premise signs per Article N
- e. Temporary uses; of listed district uses
- f. Retail sales; incidental
- g. Incidental assembly of products sold at retail or wholesale as an accessory to principle use

*(2) Residential:*

- a. Single-family dwelling
- b. Two-family attached dwelling (duplex)
- c. Multi-family development per Article 1

- k. Family care home (see also section 9-4-103)
- q. Room renting

*(3) Home Occupations (see all categories):*

\*None

*(4) Governmental:*

- b. City of Greenville municipal government building or use (see also section 9-4-103)
- c. County or state government building or use not otherwise listed; excluding outside storage and major or minor repair
- d. Federal government building or use
- g. Liquor store, state ABC

*(5) Agricultural/ Mining:*

- a. Farming; agriculture, horticulture, forestry (see also section 9-4-103)

*(6) Recreational/ Entertainment:*

- f. Public park or recreational facility
- g. Private noncommercial park or recreation facility
- o. Theater; movie or drama, including outdoor facility

*(7) Office/ Financial/ Medical:*

- a. Office; professional and business, not otherwise listed
- c. Office; customer service not otherwise listed, including accessory service delivery vehicle parking and indoor storage
- d. Bank, savings and loan or other savings or investment institutions
- e. Medical, dental, ophthalmology or similar clinic, not otherwise listed

*(8) Services:*

- c. Funeral home
- e. Barber or beauty shop
- f. Manicure, pedicure, or facial salon
- g. School; junior and senior high (see also section 9-4-103)
- h. School; elementary (see also section 9-4-103)
- i. School; kindergarten or nursery (see also section 9-4-103)
- k. Business or trade school
- n. Auditorium
- o. Church or place of worship (see also section 9-4-103)
- p. Library
- q. Museum
- r. Art Gallery
- s. Hotel, motel, bed and breakfast inn; limited stay lodging (see also residential quarters for resident manager, supervisor or caretaker and section 9-4-103)
- u. Art studio including art and supply sales
- v. Photography studio including photo and supply sales
- w. Recording studio
- z. Printing or publishing service including graphic art, map, newspapers, magazines and books
- aa. Catering service including food preparation (see also restaurant; conventional and fast food)
- kk. Launderette; household users
- ll. Dry cleaners; household users
- mm. Commercial laundries; linen supply
- oo. Clothes alteration or shoe repair shop
- pp. Automobile wash

*(9) Repair:*

- d. Upholsterer; furniture

- f. Appliance; household and office equipment repair
- g. Jewelry, watch, eyewear or other personal item repair

*(10) Retail Trade:*

- a. Miscellaneous retail sales; non-durable goods, not otherwise listed
- c. Grocery; food or beverage, off premise consumption (see also Wine Shop)
- c.1 Wine shop (see also section 9-4-103)
- d. Pharmacy
- e. Convenience store (see also gasoline sales)
- f. Office and school supply, equipment sales
- h. Restaurant; conventional
- i. Restaurant; fast food
- l. Electric; stereo, radio, computer, television, etc. sales and accessory repair
- m. Appliance; household use, sales and accessory repair, excluding outside storage
- n. Appliance; commercial use, sales and accessory repair, excluding outside storage
- p. Furniture and home furnishing sales not otherwise listed
- q. Floor covering, carpet and wall covering sales
- r. Antique sales; excluding vehicles
- s. Book or card store, news stand
- v. Video or music store; records, tape, compact disk, etc. sales
- w. Florist
- x. Sporting goods sales and rental shop
- y. Auto part sales (see also major and minor repair)
- ee. Christmas tree sales lot; temporary only (see also section 9-4-103)

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

- c. Rental of cloths and accessories; formal wear, etc.
- f. Automobiles, truck, recreational vehicle, motorcycles and boat sales and service (see also major and minor repair)

*(12) Construction:*

- a. Licensed contractor; general, electrical, plumbing, mechanical, etc. excluding outside storage
- c. Construction office; temporary, including modular office (see also section 9-4-103)
- e. Building supply; lumber and materials sales, plumbing and/or electrical supply excluding outside storage
- f. Hardware store

*(13) Transportation:*

- b. Bus station; passenger and related freight
- c. Taxi or limousine service
- e. Parcel delivery service
- f. Ambulance service

*(14) Manufacturing/ Warehousing:*

- c. Bakery; production, storage and shipment facilities

*(15) Other Activities (not otherwise listed - all categories):*

\* None

**CDF (Downtown Commercial Fringe)**  
***Special Uses***

*(1) General:*

\* None

*(2) Residential:*

- d. Land use intensity multifamily (LUI) development rating 50 per Article K
- e. Land use intensity multifamily (LUI) development rating 67 per Article K
- j. Residential quarters for resident manager, supervisor or caretaker; including mobile homes
- m. Shelter for homeless or abused
- n. Retirement center or home
- o. Nursing, convalescent center or maternity home; major care facility
- o.(1). Nursing, convalescent center or maternity home; minor care facility
- r. Fraternity or sorority house

*(3) Home Occupations (see all categories):*

- a. Home occupation; including barber and beauty shops
- c. Home occupation; including manicure, pedicure or facial salon

*(4) Governmental:*

- a. Public utility building or use

*(5) Agricultural/ Mining:*

\* None

*(6) Recreational/ Entertainment:*

- d. Game center
- i. Commercial recreation; indoor and outdoor not otherwise listed
- l. Billiard parlor or pool hall
- m. Public or private club

*(7) Office/ Financial/ Medical:*

\* None

*(8) Services:*

- a. Child day care facilities
- b. Adult day care facilities
- l. Convention center; private
- x. Dance studio
- bb. Civic organizations
- cc. Trade or business organizations
- hh. Exercise and weight loss studios; indoor only

*(9) Repair:*

- a. Major repair; as an accessory or principal use
- b. Minor repair; as an accessory or principal use

*(10) Retail Trade:*

- b. Gasoline or automotive fuel sales; accessory or principal use, retail
- g. Fish market; excluding processing or packing
- j. Restaurant; regulated outdoor activities
- t. Hobby or craft shop
- u. Pet shop (see also animal boarding; outside facility)

*(11) Wholesale/ Rental/ Vehicle- Mobile Home Trade:*

\* None

*(12) Construction:*

- d. Building supply; lumber and materials sales, plumbing and/or electrical supply including outside storage

*(13) Transportation:*

- h. Parking lot or structure; principal use

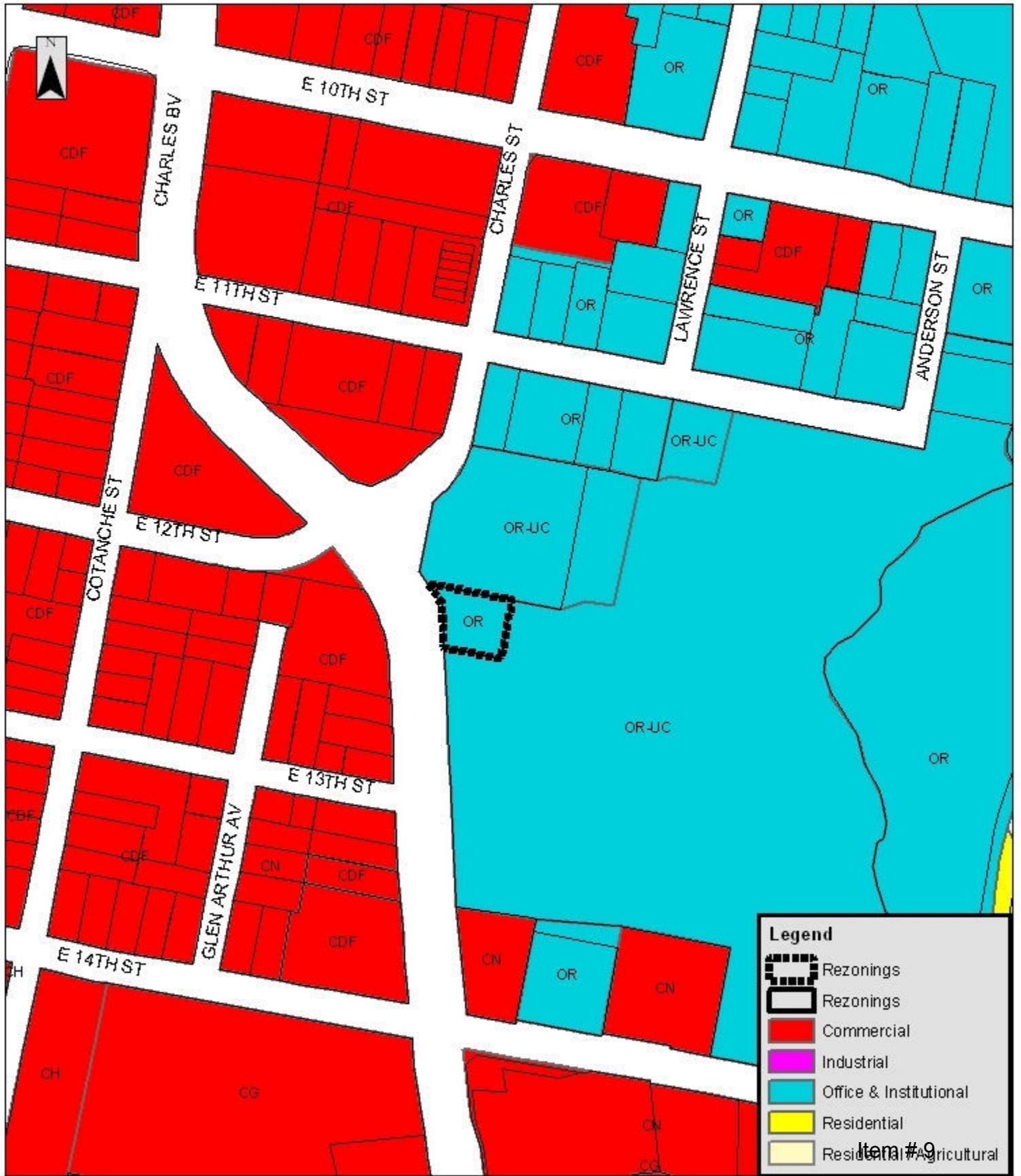
*(14) Manufacturing/ Warehousing:*

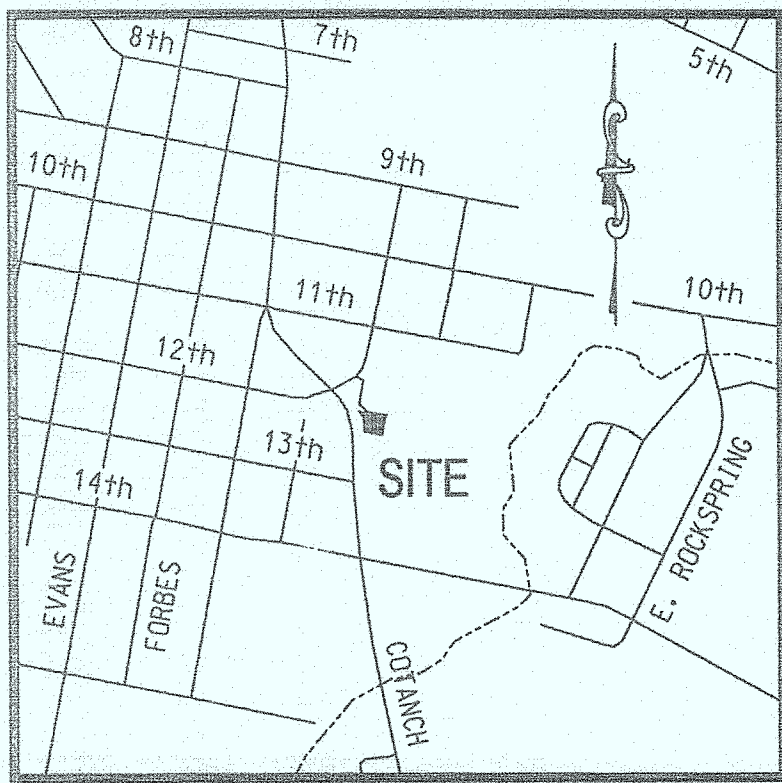
- g. Cabinet, woodwork or frame shop; excluding furniture manufacturing or upholstery

*(15) Other Activities (not otherwise listed - all categories):*

- a. Other activities; personal services not otherwise listed
- b. Other activities; professional activities not otherwise listed
- c. Other activities; commercial services not otherwise listed
- d. Other activities; retail sales not otherwise listed

Frank Hart Trust c/o Robert D. Parrott, Trustee (11-07)  
From: OR to CDF  
0.2868 acres  
August 2, 2011





VICINITY MAP  
1" = 1000'

Attachment number 6  
Page 1 of 1

STATE OF NORTH CAROLINA  
DB 1376, P 43  
CDF

NICOLAS J. HARRIS  
DB 2714, P 209  
CDF



MASONIC LODGE  
DB V32, P 616  
DB 615, P 254  
DB D33, P 622  
DB Y33, P 258  
DB Y33, P 246  
MB 10, P 30  
OR-UC  
PRIVATE CLUB

M.B. 73, PG. 108

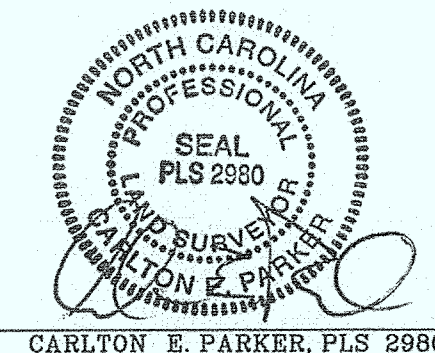
EXISTING APARTMENT BUILDING

EXISTING APARTMENT BUILDING

EXISTING ZONING OR PROPOSED ZONING CDF  
(0.2888 ACRES)

EXISTING BUILDING  
40' x 30'

UNIVERSITY RESIDENCES  
ECU, LLC  
DB 2762, P 1  
DB 2762, P 4  
DB 2762, P 9  
DB 2762, P 15  
DB 2762, P 37  
OR-UC  
APARTMENTS



CARLTON E. PARKER, PLS 2980

**REZONING MAP FOR**  
**FRANK HART TRUST c/o ROBERT D. PARROTT, TRUSTEE**

REFERENCE DEED BOOK 1359, PAGE 266,  
OF THE PITT COUNTY REGISTRY

GREENVILLE TWP CITY OF GREENVILLE PITT CO NORTH CAROLINA

OWNER: FRANK HART TRUST ROBERT DONALD PARROTT, TRUSTEE	DESIGNED: CEP
ADDRESS: 1003 RED BANKS ROAD GREENVILLE, NC 27858	DRAWN: JHT
PHONE: (252) 321-0505	APPROVED: CEP
<b>MALPASS &amp; ASSOCIATES</b> NC LICENSE NO. C-1289 1645 EAST ARLINGTON BLVD., SUITE D GREENVILLE, N.C. 27858 (252) 756-1780	DATE: 6/13/11
	SCALE: 1" = 20'
	SHEET 1 OF 1

04/30/07

## BUFFERYARD SETBACK AND VEGETATION SCREENING CHART

For Illustrative Purposes Only

**Bufferyard Requirements:** Match proposed land use with adjacent permitted land use or adjacent vacant zone/nonconforming use to determine applicable bufferyard.

PROPOSED LAND USE CLASS (#)	ADJACENT PERMITTED LAND USE CLASS (#)					ADJACENT VACANT ZONE OR NONCONFORMING USE	PUBLIC/PRIVATE STREETS OR R.R.
	Single-Family Residential (1)	Multi-Family Residential (2)	Office/Institutional, light Commercial, Service (3)	Heavy Commercial, Light Industry (4)	Heavy Industrial (5)		
Multi-Family Development (2)	C	B	B	B	B	Residential (1) - (2) Non-Residential (3) - (5)	A
Office/Institutional, Light Commercial, Service (3)	D	D	B	B	B	D	A
Heavy Commercial, Light Industry (4)	E	E	B	B	B	E	A
Heavy Industrial (5)	F	F	B	B	B	F	A

Bufferyard A (street yard)		
Lot Size	Width	For every 100 linear feet
Less than 25,000 sq.ft.	4'	2 large street trees
25,000 to 175,000 sq.ft.	6'	2 large street trees
Over 175,000 sq.ft.	10'	2 large street trees

Street trees may count toward the minimum acreage.

Bufferyard B (no screen required)	
Lot Size	Width
Less than 25,000 sq.ft.	4'
25,000 to 175,000 sq.ft.	6'
Over 175,000 sq.ft.	10'

Bufferyard C (screen required)	
Width	For every 100 linear feet
10'	3 large evergreen trees 4 small evergreens 16 evergreen shrubs

Where a fence or evergreen hedge (additional materials) is provided, the bufferyard width may be reduced to eight (8) feet.

Bufferyard D (screen required)	
Width	For every 100 linear feet
20'	4 large evergreen trees 6 small evergreens 16 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard E (screen required)	
Width	For every 100 linear feet
30'	6 large evergreen trees 8 small evergreens 26 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

Bufferyard F (screen required)	
Width	For every 100 linear feet
50'	8 large evergreen trees 10 small evergreens 36 evergreen shrubs

Bufferyard width may be reduced by fifty (50%) percent if a fence, evergreen hedge (additional material) or earth berm is provided.

**Parking Area:** Thirty (30) inch high screen required for all parking areas located within fifty (50) feet of a street right-of-way.



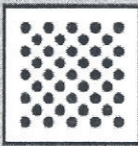
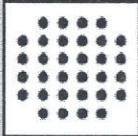
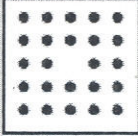
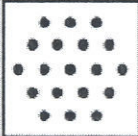
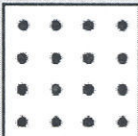
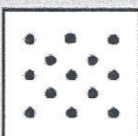
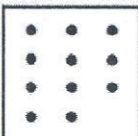
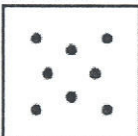
Residential Density		
Maximum density allowed by Zoning District based on average of 2.67 persons per dwelling unit		
<b>High Density</b>		
R6 R6-N R6-MH OR CDF	17 units per acre yields 45 persons per acre	
PUD	12 units per acre yields 32 persons per acre	
<b>Medium Density</b>		
R6-A	9 units per acre yields 24 persons per acre	
R6-S	7 units per acre yields 19 persons per acre	
R9	6 units per acre yields 16 persons per acre	
R9-S	5 units per acre yields 13 persons per acre	
<b>Low Density</b>		
RA-20 MRS	4 units per acre yields 11 persons per acre	
R15-S	3 units per acre yields 8 persons per acre	

Illustration: Maximum allowable density in Residential Zoning Districts



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Ordinance requested by Steve Mills to amend the Zoning Ordinance regulations applicable to wine shops

**Explanation:** The City's definition and standards for a "Wine Shop" were established in 2006 and were modeled after the applicable Alcohol Beverage Commission (ABC) licensing definitions found in GS 18B-1001. Both the City's definition and standards and the applicable ABC requirements allow the sale of unfortified wine for consumption on the premises, provided that the sale of wine for consumption on the premises does not exceed forty percent (40%) of the establishment's total sales for any 30-day period.

The applicant is the owner/operator of Dolce Vita, a wine shop located at 3110 Evans Street. Mr. Mills seeks to change the City's zoning standards for wine shops so as to allow the sale of malt beverages for consumption on the premises (see attached application). The only land uses that the City has traditionally qualified for an "On-Premises Malt Beverage Permit" are restaurants, dining and entertaining establishments, and public or private clubs; however, applicable ABC requirements would allow a wine shop to receive an "On-Premises Malt Beverage Permit".

The submitted zoning ordinance text amendment proposes the following:

- Allow a wine shop as a permitted use in the CH district and as a special use in the MCG, MCH, CD, CDF, CG, and CN districts. (Wine shops are currently a permitted use in the MCG, MCH, CD, CDF, CG, CN and CH districts.)
- Allow the on-premises consumption of malt beverages. (Only the on-premises consumption of wine is currently permitted).
- Require that the sale of wine and malt beverages for on-premises consumption not exceed 40% of the wine shop's total sales of wine and malt beverages including both on-premises and off-premises consumption for any 30-day period. (The 40% requirement is currently limited to wine

- only).
- Require that records related to the wine shop's total sales of wine and malt beverages for both on-premises and off-premises consumption be maintained on the premises for at least one year and shall be open to inspection by the City. (No such requirement currently exists.)
  - Require that a wine shop be located at least 200 feet from any existing or approved public or private club, dining and entertainment establishment, or other wine shop that includes the on-premises consumption of malt beverages. (No such requirement currently exists.)
  - Limit wine shops' hours of operation to no later than 11:00 p.m. Sunday - Thursday and no later than 12:00 a.m. Friday - Saturday.
  - Prohibit a wine shop from requiring a membership, cover charge, or minimum charge for admittance.

**Fiscal Note:** No fiscal impact anticipated.

**Recommendation:** In staff's opinion, the proposed Zoning Ordinance Text Amendment is in compliance with Horizons: Greenville's Community Plan.

The Planning and Zoning Commission recommended approval of the ordinance amendment at their August 16, 2011, meeting.

If City Council determines to approve the amendment request, a motion to adopt the attached ordinance will be needed. The ordinance includes the statutorily required statement describing whether the action taken is consistent with the comprehensive plan and explaining why Council considers the action taken to be reasonable and in the public interest.

If City Council determines to deny the amendment request, in order to comply with this statutory requirement, it is recommended that the motion be as follows:

Motion to deny the requested text amendment and to make a finding and determination that the denial of the text amendment request is consistent with the comprehensive plan and that the denial of the text amendment request is reasonable and in the public interest due to the denial being consistent with the comprehensive plan and, as a result, the denial furthers the goals and objectives of the comprehensive plan.

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

Attachments / click to download

 [Wine Shop Text Amendment Application](#)

[Wine Shop Ordinance 905037](#)

[Draft P and Z Minutes Wine Shop 905105](#)

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ORDINANCE NO. 11-\_\_\_\_\_  
AN ORDINANCE AMENDING THE ZONING ORDINANCE  
OF THE CITY OF GREENVILLE, NORTH CAROLINA

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Article 19, Chapter 160A, of the General Statutes of North Carolina, caused a public notice to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would, on September 8, 2011 at 7:00 p.m., in the City Council Chambers of City Hall in the City of Greenville, NC, conduct a public hearing on the adoption of an ordinance amending the City Code; and

WHEREAS, in accordance with the provisions of North Carolina General Statute 160A-383, the City Council does hereby find and determine that the adoption of the ordinance involving the text amendment is consistent with the adopted comprehensive plan and that the adoption of the ordinance involving the text amendment is reasonable and in the public interest due to its consistency with the comprehensive plan and, as a result, its furtherance of the goals and objectives of the comprehensive plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, DOES HEREBY ORDAIN:

Section 1: That Title 9, Chapter 4, Article D, Section 9-4-78(10)(c.(1)), of the City Code, is hereby amended by deleting said subsection in its entirety and substituting a new subsection (c.(1)), entitled “Wine shop; including on premises consumption (see also Section 9-4-103)”, with a LUI# “4”, within the table of uses, as a permitted use within the CH district and as a special use in the MCG, MCH, CD, CDF, CG, and CN districts.

Section 2: That Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code, is hereby amended by deleting the definition of “wine shop” and substituting a new definition to read as follows:

“*Wine shop.* An establishment conducted pursuant to G.S.18B-1001 as amended, and operated as a principal or accessory use, which is authorized to sell wine in the manufacturer’s original container for consumption off the premises, provided however, the permittee shall be authorized to conduct accessory and incidental wine tasting on the premises and is further authorized to sell wine for on-premises consumption, as an accessory and incidental use to the wine shop, provided the establishment and operation is compliant with section 9-4-103(S). A wine shop that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use classification.”

Section 3: That Title 9, Chapter 4, Article D, Section 9-4-103(S), of the City Code, is hereby amended by deleting said subsection in its entirety and substituting a new subsection 9-4-103(S) to read as follows:

“(S) Wine shop (see also Section 9-4-22).

- (1) A wine shop may sell wine for consumption on the premises, provided that the on-premises consumption of wine constitutes an accessory and incidental use to the wine shop.
- (2) A wine shop that also has the requisite state permit(s) that allows retail sales of malt beverages for on-premises consumption, in accordance with G.S.18B-1001 as amended, may sell both wine and malt beverages for consumption on the premises, provided that the combined on-premises consumption of wine and malt beverages constitute an accessory and incidental use to the primary retail use wine shop.
- (3) For purposes of this section, on-premises consumption of wine and malt beverages shall be deemed an accessory and incidental use to a wine shop, provided the combined sale of wine and malt beverages for consumption on the premises does not exceed forty (40) percent of the wine shop's total sales of wine and malt beverages including both on-premises and off-premises consumption, for any thirty (30) day period. The term "sale(s)" as used herein shall be the receipt of payment for the wine and malt beverages sold and/or consumed and shall not be a measure of the volume of wine and malt beverages sold and/or consumed.
- (4) Records related to the wine shop's total sales of wine and malt beverages for both on-premises and off-premises consumption shall be maintained on the premises for not less than one year and shall be open for inspection and audit at all reasonable hours when the establishment is open for business by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises or may request that copies of the written records be delivered to the City. The requirements of this subsection shall be for the purpose of determining compliance with subsection (S)(3) above.
- (5) No wine shop that includes the on-premises consumption of wine and malt beverages shall be located within a 200-foot radius, including street rights-of-way, of an existing or approved Public or Private Club, Dining and Entertainment Establishment, or other wine shop that includes the on-premises consumption of wine and malt beverages. The required measurement shall be from the building or structure containing the wine shop to the nearest property line of the parcel containing the existing or approved Public or Private Club, Dining and Entertainment Establishment, or other wine shop that includes the on-premises consumption of wine and malt beverages.
- (6) A wine shop shall not operate after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday or after 12:00 a.m on Friday and Saturday.
- (7) A wine shop shall not require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (8) A wine shop that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use

classification.

- (9) The provisions of this section shall apply to all wine shops whether operated as a principal or accessory use.”

Section 4. That 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 5. That this ordinance shall become effective upon its adoption.

Adopted this 8<sup>th</sup> day of September, 2011.

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Patricia C. Dunn, Mayor

ATTEST:

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Carol L. Barwick, City Clerk

**Excerpt from the DRAFT Planning and Zoning Commission meeting minutes (8/16/2011)**

**REQUEST BY STEVE MILLS FOR A ZONING ORDINANCE TEXT AMENDMENT  
ASSOCIATED WITH WINE SHOPS - APPROVED**

Request by the Steve Mills for a Zoning Ordinance Text Amendment amending the definition and standards for a “wine shop”.

Mr. Chris Padgett, Chief Planner, explained that the applicant, Mr. Mills, is the owner/operator of Dolce Vita wine shop. Mr. Mills wants his customers to be able to select from his craft beer inventory and consume the beer at his wine shop the same way they can currently do with his wine inventory. To do this Mr. Mills must obtain an “On-premises malt beverage consumption” ABC permit from the state. It appears that Mr. Mills meets all applicable state requirements for this permit, except that the local zoning standards applicable to a “wine shop” do not allow the on-premises consumption of malt beverages, only wine. Mr. Padgett stated that he had worked with Mr. Mills over the past two months to draft an amendment to the wine shop standards that would allow Mr. Mills to move forward with business improvements while also ensuring that wine shops operate as retail establishments and not as clubs.

Mr. Padgett reviewed the various substantive areas of the proposed text amendment which included the following:

- Allow a wine shop as a permitted use in the CH district and as a special use in the MCG, MCH, CD, CDF, CG, and CN districts. (They are currently a permitted use in the MCG, MCH, CD, CDF, CG, CN and CH districts.)
- Allow the on-premises consumption of malt beverages. (Only the on-premises consumption of wine is currently permitted).
- Require that the sale of wine and malt beverages for on-premises consumption not exceed 40% of the wine shop's total sales of wine and malt beverages including both on-premises and off-premises consumption for any 30-day period. (The 40% requirement is currently limited to wine only).
- Require that records related to the wine shop's total sales of wine and malt beverages for both on-premises and off-premises consumption be maintained on the premises for at least one year and shall be open to inspection. (No such requirement currently exists.)
- Require that a wine shop be located at least 200-feet from any existing or approved public or private club, dining and entertainment establishment, or other wine shop that includes the on-premises consumption of malt beverages. (No such requirement currently exists.)
- Limit wine shops' hours of operation to no later than 11:00 p.m. Sunday - Thursday and no later than 12:00 a.m. Friday - Saturday.
- Prohibit a wine shop from requiring a membership, cover or minimum charge for admittance.

In staff's opinion, this request is in compliance with Horizons: Greenville's Community Plan.

Mr. Gordon asked if the current location of Dolce Vita was zoned CH? Mr. Padgett responded



that it was zoned CH. Mr. Gordon asked if the applicant would be required a Special Use Permit under the proposed standards. Mr. Padgett responded that he would not.

Ms. Basnight asked about Dolce Vita's current hours of operation? Mr. Padgett said that he thought they closed by 10 pm during the week and by 11 pm on weekends.

Mr. Randall asked whether a new wine shop would have to get a Special Use Permit annually or if it was a one-time process? Mr. Padgett stated that it would be a one-time process. Mr. Randall asked if we were adding too many layers of standards for these uses? Mr. Padgett replied that the level of regulation for any land use is a policy question and he noted that the city had been strengthening its standards for establishments with the on-premises consumption of alcohol over the past several years.

Steve Mills spoke in favor of the request. Mr. Mills said that he was the owner/ operator of Dolce Vita wine shop. He opened the wine shop four-years ago and it is operated as a retail shop that sales wine and craft beer. Only 7% of his sales are for the on-premises consumption of wine and he would like to offer his beer customers the same opportunities as his wine customers.

Mr. Randall asked Mr. Mills if the extra layers of regulation would be a problem for him opening another wine shop. Mr. Mills said that he is 100% satisfied with the proposed standards and that they would not deter him or anyone that wanted to operate a business the right way.

No one spoke in opposition of the request.

Motion was made by Mr. Parker, seconded by Mr. Gordon, to approve the proposed amendment to advise that it is consistent with the comprehensive plan and other applicable plans and to adopt the staff report which addresses plan consistency and other matters. Motion passed unanimously.



Date Received 6-27-11

**CITY OF GREENVILLE**  
**ZONING ORDINANCE TEXT AMENDMENT APPLICATION**

Applicant Name(s) Steve Mills

Mailing Address 3110-F S. EVANS ST  
GREENVILLE N.C. 27858

Contact Phone Number (252) 341-3134

Contact Fax Number (252) 329-8500

\* Zoning Ordinance Section Proposed to be Amended: Section 9-4-22; Section 9-4-103(S);  
Appendix A, (C)(1)(c)(1).

Reason for Request: To allow Dolce Vita Wine and Beer to sell  
CRAFT BEER "ON PREMISE" as a part of BEINA a wine shop.

\* Proposed Language of Text Amendment (attach additional pages if needed): See attachment

STEVE MILLS

Print Name

Signature of Applicant

6/23/11

Date

## Proposed Zoning Ordinance Text Amendment: Wine Shops

**Bold underlined text** depicts proposed additions to existing standards; ~~strikethrough text~~ depicts deletions from existing standards.

- ~~1. Title 9, Chapter 4, Appendix A, (C)(10)(c)(1), allows the land use titled *Wine Shop* as a permitted use by right in the MCG; MCH; CD; CDF; CG; CN; and CH districts and assigns a LUI# “3” to said use.~~
1. **Title 9, Chapter 4, Appendix A, (C)(10)(c)(1), allows the land use titled *Wine Shop* as a Permitted Use in the CH district, and as a Special Use in the MCG; MCH; CD; CDF; CG; and CN districts and assigns a LUI# “4” to said use.**

*Explanation: Requiring a Special Use Permit for wine shops in various zoning districts will allow an additional level of review to ensure compatibility with adjacent or nearby residential uses. Increasing the Land Use Intensity (LUI) classification for wine shops will provide for increased bufferyard standards. For example, a wine shop proposed adjacent to a single family dwelling currently is required a Type D Bufferyard (20 feet wide / 10 feet with a fence). The proposed standard would require a Type E Bufferyard (30 feet wide / 15 feet with a fence).*

2. Title 9, Chapter 4, Article B, Section 9-4-22, of the City Code defines a “Wine Shop” as:

“An establishment conducted pursuant to G.S.18B-1001 as amended, and operated as a principal or accessory use, which is authorized to sell wine in the manufacture’s original container for consumption off the premises, provided however, the permittee shall be authorized to conduct accessory and incidental wine tasting on the premises and is further authorized to sell wine for on-premise consumption, as an accessory and incidental use to the wine shop, provided the establishment and operation is compliant with section 9-4-103(S). **A wine shop that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use classification.**”

*Explanation: No changes are proposed to the current definition of a wine shop.*

3. Title 9, Chapter 4, Article F, Section 9-4-103 (S), of the City Code provides the following Special Standards for Wine Shops:
  - (1) A wine shop may sell wine for consumption on the premises, provided that the on-premises consumption of wine constitutes an accessory and incidental use to the wine shop.

- (2) A wine shop that also has the requisite state permit(s) that allows retail sales of malt beverages for on-premises consumption, in accordance with G.S.18B-1001 as amended, may sell both wine and malt beverages for consumption on the premises, provided that the combined on-premises consumption of wine and malt beverages constitute an accessory and incidental use to the primary retail use wine shop.
- (3) For purposes of this section, on-premises consumption of wine **and malt beverages** shall be deemed an accessory and incidental use to a wine shop, provided the **combined** sale of wine **and malt beverages** for consumption on the premises does not exceed forty (40) percent of the wine shop's total sales of wine **and malt beverages** including both on-premises and off-premises consumption, for any thirty (30) day period. The term "sale(s)" as used herein shall be the receipt of payment for the wine **and malt beverages** sold and/or consumed and shall not be a measure of the volume of wine **and malt beverages** sold and/or consumed.
- (4) Records related to the wine shop's total sales of wine and malt beverages for both on-premises and off-premises consumption shall be maintained on the premises for not less than one year and shall be open for inspection and audit at all reasonable hours when the establishment is open for business by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises or may request that copies of the written records be delivered to the City. The requirements of this subsection shall be for the purpose of determining compliance with subsection (S)(3) above.

*Explanation: The City must be able to review the sales records of wine shops to verify that they are meeting the required sales percentages to maintain their standing as permitted. This requirement has already been established for Dining and Entertainment Establishments.*

- (5) ~~A wine shop, as set forth in subsections (S)(3)(a) and (b) below, shall be deemed a "public or private club" for purposes of zoning and land use classification.~~
- ~~— (a) That is not part of and accessory to a restaurant establishment, where such principal use restaurant has sales of prepared and/or packaged foods, in a ready to consume state, in excess of fifty (50) percent of the total gross receipts for the establishment during any month, including both the wine shop and restaurant, and/or~~
- ~~(b) Where the total sales of wine for on-premise consumption is in excess of forty (40) percent of the wine shop's total sales of wine including both on-premises and off-premises consumption, during any thirty (30) day~~

period, shall be deemed a “public or private club” for purposes of zoning and land use classification.

*Explanation: This subsection is no longer needed as a result of subsection 8 below.*

- (5) **No wine shop that includes the on-premises consumption of wine and malt beverages shall be located within a 200-foot radius, including street rights-of-way, of an existing or approved Public or Private Club, Dining and Entertainment Establishment, or other wine shop that includes the on-premises consumption of wine and malt beverages. The required measurement shall be from the building or structure containing the wine shop to the nearest property line of the parcel containing the existing or approved Public or Private Club, Dining and Entertainment Establishment, or other wine shop that includes the on-premises consumption of wine and malt beverages.**

*Explanation: The proposed spacing requirement is intended to ensure that various uses that involve the on-premises consumption of alcohol do not congregate in close proximity to one another; leading to possible cumulative adverse impacts to adjacent or nearby residential and/or commercial uses.*

- (6) **A wine shop shall not operate after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday or after 12:00 a.m. on Friday and Saturday.**

*Explanation: The proposed limits on hours of operation are intended to ensure that wine shops are operated as retail establishments and not as a public or private club.*

- (7) **A wine shop shall not require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.**

*Explanation: The proposed requirements are intended to ensure that wine shops are operated as retail establishments and not as a public or private club.*

- (8) **A wine shop that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use classification.**

- (9) The provisions of this section shall apply to all wine shops whether operated as a principal or accessory use.



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Resolution to rename a portion of Thomas Langston Road to Regency Boulevard

**Explanation:** Planning Division staff received a request by the Public Works Department to change the name of a portion of Thomas Langston Road to Regency Boulevard.

Thomas Langston Road Extension is being constructed with funding from the 2004 bond referendum, developer contributions, and other sources. The eastern portion of the roadway from the railroad tracks to Evans Street was developed as Regency Boulevard. Several businesses list Regency Boulevard addresses and those businesses prefer that their addresses not be changed. No addresses have been assigned to the newly constructed portion of the roadway from Memorial Drive to the railroad tracks. This request would create a unified street name from Memorial Drive to Evans Street.

A street name change may be considered in accordance with the provisions of Section 6-2-13(c) of the Greenville City Code, as follows:

- (1) When there is duplication of names or other conditions which tend to confuse the traveling public or delivery of mail, orders, messages or emergency services;
- (2) When it is found that a change may simplify making or giving directions to persons seeking to locate addresses; or
- (3) Upon other good and just reason.

Evaluation criteria. The Planning and Zoning Commission and/or City Council shall consider the following criteria when evaluating any resolution for a street name change under their respective authority:

- (1) The delivery of personal, public and emergency services;
- (2) The similarity to existing street names;
- (3) Any condition which may confuse the traveling public;

- (4) Ease of giving directions;
- (5) Place, name association or history;
- (6) Pronunciation and spelling;
- (7) The expense to abutting property owners; and
- (8) The expense to affected governmental agencies, including but not limited to the City of Greenville, the County of Pitt, N.C. Department of Transportation, Greenville Utilities Commission and U.S. Postal Service.

The Planning and Zoning Commission voted to recommend approval of the proposed street name change at their August 16, 2011, meeting.

Street name changes are typically reviewed and approved by the Planning and Zoning Commission. City Council approval is required for naming a street after a person, known as an honorarium, and for street names exceeding 14 characters. This request is being forwarded to City Council for final consideration.

**Fiscal Note:** There will be limited costs associated with changing street signage upon approval.

**Recommendation:** Conduct a public hearing and adopt the attached resolution to rename a portion of Thomas Langston Road to Regency Boulevard.

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**Attachments / click to download**

- [Street name change - a portion of Thomas Langston Road to Regency Boulevard](#)
- [Ordinance\\_Thomas\\_Langston\\_Road\\_to\\_Regency\\_Boulevard\\_902189](#)
- [Draft\\_PandZ\\_Minutes\\_Street\\_Renaming\\_Regency\\_Bldv\\_905127](#)

RESOLUTION NO. \_\_\_\_\_  
RESOLUTION RENAMING A PORTION OF THOMAS LANGSTON ROAD  
TO REGENCY BOULEVARD

WHEREAS, the City Council of the City of Greenville, North Carolina, in accordance with Title 6, Chapter 2, Article A, Section 6-2-13 of the City Code, caused a public hearing to be given and published once a week for two successive weeks in The Daily Reflector setting forth that the City Council would on September 8, 2011 at 7:00 p.m. in the Council Chambers of City Hall conduct a public hearing on the adoption of a resolution to change the name of a street; and

WHEREAS, the owners of property along the affected portion of Thomas Langston Road were notified by certified mail of the proposed street name change and the public hearing date; and

WHEREAS, the Planning and Zoning Commission held a meeting on August 16, 2011 to review the street name change and made its recommendation in accordance with the criteria as listed in Title 6, Chapter 2, Article A, Section 6-2-13; and

WHEREAS, a public hearing was held this date to consider changing the name of a portion of Thomas Langston Road from its intersection with Memorial Drive eastward to the railroad track to Regency Boulevard; and

WHEREAS, those persons wishing to speak for and against the requested name change were given an opportunity to voice their opinion at such hearing;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE:

Section 1. The City Council finds that:

A. The City of Greenville Public Works Department has properly filed a street name change application to officially change the name of a portion of Thomas Langston Road from its intersection with Memorial Drive eastward to the railroad track to Regency Boulevard.

B. The street name change shall affect that portion of Thomas Langston Road from the intersection of Memorial Drive eastward to the railroad track.

Section 2. The name of a portion of Thomas Langston Road from its intersection with Memorial Drive



eastward to the railroad track is hereby renamed Regency Boulevard.

Section 3. From and after the passage of this resolution, the street name changed herein shall be and shall be known only by the name as provided in this resolution.

Section 4. The City Clerk shall record a copy of this resolution in the office of the Pitt County Register of Deeds.

Section 5. The City Engineer shall amend the Official Maps of the City of Greenville in accordance with this resolution.

Section 6. The Public Works Department is authorized to change street signs in accordance with this resolution.

ADOPTED this the 8th day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

**Excerpt from the DRAFT Planning and Zoning Commission meeting minutes (8/16/2011)**

**REQUEST BY THE PUBLIC WORKS DEPARTMENT TO CHANGE THE STREET NAME  
OF A PORTION OF THOMAS LANGSTON ROAD TO REGENCY BOULEVARD  
- APPROVED**

Request by the Public Works Department to change the street name of a portion of Thomas Langston Road to Regency Boulevard.

Mr. Andy Thomas, Subdivision Administrator, explained that the Thomas Langston Road Extension was constructed by funding from the 2004 bond referendums. It has taken some time to negotiate with the railroad company to allow the crossing to connect this facility to Regency Boulevard. The eastern portion from the railroad tracks to Evans Street was developed as Regency Boulevard. Several businesses have Regency Boulevard as their address and they would prefer that their addresses not be changed. This request would present a unified street name from Memorial Drive to Evans Street.

A street name change may be considered in accordance with the provisions of Section 6-2-13(c) of the Greenville City Code, as follows:

- (1) When there is duplication of names or other conditions which tend to confuse the traveling public or delivery of mail, orders, messages or emergency services;
- (2) When it is found that a change may simplify making or giving directions to persons seeking to locate addresses; or
- (3) Upon other good and just reason.

Evaluation criteria. The planning and zoning commission and/or city council shall consider the following criteria when evaluating any resolution for a street name change under their respective authority:

- (1) The delivery of personal, public and emergency services;
- (2) The similarity to existing street names;
- (3) Any condition which may confuse the traveling public;
- (4) Ease of giving directions;
- (5) Place, name association or history;
- (6) Pronunciation and spelling;
- (7) The expense to abutting property owners; and
- (8) The expense to effected governmental agencies, including but not limited to the City of Greenville, The County of Pitt, N.C. Department of Transportation, Greenville Utilities Commission and U.S. Postal Service.

The proposed name change will be forwarded to City Council for final consideration as it may be viewed as reversing or reducing the scope of an honorarium.

Mr. Randall asked how many businesses are currently located on Regency Boulevard? Mr.

Thomas said that nine businesses are on Regency Boulevard and that no addressed structures are located on this portion of Thomas Langston Road.

Mr. Randall opened the public hearing and asked for those to speak in support of the request.

Mr. David Sutton identified himself as a business owner along Regency Boulevard. Mr. Sutton stated that he supports the street project, but does not want the expense associated with changing his business address.

Mr. Craig Hamilton spoke in favor of the request stating that he has had a business along Regency Boulevard since 1999 and wants to keep his current address.

Mr. Mark Roary spoke in favor of the request stating that he was speaking for four businesses along Regency Boulevard in asking that the request be approved.

No one spoke in opposition of the request.

Mr. Randall closed the public hearing.

Motion was made by Mr. Gordon, seconded by Ms. Bellis, to recommend approval of the proposed street name change. Motion passed unanimously.



# Street Name Change Thomas Langston Rd. to Regency Blvd.





# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Community Development Block Grant and Home Investment Partnership Consolidated Annual Performance and Evaluation Report

**Explanation:** The Consolidated Annual Performance and Evaluation Report (CAPER) is a requirement of the U.S. Department of Housing and Urban Development (HUD). As a condition of receiving funding under the Community Development Block Grant (CDBG) and Home Investment Partnership (HOME) federal grant programs, the CAPER must be completed and submitted to the agency. This end-of-year report outlines the City's progress in providing decent housing, establishing and maintaining a suitable living environment, and expanding economic opportunities. The draft CAPER for 2010-2011 is attached for your review and comment.

**Fiscal Note:** No direct cost associated with this request.

**Recommendation:** Hold a public hearing for citizen participation and authorize submission of the final CAPER to HUD.

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

Attachments / click to download

 [2010\\_11\\_CAPER\\_905034](#)

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## CAPER

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- A. Summary of Accomplishments - (C04PR23)  
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## CAPER

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### Executive Summary

The Consolidated Annual Performance and Evaluation Report (CAPER) details the housing and community development activities undertaken by the City of Greenville Community Development Department during the 2010 program year. This program year commenced on July 1, 2010 and ended June 30, 2011.

As an entitlement community, the City of Greenville receives federal funds through the U.S. Department of Housing and Urban Development (HUD) programs:

- Community Development Block Grant (CDBG)
- HOME Investment Partnerships (HOME)

Assessing the progress toward the five year goals addressed in the 2008-2013 Consolidated Plan, the City's overall efforts in allocating these funds support the national goals of community development and planning programs to develop viable urban communities. In particular, the City seeks opportunities to provide decent housing, a suitable living environment and expand economic opportunities for very low, low and moderate income persons/families.

The program year 2010 CAPER constitutes the third reporting year of the 2008-2013 Consolidated Plan. It is divided up into six (6) sections, the: 1.) Summary of the Overall Assessment of the third year Performance, 2.) Housing Needs, 3.) Community Development Block Grant, 4.) HOME Investment Partnerships, 5.) Supporting text and, 6.) The Integrated Distribution and Information System (IDIS) reports.

On August 29, 2011, a draft of this document was made available for fifteen (15) day public review and comment period. In addition, a Public Hearing for comments on this CAPER document was held on September 8, 2011 at 7:00pm in the City Council Chambers at City Hall. The program year 2010 CAPER can be found online at: [www.greenvillenc.gov\community development\housing](http://www.greenvillenc.gov/communitydevelopment/housing). No comments were received from the public.

## CAPER

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### **SECTION 1**

#### **Assessment of Activities Undertaken to Address Consolidated Plan Objectives and Priorities.**

During program year 2010, the City of Greenville received a total of \$1,463,041 in federal funds which was allocated as follows: Community Development Block Grant \$887,849 and HOME Investment Partnerships \$ 575,192.

The City had been serving as the lead agency of the Pitt County HOME Consortium. However, the Greenville City Council voted January 7, 2008 to approve disbanding of the existing Consortium and making application to become a separate Participating Jurisdiction for HOME Investment Partnership funds. The effective date of the dissolution was June 30, 2009. During the Action Plan Year July 1, 2010-June 30, 2011, the City continued to fund new projects, as well as worked closely with the Consortium members to provide support and monitor the consortium programs until all remaining funds of the Pitt County HOME Consortium are expended.

The City of Greenville and Pitt County HOME Consortium continued to carry out activities that were identified as the needs and priorities identified within the five year Consolidated Plan. Priority needs from 2008 through 2013 call for a concentrated effort within the West Greenville 45-Block Revitalization Area for the City of Greenville and Housing Rehabilitation within the jurisdictional boundaries of the Pitt County HOME Consortium. These efforts were designed to preserve the existing housing stock. Within the City of Greenville, all efforts during the course of the five year period will primarily focus on the needs within the boundaries of the West Greenville 45-Block Revitalization Area bounded by West Fifth Street on the north side, Albemarle Avenue on the east, Fleming Street on the south and Bancroft Avenue on the west. The following activities are being carried out in addressing the needs in this area: housing assistance through rehabilitation, (preservation of the existing housing stock), new construction or infill on vacant lots, down payment assistance, homeownership counseling, continue working with lenders to identify special programs/products for low to moderate income homebuyers, addressing lead-based paint issues, support and implement revolving loans for rehabilitation, support local Continuum of Care Plan, and overall neighborhood revitalization.

In addition, to avoid deterioration of other parts of the City, funds were made available for housing rehabilitation and down payment assistance for residents citywide.

The City of Greenville expended the majority of CDBG and HOME allocations in the West Greenville 45-Block Revitalization Area. Pitt County HOME Consortium members expended their allocations throughout low to moderate income Pitt County communities.

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### **Consolidated Plan Priority - Affordable Housing**

#### **Owner-Occupied Rehabilitation**

At the beginning of the fiscal year 2010, an amount of \$400,000 in CDBG and \$150,000 of HOME funds were set aside to rehabilitate ten (10) single family units. During FY 2010, a total of fourteen (14) units were completed utilizing past year funding and current year funding.

#### **Down Payment Assistance**

At the beginning of fiscal year 2010, \$100,000 of HOME allocation was set aside to provide down payment assistance to first time homebuyers seeking to purchase new homes in the West Greenville 45-Block Revitalization Area. A total of five (5) first time homebuyers received down payment assistance. Four of the five purchased homes in West Greenville and one purchased citywide. However, none of the FY 2010 set aside was used, prior year funds were expended.

#### **Acquisition of Substandard Structures for Affordable Housing**

At the beginning of FY 2010, \$70,000 of CDBG allocation was set aside for acquisition of substandard properties for development of affordable housing. A total of eleven (11) properties were acquired, however, past year funding was used.

### **Consolidated Plan Priority - Homelessness:**

#### **Ten Year Plan to End Homelessness**

At the beginning of FY 2010, \$30,000 of CDBG Public Service funding was made available for the Ten Year Plan to End Homelessness in Pitt County to provide a SOAR Counselor and assist with "Project Homeless Connect" Event.

### **Consolidated Plan Priority - Other Special Needs:**

#### **Transitional Housing**

At the beginning of FY 2010, \$117,692 of HOME allocation was set aside for an approved certified Community Housing Development Organization (CHDO) to construct one single family home for an eligible first time homebuyer. None of our local CHDOs' were able to identify a qualified buyer, so a transitional home was developed through a partnership with Streets to Home, Inc. and Center for Family Violence Prevention. A substandard property in West Greenville 45-Block area was acquired, demolished, single family unit built and occupied by a single mother, during the fiscal year.

In addition, Streets to Home, Inc. developed a second single family unit in partnership with Center for Family Violence Prevention. The substandard unit was acquired with CDBG funds, conveyed to Streets to Home for a CHDO project to rehab for purposes of a transitional unit for displaced women and children residing in a "safe house" as a result of domestic violence.

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### Consolidated Plan Priority - Non Housing Community Development:

The goal of the CDBG Program for non-housing community development is to support the expansion of economic opportunities for low to moderate income persons and to support the community's involvement and participation efforts in relation to supporting non housing priority needs. The following are allocated public service and public facility projects for approved non-profit organizations.

#### Public Service - Subrecipient Projects

The following is summary of approved public service projects for FY 2010.

**Name of Agency:** Boys & Girls Club of Pitt County, Inc.  
**Program:** Triple Play - Prevention of Childhood Obesity  
**Accomplishments:** Total youth served 135.  
**Amount of Funding Allocated:** \$11,000                      **Expenditures through June 30, 2011:** \$6,688

**Name of Agency:** N.C. Rural Fund for Development  
**Program:** Homebuyer Education and Counseling  
**Accomplishments:**  
**Amount of Funding Allocated:** \$5,800                      **Expenditures through June 30, 2011:** \$2,066

**Name of Agency:** N.C. Rural Fund for Development  
**Program:** Homebuyer Education and Counseling  
**Accomplishments:**  
**Amount of Funding Allocated:** \$18,450                      **Expenditures through June 30, 2011:** \$3,787

**Name of Agency:** L.I.F.E. of N.C., Inc.  
**Program:** Re-Entry Program - Job Training  
**Accomplishments:** Total of 90 individuals benefited, 27 jobs created.  
**Amount of Funding Allocated:** \$20,000                      **Expenditures through June 30, 2011:** \$5,907

**Name of Agency:** Building Hope Community Life Center, Inc.  
**Program:** Workforce Development  
**Accomplishments:** Total of Thirty (30) very low to low income youth served, two homeless  
**Amount of Funding Allocated:** \$15,000                      **Expenditures through June 30, 2011:** \$4,053

**Name of Agency:** EXCEED, Inc.  
**Program:** Job Training  
**Accomplishments:** Total persons served six.  
**Amount of Funding Allocated:** \$5,000                      **Expenditures through June 30, 2011:** \$3,209

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**Name of Agency:** Center for Family Violence Prevention  
**Program:** Hispanic Outreach & Supervised visitations  
**Accomplishments:** 43 supervised visitations.  
**Amount of Funding Allocated:** \$22,200                      **Expenditures through June 30, 2011:** \$7,950

**Name of Agency:** Center for Family Violence Prevention (Safe House)  
**Program:** Employment Training Center  
**Accomplishments:** 152 Clients benefited from training  
**Amount of Funding Allocated:** \$6,000                      **Expenditures through June 30, 2011:** \$3,519

**Name of Agency:** Pitt County Government  
**Program:** Ten Year Plan to End Homelessness  
**Accomplishments:** 25 persons received Soar training; and 205 homeless individuals attended Project Homeless Connect.  
**Amount of Funding Allocated:** \$30,000                      **Expenditures through June 30, 2011:** \$22,059

**Name of Agency:** Community Appearance Commission  
**Program:** Community Gardens - West Greenville  
**Accomplishments:** Twelve families benefited  
**Amount of Funding Allocated:** \$6,500                      **Expenditures through June 30, 2011:** \$6,500

### Public Facility Improvements - Subrecipient Projects:

The following is a summary of approved projects:

**Name of Agency:** Operation Sunshine, Inc.  
**Repair:** Roof, HVAC, Mechanical Gate  
**Accomplishments:** Twenty-four (24) very low to low income youths served  
**Amount of Funding Allocated:** \$11,795                      **Expenditures through June 30, 2011:** \$6,064

**Name of Agency:** L.I.F.E of N.C., Inc.  
**Repair:** Program Equipment & general repairs  
**Accomplishments:** Total of 90 individuals benefited, 27 jobs created.  
**Amount of Funding Allocated:** \$20,345                      **Expenditures through June 30, 2011:** \$10,822

**Name of Agency:** Center for Family Violence Prevention, Inc. (Safe House)  
**Repair:** Handicap accessibility ramp  
**Accomplishments:** 152 persons benefited from improvement.  
**Amount of Funding Allocated:** \$2,800                      **Expenditures through June 30, 2011:** \$2,800

**Name of Agency:** Building Hope Community Life Center, Inc.  
**Repair:** Expand workroom & computer laboratory  
**Accomplishments:** Total of Thirty (30) very low to low income youth served  
**Amount of Funding Allocated:** \$26,700                      **Expenditures through June 30, 2011:** \$26,700

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### Affirmatively Furthering Fair Housing

The Federal Fair Housing Act, as Amended, prohibits discrimination in the rental, sale, or financing of any dwelling based upon race, color, religion, sex, national origin, familial status, or disability. As a condition for receiving federal funds from HUD, entitlement communities, such as City of Greenville must “affirmatively further fair housing.” This phrase means to

- Conduct an analysis to identify impediments to fair housing choice within the jurisdiction;
- Take appropriate actions to overcome the effects of any impediments identified through the analysis; and
- Maintain records reflecting the analysis and actions taken in this regard.

An update to the Analysis of Impediments to Fair Housing Choice was completed by the City of Greenville, May 2008. This section presents the Fair Housing Analysis Update for the 2008-2013 Consolidated Plan. It primarily includes existing impediments to fair housing choice currently being addressed and the plans recommended to remedy them. The update relies on public/private information regarding the real estate and banking industries, Greenville housing and community development activities, North Carolina and Greenville Human Relations Agencies, and the Greensboro and Atlanta HUD Offices of Fair Housing and Equal Opportunity. The following impediments were identified:

Impediment 1: Lack of affordable housing forces the lower income population to find alternative housing. Alternative housing may consist of doubling up; where households combine to cut the expenses of housing. Others are forced to live in housing that is in poor condition that leads to that leads to disparate treatment of protected class families and individuals.

#### Plan of Action:

The financing industry may have the best strategy for this impediment. While it appears to be true that there are insufficient affordable housing units available for housing choice in Greenville, the fact is that a surplus of moderately priced housing is available. Therefore, if lower income home seekers attempt to follow financing recommendations such as using the City’s down payment assistance programs and efforts such as West Greenville revitalization that have been instrumental in bringing clients representing “all realms” of the population to apply for loans to purchase homes.

The City’s down payment assistance is available to everyone. While some applicants appear to be well educated in the homebuyer loan process, the lending industry feels that most still are not. When lenders counsel prospective borrowers about the financial responsibility associated with home mortgages, offering practical advice regarding savings and spending, borrowers become frustrated and seek mortgage loans elsewhere. If all mainstream lenders have similar policies, it is possible that this serves drive people to seek loans through brokers and subprime

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lenders. Therefore, a stronger push to promote homebuyer counseling appears to be an appropriate solution.

Impediment 2: The lack of education about discrimination and fair housing laws in Greenville. An essential part of fair housing opportunities and enforcement is the education of the public regarding the rights and responsibilities afforded by fair housing laws. This includes the education of housing and financial providers, as well as citizens.

### Plan of Action:

Education is a key element on two fronts. First, it is one of the most pressing needs to ensure fair housing choice. It is imperative that individuals and families seeking housing know their rights and responsibilities and that those involved in the housing industry understand their rights and responsibilities, as well. Secondly, providing public education that produces an employable workforce with higher earning potential will help improve creditworthiness of future homebuyers. The onus falls to the public school system to ensure that tomorrow's residents have the skills they need to be competitive in the job marketplace, as well as to be educated consumers armed with the skills to make informed decisions.

Impediment 3: Awareness of fair housing issues is important. Everyone needs to know what may constitute a violation, and what they can do in the event they believe they may have been discriminated against. In addition, it is important for lenders, housing providers and their agents to know their responsibilities and when they may be violating fair housing laws.

### Plan of Action

In responding to whether Fair Housing was an issue in Greenville, the financing industry again addressed the results of the recent NCRC report, stating that the minority stigma has improved, but it still exists. The lenders need for production (or writing of loans) drives greater leniency in which lenders select to lend to, thereby lessening the impact of race. Mortgage brokers, on the other hand, know that people do business with people who look like them, and so they hire people that resemble the markets they serve. This is good marketing, but also encourages minority homebuyers to seek loans with lenders who are not necessarily looking out for the borrowers' best interests. Additionally, brokers are most familiar with the products that are most popular in the markets they serve and are not aware of all the products offered by the institutions they represent, thus limiting their offerings to higher-cost products. Unfortunately, uninformed buyers also choose lenders on the basis of word-of-mouth referrals from friends and family, and the belief that banks do not lend money to minorities. Again, while educating consumers is indicated, it is difficult to reach them when they will not avail themselves of the opportunities.

The City will continue its efforts to educate the public through Fair Housing month activities and a local loan counseling program.

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The City will encourage lenders, housing providers and their agents to know their responsibilities and to attend training on fair housing laws.

Impediment 4: The lack of a pro-active property maintenance code enforcement program. Substandard housing and low property maintenance contribute to the lack of safe, decent, and sanitary affordable housing. Such a program could help with the preservation of the rental housing stock.

Plan of Action:

The City will consider several activities to increase the availability of affordable housing opportunities and programs to preserve existing rental housing stock throughout the City including a program to assist investors in rehabilitating substandard housing stock in an effort to keep those units affordable once renovations have been completed, as well as aggressive code enforcement.

Impediment 5: There are limited housing opportunities for the homeless, those who are at risk of homelessness, and special needs populations. There is not enough funding for permanent housing. Too many citizens are on the brink of becoming homeless because they have to spend too much of their income on housing (many times not decent or safe housing).

Plan of Action:

The City will continue to support programs to increase family self-sufficiency and to prepare homeless, at risk and special needs populations for rental or homeownership opportunities through financial literacy, credit counseling and rental assistance. The City also needs to support a number of initiatives to assist low-moderate homebuyers with down-payment assistance, default delinquency counseling, anti-predatory lending counseling and homeless prevention programs.

Impediment 6: Lack of Access to Homeownership (Based on HMDA and apparent Predatory Lending Practices)

This Impediment can be addressed in the 2008-2013 Consolidated Plan as the City considers inequities that may occur in homeownership opportunities for protected classes or those covered by the Fair Housing Law. An analysis of the HMDA data in this document reveals, for example, that while black residents comprise 34 percent of the population, 21 percent of all home purchase mortgage applications come from black families/individuals so therefore, it appears that black applicants may be underrepresented although improving substantially over the past five years. City programs targeted to assist low-moderate income protected classes should focus more closely on educating the population on the importance of homeownership and how to access local lending resources.

In addition, consistently high denial rates on home improvement loans may reflect policies in the lending industry, but this is an area that warrants some attention in Greenville. The



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disinvestment associated with an inability to raise funds to maintain one's home can have an undesirable effect on the community when it occurs in great numbers.

### Plan of Action:

In responding to whether Fair Housing was an issue in Greenville, the financing industry again addressed the results of the recent NCRC report, stating that the minority stigma has improved, but it still exists. The need for production (that is, writing loan business) in the lending industry drives greater leniency in which lenders select to lend to, thereby lessening the impact of race. Mortgage brokers, on the other hand, know that people do business with people who look like them, and so they hire people that resemble the markets they serve. This is good marketing, but also encourages minority homebuyers to seek loans with lenders who are not necessarily looking out for the borrowers' best interests. Additionally, brokers are most familiar with the products that are most popular in the markets they serve and are not aware of all the products offered by the institutions they represent, thus limiting their offerings to higher-cost products. Unfortunately, uninformed buyers also choose lenders on the basis of word-of-mouth referrals from friends and family, and the belief that banks do not lend money to minorities. Again, the solution lies in educating consumers, although it is difficult to reach them when they will not avail themselves of the opportunities.

### **Affirmative Marketing Plan:**

It is the policy of the City of Greenville Housing Division not to discriminate against any person on the basis of race, color, national origin, sex, religion, familial status, or disability: in the sale or rental of housing or residential lots; in the advertising the sale or rental of housing; in the financing of housing; in the provision of real estate brokerage services; or in the appraisal of housing.

In accordance with the regulations of the HOME program and in furtherance of the City of Greenville's commitment to fair housing and equal housing opportunity, a policy that establishes procedures to affirmatively market rental or residential units constructed or rehabilitated under the HOME program was approved June 1, 2009. These procedures are designed to assure that individuals who normally might not apply for available housing units because they are socially and/or economically disadvantaged are provided an opportunity to apply.

In addition, the City of Greenville has adopted policies that assure and encourage the full participation of Women and Minority-Owned Business Enterprises (WMBE) and Disadvantaged Business Enterprises (DBE) in the provision of goods and services. The City of Greenville's WMBE Coordinator publishes a quarterly newsletter and maintains a Business Directory for the construction, maintenance and building trades services. The directory identifies firms that have been certified or registered as DBE by the City of Greenville, and provides information that can assist their efforts to obtain contracts with the City of Greenville. The City expended approximately \$50,000 in general fund dollars to cover the WMBE Coordinator labor and activities, during FY 2010-2011.

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The City continues to affirmatively market fair housing strategies. These strategies are inherent to each of the housing programs provided through the Housing Division. To ensure equal opportunity access to federal housing programs, the Housing Division includes Minority and Women Business Enterprise (MBE/WBE) requirements in all contracts and agreements.

Education of the Fair Housing Laws will occur throughout the year and most specifically during the month of April, which is designated as "Fair Housing Month" and "CDBG Week".

During the month of April 2011, in celebration of Fair Housing Month, the City of Greenville, the Greenville Human Relations Council, Greenville Property Managers Association and Greenville-Pitt Association of Realtors sponsored a Fair Housing Month Poster Contest for residents in grades k-12, including the special education program. The purpose of the poster contest was to demonstrate non-discriminatory housing for all people regardless of race, sex, color, national origin, disability or family status.

City of Greenville will continue to use administrative dollars to affirmatively further fair housing. Funds that are used to assist very low and low income households will be advertised in local newspapers. Special outreach will be provided through various community events and non-profit agencies in the community.

In addition to these activities, the City provides a full time staff position (Human Relations Coordinator) to address landlord/tenant issues, provide emergency housing assistance and outreach to citizens. This position is funded with approximately \$60,000 general government revenues. One of the primary responsibilities of the Staff member is to serve as a liaison to the Greenville Human Relations Council. The Greenville Human Relations Council seek to serve as an advocate for all people in pursuit of human and economic relationships, to promote activities, education and programs which enhance human dignity, equal opportunity, mutual respect and harmony among the many different citizens of Greenville.

### **Homeless Needs**

#### **Actions to meet supportive housing needs (include HIV/AIDS)**

Funding to nonprofit organizations that address supportive needs is made available each fiscal year for eligible applicants. All nonprofits that receive funding are encouraged to participate with local Continuum of Care efforts.

Although the City does not receive Housing Opportunities for Persons with Aids (HOPWA) funds, the Greenville Housing Authority and Pitt County AIDS Service Organization (PICACO), a local nonprofit apply on an annual basis. They are currently managing 10 units of housing for HIV AIDS afflicted citizens.

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### **Actions to plan and/or implement continuum of care**

HUD encourages communities to address housing and homelessness through a comprehensive, collaborative, and strategic approach that it has promoted since 1994. HUD's Continuum of Care concept facilitates this process and is designed to help communities envision, organize, and plan comprehensive and long-term solutions to address the problem of homelessness.

As in past years, the City of Greenville has actively assisted with the creation and development of a Continuum of Care for Pitt County. The group, known as the Pitt County Continuum of Care, is comprised of City and County staff, as well as non-profit and for-profit representatives. The group meets monthly to discuss issues impacting the ever-growing homeless population. Efforts to end homelessness and to coordinate supportive services to homeless persons are top priorities for the community. The Pitt County Continuum of Care's mission for combating homelessness is to have a seamless continuum of housing and services to meet the housing and support service needs of all homeless subpopulations in the County and the City of Greenville, in both urbanized and non-urbanized areas. This requires the strengthening of coordinated activities of the local homeless coalition, the providers, other non-profit organizations and homeless individuals and advocates. The January 2011 Point in Time Count revealed that there are 93 homeless persons in Pitt County and only seventy-two (72) beds available to serve them.

During the upcoming fiscal year, the group will continue to develop the Continuum of Care and prepare an Emergency Services grant application for submission. To date, the Pitt County Continuum of Care has received funding from the 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010 funding cycle. Funding received under the 2004 and 2005 award was allocated to implement a Homeless Management Information System (HMIS). All actions by the Continuum of Care group will address obstacles to meet the underserved needs in the community, assist with the reduction of poverty level families, assist with the development of institutional structures, and enhance coordination between public and private housing and social service providers.

### **Actions to prevent homelessness**

The United States Interagency Council on Homelessness issued a challenge to communities across the country to address the problem of homelessness, specifically the chronically homeless. In the fall of 2006 and spring of 2007, the Pitt County Board of Commissioners and the City of Greenville City Council adopted resolutions to develop a 10-Year Plan to End Chronic Homelessness in Pitt County. The 10-Year Plan is a comprehensive effort of various community organizations, leaders and citizens. The City of Greenville committed \$15,000 CDBG funding towards this effort.

The Blue Ribbon Task Force to End Chronic Homelessness in Pitt County spent approximately eight months gathering data on homelessness in community and reviewing best practice approaches being used in other communities to reduce and end homelessness. The Task Force

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held focus groups and forums to help determine the best approaches for the community. The 10-Year Plan to End Chronic Homelessness in Pitt County represents the culmination of work over the past year. The two major recommended goals featured in the plan are evidenced-based practices drawn from best practices of innovative programs and initiatives in place across the country:

- **Goal 1:** Provide community-based services and support to prevent homelessness before it happens and diminish risks for homelessness to recur.
- **Goal 2:** Create adequate short-term housing options and supportive permanent housing for those who are chronically homeless or at risk of becoming homeless.

In addition, Pitt County Government was awarded Homeless Prevention and Rapid Re-Housing Program (HPRP) funds from the North Carolina Office of Recovery and Investment (OERI), which is funded under the American Economic Recovery and Reinvestment Act of 2009. The City of Greenville serves as a partnering agency.

Ending chronic homelessness is a challenge for the entire community. There are no simple solutions. Ending homelessness will require a cooperative effort among government agencies, private and public services, businesses, faith-based organizations and neighborhoods.

### **Actions to address emergency shelter needs**

The City of Greenville, through its CDBG Program provided financial assistance during the 2010 fiscal year to Center for Family Violence Prevention, which provides emergency housing to battered women and young children.

### **Actions to develop transitional housing**

During the past fiscal year, funding was provided to the Center for Family Violence Prevention for safe family visits. Center for Family Violence Prevention provides transitional housing for domestic violence victims. The need for safe, affordable housing for victims of domestic violence is well documented. Without access to housing options, women fleeing from abusive relationships are often forced to live in substandard conditions or return to their batterers. While many battered women need only short-term, emergency shelter, others face numerous barriers to achieving independence free from abuse and require long-term housing assistance and a variety of support services.

Recognizing the housing needs of battered women, many domestic violence service providers now offer longer-term, transitional housing to the women and children they serve. With that in mind, the City certified two new CHDO's this fiscal year, Streets to Home, Inc. and EXCEED, Inc. to provide transitional rental housing for victims of domestic violence and homelessness who are transitioning from emergency shelter to permanent housing.

Transitional housing, sometimes called second stage housing, is a residency program that includes support services. Usually provided after crisis or homeless shelter, transitional

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housing is designed as a bridge to self-sufficiency and permanent housing. Residents usually remain from six months to two years, and are typically required to establish goals to work towards economic stability.

### **Meeting Underserved Needs**

#### **Actions taken and accomplishments to meet worst-case needs**

The Greenville Police Department and LIFE/STRIVE of North Carolina, Inc. have collaborated together to implement a prisoner re-entry program in the City of Greenville, through a grant funded by the North Carolina Governor's Crime Commission. Re-entry involves the use of programs targeted at promoting the effective reintegration of offenders back to communities upon release from prison and jail. Re-entry programming, which often involves a comprehensive case management approach, is intended to assist offenders in acquiring the life skills needed to succeed in the community and become law-abiding citizens. A variety of programs are used to assist offenders in the re-entry process, including pre-release programs, drug rehabilitation, vocational training and work programs. STRIVE has a successful job training program which was partially funded with CDBG Public Service funds.

#### **Actions and accomplishments to serve people with disabilities**

Elderly and disabled homeowners wishing to have their homes rehabilitated are given first priority. In situations in which a homeowner has special needs, those needs are taken into account by Housing Division staff. Provisions are made to provide devices necessary for mobility and comfort.

Within the City of Greenville there continues to be a need to assist homeless, unemployed, "at risk" youth, victims of domestic abuse, and drug abuse. The program responds to such needs through the CDBG funding of organizations that cater to the needs of these groups. Such groups include the Greenville Community Shelter, L.I.F.E. of NC, Lucille Gorham Intergenerational Center, and Center for Family Violence Prevention Program.

### **Reduce poverty**

City of Greenville housing programs inherently address poverty by creating housing opportunities for low income households. Without these housing opportunities many low income households would not be able to afford housing repair costs or to purchase a home.

City of Greenville also provides funding for various projects to create economic opportunities for low to moderate income persons, which aid in the reduction of poverty. The City's Urban Development Division operates the following programs: business facade improvement program; small business plan competition and is currently working on development of a small business incubator in the designated redevelopment area.

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Transportation systems in Pitt County and major highways have been improved and will continue to be improved to meet the demands of a growing population.

### **Program Monitoring**

The Housing Division conducts formal monitoring of its CDBG and HOME grant programs annually in August and September. The monitoring visits consist of reviewing programmatic procedures to ensure that each grant program regulations defined in the Code of Federal Regulations and the scope of work described in the Subrecipient Agreement is met. General financial and accounting procedures are also reviewed in accordance with applicable Office of Management and Budget circulars.

If a finding or concern is identified as a result of the monitoring, technical assistance is provided in order for the agency to correct the deficiency. If deficiencies persist, reimbursement fund may be suspended and/or the subrecipient could jeopardize future funding opportunities.

The City ensures that all monitoring letters detail specific time frames for a monitoring response and the corrective actions that need to be taken. Additionally, the City will impose sanctions if the corrective actions are not taken within the specified time frame.

### **Leveraging Resources**

On November 2, 1992, the citizens of Greenville approved a one million dollar bond referendum for affordable housing. The funding was divided into three revolving loan categories. The categories include homeownership, land banking, and elderly housing rehabilitation. As revolving loans, these funds are continually recaptured and recycled into the activities to further efforts to promote and preserve affordable housing. These funds have been recycled since 1992 and are available for the West Greenville 45-Block Revitalization area and other affordable housing initiatives of the City of Greenville.

In 2004, Greenville citizens again approved \$10 million in bond referendums for the revitalization efforts in the Uptown Greenville and West Greenville 45-Block Revitalization focus areas. Five million of the \$10 million is set aside for the priorities and goals identified below within the West Greenville 45-Block Revitalization area to leverage CDBG and HOME funds.

The City of Greenville was awarded through the 2009 American Recovery and Reinvestment Act (ARRA) from the U.S. Department of Housing and Urban Development a Lead Based Paint Hazard Control Grant. The \$1.9 million grant funds will be used to accomplish the following within 36 months, beginning April 15, 2009:

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- Control and reduce lead hazards in one hundred ten (110) low-income housing units in the Greenville area
- Addressing one hundred ten (110) housing units occupied by children under the age of six years with elevated blood lead levels
- Provide eighty five (85) outreach programs for community awareness and education regarding lead hazards aimed at reaching five thousand (5,000) people
- Screen and test children under the age of six years for elevated lead blood levels
- Provide Lead Safe Work and Lead Certification training to at least ten (10) Contractors involved in the City of Greenville housing rehabilitation program
- Provide economic opportunities to at least sixty (60) unemployed and underemployed persons in the targeted neighborhoods, creating sixty (60) jobs
- Develop a self sustaining program by integrating lead hazard reduction into housing rehabilitation programs

**One hundred and one (101) units have been tested for lead paint.**

**Eighty-one (81) units have been cleared of lead paint.**

In addition, the City of Greenville contributes approximately \$300,000 of General Government Fund dollars to support the Housing Division staff administrative costs to administer federal grants and bond fund projects.

### **Managing the Process**

The Community Development Housing Division consistently seeks methods to improve and strengthen its programs. Assessment of program activities in compliance with outlined performance measurement objectives, indicators and outcomes in the action plan is performed annually.

In addition, the Senior Planner conducts regular “desk audits” of all programs to insure compliance with regulations.

### **Citizen Comments and Public Participation**

The City of Greenville continues to acknowledge the importance of citizen participation in developing activities for each upcoming year. During the development of the fiscal 2010-2011 Consolidated Plan year, three public hearings were held to advise the community of proposed activities and sources of funds. In addition, two community meetings were held to receive comments from citizens in developing the plan.

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All requests for bids from contractors to assist with housing repairs and construction throughout the year were handled in an open and fair manner.

The notice of availability of the CAPER for review and to receive public comments was published in the "Daily Reflector" on Monday, August 29, 2011, September 5, 2011 and September 12, 2011. The CAPER was made available for review for a period of fifteen (15) days. See attached copy of Publisher's Affidavits. Also, the "Notice of Public Hearing" to receive comments at City Council meeting was published in the "Daily Reflector" on August 29, 2011 and September 5, 2011. Also, notices were published in two minority newspapers during month of August/September 2011 in "Daily Drum" and "M-Voice"

In addition to the public hearing, the following meetings were conducted as part of Greenville's public participation process as well as to disseminate program information:

- Monthly Affordable Housing Loan Committee meetings (AHLC);
- Technical assistance meetings during the CDBG Notice of Funding cycle for nonprofits with interested organizations;
- Presentations to Churches and Community groups;
- Monthly Continuum of Care meetings;
- National Night Out Against Crime, August 2, 2011.

Finally, to improve access of the CAPER for the community, the Housing Division posted the CAPER on the city's website for review.

There were no public comments received by the City of Greenville for the 2010-2011 CAPER.

### **Institutional Structure**

The City of Greenville, through its Housing Division, Pitt County Consortium members, the network of housing subrecipients and Community Housing Development Organizations (CHDOs) are effectively organized to utilize all the funding received through the various state/federal programs. The private sector is provided with incentives for developing affordable rental housing through tax credits provided by the federal tax credit program. Tax credits provide developers with an additional North Carolina subsidy for low income apartment construction. In addition, each year efforts are made to work with local institutions to provide housing and economic opportunities for low income persons through public service activities and participation in the Pitt County Continuum of Care. The Pitt County Continuum of Care began in 2001 and has successfully grown into a well-balanced organization made up of local government agencies, housing providers, service providers, and other interested group. The development of the continuum and participation by the City of Greenville will greatly enhance coordination between these agencies. The Greenville Housing



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Authority has also joined this group and began working in concert with the City of Greenville in revitalization efforts in the West Greenville 45-Block Revitalization Area.

### **Reduce Lead-based paint hazards**

The City of Greenville is committed to testing and abating lead in all pre-1978 housing units assisted with federal grant funds in housing programs. Currently, the City of Greenville has contracted with an agency to provide all lead testing and clearance activities. This agency has also agreed to provide training for the housing rehabilitation contractors.

All projects in which HUD funding is used are in compliance with the new Lead Based Paint (LBP) guidelines as enacted on September 15, 2000. Testing of all units is conducted and, if found, all lead hazards are abated.

In addition, the City of Greenville was awarded a grant from Department of Housing and Urban Development, Office of Healthy Homes and Lead Hazard Control a Lead-based Paint Hazard Control Grant Program for thirty-six month period, as part of the American Economic Recovery and Reinvestment Act of 2009. The grant agreement was signed April 15, 2009.

The goals of the grant include testing and abatement of one hundred ten (110) units, training for Contractors and creation of sixty (60) jobs.

### **Self Evaluation**

The overall goal of the Housing Division of the Community Development Department is to develop viable communities by providing safe, sanitary, and decent housing, a suitable living environment, and expanding economic opportunities principally for low to moderate income persons. The Consolidated Plan is a vehicle which enables officials and citizens of the City of Greenville to pursue this goal, collectively address neighborhood and community problems and plan for the future. To structure these efforts, a five (5) year strategic plan and annual action plan was created. While the five year strategic plan typically remains static, the annual action plan changes every year to address various goals outlined in the larger and more global strategic plan. To evaluate progress, efforts are annually assessed through the CAPER.

Thus, the purpose of the self-evaluation section is to look at how activities and strategies have made an impact on identified community needs. An analysis of the City of Greenville's Program Year 2010 Annual Action Plan goals are grouped into four priority areas: Affordable Housing Strategy, Homeless Strategy, Other Special Needs Strategy and Community Development Strategy.

#### **Affordable Housing Strategy**

Over the past year, the City, like the rest of the country, has experienced a dramatic economic downturn and a large percentage of housing and commercial development in the area has

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been affected. While the City has not been able to meet all of the City's housing needs, progress has been made toward achieving priority housing goals. Three (3) program activities were carried out in an effort to meet the City's affordable housing goal: down payment assistance, owner occupied rehabilitation and implementation of lease/purchase options. In addition, City staff continued to be successful in providing technical and educational support to both non-profits and homeowners.

### **Homelessness Strategy**

The City of Greenville has made a priority of addressing the homeless issue by participating in various community efforts. In collaboration with Pitt County Government and other partners, a "Project Homeless Connect" event was held March 2011. This event initially served over 500 homeless individuals and their families. Pitt County Government has taken the lead in this event and scheduled to be held again in 2012.

In addition, City Staff and Elected Officials will continue to serve on the Ten Year Plan to End Homelessness Advisory Committee, as well as the Continuum of Care. \$30,000 of Community Development Block Grant Public Service funds were budgeted in FY2010.

### **Other Special Needs Strategy**

To address individuals and families with special needs, the City provided local non-profit organizations with CDBG funds to assist with job training and placement of ex-Offenders re-entering society, victims of domestic violence, and at risk youth development.

### **Community Development Strategy**

During FY 2010, four (4) non-profit organizations received CDBG funds to make necessary facility improvements and repairs to aid in providing services to low income individuals and families.

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### **SECTION 2** **HOUSING NEEDS**

#### **Public Housing Strategy**

There are four (4) Public Housing Authority managing agencies in the Pitt County area, which include Greenville Housing Authority with a total of 714 units; Mid East Commission who manages a total of 135 units in three towns; Farmville Housing Authority who manages 174 units and Ayden Housing Authority who manages 175 units. Each of the mentioned Public Housing Authorities receives federal funds to modernize and repair public housing units. None of the public housing authorities in Pitt County have been designated as “troubled” agencies or otherwise performing poorly.

During fiscal year 2010-2011, the City of Greenville Community Development Department Housing Division formed a partnership with the Greenville Housing Development Corporation to implement a Lease/Purchase program utilizing five rehabilitated single family units for low to moderate income residents in the West Greenville 45-Block Revitalization Area.

#### **Foster and maintain Affordable Housing**

The City of Greenville continually seeks methods for fostering and maintaining affordable housing. Funds during the 2010 Program Year were reserved for downpayment assistance to low-moderate income homebuyers within the City of Greenville. Funds were used to address goals for increasing homeownership within the West Greenville Redevelopment Area. Funding from previous years has also been made available to homebuyers as downpayment assistance. Provision of downpayment assistance decreases the amount of financing and or private source of funding a homebuyer needs in order to purchase a home. The City also provides assistance with local bond funds to aide with downpayment or closing costs. Bond funds are awarded to qualifying applicants as a zero interest loan up to 5% of the purchase price of the home and amortized over five (5) years.

#### **Eliminate barriers to Affordable Housing**

The City of Greenville partners with local nonprofit agencies to provide homeownership counseling and workshops for potential homebuyers. The City also offers a Homeownership Academy that provides participants with the opportunity to gain a working knowledge of the home buying process and to prepare financially to purchase a home within the West Greenville Revitalization Area. At the completion of the program, participants receive a certificate for \$500.00 redeemable at closing to assist with the purchase of an existing or new home within the West Greenville Revitalization Area.

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### **SECTION 3**

#### **COMMUNITY DEVELOPMENT BLOCK GRANT**

##### **Relationship of expenditures to priority needs**

During FY 2010-2011, Community Development Block Grant (CDBG) activities were conducted in accordance with the priority goals and objectives identified in the Consolidated Plan. Greenville's total CDBG program allocation for FY 2010-2011 was \$887,849. Funds were distributed among owner-occupied housing rehabilitation; acquisition of dilapidated/substandard properties; clearance and demolition; assistance to nonprofits and administration. As per regulation, a jurisdiction cannot spend more than fifteen percent (15%) of its allocated FY 2010-2011 grant amount on public services and cannot spend more than twenty percent (20%) on administrative costs, irrespective of actual expenditures during the program year.

According to the Integrated Disbursement and Information System (IDIS) PR26 Financial Summary Report, the City of Greenville spent 4.37% of its allocated FY 2010 grant amount on public services and 17.56% of its allocated grant amount on administration costs.

##### **Low/moderate area benefit**

Excluding costs for planning and administration, all CDBG expenditures during FY 2010-2011 went toward activities and projects with a national objective of benefitting low to moderate income residents.

##### **Amendments and other changes to programs**

None.

##### **National objective failures**

None to report.

##### **Actions taken to avoid displacement**

Efforts are made to avoid displacement. Should a family occupy a structure that is not a feasible rehabilitation project or unit and the structure is contributing to a slum/blighting situation, the family is then relocated. Downpayment assistance is offered to tenants that qualify under program guidelines for purchase of a home. The property can also be rehabilitated under our owner-occupied rehabilitation program. When displacement is necessary, efforts are in place to relocate the person(s) to comparable, decent, safe, and sanitary housing. All efforts are made to find units within the same neighborhood however per Uniform Relocation Act (URA) regulations; it is ultimately the decision of the individual as to where they chose to relocate.

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### **Compliance with Uniform Relocation Act**

All necessary measures for complying with URA guidelines have been met and the necessary documentation is located in the files.

### **If jobs were filled with over income people:**

None

### **For limited clientele activities, if any**

Public service funds were provided to two nonprofits organizations serving only homeless individuals and families; and victims of domestic violence.

### **Rehabilitation accomplishments and costs:**

A total of eleven (11) owner occupied rehabilitation units were completed at an approximate cost of **\$700,000**

### **Units completed for each type of program**

Eleven (11) units Owner occupied rehab  
Ten (10) public services grants awarded  
Twelve (12) substandard units acquired  
Five (5) substandard units demolished and cleared  
Four (4) displaced tenants relocated  
Five (5) public facility improvements

### **CDBG expenditures for rehabilitation**

**\$700,000**

### **Other funds invested**

Lead Hazard Control Funds \$589,000

### **Delivery costs**

**\$143,049.65**

### **Neighborhood Revitalization Strategy Area, if any:**

No area established

### **CDBG Financial Summary Attachments:**

See attached.

- Reconciliation of cash balances (Federal Cash Transaction Reports)
- Program income, adjustments and receivables

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### **SECTION 4** **HOME INVESTMENT PARTNERSHIP PROGRAM**

#### **Distribution of HOME funds among identified needs**

During the 2010-2011 fiscal year, HOME funds were provided to assist with new construction, housing rehabilitation, downpayment assistance and administrative costs. While efforts to increase new housing units continued, the City also continued to support the existing housing stock through housing rehabilitation. Total of six (6) housing rehabilitation projects were completed by Pitt County Government and City of Greenville completed three (3). Total costs of each rehab ranged from \$60,000 to \$70,000. Additional rehabs were underway at the end of the fiscal year. Other activities included the provision of downpayment assistance to five (5) low income, first-time homebuyers through the City of Greenville. All activities completed address the needs identified within the Consolidated Plan. All activities are monitored to ensure compliance with program guidelines. As lead entity, the City of Greenville maintains the necessary documentation, monitors all participating jurisdictions and CHDO's, and provides daily assistance to members with program rules and regulations as well as the requisition of funding.

#### **HOME Match Report (HUD 40107A)**

According to the HOME final rule 24 CFR Part 92, Participating Jurisdictions (PJs) under the HOME program must provide a twenty-five percent (25%) non-federal match for eligible HOME activities (minus administration costs). For FY 2010-2011, Greenville used Local Affordable Housing Bonds and General fund dollars to provide a match needed for the grant.

#### **Contracting Opportunities for W/MBE's**

Submittal of each annual CAPER must also include Part III of HUD Form 4107, otherwise known as HOME Annual Performance Report. Specifically, this report is used to report on the contract and subcontracting opportunities with MBEs and WMEs for any HOME projects completed during FY 2010-2011. While there are no statutory requirements for contracting with a MBE or WBE, HUD uses this report to determine the outreach efforts of the Division to MBEs and WBEs.

#### **Summary of results of onsite inspections of HOME rental units-**

Not applicable

#### **Assessment of effectiveness of affirmative marketing plans**

The City routinely solicits minority and female contractors to provide services. Each advertisement encourages minority and females business owners to apply where applicable. Efforts include advertising in local minority publications where available. While affirmative marketing plans are in place, the availability of minority and female owned businesses is limited within City of Greenville.

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### **Information about the use of program income**

Any program income generated through the HOME program is reallocated to program activities to further the City's efforts.

### **Analysis of successes and failures and actions taken to improve programs**

The Housing Division consistently evaluates the HOME Program for efficiency and continually updates the requirements and procedures as needed.

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### ATTACHMENT FOR CDBG PROGRAM INCOME; ADJUSTMENTS AND LOANS & RECEIVABLES

**a. Program Income**

1. Total program income to revolving funds:  
(Identify by fund type and amount)

Entitlement Funds

Owner-Occupied Rehab: \$38,364.67

These funds are program income from loan payments that were reprogrammed for Housing Rehabilitation.

2. Float-funded activities: *None*
3. Other loan repayments by category: *None*
4. Income received from sale of property: \$18,498.00

**b. Prior Period Adjustments**

1. Reimbursement made for disallowed costs: *None*
- Activity name
  - Activity number
  - Program Year expenditure was reported
  - Amount returned to program account

**c. Loans and other receivables**

1. Float-funded activities outstanding as of the end of the reporting period: *None*
2. Total number of loans outstanding and principle balance as of the end of reporting period: *15 loans with a balance of \$103,042.18*
3. Parcels acquired or improved with CDBG funds that are available for sale as of reporting period: *None*
4. Number and amount of loans in default and for which the balance was forgiven or written off during the reporting period: *None*

Lump sum drawdown agreement: *None*



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# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Resolution approving the Operational Management Agreement for the Greenville Convention Center

**Explanation:** On September 11, 2000, the City, Exhibit Hall Managers, the Pitt-Greenville Convention and Visitors Authority, Greenville Prime Investors, and Thomas Glennon signed an agreement for the development and operation of the Greenville Convention Center. That agreement expires on December 31, 2012. As operator of the Convention Center, Exhibit Hall Managers is now signing contracts for the use of the Convention Center for events that will occur after December 31, 2012. The agreement needs to be renewed in order that Exhibit Hall Managers can continue to market the Convention Center for future dates.

Attached is a proposed new agreement that changes the document to recognize that the Convention Center has been constructed. Most of the operational terms remain the same. Attached is a summary of the key provisions of the proposed agreement and the differences from the current agreement.

The Pitt-Greenville Convention and Visitors Authority approved the proposed agreement at a board meeting on August 24, 2011. Exhibit Hall Managers and Greenville Prime Investors have agreed to the terms of the proposed agreement.


**Fiscal Note:** Exhibit Hall Managers is responsible for the operational costs of the Convention Center. Exhibit Hall Managers retains all revenue derived from the use of the Convention Center. The Convention and Visitors Authority provides the equivalent of one penny of the hotel/motel accommodations tax (approximately \$226,000) annually to Exhibit Hall Managers for marketing of the Convention Center.


**Recommendation:** Adopt the attached resolution approving the Operational Management Agreement for the Greenville Convention Center.

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

**Attachments / click to download**

 [Convention\\_Center\\_Operational\\_Management\\_Agreement\\_819217](#)

 [2011\\_Convention\\_Center\\_Operational\\_Management\\_Agreement\\_905523](#)

 [RESOLUTION\\_APPROVING\\_THE\\_OPERATIONAL\\_MANAGEMENT\\_AGREEMENT\\_FOR\\_THE\\_GREENVILLE\\_CONVENTION\\_CENTER\\_905](#)

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## OPERATIONAL MANAGEMENT AGREEMENT

THIS OPERATIONAL MANAGEMENT AGREEMENT (hereafter "Agreement"), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Exhibit Hall Managers, LLC a North Carolina limited liability company, hereafter referred to as "EHM", the City of Greenville, a municipal corporation existing pursuant to the laws of the State of North Carolina, hereafter referred to as "Greenville," Pitt-Greenville Convention and Visitors Authority, an authority existing under the laws of the State of North Carolina, hereafter referred to as "CVA," Greenville Prime Investors, LLC, a North Carolina Limited Liability Company, hereafter referred to as "Hilton."

### 1.0 RECITALS

- 1.1 Greenville has built and equipped a modern, first-class exhibit hall and related foyers, offices, restrooms, service rooms, mechanical rooms, loading docks, walkways and parking areas ("Exhibit Hall") on land owned by Greenville in the City of Greenville, Pitt County, North Carolina, said land being more particularly described on Exhibit "A" attached hereto ("Exhibit Hall Property").
- 1.2 The Exhibit Hall Property is located adjacent to a hotel owned by Hilton, which hotel ("Hotel") is located at 207 S.W. Greenville Boulevard, upon land in the city of Greenville, Pitt County, North Carolina, said land being more particularly described on Exhibit "B" attached hereto ("Hotel Property"). Said hotel consisting of rooms, offices, a restaurant, a bar, meeting rooms, a ballroom and ancillary offices, restrooms, foyers, walkways, storage rooms, loading docks and other facilities.
- 1.3 Greenville, Hilton, and EHM intend for the Exhibit Hall and the Hotel to be used and operated in conjunction with each other to the end that the Exhibit Hall will benefit

Greenville and its citizens by serving as a first-class facility for the presentation of a variety of cultural, educational, business, social and entertainment events and meetings. The Exhibit Hall and the Hotel together are referred to as the “Convention Center.”

- 1.4 Greenville desires to have EHM manage and operate the Exhibit Hall and EHM, as an independent contractor, desires to perform such services for the account of Greenville on the terms and conditions set forth in this Agreement, which terms and conditions include, without limitation, EHM operating and maintaining the Exhibit Hall in a first-class, professional manner.

NOW, THEREFORE, incorporating the above recitals as though fully set forth, and in consideration of the mutual covenants, promises, and obligations set forth below, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

2.0 OWNERSHIP OF THE EXHIBIT HALL AND HOTEL PROPERTIES

2.1 TITLE TO EXHIBIT HALL SITE

Greenville agrees that it now has full ownership and fee title to the Exhibit Hall Property, subject only to such liens, encumbrances, exceptions, covenants and charges as do not materially or adversely affect the operation of the Exhibit Hall or EHM's continuing management thereof. Greenville agrees that it will make all reasonable efforts, which may include litigation, to enable EHM to operate and manage the Exhibit Hall consistent with the terms of this Agreement.

2.2 TITLE TO HOTEL SITE

Hilton agrees that it now has full ownership and fee title to the Hotel Property subject only to such liens, encumbrances, exceptions, covenants and charges as do not materially or adversely affect the operation of the Hotel. Hilton agrees that it will make all reasonable

efforts, which may include litigation, to enable EHM to peaceably use and enjoy the Hotel consistent with the terms of this Agreement.

### 3.0 EHM MANAGEMENT SERVICES

#### 3.1 MANAGEMENT OF THE EXHIBIT HALL

Greenville appoints and contracts with EHM, as an independent contractor, to supervise, direct, control, manage and operate (collectively “operate” or a variation thereof) the Exhibit Hall, in accordance with the terms and conditions set forth in this Agreement, for the term of this Agreement. EHM accepts said appointment, as an independent contractor, agrees to operate the Exhibit Hall in a first-class manner, in accordance with the terms and conditions of this Agreement, and agrees to operate the Exhibit Hall in conjunction with the Hotel. For the purpose of this Agreement, first-class is defined as excellence in programs and service, best quality, and meeting or exceeding in standards of cleanliness, neatness, appearance, sanitation, usefulness, serviceability and accommodations as found in the best convention centers and/or exhibit halls in the Southeastern United States as rated by the visitors and convention center trade publications and rating agencies. Subject to any limitations set forth in this Agreement, in operating the Exhibit Hall, EHM shall offer to patrons and their guests, invitees and permittees, services and amenities typically available in a first-class exhibit hall located in the Southeastern United States, including, food and alcoholic beverages.

#### 3.2 MANAGEMENT SERVICES

EHM shall do or cause to be done or undertaken, in its own name, all things appropriate, advisable, beneficial or reasonably necessary to fully, properly and timely operate the Exhibit Hall in a first-class manner, including, without limitation, the following items:

- 3.2.a. Secure all licenses and permits (including alcoholic beverage permits EHM deems appropriate) necessary for the operation of the Exhibit Hall.

- 3.2.b. Select, employ and supervise all persons, including, without limitation, administrative, marketing and sales (excluding those of the CVA who will also be marketing the Exhibit Hall in coordination with EHM), maintenance, staging, service and security persons that are necessary for the proper operation of the Exhibit Hall, which persons shall be employees of EHM or agents of or independent contractors of EHM, compensated by EHM and otherwise employed on terms deemed appropriate by EHM.
- 3.2.c. Schedule and manage events and the use of the Exhibit Hall, coordinate the use of the Exhibit Hall with the Hotel and other hotels and motels to the end that maximum use is made of the Exhibit Hall, and use its best efforts to implement marketing plans, budgets and standards that will have the effect of prioritizing the use of the Exhibit Hall, first for out-of-town conventions, second for business and consumer trade shows, third for public and private civic, community and family reunion events and fourth, quality entertainment.
- 3.2.d. Negotiate and manage all rental and license agreements for the benefit of all patrons in connection with the use of the Exhibit Hall, which leases and licenses shall be for the use of the Exhibit Hall for limited periods for out-of-town conventions, business and consumer trade shows, public and private civic and community events, entertainment events and other categories of events.
- 3.2.e. Collect all rental and license fees, use fees and other sums required to be paid by patrons and any other person for the use of the Exhibit Hall and in connection therewith collect, account for, and remit promptly to the proper governmental authority all applicable excise, sales and use taxes or similar governmental charges collected at the Exhibit Hall directly from the patrons, or as a part of the sales price

of any goods, services, or displays, such as occupancy, gross receipts, admission, or similar or equivalent taxes.

- 3.2.f. Pay all bills, statements, accounts and other payables relating to the Exhibit Hall or arising from the operation of the Exhibit Hall, as and when the same are due and payable, including, without limitation, bills, statements, accounts and payables for (1) telephone, gas, electric, water, sanitary sewer, trash collection, cable television, satellite reception, internet connections and other computer related tie-ins and other similar services, facilities and/or utilities used in or about or made available for use in or about the Exhibit Hall and (2) local, county, state and federal taxes, except for ad valorem property taxes attributable to the valuation of the Exhibit Hall, assessments and charges but not including the payment for non-routine repairs and maintenance, for which payment is the responsibility of Greenville.
- 3.2.g. Process properly, promptly, courteously and professionally and endeavor to resolve, in accordance with all governmental requirements, all claims, problems and complaints arising from the use, repair or maintenance of the Exhibit Hall or other matters relating to the Exhibit Hall, except for matters relating to ownership of the Exhibit Hall Property and the real property improvements located thereon and matters relating to the non-routine repairs and maintenance to be performed by Greenville, which matters shall be resolved by Greenville.
- 3.2.h. Provide and maintain at all times, in a good, serviceable, neat and attractive manner all furniture, fixtures, and equipment located in the Exhibit Hall (“Exhibit Hall FF&E”), such Exhibit Hall FF&E provided by EHM to be of the type of quality normally and customarily found in and used in facilities comparable to the Exhibit Hall.



- 3.2.i. Provide for all set-up and take-down of the Exhibit Hall, including staging, chairs, tables, audio and visual equipment, booths, drapes, dividers and signs, provide services to patrons of the Exhibit Hall, including traffic control and security in and around the vicinity of the Exhibit Hall.
- 3.2.j. Undertake and complete all routine repairs and maintenance so as to keep and maintain the Exhibit Hall in a condition that is in all respects first class.
- 3.2.k. Keep the Exhibit Hall in a good, clean, neat, attractive, pleasant and sanitary condition at all times, and develop, establish, maintain and follow a janitorial and maintenance program that ensures the Exhibit Hall is and remains a first-class facility, comparable to or better than other similar facilities in the Southeastern United States, which program shall include, without limitation, the purchasing, supplying or other provisions for necessary fixed asset supplies and inventories necessary or appropriate for accomplishing the foregoing.
- 3.2.l. Establish, implement, maintain and supervise the books, record keeping, accounting, inventory and cost control systems that are necessary for the efficient operation of the Exhibit Hall and that are customary for other exhibit halls in the Southeastern United States, all in accordance with generally accepted accounting principles.
- 3.2.m. Keep Greenville informed regarding all significant, material or substantial matters relating to the Exhibit Hall.
- 3.2.n. Use all reasonable efforts to collect all charges, rents, and other amounts due from Exhibit Hall guests, patrons, tenants, subtenants, concessionaires and other parties providing exclusive services.

- 3.2.o. Cause notices to be served upon such Exhibit Hall guests, patrons, tenants, subtenants, and concessionaires or other parties providing services to quit and surrender space occupied or used by them where desirable or necessary.
- 3.2.p. Ask for, demand, and give receipts for all charges, rents, and other amounts which may at any time be due from any Exhibit Hall guest, patron, tenant, subtenant, concessionaire or other party providing services.
- 3.2.q. Sue for and institute summary proceedings where desirable or necessary in the name of EHM in connection with charges, rents, or other amounts due from Exhibit Hall guests, patrons, tenants, subtenants, concessionaires or other party providing services.
- 3.2.r. Establish the Exhibit Hall's policy regarding association with any credit card system in conformity with EHM's general policy on that subject.
- 3.2.s. Study and provide advice for the purpose of (i) reviewing the plans and specifications for any alteration of the Exhibit Hall premises, (ii) offering advice regarding the design of replacement FF&E and the quantities required, (iii) eliminating, in general, operating problems so as to improve operations, and (iv) formulating business and marketing plans.
- 3.2.t. Commence, upon the prior written consent of Greenville, such legal actions or proceedings concerning operation of the Exhibit Hall as are necessary or required in the opinion of EHM, expeditiously advise Greenville of the commencement of any legal action or proceeding concerning the Exhibit Hall, and, in connection therewith, retain counsel satisfactory to Greenville.
- 3.2.u. Grant concessions for services customarily subject to concession in exhibit halls if desirable in EHM's opinion and exert its best efforts to negotiate an agreement with individual hotels and motels to pay ten percent (10%) of the gross room rental rate

for all rooms rented through efforts of CVA or EHM for persons attending conventions, trade shows, or other events at the Exhibit Hall and an agreement with food and beverage service providers to pay at least ten percent (10%) of the gross revenue from sales relating to the provision of food and beverage services to the Exhibit Hall.

- 3.2.v. Determine and set all rates and charges for, food and beverage service, equipment use, the use of function rooms and other rooms and facilities at the Exhibit Hall. All function rooms and other rooms and facilities in the Exhibit Hall available for use by the general public for meetings or other uses typically associated with an exhibit hall shall be rented or made available by EHM on a non-discriminatory basis pursuant to a fee schedule established from time to time by EHM. EHM shall provide Greenville and CVA a copy of this fee schedule, including any changes in or modifications thereof as and when such changes or modifications are made.
- 3.2.w. Forward to Greenville in a prompt manner all legal or official notices, or other information, or allegations received by EHM which could materially affect either Greenville or the Exhibit Hall.
- 3.2.x. Use its best efforts to cause the Exhibit Hall to comply with all applicable covenants and provisions of any financing mechanism for the Exhibit Hall.
- 3.2.y. Cause, in cooperation with Greenville, all such other things to be done within its reasonable control in and about the Exhibit Hall as are necessary to comply with all conditions of financing mechanisms, leases, statutes, ordinances, laws, rules, regulations, orders, and requirements of any federal, state or local government and appropriate departments; and to ensure compliance with the orders and any requirements of any local board of fire underwriters or any other body which may

exercise similar functions; provided, however, that either EHM or Greenville has the right to contest by legal proceedings, until final determination, the validity of any such statute, ordinance, law, rule, regulation, order, or requirement to the extent and in the manner provided or permitted by law. EHM shall not discriminate at any time against any person or group on account of sex, age, race, color, creed, religion, handicap, national origin or ancestry in the operation of the Exhibit Hall.

### 3.3 LIMITATION ON EHM AUTHORITY

Notwithstanding anything to the contrary provided in this Agreement, it is understood and agreed by the parties hereto that EHM shall not incur any expense in excess of the amount in the approved budget for the Exhibit Hall for the subject of such expense. EHM shall not, without Greenville's prior written approval:

- 3.3.a Adopt any major change in the policy of operating the Exhibit Hall or undertake any reconstruction of the Exhibit Hall.
- 3.3.b Incur any expense on behalf of Greenville or pay any expenses from the Exhibit Hall Operating Account that are not expenses of the Exhibit Hall.
- 3.3.c Enter into any service contract having a term of more than one (1) year unless the contract can be cancelled with a thirty (30) day notice.

Additionally, it is understood and agreed by the parties hereto that the nature of the business or purpose to be conducted or promoted by EHM is to engage exclusively in business and financial activities relating to (i) managing and operating the Exhibit Hall and (ii) engaging in any activity and exercising any powers permitted to limited liability companies under the laws of the State of North Carolina that are related or incidental to the foregoing and necessary, suitable or convenient to accomplish the foregoing. Notwithstanding any other provision of its Articles of Organization and

any provision of law that otherwise so empowers EHM, EHM shall not, without the prior written consent of Greenville:

- 3.3.d Engage in any business or activities other than those hereinabove set forth.
- 3.3.e Incur any indebtedness, or assume or guaranty any indebtedness of any other entity, except such indebtedness that is incurred or assumed in the course of conducting its activities in accordance with those hereinabove set forth.
- 3.3.f Dissolve or liquidate, consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity, or assign its obligations under this Agreement.

3.4 COMPENSATION FOR MANAGEMENT SERVICES

EHM shall receive compensation for its management services under this Agreement in an amount equal to the revenues collected by EHM from its operation of the Exhibit Hall, after payment of all costs and expenses associated or related thereto, as provided in this Agreement. The determination of whether revenues exceed expenses will occur on an annual basis at the close of EHM's fiscal year. In no event shall any funds provided by Greenville or CVA for the Exhibit Hall be considered as a revenue for the purpose of this section and, likewise, in no event shall the expenditure of such funds provided by Greenville or CVA for the intended purpose be considered as an expense for the purpose of this section. Greenville shall have no obligation to pay or reimburse to EHM any uncollected revenues generated by EHM from the Exhibit Hall, or for any collected revenues generated by EHM from the Exhibit Hall, or for any collected revenues that EHM is required to refund. Greenville shall also have no obligation to assist EHM in the collection of any revenues. And, Greenville shall not be responsible for, share in or be allocated or assessed the losses, if any, associated with or arising from the Exhibit Hall or any of its operations.

### 3.5 OPERATING ACCOUNT

EHM shall maintain an Operating Account (“Operating Account”) in order to pay the expenses of operating the Exhibit Hall pursuant to the provisions of this Agreement. The Operating Account shall be utilized to pay all expenses associated with the ongoing operation of the Exhibit Hall and said amount to not otherwise to be utilized by EHM without the approval of Greenville. All proceeds from the renting or letting of rooms and facilities in the Exhibit Hall and other proceeds derived from the operation of the Exhibit Hall including, without limitation, rental, concession fees, and contributions from hotels and motels for room referrals shall be collected by EHM and such proceeds shall be deposited in the Operating Account, subject to the use thereof for full and timely performance of its obligations hereunder and accomplishment of the purposes sought to be achieved under and by virtue of this Agreement. The Operating Account shall be maintained at a bank approved by Greenville. Subject to Greenville's reasonable approval, EHM will designate the persons who are authorized signatories for the making of withdrawals from the Operating Account. In the event the expense of the operation of the Exhibit Hall exceeds the amount of the Operating Account, EHM shall, with the approval of Greenville, draw down a portion of the standby letter of credit provided by EHM pursuant to section 10.2 and deposit it in the Operating Account, the portion to be drawn down to be an amount approved by Greenville, with the letter of credit to be reduced on an equal amount basis. In no event shall the amount to be drawn down on the standby letter of credit exceed the sum of TWO HUNDRED THOUSAND DOLLARS (\$200,000).

### 3.6 ANNUAL BUDGET

At least sixty (60) days prior to the commencement of each new fiscal year of EHM, EHM will submit to Greenville for approval by the City Manager (which approval shall not be

unreasonably withheld), an Annual Budget in a form reasonably acceptable to Greenville. The Annual Budget will set forth the projections of income and expenses, the cost of capital improvements for the forthcoming fiscal year, the anticipated income before fixed charges, and such additional information as Greenville may reasonably request. During the year, EHM will maintain expenditures relating to the operation of the Exhibit Hall within the approved Annual Budget. Additionally, EHM will comply with the capital improvements portion of the Annual Budget and will not materially deviate from the amount budgeted therefor or incur any material additional capital expense without Greenville's prior consent. For the purposes of this Agreement, (i) the fiscal year of EHM and of the Exhibit Hall shall be from July 1 to June 30 and (ii) the Annual Budget shall be prepared on a cash basis.

#### 4.0 MARKETING THE EXHIBIT HALL

##### 4.1 MARKETING PLANS AND BUDGETS

EHM shall coordinate with CVA and EHM does hereby agree to coordinate with CVA the marketing and promotion of the Exhibit Hall. In connection therewith, EHM shall meet with CVA on a regular basis, shall work with CVA on a broad, expansive basis regarding the marketing and promotion of the Exhibit Hall and shall jointly develop with CVA all marketing plans and marketing budgets for the Exhibit Hall. In addition and without limiting the foregoing, throughout the term of this Agreement, all of EHM's marketing plans and budgets with respect to the Exhibit Hall shall be submitted to the executive committee of CVA for approval.

##### 4.2 MARKETING FUND-CVA

The success of the Exhibit Hall depends in part on adequate funding of marketing and promotional activities. CVA shall contribute, grant, designate or make available to or for the

benefit of EHM and CVA, on a quarterly basis, for use by EHM in executing annual marketing plans, an amount equal to one cent of the first three cents of the occupancy tax levied and collected by Pitt County, North Carolina, for the benefit of CVA, after deducting any cost of collection or administrative fees charged by or retained by Pitt County, North Carolina. Greenville, CVA and EHM shall establish mutually agreeable procedures and processes for the payment of these sums by CVA and the expenditure of these funds, which procedures and processes shall include, without limitation, (1) annual or more frequent, if appropriate or necessary, budgets for use of the funds, (2) procedures to ensure that the funds are used to market the Exhibit Hall and (3) adequate safeguards to prevent misuse or misapplication of such funds or other use of such funds in a manner contrary to the purposes contemplated by this Agreement. CVA may, but is not required to, commit funds to market and promote the Exhibit Hall in addition to the amount required to be made available to EHM pursuant to the provisions of this section 4.2.

#### 4.3 CVA OFFICE SPACE

Except as otherwise provided in this section, CVA shall be provided, at no cost to the CVA (i.e., no rent but CVA shall be responsible for payment of expenses associated with cleaning and janitorial services, phone, data communication, cable tv, and other similar utilities not associated with the building itself) office space of not less than 1,500 square feet, located in the Exhibit Hall and of the type that is reasonably suitable, in the opinion of CVA and Greenville, for CVA to carry out its functions and responsibilities, which functions and responsibilities Greenville, EHM and CVA agree include without limitation, (1) marketing activities relating to the Exhibit Hall and (2) the general promotion of travel and tourism in the area of Pitt County, North Carolina (i.e., advertising and marketing of the area and its facilities and sights, market research, publication and distribution of brochures and



pamphlets and other similar matters relating to attracting tourist and business travelers to the area) which activities will benefit the Exhibit Hall. Notwithstanding the foregoing, CVA may determine, in its sole discretion, to vacate the offices in the Exhibit Hall and locate its offices at a location other than the Exhibit Hall and, if it makes such a determination, it shall provide Greenville and EHM, at least one hundred eighty (180) days prior written notice of the determination to vacate and relocate and the effective date when the offices in the Exhibit Hall will be vacated and the offices will be at a location other than the Exhibit Hall. In the event CVA vacates its offices in the Exhibit Hall, the offices at the Exhibit Hall previously occupied by CVA shall, as mutually agreed upon by Greenville and EHM, be a part of the Exhibit Hall available for lease or rental for use for limited periods for out-of-town conventions, businesses, and consumer trade shows, public and private civic and community events, education events and other categories of events or be used as offices by EHM.

#### 5.0 OPERATION OF HOTEL

Hilton understands that Greenville desires that the Exhibit Hall be a focal point for Greenville, its citizens and residents and for it to be operated and maintained in a manner that enhances and is a credit to Greenville and its citizens. Additionally, Hilton understands that the Hotel is to be operated in conjunction with the Exhibit Hall in order to serve as a Convention Center. Accordingly, Hilton shall operate the Hotel in a first-class manner and in a manner in which the Hotel complements, supports, enhances, and benefits the Exhibit Hall. Hilton shall do or cause to be done in a first class manner, at least the following items:

5.0.a. Hilton shall, at all times during the term of this Agreement, operate the Hotel under and pursuant to a franchise agreement or license with Hilton Hotels Corporation or some other national hotel chain of a similar or better quality and reputation that is now held by Hilton Hotels Corporation and in connection therewith: (i) Hilton shall

not change the use of the Hotel unless and only to the extent necessary to comply with and conform in all respects to the terms and conditions of this Agreement and its agreement with the Hilton Hotels Corporation or a successor franchisor. (ii) Hilton shall give Greenville prior written notification of any proposed voluntary or involuntary termination of its franchise agreement or license with Hilton Hotels Corporation or a successor franchisor. In connection with such notification, Hilton shall provide Greenville with information regarding its plans regarding a replacement franchise or license and shall use its best efforts to have in place, prior to termination, a replacement franchise or license that meets the requirements of this section, which replacement franchise is approved by Greenville prior to the termination of the franchise it is to replace.

- 5.0.b. Hilton shall provide food and beverage services to the Exhibit Hall upon reasonable request and at a cost of no more than 125% of that charged for the same item within the Hotel. Hilton shall pay EHM at least ten percent (10%) of the gross revenue it receives from the provision of food and beverage services to the Exhibit Hall.
- 5.0.c. Hilton shall make available to Exhibit Hall patrons, in accordance with its usual standards and costs, its ballroom and meeting rooms provided it receives the normal deposits to reserve such facility and provided that such facility has not been earlier reserved.
- 5.0.d. Hilton shall maintain all exterior landscaping and yards located on the Hotel Property in a neat, presentable and first-class manner to the same extent as the exterior of the Exhibit Hall is maintained.
- 5.0.e. Hilton shall exert every reasonable effort to ensure that all restaurants located on the Hotel Property maintain a Grade “A” rating with the State of North Carolina and

shall promptly notify Greenville within ten (10) days of its failure to do so and the steps it is taking to remedy such shortcoming.

- 5.0.f. Hilton shall not discriminate at any time against any person or group on account of sex, age, race, color, creed, religion, handicap, national origin or ancestry in the operation of the Hotel.
- 5.0.g. Hilton shall cooperate with CVA and EHM for the active, continuous and professional marketing of and public relations with respect to the Exhibit Hall, including but not limited to fully informing CVA and EHM of the dates, room rates, availability of the banquet and meeting rooms, and similar information that are available for patrons of the Exhibit Hall.
- 5.0.h. Hilton shall not employ any employee who is also an employee of EHM. Hilton may contract with EHM for the services of employees of Hilton provided that: (i) the services are contracted in compliance with the terms of the Agreement; (ii) the services are reasonable and necessary; and (iii) the services are furnished under terms and conditions which are at least as favorable to EHM as those which can be obtained on a competitive basis from other sources.
- 5.0.i. Hilton shall pay EHM ten percent (10%) of the gross room rental rate exclusive of tax of all rooms rented at the Hotel through the efforts of EHM or CVA for persons attending conventions, trade shows, or other events at the Exhibit Hall.
- 5.0.j. Hilton shall, at the end of each calendar year during the term of this Agreement, have an independent certified public accountant perform an audit of its books and records. After the audit, the accountant shall issue a letter stating that an audit was performed and stating (1) the type of opinion being given of Hilton's financial conditions (unqualified, qualified, or adverse); (2) any issues regarding Hilton's ability to

operate as a going concern and (3) whether Hilton has had any substantial change in the financial condition of its business. A copy of the letters shall be sent to Greenville no later than sixty (60) days of the end of the calendar year to which it applies. Upon the request of Greenville, said accountant shall be made available by Hilton to provide further information concerning the financial condition of Hilton which does not require the disclosure of proprietary and confidential data unrelated to the Exhibit Hall or the Exhibit Hall in conjunction with the Hotel.

6.0 NAMING RIGHTS

6.1 IN GENERAL

Greenville shall have the exclusive right to name the Exhibit Hall and the individual rooms or areas within the Exhibit Hall. Except as set forth in section 6.2, any money paid or collected in connection with naming or changing a name of all or any part or portion of the Exhibit Hall (“Naming Rights Receipts”) shall be held by Greenville in a Naming Rights Fund, and the lesser of \$50,000 or the amount on deposit in such fund shall be annually allocated and reserved by Greenville for replacement and additions to the Exhibit Hall FF&E. The expenditure of such funds shall be governed by the provisions of section 9.0.

6.2 NAMING RIGHTS CAP

Because Greenville issued obligations the interest on which is not included in gross income for federal income tax purposes to pay costs of acquiring, constructing, furnishing and equipping the Exhibit Hall (the “Tax-Exempt Issue”), any Naming Rights Receipts that are in excess of the Naming Rights Cap shall be deemed to be a revenue collected by EHM from its operation of the Exhibit Hall. The “Naming Rights Cap” shall be equal to (i) four percent (4.00%) multiplied by the present value (using the yield on the Tax-Exempt Issue as the present value factor for this purpose), as of the date of issue of the Tax-Exempt Issue of the

stated principal and interest due on the Tax-Exempt Issue during the term of this Agreement, (ii) less the present value as of the date of issue of the Tax-Exempt Issue (using the yield on the Tax-Exempt Issue as the present value factor for this purpose) of any other amounts received by Greenville during the term of this Agreement from the operation or use of the Exhibit Hall (“Other Private Payments”). Notwithstanding the provisions of this section 6.2, Greenville shall be under no obligation to name all or any portion of the Exhibit Hall, and Greenville may, at its sole discretion, cause the provisions of this section 6.2 to be amended or deleted in its entirety at any time, upon delivery of an opinion of a nationally recognized bond counsel to EHM or the trustee with respect to the Tax-Exempt Issue that such amendment or deletion will not adversely affect the exclusion of interest on obligations comprising the Tax-Exempt Issue from gross income for purposes of federal income taxation.

7.0 EXHIBIT HALL EVENT MIX.

EHM shall prioritize the event mix for the use of the Exhibit Hall first for out-of town conventions, second for business and consumer trade shows, third for public and private civic, community and family reunion events and fourth for quality entertainment. To assist Greenville in monitoring the mix of events, EHM shall maintain a log or record of events held and booked in the Exhibit Hall and shall forward a copy of this log or record to Greenville and the executive committee of CVA no later than the first calendar day of each calendar month during the term of this Agreement, such monthly log or record to show both events held in the Exhibit Hall for the previous month and events booked during the previous month, together with a cumulative summary, by category, of events held and booked for the then current fiscal year. Greenville reserves the right, during July of each fiscal year, based on the event mix for the previous fiscal year, to limit the types of events that may be booked

during the upcoming fiscal year, such limits to be imposed for the purpose of attaining an event mix reflective of the event mix priority schedule. Notwithstanding anything to the contrary contained in this Agreement or any other agreement between the parties or with any other person, (1) EHM, unless Greenville otherwise consents in writing, shall limit in the Exhibit Hall musical concerts and events that are primarily pop, rock (to include soft and hard rock, heavy metal and all variations of the foregoing), rap or country music and/or dance related to no more than an aggregate of twelve (12) events per fiscal year, (2) EHM shall not conduct, shall not permit any events to be conducted in the Exhibit Hall and shall not knowingly permit, after exercising reasonable due diligence, any person or persons to conduct or carry on in the Exhibit Hall any act or acts that are immoral, illegal or otherwise objectionable or offensive to community standards, including, without limitation, events or acts involving, related to or entailing indecent exposure, pornography or other sexually oriented activities and/or businesses where the emphasis is in whole or in part on matter and conduct depicting, describing or related to anatomical areas and sexual activities specified in North Carolina General Statute § 14-202.10 or any ordinance or regulation now or hereafter adopted by Greenville in the exercise of its police powers, and (3) EHM shall ensure that there is adequate security provided for each event conducted in the Exhibit Hall.

#### 8.0 REPAIRS AND MAINTENANCE TO EXHIBIT HALL

##### 8.1 RESPONSIBILITY

EHM shall undertake, as an expense of the operation of the Exhibit Hall, all routine repairs and maintenance and Greenville, at its expense, shall undertake all non-routine repairs and maintenance to the Exhibit Hall, all as provided in this Agreement. Greenville and EHM shall coordinate with each other regarding the making of their respective repairs and maintenance and they shall use reasonable efforts to schedule repairs and maintenance at

times that will cause minimal disruption to the use of the Exhibit Hall. Each of said parties shall pay the costs and expenses of the repairs and maintenance that each is to perform, as and when the same are due and prior to the filing or perfecting of any lien against the Exhibit Hall by any contractor, materialman or other person performing work or providing materials or services thereto. With respect to all repairs and maintenance, whether routine or non-routine, the parties shall at the beginning of each of EHM's fiscal years during the term of this Agreement, establish a schedule for repairs and maintenance to be undertaken and completed, and the responsible party, during the upcoming period.

8.2 QUALITY OF REPAIRS AND MAINTENANCE.

In making any repairs and maintenance, whether routine or non-routine, all work done by or for the account of either party required to perform same shall be of first-class quality in both materials and workmanship. All repairs and maintenance will be made in conformity with all governmental requirements and shall be made in a timely manner, with as little disruption to ongoing activities in or around the Exhibit Hall as is reasonably possible.

8.3 ROUTINE AND NON-ROUTINE REPAIRS AND MAINTENANCE DEFINITIONS

For the purpose of this Agreement, the following definitions apply: (i) "Routine Repairs and Maintenance" means all items of repair, maintenance, replacement and restoration which are not classified as non-routine repairs and maintenance and shall include, without limitation, repair, maintenance, replacement and restoration of all plate glass, interior and exterior doors and door systems, concrete slabs and other floor systems, all floor and wall coverings, ceiling grids and tiles, lights and light fixtures, interior plumbing fixtures and systems, interior drainage systems, heating, air conditioning and ventilating equipment and facilities, electrical panels, switches, wiring, boxes, outlets and other systems and facilities, audio visual equipment and all other FF&E, landscaping and general yard maintenance, cleaning

and repair of drive-ways and parking lots and striping of driveways and parking lots, cleaning and repair of curbs, cutters, drainage pipes and exterior sidewalks and interior and exterior signs and signage, together with their light bulbs or other light sources;

(ii) "Non-Routine Repairs and Maintenance" means and is limited to the following, unless any of the following are necessitated or caused principally by EHM's negligent or intentionally wrongful performance or nonperformance of routine repairs and maintenance, in which event the non-routine repair and maintenance caused by the foregoing shall be undertaken by EHM: (1) a complete resurfacing, but not patching, caulking, tarring or sealing, of the driveways and parking lots on the Exhibit Hall Property, (2) replacement of curbs, guttering and drive-way and parking lot drainage pipes and culverts on the Exhibit Hall Property, (3) replacement of exterior sidewalks on the Exhibit Hall Property, (4) replacement of the roof of the Exhibit Hall, (5) repair, maintenance and replacement of the foundation and other structural elements of the Exhibit Hall (*i.e.*, foundations for the exterior walls and any other walls that support the roof, the roof joists, beams and girders and the exterior and interior walls that support the roof, but excluding all plate glass, doors, interior load bearing walls that are not structural, non-load bearing interior walls, and floor systems, whether the concrete slab that forms the base floor for the Exhibit Hall or other floor systems or coverings), (6) replacement of heating, air conditioning and ventilating equipment used exclusively for the Exhibit Hall (*i.e.*, condensers, air handling units and duct work), and (7) repair, maintenance and replacement of water and sewer lines as they extend from public right of ways and easements to the perimeter foundation and exterior walls of the Exhibit Hall.

9.0 EXHIBIT HALL FF&E.



As an expense of the operation of the Exhibit Hall, EHM shall be responsible for the replacement of and additions to all Exhibit Hall FF&E and, in addition thereto, EHM shall be responsible for the routine repair and maintenance of all said Exhibit Hall FF&E. At the termination of this Agreement, EHM shall surrender to Greenville the Exhibit Hall FF&E, promptly and in good condition, order and repair, except for reasonable wear and tear not attributable to EHM's failure to perform necessary and/or scheduled routine repair and maintenance thereof. At the end of each fiscal year during the term of this Agreement, EHM shall provide an annual inventory of the Exhibit Hall FF & E to Greenville, which inventory shall include information regarding the routine repair and maintenance thereafter and the schedule for replacement thereof and additions thereto. In the event there is an addition to the Exhibit Hall, Greenville, at its expense, shall provide the initial FF&E for the addition to the Exhibit Hall prior to the opening of the addition and, therefore, EHM shall be responsible for the replacement, addition, and routine repair and maintenance of the FF&E for the addition to the Exhibit Hall in accordance with the provisions of this Section 9.0.

As a component of the Annual Budget, EHM and Greenville will agree upon (i) an amount to be charged in the following fiscal year for the creation of a reserve for the replacement of and additions to FF&E, including a 4% reserve (of the annual revenues in excess of expense to be set aside by EHM), and the specific items of FF&E which are to be replaced or added during said fiscal year. EHM agrees to set up and maintain such FF&E reserve in a special interest-bearing trust account acceptable to Greenville. Any income realized therefrom shall be credited to the amount to be placed into the reserve account.

EHM will make all replacements of and additions to Exhibit Hall FF&E from this account, in accordance with the Annual Budget. EHM will also have the right, with Greenville's approval, which will not be unreasonably withheld, to make discretionary expenditures from

this account to ensure that the Exhibit Hall is maintained, equipped and decorated in accordance with the agreed quality levels, provided that funds are available within said account for this purpose. Any proposed expenditure in excess of the balance in the reserve account may only be made with Greenville's consent. All expenditures made by EHM against the reserve account will be reflected in the account for the fiscal year in which made.

## 10.0 GUARANTIES OF PERFORMANCE

### 10.1 HILTON LETTER OF CREDIT

Hilton shall provide and maintain for the benefit of Greenville a standby letter of credit in an amount equal to One Hundred Thousand Dollars (\$100,000) which amount shall be paid to Greenville in the event this Agreement is terminated pursuant to section 15.4 as a result of an event of default by Hilton. Said letter of credit shall (1) be issued by a commercial bank with an office in the City of Greenville, North Carolina, which bank is acceptable to Greenville, acting reasonably, (2) be in a form and contain such substantive provisions as Greenville deems necessary and appropriate, including, without limitation, provisions relating to draws on the letter of credit and the term of the letter of credit and renewal provisions, and (3) be delivered to Greenville within thirty (30) days of the date of this Agreement and any renewal letters of credit, or amendments to existing letters of credit that effect a renewal, shall be delivered to Greenville no later than thirty (30) calendar days before the expiration date of the letter of credit that is then outstanding. The letter of credit shall be returned to Hilton in the event Hilton terminates the Agreement due to an event of default of Greenville.

### 10.2 EHM LETTER OF CREDIT

EHM shall provide and maintain for the benefit of Greenville a standby letter of credit in an amount equal to Three Hundred Thousand Dollars (\$300,000) which amount shall be paid to Greenville in the event this Agreement is terminated pursuant to section 15.4 as a result of an

event of default by EHM or terminated by EHM without cause. Said letter of credit shall (1) be issued by a commercial bank with an office in the City of Greenville, North Carolina, which bank is acceptable to Greenville, acting reasonably, (2) be in a form and contain such substantive provisions as Greenville deems necessary and appropriate, including, without limitation, provisions relating to draws on the letter of credit and the term of the letter of credit and renewal provisions, and (3) be delivered to Greenville within thirty (30) days of the date of the Agreement and any renewal letters of credit, or amendments to existing letters of credit that effect a renewal, shall be delivered to Greenville no later than thirty (30) calendar days before the expiration date of the letter of credit that is then outstanding. The amount of the letter of credit may be reduced in accordance with the provisions of section 3.5 only upon the approval of Greenville. The letter of credit shall be returned to EHM in the event EHM terminates the Agreement due to an event of default of Greenville.

11.0 EXHIBIT HALL AND FF&E OPERATIONAL WARRANTIES

EHM agrees to use its best efforts to comply with the operation and maintenance standards and instructions found in any warranty or required service contract relating to the Exhibit Hall or any of the Exhibit Hall FF&E of which it has received a copy from Greenville. In performing repairs and maintenance, EHM shall have the benefit of all warranties and service contracts that may run in favor of Greenville and Greenville shall cooperate in all reasonable respects with EHM to the end that EHM receives the material benefits of such warranties and service contracts. In the event that a repair or maintenance is required which is covered by such warranty or required service contract and such warranty or required service contract is not honored due to failure by EHM to operate and maintain in accordance with the terms of the warranty or the required service contract, notwithstanding anything to the contrary contained in this Agreement, EHM shall, at its sole cost and expense, make such repair and

replacement as necessary or do such maintenance work with no contribution by Greenville or the Operating Account regardless of whether it is deemed a non-routine repair and maintenance item.

12.0 DISCHARGE OF MECHNICS AND MATERIALMEN'S LIENS

EHM and Greenville shall use their best efforts to prevent any liens that arise from any maintenance, repairs, alterations, improvements, additions or replacements in or to the Exhibit Hall from being filed against the Exhibit Hall. EHM shall act for itself and Greenville for itself in this regard, unless Greenville directs otherwise, and if any liens are filed, EHM and Greenville, as appropriate, shall prevent any liens from becoming delinquent. The cost thereof shall be treated the same as the cost of the matter to which it relates, unless the lien arises as a result of the fault of the party who normally would not be paying the cost of the matter to which the lien relates, then such party shall bear the cost of obtaining the lien release (i.e., if the costs would normally be paid by Greenville, but the lien is a result of fault of EHM, then EHM bears the costs).

13.0 ACCESS

Greenville, through its employees and representatives shall have full and uninterrupted access to and right to go in and upon the Exhibit Hall at any time or times during the term of this Agreement for any purpose which Greenville deems appropriate.

14.0 SURRENDER OF EXHIBIT HALL ON TERMINATION

Upon the termination of this Agreement for any reason, EHM covenants and agrees to yield and deliver peaceably to Greenville possession of the Exhibit Hall (including Exhibit Hall FF&E) and any alterations, additions, or improvements made by EHM thereto, promptly and in good condition, order and repair, except for reasonable wear and tear and acts of God. EHM shall remain responsible for any condition, order, or repair resulting from EHM's

failure to perform scheduled routine repair and maintenance of the Exhibit Hall and the Exhibit Hall FF&E. In addition, at the time of termination, EHM (1) shall have paid all amounts owing to Greenville and others under or pursuant to this Agreement, including, without limitation, the payment of all accrued accounts and payables with respect to the Exhibit Hall and the operation thereof, whether the same are due and owing prior to the effective date of termination or thereafter, (2) shall have terminated, without any liability, cost or expense to Greenville, all management and service contracts EHM has entered into with respect to the Exhibit Hall, unless Greenville directs otherwise as to all or some of said contracts, in which event the management and service contracts that Greenville elects to continue shall be assigned to Greenville by EHM, (3) shall have delivered to Greenville all books and records, or legible copies thereof, with respect to the Exhibit Hall and its operation thereof, including, without limitation, all warranty contracts relating to Exhibit Hall FF&E and all service and maintenance records relating to the Exhibit Hall and the Exhibit Hall FF&E, (4) shall have completed the performance of all other items and matters that would normally be completed or are scheduled to be completed on or before the date of termination, and (5) shall assign to Greenville rental and license agreements for the use of the Exhibit Hall for events occurring after the time of termination unless Greenville directs otherwise as to all or some of said rental and license agreements. Termination of this Agreement shall not end or terminate any covenant, obligation, indemnification or other liability of a party to this Agreement which is by terms or nature intended to survive termination, it being agreed that all such provisions specifically survive termination.

15.0 DEFAULT

15.1 DEFAULT BY HILTON

The occurrence of any of the following shall be an event of default by Hilton under this Agreement:

- (a) The filing by Hilton of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights, or the consent by Hilton to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights, or the entering of an order for relief against Hilton or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Hilton in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of sixty (60) consecutive days.
- (b) The failure of Hilton to perform or to observe any covenant, obligation or requirement of this Agreement or any other agreement by or between the parties, which failure is not specifically named as a default in this section, and the continuation of such failure for twenty (20) days after written notice from Greenville to Hilton specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such twenty (20) day period, the failure to commence to cure such default within such twenty (20) day period and to diligently continue to pursue such efforts to cure to completion within a reasonable period of time after the expiration of the twenty (20) day period, in no event to exceed sixty (60) days after the written notice of default.

#### 15.2. DEFAULT BY EHM

The occurrence of any of the following shall be an event of default by EHM under this Agreement:

- (a) The filing by EHM or its managers of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights, or the consent by EHM or its managers to an involuntary proceeding under present or future bankruptcy,

insolvency, or other laws respecting debtor's rights, or the entering of an order for relief against EHM or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of EHM in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of sixty (60) consecutive days.

- (b) The failure of EHM to pay to Greenville any money due under the provisions of this Agreement and the continuation of such failure for fifteen (15) days after written notice from Greenville to EHM specifying the nature of such default.
- (c) The failure of EHM to perform or to observe any covenant, obligation or requirement of this Agreement, the Easement Agreement or any other agreement by or between the parties, which failure is not specifically named as a default in this section, and the continuation of such failure for twenty (20) days after written notice from Greenville to EHM specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such twenty (20) day period, the failure to commence to cure such default within such twenty (20) day period and to diligently continue to pursue such efforts to cure to completion within a reasonable period of time after the expiration of the twenty (20) day period, in no event to exceed sixty (60) days after the written notice of default.

### 15.3 DEFAULT BY CITY OR CVA

The occurrence of any of the following shall be an event of default by Greenville under this Agreement:

- (a) The filing by Greenville or CVA of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights, or the consent by Greenville or CVA to an involuntary proceeding under present or future bankruptcy,

insolvency, or other laws respecting debtor's rights, or the entering of an order for relief against Greenville or CVA or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Greenville or Greenville CVA in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of sixty (60) consecutive days.

- (b) The failure of Greenville or CVA to pay to EHM any money due under the provisions of this Agreement and the continuation of such failure for fifteen (15) days after written notice from EHM to Greenville specifying the nature of such default.
- (c) The failure of Greenville or CVA (to the extent CVA is a party thereto) to perform or to observe any covenant, obligation or requirement of this Agreement or any other agreement by or between the parties, which failure is not specifically named as a default in this section and the continuation of such failure for twenty (20) days after written notice from EHM to Greenville specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such twenty (20) day period, the failure to commence to cure such default within such twenty (20) day period and to diligently continue to pursue such efforts to cure to completion within a reasonable period of time after the expiration of the twenty (20) day period, in no event to exceed sixty (60) days after the written notice of default.

#### 15.4 REMEDIES

Upon the occurrence of any event of default described in section 15.1 which has not been cured within the applicable grace period, Greenville may elect to terminate this Agreement in connection with the rights and responsibilities of Hilton by giving written notice of termination to Hilton, and this Agreement shall terminate in connection with the rights and responsibilities of Hilton as of the date specified in such notice (which date shall be on or



about the date of the notice of termination) and Greenville shall receive the amount of the standby letter of credit maintained in accordance with section 10.1 as liquidated damages and not as a penalty. Upon the occurrence of any event of default described in section 15.2 which has not been cured within the applicable grace period, Greenville may elect to terminate this Agreement in connection with the rights and responsibilities of EHM by giving written notice of such termination to EHM, and this Agreement shall terminate in connection with the rights and responsibilities of EHM as of the date specified in such notice (which date shall be on or after the date of the notice of termination) and Greenville shall receive the amount of the standby letter of credit maintained in accordance with section 10.2 as liquidated damages and not as a penalty. Upon the occurrence of an event of default described in section 15.3 which has not been cured within the applicable grace period, EHM may elect to terminate this Agreement by giving written notice of such termination to Greenville, and this Agreement shall terminate as of the date specified in such notice (which date shall be on or after the date of notice of termination) and EHM shall be paid the amount of \$200,000 which it deposited in the Operating Account pursuant to section 5.5 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, less any management fees it received pursuant to the provisions of section 5.4 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, and pursuant to the provisions of section 3.4 of this Agreement as liquidated damages and not as a penalty. In addition to the remedies of termination described above, a nondefaulting party shall have available to it the right to collect damages against a defaulting party who has committed an act of malfeasance or misfeasance resulting in such default, to require specific performance, and to pursue all other rights and remedies under this

Agreement provided at law or in equity. All remedies under this Agreement shall be cumulative and in addition to any and all other remedies allowed or available.

15.5 NON-WAIVER

No failure by either Hilton, EHM, CVA, or Greenville to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy, shall constitute a waiver of any breach or default, present or future, except by specific written waiver.

16.0 OPERATING TERM

16.1 TERM

The term of this Agreement will commence at 12:01 a.m. on January 1, 2012, and will terminate, unless earlier terminated in accordance with the provisions of this Agreement, at 11:59 p.m. on December 31, 2021.

16.2 EXPANSION

Regardless of the termination date specified in Section 16.1, should Greenville, in its sole discretion, determine to expand and/or modify the size and configuration of the Exhibit Hall facility, existing as of the commencement of the term of this Agreement, then, Greenville, EHM, CVA, and Hilton agree to negotiate a new agreement with additional terms, if deemed appropriate, to address changes to the Exhibit Hall resulting from the expansion or modification. If the parties do not agree to a new agreement, the term of the Agreement shall remain the same as stated in Section 16.1.

17.0 FINANCIAL RECORDS

17.1 BOOKS AND RECORDS.

EHM shall keep, in accordance with generally accepted accounting principles and on a fiscal year basis, complete and accurate books, records and financial data reflecting the results of

the operations of the Exhibit Hall, which books and records shall include, without limitation, a balance sheet, an income statement, a statement of cash flows and any relevant or applicable notes to financial statements. EHM shall, upon the request of Greenville, prepare for Greenville or assist Greenville in the preparation of such special reports (reports other than those EHM is required to furnish pursuant to other provisions of this section and this Agreement), including, without limitation, special financial reports, with respect to the Exhibit Hall as may be reasonably required by or needed by Greenville in the conduct of its business. The cost of the preparation of all of these special reports shall be borne solely by Greenville, but the costs of all other reports required to be given by EHM to Greenville under this Agreement shall be borne by EHM, unless otherwise specifically provided herein.

#### 17.2 INSPECTION OF BOOKS AND RECORDS.

EHM shall maintain the books, records and financial data referred to in section 17.1, or a complete, exact and full copy thereof, at the Exhibit Hall. EHM, upon reasonable notice by Greenville to EHM, at the times, to the extent and on the conditions specified elsewhere in this Agreement, shall permit Greenville, acting through its employees and/or representatives, and at Greenville's cost and expense (except as provided below), to make inspections, audits, examination, abstracts and copies of all or any part of said books, records and financial data. It is further understood and agreed (1) that any such inspection or audit hereunder shall be conducted during the hours of 9 a.m. to 5 p.m., Monday through Friday (excepting holidays recognized by Greenville), (2) that EHM shall make all of the aforesaid books, records and financial data available at a business office or other appropriate site in the Exhibit Hall or such other location as Greenville and EHM may agree upon, within seven (7) days of the written request by Greenville, (3) that EHM shall make available to Greenville, if requested, at Greenville's cost, at the time of and during the course of any inspections and audits, for the

purpose of assisting Greenville with its inspections and audits, one or more of EHM's employees familiar with EHM's books, records and financial data, and (4) that EHM shall otherwise fully cooperate with Greenville in Greenville's conduct of its inspections and audits.

### 17.3 FINANCIAL REPORTS

EHM agrees to deliver to Greenville within twenty (20) days after the end of each quarter a Financial Statement showing the results of Exhibit Hall operations for that quarter and the fiscal year to date prepared substantially in accordance with generally accepted accounting standards including the "Statement of Income" contained in the "Uniform System of Accounts for Exhibit Halls" (8th Revised Edition, 1986, or as subsequently revised), as published by the American Exhibit Hall Association of the United States and Canada (the "Uniform System"). Each such Financial Statement shall be reviewed by EHM's controller and shall show the results of Exhibit Hall operations during that quarter, as well as cumulative results for all previous calendar quarters of the current fiscal year. Each such report will also contain a comparison of the results for the prior fiscal year, and a comparison with the quarterly and cumulative Annual Budget for the current fiscal year.

### 17.4 ANNUAL AUDIT

Within sixty (60) days after the end of each fiscal year, EHM will deliver to Greenville an annual audit including audited financial statements in the form of a Financial Statement, Balance Sheet, and Statement of Cash Flows, showing the results of Exhibit Hall operations during the preceding fiscal year, and such additional information, schedules and associated tax worksheets as Greenville may reasonably request. Each of these reports will include a comparison of results with (i) the preceding year and (ii) the Annual Budget. The audit shall be performed by an independent certified public accountant and conform with any

requirements imposed by the North Carolina Local Government Commission.

18.0 INSURANCE

EHM, as a cost and expense of operation of the Exhibit Hall, shall, during the term of this Agreement, procure and maintain the insurance hereinafter set forth with insurance companies acceptable to Greenville and licensed or authorized to do business in the State of North Carolina, said insurance, unless otherwise indicated, to cover or be inclusive of the Exhibit Hall, Greenville's and EHM's respective interest therein, EHM's employees and other personnel (but not CVA's personnel), EHM's and Greenville's contractors, the patrons, all guests, invitees and permittees, and all activities therein or around the Exhibit Hall.

(a) Statutory workers' compensation insurance for EHM's employees and other personnel, but excluding CVA's employees and personnel;

(b) Comprehensive/umbrella general liability insurance, including but not limited to coverage for premises operations, automobiles, products, personal injury, broad form property damage, and bailee liability, for which the limits of each of the foregoing coverage parts is to be not less than Ten Million Dollars (\$10,000,000.00) for bodily injury and property damage liability;

(c) Business interruption insurance covering not less than one (1) year's gross operating revenues for the Exhibit Hall;

(d) Casualty insurance covering one hundred percent (100%) of the replacement value of all of the buildings and other improvements making up the Exhibit Hall and all of the Exhibit Hall FF&E, said casualty insurance to be an all risks form (including boilers) customarily carried in North Carolina for facilities similar to the Exhibit Hall;

(e) Dram shop liability insurance with a minimum coverage of Two Million Dollars (\$2,000,000.00); and

(f) Fidelity bonds for employees or other personnel in job classifications that are typically bonded in exhibit halls similar to the Exhibit Hall, with a minimum limit of One Hundred Thousand Dollars (\$100,000.00) per person covered. All insurance described hereinabove may be obtained by EHM by endorsement or equivalent means under blanket insurance policies, provided that such blanket policies fulfill the requirements specified herein. All insurance policies shall be in form and substance, with deductible limits and self-insured retention that are in all respects satisfactory to Greenville, acting reasonably. All insurance required under this section shall name Greenville as a loss payee, additional insured or beneficiary, as appropriate, and shall contain such provisions as Greenville deems necessary and appropriate to ensure payment under such policies notwithstanding the acts or inactions of EHM. EHM shall deliver to Greenville, immediately upon Greenville's request therefore, policies or certified copies, together with paid receipts therefore, signed by an authorized representative of the insurer, or in the case of blanket policies, certified abstract policies with respect to all policies so procured, including existing, additional and renewal policies and, in the case of insurance about to expire, shall deliver evidence of renewal in binder form with respect to the renewal policies not less than thirty days (30) days prior to the respective dates of expiration, and thereafter shall deliver policies, as aforesaid, or as the case may be, within sixty (60) days succeeding the expiration dates. All policies of insurance provided for under this section shall, to the extent obtainable, have attached thereto an endorsement that such policy shall not be canceled or materially changed without at least sixty (60) days prior written notice to Greenville.

19.0 INDEMNIFICATION.

19.1 GREENVILLE INDEMNIFICATION.

To the fullest extent permitted by law, Greenville hereby agrees to indemnify and hold harmless Hilton, EHM, its members, officers, employees, agents, attorneys, professionals, consultants, and agents, and the heirs, successors and assigns of each (each a “Hilton Indemnitee” and collectively, the “Hilton Indemnitees”) from and against any claims or loss, liabilities, suits, obligations, penalties, fines, damages, costs, charges and expenses including reasonable attorney and other professional fees and disbursements whensoever asserted or occurring, which any Hilton Indemnitee may suffer, incur or pay out, or which may be asserted against any Hilton Indemnitee in whole or in part, by reason of, or in connection with, the following, whether or not foreseeable:

(a) Any failure of Greenville to fully and punctually perform the terms and conditions of this Agreement;

(b) any untrue or incorrect statement or representation of a material nature in any document submitted by Greenville to a Hilton Indemnitee with respect to this Agreement;

(c) any failure of Greenville to comply with laws or any other requirements contained in this Agreement;

(d) any legal proceeding asserted by any contractor or any other person against any Hilton Indemnitee in connection with any act or omission for which Greenville is determined in a legal proceeding to be directly or indirectly responsible; and/or

(e) all fees and costs incurred by any Hilton Indemnitee in connection with any appearance by such person as a witness or as a party (and whether discretionary or compulsory), in any legal proceeding concerning any matter or amount for which Greenville has agreed to indemnify any Hilton Indemnitee under this section.

19.2 GREENVILLE TO DEFEND.

To the extent permitted by law, Greenville shall defend any and all legal proceedings commenced against any Hilton Indemnitee concerning any matter which may or might be covered under section 19.1 (i.e., regardless of any alleged fault or cause). Greenville shall deliver to the Hilton Indemnitee copies of documents served in any such legal proceeding and, whenever requested by the Hilton Indemnitee, shall advise as to the status of such legal proceeding. If Greenville shall fail to defend diligently any such legal proceeding, the Hilton Indemnitee shall have the right (but no obligation) to defend the same at Greenville's expense. Greenville shall not settle any such legal proceeding without the Hilton Indemnitee's prior written consent unless the effect of such settlement shall be to release all of the Hilton Indemnitees from all liability with respect to such legal proceeding (and all claims and liabilities asserted therein).

19.3 HILTON INDEMNIFICATION.

To the fullest extent permitted by law, Hilton hereby agrees to indemnify and hold harmless Greenville, CVA, the elected, appointed or named officials, officers, employees, agents, attorneys, professionals, consultants, and agents of each, and the heirs, successors and assigns of all (each a "Greenville Indemnitee" and collectively, the "Greenville Indemnitees") from and against any claims or loss, liabilities, suits, obligations, penalties, fines, damages, costs, charges and expenses including reasonable attorney and other professional fees and disbursements whomsoever asserted or occurring, which any Greenville Indemnitee may suffer, incur or pay out, or which may be asserted against any Greenville Indemnitee in whole or in part, by reason of, or in connection with, the following, whether or not foreseeable:



(a) any failure of Hilton to fully and punctually perform its obligations under the terms and conditions of this Agreement;

(b) any untrue or incorrect statement or representation of a material nature in any document submitted by Hilton to a Greenville Indemnitee with respect to this Agreement;

(c) any failure of Hilton to comply with laws or any other requirements contained in this Agreement;

(d) any legal proceeding asserted by any contractor or any other person against any Greenville Indemnitee in connection with any act or omission for which Hilton is determined in a legal proceeding to be directly or indirectly responsible; and/or

(e) all fees and costs incurred by any Greenville Indemnitee in connection with any appearance by such person as a witness or as a party (and whether discretionary or compulsory), in any legal proceeding concerning any matter or amount for which Hilton has agreed to indemnify any Greenville Indemnitee under this section.

#### 19.4 HILTON TO DEFEND.

To the extent permitted by law, Hilton shall defend any and all legal proceedings commenced against any Greenville Indemnitee concerning any matter which may or might be covered under section 19.3 (i.e., regardless of any alleged fault or cause). Hilton shall deliver to Greenville copies of documents served in any such legal proceeding and, whenever requested by Greenville, shall advise as to the status of such legal proceeding. If Hilton shall fail to defend diligently any such legal proceeding, Greenville shall have the right (but no obligation) to defend the same at Hilton's expense. Hilton shall not settle any such legal

proceeding without Greenville's prior written consent unless the effect of such settlement shall be to release all of the Greenville Indemnitees from all liability with respect to such legal proceeding (and all claims and liabilities asserted therein).

19.5 EHM INDEMNIFICATION

EHM will use its best efforts to not do or permit any act or thing to be done in, on or around the Exhibit Hall which subjects Greenville to liability or responsibility for injury, damage to persons or property or to any liability by reason of any violation of law or of any governmental requirement and shall use its best efforts to exercise such control over the Exhibit Hall so as to fully protect Greenville against any such liability. In addition, to the fullest extent permitted by law and to the extent the liability is not insured against in accordance with the terms of this Agreement and actually discharged through payment of insurance proceeds on account of any of the following, EHM shall indemnify and save harmless Greenville against and from all liabilities, suits, obligations, fines, damages, losses, penalties, claims, charges, forfeitures, and costs and expenses which may be imposed upon, asserted against, or suffered or incurred by Greenville, CVA, or any agency or subdivision of either Greenville or CVA, or their respective agents, employees, representatives, contractors, elected and appointed officials, mayor, officers, council members, directors, guests, invitees or permittees ("Indemnitees") by reason of the acts or omissions of EHM, its affiliates or any of their respective members, officers, managers, directors, employees, agents, representatives, contractors, independent contractors, permitted assigns, patrons, guests, invitees, permittees or the performance of each of their obligations hereunder, unless the same shall have been caused solely by the negligent or willful acts of such Indemnitees. The obligation of EHM under this section shall not in any way be affected by the absence of

insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Exhibit Hall.

19.6 EHM DUTY TO DEFEND

To the extent permitted by law, if any claim, action, or proceeding is made or brought against any Indemnitee, then, upon demand by such Indemnitee, EHM at its sole cost and expense, shall resist or defend such claim action or proceeding in such Indemnitee's name, if necessary, by the attorneys for EHM's insurance carrier, if such claim, action or proceeding is covered by insurance, or otherwise by such attorneys as Greenville shall approve. Greenville agrees that in the event that Greenville is named as party to an action, Greenville will reasonably cooperate with EHM in the conduct of the proceedings.

The indemnification contained in this section and all other sections of this Agreement shall survive the termination or expiration of this Agreement for a period of three (3) years, regardless of the reason for termination.

19.7 INDEMNITY

Hilton's, EHM's, CVA's, and Greenville's indemnities and obligations under this Agreement shall not be limited or defined in any fashion whatsoever by the amount of required insurance or by any limitations or restrictions on the amount or type of damages, compensation or benefits payable to, by or for the other party under workers' compensation acts or any other laws relating to employee benefits. No right to indemnity under this Agreement shall be diminished, waived, or discharged by any assessment or liquidated damages or by the exercise of any other remedy allowed under this Agreement or by law. The indemnitees and obligations under this section 19.0 shall be construed as protecting the applicable parties to the fullest extent permitted by law. The obligations of Hilton under section 19.3 shall not include any loss, damage or liability which any Greenville Indemnitee may suffer or incur as

a result of the negligence or willful misconduct of such Greenville Indemnatee or Greenville's default under this Agreement. The obligations of Greenville under section 19.1 shall not include any loss, damage or liability which any Hilton Indemnatee may suffer or incur as a result of the negligence or willful misconduct of such Hilton Indemnatee or Hilton's default under this Agreement. The obligations of Hilton, EHM, and Greenville under this section 19.0 shall survive the termination or expiration of this Agreement for a period of three (3) years.

20.0 ALTERATIONS TO EXHIBIT HALL

20.1 ALTERATION TO EXHIBIT HALL BY GREENVILLE

Greenville may, in its sole discretion, make alterations, additions, improvements in or to the Exhibit Hall. Upon request, EHM will assist Greenville in the development of criteria for the construction of any alterations, additions, or improvements in or to the Exhibit Hall. Greenville has the final approval authority of the criteria for the construction of any alterations, additions, or improvements in or to the Exhibit Hall.

20.2 ALTERATION TO EXHIBIT HALL BY EHM

EHM shall make no material alterations, additions or improvements in or to the Exhibit Hall without the prior written approval of Greenville, which approval shall be in the sole discretion of Greenville and, if granted, subject to such terms and conditions as Greenville deems appropriate. If EHM desires to make any material alterations, additions or improvements, EHM shall prepare an estimate of the costs and expenses therefore and when submitting its request for approval, EHM shall submit such estimate to Greenville, together with complete plans and specifications for the alterations, additions or improvements. All alterations, additions, improvements and replacements to the Exhibit Hall, whether made by EHM or Greenville, shall be the property of Greenville. For the purpose of this section, a

“material alteration, addition or improvement” shall mean a change which results in (1) a change in the overall appearance of the exterior or interior of any part of the Exhibit Hall; (2) a change in the structural integrity of any part of the Exhibit Hall; (3) a change in the heating, air conditioning, air handling, fire protection, plumbing or other similar systems of any portion of the Exhibit Hall; (4) a change, not previously approved in the annual budget, of more than \$5,000 in any one instance, or a cumulative change of more than \$20,000 in any series of related instances; or (5) a change in the furniture, fixtures, equipment, amenities or color schemes which were agreed to by Greenville and EHM.

#### 21.0 CVA’S JOINDER

In accordance with the Interlocal Agreement dated September 18, 1997, CVA has delegated to Greenville the authority to act on its behalf in all matters related to the transactions contemplated by this Agreement, including the right to decide all matters relating to financing, constructing, maintaining, operating and marketing of an exhibit hall. Accordingly, CVA, by its execution hereof, does hereby affirm and ratify all actions taken by Greenville to date in performing such duties and in negotiating and entering into this Agreement. Additionally, by its execution hereof, CVA, except with respect to matters specifically pertaining to CVA as set forth in this Agreement, does hereby irrevocably appoint Greenville as its true and lawful attorney-in-fact to take any actions, decide any matters, agree to any changes, modifications or amendments of this Agreement or of any party’s duties hereunder, to execute, acknowledge and/or deliver any documents or instruments required or requested hereunder and to do and perform any and all other acts and things required or requested hereunder in the name and on behalf of CVA. This appointment shall be coupled with an interest and shall be binding upon CVA to the fullest extent permitted by law. Except with respect to matters specifically pertaining to CVA as set

forth in this Agreement, CVA shall not be required to perform under this Agreement and shall not have any liability under or pursuant to this Agreement. EHM agrees that all indemnifications given or agreed to herein by EHM to, with or for the benefit of Greenville shall also run to and in favor of CVA, its directors, officers, employees, agents, representatives, contractors, guests, invitees and permittees.

22.0 EHM USE OF HILTON OR AFFILIATES

EHM shall not employ any employee who is also a salaried employee of Hilton.

However, EHM may contract with Hilton for the services of employees of Hilton provided that, (i) the services are contracted in compliance with the terms of this Agreement, (ii) the services are reasonable and necessary, and (iii) the services are furnished under terms and conditions (including payment and quality terms) which are at least as favorable to EHM than those which can be obtained on a competitive basis from other sources.

23.0 DAMAGE TO AND DESTRUCTION OF THE EXHIBIT HALL

If the Exhibit Hall is damaged or destroyed by fire or other casualty so extensively as to require the replacement of fifty percent (50%) (based upon then insurable replacement value) or more of the Exhibit Hall at any time during the term of this Agreement, Greenville shall have the option, which shall be exercised within sixty (60) days after the casualty occurs by written notice to EHM, either (i) to replace and restore the Exhibit Hall to the condition which existed prior to such damage or destruction, or to a different condition, and Greenville shall have the full proceeds from the insurance thereon to pay the costs of such restoration, in which case this Agreement shall continue in full force and effect, or (ii) to elect not to operate the Exhibit Hall, in which event this Agreement shall terminate as of the date of Greenville's election and Greenville shall release EHM it from the standby letter of credit

referred to in Section 3.5 and shall pay EHM the amount of \$200,000 which it deposited in the Operating Account pursuant to section 5.5 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, less any management fees it received pursuant to the provisions of section 5.4 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, and pursuant to section 3.4 of this Agreement. If Greenville elects to replace and restore the Exhibit Hall, Greenville shall proceed diligently with the required repairs or other corrective action and shall commence work within one hundred twenty (120) days after the casualty occurs. If the Exhibit Hall is damaged or destroyed by less than the amount referred to above at any time during the term of this Agreement, Greenville shall replace and restore the Exhibit Hall premises and use the insurance proceeds therefor, except that Greenville shall have no obligation to replace or restore any damage exceeding One Hundred Thousand Dollars (\$100,000) from any one occurrence during the last twelve (12) months of the term of this Agreement.

#### 24.0 RIGHT TO PERFORM COVENANTS OF OTHER PARTY

If either EHM or Greenville fails to make any payment or perform any act required under this Agreement within the time herein specified, the other party may elect to do so after giving twenty (20) days prior written notice to the defaulting party. Such notice is not required, however, in the event of an emergency. Any such election will not release the other party from its obligations, and the electing party will not be deemed to have waived any right or remedy. Any payment made by the electing party will be immediately repaid, together with interest at the prime rate, announced by the Wall Street Journal, but not in excess of the maximum rate allowed by law.

#### 25.0 GENERAL PROVISIONS

25.1 QUIET POSSESSION

Greenville covenants that, during the term of this Agreement, EHM shall and may peaceably and quietly have possession of the Exhibit Hall and operate the Exhibit Hall in accordance with the terms of this Agreement, free from interference, eviction, and disturbance from Greenville.

25.2 CHANGES REQUIRED BY FINANCING MECHANISM

Greenville, CVA, Hilton, and EHM mutually agree to make such changes to this Agreement, by amendment or otherwise, as may reasonably be required in connection with the financing of an expansion or a modification of the size and configuration of the Exhibit Hall provided, however, that no party shall be obligated to agree to any change which would adversely affect its basic economic rights hereunder in any material way.

25.3 FORCE MAJEURE

Notwithstanding any other provision of this Agreement, if at any time during the term of this Agreement it becomes necessary in EHM's reasonable opinion to cease operation of the Exhibit Hall in order to protect the Exhibit Hall and/or the health, safety, or welfare of its guests or employees for reasons of force majeure such as, but not limited to, acts of war, insurrection, civil strife and commotion, labor unrest, or acts of God, then, in such event, EHM may close and cease operation of all or part of the Exhibit Hall, reopening and commencing operation when EHM deems that such may be done without jeopardy to the Exhibit Hall, its guests, and its employees. At all other times during the term of this Agreement, EHM shall continuously and diligently operate the Exhibit Hall and keep the same open for business as required in accordance with the provisions hereof.

25.4 ASSIGNMENT BY EHM OR HILTON .



Except as otherwise provided in this Agreement, neither EHM, Hilton nor any trustee in bankruptcy, nor EHM or Hilton, as a debtor in possession, nor any other person, without the prior written consent of Greenville, shall directly or indirectly, sell, assign, transfer, license, permit, give, grant, devise, let or dispose of all or any of its rights or interest under this Agreement. Notwithstanding the foregoing, EHM shall have the right to assign all of its right, title and interest under this Agreement to any affiliated company of EHM, provided that the affiliated company is a single purpose entity as required by section 3.3 and provided that EHM shall not be absolved of liability for performance of this Agreement and Hilton shall have the right to assign all of its right, title, and interest under this Agreement to an affiliated company of Hilton, provided that Hilton shall not be absolved of liability for performance under this Agreement. Any other assignments shall require Greenville's absolute consent which consent shall not be unreasonably withheld. Written notice of any sale, assignment, or transfer shall be given to Greenville promptly specifying the terms and conditions, the parties thereto, and the effective date.

25.5. ASSIGNMENT BY GREENVILLE

Greenville will have the right to sell, assign or transfer all or a part of its right, title and interest in the Exhibit Hall or in this Agreement to any person or entity on the condition that this Agreement shall continue in full force and effect provided that EHM consents, which consent shall not be unreasonably withheld. Written notice of any sale, assignment, or transfer shall be given promptly to EHM, and Hilton, specifying the terms and conditions the parties thereto, and the effective date.

25.6 CURRENCY

All amounts to be reimbursed or paid to EHM under the terms of this Agreement shall be in United States dollars. At EHM's option, the amounts due may be paid to it directly or

deposited in a bank account designated in writing by EHM. All sums due Greenville under this Agreement will be delivered or paid in United States dollars.

## 25.7 NOTICES

All notices under this Agreement shall be in writing and will be deemed to have been sufficiently given when presented personally, sent by registered or certified mail, or sent by facsimile, telex or telegraph, addressed as follows or to such other address as either Greenville or EHM may subsequently designate by this notice procedure:

If to EHM:  
Exhibit Hall Managers, LLC  
P. O. Box 30803  
Greenville, NC 27833

If to Greenville:  
City Manager, City of Greenville  
200 West Fifth Street  
Greenville, NC 27834

If to CVA:  
Greenville-Pitt County Convention & Visitors Bureau  
303 SW Greenville Boulevard  
P.O. Box 8027  
Greenville, NC 27835-8027

If to Hilton:  
Greenville Prime Investors, LLC  
P. O. Box 30803  
Greenville, NC 27833

Notice will be deemed effective (i) upon delivery, if delivery personally to the notice address of the party; (ii) on the date of dispatch, if by telegram or telex; (iii) three (3) days after mailing, if by registered or certified mail; and (iv) on the date confirmed by phone, if by facsimile transmission (facsimile transmission after 5:00 P.M. EST shall be deemed delivered the following day). Addresses for the purpose of this section can be changed via written notice to either party by certified mail with return receipt requested.

25.8 GREENVILLE'S POLICE POWER

Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Agreement shall in any way stop, limit, or impair Greenville from exercising or performing any regulatory, policing, or other governmental functions with respect to the Exhibit Hall Property, the Hotel Property, or any part or parts thereof.

25.9 AMENDMENTS

The conditions, covenants, agreements, and terms of this Agreement may only be waived, altered, or modified by an instrument in writing signed by the parties or their respective successors.

25.10 APPLICABLE LAW

This Agreement will be interpreted under and governed by the laws of the State of North Carolina.

25.11 PARTIAL INVALIDITY

In the event that any one or more of the sentences, sections, or portions of this Agreement are declared invalid by any court, this Agreement will be construed as if the same had not been inserted, except when such would cause undue hardship to Greenville, CVA, Hilton, or EHM.

25.12 HEADINGS

The headings or titles used in this Agreement are for the purpose of convenience only and are not to be used in construing the meaning or intent of the language.

25.13 RIGHT TO MAKE AGREEMENT

Greenville, CVA, Hilton, and EHM each warrant that neither the execution of this Agreement nor the consummation of the transactions contemplated hereby shall violate any provision of law or judgment, writ, injunction, order or decree of any court or governmental

authority having jurisdiction over the parties or result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which either is a party or by which either is bound; or require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken. Each party covenants that it has, and will continue to have throughout the term of this Agreement and any extensions thereof, the full right to enter into this Agreement and perform its obligations hereunder.

25.14 NO PARTNERSHIP

Nothing herein contained shall be deemed to create a partnership, joint venture or lease of any kind between Greenville and EHM it being specifically understood and agreed that EHM is an independent contractor.

25.15 ENTIRE AGREEMENT

This Agreement and exhibits hereto, constitute the entire agreement and understanding between the parties and supersedes the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000.

IN WITNESS WHEREOF, the parties hereto have executed Operational Management Agreement as of the date first hereinabove written.

CITY OF GREENVILLE

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST

\_\_\_\_\_  
Carol L. Barwick, City Clerk

PITT-GREENVILLE CONVENTION  
AND VISITORS AUTHORITY

\_\_\_\_\_  
, Chairman

ATTEST

\_\_\_\_\_  
, Secretary

EXHIBIT HALL MANAGERS, LLC

\_\_\_\_\_  
Thomas Glennon, Managing Member

GREENVILLE PRIME INVESTORS, LLC

\_\_\_\_\_  
Thomas Glennon, Managing Member

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

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, certify that Carol L. Barwick personally came before me and acknowledged that she is City Clerk for the City of Greenville, and that by authority duly given, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Carol L. Barwick, its City Clerk.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, certify that \_\_\_\_\_ personally came before me and acknowledged that she is Secretary for the Pitt-Greenville Convention and Visitors Authority, and that by authority duly given, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by \_\_\_\_\_, its Secretary.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, do hereby certify that Thomas Glennon, Managing Member of Exhibit Hall Managers, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, do hereby certify that Thomas Glennon, Managing Member of Greenville Prime Investors, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## Convention Center Operational Management Agreement

### Key Provisions

1. **Operation of Exhibit Hall.** EHM is to operate and manage the exhibit hall in a first-class manner (section 3.1). First-class is defined in section 3.1. EHM is responsible for accomplishing everything required to operate the exhibit hall with its duties and responsibilities being listed in section 3.2. The funds necessary to operate the exhibit hall are to be maintained in an operating account (section 3.5). The revenues derived from the operation of the exhibit hall are to be deposited in the operating account (section 3.5). If additional funds are required, a maximum of \$200,000 of the \$300,000 letter of credit provided by EHM may be converted to the operating account at the City's option (section 3.5). Expenses incurred by EHM for the exhibit hall operation must be maintained within the annual budget approved by the City Manager (section 3.6). EHM only receives compensation for its management services in a fiscal year in which revenues of the exhibit hall exceed expenses (section 3.4). The City is not responsible for any losses associated with the operation of the exhibit hall (section 3.4).
2. **Marketing the Exhibit Hall.** EHM is to coordinate the marketing of the exhibit hall with the CVA (section 4.1). All marketing plans and budgets are to be approved by the executive committee of the CVA (section 4.1). Funding for the marketing of the exhibit hall is to be provided by the CVA to EHM on a quarterly basis in an amount equal to 1 cent of the first 3 cents of the occupancy tax (section 4.2). Office space is to be provided within the exhibit hall for the CVA (section 4.3). CVA may vacate office space (section 4.3).
3. **Hotel Operation.** Hilton is to operate its hotel in a first-class manner so that it complements the exhibit hall and together they form a convention center (section 5.0). First-class is defined in section 3.1. Hilton is to provide food and beverage service to the exhibit hall (section 5.0 b), make available its ballroom and meeting room facilities (section 5.0 c) to exhibit hall patrons, and cooperate with the marketing of the exhibit hall (section 5.0 g). Hilton is to maintain a franchise agreement with the national Hilton chain or a similar national hotel chain (section 5.0 a). Hilton is to pay, as a revenue of the exhibit hall, at least a 10% concession fee on food and beverage service and at least a 10% room referral fee (section 5.0 b and i).
4. **Guaranties.** The performance of the obligations of Hilton are guaranteed by a \$100,000 letter of credit (section 10.1). The performance of the obligations of EHM are guaranteed by a \$300,000 letter of credit (section 10.2).
5. **Financial Records.** The books, records, and financial data relating to the exhibit hall are open to the City at all times (section 17.2). A quarterly report of the operations of the exhibit hall is to be provided by EHM to the City (section 17.3). An annual audit of the exhibit hall operations prepared by an independent certified public accountant and conforming with requirements of the Local Government Commission is to be provided by



EHM to the City (section 17.4). Hilton will have an independent certified public accountant perform an annual audit and issue to the City a letter which states the type of opinion given of the financial condition of the Hilton (unqualified, qualified, or adverse), any issues relating to Hilton's ability to operate as a going concern, and whether the Hilton has had any substantial change in the financial condition of its business (section 5.0 j). Additionally, the accountant will be made available, at the City's request, to provide further financial information relating to the Hilton, with certain limitations (section 5.0 j).

6. **Term.** The term of the Agreement begins on January 1, 2012, and ends on December 31, 2021. The City or EHM may terminate the Agreement as a result of a default by the other party (section 15.4).
7. **Other Provisions.**
  - a. The treatment of naming rights is set-out in section 6.0.
  - b. The required mix of events at the exhibit hall is set out in section 7.0.
  - c. The responsibility for repairs and maintenance of the exhibit hall and its furniture, fixtures, and equipment is set out in section 8.0 and 9.0.
  - d. The non-discrimination requirement for EHM is set out in Section 3.2 y and for the Hilton is set out in section 5.0 f.
  - e. The insurance required to be maintained is set out in section 18.0

#### **Differences from Current Agreement**

- 1) Extends term
  - Current term expires December 31, 2012
  - New term is for 10 years (January 1, 2012, to December 31, 2021). (section 16.1)
- 2) Removes all provisions relating to mandated construction of Exhibit Hall and mandated Hilton Hotel Improvements since these have been accomplished. This includes removal of insurance requirements of Greenville and Hilton which were in place as a result of mandated construction of Exhibit Hall and mandated construction of Hilton Hotel Improvements.
- 3) Deletes Guarantor from being a party to the Agreement since guaranty only related to required Hilton Hotel Improvements which have been completed.
- 4) Clarifies that CVA is under no obligation to commit any funds to market the Exhibit Hall in addition to the amount required to be deposited in the Marketing Fund. (section 4.2)
- 5) Provides that CVA may, in its discretion, vacate the offices in the Exhibit Hall. (section 4.3)

- 6) Provides that if CVA chooses to vacate its offices, the vacated CVA office space will be used as a part of Exhibit Hall available for rent or as EHM office space, as mutually agreed upon by City and EHM. (section 4.3)
- 7) Provides that the log or record of events held at the Exhibit Hall shall be provided to the Executive Committee of CVA in addition to Greenville. Also provides that EHM is to ensure that there is adequate security provided for each event at the Exhibit Hall. (section 7.0)
- 8) Clarifies responsibility as to FF&E so that it is clear that it is EHM's sole responsibility to replace and add to FF&E. (section 9.0)
- 9) Adds provision where City is responsible for the initial FF&E for an addition to the Exhibit Hall. (section 9.0)
- 10) Adds requirement that, at time of termination, EHM assigns rental or license agreements for events occurring after time of termination unless Greenville directs otherwise. (section 14.0)
- 11) Adds a Section 16.2 which provides for an agreement to negotiate a new Agreement with additional terms, if deemed appropriate, when there is an expansion or modification of the Exhibit Hall. If parties do not agree to a new agreement, the term of the Agreement remains as stated in Section 16.1. (section 16.2)
- 12) Amends provision where Greenville acts on CVA's behalf so that Greenville will still act on CVA's behalf on matters addressed in the Agreement except with respect to matters specifically pertaining to CVA as set forth in the Agreement. This parallels the provision contained in the same section relating to CVA's obligation to perform and CVA's exposure to liability. (section 21.0)
- 13) Changes provision relating to changes required by financing mechanism so that changes to be made in Agreement relate to financing associated with an expansion or modification of the Exhibit Hall. (section 25.2)

RESOLUTION NO.  
RESOLUTION APPROVING THE OPERATIONAL MANAGEMENT AGREEMENT  
FOR THE GREENVILLE CONVENTION CENTER

WHEREAS, North Carolina General Statute 160A-489 authorizes the City of Greenville to establish and support a convention center; and

WHEREAS, pursuant to an Interlocal Agreement dated September 18, 1997, between the City of Greenville, Pitt County, and the Pitt-Greenville Convention and Visitors Authority, the City of Greenville has been empowered to determine all matters relating to financing, constructing, maintaining, operating, and marketing a convention center to be developed within the corporate limits of the City of Greenville;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that the Operational Management Agreement by and between Exhibit Hall Managers, LLC, the City of Greenville, Pitt-Greenville Convention and Visitors Authority and Greenville Prime Investors, LLC, be and is hereby approved, said Agreement establishing the terms and conditions for the operation of the Greenville Convention Center for a ten (10) year period commencing on January 1, 2012.

Adopted this 8th day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Special Task Force on Public Safety recommendations

**Explanation:** At the August 8, 2011 City Council meeting the Special Task Force on Public Safety presented a final report that included a list of recommendations. The City Council received the report and directed staff to bring back a report of proposed actions to address each of the recommendations. A staff report on the Task Force recommendations is attached.

**Fiscal Note:** The cost of any recommendations pursued by the City will be identified during the implementation process.

**Recommendation:** Review the report on the Task Force recommendations and provide direction to staff.

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

Attachments / click to download

 [Task\\_Force\\_Recommendations\\_904284](#)

## **Special Task Force on Public Safety Recommendations**

- 1. The Greenville Police Department should acquire appropriate statistical software that would allow them to better analyze crime data on a monthly basis, capture the mathematical expressions that describe the seasonality and cyclicity that occurs and initiate a predictive policing program. The “Blue Crush” program in Memphis has been reviewed by GPD and should be consider together with elements of the Operation Bull’s Eye program used in Durham, NC, which evaluates shots fired data to target areas.**

The Police Department has already employed some elements of the “Blue Crush” model in the form of accruing and implementing the software that provides the statistical analysis capabilities that are recommended. As part of this effort, the Department now uses the Crime View and Automated Tactical Analysis & Crime (ATAC) software platforms as part of its crime analysis and predictive policing efforts. This software allows for the mapping of reported crime throughout the City while noting changes in geographic patterns over defined time frames. Examination of this data by the crime analyst provides trend data on patterns related to criminal activity. As the crime analyst becomes better trained and more familiar with this software, it is anticipated that capabilities in the area of trend analysis and predictive policing will continue to improve. To further facilitate predictive policing, a criminal intelligence unit is in development to enhance that function and aid in categorizing, analyzing, and disseminating criminal intelligence information. Research of “Operation Bull’s Eye” is still on-going.

- 2. Enact a zoning ordinance which amortizes the nonconforming status (for zoning purposes) of public or private clubs so that these clubs would be required to secure the special use permit which new clubs must obtain and be subject to the annual review condition.**

This measure was listed in the August 19, 2009, memo to City Council from City Manager Bowers and City Attorney Holec as a potential action for City Council to consider to address issues resulting from the concentration of public or private clubs in the downtown area.

The conditions which apply to a special use permit for public or private clubs were revised in 2006 and provided for the annual review of the special use permit to determine and ensure annual compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, nuisance and public safety regulations, and special use permit conditions of approval. The review is handled initially by the director of community development who provides a report to the Board of Adjustment. If the Board determines there is an issue of compliance, it can order a rehearing on the special use permit. If it determines that there is not an issue of compliance, then the special use permit continues and is reviewed again by the same process in a year. This review method simply provides a mechanism to annually review each club without being burdensome on the clubs that comply.

There are seven (7) clubs in the downtown area and two (2) clubs in other areas which are not subject to this review method since they were in existence prior to the establishment of the requirement to receive a special use permit. A club's legal non-conforming status could be amortized so that it would be subject to the requirement. The public or private club would still be allowed to operate, but it would be subject to the special use permitting process including the annual review method. An amortization period of at least one (1) year would be sufficient to impose this requirement.

The procedure to enact this zoning ordinance would involve City Council initiating the amendment and referring it to the Planning and Zoning Commission for review and recommendation. The Planning and Zoning Commission would conduct a public hearing and make a recommendation. City Council would be required to conduct a public hearing. After the public hearing, City Council could adopt the ordinance at a meeting.

**3. Enact an ordinance which establishes the procedure for the City to refuse to issue, as allowed by G.S. 105-113.71, a local license for the sale of beer and wine if the applicant committed any, or permitted any, act that would be grounds for suspension or revocation of its ABC permit under G.S. 18B-104. (Chapel Hill, Wilmington)**

This measure was listed in the August 19, 2009, memo to City Council from City Manager Bowers and City Attorney Holec as a potential action for City Council to consider to address issues resulting from the concentration of public or private clubs in the downtown area.

North Carolina General Statute 18B-901 provides that all ABC permits are issued by the North Carolina Alcoholic Beverage Control Commission. G.S. 18B-901(d) states the Commission has the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit and has the authority to determine the suitability of a location. To be a suitable place, the establishment must be in compliance with all building and fire codes. Additionally, G.S. 18B-901(c) lists other factors which the Commission is to consider in determining whether the applicant and the location are suitable. These factors are to be considered (but are not mandated to be followed) by the Commission in making its determination. The City has the opportunity to comment on the applicant and the location prior to the ABC Commission making its determination.

Although the ABC Commission has the sole authority to issue an ABC retail permit, G.S. 105-113.71 authorizes City Council to refuse to issue a local license for the retail sale of beer and wine if City Council finds, after notice and hearing, that there are grounds for suspension or revocation of the permit under G.S. 18B-104. Grounds for suspension or revocation include any violation of any statute in Chapter 18B or Article 2C of Chapter 105 or the Rules issued by the ABC Commission pursuant to the provisions of Chapter 18B. Only local licenses relating to retail sale of beer and wine are included in this authority since these are the only local retail licenses relating to alcoholic beverages which the City is statutorily authorized to issue. Additionally, this statute authorizes City Council to refuse to issue the annual license only. This statute does not authorize City Council to

revoke or suspend a license after issuance. G.S. 18B-113.70(b) provides that the annual licenses issued are for the period from May 1 to April 30.

The Town of Chapel Hill has adopted an ordinance which sets forth the procedure to implement this authority. Although Chapel Hill has not used this authority to refuse to issue a license, the existence of the ordinance and the fact that it may be utilized has likely resulted in some applications not being submitted when an establishment has not been able to comply with ABC laws.

The procedure to enact this ordinance would involve City Council requesting that it be drafted and scheduled for its consideration at a City Council meeting. There is no public hearing required. City Council could adopt the ordinance at a meeting.

**4. Enact an ordinance which requires that public or private clubs have a certain percentage of their building front comprised of non-opaque material so as to open up the establishment**

This measure was listed in the August 19, 2009, memo to City Council from City Manager Bowers and City Attorney Holec as a potential action for City Council to consider to address resulting from the concentration of public or private clubs in the downtown area.

Many of the buildings where public or private clubs are located have little or no windows located at the front of the building. Requiring these establishments to have a certain percentage of non-opaque material at their building front would open up the establishment. A more open establishment would be a deterrent to bad behavior and also would be beneficial to the overall appearance of the areas where these clubs are located, particularly the downtown area. The ability of visitors to “see and be seen” is one of the key aspects of personal safety in an urban setting. Visitors to the downtown area are more likely to feel secure when interior activities can be recognized and when lighting is emanating from both the buildings and the streets. An active, well lit environment where there are many “eyes on the street and on the establishment” from both inside and outside the building would promote safety. There would need to be a phase-in period for an establishment to meet such a requirement since for some buildings, this may involve some building renovations. This ordinance could apply to all businesses whether pre-existing or not. The authority for this ordinance is the City’s general ordinance making power authorized by G.S. 160A-174. Any such ordinance would need to apply to public or private clubs whether or not alcoholic beverages are sold.

The City currently has a similar requirement for pool halls.

The procedure to enact this ordinance would involve City Council requesting that it be drafted and scheduled for its consideration at a City Council meeting. There is no public hearing required. City Council could adopt the ordinance at a meeting.

**5. Pursue bill through NC legislature to allow Greenville Police to assist Pitt County ABC officers with enforcement of ABC laws. Continue multi-agency enforcement initiatives with GPD, Pitt County ABC and Greenville Fire Rescue fire marshal. Enforce underage alcohol violations on alcohol establishments as well as underage individuals.**

This measure was listed as a potential legislative initiative for the 2011 Session of the North Carolina General Assembly in the agenda material for the February 10, 2011, meeting of City Council. It also is a component of a potential action listed in the August 19, 2009, memo to City Council from City Manager Bowers and City Attorney Holec for City Council to consider to address issues resulting from the concentration of public or private clubs in the downtown area.

North Carolina General Statute 18B-1008 authorizes the North Carolina Alcoholic Beverage Control Commission to establish Rules relating to ABC permits. These rules are contained in the North Carolina Administrative Code. The rules establish mandatory requirements for private clubs and restaurants in connection with the sale of alcoholic beverages. Article 5 of Chapter 18B provides that Alcohol Law Enforcement agents (State of North Carolina law enforcement officers) and local ABC officers (Pitt County ABC Board law enforcement officers) have the authority to enforce the ABC laws including the Rules established by the ABC Commission relating to ABC permits. City law enforcement officers do not have the authority to enforce the Rules established by the ABC Commission relating to ABC permits. Additionally, City law enforcement officers do not have the authority, in order to procure evidence of violation of ABC laws, to investigate the operation of each licensed premises for which an ABC permit has been issued, to make inspections that include the viewing of the entire premises and to examine the books and records of the permittee unless the City has a contract with the local ABC Board to assist in the enforcement of the ABC laws. If City law enforcement officers had this authority, there would be additional resources available to enforce these Rules.

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.

G.S. 18B- 501(f) provides that “instead of hiring local ABC officers,” a local ABC board may contract with a local police department for the enforcement of ABC laws and, when such a contract exists, the officers of the police department have the same authority to inspect as local ABC officers. Since the Pitt County ABC Board has hired local ABC officers, an amendment to this statute or a local act would be necessary for this arrangement to be permissible by adding the language “or in addition to hiring local ABC



officers”. This option would be dependent upon the amendment or local act being enacted and the Pitt County ABC Board agreeing to enter into the contract. The Pitt County ABC Board has previously declined entering into a contract with the City to allow City officers to enforce ABC laws.

The Mecklenburg County ABC Board has such a local act and such a contract. As a result of this, the City of Charlotte has 13 law enforcement officers operating pursuant to the contract with ABC enforcement authority. This is considered as being effective at placing resources where the most serious problems are located. The Greenville Police would be interested in pursuing a similar arrangement with the Pitt County ABC Board to use existing officers to assist in enforcing the State alcoholic beverage laws.

An additional provision to consider for the amendment or local act would involve authorizing the City to designate one or more officers to enforce the ABC laws when the City does not have a contract with the local ABC Board. The designated officers would be required to receive the same training as local ABC Officers and be certified by the local ABC chief officer as having been trained. Additionally, to ensure accountability, enforcement reports would be required to be filed with the local ABC Board. Such a provision was included in the 2009 version of the ABC reform law recommended by a study committee. But, this provision was deleted from the bill prior to it being enacted.

The procedure for pursuing this bill would involve City Council adopting a resolution seeking its enactment and requesting the City’s local legislative delegation to the North Carolina General Assembly to enact the legislation. During the 2012 Session of the General Assembly, there are limits on the types of bills which may be considered since it is a short session. So, this may not be able to be considered until the 2013 Session.

Multi-agency enforcement initiatives addressing a wide variety of activity – including enforcement of ABC laws – are common practice among the Greenville Police Department and other enforcement agencies. Upcoming and recent activities specifically addressing alcohol law enforcement include a scheduled joint ABC-ALE-GPD enforcement effort in the downtown area in late August, ongoing facility inspections by Greenville Fire Department personnel, and future planned covert operations.

**6. 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.**

This measure was approved by City Council as a legislative initiative for the 2011 Session of the North Carolina General Assembly. It was listed as a potential legislative initiative for the 2011 Session of the North Carolina General Assembly in the agenda material for the February 10, 2011, meeting of City Council. It also is a component of a potential action listed in the August 19, 2009, memo to City Council from City Manager Bowers and City Attorney Holec for City Council to consider to address issues resulting from the concentration of public or private clubs in the downtown area.

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 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. It is equitable to fairly apportion the expense borne by the City of Greenville to the establishments causing the need for the expenditure.

Currently, the authorized City license tax on establishments having ABC permits is limited. North Carolina General Statute 105-113.77 requires that an annual license is to be obtained from the City, for a stated annual tax amount, by a person holding the following retail ABC permits as follows:

ABC Permit	Current City Tax for Corresponding License
On-premises malt beverage.....	\$15.00
Off-premises malt beverage.....	5.00
On-premises unfortified wine, on-premises fortified wine, or both.....	15.00
Off-premises unfortified wine, off-premises fortified wine, or both.....	10.00

The tax stated above is the tax for the first license issued to a person. The tax for each additional license of the same type issued to that person for the same year is one hundred ten percent (110%) of the base license tax, that increase to apply progressively for each additional license. Additionally, North Carolina General Statute 105-113.79 provides that the City may require a city malt beverage wholesaler or city wine wholesaler business located in the city to obtain a license for an annual tax amount of not more than \$37.50. North Carolina General Statute 105-113.70(d) prohibits the City from requiring any license for activities related to the sale of alcoholic beverages other than these licenses.

Senator Clark Jenkins filed Senate Bill 274 during the 2011 Session of the North Carolina General Assembly which provides the authority to 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. The bill was initially referred to the Senate Committee on Rules and Operation of the Senate. The bill was later referred to the Senate Finance Committee. The Senate Finance Committee discussed the bill but no action was taken.

There was a concern raised that this bill may violate a North Carolina Constitutional provision that prohibits local acts relating to trade. However, there is case law to support that a local act authorizing a city to charge a tax or fee is not considered a local act regulating trade.

The procedure for pursuing this bill would involve City Council adopting a resolution seeking its enactment and requesting the City's local legislative delegation to the North Carolina General Assembly to enact the legislation. During the 2012 Session of the General Assembly, there are limits on the types of bills which may be considered since it is a short session. So, this may not be able to be considered until the 2013 Session.

7. **City to provide input on alcohol permit applications based on ABC-related safety and crime problems. Wilmington's City Manager set up a committee to handle this and Gainesville based their recommendation on the number of incidents.**

The City Manager has been designated by the City Council as the official to provide City approval or disapproval to the proposed issuance of alcohol permits for businesses located in the City. The City Manager has established a procedure that requires the Police Department, Fire-Rescue Department, Planning Division, and Building Inspection Division to review and comment on each alcohol sales application. After these reviews, the City Manager provides the City's advisory comments to the North Carolina ABC Board.

8. **Form alliances or working groups with other cities and universities to convince the legislature to modify or enact laws that would help us solve our problems.**

The City Council requested that the North Carolina League of Municipalities include in its 2011 legislative priorities a request that cities be given the authority to levy a tax or fee on the sale of alcoholic beverages with the proceeds being dedicated for law enforcement purposes. The City Manager contacted the City of Wilmington seeking support for Senate Bill 274 (referenced in item 6 above) to provide the City of Greenville the authority 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 Wilmington endorsed this legislation and requested that the New Hanover County legislative delegation support Senate Bill 274 and include the City of Wilmington in the provisions of the law.

9. **Accept ECU Criminal Justice proposal to complete a new community survey. (Approved by Special Task Force on Public Safety on 2/24/11.)**

The Greenville Police Department has contracted with the ECU College of Human Ecology, Department of Criminal Justice to conduct a city-wide survey on community fear of crime. The survey will be conducted during the fall 2011 semester with results anticipated in early 2012.

10. **The task force supports the work of Dr. Stephen K. Straus, PhD. and Developmental Associates (his company) to facilitate training for the Greenville Police Department with input from the community. The three-part training program is designed to strengthen relationships and enhance police-community partnerships which are vital to effective community-oriented policing programs.**

Two training programs specifically designed for the City of Greenville have been developed by Developmental Associates. The Police Program on Community Partnerships is designed specifically for Police Department employees and will be conducted in six separate sessions with approximately thirty employees attending each session. The Police and Community Partnership Program will be presented in three sessions with twenty employees and ten citizens attending each session. Members of City Council have been

invited to participate in the Police and Community Partnership Program. Sessions have been scheduled and will be presented in September 2011.

**11. Establish mini sub police stations in our high crime apartment complexes. Establish a Police coordinator for downtown. (Huntington, WV)**

The Greenville Police Department currently has two substations. Upfitting additional facilities to meet ADA and operational requirements is cost prohibitive in the current fiscal year. Additional research is needed to better define “mini-substations,” associated costs, staffing, and performance expectations. The Department also plans to utilize the new mobile command post in various neighborhoods as a mini substation. Regarding a Police Downtown Coordinator, this discussion will take place with the downtown bar owners and Uptown Greenville.

**12. Develop “responsible bar owner” guidelines and certification program to be managed by Uptown Greenville with input from City, ECU and Greenville Police.**

Any additional mandatory requirements governing the operation of downtown businesses in a manner they perceive as overly restrictive, inequitable, or revenue restrictive will be strongly opposed by those businesses. Also, any such program should not be restricted to the downtown area but should be applicable to all affected businesses. Programs and training, both voluntary and mandatory, are already in place. Pitt County ABC officers will be offering training in recognizing fake ID cards in conjunction with stricter enforcement of that type of violation. Responsible Alcohol Sales Education (RASE) training is also offered. While not yet mandatory, both training sessions are strongly encouraged.

**13. Establish a group to meet once a month to discuss downtown issues, including communication and unrestricted access into clubs for Police. The group should include Greenville Police, DART (downtown area restaurant and tavern owners), Uptown Greenville and ECU. Best practices like “Other Place” membership system or ID readers could be developed and self-imposed or incorporated into the “responsible bar owner” program and/or permit application process. (Portland, OR) Established dress codes and elimination of “below cost” drinks should be part of this program as well. The COPS document entitled, “Assaults in and Around Bars, 2nd Ed” is a comprehensive reference that can provide excellent guidance.**

The Greenville Police Department currently meets regularly with downtown bar and club owners. These meetings are generally held quarterly. The most recent meeting was August 10, 2011. Participants in that meeting included GPD and GFR personnel, Pitt County ABC personnel, and downtown bar and club owners. At that meeting, the option of meeting monthly was presented for discussion. The consensus opinion of the business owners was that monthly meetings were unnecessary, meeting quarterly was sufficient, and interim meetings could easily be scheduled if needed. An email and invitation list for those meetings is in place. The next meeting is scheduled for October 10, 2011.

**14. Consider enacting a chronic nuisance ordinance to enable city officials to address repeated complaints against bars and private clubs that have 3 calls for service in 30 days. (Huntington, WV)**

This measure was identified by the survey conducted by the Task Force about the tactics other cities, comparable in size and other characteristics to Greenville, were using to manage downtown/bar issues, improve high crime areas, and reduce crime rates. The survey response from Huntington, WV, indicated that it has a Chronic Nuisance Property Ordinance which addresses repeated complaints against bars and private clubs. Its Chronic Nuisance Property Ordinance provides that property is considered a chronic nuisance property where 3 or more nuisance activities have occurred on the property within 30 days, where 3 or more nuisance activities have occurred within 200 feet of the property by a person associated with the property where a search warrant was executed based upon a court determination that controlled substance or related offenses have occurred on the property within the previous 30 days (with a determination by the Chief of Police that the warrant was based on repeated nuisance activities on the property), or where repeated nuisances have occurred. Nuisance activities, as defined by the ordinance, include such matters as alcohol offenses, public indecency, larceny, damage to property, discharge/attempted discharge of a firearm, controlled substance offenses, unlawful operation of sound equipment, and other specified offenses. The ordinance provides for notice to the property owner, opportunity for the property owner to abate the nuisance, and, if not abated, the possibility of legal action to close the property and impose additional civil penalties. The Huntington, WV, ordinance applies to all properties, not only bars and clubs.

As applied to public or private clubs, the ordinance provides a mechanism to address a club which has a number of violations occurring within a 30-day period. However, there are concerns as to its legality under North Carolina law. The North Carolina Court of Appeals has ruled that if the primary purposes for which a property was used were legitimate, then a nuisance action for forfeiture or closure cannot occur under the North Carolina Statute which provides for a nuisance action (NCGS §19-1). Additionally, North Carolina courts have specifically held that just a few incidents over a period of time would not be sufficient to satisfy the burden of establishing the location was a nuisance under the North Carolina statute which provides for nuisance actions (NCGS §19-1).

The procedure to enact this ordinance would involve City Council requesting that it be drafted and scheduled for its consideration at a City Council meeting. There is no public hearing required. City Council could adopt the ordinance at a meeting.

**15. Engage citizens, news media and ECU students in community-oriented policing program through education and marketing of crime prevention techniques and crime and suspicious activity reporting, as well as the opportunities available to participate in neighborhood watch, mentoring youth, and assisting with available youth and family programs. Partner with ECU to implement a crime prevention program for**

**the entire city that is similar to the “See Something, Say Something” program in New York City.**

The Greenville Police Crime Prevention Unit recently began the “Speak Up, Stop Crime” initiative. The concept was introduced at the July 21, 2011 community meeting held in West Greenville. Program brochures have been developed and distribution is ongoing. The program encourages citizens and Community Watch groups to report suspicious activity in their communities and neighborhoods. The Department has other crime prevention efforts in place in addition to this initiative. Through the Police Athletic League, the Department works with youth and their parents to instill proper values and anti-crime philosophies. Also, Patrol Bureau and Code Enforcement personnel have historically partnered with ECU and others to distribute crime prevention and “good neighbor” information to returning students through door-to-door contact at student housing apartment complexes and neighborhoods.

- 16. GPD should continue their efforts to revitalize all neighborhood watch groups and reach out to all citizens. Citizens must also work to forge strong relationships with police officers. (See Neighborhood Watch Report in Attachment E.)**

There are currently 63 Community Watch organizations listed as having been formed in the City of Greenville. Of these, 28 are considered active and regularly communicate with the Crime Prevention Unit. The Police Department works diligently within neighborhoods to establish new programs. However, the Community Watch program is based on the basic philosophy that it is not a law enforcement driven program but is a community program supported by law enforcement. As such, the Police Department continues to offer support and to participate in individual programs as requested, but sustainability of watch groups depends heavily on that community participation and involvement.

- 17. In addition to neighborhood watch group meetings, GPD should meet monthly with neighborhood associations or a “Neighborhood Institute” similar to the group used in Huntington, WV to help connect the neighborhoods with the police department.**

The Police Community Relations Committee (PCRC) was established in 1996 with the goal: “To serve as liaison between community and police over concerns. To serve as advocate for programs, ideas, and methods to improve relationships between the community and Police Department.” In spite of minimal community involvement, the PCRC continues to meet monthly at various locations throughout the City. Upon request, Greenville Police Department personnel make presentations on various topics of interest at the monthly PCRC meetings.

The Department’s Area Policing Plan and patrol district assignments are designed to integrate officers into the communities they serve as well as helping connect neighborhoods with the Department. Area supervisors and officers are encouraged to attend neighborhood association meetings within their assigned areas of responsibility. Area supervisors, their designated areas, and contact information are available through the Department’s Webpage and by calling or emailing the Department.

The Department is in the process of expanding efforts to further engage the community. Quarterly community outreach events will be scheduled with different neighborhoods and communities selected each quarter. These events will be of a social nature and may include a variety of activities including cook-outs, events/activities for kids, presentations, or other items of interest.

- 18. The City of Greenville and Pitt County should adopt a goal of reducing the number of juveniles entering the justice system through expanding community partnerships. (See Youth Issues report in Attachment F.) A group of community partners should be established to help assess all City and County youth and family issues and programs and identify best practices and improvements to help achieve this goal. Membership in the group should include public, private, faithbased and citizen representatives. As part of this evaluation, develop a 5-year plan that engages these youth and family service programs in helping to reduce youth and family crime as has been done in Raleigh, NC.**

The Greenville Police Department is already very active in programs designed to reduce juvenile crime and delinquency. The Department sponsors or hosts nine separate programs, many of which are multi-faceted, with the specific goals of preventing or reducing juvenile crime, provide opportunities for youth, and enhancing relationships between youth, the community, and the Police Department. The Department is an active participant in at least five additional programs with the same goals. These programs are collaborative efforts between Pitt County Schools and the Mediation Center of North Carolina. The development of a five- year plan should be explored to determine interest from stakeholders. The Greenville Police Department Special Victims Unit conducts an annual review and evaluation of juvenile crime prevention programs to determine continued need, effectiveness, and recommendations for improvement.

- 19. Market a new community image through videos of citizens talking about the positive aspects of living in Greenville and put on website and GTV9. Continue to expand family and youth opportunities in the community such as festivals, community unity events and venues like a Science Center.**

The Assistant City Manager, Communications Manager/PIO, and Community Development Department are working with community partners to develop a brand, which will serve as the basis of a marketing campaign and an emphasis on the community's image.

Assistant City Manager will continue to work with the Recreation and Parks, Public Works, Police, and Community Development Departments and the Greenville Bicycle and Pedestrian Commission as well as other organizations, to continue exploring opportunities to expand family and youth activities.

**20. Encourage the continued effort of the GPD to increase the number of participants in the Crime Free Rental Housing Program.**

The Greenville Police Department continues to encourage and facilitate participation in this voluntary program. A second training seminar is tentatively scheduled for September 2011. The Police Department will present a report to the City Council in September on the status of the voluntary Crime Free Rental Housing Program.

**21. Continue strategic camera installations and lighting improvements to increase consistency of lighting to recognized standards.**

The City of Greenville's use of cameras in public spaces for security has expanded rapidly in a very short period of time. Continued growth of a City-wide security camera system is expected and must be done in an organized and efficient manner involving several City departments. Successful expansion of the security camera program is dependent on the expansion of the City's fiber optic infrastructure. Likewise, continued improvement in lighting is dependent upon a collaborative effort. Both programs will have budgetary concerns. A multi-disciplinary team consisting of key individuals from the GPD, IT, Public Works, and GUC has been developed to insure an organized approach to these needs.

**22. ECU should establish a non-alcohol entertainment venue and a mandatory safety training program for students.**

The report of the City of Greenville/East Carolina University Task Force to Study Student Related Alcohol Issues in 2008 recommended the establishment of an alcohol-free entertainment facility in Uptown Greenville. The City Council could request that ECU again consider opening such an establishment. The City Council could write a letter to the Chancellor of East Carolina University urging ECU to provide a mandatory safety training program for students.





# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Possible modifications to sign regulations

**Explanation:** Council Member Max Joyner requested on May 31, 2011, that a report on the sign regulations be placed on the August City Council meeting agenda. As a result of this request, Planning Division staff developed a report (attached) on the City's sign regulations and presented the report to the City Council at the August 8, 2011, meeting.

Following staff's presentation, Council Members asked a variety of questions related to the sign regulations, and specifically about temporary signs and flags. Following this discussion, City Council directed staff to develop options for possible modifications to the sign regulations for review. The following is an initial list of such possible modifications. It should be noted that any proposed text amendment must be reviewed by the Planning and Zoning Commission prior to City Council's consideration.

As a reminder, the City of Greenville's standards for regulating signs are located in Article N of the Zoning Ordinance (attached) and are typically referred to as the City's sign regulations. The sign regulations attempt to balance the rights and needs of businesses and other entities to advertise and promote themselves to the public with the need to maintain public safety and the aesthetic quality of the community. They are also considered comprehensive in that they include minimum standards relative to the construction, type, size, height, number, location, illumination, and maintenance of all signs within the City's planning and zoning jurisdiction. A survey of other North Carolina cities' temporary and flag standards is attached.

## **Possible Modifications to Sign Regulations**

**1. Temporary Signs.** These signs are currently permitted at a rate of one per lot, are limited to six square feet in area, and are permitted continuously (365 days per year).

Possible Modification 1: Eliminate the use of temporary signs.

**2. Flags.** Flags, either with or without commercial messages, are permitted so long as each flag does not exceed 100 square feet in area. There is no limitation to the number of flags that can be erected per lot or business. "Wind blades" are not considered flags and are not permitted.

Possible Modification 2: Allow "wind blades", but limit the number permitted per lot or business.

Possible Modification 3a: Limit the number of flags with commercial messages per lot or business.

Possible Modification 3b: Eliminate the use of flags with commercial messages.

**3. Education.** The Code Enforcement Division distributes a brochure outlining the standards for temporary/permit exempt signs to individuals in the field. The Planning Division distributes materials outlining the standards for permanent signs to new businesses when they apply for a business license.

Possible Modification 4: Develop a unified "sign regulations brochure" and distribute information to all business license holders during annual renewal process.

Possible Modification 5: Require all businesses engaged in the production of signs to confirm in writing that they have received a copy of the City's sign regulations and have reviewed the same.

**Note:** Possible Modifications 4 and 5 are modifications proposed to various operating procedures; they do not involve substantive changes to the sign regulations.

**Fiscal Note:** No direct cost.

**Recommendation:** Provide staff with direction regarding desired modifications to the sign regulations.

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

**Attachments / click to download**

[Article N of Zoning Ordinance: Signs](#)

[Report on Sign Ordinance 2011\\_902351](#)

[Temporary Sign Survey August 2011\\_904867](#)

## **Temporary Sign and Flag Standards Survey**

### **Cary**

Temporary signs are prohibited in Cary except in conjunction with a grand opening event. These signs can be erected for 30 days and can be no larger than 32 square feet.

Flags that contain logos or advertisements are considered temporary signs and are not allowed. Ornamental flags can be erected on permanent poles at the rate of 3 poles per structure and two flags per pole not to exceed 25 foot in height. Flags are limited to 5'x8' or 40 square feet each in size.

### **Chapel Hill**

Temporary signs are prohibited in Chapel Hill except in conjunction with a grand opening event. These signs can be erected for 21 days and can be no larger than 32 square feet.

Chapel Hill only allows the use of local, state or federal flags.

### **Fayetteville**

Temporary signs are prohibited in Fayetteville except in conjunction with a grand opening event or going out of business sale. These signs can be erected for 30 days during each period. There is no size limit to the signs.

Flags are permitted at the rate of 5 per business and can only be business logo flags, local, state or federal flags.

### **Jacksonville**

Temporary signs are permitted in the following manner:

- In conjunction with a grand opening which allows no more than two signs per lot or business to be erected no longer than 3 consecutive days or 10 total days per 365 days.
- 1 sign per lot no larger than 4 square feet and erected no longer than 3 consecutive days or 10 total days per 365 days.

Commercial and non commercial flags are permitted as long as they remain in good physical condition. There is no limit to the size or quantity.

## **Raleigh**

Temporary signs are permitted in the following manner:

- Special Events: permitted for 30 days twice during the life of a business. Typically used in association with grand opening and going out of business events.
- Temporary Events: permitted for 20 days per calendar year

There is no limit to the size or amount of signs during these events.

Flags are considered wind blown signs and count toward the wall sign allowance of a business. They are limited to 20 in height or the height of the tallest structure, 35 square feet in size, 3 per business and they must be installed on permanent poles.

**ARTICLE N. SIGNS****SEC. 9-4-221 PURPOSE.**

It is the purpose of this article to allow certain signs of a residential and commercial nature in areas designated for those uses which will best provide and ensure:

- (A) The health, safety and general welfare of the people;
- (B) The adequate supply of light and air to adjacent properties;
- (C) Adequate and proportionate advertisement displays which promote and protect the economic vitality of the community;
- (D) That signage displayed adjacent to and visible from a public right-of-way will not distract or confuse the motoring public, thereby causing a public hazard; and
- (E) That the aesthetic quality of the city is maintained for the benefit of all the citizens of the City of Greenville, Pitt County, and the State of North Carolina as a whole.  
(Ord. No. 2337, § 1, passed 6-13-1991)

**SEC. 9-4-222 DEFINITIONS.**

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

*Banner.* A temporary sign display that is constructed of non-self-supporting or rigid material that is supported on two or more sides or corners by a rope, wire or other attachment that allows the display to move when struck by wind, and which is not a permanent sign or flag as a defined in this section. (See also definition of flag.)

*Building frontage.* The distance expressed in linear feet of the horizontal dimension of a building wall that is parallel and adjacent to one or more of the qualifying areas listed below:

- (a) A public or private street;
- (b) A common parking area in the case of a planned center;
- (c) A public parking area; or
- (d) A public access walkway.

*Flag.* A non-self-supporting fabric or film display that is supported on one side by a pole or mast, and is allowed to hang limp without vertical or horizontal structure and/or to move freely when struck by wind. A non-self-supporting fabric or film display that is supported on two or more sides or corners, or that is supported only along the top (highest) side shall constitute a banner. (See also definition of banner.)

*Freestanding sign.* A sign that is not directly and permanently attached to, supported by or erected on a building or other structure having a principal function other than support of the sign. To qualify as a permanent freestanding sign, displays made from non-self-supporting materials, including flex-face type signs, shall be permanently affixed to the sign support structure by a method approved by the Building Inspector, and the display (sign face) shall be enclosed and/or attached either by a two-inch or wider raised frame that supports the sign face, or within a two-inch or wider raised sign cabinet specifically designed for support of the sign.

*Lot frontage.* The distance expressed in linear feet of the common property boundary lines of a lot of record and a public or private street.

*Off-premises sign.* An outdoor advertising sign used for the purpose of displaying non-point-of-sale advertisement which directs attention to a business, establishment, profession, service, event, entertainment, condition or commodity that is located, manufactured, conducted, sold or otherwise offered or provided at an off-premises or off-site location other than the lot of record where the sign is constructed or displayed, except as further provided under section 9-4-236(B). Off-premises signs are hereby divided into two separate categories for purposes of regulation under section 9-4-236(B) as follows: temporary poster panel off-premises sign, and permanent panel off-premises sign. Any off-premises sign may be converted from either category to the other; provided, however, the use of any such sign shall be regulated in accordance with the category assignment of the sign at time of use.

*Permanent panel off-premises sign.* As used herein, a sign having a permanent frame and either a permanent or interchangeable solid display mounting surface upon which the sign's message or advertising content is permanently affixed to or painted directly on the display mounting surface. Specifically, any off-premises sign not meeting the definition of temporary poster panel off-premises sign below shall be construed as a "permanent panel off-premises sign."

*Temporary poster panel off-premises sign.* As used herein shall be defined as a sign having a permanent frame and solid display mounting surface upon which interchangeable messages, in the form of a temporary advertising poster composed of paper, film or other similar temporary non-self-supporting material, are mounted utilizing an adhesive or other similar temporary contact attachment method and which can be removed without disassembly of the display mounting surface. The term "temporary advertising poster" as used herein shall include only those displays which are printed, painted, drawn or otherwise created in complete content and form at a remote location and which are then adhered to the display mounting surface in single or multiple sheets. Mounting of poster displays to the display mounting surface by the use of nails, staples, screws, bolts, clips, hooks, cords, ropes, straps and similar methods shall be regarded as a permanent attachment as opposed to a temporary attachment and the poster displays shall not constitute a temporary advertising poster. All temporary advertising posters shall be open to the natural elements and shall not be enclosed or covered by plastic, glass or other permanent transparent material, enclosure or case.

*On-premises sign.* An advertising sign used for purposes of displaying point-of-sale advertisement which attracts attention to a business, establishment, profession, service, event, entertainment, condition or commodity that is manufactured, conducted, sold or otherwise offered or provided on the lot of record where the sign is constructed or displayed. "On-premises signs" are all signs not otherwise defined or regulated as off-premises signs.

*Owner occupant.* Any person, firm, corporation, lessee, receiver, trustee, guardian or personal representative holding legal title or legal right to occupy or carry on business in a structure or any facility, or any manager, operator or other person authorized to conduct business on behalf of an owner, and shall include each and every person who shall have title to or benefit of a sign, or for whose benefit any type sign is erected or maintained. Where there is more than one owner, as defined, their duties and obligations under this chapter are joint and several and shall include the responsibility for the sign.

*Planned center.* See Article B of this chapter.

*Roof sign.* A sign that is directly and permanently attached to and supported by the roof of a building or structure having a principal function other than support of the sign.

*Sign.* Any display device that is sufficiently visible and is located and designed to attract the attention of persons or to communicate any information to them.

*Subdivision directory sign.* A sign containing locational information relative to property owners, tenants, establishments or addresses within a platted subdivision. The sign shall contain no commercial advertisement.

*Temporary sign.* Any portable advertisement display that directs or attracts public attention to a specific event, product sold or service offered by the beneficiary of the display. Such signs include but are not limited to the following:

- (1) Signs made of paper, cloth, polyethylene film or other similar material;
- (2) Signs that are not permanently affixed to the ground or building surface in a manner approved by the Building Inspector;
- (3) Trailer signs;
- (4) Portable signs; and
- (5) Banners, flags or other similar devices.

*Wall sign.* A sign that is directly and permanently attached to and supported by a building or other structure having a principal function other than support of the sign. For purposes of this definition, poles, fences, storage tanks, bracing or other similar structures shall not be considered as a building or structure having a principal function other than support of the sign, and canopies and their support structures shall be considered as a building or structure having a principal function other than support of the sign.

- (1) To qualify as a permanent "wall sign," displays made from non-self-supporting materials, including flex-face type signs, shall be permanently affixed to the building or other structure by a method approved by the Building Inspector, and the display (sign face) shall be enclosed and/or attached:
  - (a) By a two-inch or wider raised frame that supports the sign face; or
  - (b) Within a two-inch or wider raised sign cabinet specifically designed for support of the sign.
- (2) The intent of subsections (1)(a) and (b) is to prohibit direct contact attachment of non-self-supporting material signs on a supporting wall or qualified structure and to require that the display (sign face) is separated from the supporting wall or qualified structure by not less than two inches.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 96-45, § 2, passed 6-13-1996; Ord. No. 02-63, §§ 1, 2, passed 6-13-2002; Ord. No. 06-76, § 1, passed 8-10-2006)

#### **SEC. 9-4-223 PERMITS REQUIRED.**

(A) No sign shall be erected upon any lot or attached to, suspended from or supported on a building or structure, nor shall any existing sign be enlarged, removed, relocated or materially repaired unless a zoning compliance and building permit for the same has been issued by the city. The permit shall be on forms supplied by the city and shall contain such information as necessary to ensure that the requirements and conditions of this article can be met.

(B) There shall be no sign permit issued unless the plans, specifications and intended use of the sign or part thereof conform in all respects to all applicable provisions of the Zoning Ordinance and the North Carolina State Building Code.  
(Ord. No. 2337, § 1, passed 6-13-1991)

#### **SEC. 9-4-224 GENERAL REQUIREMENTS FOR SIGNS.**

(A) All signs shall be constructed and maintained in accordance with this article and the North Carolina State Building Codes, as amended. In the event of conflicting provisions of this article and the North Carolina State Building Codes, the more restrictive shall apply.

(B) No sign shall be erected or allowed to remain erected that is structurally unsafe, hazardous and in the opinion of the Building Inspector, constitutes a danger to the public safety. If, in the opinion of the Building Inspector, any sign should become insecure or in danger of falling or otherwise unsafe, the owner thereof or the person or firm maintaining the same

shall, upon written notice from the Building Inspector, immediately secure the sign in a manner to be approved by the Building Inspector in conformity with the provisions of this article or remove the sign at the expense of the owner. Any freestanding sign that is not permanently attached to the ground in a manner approved by the Building Inspector shall be considered a danger to public safety.

(C) To ensure that signs are maintained in a safe and aesthetic manner, the following maintenance requirements must be observed for all signs visible from any public street.

- (1) No sign shall have more than 20% of its display surface area covered with disfigured, chipped, peeling, cracked, ripped or frayed material of any description for a period of more than 30 successive days.
- (2) No sign shall be allowed to remain with bent or broken display area(s), broken supports, loose appendages or struts, or allowed to stand more than 15 degrees away from the perpendicular for a period of more than 30 successive days.
- (3) No sign shall be allowed to have weeds, trees, vines or other vegetation growing upon it for a period of more than 30 successive days.
- (4) No indirect or internally illuminated sign shall be allowed with only partial illumination for a period of more than 30 successive days.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 99-4, § 1, passed 1-14-1999; Ord. No. 02-94, § 1, passed 9-12-2002)

(D) Signs and sign support structures that are abandoned for a period of 12 months shall be removed regardless of compliance with subsections (A), (B) and (C) above. For purposes of this section, when an establishment, building or use that is the beneficiary of any on-premises sign has been vacated and is otherwise no longer in operation, all signs and sign support structures associated with the vacated establishment, building or use shall be deemed to be abandoned.  
(Ord. No. 06-35, § 1, passed 4-13-2006)

#### **SEC. 9-4-225 NONCONFORMING SIGNS.**

(A) Any sign existing on the effective date (November 13, 1986) of this article that does not meet the requirements of this article or any amendment hereto shall be considered nonconforming. The sign shall be allowed to remain unless otherwise provided herein.

(B) No such nonconforming sign shall be altered, expanded or enlarged except as provided under subsection (C) below. Change in permanent copy shall be considered an alteration. For purposes of this section, permanent copy shall not include off-premises signs with changeable panels and reader board type signs with removable letters.

(C) Exemptions.

- (1) Any existing on-premises freestanding sign which is nonconforming with respect to a public street setback may be altered, provided all on-site freestanding sign(s) comply with all of the following conditions:
  - (a) Except as otherwise provided, the provisions of Article C of this chapter shall apply.
  - (b) The total number of all freestanding signs shall comply with applicable requirements.
  - (c) The sign surface area of all freestanding signs shall comply with applicable requirements.
  - (d) The altered freestanding sign height shall not be increased.
  - (e) The altered freestanding sign shall not exceed the maximum height for the district for a sign which is set back ten or more feet from the public street right-of-way.



- (f) There shall be no increase in any existing nonconforming situation or the creation of any new nonconforming situation.
- (2) Any existing off-premises sign which is nonconforming with respect to spacing, setback and/or construction may be altered, including replacement, provided the altered or replacement sign complies with all of the following conditions.
- (a) Except as otherwise provided, the provisions of Article C shall apply.
  - (b) No such sign shall be altered or replaced unless the sign is located within a zoning district that allows off-premises signs as a permitted use.
  - (c) There shall be no increase in any existing nonconforming situation or the creation of any new nonconforming situation.
  - (d) Except as further provided, a sign altered or replaced pursuant to this section shall comply with all applicable requirements including sign area, horizontal and vertical dimension, height, construction and landscaping as provided herein.
  - (e) There shall be no increase in sign size, including sign display area vertical or horizontal dimension, or in sign height.
  - (f) Prior to alteration or replacement of any such sign, the owner shall provide information, including photographic picture(s), scaled graphic depiction, site plan and any additional documentation as maybe required, to the Director of Community Development or his or her designee which illustrates and details the existing and proposed sign. No sign shall be altered or replaced prior to issuance of a zoning compliance and building permit.
  - (g) A building permit to replace the sign shall be obtained prior to the removal of the original sign. Construction of the replacement sign shall be initiated within the valid period of the original building permit. Failure to initiate construction of the sign within the valid permit period shall void any right to replace the sign under this section. Replacement of any sign initiated after the valid permit period shall be subject to all requirements in effect for location and construction of a new sign.

(D) Except as otherwise provided, no nonconforming sign shall be repaired when the repairs exceed 50% of the actual replacement value, as determined by the Building Inspector, except in conformance with this article.

(E) All temporary signs existing on the effective date (November 13, 1986) of this article which do not conform to the requirements set forth herein shall be removed within six months from the effective date of this article.

(F) Any sign erected after the effective date (November 13, 1986) of this article that does not conform to the requirements set forth herein shall be considered in violation of this article and must be removed at the owner's expense. (Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 95-137, § 1, passed 12-14-1995; Ord. No. 03-78, §§ 1-4, passed 8-14-2003; Ord. No. 06-75, § 1, passed 8-10-2006)

#### **SEC. 9-4-226 NONCONFORMING SIGN; ORDER TO REMEDY OR REMOVE.**

If any sign as defined by this article is erected or maintained in violation of this article, the owner of the sign shall be subject to the enforcement provisions of this article.  
(Ord. No. 2337, § 1, passed 6-13-1991)

**SEC. 9-4-227 SIGNS NOT REQUIRING PERMITS.**

The following signs shall not require a zoning compliance permit under this article; provided, however, any such signs shall comply with all other requirements of this article and chapter except that the signs shall not be included in or count towards the total allowable sign surface area or total number of allowable freestanding signs.

(A) Signs not exceeding three square feet in total sign surface area that are associated with residential use and that are not of a commercial nature. The sign surface area shall contain only property identification names or numbers or names of occupants or warnings to the public;

(B) Memorial plaques, cornerstones, historical tablets and similar devices;

(C) Signs erected by or on behalf of or pursuant to the authorization of a governmental body, including legal notices, identification and information signs and traffic directional or regulatory signs;

(D) On-premises flags, balloons, insignia of nonprofit or governmental organizations shall be allowed subject to all of the following requirements:

(1) Flags not exceeding 100 square feet in surface area may at the option of the owner contain company and/or organization logos, writing or other representations. The flags shall be maintained in accordance with section 9-4-224 of this article;

(2) Balloons, except as qualified and regulated under section 9-4-233(K) of this article, shall comply with all of the following requirements:

(a) Balloons shall be removed each day for the period extending between the hours of 10:00 p.m. and 8:00 a.m. unless otherwise provided herein;

(b) Balloons shall be maintained in accordance with section 9-4-224 of this article;

(c) No balloon shall exceed a maximum height of 125 feet above grade, as measured from the point of ground attachment to the highest balloon surface;

(d) Any balloon that exceeds 25 feet in height shall be set back from all street right-of-way lines and overhead public utility transmission and/or distribution lines a ground distance equal to the display height of the balloon plus 25 feet, as measured from the ground attachment point to the right-of-way line or to all ground points determined by a 90-degree vertical line extending from the closest overhead public utility transmission and/or distribution line as projected upon the ground, whichever is closer. The purpose of this requirement is to provide a 25-foot clear fall zone in the event of the balloons descent due to deflation or weather conditions;

(e) All balloons shall comply with the maximum height limitations set forth under Title 9, Chapter 3, Airport Zoning, of the Greenville City Code; and

(f) No individual balloon regulated under this section shall exceed a dimension of 20 feet as measured by diameter in the case of spherical balloons, or as measured by the greatest length in the case of oblong or tubular balloons, including blimps and the like.

(3) Insignia of nonprofit or governmental organizations shall not be displayed in connection with a commercial promotion or as an advertising device.

(E) Integral decorative or architectural features of buildings or works of art, provided the features or works of art do not contain advertisements, trademarks, moving parts or lights;

(F) Signs erected for the purpose of directing traffic on private property, identifying restrooms and parking area entrances or exits, provided the signs shall not exceed three square feet. The signs shall not contain any advertising, business name or logo;

(G) Signs painted on or otherwise permanently attached to current licensed motor vehicles that are not primarily used as signs; and

(H) Certain temporary signs:

- (1) Temporary signs erected in connection with elections or political campaigns. Such signs shall be subject to section 12-1-5 of the Greenville City Code.
- (2) Displays, including lighting, erected in connection with the observance of holidays. Such displays shall be removed within ten days following the holiday.
- (3) Construction site identification signs shall be removed within ten days after the issuance of the occupancy permit.
- (4) Signs attached temporarily to the interior of a building's window or glass door. Such signs may not cover more than 25% of the transparent surface area of the window or door to which they are attached. Signs painted on a window or glass door shall not be considered as temporary.
- (5) Temporary unilluminated real estate signs shall be subject to the following.
  - (a) Within any residential zoning district, the total sign display area of any real estate sign(s) erected on any lot shall not exceed 12 square feet, unless otherwise provided herein.
  - (b) Within any nonresidential zoning district, the total sign display area of any real estate sign(s) erected on any lot shall not exceed 50 square feet, unless otherwise provided herein.
  - (c) The total sign display area of all temporary real estate sign(s) located on any multi-family lot that contains not less than 20 attached dwelling units, in one or several structures, shall not exceed 50 square feet.
  - (d) For purposes of this section, the term "real estate sign" shall include both "for sale" and "lease occupancy advertising" signs.
  - (e) Real estate "for sale" signs erected under this section shall be removed within 14 days following the transfer of title of the lot, tract or unit associated with the signs.
  - (f) Real estate "lease occupancy advertising" signs erected under this section shall be removed within 14 days following the occupancy of all leasehold units associated with the signs.
  - (g) Temporary real estate signs that are attached to a building, fence, wall or other structure shall meet the requirements for a permanent wall sign included under section 9-4-234(B).
  - (h) Temporary real estate signs that are freestanding shall meet the requirements for a permanent freestanding sign included under section 9-4-234(C); provided, however, no freestanding real estate sign located in a residential district shall exceed four feet in height and no real estate sign located in a nonresidential district shall exceed eight feet in height.
- (6) Temporary signs not covered in the foregoing categories, so long as the signs meet the following restrictions.
  - (a) Not more than one sign may be located on any lot.
  - (b) No such sign shall exceed six square feet in area.

(c) The sign shall be restricted to nonresidential uses only.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 95-61, §§ 2-4, passed 6-8-1995; Ord. No. 99-4, § 2, passed 1-14-1999; Ord. No. 05-15, §§ 1-2, passed 3-10-2005; Ord. No. 06-76, § 2, passed 8-10-2006)

#### **SEC. 9-4-228 DETERMINING THE NUMBER OF SIGNS.**

(A) For purposes of this article, a sign shall be considered a single display device or surface containing organized or related elements, and which form a unit. Randomly displayed elements without organized or related relationship shall be considered individually in determining the total number of signs.

(B) A double-face or a multi-side sign shall be regarded as one sign.  
(Ord. No. 2337, § 1, passed 6-13-1991)

#### **SEC. 9-4-229 COMPUTATION OF SIGN SURFACE AREA.**

(A) The surface of a sign shall be computed by including the entire unit within a single, continuous, rectilinear perimeter forming 90-degree angles, enclosing the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework or bracing that is clearly incidental to the display itself, except as defined in subsection (B) of this section.

(B) With respect to three-dimensional or multi-sided signs (excluding double-face signs), the total sign surface area of all sides shall not exceed twice the maximum sign surface area as provided herein.

(C) With respect to decorative base or pylon mounted sign displays, the base or pylon shall not be utilized in the calculation of sign display area, provided the total area of the base or pylon does not exceed 50% of the total sign display surface area. In cases where the base or pylon area exceeds 50% of the total sign display area, the base or pylon shall be deemed to constitute a sign as defined herein and shall be utilized in the calculation of total sign area.  
(Ord. No. 2337, § 1, passed 6-13-1991)

#### **SEC. 9-4-230 TOTAL ALLOWABLE SIGN SURFACE AREA.**

(A) Unless otherwise provided in this article, the total surface area devoted to all signs on any building shall not exceed the maximum limitations set forth in this section.

(B) Temporary signs shall not be included in this calculation.

(C) Unless otherwise provided in this article, the maximum sign surface area permitted for any residential use shall be three square feet.

(D) Unless otherwise provided in this article, the maximum wall sign surface area permitted for any nonresidential use shall be determined as follows.

- (1) All wall signs for any one use shall not exceed one and one-half square feet of sign surface area per linear foot of building frontage occupied by such use.
- (2) If a building has frontage on more than one qualifying area, then the total sign surface area permitted on the building shall be the sum of the sign surface area allotments related to each frontage.
- (3) Signage may be allowed on any building wall, provided that the sign surface area of all signs located on a wall of a structure may not exceed 25% of the total surface area of the wall on which the signs are located. Wall

signage may be placed on a canopy, provided that the sides of a canopy shall be considered as a wall, and the signage on a canopy shall be subject to the 25% limitations of this section.

(E) The display area of wall signs painted on, affixed to or otherwise displayed on or through a facade window shall not exceed 25% of the window area.

(F) In cases where the provisions of this section will not allow signage of at least 50 square feet, then the requirements of this section shall be waived to the extent that a total wall sign allowance of 50 square feet or less, at the option of the owner, shall be permitted.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 94-156, §§ 10, 11, passed 12-8-1994; Ord. No. 95-29, § 9, passed 3-9-1995; Ord. No. 95-61, § 5, passed 6-8-1995)

#### **SEC. 9-4-231 NUMBER OF FREESTANDING SIGNS.**

(A) Except as authorized by this section, no lot or planned center may have more than one freestanding sign; provided, however, that if a lot or planned center is located on a corner and has at least 150 feet of frontage on each of the two intersecting public streets, then the lot or planned center may have not more than one freestanding sign along each side of the lot or planned center bordered by such streets.

(B) Additional frontage:

- (1) If a lot or planned center has 300 or more feet of frontage on a public street, then the lot or planned center may have not more than two freestanding signs along the street, provided the signs are spaced not less than 100 feet apart as measured from the center of the sign; or
- (2) If a lot or planned center has 500 or more feet of frontage on a single public street then the lot or planned center may have not more than three freestanding signs along the street, provided the signs are spaced not less than 100 feet apart as measured from the center of the sign.

(C) If a lot or planned center is bordered by two public streets that do not intersect (double frontage lot), then the lot or planned center may have not more than one freestanding sign on each public street, except as provided herein.  
(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 94-156, § 12, passed 12-8-1994; Ord. No. 95-61, §§ 6, 7, passed 6-8-1995)

#### **SEC. 9-4-232 FREESTANDING SIGN SURFACE AREA.**

(A) For purposes of this section, a side of a freestanding sign is any plane or flat surface area included in the calculation of the total sign surface area as provided herein.

(B) Unless otherwise provided, a single side of a freestanding sign may not exceed one-half square foot in surface area for every linear foot of frontage along the street toward which the sign is primarily oriented. However, in no case may a single side of a freestanding sign exceed 125 square feet in surface area.

(C) With respect to freestanding signs that have no discernible "sides," such as spheres or other shapes not composed of flat planes, no such freestanding signs may exceed one square foot in total surface area for every linear foot of lot frontage along the street toward which the sign is primarily oriented. However, in no case may the sign exceed 200 square feet in surface area.

(D) For purposes of this section, a single side of a double-face freestanding sign shall be considered as the total display surface for the calculation of sign area, provided the sides are separated no more than 30 inches at any point.  
(Ord. No. 2337, § 1, passed 6-13-1991)

**SEC. 9-4-233 SPECIAL PROVISIONS FOR CERTAIN SIGNS.****(A) Subdivision entrance and multi-family development signs.**

(1) *Freestanding signs.* Except as further provided under subsection (A)(2) below for the CD District, at any entrance to a subdivision or multi-family development there may be not more than two freestanding signs identifying the subdivision or development, and a single side of any such sign shall not exceed 50 square feet in total sign surface area. Freestanding identification signs shall be subject to section 9-4-234; provided, however, no such sign shall exceed a height of ten feet above the property grade. In cases where such signs are mounted on a decorative functional or nonfunctional wall, the wall area shall not be utilized to calculate total sign surface area. Such signage shall not be included in the calculation of or count towards the total sign surface area for the lot on which it is located.

**(2) CD District wall and freestanding signs.**

(a) Each multi-family development located within a CD (Downtown Commercial) District may have either:

1. Not more than two wall signs identifying the development;
2. Not more than two freestanding signs identifying the development; or
3. Not more than one freestanding sign and one wall sign identifying the development.

(b) No single side of a wall or freestanding sign allowed under this section shall exceed 50 square feet in total sign surface area. Freestanding and wall identification signs shall be subject to section 9-4-234; provided, however, no freestanding sign shall exceed a height of ten feet above the property grade. In cases where the signs are mounted on a decorative functional or nonfunctional wall, the wall area shall not be utilized to calculate total sign surface area. Such signage shall not be included in the calculation of or count towards the total sign surface area for the lot on which it is located.

(Ord. No. 09-17, passed 3-5-2009)

**(B) Grand opening signs.** Grand opening signs shall be subject to the following requirements and/or exemptions.

- (1) For purposes of this section, the term "grand opening" shall be construed as a singular event of limited (ten-day maximum) duration designed and intended to attract public attention to a recently established office, commercial, industrial or multi-family land use. Expansion of an existing principal use shall not be construed as a grand opening event. Addition of an accessory use shall not be construed as a grand opening event. No temporary use shall be construed as a grand opening event.
- (2) Such event shall commence not later than 60 days following any occupancy for use to qualify for a grand opening sign.
- (3) No grand opening sign(s) shall be displayed for more than ten total and continuous days.
- (4) No maximum sign surface area requirement shall be established for the sign(s).
- (5) Within a planned center each lot or unit occupied by a separate establishment may qualify for individual grand opening signs in accordance with this section.
- (6) Such sign(s) shall be exempt from the provisions of section 9-4-237 herein.

**(C) Planned center directory signs.** Such signs may be allowed, provided they do not exceed 20 square feet in display area, six feet in height and are located no closer than ten feet from the property line. There shall be no more than two directory signs within any planned center. The signs shall contain no commercial advertisement. The signage shall be allowed in addition to the maximum wall or freestanding sign allowance for the lot on which the signage is located.

- (D) *Nonresidential subdivision directory signs.* Shall be subject to all of the following standards and requirements.
- (1) There shall be no more than two directory signs within a subdivision.
  - (2) Such signs shall contain no commercial advertisement. For purposes of this section establishment names and trademarks shall not be construed as commercial advertisement.
  - (3) Such signs shall be located on private property and no portion of the sign shall extend beyond any property boundary line or street right-of-way line.
  - (4) No sign shall exceed a height of five feet unless the sign is set back not less than ten feet from the street right-of-way.
  - (5) Such signage may contain subdivision identification in addition to individual establishment identification panels.
  - (6) Where the sign contains any subdivision identification, that portion of the sign devoted to subdivision identification shall be subject to the maximum area and number of signs criteria set forth under subsection (A) of this section.
  - (7) Additional specific standards for commercial and/or office subdivisions are as follows:
    - (a) Maximum display area including subdivision identification shall not exceed 50 square feet.
    - (b) Maximum height shall be ten feet.
    - (c) Individual establishment identification panels shall not exceed four square feet in display area.
  - (8) Additional specific standards for industrial subdivisions are as follows:
    - (a) Maximum display area including subdivision identification shall not exceed 125 square feet.
    - (b) Maximum height shall be 25 feet.
    - (c) Individual establishment identification panels shall not exceed 16 square feet in display area.
  - (9) Such signage shall be allowed in addition to the maximum wall or freestanding sign allowance for the lot on which the signage is located.
  - (10) This section shall not apply to subdivisions which constitute a planned center. Planned center directory signage shall be in accordance with subsection (C) of this section.

(E) *Restaurant menu reader boards.* No restaurant menu reader board shall exceed 42 square feet in surface area or eight feet in height. Menu reader boards shall be set back not less than 20 feet from any property line. One menu reader board shall be allowed per each drive-through facility, and the display shall contain no commercial advertisement that can be viewed from any adjacent street right-of-way or property line. The signage shall not be included in the calculation of or count towards the total allowable sign surface area.

(Ord. No. 99-38, § 1, passed 4-8-1999)

(F) *Church signs.*

- (1) *Off-premises directional signs.* Church off-premises directional signs shall not exceed three square feet in area or six feet in height. Such signs shall be located on private property and shall be allowed in addition to the maximum wall or freestanding sign allowance for the lot on which the signage is located.

(2) *On-premises signs.*(a) *Wall signs.* Shall be in accordance with section 9-4-230 of this article.(b) *Freestanding signs.*

1. Shall not exceed 36 square feet in surface area except as further provided. The number, height and location of the sign(s) shall be in accordance with sections 9-4-231 and 9-4-234 of this article except as further provided.
2. When a lot qualifies for two or more freestanding signs along any one street, the owner may option to erect one 72-square foot sign in lieu of two 36-square foot signs. Within any residential zoning district, no freestanding sign which exceeds 36 square feet in surface area shall exceed ten feet in height.

(G) *Permitted nonresidential uses.* Except as otherwise provided, signs for permitted nonresidential uses, excluding home occupations, located in a residential zoning district may be allowed, provided the signs meet the following restrictions.

- (1) Signs shall not exceed 12 square feet in display surface area.
- (2) Signs shall not exceed five feet in height above the property grade in the case of a freestanding sign.
- (3) Signs shall not exceed one sign per lot.

(H) *Home occupations.*

- (1) Freestanding signs shall be prohibited.
- (2) Except as otherwise provided, wall signs shall be limited to two square feet of total sign display area.
- (3) Bed and breakfast inn signage shall be subject to the following standards: wall signs shall be limited to four square feet of total sign display area.

(I) *Open door and/or open window signs.* Any sign which can be viewed through an open doorway and/or open window from any point outside the building may be allowed subject to all of the following.

- (1) Such signage shall be included in the calculations of and count toward the total allowance of wall sign surface area.
- (2) Such signs shall be permanently attached to the building by manner of an approved rigid frame structure, by a solid metal chain or cable, or a combination thereof.
- (3) Such sign surface area shall be constructed of an approved rigid material or shall be bound on not less than two sides by a rigid frame which prohibits the signage from swaying loosely when struck by moving air.
- (4) All portions of the signs shall be set back inside the interior finished wall of the building.
- (5) All such signs shall not cover or obstruct more than 25% of the door or window opening.
- (6) The lowest part of the signs displayed through an open doorway shall be not less than eight feet above the doorway threshold if the signs are located within ten feet of the subject doorway.
- (7) Such signs shall be exempt from the wall sign projection standard set forth under section 9-4-234(B) of this article; provided, however, no vertical dimension of any the sign including supports shall exceed four feet.
- (8) Signs located on and/or beneath a canopy shall not be construed as open door and/or open window signs.



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- (9) Signs which are not designed to attract the attention of or convey a message to persons located outside the building and which are designed only to provide information or warnings to persons located inside the establishment are exempt from regulation under this section.

(J) *Temporary non-profit and governmental organization signs.* Temporary sign(s), including banners, erected in conjunction with a special event sponsored and conducted by a nonprofit or governmental organization shall be allowed subject to all of the following conditions.

- (1) It is the intention of this section that no such sign shall be displayed in conjunction with a commercial promotion or as an advertising device for a commercial establishment, product or service.
- (2) Not more than one on-premises and three off-premises signs shall be allowed in conjunction with any event. No sign shall be erected on any lot without the consent of the property owner.
- (3) No such sign shall exceed 30 square feet of sign surface area.
- (4) There shall be not more than one special event sign allowed on any lot.
- (5) The maximum frequency of any special event display shall not exceed one occurrence within any 12-month period and the maximum duration of the display shall not exceed seven days. For purposes of this section, the duration of each separate event display shall be measured in continuous days.
- (6) Each display shall contain the name and current phone number of the event sponsor and the sign permit number indelibly printed on the communication side/surface in one-inch or larger letters.
- (7) The sign shall be located completely on private property. No portion of the sign or its support structure shall be located on or across any public street right-of-way or private street easement.
- (8) The sign shall not be located within any sight distance triangle as defined in Title 6, Chapter 2 of the Greenville City Code or as provided by notation or description upon any map recorded pursuant to the subdivision regulations.
- (9) No such sign shall be suspended from or attached to any public utility pole, apparatus, structure or support/guy wire, any public or private traffic-control or directional sign, structure or device, or any tree or shrub located on public or private property.
- (10) No such sign shall be erected or maintained which obstructs any traffic-control sign or device or warning sign located on public or private property.
- (11) No such sign shall be erected on or across any recognized or improved pedestrian area, path, walkway or sidewalk, driveway, interior drive or parking lot drive aisle.
- (12) Any sign erected or maintained in conflict with this section shall be considered a nuisance and/or hazard to the public and shall be subject to immediate removal by the city at the expense of the sponsoring nonprofit organization and/or property owner in addition to other available remedies as provided by law.
- (13) Such sign(s) shall be exempt from section 9-4-237(G) herein.

(K) *Temporary on-premises special event spotlights and roof mounted inflatable balloons.* Except as otherwise provided herein, temporary special event spotlights and roof mounted inflatable balloons shall be allowed, subject to all of the following requirements.

- (1) *Spotlights.*
  - (a) Not more than one spotlight shall be displayed on any lot at any one time.

- (b) No spotlight shall be displayed for more than two consecutive days.
- (c) No lot shall display any spotlight(s) for more than 20 total days per calendar year.

(2) *Roof mounted inflatable balloons.*

- (a) Not more than one roof mounted inflatable balloon shall be displayed on any lot at any one time.
- (b) No roof mounted inflatable balloon shall be displayed for more than two consecutive days.
- (c) No lot shall display any roof mounted inflatable balloon(s) for more than 20 total days per calendar year.

(3) *Terms.*

- (a) For purposes of this section, the term "lot" shall be construed to include all contiguous parcels occupied by an establishment.
- (b) For purposes of this section, the term "roof mounted inflatable balloon" shall be construed to include only those balloons which meet all of the following requirements: are mounted onto the roof of a structure having a principal purpose other than the support of the balloon; are mounted on the roof of a qualified structure by means of a gravity dependent and/or direct contact attachment method; and are not tethered to the roof of a structure in a manner which allows the balloon to free-float above the surface of the roof.

(L) *Golf course signs.* Golf courses located within a residential district shall be subject to the following requirements:

- (1) Wall signage, including accessory use identification signage, shall not exceed 20 square feet in total sign surface area.
- (2) Golf course (principal use) freestanding signage shall be limited to one sign. The sign shall not exceed 20 square feet in total sign surface area and shall not exceed five feet in height.
- (3) No freestanding signage shall be permitted in conjunction with an accessory use, including but not limited to any dining facility and/or restaurant, snack bar, pro-shop, social club, tennis court or swimming facility.
- (4) Freestanding and wall signage shall be illuminated by indirect lighting only

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 95-53, § 1, passed 5-11-1998; Ord. No. 95-61, § 8, passed 6-8-1995; Ord. No. 96-29, § 1, passed 3-14-1996; Ord. No. 96-35, § 1, passed 5-9-1996; Ord. No. 96-73, § 1, passed 8-8-1996; Ord. No. 96-79, § 1, passed 8-8-1996; Ord. No. 96-91, § 1, passed 9-12-1996; Ord. No. 97-64, § 1, passed 6-12-1997; Ord. No. 99-4, §§ 3 and 4, passed 1-14-1999; Ord. No. 99-152, § 1, passed 12-9-1999; Ord. No. 05-15, § 3, passed 3-10-2005; Ord. No. 05-89, § 8, passed 8-11-2005; Ord. No. 07-11, § 5, passed 1-11-2007)

**SEC. 9-4-234 LOCATION AND HEIGHT REQUIREMENTS.**

(A) Except as further provided, no portion of any sign shall extend beyond any property boundary line of street right-of-way line.

(B) Additional wall sign standards.

- (1) No wall sign shall extend above the top of any exterior wall line of the building to which it is attached, except as provided under subsection (B)(2) below.
- (2) Wall signage may be permitted on a decorative roof structure (i.e., canopies, awnings and the like), provided the top of the signage does not extend above the decorative roof structure and does not extend more than five feet above the exterior wall to which the structure is attached.

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- (3) No wall sign shall project more than 12 inches from the building, except as provided under subsection (B)(4) and (5) below.
- (4) Except as further provided, wall signage may be located on a sign support frame provided the sign and support frame shall not project more than three total feet from the building and provided the depth of the sign, as measured perpendicular from the outside surface of the front face to the outside surface or plane of the rear (building side) of the sign, is not more than 12 inches.
  - (a) No wall sign, including any sign support frame, erected on a decorative roof structure (i.e., canopies, awning and the like) shall project more than 12 inches from the front (outside) edge of the decorative roof structure.
  - (b) When a wall sign is erected on a sign support frame and when the sign and support frame projects more than 12 total inches from the building, the message portion of the sign, including any letters and/or graphics, shall be parallel in orientation to the building wall.
  - (c) When a sign and/or support frame projects more than 12 inches from a building the lowest part of the sign, display shall be not less than eight feet above the adjacent finished ground surface elevation.
- (5) Wall projection signs.
  - (a) For purposes of this section, wall projection signs shall be any wall sign that projects more than 12 inches from the building and does not qualify under subsection (4).
  - (b) Wall projection signs shall be allowed only in the CD (downtown commercial) district and such signs shall be subject to compliance with all of the following requirements:
    1. Shall be permanently attached to an exterior wall of a building in a manner approved by the Building Inspector.
    2. Shall not be attached to the outside edge of a canopy or extend beyond any outside edge of a canopy.
    3. May project horizontally from the building wall not more than three feet, or two-thirds the distance from the building wall to the inside edge of the street curb line as located at the time of sign permit approval, whichever is less.
    4. The message portion of the sign, including any letters and/or graphics, shall be perpendicular in orientation to the building wall.
    5. The bottom edge of a projection wall sign shall be parallel to the finished floor of the building.
    6. There shall not be more than 12 inches between the sign display areas (faces) of a double-sided sign. Three-dimensional projection wall signs not composed of flat sign display surfaces shall not be permitted.
    7. Projection wall signs shall be located on private property, provided however, a projection wall sign may encroach into the street right-of-way in accordance with an encroachment agreement approved by the city, and where applicable, the State Department of Transportation.
    8. Buildings with two or more stories shall not have projecting signs located higher than the inside finished ceiling of the second story or 24 feet, as measured from the finished grade directly below the sign to the highest point of the sign, whichever is less.
    9. Not more than one projection wall sign shall be allowed per each individual principal use establishment.

10. Projection wall signs for individual principal use establishments located in a common building shall not be located closer than eight feet from any other projection wall sign located on the same building.
11. All projection wall signs for individual principal use establishments located on a common building façade shall be of equal dimension, including but not limited to, individual sign display area, width, height, horizontal projection. Sign height above grade may vary provided compliance with subsection (m) below.
12. Projection wall signs shall be considered part of the total wall sign allowance, provided however, no projecting wall sign shall exceed ten total square feet in sign display surface area. A single side of a double-face sign shall be utilized for the sign surface area calculation.
13. Minimum height of a projection wall sign, as measured from the finished grade directly below the sign to the lowest point of the sign, shall be not less than eight feet, except as further provided. Projection wall signs subject to street right-of-way encroachment agreement approval shall have a minimum height of not less than ten feet, or per encroachment agreement condition, whichever is greater.
14. If required, all right-of-way encroachment agreement(s) must be granted by the approval authority prior to sign permit application. A copy of any encroachment agreement and any conditions shall be attached to the sign permit application.

- (6) (a) To qualify as a permanent wall sign, displays made from non-self-supporting materials, including flex-face type signs, shall be permanently affixed to the building or other structure by a method approved by the Building Inspector, and the display (sign face) shall be enclosed and/or attached:
1. By a two-inch or wider raised frame that supports the sign face; or
  2. Within a two-inch or wider raised sign cabinet specifically designed for support of the sign.
- (b) The intent of subsections (B)(6)(a)1. and 2. is to prohibit direct contact attachment of non-self-supporting material signs on a supporting wall or qualified structure and to require that the display (sign face) is separated from the supporting wall or qualified structure by not less than two inches.

(C) No freestanding sign may exceed five feet in height above the average centerline grade of the public street toward which the sign is oriented, except as provided below:

- (1) Within any MI, MS, MO, MCG, MCH and/or CD Zoning District, no freestanding sign may exceed 15 feet in height above the average centerline grade of the public street toward which the sign is oriented, provided the sign is set back not less than ten feet from the right-of-way of the public street; or
- (2) Within any CDF, CG, CN, CH, IU, PIU, I, PI, OR and/or O Zoning District, no freestanding sign may exceed 25 feet in height above the average centerline grade of the public street toward which the sign is oriented, provided the sign is set back not less than ten feet from the right-of-way of the public street.

(D) No sign shall be erected, maintained, painted or drawn on any tree, rock, natural feature or utility pole. "Utility pole" shall include but not be limited to any traffic-control, lighting, power, telephone or other similar utility pole.

(E) No sign shall be erected or maintained so as to obstruct any fire escape or any window or door or opening used as a required means of egress or so as to prevent free passage from one part of a roof to any other part thereof. No sign shall be attached in any form, shape or manner to a fire escape or be placed in such a manner as to interfere with any opening required for ventilation.

(F) No sign shall be erected or maintained which simulates or closely resembles an official traffic-control or warning sign in such a manner as to, or could in any way, confuse or mislead the traffic.

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(G) No freestanding sign shall be permitted in sight distance areas as defined in Title 6, Chapter 2 of the Greenville City Code.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 97-85, §§ 1, 2, passed 8-14-1997; Ord. No. 98-34, § 1, passed 3-12-1998; Ord. No. 06-76, § 2, passed 8-10-2006; Ord. No. 10-44, §§ 1-4, 5-13-2010)

**SEC. 9-4-235 SIGN ILLUMINATION AND SIGNS CONTAINING LIGHTS; ELECTRONIC AND MECHANICAL INTERCHANGEABLE SIGN FACE COPY.**

(A) Unless otherwise prohibited by this article, signs may only be illuminated in accordance with this section.

- (1) Illumination, either internal or indirect, shall not be added to nonconforming signs.
- (2) No sign may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity or color, except signs indicating only time and/or date and/or temperature and except signs containing electronic and/or mechanical interchangeable sign face copy in accordance with subsection (B) below.
- (3) Indirect illuminated sign light shall be shielded so that only the face of the sign is illuminated and the light shall not shine directly into a public or private street travel way, drive or parking area or into a residential dwelling or premises.
- (4) No indirectly illuminated sign shall be constructed or maintained within 50 feet of any residential zone or dwelling unit in any zone.
- (5) No illuminated sign shall imitate any traffic-control sign or device or be located or utilized in any manner which may confuse or distract the motoring public.

(B) Unless otherwise provided by this article, signs may only contain electronic and/or mechanical interchangeable sign face copy in accordance with this section.

- (1) Electronic and/or mechanical interchangeable sign face copy shall not be added to nonconforming signs.
- (2) No electronic and/or mechanical interchangeable sign face copy shall be changed to include any new or different copy, color, intensity or graphic representation, more than one time in any 60-minute period. For purposes of this section, all wall and/or freestanding signage associated with any use or establishment shall be considered as a whole, and a change to any electronic and/or mechanical sign face copy shall prohibit any change to any other associated sign face copy until the expiration of the minimum 60-minute period required between changes as specified. The provisions of this subsection shall not apply to time and/or date and/or temperature displays.
- (3) Each allowed change of sign face copy shall be completed by one continuous action or movement and the total duration of such action or movement shall not exceed five total and continuous seconds.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 02-94, § 2, passed 9-12-2002)

**SEC. 9-4-236 OFF-PREMISES ADVERTISING SIGN REQUIREMENTS.**

(A) The following additional standards and regulations shall apply to all off-premises advertising signs.

- (1) *Off-premises advertising signs.* Off-premises advertising signs shall be permitted only within the CH, IU and I Zoning Districts or as provided herein.
- (2) *Compliance.* No such signs shall be altered, expanded, enlarged or replaced except in conformance with this section and section 9-4-225(C)(2).

9-218B

**Greenville - Building, Planning and Development Regulations**

## Zoning

- (3) *Removal of sign.* Where the premises or property upon which the sign is erected is changed to another zone other than CH, IU or I, the sign shall be removed within 90 days from the effective date of the change.
- (4) *Spacing.* The minimum spacing requirement between each off-premises advertising sign shall be 1,000 feet from the center of the sign.
- (5) *Size and height.*
  - (a) Such signs shall not measure more than 400 square feet of total sign area or display surface, and the display surface shall not be more than 12 feet in the vertical dimension nor greater than 40 feet in the horizontal. Copy extensions of 120 or less shall not be included in the calculation of total sign display surface area.
  - (b) A single side of a double face or V-type signs shall be regarded as the total display surface for purposes of calculating total sign surface area, provided the sides are separated by not more than 20 feet at any point.
  - (c) The top of the sign shall not exceed 35 feet in height (exclusive of copy extensions) as measured from the surface elevation of the ground or main roadway surface elevation nearest the sign, whichever is highest.
  - (d) The minimum vertical clear distance between the property grade and the bottom of the trim or other frame support shall be not less than 12 feet.
  - (e) All support structure(s) shall be painted in a neutral color to blend with the surrounding area.
- (6) *Setback.*
  - (a) The setback requirements shall be the same as set forth in the CH, IU or I Districts for the front yard, side yard and rear yard setbacks; provided, however, no sign shall be closer than ten feet to a side or rear property line.
  - (b) All off-premises advertising signs shall be set back at least 300 feet from the nearest edge of a zoning boundary which describes property zoned for residential purposes, including the R-6, R-6A, R-6S, R-6N, R-6MH, R-9, R-9S, R-15S, RA-20, OR, CDF, MR and MRS Zoning Districts.
  - (c) No off-premises signs shall be located closer than 100 feet to the intersection of two public streets.
  - (d) All setback requirements as set forth above shall be measured from the extreme outermost edge of the sign as projected upon the ground and measured from this ground point to the nearest property line or nearest zoning district.
- (7) *Construction.*
  - (a) All off-premises advertising signs shall be self-supporting single-pole structures erected on or set into and permanently attached to concrete foundations. The sign's structure, electrical system and other construction elements shall be designed and built according to the North Carolina State Building Code as evidenced by engineering drawings drawn to scale by a licensed engineer or architect. The signs shall be engineered to withstand a wind loading of 36 pounds per square feet.
  - (b) Off-premises advertising signs shall be located and constructed in such a way as to maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the North Carolina State Building Code and the National Electronic Code as incorporated therein; provided, that in no case shall an outdoor advertising sign be erected with any part closer than ten feet horizontally or vertically from any conductor or public utility guy wire.

(8) *Additional requirements.* The immediate premises shall be kept free from debris or undergrowth. A landscaping plan shall be approved by the Director of Community Development and shall be maintained on the immediate premises by the sign owner. The landscaping shall consist of ground cover, shrubs, trees or other permanent vegetation that will effectively screen the sign's base. For purposes of this article, the "immediate premises" shall be defined as an area surrounding the sign's structural support not less than ten feet in all directions from the base.

(9) *Off-premises signs.* Off-premises signs shall not be included in or count toward the total number of on-premises signs or the total sign surface area allocation calculation for on-premises signs.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 95-29, § 10, passed 3-9-1995; Ord. No. 97-85, §§ 1, 2, passed 8-14-1997; Ord. No. 02-63, § 3, passed 6-13-2002; Ord. No. 06-75, § 1, passed 8-10-2006)

(B) *Exemptions.* Any temporary poster panel off-premises sign may be utilized to advertise a business, establishment, profession, service, event, entertainment, condition or commodity that is located, manufactured, conducted, sold or otherwise offered or provided on the lot of record where the sign is constructed or displayed, provided all of the following:

- (1) Such temporary poster panel off-premises sign(s) are rental signs owned by a third party and leased to others for advertising as part of the third party's bona fide sign rental business;
- (2) Such temporary poster panel off-premises sign(s) are either conforming or legal (existing) nonconforming off-premises signs as regulated by this article; and
- (3) A zoning compliance permit for such use has been reviewed and approved for each separate location. The purpose of this section is to ensure that the subject sign structure and method of display is in compliance with applicable requirements. There is otherwise no limitation on the frequency or duration of any such display provided compliance with all the provisions of this article.

(Ord. No. 02-63, § 4, passed 6-13-2002; Ord. No. 03-78, § 5, passed 8-14-2003)

#### **SEC. 9-4-237 SIGNS THAT ARE NOT PERMITTED UNDER THE PROVISIONS OF THIS ARTICLE.**

Except as otherwise provided, the following signs are not permitted under the provisions of this article:

- (A) Kites or other similar devices;
- (B) Balloons, except as otherwise provided under section 9-4-227(D)(2) of this article;
- (C) Spotlights, except as otherwise provided under section 9-4-233(K)(1) of this article;
- (D) Flags that exceed 100 square feet in surface area which are displayed upon property that contain commercial use;
- (E) Temporary signs other than as specified under section 9-4-227 of this article;
- (F) Signs attached to radio or television towers or poles, including satellite dish transmission or reception devices;
- (G) Signs suspended between two structures or poles and supports by a wire, rope or similar device including banners, except as otherwise provided under section 9-4-233 of this article;
- (H) Roof signs, except as otherwise provided under section 9-4-233(K)(3) of this article;
- (I) Revolving signs;
- (J) Flashing signs, except as otherwise provided under section 9-4-235 of this article;
- (K) Strings or ribbons, tinsel, small flags and other similar devices; and



**Zoning**

(L) Pinwheels, windmills or other similar devices.  
(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 96-73, § 2, passed 8-8-1996; Ord. No. 99-4, § 5, passed 1-14-1999; Ord. No. 99-152, § 2, passed 12-9-1999)

**ARTICLE O. PARKING**

**SEC. 9-4-241 PURPOSE.**

- (A) (1) The purpose of these regulations is to ensure proper and uniform development of public and private parking and loading areas in the city and its extraterritorial areas; to relieve traffic congestion in the streets; and to minimize any detrimental effects of off-street parking areas on adjacent properties.
- (2) The purpose of these regulations is also to improve the visual quality of parking areas by making them more pleasant, attractive, and compatible with the surrounding environment; to ensure safe and efficient operation of parking areas by clearly defining and delineating potential circulation movements of motorists and pedestrians; and to improve air quality and encourage energy conservation by moderating the microclimate of parking lots.

(B) The requirements contained in these regulations shall be considered as minimum standards.

(C) The owner, developer or operator of any existing or proposed use shall evaluate anticipated needs to determine if they are greater than the minimum requirements herein specified.  
(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 2539, § 1, passed 11-12-1992)

**SEC. 9-4-242 OFF-STREET PARKING AND LOADING REQUIRED.**

No permit for new construction, expansion, development, occupancy or related activity shall be issued for any use unless the use is in accordance with the provisions of this article.

**SEC. 9-4-243 EXEMPTIONS.**

The provisions of this article shall not apply to the following uses:

(A) Nonresidential land uses within the CD District; or

(B) Any proposed or existing principal use regardless of district which meets all of the following conditions:

(1) Existing structure(s) cover 75 or more of the lot on which the existing or proposed use is located;

(2) No expansion of any structure is proposed; and

(3) The maximum number of off-street parking spaces permitted by conforming site layout are provided on the same lot as the principal use.

(Ord. No. 2337, § 1, passed 6-13-1991; Ord. No. 94-156, § 13, passed 12-8-1994)

**SEC. 9-4-244 PARKING PLAN REQUIRED.**

(A) A parking plan which conforms to the provisions of this article shall be submitted to the Director of Community Development for site plan review in accordance with the specific submission standards of the *Land Development Administration Manual* which is incorporated herein by reference.



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Report on standards for Dining and Entertainment Establishments

**Explanation:** At their August 22, 2011, meeting, the City Council voted to request that staff develop a report on the City's current standards for Dining and Entertainment Establishments (D&E's) . This request was initiated by Council Member Joyner who stated that he was specifically interested in amending the weekday time restrictions for amplified audio entertainment applicable to D&E's to differentiate between those establishments that are located within close proximity of existing single-family residences and single-family districts, and those that are located in commercial areas.

The attached report is intended to fulfill that request. The report includes background information including previous ordinance provisions related to D&E's, a summary of the City's existing standards, and an inventory of all such establishments approved by the City since the land use category was established in April 2009.

The specific issue raised by Council Member Joyner at the August 22, 2011, City Council meeting involves the weekday time restrictions for amplified audio entertainment applicable to D&E's. Specifically, D&E's are not permitted to have amplified audio entertainment, such as bands or karaoke, after 11 p.m. on Monday, Tuesday, Wednesday and Thursday (classified as Weekdays) or after 2 a.m. Friday and Saturday and 11 p.m. on Sundays (classified as Weekends). The question raised by Council Member Joyner is whether it is appropriate for D&E's located in completely commercial areas, not within a set distance of existing single-family residences and single-family districts, to have expanded hours for amplified audio entertainment on weekdays.

Separation from conforming single-family residences and single-family zoning districts is already a requirement for public or private clubs. This separation is intended to minimize adverse impacts that such land uses can have on residences. One possible way to structure such an amendment would be to utilize a similar separation standard to determine whether existing D&E's that are

in a non-residential setting qualify for extended hours for amplified audio entertainment. This approach would offer neighborhoods the same level of protection from amplified audio entertainment from D&E's as they currently have from public or private clubs. Those D&E's that do not meet the separation requirement would continue to operate under the current standards. The definition and other applicable standards for D&E's would remain the same, thus they would all continue to have to meet the food sales requirement (must be in excess of 30% of gross sales receipts for the establishment during any month).

**Fiscal Note:** No fiscal impact is anticipated.

**Recommendation:** Consider initiating a Zoning Ordinance Text Amendment to change with certain conditions the weekday time restrictions for amplified audio entertainment applicable to D&E's.

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## **Report on Standards for Dining and Entertainment Establishments**

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- Section I. City Council Directive – Page 2
- Section II. History and Background Information – Page 2
- Section III. Summary of Existing Standards – Page 4
- Section IV. Identification of Existing Dining and Entertainment Establishments – Page 16

**Report Developed by the City of Greenville  
Community Development Department - Planning Division  
August 24, 2011**

## **SECTION I – City Council Directive**

City Council voted to request that staff develop a report on the city's current standards for Dining and Entertainment Establishments (D&E's) at their August 22<sup>nd</sup>, 2011, meeting. This request was initiated by Council Member Joyner who stated that he was specifically interested in amending the weekday time restrictions for amplified audio entertainment applicable to D&E's to differentiate between those establishments that are located within close proximity of existing single family residences and single family districts, and those that are located in commercial areas.

## **SECTION II – History and Background Information**

The Dining and Entertainment Establishment land use category and its associated standards were originally adopted in April, 2009. Until then, the city had land use categories for conventional restaurants and public or private clubs. A conventional restaurant was an eating establishment in which food sales had to account for more than 50% of the establishment's gross sales. A public or private club was an entertainment establishment that had no restrictions or requirements related to gross sales.

The need for a new land use category was recognized when a local business permitted as a conventional restaurant was unable to meet the local zoning requirement for food sales (greater than 50% gross sales), but did meet the state's requirement (greater than 30% gross sales). This discrepancy between local and state requirements, and the fact that the business could not qualify as a public or private club because it was located in a CN (Neighborhood Commercial) zoning district, led to a year-long process of evaluating the city's standards and creating a new land use category, dining and entertainment establishments. This new category, which was intended to be an eating and entertainment establishment, must have food sales in excess of 30% of the establishment's gross sales, and was intended to fill the gap that previously existed between conventional restaurants and dining and entertainment establishments.

The standards applicable to dining and entertainment establishments have been amended once since their initial adoption. That amendment, Ord. No. 10-83, allowed dining and

entertainment establishments located in the CD (Downtown Commercial) district to have amplified audio entertainment on each Thursday night until 2:00 a.m. the following day (previously limited to 11:00 p.m.

See Description (below) for ordinance/amendment explanation.

<b>Year</b>	<b>Applicant</b>	<b><u>Description</u></b>	<b>Ord. # And Approval Date</b>
2009	CDD (Planning); initiated by City Council 12/08	Amend the definition section, table of uses, special use permit standards, etc., to establish a dining and entertainment establishment use and associated standards.	09-27 4/9/09
2010	Phoenix Redevelopment (Don Edwards)	Amend the special use permit standards for D&E's in the CD (Downtown Commercial) district to allow amplified audio entertainment on each Thursday night until 2:00 a.m. the following day.	10-83 10/14/2010

## **SECTION III – Summary of Existing Standards**

### **Section 9-4-78: Table of Uses**

Dining and Entertainment Establishments are permitted by-right in the following zoning districts:

- CG (General Commercial)
- CH (Heavy Commercial)
- IU (Unoffensive Industry)
- I (Industry)
- PIU (Planned Unoffensive Industry)
- PI (Planned Industry)

Dining and Entertainment Establishments are subject to special use permit approval of the Board of Adjustment in the following zoning districts:

- MS (Medical Support)
- MO (Medical Office)
- MCG (Medical – General Commercial)
- MCH (Medical – Heavy Commercial)
- OR (Office Residential)
- CD (Downtown Commercial)
- CDF (Downtown Commercial Fringe)
- CN (Neighborhood Commercial)

### **Section 9-4-22. Definitions.**

*Dining and entertainment establishment.* An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
  - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to

be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.

- (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
  - (c) A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;
- (3) Does provide sit-down dining area(s);
  - (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
  - (5) May offer food in disposable containers;
  - (6) May offer carry-out and/or off-site delivery services;
  - (7) Does not offer drive-in attendant services;
  - (8) May exhibit one but not both of the following operational functions or characteristics:
    - (a) Drive-through service; or
    - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
  - (9) May have one or more of the following activities or services, which is open to the establishment's patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation



and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;

- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and
- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

**Section 9-4-103(U). Specific Criteria:**

The following requirements are applicable to all D&E's that are not special use permit dependent (i.e. permitted by right).

(U) *Dining and entertainment establishments not subject to Article E.* Shall comply with all of the following:

- (1) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after the period of amplified audio entertainment as follows:
  - (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession

licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all times. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.

- (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all times. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
  - (3) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
  - (4) Weekdays. Except as further provided under subsection (U)(6) below, dining and entertainment establishments shall not have amplified audio entertainment after

11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided; however; televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;

- (5) Weekends. Except as further provided under subsection (U)(6) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system, provided however televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment;
- (6) The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (U)(4) and (5) above to not later than 2:00 a.m. and before 11:00 a.m. of the next day on the following day: December 31 (New Year's Eve);
- (7) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
  - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
  - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this

subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

- (c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.
  - (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, subsection of a department, or agency of the State of North Carolina;
- (8) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (U)(7) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations;
- (9) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104; and
- (10) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development, or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not

apply to a dining and entertainment establishment and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.

**Section 9-4-86(F)1. Specific Criteria:**

The following requirements are applicable to all D&E's that are special use permit dependent. In addition to these requirements, these establishments are also subject to any reasonable conditions of approval required by the Board of Adjustment.

*(F)1. Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.

- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
    - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
      - a. The use of the property is inconsistent with the approved application;
      - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
      - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
      - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
    - 2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.
  - (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and

entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.

- (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (7) Weekends. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (8) Special period of operation and amplified audio entertainment exemption.

- (a) The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (F)1.(6) and (7) above to not later than 2:00 a.m. and before 11:00 a.m. of the next day on the following day: December 31 (New Year's Eve).
  - (b) The allowable period of amplified audio entertainment for any dining and entertainment establishment located in the CD (downtown commercial) zoning district may be extended, at the option of the owner/operator, from the times specified under subsection (F)1.(6) on each Thursday night to no later than 2:00 a.m. the following day.
- (9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
- (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
  - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
  - (c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.
  - (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.
- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable



hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.

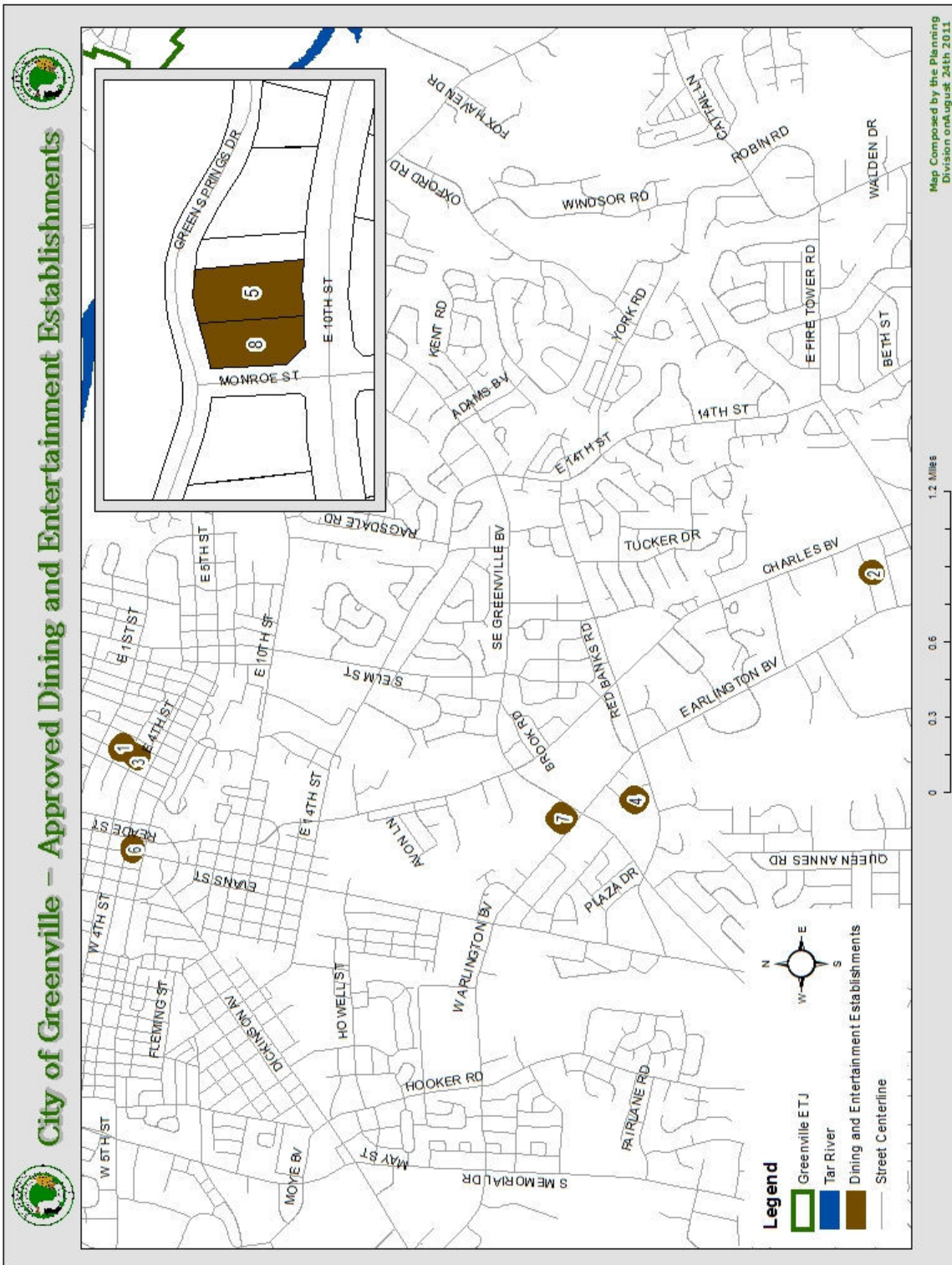
- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.
- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.

- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
- (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.

**SECTION IV. Identification of Approved Dining and Entertainment Establishments**

The table below identifies all of the dining and entertainment establishments approved by the city since establishing the land use category in April, 2009. Those establishments classified as Special Use Permit Dependent have been issued a special use permit by the Greenville Board of Adjustment. See the map on the following page for the location of these establishments based on ID field in table below.

<b>ID</b>	<b>Name</b>	<b>Location</b>	<b>Date Approved</b>	<b>Special Use Permit Dependent</b>	<b>Status</b>
1	Unk's	201 S. Jarvis St.	5/28/2009	Yes	Not Active
2	AJ McMurphys	1914 Turnberry Dr.	9/9/2009	No	Active
3	Christy's Europub	301 S. Jarvis St.	9/24/2009	Yes	Active
4	Japan Inn	739 Red Banks Rd.	10/1/2009	No	Active
5	Eddie's Sports Bar	2713 E. 10 <sup>th</sup> St.	1/23/2010 and 2/9/2010	No	Not Active
6	Tipsy Teapot	409 S. Evans St.	5/27/10	Yes	Active
7	Upper Deck Sports Bar and Grill	703 SE Greenville Blvd.	12/28/2010	No	Active
8	El Paraiso 2	2713 E. 10 <sup>th</sup> St.	4/26/2011	No	Not Active





# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Resolution of intent to close a portion of West Gum Road

**Explanation:** Perdue Agri Business is requesting to close a ten (10) foot wide strip of West Gum Road (a right-of-way reduction) running along the northern right-of-way of West Gum Road from Jule Street to Seaboard Coastline Railroad.

Perdue Agri Business removed and replaced a silo on the property adjacent to West Gum Road. The removed silo was considered an existing non-compliant structure per the zoning ordinance. Construction of the replacement silo was started without the owner obtaining a building permit. This was discovered by the Inspections Division and a stop work order was issued. The owner then applied for a building permit, which also requires the structure to be in compliance with City zoning ordinances. A zoning compliance determination could not be issued because the replacement silo, even though on the same foundation of the previous structure, does not comply with front yard setback requirements. Reducing the right-of-way width of the street will make the silo compliant with the zoning ordinance.

A drainage and utility easement will be retained by the City and GUC over the section of the street right-of-way that will be closed.

City and Greenville Utilities staffs have reviewed the proposed closing, and no objections or adverse comments were provided.

**Fiscal Note:** The City will not incur any costs associated with this street closing.

**Recommendation:** Adopt the attached resolution of intent to close a portion of West Gum Road.

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

**Attachments / click to download**

 [West Gum Rd Street Closing](#)

 [Resolution of Intent to Close a Portion of West Gum Road 905465](#)

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RESOLUTION NO. \_\_\_\_\_  
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE  
DECLARING ITS INTENT TO CLOSE A PORTION OF WEST GUM ROAD

WHEREAS, the City Council intends to close said street, in accordance with the provisions of G.S. 160A-299;

THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina, that it is the intent of the City Council to close said street right-of-way, more particularly described as follows:

To Wit: Being the 10 foot wide strip of right of way on the northern side of West Gum Road adjoining Parcel No. 24129 as shown on plat entitled, "Street Closing Map for a Portion of West Gum Road", prepared by Stroud Engineering, PA, dated April 18, 2011 designated as project number LS718~001 drawing no. 001.

Location: Lying and being in the City of Greenville, Greenville Township, Pitt County, North Carolina, lying north of NCSR 1441 Airport Road and west of NCSR 1531 N. Greene Street and being more particularly described as follows:

Beginning at NGS Monument "Guard" with published coordinates of (N) 689705.6645, (E) 2481899.1110, NAD 83 (2001); thence from "Guard" S75-16-58E – 1586.35' to an existing iron pipe found on the northeast right of way intersection of Jule Street and West Gum Road, the true point of beginning. Thence from the true point of beginning, leaving the eastern right of way of Julie Street and following the northern existing 60' right of way of West Gum Road S47-51-21E – 280.62' to an existing iron pipe on the western right of way of Seaboard Coastline Railroad, thence in line with the railroad right of way S15-10-26W – 11.22' to a point, thence N47-51-21W – 263.35' to a point of curvature, thence with a curve to the right, having a radius of 30.00' and a chord of N23-45-40W – 24.49' to the point of beginning, containing 0.0634 acre.

BE IT FURTHER RESOLVED that a public hearing will be held in the Council Chamber, City Hall, Greenville, North Carolina, on the 13<sup>th</sup> day of October, 2011 at 7:00 p.m., to consider the advisability of closing portions of the aforesaid streets. At such public hearing, all objections and suggestions will be duly considered.

BE IT FURTHER RESOLVED that a copy of this resolution be published once a week for four (4) consecutive weeks in The Daily Reflector; that a copy of this resolution be sent by certified mail to the owners of property adjacent to the above described street, as shown on the County tax records, and that a copy of this resolution be posted in at least two (2) places along the portion of the street to be closed.

Duly adopted this the 8<sup>th</sup> day of September, 2011.

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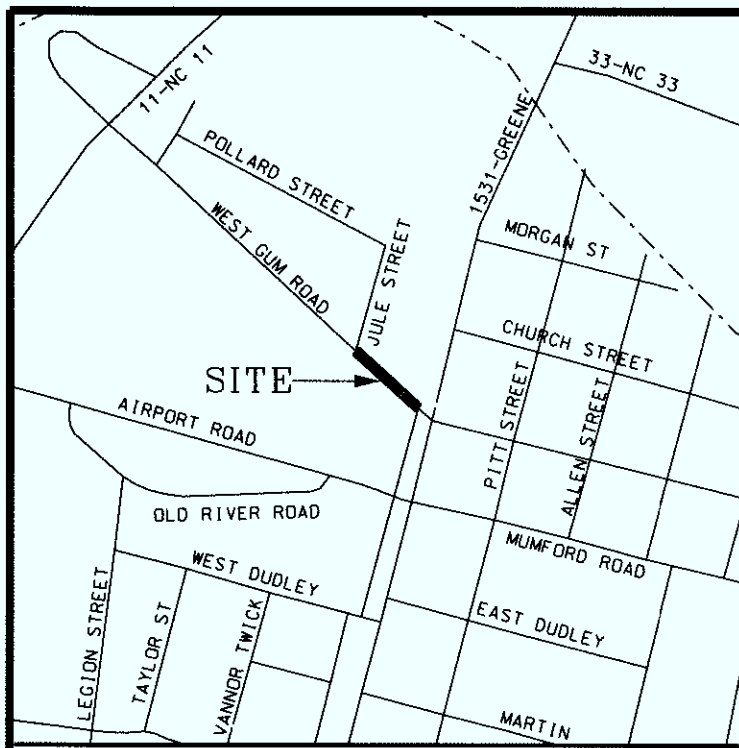
Patricia C. Dunn, Mayor

ATTEST:

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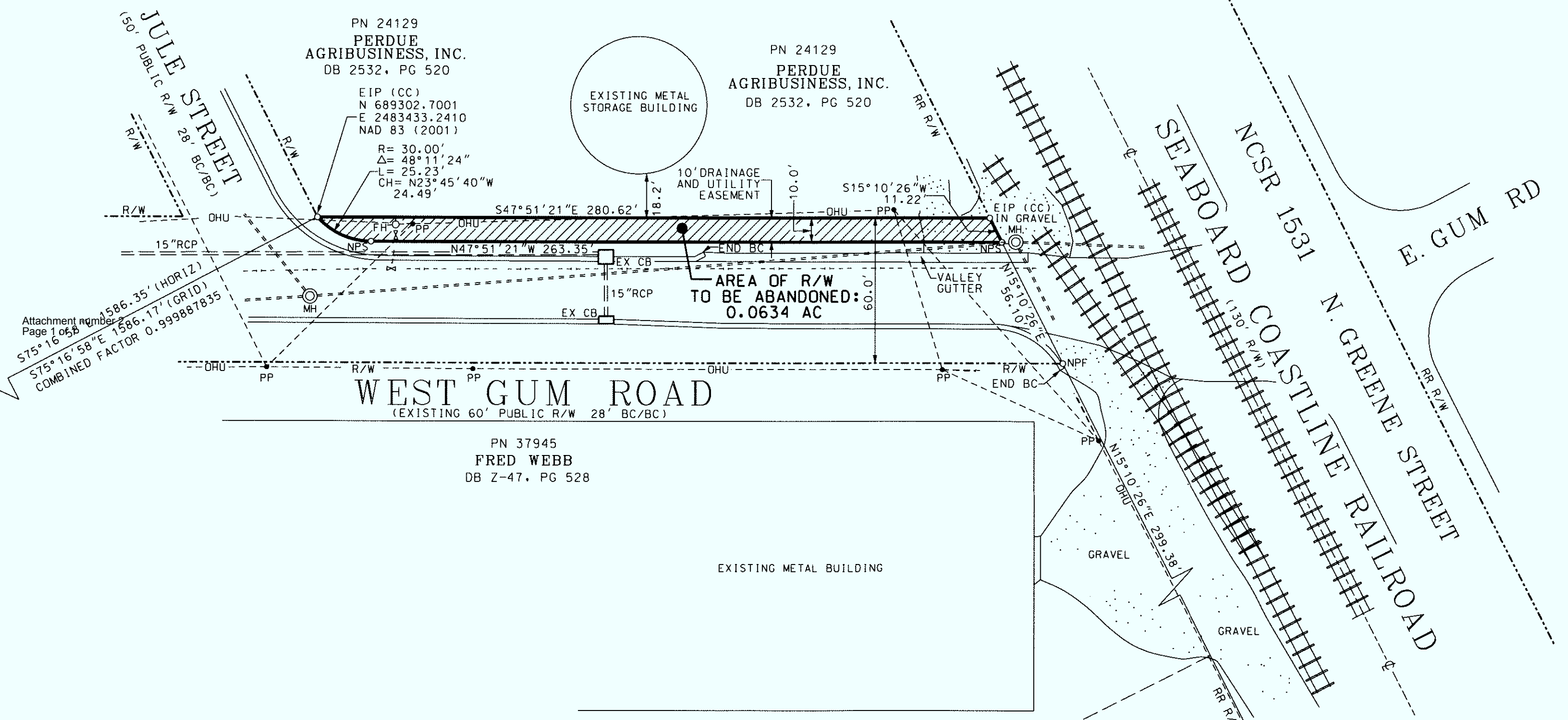
Carol Barwick, City Clerk





VICINITY MAP  
N. T. S.

- LEGEND:**  
 EIP= EXISTING IRON PIPE  
 R/W= RIGHT-OF-WAY  
 NPS= NO POINT SET  
 NPF= NO POINT FOUND  
 BC= BACK OF CURB  
 HORIZ= HORIZONTAL  
 OHU= OVERHEAD UTILITY  
 PP= POWER POLE  
 RR= RAILROAD  
 NGS= NATIONAL GEODETIC SURVEY  
 C= CENTERLINE  
 --- = NOT TO SCALE  
 N. T. S.= NOT TO SCALE  
 MH= MANHOLE  
 FH= FIRE HYDRANT  
 CB= CATCH BASIN  
 RCP= REINFORCED CONCRETE PIPE  
 CC= CONTROL CORNER



**REVIEW OFFICER CERTIFICATE**  
 NORTH CAROLINA, PITT COUNTY  
 I, REVIEW OFFICER OF PITT COUNTY, CERTIFY THAT THIS MAP OR PLAN TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.  
 REVIEW OFFICER \_\_\_\_\_  
 DATE \_\_\_\_\_

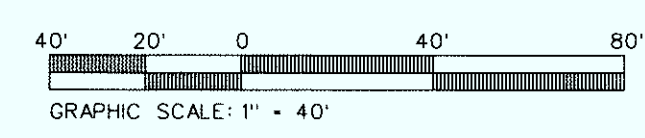
**SURVEYOR'S CERTIFICATE**  
 I, HOWARD O. BARNUM, CERTIFY THAT THIS MAP IS OF A SURVEY OF ANOTHER CATEGORY AND IS AN EXCEPTION TO THE DEFINITION OF A SUBDIVISION. THIS MAP IS OF A SURVEY FOR A PARTIAL ROAD CLOSING.  
 Howard O. Barnum  
 PROFESSIONAL LAND SURVEYOR




NGS MONUMENT "RUNWAY"  
 N 687846.4100  
 E 2481381.4000  
 NAD83(2001)

**MAYOR'S CERTIFICATE**  
 THIS IS TO CERTIFY THAT THE CITY COUNCIL OF THE CITY OF GREENVILLE HAS PASSED A RESOLUTION TO CLOSE A PORTION OF WEST GUM ROAD.  
 RESOLUTION NO. \_\_\_\_\_  
 SIGNED \_\_\_\_\_ MAYOR  
 SIGNED \_\_\_\_\_  
 Item # 17 ERK

I, HOWARD O. BARNUM, CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS MAP WAS DRAWN FROM AN ACTUAL FIELD SURVEY, THAT THE RATIO OF PRECISION IS 1:72,536, THAT THE MONUMENTS HAVE BEEN PLACED AS SHOWN, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.  
 WITNESS MY HAND AND SEAL THIS 15<sup>th</sup> DAY OF June, 2011.  
 Howard O. Barnum  
 PROFESSIONAL LAND SURVEYOR L-3634



STREET CLOSING MAP FOR A PORTION OF  
**WEST GUM ROAD**  
 GREENVILLE, GREENVILLE TOWNSHIP, PITT COUNTY, NORTH CAROLINA

CLIENT: PERDUE AGRIBUSINESS, INC. ADDRESS: 242 PERDUE ROAD COFIELD, NC 27922	SURVEYED: HOB/DTB
PHONE: W.E. "BILLY" MIZELLE, JR. (252) 209-9261	DRAWN: DTB
 <b>STROUD ENGINEERING, P.A.</b> 107B COMMERCE ST. GREENVILLE, NC (252) 756-9352 LICENSE NO. C-0647	APPROVED: HOB
	DATE: 4-18-11
	SCALE: 1" = 40'
	SHEET 1 OF 1

PROJECT NO. LS718-001



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Update of the Municipal Agreement with the North Carolina Department of Transportation for the 10th Street Connector Project

**Explanation:** The City of Greenville entered into a Municipal Agreement with the North Carolina Department of Transportation (NCDOT) for construction of the 10<sup>th</sup> Street Connector on April 23, 2004. The agreement had the City managing the project from the study to completion of the design phase. NCDOT and the City recognized that NCDOT had more experience and time to manage the design process. Therefore, the two parties began the process of developing a new municipal agreement.

The public hearing has been held and the Environmental Assessment completed. The Finding of No Significant Impact (FONSI) has been completed and is in the final approval process. The completion of these tasks has enabled the partners to determine the final costs of the study phase. The attached Municipal Agreement has been developed to formalize the transition. Staff has coordinated with the other local funding partners for this project (East Carolina University and Pitt County Memorial Hospital) and they have no concerns.

The agreement includes the participation of the City in the design process for review to ensure consistency with the plans as approved in the Environmental Assessment and FONSI. Additionally, the agreement specifies the procedures to transfer the remaining project funds to NCDOT as well as identifies construction costs for elements of the project that are above NCDOT standards. Funding these elements (called betterments by NCDOT) are the City's responsibility. The elements are:

- Constructing additional 20 feet of berm width (the area from back of curb to edge of the right-of-way) on both sides of the proposed roadway, from Memorial Drive to Myrtle Street – 100% reimbursement (estimated cost is \$198,000).
- Construction of NCDOT standard 5-foot sidewalk – 40% cost share (estimated cost is \$133,670).
- Construction of additional 1 foot of sidewalk width to complete the

requested 6-foot sidewalk – 100% reimbursement (estimated cost is \$66,836).

- Reimburse the Department for all landscape plantings in excess of the allowable percentage rate of 0.75% of the construction contract (cost to be determined after bid). This work will be handled under a separate landscape agreement with the City at a later date.
- Installation of the conduit for decorative lighting on Bridge Structure (cost to be determined).

NCDOT began the design process while the agreement was under development. The design is 25% complete. Design is scheduled to be complete in 2012. Construction is scheduled to begin in 2014.

**Fiscal Note:**

Estimated cost for those project elements that exceed NCDOT standards is \$398,506. This estimate does not include the two elements that have not yet been estimated. The sidewalk costs (\$200,606) are Powell Bill eligible. The remainders to include the two elements without estimates are General Fund expenses. These costs will be included in the development process for the 2013-2017 Capital Improvement Program that begins later this year.

**Recommendation:**

Approve the attached Municipal Agreement with NCDOT for the 10th Street Connector Project.

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

Attachments / [click to download](#)

 [Tenth St Connector Updated Municipal Agreement](#)

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NORTH CAROLINA

**TRANSPORTATION IMPROVEMENT PROJECT –  
MUNICIPAL AGREEMENT**

PITT COUNTY

DATE: **8/17/2011**

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

TIP #: U-3315

AND

WBS Elements: 35781.1.1  
35781.2.1  
35781.3.1

CITY OF GREENVILLE

THIS MUNICIPAL AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the City of Greenville, a local government entity, hereinafter referred to as the "Municipality".

W I T N E S S E T H:

WHEREAS, this Agreement rescinds and supersedes the Municipal Agreement made and entered into between the Department and City of Greenville on April 23, 2004; and

WHEREAS, the Department has plans to make certain street and highway constructions and improvements within the Municipality under Project U-3315, in Pitt County; and,

WHEREAS, the Department and the Municipality have agreed that the municipal limits, as of the date of the awarding of the contract for the construction of the above-mentioned project, are to be used in determining the duties, responsibilities, rights and legal obligations of the parties hereto for the purposes of this Agreement; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly, including but not limited to, the following legislation: General Statutes of North Carolina, Section 136-66.1, Section 160A-296 and 297, Section 136-18, and Section 20-169, to participate in the planning and construction of a Project approved by the Board of Transportation for the safe and efficient utilization of transportation systems for the public good; and,

WHEREAS, the parties to this Agreement have approved the construction of said Project with cost participation and responsibilities for the Project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

### **SCOPE OF THE PROJECT**

1. The Project consists of the construction of a connector of Stantonsburg Road and Tenth Street from Memorial Drive to Evans Street (SR 1702). The project is to include a grade separation at the CSX Transportation System track at Dickinson and Tenth Street.
2. The Department, at the request of the Municipality and subject to reimbursement by the Municipality, shall expand the scope of the project to include the addition of certain betterment work. Said work shall include the following:
  - The Department shall include in its construction contract the construction of 30-foot outside berm from Memorial Drive to Myrtle Street.
  - Construction of new 6-foot sidewalks (which is 1-foot wider than NCDOT's 5-foot standard).
  - Conduit will be installed for decorative lighting on the Bridge Structure. The Municipality will install decorative street lighting along the project at a later date under a separate encroachment agreement. Relocation of existing utilities and installation of the electrical conduit for street lighting will be coordinated with NCDOT and the contractor to minimize the duplication of work.
  - If applicable: landscape plantings in excess of the allowable percentage rate of 0.75% of the construction contract amount.

### **ENVIRONMENTAL DOCUMENTATION**

3. The Municipality shall prepare the environmental documents needed to construct the Project and respond to appropriate comments, in accordance with the National Environmental Policy Act (NEPA) and all other appropriate environmental laws and regulations. All work shall be performed in accordance with Departmental procedures and guidelines. Said documentation shall be submitted to the Department and FHWA for review and approval.
4. The Municipality shall be responsible for preparing and filing with all proper agencies the appropriate planning documents, including an Environmental Assessment and Finding of No Significant Impact (FONSI).

5. The Municipality, and/or its agent, shall complete the Finding of No Significant Impact (FONSI) no later than October 2011.
6. The Project must progress in a satisfactory manner as determined by the Department or the Department and/or FHWA reserves the right to de-obligate said funding.

#### **DESIGN DISCIPLINES**

7. The Department recognizes that the Municipality has previously represented design-work commitments to private engineering firms under the initial Request for Proposals and any subsequent design subcontractor designations that have occurred under management by the selected engineering firm. In this regard, the Department agrees that the following design components shall be performed by the selected engineering firm and its subcontractors, so long as they are deemed qualified by the Department and agreement of a reasonable fee is reached in a timely manner, both for right-of-way and final plan phases:
  - A. Roadway Design
  - B. Structure Design
  - C. Hydraulic Design
  - D. Utility Coordination and Design
  - E. Geotechnical Design
  - F. Pavement Marking and Signage
  - G. Landscape Design
  - H. Erosion Control
  - I. Traffic Signals
  - J. Work Zone Traffic Control
  - K. Final Surveys
  - L. Railroad Coordination and Railroad Signals

## **DESIGN**

8. The Department shall be responsible for oversight of all phases of design, and manage preparation of right-of-way and final plans and specifications needed to construct the Project in accordance with Department standards, specifications, policies and procedures.
9. The Department shall be responsible for the establishment of all Scope of Work, and Fee Negotiations, with the selected engineering firm and its subcontractors.
10. At the request of the Municipality, and subject to reimbursement by the Municipality, the Department shall design and construct the project to include certain betterment work. Those design components are listed in Provision # 2, above.
11. The Department will provide draft design plans to the Municipality for “consistency review and comments” in terms of designs and betterment work that are represented in the Environmental Assessment and FONSI, and in terms of any conflicting municipality projects or requirements. Should the Municipality identify design components or modifications that do not meet the intention of environmental document representations, then the Department and Municipality agree to coordinate design solutions.

## **RIGHT OF WAY**

12. The Department shall be responsible for acquiring any needed right of way required for the Project. Acquisition of right of way shall be accomplished in accordance with the policies and procedures set forth in the North Carolina Right of Way Manual and the approved project plans.
13. The Department commits to pay all right-of-way acquisition costs (not including the City’s Tenth Street Connector Supplemental Relocation Program). Any residual parcels shall belong to NCDOT.

## ***TENTH STREET CONNECTOR SUPPLEMENTAL RELOCATION PROGRAM***

14. The Municipality recognizes and agrees that the “Tenth Street Connector Supplemental Relocation Program” was presented to homeowners during the alternative selection process as a City-approved component of the project proposal, and as such commits to execute the program during the programmed Right-of-Way phase. The Supplemental Program is separate and distinct from the normal NCDOT Relocation Program, and is affixed to this agreement.

## **UTILITIES**

15. The Municipality shall relocate and adjust all municipally-owned utilities in conflict with the Project and shall exercise any rights which it may have under any franchise to effect all necessary changes, adjustments, and relocations of telephone, telegraph, and electric power lines; underground cables, gas lines, and other pipelines or conduits; or any privately- or publicly-owned utilities.
- A. Said work shall be performed in a manner satisfactory to the Department prior to the Department beginning construction of the Project. The Municipality shall make every effort to promptly relocate said utilities in order that the Department will not be delayed in the construction of the Project.
  - B. The Municipality shall make all necessary adjustments to house or lot connections or services lying within the right of way or construction limits, whichever is greater, of the Project.
  - C. The Department, where necessitated by construction, will make vertical adjustments of two (2) feet or less to the existing manholes, meter boxes, and valve boxes at no expense to the Municipality.
  - D. If applicable, the Department shall reimburse the Municipality in accordance with the Municipally Owned Utility Policy of the Department approved by the Board of Transportation.
  - E. The City's utility, Greenville Utilities Commission, currently intends to relocate its infrastructure (water, waste water, electricity, and natural gas) in the right-of-way. At a later date: If the Municipality requests the Department to include the relocation and/or adjustment of municipally-owned utilities and/or requests to relocate overhead municipally-owned utilities to underground utilities in its construction contract provisions, the Municipality shall reimburse the Department all costs associated with said relocation. Reimbursement will be based on actual costs of relocation. If a request is received from the Municipality, a separate Utility Agreement will be prepared to determine the reimbursement terms and an updated cost estimate.

## **CONSTRUCTION**

16. The Department shall construct, or cause to be constructed, the Project in accordance with the plans and specifications. The Department shall administer the construction contract for said Project.
17. The Department shall be responsible for coordinating and obtaining all necessary permits.



## **MAINTENANCE**

18. Upon completion of the Project, the improvement(s) shall be a part of the State Highway System and owned and maintained by the Department.
19. The Municipality, at no expense to the Department, shall assume all maintenance responsibilities for the sidewalks, landscaping and release the Department from all liability relating to such maintenance. The Municipality shall pay electric charges for decorative lighting operation.

## **FUNDING**

20. The Municipality has agreed to provide advance funding in the amount of SIX MILLION DOLLARS (\$6,000,000) for planning, engineering and right of way acquisition for this Project. In addition to this advance funding, the Municipality shall also reimburse the Department one hundred (100%) percent of the actual costs of all project betterment work that is performed by the Department, and which is identified herein for payment by the Municipality. Within 30 days of execution of this Agreement, the Municipality shall submit a check in the amount of \$6,000,000 (less expenditures incurred by the Municipality for work performed by private engineering firms thus far and less the retained obligated sum of \$350,000 as hereinafter provided). The Municipality will provide a statement to the Department that provides a full cost-accounting of actual expenditures paid to date by the Municipality to compensate private engineering firms and others for preparation of the environmental documents. The cost accounting will be supported by copies of invoices paid. Inclusion of labor, direct, and overhead costs for use of Municipal employees or resources is not allowable. In addition, the Municipality will retain an obligated sum of \$350,000 to fund any remaining preliminary engineering work, including completion and distribution of the FONSI.
21. Within 90 days of the completion of the remaining contracted preliminary engineering work (but not later than the R/W Acquisition Date), the Municipality will settle any outstanding claims against the \$350,000 obligation for work performed, and provide a statement to the Department that provides a full cost-accounting of actual expenditures paid to date by the Municipality to compensate private engineering firms and others for preparation of the environmental documents. The cost accounting will be supported by copies of previous invoices paid. Inclusion of labor, direct, and overhead costs for use of Municipal employees or resources is not allowable. The Municipality shall submit a check in the amount of \$350,000 less paid expenses.
22. Upon completion of the project, the Municipality within sixty days of invoicing by the Department, shall reimburse the Department for requested betterment as follows:

- A. Constructing an additional 20-feet of berm width on both sides of the proposed roadway, from Memorial Drive to Myrtle Street – 100% reimbursement (estimated cost to Municipality is \$198,000).
- B. Construction of NCDOT standard 5-foot sidewalk – 40% cost share (estimated cost to Municipality is \$133,670).
- C. Construction of additional 1-foot of sidewalk width to complete the requested 6-foot sidewalk – 100% reimbursement (estimated cost to Municipality is \$66,836).
- D. The Municipality shall reimburse the Department for all landscape plantings in excess of the allowable percentage rate of 0.75% of the construction contract (cost to be determined after bid). This work will be handled under a separate landscape agreement with the Municipality at a later date. The Municipality shall be responsible for any cost requests above said amount and for all costs of maintenance associated with said plantings.
- E. Installation of the conduit for decorative lighting on Bridge Structure.
- F. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment herein above provided, North Carolina General Statute 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1 until such time as the Department has received payment in full under the reimbursement terms set forth in this Agreement. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.

#### **ADDITIONAL PROVISIONS**

23. The Department shall include provisions in its construction contract for the construction of sidewalks on/or along the project length, including sidewalks on the grade separation and below the structure. Said work shall be performed in accordance with Departmental policies, procedures, standards and specifications, and the following provisions. It is understood by both parties that all sidewalk work shall be performed within the existing right of way. However, should it become necessary, the Municipality, at no expense or liability whatsoever to the Department, shall provide any needed right of way and or construction easements for the construction of the sidewalks and remove from said rights of way all obstructions and encroachments of any kind or character. Acquisition of any needed right of way shall be performed in accordance with the following state and federal policies and procedures, "Right of Way Acquisition Policy and Land Acquisition Policy, contained in the Federal-Aid Policy Guide, Part 712, Subpart B", and the North Carolina Right of Way Manual (Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970). The Department shall be indemnified and held harmless from any and all damages and claims for damages associated with the acquisition of any construction easements and/or right of way.

24. It is further agreed that upon completion of the Project, the Department shall be responsible for all traffic operating controls and devices which shall be established, enforced, and installed and maintained in accordance with the North Carolina General Statutes, the latest edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, the latest edition of the "Policy on Street and Driveway Access to North Carolina Highways", and departmental criteria.
25. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Department or Agency.
26. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.
27. All terms of this Agreement are subject to available departmental funding and fiscal constraints.
28. By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manger, 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).

IT IS UNDERSTOOD AND AGREED upon that the approval of the Project by the Department is subject to the conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST: CITY OF GREENVILLE  
BY: \_\_\_\_\_ BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_ TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

NCGS 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.

Approved by \_\_\_\_\_ of the local governing body of the City of Greenville as attested to by the signature of \_\_\_\_\_ Clerk of said governing body on \_\_\_\_\_ (Date)

This Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

(SEAL) BY: \_\_\_\_\_ (FINANCE OFFICER)

Federal Tax Identification Number  
\_\_\_\_\_

Remittance Address:  
City of Greenville  
\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION  
BY: \_\_\_\_\_  
DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (Date)



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Resolution authorizing the conveyance of 509 Watauga Avenue to the Greenville Housing Development Corporation

**Explanation:** This is a request to convey the City-owned property at 509 Watauga Avenue to the Greenville Housing Development Corporation (GHDC). GHDC plans to acquire additional property and build an affordable home on the site. GHDC also plans to partner with the Construction Technology program of Pitt Community College for the construction. Many of the students enrolled at the Lucille Gorham Intergenerational Center will be involved in the house construction.

On June 12, 2008, the City Council authorized a loan of \$256,000 from 1992 Affordable Housing Bond proceeds to the GHDC for the Crystal Springs Elderly Housing development. In addition to repayment of the loan, GHDC committed to reinvest \$350,000 for projects within the West Greenville Revitalization Area. Although this property is located one block south of the Revitalization area, staff recommends that this transaction be approved. The current tax value of the property as determined by the Pitt County Tax Assessor is \$10,073.

The property was acquired by the City of Greenville on November 8, 2010, by foreclosure for unpaid taxes. North Carolina General Statute 160A-279 permits a city to convey real property by private sale.

If approved by City Council, the transaction will be formally closed by the City Attorney or his designee.

**Fiscal Note:** Estimated costs for this action are approximately \$500 in legal fees. These costs will be paid from the Community Development Department budget.

**Recommendation:** Adopt the attached resolution authorizing the conveyance of 509 Watauga Avenue to the Greenville Housing Development Corporation for the construction of a single-family home. In addition, staff recommends that the home meet the

Greenville Utilities E-300 Energy Efficiency Program standards.

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**Attachments / click to download**

 [509 Watauga Map](#)

 [Resolution conveying 509 Watauga Avenue to the Greenville Housing Development Corporation 905386](#)

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RESOLUTION NO. 11-  
RESOLUTION AUTHORIZING THE CONVEYANCE OF PROPERTY  
LOCATED AT 509 WATAUGA AVENUE TO THE GREENVILLE HOUSING  
DEVELOPMENT CORPORATION

WHEREAS, the City of Greenville recognizes the importance of affordable housing for low to moderate income residents; and

WHEREAS, the City of Greenville is authorized pursuant to North Carolina General Statute 160A-279 to pursue such relationships as Sale of Property to entities carrying out a public purpose; and

WHEREAS, the City Council, during the September 8, 2011 meeting, heard a request to convey the following property located at 509 Watauga Avenue to the Greenville Housing Development Corporation, a non-profit development corporation engaged in the development of housing for low to moderate income residents; and

WHEREAS, North Carolina General Statute 160A-279 authorizes a conveyance of property to the Greenville Housing Development Corporation for affordable housing purposes as permitted by North Carolina General Statutes 160A-456(b) and 157-9;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby authorize conveyance of property consisting of tax parcel #10605 located at 509 Watauga Avenue to the Greenville Housing Development Corporation with the conditions that the use of the property is limited to affordable housing for low to moderate income residents and the structure built must meet Greenville Utilities E-300 Energy Efficiency Standards, said conveyance to be by private sale for the consideration of the use of the property consistent with the aforementioned conditions and to be accomplished by a deed executed by the Mayor and City Clerk.

This the 8<sup>th</sup> day of September, 2011.

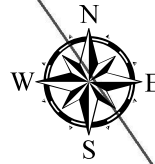
\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk



CITY OF  
**GREENVILLE**  
NORTH CAROLINA



**Legend**

- Land Parcels
- Street Centerline

Parcel:	<a href="#">10605</a>
Physical Address:	509 N WATAUGA AV
Owner Name:	GREENVILLE CITY OF
OwnerAddress1:	200 WEST FIFTH ST
OwnerAddress2:	
OwnerAddress3:	
City / State / Zip:	GREENVILLE NC 27835
NC PIN:	4677892611
Subdivision / Section / Phase:	
Prior Legal Description:	HIGGS BROTHERS
Block / Lot:	15 8
Tract:	
Building Number / Unit:	
Acres:	0.17
Current Owner Deed/Document:	<a href="#">002802 00567</a>
Map Book:	<a href="#">MB2-180</a>
Deed / Document Date:	Nov-10
Deed / Document Sales Price:	\$0
Building Type / Use:	MFR CONST(DUPLEX/TRIPLEX)
Number of Buildings:	1
Year Built:	1957
Heated Square Feet:	1728
Building Value:	\$5,837
Extra Features Value:	
Land Value:	\$4,236
Total Current Market Value:	\$10,073
Total 2007 Market Value:	\$19,310
Revaluation Year:	2008
Municipality:	GREENVILLE
Township:	GREENVILLE
Fire Tax District:	GREENVILLE
Census Tract:	7.01
Neighborhood:	4133
Elementary School:	SOUTH GREENVILLE ES
Middle School:	C M EPPES MS
High School:	J H ROSE HS





# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

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**Title of Item:** Recommendations from the Joint City/GUC Committee for Employee Pay and Benefits concerning employee health and dental insurance programs, the employee wellness program, and individual retirement account options

**Explanation:** The Joint City/GUC Committee for Employee Pay and Benefits met on August 29, 2011 to conduct the annual review of the City/GUC employee health and dental insurance programs with the consultant for the programs (Mercer Consulting). In addition, the Committee discussed and made recommendations concerning the employee wellness program and offering individual retirement account (IRA) options to employees through the ICMA Retirement Corporation.

A report containing the recommendations from the Committee is attached.

**Fiscal Note:** Funds for the employee health and dental insurance programs are included in the City and GUC budgets. Funds are also available in the health insurance account for the employee wellness program. There is no direct cost to offer the IRA programs.

**Recommendation:** Approve the recommendations included in the attached Joint City/GUC Committee for Employee Pay and Benefits report.

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**Attachments / click to download**

- [Memo re: Committee Recommendations](#)
- [Health and Dental Info from Mercer](#)



**MEMORANDUM**

TO: Mayor and City Council  
Greenville Utilities Commissioners

FROM: Ron Elks, General Manager/CEO *Ronald L. Elks*  
Wayne Bowers, City Manager *Wayne Bowers*

DATE: August 31, 2011

SUBJECT: Recommendations of Joint City/GUC Committee for Employee Pay and Benefits

The Joint City/ GUC Committee for Employee Pay and Benefits met on Monday, August 29, 2011, to consider the 2012 renewal of the health and dental insurance programs, a new incentive feature for the wellness program, and the addition of two employee-funded IRA options from ICMA-RC. The recommendations are discussed below.

**Health/Dental Insurance Renewal**

During this time of year, the City of Greenville and Greenville Utilities Commission (GUC) re-examine the status of our health and dental plans. Our strategic goals with our health and dental insurance benefits have been to:

- Develop a strategic plan for the next several years that will deliver healthcare to our employees and their families which considers cost management, coverage options, funding alternatives, and wellness program components.
- Ensure we are competitive when compared to similar employers geographically, by sector, and by industry.
- Provide high quality benefits that are affordable for employees and their families by managing costs, containing future increases, and rewarding the healthy behavioral and lifestyle choices that significantly impact these costs.

**Health Plan:** A self-funded health insurance program was established in January 2010 with two plan designs, a core (basic) plan and an enhanced plan, to offer employees a choice. Benefit levels were slightly lower for the core plan than the pre-2010 single plan; levels were slightly better for the enhanced plan. No benefit or premium adjustments have been made since the plan was implemented. Medical expenses for the plans have been consistent with budget projections for 2010 and 2011 year-to-date.

For the upcoming renewal, one benefit adjustment is proposed: free generic prescription drugs through the mail order benefit. On the funding side, it is recommended that medical contributions be increased 4.8% on the enhanced plan only—no increase on the core plan. This adjustment will cover the anticipated funding deficit of \$368,000 projected for 2012.

**Dental Plan:** Effective January 1, 2011, we transitioned from a dental reimbursement to a self-insured dental insurance benefit. Participation in the plan has exceeded expectations so far this year, although some of the usage is likely due to pent up demand. It is assumed that usage will settle down by year end. With this in mind, Mercer calculated a moderate contribution increase for the 2012 dental plan despite only having six months of hard claim data to use for projections. Normally at least 12 mature months are required to develop a credible case specific number. Under the moderate contribution increase formula, the regular employee payroll contribution will increase from \$2.70 to \$3.24 on a bi-weekly basis. The Committee supported this moderate approach.

### **Wellness Program**

The objective of our Wellness Program is that our employees will develop and manage their own healthy lifestyles for a greater chance to live longer, healthier, and more productive lives. The desired outcomes are healthy employees and reduced claims costs associated with chronic medical conditions. We help our employees achieve this outcome by providing them with effective wellness tools and opportunities that will enable them to make healthy lifestyle choices. Their choices will have the potential to prevent and reduce many of the health issues we see a high incidence of in Eastern North Carolina. Some of the wellness tools that we provide to our employees are Health Risk Appraisals (HRAs), Biometric Screenings, and individualized health coaches. Mercer Consulting has recommended a best practices model of incentives to encourage and increase employee utilization of these valuable wellness tools. It is proposed that a \$150 gift card provided by CIGNA Incentive be awarded to each employee who completes all three of CIGNA's basic tools—HRA, biometric screening, and talking with a CIGNA health coach.

### **ICMA-RC Options**

The ICMA Retirement Corporation (ICMA-RC), a nonprofit organization, already provides an employee-funded tax-deferred 457 retirement account to GUC and City employees. The organization also has available payroll deduction individual retirement accounts (IRAs), both traditional and Roth, to assist our employees' retirement planning efforts. Several employees over the last year have requested the City and GUC offer these options to employees, given there is no direct cost to the City/GUC. These programs are completely voluntary, and no employer funding is involved. It is recommended that the traditional and Roth IRAs be added to our benefits program for 2012.

### **Other Items of Business**

ICMA-RC also provides a Retirement Health Savings (RHS) Plan to assist with Other Post-Employment Benefits (OPEB) changes. A RHS can be used by employers to augment or supplant OPEB benefits and have a positive impact on GUC and the City's unfunded accrual accrued OPEB liability over time. RHS accounts allow employees to accumulate assets to pay for retiree health care expenses. Employer and employee contributions may be made to a RHS account based on an employer definition of specific employee group(s); participation is mandatory for all members of the employer defined groups. Three North Carolina local

governments have established RHS plans---Town of Chapel Hill, City of Durham and Guilford County. The Committee expressed interest in reviewing more detailed information on this program.

cc: Thom Moton, Assistant City Manager  
Tony Cannon, Assistant General Manager/COO

Attachments

**CITY OF GREENVILLE  
GREENVILLE UTILITIES COMMISSION  
2011 MEDICAL PLAN PERFORMANCE AND  
2012 PROJECTIONS**

AUGUST 29, 2011



**Steven W. Graybill**  
Principal

Charlotte

## 2010 – 2012 Calendar Year Medical Expense vs. Budget

- Medical cost for calendar year 2011 is expected to be \$966,000 or 6.1% less than budget. The actual medical cost does not include the incurred but not paid estimate.
- The 2012 calendar year costs are expected to be \$368,000 or 2.3% over budget. The projection does not include an estimate for incurred but not paid claims.

Medical Calendar Year	Jan. 2010 - Dec. 2010	Jan. 2011 - Dec. 2011	Jan. 2012 - Dec. 2012
	<i>Actual</i>	<i>Actual / Projected</i>	<i>Projected</i>
Projected Claims	\$11,131,000	\$13,736,000	\$14,921,000
Admin./SL Fees	\$1,046,000	\$1,244,000	\$1,397,000
Total Projected Cost	\$12,177,000	\$14,980,000	\$16,318,000
Budget	\$14,371,000	\$15,946,000	\$15,950,000
Surplus / (Deficit) \$	\$2,194,000	\$966,000	(\$368,000)
Surplus / (Deficit) %	15.3%	6.1%	-2.3%

- 2011 and 2012 Budget estimates are based on 2011 premiums.
- Mercer projections include 8.25% annual medical trend, 8.75% annual pharmacy trend, 2% margin and 3% administrative fee increase in 2012.
- Stop Loss fees assumed to increase 25% in 2012.
- Projections assume June headcount will remain constant throughout projection period.
- All estimates, based upon the information available at a point in time, are subject to unforeseen and random events. Therefore any projections must be interpreted as having a likely range of variability from the estimate.

## Total Medical Cost by Plan

	Core Plan	Enhanced Plan	Total
Total Cost	\$2,371,375	\$11,597,693	\$13,969,069
Average Headcount	355	1,059	1,413
Cost Per Employee	\$6,688	\$10,957	\$9,886

Above plan experience reflects the claims and expenses for the last twelve months (07/2010-06/2011) for each of the medical plan options. The main reasons for the cost difference:

- Demographic differences (age, sex, single, family) of enrollment selection
- Plan Design Differences

Given our goal to broaden the difference in cost and to begin to reflect this cost difference, we are recommending increases on the Enhanced Plan.



# 2011 Calendar Year Medical Employee Contributions

## Current

Monthly Contributions by Annual Salary Bands					Average Cost Share
Core Plan	<\$32,378	\$32,379 - \$46,950	\$46,951 - \$61,623	Over \$61,624	Core Plan
Employee Only	\$15.21	\$15.21	\$15.21	\$15.21	3.2%
Employee + Spouse	\$126.27	\$138.60	\$164.02	\$189.41	15.7%
Employee + Child(ren)	\$123.28	\$135.31	\$160.12	\$184.90	15.7%
Family	\$180.29	\$197.88	\$234.17	\$270.42	15.7%

Enhanced Plan	<\$32,378	\$32,379 - \$46,950	\$46,951 - \$61,623	Over \$61,624	Enhanced Plan
Employee Only	\$43.88	\$43.88	\$43.88	\$43.88	8.8%
Employee + Spouse	\$186.46	\$198.79	\$224.21	\$249.60	20.5%
Employee + Child(ren)	\$182.02	\$194.05	\$218.86	\$243.66	20.5%
Family	\$266.24	\$283.83	\$320.10	\$356.37	20.5%

# Recommended 2012 Calendar Year Medical Employee Contributions

**Increase Medical Contributions by 0.0% on Core and 4.8% on Enhanced Plan Only**

Monthly Contributions by Annual Salary Bands					Average Cost Share
Core Plan	<\$32,378	\$32,379 - \$46,950	\$46,951 - \$61,623	Over \$61,624	Core Plan
Employee Only	\$15.21	\$15.21	\$15.21	\$15.21	3.2%
Employee + Spouse	\$126.27	\$138.60	\$164.02	\$189.41	15.4%
Employee + Child(ren)	\$123.28	\$135.31	\$160.12	\$184.90	15.4%
Family	\$180.29	\$197.88	\$234.17	\$270.42	15.4%

Enhanced Plan	<\$32,378	\$32,379 - \$46,950	\$46,951 - \$61,623	Over \$61,624	Enhanced Plan
Employee Only	\$45.99	\$45.99	\$45.99	\$45.99	9.0%
Employee + Spouse	\$195.41	\$208.33	\$234.97	\$261.58	21.0%
Employee + Child(ren)	\$190.76	\$203.36	\$229.37	\$255.36	21.0%
Family	\$279.02	\$297.45	\$335.46	\$373.48	21.0%

**The above rates include coverage of 100% coverage of mail order generic drugs to help promote mail order and improve compliance. Change will save money if mail order utilization increases.**

## 2012 Calendar Year Dental Projections

Dental Calendar Year	Jan. 2011 - Dec. 2011	Jan. 2012 - Dec. 2012
	<b>Actual / Projected</b>	<b>Projected</b>
Projected Claims	\$731,000	\$804,000
Admin. Fees	\$39,000	\$40,000
Total Projected Cost	\$770,000	\$844,000
Budget	\$617,000	\$618,000
Surplus / (Deficit) \$	(\$153,000)	(\$226,000)

Dental	Actual Cost
2011 YTD (Jan - Jun)	\$364,000
2011 Annualized (Jan - Dec)	\$728,000

- 2011 and 2012 budget estimates are based on 2011 Premiums.
- The 2011 Dental PEPM includes the CIGNA dental administrative fee of \$2.75.
- Headcounts are assumed to remain constant throughout projection period.
- The 2012 projected dental costs include 5.5% annual claims trend, 2% margin and assume a 3% administrative fee increase.
- All estimates, based upon the information available at a point in time, are subject to unforeseen and random events. Therefore any projections must be interpreted as having a likely range of variability from the estimate.

## 2011 and 2012 Calendar Year Dental Employee Contributions

### Current Monthly Contributions

### Increase Monthly Dental Contributions to Full Funding

### Recommended Approach Moderate Increase

Dental Plan	2011	Cost Share
Employee Only	\$5.85	26.6%
Employee + Spouse	\$22.31	48.3%
Employee + Child(ren)	\$19.66	48.3%
Family	\$31.88	48.3%

2012	Cost Share
\$7.99	26.6%
\$30.48	48.3%
\$26.86	48.3%
\$43.55	48.3%

2012	Cost Share
\$7.02	23.4%
\$26.77	42.4%
\$23.59	42.4%
\$38.26	42.4%

- **Moderate increase is recommend due to the limited amount of claims information and the first year introduction where some pent up demand is evident.**



Services provided by Mercer Health & Benefits LLC.



# What's the Difference?

## Traditional vs. Roth IRA

Questions	Traditional IRA	Roth IRA															
Are there eligibility requirements to contribute?	<p>You must be under age 70½ as of the end of the year.</p> <p>You (and/or your spouse) must have at least an equivalent amount of taxable compensation, such as wages and salaries.</p>	<p>Your eligibility to make full or partial contributions depends on your Modified Adjusted Gross Income (MAGI):</p> <table border="1"> <thead> <tr> <th style="border-top: 1px solid black;">Eligibility</th> <th style="border-top: 1px solid black;">Married Joint Filers</th> <th style="border-top: 1px solid black;">Single Filers</th> </tr> </thead> <tbody> <tr> <td>Full</td> <td>&lt; \$167,000</td> <td>&lt; \$105,000</td> </tr> <tr> <td>Partial</td> <td>\$167,000–\$177,000</td> <td>\$105,001–\$120,000</td> </tr> </tbody> </table> <p>You (and/or your spouse) must have at least an equivalent amount of taxable compensation, such as wages and salaries.</p>	Eligibility	Married Joint Filers	Single Filers	Full	< \$167,000	< \$105,000	Partial	\$167,000–\$177,000	\$105,001–\$120,000						
Eligibility	Married Joint Filers	Single Filers															
Full	< \$167,000	< \$105,000															
Partial	\$167,000–\$177,000	\$105,001–\$120,000															
Do I receive a tax benefit for contributing? How about my spouse?	<p><b>Your contributions may be fully or partially tax-deductible</b>, and not taxed until withdrawn, <b>if you participate in an employer retirement plan</b> and your Modified Adjusted Gross Income (MAGI) is:</p> <table border="1"> <thead> <tr> <th style="border-top: 1px solid black;">Deduction</th> <th style="border-top: 1px solid black;">Married Joint Filers</th> <th style="border-top: 1px solid black;">Single Filers</th> </tr> </thead> <tbody> <tr> <td>Full</td> <td>&lt; \$89,000</td> <td>&lt; \$55,000</td> </tr> <tr> <td>Partial</td> <td>\$89,001–\$109,000</td> <td>\$55,001–\$65,000</td> </tr> </tbody> </table> <p>If you and your spouse both do not participate in an employer plan, both of your contributions are fully tax-deductible.</p> <p>If you participate but your spouse does not, then your spouse's contributions are fully or partially tax-deductible if you file Married Jointly and your MAGI is:</p> <table border="1"> <thead> <tr> <th style="border-top: 1px solid black;">Deduction</th> <th style="border-top: 1px solid black;">Married Joint Filers</th> </tr> </thead> <tbody> <tr> <td>Full</td> <td>&lt; \$167,000</td> </tr> <tr> <td>Partial</td> <td>\$167,001–\$177,000</td> </tr> </tbody> </table>	Deduction	Married Joint Filers	Single Filers	Full	< \$89,000	< \$55,000	Partial	\$89,001–\$109,000	\$55,001–\$65,000	Deduction	Married Joint Filers	Full	< \$167,000	Partial	\$167,001–\$177,000	No.
Deduction	Married Joint Filers	Single Filers															
Full	< \$89,000	< \$55,000															
Partial	\$89,001–\$109,000	\$55,001–\$65,000															
Deduction	Married Joint Filers																
Full	< \$167,000																
Partial	\$167,001–\$177,000																
Can I make contributions that are not tax-deductible?	Yes, and those contributions would not be taxed when withdrawn, but you have to follow an IRS formula to determine what percentage of each withdrawal represents after-tax contributions and is thus not subject to tax.	Contributions are never tax-deductible but can be withdrawn first, at any time, without taxes or penalties.															
Do I receive a tax benefit for my earnings?	Yes, <b>earnings are tax-deferred</b> — taxable only when withdrawn.	Yes, earnings are tax-deferred. They also are <b>tax-free</b> if you have held a Roth IRA for more than five years <b>and</b> either: <ul style="list-style-type: none"> <li>a) you are age 59½ or over; or</li> <li>b) you qualify as disabled; or</li> <li>c) you qualify for a “first-time” home purchase; or</li> <li>d) your heirs receive them upon your death.</li> </ul>															
How much can I contribute?	<p><b>\$5,000</b> for the 2010 tax year, up until April 15, 2011</p> <ul style="list-style-type: none"> <li>• You may contribute to both a Traditional and a Roth IRA but your total combined contribution cannot exceed \$5,000.</li> </ul>																

Questions <i>(continued)</i>	Traditional IRA <i>(continued)</i>	Roth IRA <i>(continued)</i>
Can I contribute more if I am age 50 or over?	<b>+ \$1,000</b> , for a total of <b>\$6,000</b> if you are age 50 or over during 2010	
When can I withdraw?	At any time without restriction	
Are there early withdrawal penalty taxes?	<p>A 10% penalty tax is imposed on withdrawals (other than non-deductible contributions) prior to age 59½ unless an exception applies. Exceptions include if you:</p> <ul style="list-style-type: none"> <li>• have qualified medical expenses that exceed 7.5% of your Adjusted Gross Income;</li> <li>• qualify as disabled;</li> <li>• annuitize in order to receive lifetime income payments;</li> <li>• receive “substantially equal periodic payments” for a period of 5 years or until you are age 59½, whichever is longer;</li> <li>• use payments to directly satisfy a federal tax levy;</li> <li>• are a qualified military reservist called to active duty for more than 180 days;</li> <li>• purchase a qualifying “first-time” home, up to a maximum \$10,000 lifetime limit;</li> <li>• have qualified higher education expenses; or</li> <li>• have qualifying medical insurance premiums around the time you receive unemployment compensation.</li> </ul> <p>Additional exceptions include withdrawals:</p> <ul style="list-style-type: none"> <li>• made to your beneficiary(ies) or estate on or after your death.</li> </ul>	<p>Contributions are withdrawn first and not subject to taxes or penalties.</p> <p>Earnings, which are withdrawn once all contributions and conversions (see below) have been withdrawn, are subject to the same rules as Traditional IRAs.</p> <ul style="list-style-type: none"> <li>• Only earnings withdrawn, not contributions, count towards the \$10,000 lifetime limit for “first-time” home purchases.</li> </ul>
Can I take out a loan?	No.	
Am I ever required to withdraw?	<p>Yes, but not until age 70½. IRS-required minimum distributions (RMDs) must be taken yearly beginning in the year you turn age 70½ regardless of whether you are still working. Your first RMD may be taken by April 1 of the following year.</p>	<p>No. Upon your death, however, your heirs are required to take RMDs but those distributions are likely to be tax-free.</p> <ul style="list-style-type: none"> <li>• Earnings would only be subject to taxes if you, as the original owner, had not held a Roth IRA for the five-year holding period.</li> </ul>
Can I transfer assets to or from other retirement accounts?	<p>Generally yes; transfers or rollovers to or from eligible retirement plans, including other IRAs, 401(a), 401(k), 403(b), and 457(b) public deferred compensation plans, are allowed.</p> <ul style="list-style-type: none"> <li>• Exception: Non-deductible contributions cannot be rolled over to employer plans.</li> </ul> <p>If you move money from a Traditional IRA to a Roth IRA — a “conversion” — it is subject to tax but future growth may be tax-free.</p> <ul style="list-style-type: none"> <li>• Visit <a href="http://www.icmarc.org/rothconversion">www.icmarc.org/rothconversion</a>.</li> </ul>	<p>No.</p> <p>Transfers or rollovers from Roth 401(k) or Roth 403(b) assets to a Roth IRA are allowed but not vice-versa.</p>

*This information is offered for educational purposes only. ICMA-RC does not provide legal or tax advice. You are encouraged to consult a qualified tax advisor for tax-related answers specific to your situation. See IRS Publication 590 for complete IRA rules. All figures pertain to the 2010 tax year and to IRS federal tax rules. Different tax rules may apply to your state.*



# City of Greenville, North Carolina

Meeting Date: 9/8/2011  
Time: 7:00 PM

**Title of Item:** Budget ordinance amendment #2 to the 2011-2012 City of Greenville budget (Ordinance 11-038) and an ordinance establishing the Emergency Operations Center Project Fund

**Explanation:** 1) Attached is an amendment to the 2011-2012 budget ordinance for consideration at the September 8, 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 explanation below:

**A** To reduce the appropriation to Sheppard Memorial Library to match Pitt County funding for the current fiscal year. This adjustment was discussed and approved during the August 8, 2011 City Council meeting (\$75,480).

**B** To appropriate funds received from Wells Fargo (former owner of structure) to complete the demolition of the structure located at 1604 Henry Drive (\$2,500).

**C** To appropriate the City's share of funds to match a federal grant for construction of the Emergency Operations Center (\$200,000).

**D** To reappropriate unused donation funds received in prior fiscal year into the current fiscal year 2011-2012 (\$136,708).

**E** To reappropriate unused Supplemental PEG funds received during prior year (s) into the current fiscal year (\$77,130).

2) Attached is an ordinance to establish a Capital Project Fund for the Emergency Operations Center (EOC). This fund will track activity to construct an EOC for the City using local and federal grant funds.

**Fiscal Note:** The budget ordinance amendment affects the following funds: increase General Fund by \$416,338. The original budget amount has been adjusted for



encumbrances that have rolled forward from open purchase orders from the prior year. This results in the addition to the original budget of \$988,823. The encumbrance carryover is consistent to prior year(s).

<u>Fund Name</u>	<u>Original Adopted Budget</u>	<u>Proposed Amendment</u>	<u>Adjusted Budget</u>
General	\$ 75,670,587	\$ 416,338	\$76,086,925
Emergency Operations Center	\$ 800,000		\$ 800,000

**Recommendation:** Approve budget ordinance amendment #2 to the 2011-2012 City of Greenville budget (Ordinance 11-038) and the ordinance establishing the Emergency Operations Center Project Fund

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

**Attachments / click to download**

[Budget Amendment FY 2011 2012 902782](#)

[Emergency Operations Center Project Fund Ordinance 904919](#)

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ORDINANCE NO. -  
CITY OF GREENVILLE, NORTH CAROLINA  
ORDINANCE (#2) AMENDING THE 2011-2012 BUDGET (ORDINANCE NO. 11-038)

**THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA , DOES ORDAIN:**

Section I: Estimated Revenues and Appropriations. **General Fund**, of Ordinance 11-038, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ORIGINAL 2011-2012 BUDGET</b>		<b>#2 Amended 9/8/11</b>	<b>Total Amendments</b>	<b>Amended 2011-2012 Budget</b>
<b><u>ESTIMATED REVENUES</u></b>					
Property Tax	\$ 29,813,308		\$ -	\$ -	\$ 29,813,308
Sales Tax	14,350,430		-	-	14,350,430
Utilities Franchise Tax	5,974,803		-	-	5,974,803
Other Unrestricted Intergov't Revenue	2,475,028		-	-	2,475,028
Powell Bill	2,032,692		-	-	2,032,692
Restricted Intergov't Revenues	2,149,013			171,000	2,320,013
Building Permits	733,701			-	733,701
Other Licenses, Permits and Fees	2,858,088			-	2,858,088
Rescue Service Transport	2,652,260			-	2,652,260
Other Sales & Services	1,042,183			-	1,042,183
Other Revenues	295,641	<b>B</b>	2,500	2,500	298,141
Interest on Investments	1,884,450			-	1,884,450
Transfers In GUC	4,986,085			-	4,986,085
Other Financing Sources	1,062,537			-	1,062,537
Appropriated Fund Balance	3,079,408	<b>C,D,E</b>	413,838	523,798	3,603,206
<b>TOTAL REVENUES</b>	<b>\$ 75,389,627</b>		<b>\$ 416,338</b>	<b>\$ 697,298</b>	<b>\$ 76,086,925</b>
<b><u>APPROPRIATIONS</u></b>					
Mayor/City Council	\$ 431,749		\$ -	\$ -	\$ 431,749
City Manager	1,116,824	<b>E</b>	77,130	77,130	1,193,954
City Clerk	308,883		-	-	308,883
City Attorney	455,445		-	-	455,445
Human Resources	2,708,693		-	-	2,708,693
Information Technology	3,214,564		-	-	3,214,564
Fire/Rescue	12,944,364	<b>D</b>	29,013	74,013	13,018,377
Financial Services	2,299,332	<b>D</b>	864	864	2,300,196
Recreation & Parks	6,334,925	<b>D</b>	83,741	83,741	6,418,666
Police	22,536,036	<b>D</b>	20,861	20,861	22,556,897
Public Works	9,191,938	<b>B</b>	2,500	128,500	9,320,438
Community Development	1,730,349	<b>D</b>	2,229	112,189	1,842,538
OPEB	250,000		-	-	250,000
Contingency	150,000	<b>A</b>	75,480	75,480	225,480
Indirect Cost Reimbursement	(601,354)		-	-	(601,354)
Capital Improvements	6,347,428		-	-	6,347,428
Total Appropriations	<b>\$ 69,419,176</b>		<b>\$ 291,818</b>	<b>\$ 572,778</b>	<b>\$ 69,991,954</b>
<b><u>OTHER FINANCING SOURCES</u></b>					
Debt Service	\$ 4,209,487		\$ -	\$ -	\$ 4,209,487
Transfers to Other Funds	1,760,964	<b>A,C</b>	124,520	124,520	1,885,484
	<b>\$ 5,970,451</b>		<b>\$ 124,520</b>	<b>\$ 124,520</b>	<b>\$ 6,094,971</b>
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 75,389,627</b>		<b>\$ 416,338</b>	<b>\$ 697,298</b>	<b>\$ 76,086,925</b>

Section II: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section III: This ordinance will become effective upon its adoption.

Adopted this 8th day of September, 2011.

\_\_\_\_\_  
Patricia C. Dunn

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

ORDINANCE NO. 11-\_\_\_\_\_  
CITY OF GREENVILLE, NC  
EMERGENCY OPERATIONS CENTER PROJECT FUND  
BUDGET ORDINANCE

**THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA , DOES ORDAIN:**

Section I: Estimated Revenues. It is estimated that the following revenues will be available for the Emergency Operations Center Project Fund:

	<b>ORIGINAL 2011-2012 BUDGET</b>
<b><u>ESTIMATED REVENUES</u></b>	
Transfer from General Fund	\$ 200,000
Loc / State / Federal Grant	600,000
<b>TOTAL REVENUES</b>	<b>\$ 800,000</b>

Section II: Appropriations. The following amounts are hereby appropriated for the Emergency Operations Center Project Fund:

<b><u>APPROPRIATIONS</u></b>	
Design	200,000
Construction	\$ 600,000
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 800,000</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 8th day of September 2011.

\_\_\_\_\_  
Patricia C. Dunn, Mayor

ATTEST:

\_\_\_\_\_  
Carol L. Barwick, City Clerk

