



## **Agenda**

### **Greenville City Council**

**April 8, 2019**

**6:00 PM**

**City Hall Council Chambers**

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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 Smiley**
- III. Pledge of Allegiance**
- IV. Roll Call**
- V. Approval of Agenda**
- VI. 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.

## **VII. Special Recognitions**

1. Calvin Horne, Sr. - Fire-Rescue Department Retiree
2. Accreditation of Fire-Rescue Department by Commission on Fire Accreditation International (CFAI)

## **VIII. Consent Agenda**

3. Minutes from the February 14, 2019 City Council meeting
4. Resolution amending the City of Greenville Personnel Policies
5. Ordinance revising the Outdoor Dining regulations for the Outdoor Sidewalk Dining ordinance and Uptown Parking Deck Plaza ordinance
6. Resolution authorizing condemnation to acquire an electric easement on certain property owned by Harry Salley for the West 5th Street Gateway Streetscape – Phase 2 Project
7. Right-of-Way Encroachment Agreement with HAFCO, Inc.
8. Contract award for professional services for Construction Engineering and Inspection and Construction Materials Testing for City-funded projects
9. Contract with Cherry Bekaert, LLP for auditing services for Fiscal Year 2018-2019
10. Report on Bids and Contracts Awarded
11. Various tax refunds greater than \$100

## **IX. New Business**

12. Presentations by Boards and Commissions
  - a. Firefighters Relief Fund Committee
  - b. Police Community Relations Committee
13. Preview of the City's 2019-2020 proposed General Fund budget
14. Budget ordinance amendment #9 to the 2018-2019 City of Greenville budget (Ordinance #18-038) and Special Grants Revenue (Ordinance #11-003)

## **X. Review of April 11, 2019 City Council Agenda**

## **XI. City Manager's Report**

## **XII. Comments from Mayor and City Council**

### **XIII. Adjournment**



## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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- Title of Item:** Minutes from the February 14, 2019 City Council meeting
- Explanation:** Proposed minutes from the regular City Council meeting held on February 14, 2019 are presented for review and approval
- Fiscal Note:** There is no direct cost to the City
- Recommendation:** Review and approve proposed minutes from the regular City Council meeting held on February 14, 2019
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### ATTACHMENTS:

- ▣ **Proposed\_Minutes\_of\_the\_February\_14,\_2019\_City\_Council\_Meeting\_1105885**

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, FEBRUARY 14, 2019



A regular meeting of the Greenville City Council was held on Thursday, February 14, 2019 in the Council Chambers, located on the third floor at City Hall, with Mayor P. J. Connelly presiding. Mayor Connelly called the meeting to order at 6:00 pm. Mayor Connelly gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor P. J. Connelly, Mayor Pro-Tem Rose H. Glover and Council Members Monica Daniels, Will Bell, Rick Smiley, William F. Litchfield, Jr. and Brian V. Meyerhoeffer, Jr.

Those Absent:

None

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel D. McGirt, City Clerk Carol L. Barwick and Deputy City Clerk Polly Jones

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**APPROVAL OF THE AGENDA**

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City Manager Ann Wall asked that the item related to closure of an alleyway located on the east side of Cedar Lane and south of East Tenth Street be removed from the agenda.

Council Member Meyerhoeffer reminded the City Council of the continuation of the State Lobbying item from the previous Monday's meeting.

Council Member Smiley asked that anyone desiring to speak on the alleyway closure be allowed to do so under public comment, then moved that the agenda be approved as amended. Council Member Meyerhoeffer seconded the motion, which passed by unanimous vote.

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**PUBLIC COMMENT PERIOD**

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Mayor Connelly opened the public comment period at 6:07 pm, explaining procedures which should be followed by all speakers.



Robert O’Neal – 1900 Allen Road

Mr. O’Neal expressed significant concern that the landfill has a machine that sounds like a thunderstorm coming through the woods. He has been discussing this with Mayor Connelly and Chief Planner Chantae Gooby, who has informed him this is an allowable use for that location. He can’t understand why, noting landfill personnel run this machine as late as 8:00 or 9:00 pm and as early as 7:00 am. He said he complained at a County Commissioner’s meeting and, as a compromise, they offered to quit running the machine from 7:00 pm on Saturday until 7:00 am on Monday. Mr. O’Neal stated he has a son with Down Syndrome who will not go outside when this machine is running, and if it starts to run while he is outside, he runs for the house. He asked if he is supposed to only be able to take his son outside during this small window of time.

Mike Barnum – 614 Maple Street

Mr. Barnum stated he felt really good about stormwater control efforts that have been put in place over the past couple years, the detailed study that was done and the Council passing the Stormwater Master Plan. Over the past year, in attending some Planning and Zoning meetings and City Council meetings, he has become concerned over some of the verbiage in some of the zoning requests. Under the Environments Concerns section, it says “if stormwater rules apply” even when it has been identified that area is in a sensitive watershed area. He stated he wants Council to be aware of this in case it becomes a clause that might allow developers to work around stormwater rules.

Jamie Harris – Cedar Lane

Ms. Harris stated she has lived on Cedar Lane since 2005 and during that time, there have been many changes in the businesses up and down the alleyway off 10<sup>th</sup> Street. She has been concerned with the growing decline in area properties and the activities going on in that area. Many individuals hang out in the dirt path that are not residents in the area and they may or may not be engaging in illegal activities. She is also concerned about large trucks attempting to use the alley, which is too narrow to maneuver without having to drive onto her property, causing damage to it as well as to the curbing owned by the City. Ms. Harris stated she sees no reason this alley should remain open.

Hearing no one else who wished to speak during the Public Comment period, Mayor Connelly closed the public comment period at 6:15 pm.

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**SPECIAL RECOGNITIONS**

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**TIM LANGLEY – POLICE DEPARTMENT RETIREE**

City Manager Ann Wall, accompanied by Mayor Connelly and Police Chief Mark Holtzman, recognized Tim Langley on the occasion of his retirement from the Greenville Police



Department. She read and presented him with a plaque honoring his 30 years of service to the citizens of Greenville.

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## APPOINTMENTS

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

#### Affordable Housing Loan Committee

Council Member Daniels made a motion to reappoint David Campbell to a second three-year term that will expire January 2022. Council Member Bell seconded the motion and it carried unanimously.

#### Community Appearance Commission

Council Member Smiley made a motion to appoint Jeremy Miller to fill an unexpired term that will expire April 2020 in replacement of Byron Aynes, who had resigned. Council Member Bell seconded the motion and it carried unanimously.

#### Environmental Advisory Commission

Council Member Meyerhoeffer made a motion to appoint Derrick Smith to fill an unexpired term that will expire April 2021 in replacement of Durk Tyson, who did not seek a second term. Council Member Bell seconded the motion and it carried unanimously.

Council Member Meyerhoeffer continued the appointment for all remaining seats.

#### Greenville Bicycle & Pedestrian Commission

Council Member Bell continued all appointments.

#### Historic Preservation Commission

Council Member Litchfield made a motion to appoint Edward Puchner to a first three-year term that will expire January 2022, in replacement of Christopher Nunnally, who had resigned. Council Member Bell seconded the motion and it carried unanimously.

Council Member Litchfield made a motion to appoint Andrew Morehead to fill an unexpired term that will expire January 2021 in replacement of Troy Demers, who had resigned. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

#### Human Relations Council

Mayor Pro-Tem Glover continued all appointments.

#### Recreation & Parks Commission

Mayor Pro-Tem Glover continued all appointments.



Redevelopment Commission

Council Member Smiley made a motion to appoint AJ Jacobs to fill an unexpired term that will expire November 14, 2020, in replacement of Tracie Gardener, who had resigned. Council Member Bell seconded the motion and it carried unanimously.

Youth Council

Mayor Pro-Tem Glover made a motion to appoint Lexi Karaivanova and Javier Limon to unexpired terms that will expire September 30, 2019. Council Member Meyerhoeffler seconded the motion and it carried unanimously.

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**CONTINUED FROM MONDAY'S MEETING**  
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**CONTRACT AWARD FOR STATE LOBBYING SERVICES**

City Manager Ann Wall stated proposals were received from firms interested in performing lobbying services for the City of Greenville. The lobbyist services will include work with the General Assembly in areas including economic development, transportation, storm water, tax policies and City Council priorities. The work will include reviewing State proposals and legislation under consideration; proposed and adopted administrative rules and regulations; and other developments for the purpose of advising the City of issues that may have a bearing on the City's policies and programs; identify and act to obtain funding for the City; develop briefing materials; and alert the City to potential new opportunities that will further the City's interest. Ms. Wall recommended awarding a contract to Ward and Smith P.A. for lobbying services with the State of North Carolina having an annual cost of \$72,000. Funding is available through the operating budget.

Upon motion by Council Member Meyerhoeffler and second by Council Member Litchfield, the City Council voted unanimously to Approve and authorize the City Manager to sign the engagement agreement with Ward and Smith.

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**NEW BUSINESS**  
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**PUBLIC HEARINGS**

**ORDINANCE TO ANNEX GREY FOX RUN, PHASE 2 INVOLVING 2.2018 ACRES LOCATED ALONG BLUEBILL DRIVE AND 450+/- FEET EAST OF KITTRELL FARMS DUPLEXES - Ordinance No. 19-007**

Senior Planner Chantae Gooby showed a map depicting the proposed annexation area, which is located within Winterville Township in voting district #5. The property is





currently vacant with no population, and a population of 39 is expected at full development. Current zoning is R6 (Residential), with the proposed use being 18 townhome lots. Present tax value is \$143,117, with tax value at full development estimated at \$2,614,590.

Mayor Connelly declared the public hearing for the proposed annexation open at 6:35 pm and invited anyone wishing to speak in favor to come forward.

Hearing no one, Mayor Connelly invited comment in opposition. Also hearing none, Mayor Connelly closed the public hearing at 6:36 pm.

Council Member Bell moved to adopt the ordinance to annex Grey Fox Run, Phase 2, involving 2.2018 acres located along Bluebill Drive and 450+/- feet east of Kittrell Farms Duplexes. Council Member Smiley seconded the motion, which passed by unanimous vote.

**ORDINANCE TO ANNEX PROPERTY OWNED BY THE CITY OF GREENVILLE INVOLVING 9.57 ACRES LOCATED ALONG THE WESTERN RIGHT-OF-WAY OF THE CSX RAILROAD AND NORTH OF WEST FIRE TOWER ROAD** – Ordinance No. 19-008

Senior Planner Chantae Gooby showed a map depicting the proposed annexation area, which is located within Winterville Township in voting district #5. The property is currently vacant with no population, and no population is expected at full development. Current zoning is RA20 (Residential-Agricultural), with the proposed use being a utility substation. Present tax value is \$185,888, with tax value at full development estimated at \$14,000,000.

Mayor Connelly declared the public hearing for the proposed annexation open at 6:37 pm and invited anyone wishing to speak in favor to come forward.

Hearing no one, Mayor Connelly invited comment in opposition. Also hearing none, Mayor Connelly closed the public hearing at 6:38 pm.

Council Member Smiley moved to adopt the ordinance to annex property owned by the City of Greenville involving 9.57 acres located along the western right-of-way of the CSX Railroad and north of West Fire Tower Road. Council Member Bell seconded the motion, which passed by unanimous vote.

**ORDINANCE REQUESTED BY CAROLINA PENN INVESTMENT GROUP, LLC TO REZONE A TOTAL OF 0.939 ACRES LOCATED ALONG WEST 3RD STREET BETWEEN SOUTH PITT STREET AND THE CSX RAILROAD FROM CDF (DOWNTOWN COMMERCIAL FRINGE) AND R6 (RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) TO CD (DOWNTOWN COMMERCIAL)** – Ordinance No. 19-009



Chief Planner Chantae Gooby stated Carolina Penn Investment Group, LLC has requested rezoning of a total of 0.939 acres located along West 3<sup>rd</sup> Street between South Pitt Street and the CSX Railroad from CDF (Downtown Commercial Fringe) and R6 (Residential [High Density-Multi-family]) CD (Downtown Commercial).

Based on the analysis comparing the existing zoning (59 trips) and requested rezoning, the proposed rezoning could generate approximately 93 trips to and from the site on West 3<sup>rd</sup> Street. Since the increase is small and there are several roadways in the surrounding network for the traffic to disperse, a traffic volume report was not generated. During the review process, measures to mitigate the traffic will be determined.

In 1969, the property was zoned to its current zoning. Water and Sanitary Sewer are available. There are no known historical conditions/constraints on this property. The property is located in the Harris Mill Run / Schoolhouse Branch Watershed. Since the property is less than 0.5 acres, stormwater rules will not apply. If stormwater rules apply, 10-year detention would be required. Since it is located in the West Greenville Revitalization Area, it is exempt from water quality requirements. It is not located in the Special Flood Hazards Area, therefore, development is not subject to the Flood Damage Prevention Ordinance.

Under the current zoning, Ms. Gooby stated Tract 1 could accommodate one duplex building. Tract 2 contains two duplexes and two vacant lots. Tract 3 contains three single-family dwellings on one lot. Under the proposed zoning, the site could accommodate ten multi-family units (1, 2 and 3 bedroom). The anticipated build-out time is within 1-3 years.

Surrounding land uses and zoning are as follows:

North: R6 - Greenville Utilities Commission property; CD - one (1) vacant lot

South: CDF - Three (3) vacant lots and one (1) single-family dwelling

East: CD - One (1) vacant lot and Instigator Marketing; CDF - one (1) commercial building

West: R6 - Two (2) vacant parcels and one (1) multi-family building

Ms. Gooby stated that, in staff's opinion, the request is in compliance with Horizons 2026: Greenville's Community Plan and the Future Land Use Plan and Character Map. "In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Ms. Gooby stated the Planning and Zoning Commission voted unanimously to recommend approval of the request at its January 15, 2019 meeting.

Mayor Connelly declared the public hearing for the proposed rezoning open at 6:49 pm



and invited anyone wishing to speak in favor to come forward.

Mike Baldwin – No Address Given

Mr. Baldwin, representing the applicant, stated Mr. Overton has made some significant improvements to the property. He noted the CDF zoning allows for some higher impact uses than CD, such as a service station. Mr. Baldwin stated he is available to answer any questions the Council may have.

Michael Overton – No Address Given

Mr. Overton stated he is a managing member of the Penn Investment Group. He said one of the illustrations shown tonight showed two older homes. Those homes have actually been demolished. There is still some cleanup on the lots to be done. The three duplexes that were converted to single family are all on one lot. Because of setback rules, they could not be divided into individual parcels. He noted he also owns the property across the street and it is already zoned CD. He stated their goal is to improve the appearance of that street.

Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition.

No one was present in the audience who wished to speak. Mayor Connelly read an email received from Ann Harrington regarding her opposition.

**\*\*COPY\*\***

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**From:** Ann Harrington <[all826@suddenlink.net](mailto:all826@suddenlink.net)>  
**Sent:** Wednesday, February 13, 2019 9:48 AM  
**To:** City Clerk Information <[clerk@greenvillenc.gov](mailto:clerk@greenvillenc.gov)>  
**Subject:** Proposed Rezoning

Good Morning,

My property, 412 W 4<sup>th</sup> St is adjacent to the proposed rezoning property on West 3<sup>rd</sup> St. I am unable to attend tomorrow's City Council meeting and am writing to protest this rezoning. I am opposed to multi-family use in this area mostly because I do not want such on my street. We all know that rezoning is based on precedents in the neighborhood. Before the economic crash of 2008 the property owner to my west, was intending to build triplexes on it if she could obtain rezoning. I am staunchly opposed to this. My husband and I have lived in this neighborhood for 30+ years and have been among the few anchors of stability in this area. West Greenville is poised to be revitalized. We are delighted that Uptown has changed in a good direction. As leaders you have great influence as to how this will affect us ordinary middle class folk. At the very least, I ask you to table this motion so you can visit us and see what I am talking about.

I look forward to hearing from you.

Sincerely,  
Ann W. Harrington

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**\*\*END COPY\*\***



Hearing no one else who wished to speak, Mayor Connelly closed the public hearing at 6:54 pm.

Council Member Bell moved to adopt the ordinance to rezone a total of 0.939 acres located along West 3<sup>rd</sup> Street between South Pitt Street and the CSX Railroad from CDF (Downtown Commercial Fringe) and R6 (Residential [High Density-Multi-family]) CD (Downtown Commercial). Council Member Litchfield seconded the motion, which passed by unanimous vote.

**ORDINANCE REQUESTED BY HAPPY TRAIL FARMS, LLC TO REZONE 10.066 ACRES LOCATED BETWEEN STANTONSBURG ROAD AND THE NORFOLK SOUTHERN RAILROAD AND WEST OF THE SOUTHWEST BYPASS FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO I (INDUSTRY) – Ordinance No. 19-010**

Chief Planner Chantae Gooby stated Happy Trail Farms, LLC has requested rezoning of 10.066 acres located between Stantonburg Road and the Norfolk Southern Railroad and west of the Southwest Bypass from RA20 (Residential-Agricultural) to I (Industry).

Based on the analysis comparing the existing zoning (335 daily trips) and requested rezoning, the proposed rezoning classification could generate approximately 209 trips to and from the site on Stantonburg Road, which is a net decrease of 126 trips per day. Since the traffic analysis for the requested rezoning indicates that the proposal would generate less traffic than the existing zoning, a traffic volume report was not generated. During the review process, measures to mitigate the traffic will be determined.

In 2001, the subject property was part of a large-scale extra-territorial jurisdiction (ETJ) extension and was zoned its current zoning. There was a Future Land Use and Character Map Amendment associated with this request to amend the Future Land Use and Character Map for 10.066 acres from the Office/Institutional (OI) land use character to the Industrial/Logistics (IL) land use character. At its December 13, 2018 City Council meeting, the request was denied.

Water will be provided by Bell Arthur Water Corporation. However, sanitary sewer is not currently available. There are no known effects on historic sites. The property is located in the Greens Mill Run Watershed. If stormwater rules apply, it would require 10-year detention and nitrogen and phosphorous reduction. It is not located in the Special Flood Hazards Area. Therefore, development is not subject to the Flood Damage Prevention Ordinance.

Under the current zoning, the site could accommodate 30-35 single-family lots. Under the proposed category, the site could yield 58,800+/- square feet of industrial/warehouse space. The anticipated build-out time is 2-3 years.



Surrounding land uses and zoning are as follows:

North: RA20 - Four (4) vacant lots

East: I - Pitt County Landfill

West: RA20 - One (1) vacant lot

Ms. Gooby stated that, in staff's opinion, the request is not in compliance with Horizons 2026: Greenville's Community Plan and the Future Land Use and Character Map. Therefore, staff recommends denial. "Not in compliance with the comprehensive plan" should be construed as meaning the requested zoning (i) is specifically noncompliant 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.

Ms. Gooby stated the Planning and Zoning Commission voted 6 to 2 to recommend approval of the request at its January 15, 2019 meeting.

Council Member Smiley questioned the word choice of "if stormwater rules apply" and asked in what circumstances might they not apply.

Public Works Director Kevin Mulligan stated it depends on the size of the development. For example, something under half an acre would be deemed not a problem and they would not apply.

Mayor Connelly declared the public hearing for the proposed rezoning open at 7:05 pm and invited anyone wishing to speak in favor to come forward.

#### Mike Baldwin – No Address Given

Mr. Baldwin, representing the applicant, stated Happy Trails Farm is managed by Woody Whichard, who is a native of Pitt County. He stated they started by requesting a land use map amendment. That request was approved 5 to 2 by the Planning and Zoning Commission, but was denied when it came before the City Council. They are back now with a rezoning request, not because they are hardheaded, but because they are passionate about their request. The property is located 5,400 feet along old Stantonsburg Road from a major thoroughfare. People are not going to want to travel that far down a two-lane road to go to an office. He stated the noise at the landfill comes from a rail car that sits on the track that is equipped with a shaker for limestone and it is the noisiest thing he has heard in Pitt County. No one would want to be in an office at that location due to the noise of not only the shaker, but of the railroad tracks and the Southwest Bypass. Practical uses for the property would be electrical contractors, mini storage and other things that would not be disturbed by the noise that exists there. Mr. Baldwin said he is available to answer any questions the Council may have.



Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition.

Robert O'Neal – No Address Given

Mr. O'Neal stated he opposes this request because of the industrial zoning. He is very concerned that a future buyer with that zoning could use the property for something that would bring even more noise to the area.

Mike Barnum – 614 Maple Street

Mr. Barnum stated he is not necessarily in opposition to the request, but he has read the Greens Mill Run Watershed Master Plan and it identifies anything in the Allen Road area as being somewhere that can make an impact on stormwater in the area. He is concerned that the appropriate detention standard (10 year versus 25 year) be applied.

Hearing no one else who wished to speak, Mayor Connelly closed the public hearing at 7:20 pm.

Council Member Smiley moved to deny the request; however, the motion died for lack of a second.

Council Member Bell moved to adopt the ordinance to rezone 10.066 acres located between Stantonsburg Road and the Norfolk Southern Railroad and west of the Southwest Bypass from RA20 (Residential-Agricultural) to I (Industry), noting that the motion to adopt this ordinance will, in addition to the furtherance of other goals and objectives, promote the safety and general welfare of the community because the requested zoning encourages the most appropriate use of land that allows for the development needs of the community and is located in a Primary Service Area. Mayor Pro-Tem Glover seconded the motion, which passed by a vote of 5 to 1 with Council Member Smiley casting the dissenting vote.

**ORDINANCE REQUESTED BY BENT CREEK FARMS, LLC TO REZONE 1.362 ACRES LOCATED ALONG THE WESTERN RIGHT-OF-WAY OF ALLEN ROAD AND 400 +/- FEET NORTH OF WOODRIDGE PARK DRIVE FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO CH (HEAVY COMMERCIAL) – Ordinance No. 19-011**

Chief Planner Chantae Gooby stated Bent Creek Farms, LLC has requested rezoning of 1.362 acres located along the western right-of-way of Allen Road and 400 +/- feet north of Woodridge Park Drive from RA20 (Residential-Agricultural) to CH (Heavy Commercial).

Based on the possible uses permitted by the requested rezoning, the proposed rezoning classification could generate 122 trips to and from the site on Allen Road, which is a net increase of 92 additional trips per day. During the review process, measures to mitigate the traffic will be determined.



In 2001, the subject property was part of a large-scale extra-territorial jurisdiction (ETJ) extension and was zoned its current zoning. Water and sanitary sewer are available. There are no known effects on historic sites. Greens Mill Run runs along the southern property line. A portion of the property is within the 100-year floodplain and floodway. This property may contain wetlands and is subject to the riparian buffer rules. The property is located in the Greens Mill Run Watershed. If stormwater rules applies, it would require 25-year detention and nitrogen and phosphorous reduction.

Currently, there is one (1) single-family dwelling and three (3) mobile homes on the site. Under the proposed zoning, the site could accommodate 11,050+/- square feet of office space. The anticipated build-out is within 1-2 years.

Surrounding land uses and zoning are as follows:

North: RA20 - One (1) single-family dwelling

South: CH - Woodridge Corporate Park

East: RA20 - One (1) vacant lot (NCDOT-owned) and farmland

West: RA20 - Farmland

Ms. Gooby stated that, in staff's opinion, the request is in compliance with Horizons 2026: Greenville's Community Plan and the Future Land Use Plan and Character Map. "In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Ms. Gooby stated the Planning and Zoning Commission voted 6 to 2 to recommend approval of the request at its January 15, 2019 meeting.

Mayor Connelly declared the public hearing for the proposed rezoning open at 7:42 pm and invited anyone wishing to speak in favor to come forward.

#### Mike Baldwin – No Address Given

Mr. Baldwin, representing the applicant, stated he is available to answer any questions the Council may have.

Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition. Hearing none, Mayor Connelly closed the public hearing at 7:44 pm.

Mayor Pro-Tem Glover moved to adopt the ordinance to rezone 1.362 acres located along the western right-of-way of Allen Road and 400 +/- feet north of Woodridge Park Drive



from RA20 (Residential-Agricultural) to CH (Heavy Commercial). Council Member Meyerhoeffer seconded the motion, which passed by unanimous vote.

**ORDINANCE REQUESTED BY CRAIG F. GOESS AND CRAIG M. GOESS TO REZONE 7.687 ACRES LOCATED ON THE NORTHWESTERN CORNER OF THE INTERSECTION OF WEST ARLINGTON BOULEVARD AND DICKINSON AVENUE FROM MCG (MEDICAL-GENERAL COMMERCIAL) TO MCH (MEDICAL-HEAVY COMMERCIAL)** – Ordinance No. 19-012

Chief Planner Chantae Gooby stated Craig F. Goess and Craig M. Goess have requested an ordinance to rezone 7.687 acres located on the northwestern corner of the intersection of West Arlington Boulevard and Dickinson Avenue from MCG (Medical-General Commercial) to MCH (Medical-Heavy Commercial).

Based on the analysis comparing the existing zoning (10,188 trips) and requested rezoning, the proposed rezoning could generate approximately 8,736 trips to and from the site on Arlington Boulevard and Dickinson Avenue, which is a decrease of 1,452 less trips per day. The traffic analysis for the requested rezoning indicates that the proposal would generate approximately 15% less traffic than the existing rezoning. Therefore, a traffic volume report was not generated. During the review process, measures to mitigate the traffic will be determined.

In 1972, the subject properties were incorporated into the City's ETJ (extra-territorial jurisdiction) and zoned RA20 (Residential-Agricultural). In 2007, the property was rezoned to MO (Medical-Office). In 2016, the property was rezoned to its current zoning (MCG). A portion of the property is included in the approved preliminary plat for Arlington West Office Park. Water and Sanitary Sewer are available. There are no known historical conditions/constraints on this property, nor are there any known environmental conditions/constraints. The property is located in the Greens Mill Run Watershed. If stormwater rules apply, it would require 25-year detention and nitrogen and phosphorous reduction. It is not located in the Special Flood Hazards Area. Therefore, development is not subject to the Flood Damage Prevention Ordinance.

Under the current zoning, the site could accommodate 60,800 +/- square feet mixed retail/restaurant/service development including: one (1) conventional restaurant (5,600 sq. ft.), personal service (5,000 sq. ft.), fast food restaurants (10,000 sq. ft.), and office space (5,000). The remaining area would be used for miscellaneous retail.

Under the proposed zoning, the site could accommodate 60,800 +/- square feet mixed retail/restaurant/service development including: one (1) convenience store with gasoline sales (3,600 square feet), one (1) conventional restaurant (5,600 sq. ft.), personal service (2,000 sq. ft.), two (2) fast food restaurants (4,000 sq. ft.), and office space (2,000 sq. ft.). The remaining area would be used for miscellaneous retail.

The anticipated build-out is within 2-3 years.





Surrounding land uses and zoning are as follows:

North: O - Arlington West Office Park; MCG and MCH - One (1) vacant lot

South: OR - Two (2) vacant lots; RA20 - Two (2) vacant lots

East: O - Bowman, Padgett and Associates Dentistry

West: RA20 - One (1) single-family residence and farmland

Ms. Gooby stated that, in staff's opinion, the request is in compliance with Horizons 2026: Greenville's Community Plan and the Future Land Use Plan and Character Map. "In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Ms. Gooby stated the Planning and Zoning Commission voted unanimously to recommend approval of the request at its January 15, 2019 meeting.

Mayor Connelly declared the public hearing for the proposed rezoning open at 7:48 pm and invited anyone wishing to speak in favor to come forward.

Mike Baldwin – No Address Given

Mr. Baldwin, representing the applicant, stated approval of this request will give the applicant more flexibility with the property. He has just built the very nice looking building on the north end of this property where the new Dunkin Donuts is located. He stated Ms. Gooby hit the nail on the head when she said the MCG zoning does not allow for a convenience store, but the MGH does. Mr. Goess bought the property a couple years ago in hopes of putting a convenience store at that corner. He offered to answer any questions the Council may have.

Michael Overton – No Address Given

Mr. Overton stated he is the managing member of the Overton Group and they represent the Goess family on most of their commercial properties. He clarified there is no immediate plan to put a convenience store on the property, but if there were a good one, he'd be interested in discussing the option. He stated their goal is to construct nice looking buildings with better access than what is there now.

Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition. Hearing none, Mayor Connelly closed the public hearing at 7:52 pm.

Council Member Bell moved to adopt the ordinance to rezone 7.687 acres located on the northwestern corner of the intersection of West Arlington Boulevard and Dickinson



Avenue from MCG (Medical-General Commercial) to MCH (Medical-Heavy Commercial). Council Member Meyerhoeffer seconded the motion, which passed by unanimous vote.

**ORDINANCE REQUESTED BY BOBBY W. JOYNER TO REZONE 12.943 ACRES LOCATED ALONG THE NORTHERN RIGHT-OF-WAY OF EAST FIRE TOWER ROAD AND ADJACENT TO MEETING PLACE SUBDIVISION FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO OR (OFFICE-RESIDENTIAL [HIGH DENSITY MULTI-FAMILY])**

Chief Planner Chantae Gooby stated Bobby W. Joyner has requested an ordinance to rezone 12.943 acres located along the northern right-of-way of East Fire Tower Road and adjacent to Meeting Place Subdivision from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-family]).

Based on possible uses permitted by the requested rezoning, the proposed rezoning classification could generate 1,031 trips to and from the site on East Fire Tower Road, which is a net increase of 600 trips per day. During the review process, measures to mitigate the traffic will be determined.

In 1972, the property was incorporated into the City's extra-territorial jurisdiction (ETJ) and zoned to its present zoning. Water and Sanitary Sewer are available. There are no known historical conditions/constraints on this property. Meeting House Branch is along the northern property line, and a blue line stream traverses the property. There is not mapped flood plain on the subject property. This property may contain wetlands and is subject to the riparian buffer rules. The property is located in the Meeting House Branch Watershed. If stormwater rules apply, it would require 25-year detention and nitrogen and phosphorous reduction.

Under the current zoning, the site could accommodate 40-45 single-family lots. Under proposed zoning, the site could accommodate 145-155 multi-family units (1, 2 and 3 bedroom units). The anticipated build-out is within 2-3 years.

Surrounding land uses and zoning are as follows:

North: R6 and R6S - Farmland

South: RA20 - Farmland (under common ownership of the applicant) and one (1) single-family dwelling

East: R6S - Meeting Place Subdivision (single-family)

West: CG and OR - Farmland

Ms. Gooby stated that, in staff's opinion, the request is in compliance with Horizons 2026: Greenville's Community Plan and the Future Land Use Plan and Character Map. "In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is



considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Ms. Gooby stated the Planning and Zoning Commission voted 6 to 2 to recommend approval of the request at its January 15, 2019 meeting.

Mayor Connelly declared the public hearing for the proposed rezoning open at 7:56 pm and invited anyone wishing to speak in favor to come forward.

Amanda Mann – No Address Given

Ms. Mann stated she is an attorney out of the Morningstar Law Group in Raleigh. She stated she is representing the Joyner family. Mr. Joyner has lived here his entire life and plans to remain here. She then made a video presentation showing the site and the variety of uses in the area. Ms. Mann stated she is aware there are some neighborhood concerns about stormwater and she has an Engineer with her from Ark Consulting to address those.

Scott Anderson – No Address Given

Mr. Anderson stated he is a Licensed Professional Engineer with Ark Consulting Group, which is located in Greenville. His office is located on Charles Boulevard, about a mile from this site, and he is very familiar with the property. Anything developed on the site will be required to go through the site planning process, and will be required to meet all the requirements for setbacks, buffer yards, parking and vegetation. Anything that disturbs more than one acre of land will be required to submit an erosion control plan. All of those measures will ensure anything developed on this site does not negatively impact the neighbors or surrounding waters.

Ronald Stevenson – No Address Given

Mr. Stevenson, with Ramey-Kemp and Associates of Raleigh, discussed existing traffic conditions, the anticipated net increase of about 600 trips daily and the positive impact of the current and funded DOT project. He stated they have been coordinating efforts with the City's Traffic Engineer, Rik DiCesare.

In concluding her allowed time, Ms. Mann reviewed recommendations by City staff and the Planning Board in support of the requested rezoning and discussed laws related to the Council's deliberation on this type of request. She respectfully requested approval of the rezoning request.

Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition.

Nicki Katusitz – No Address Given

Ms. Katusitz stated she lives in the Red Banks Subdivision, which is on Fire Tower Road. Since this matter went before the Planning and Zoning Commission in January, she has gotten 541 signatures on a petition from people opposed to this rezoning who live or own



property in the Greenville area. She said this matter really comes down to a value transfer of making Mr. Joyner's land more valuable to the detriment of hundreds of other people who live in that area. She stated the City refers to this as mixed use, but the more popular term is urban sprawl, which has a negative connotation. She discussed the probability of increased crime correlating to the increased density. Ms. Katusitz thanked Ms. Mann for reaching out to the neighborhood in an effort to address their concerns, but said she still has significant concern about traffic impacts. She then discussed statistics on crashes in the area between 2013 and 2017, noting the percentages that resulted in personal injury and/or property damage. She questioned the timing of this rezoning considering DOT construction is not scheduled to begin until 2021.

Eric Norris – Bells Fork Road

Mr. Norris stated he is opposed to the rezoning requests. He works at Greenville Utilities and rides his bike a lot from home to their location on Mumford Road. Hands down, the worst area of the ride is crossing Fire Tower Road. He stated he feels approving this rezoning before the DOT project is complete is a bad idea.

Lauri Crutchfield – No Address Given

Ms. Crutchfield stated her property backs up to South Ridge Drive, so this rezoning could potentially impact her. She feels anything that would add traffic congestion on Fire Tower before completion of the DOT project is jumping the gun.

Doreen Liverman – Tara Court

Ms. Liverman said while she appreciates Mr. Joyner's effort to develop his land, she would encourage the Council not to allow the high density they are requesting. She noted the hazards of pulling out of her neighborhood or any other neighborhood that is located on Fire Tower and the amount of time it takes for anyone attempting a left turn.

Joanna Kearney – Tara Court

Ms. Kearney expressed agreement with what has already been said in opposition to the rezoning, adding that during rush hour traffic, it is pointless to attempt to leave the neighborhood. She stated once the DOT project is complete, this rezoning might make sense, but for now she is opposed.

Hearing no one else wishing to speak, Mayor Connelly closed the public hearing at 8:36 pm.

Council Member Smiley stated he feels this action is pre-mature and encouraged the City Council to deny.

Council Member Litchfield asked how long Mr. Joyner has owned the property.

Ms. Mann stated it has been in the Joyner family for 100+ years.

Council Member Meyerhoeffler asked if sidewalks are included.



Public Works Director Kevin Mulligan stated the City has committed to fund sidewalks from west of Arlington on both sides of the road.

Council Member Smiley expressed concern about adding construction traffic for this project to the traffic congestion that already exists.

Council Member Litchfield moved to adopt the ordinance to rezone 12.943 acres located along the northern right-of-way of East Fire Tower Road and adjacent to Meeting Place Subdivision from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-family]). Mayor Pro-Tem Glover seconded the motion.

The vote resulted in a 3 to 3 tie with Mayor Pro-Tem Glover and Council Members Bell and Litchfield voting in favor and Council Members Daniels, Smiley and Meyerhoeffer voting in opposition. Mayor Connelly broke the tie, voting in favor of the motion; however, City Attorney Emanuel McGirt recommended continuing the item to the March 14<sup>th</sup> meeting for a second vote. He explained that G.S. §160A-75 states in part “no ordinance nor any action having the effect of an ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the Council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the Council.” As such, four affirmative votes not counting the mayor’s vote would be required to finally adopt this ordinance tonight.

Upon motion by Council Member Litchfield and second by Council Member Meyerhoeffer, the City Council voted unanimously to include this item for second reading on the March 14, 2019 agenda.

**ORDINANCE INITIATED BY THE GREENVILLE CITY COUNCIL TO AMEND THE GREENVILLE FUTURE LAND USE AND CHARACTER MAP FOR THE AREA LOCATED ADJACENT TO THE EAST CAROLINA UNIVERSITY (ECU) MAIN CAMPUS ROUGHLY BETWEEN EAST 5TH STREET AND SHADY LANE AND 130+/- FEET WEST OF MAPLE STREET CONTAINING 0.90+/- ACRES FROM UNIVERSITY/INSTITUTIONAL (UI) TO TRADITIONAL NEIGHBORHOOD, MEDIUM-HIGH DENSITY (TNMH) – Ordinance No. 19-013**

Mayor Connelly disclosed that one of the owners of property in the bump out area that could be impacted by this decision is one of his clients, however, the outcome of this matter has no impact on his fee, therefore he has no financial interest.

Chief Planner Chantae Gooby stated the City Council initiated a request to amend the City of Greenville Future Land Use and Character Map for the area located adjacent to the East Carolina University (ECU) Main Campus roughly between East 5th Street and Shady Lane



and 130+/- feet west of Maple Street containing 0.90+/- acres from University/ Institutional (UI) to Traditional Neighborhood, Medium-High Density (TNMH).

The current land use character is mainly comprised of ECU's Main Campus, surrounding facilities (athletic fields), and the future Millennial Campus. The core of the campus area tends to cluster buildings in a walkable pattern. At the edges of the campus are related facilities and parking areas.

The proposed land use character reflects a primarily residential area featuring a mix of higher density housing types ranging from multi-family, townhomes, and small-lot single-family detached. They are typically located within a walkable distance to a neighborhood activity center. Traditional neighborhoods should have a walkable street network of small blocks, a defined center and edges, and connections to surrounding development.

Ms. Gooby stated the current character designations for this area on the Future Land Use and Character Map support a sustainable development pattern. Therefore, staff recommends denial of this request. The Planning and Zoning Commission unanimously voted to approve the request at its December 18, 2018 meeting.

Mayor Connelly declared the public hearing for the proposed amendment open at 9:05 pm and invited anyone wishing to speak in favor to come forward.

Hap Maxwell – No Address Given

Mr. Maxwell, who stated he is President of the Tar River Neighborhood Association (TRUNA), stated the TRUNA neighborhood will be very happy to have this eastern boundary for ECU back to where it stood for over 100 years. He discussed the history of the neighborhood and noted that the Horizons Plan does not support any changes to the line between their neighborhood and ECU.

Hearing no one else wishing to speak in favor of the proposed rezoning, Mayor Connelly invited comment in opposition.

Bill Bagnell – No Address Given

Mr. Bagnell, who is Associate Vice Chancellor for Campus Operations at East Carolina University, stated he is speaking in opposition to the proposed amendment. The Future Land Use Plan, as it relates to ECU property, reflects what is on the ground today. ECU has been in this neighborhood for 50 years on one property and 20 years on another property. They have always maintained the property at a high level and there is nothing in the deed of the 50 year property that restricts its use. That one is used as a parking lot and the 20 year property is used for housing visiting faculty. Mr. Bagnell stated the university would like to protect its interest in these properties and this change in the Future Land Use Plan would not allow them to do that.



Hearing no one else who wished to speak, Mayor Connelly closed the public hearing at 9:25 pm.

Council Member Smiley moved to adopt the ordinance to amend the Greenville Future Land Use and Character Map for the area located adjacent to the East Carolina University (ECU) Main Campus roughly between East 5<sup>th</sup> Street and Shady Lane and 130+/- feet west of Maple Street containing 0.90+/- acres from University/Institutional (UI) to Traditional Neighborhood, Medium-High Density (TNMH). Council Member Bell seconded the motion, which passed by unanimous vote.

**RESOLUTION TO CLOSE AN ALLEYWAY LOCATED ON THE EAST SIDE OF CEDAR LANE AND SOUTH OF EAST TENTH STREET**

This item was removed from the agenda – no action taken.

**RESOLUTION TO CLOSE AN ALLEYWAY LOCATED ON THE EAST SIDE OF EAST ROCK SPRING ROAD AND SOUTH OF EAST TENTH STREET** – Resolution No. 010-19

Public Works Director Kevin Mulligan asked the City Council to consider adopting a Resolution to Close an alleyway located on the east side of East Rock Spring Road and south of East Tenth Street. He noted the closure of the alleyway is being requested by the City. A Resolution of Intent to Close this alleyway was adopted by the Council during its January 7, 2019 meeting and set the date for the public hearing tonight. The Planning and Zoning Commission gave a favorable recommendation to the petition for closure during its January 15, 2019 meeting.

Mayor Connelly declared the public hearing for the proposed resolution open at 9:29 pm and invited anyone wishing to speak in favor to come forward.

Hearing none, Mayor Connelly invited comment in opposition. Also hearing none, Mayor Connelly closed the public hearing at 9:30 pm.

Council Member Smiley moved to adopt the resolution to close an alleyway located on the east side of East Rock Spring Road and south of East Tenth Street. Council Member Bell seconded the motion, which passed by unanimous vote.

**ORDINANCE TO AMEND CITY CODE TITLE 9, CHAPTER 7, SECTION 9-7-12 POWERS OF PRESERVATION COMMISSION** – Ordinance No. 19-014

Planner Domini Cunningham stated the Historic Preservation Commission (HPC) would like to have the ability to post a notice signifying a certificate of appropriateness (COA) has been issued. A COA is requested by owners of properties located within the College View Local Historic District or a Local Landmark for proposed exterior changes. The COA is considered by the HPC and issued if the proposed work is in compliance with the Historic



District and Local Landmark Design Guidelines. A COA is not required for routine maintenance and repairs.

At the January 22, 2019 HPC meeting, Mr. Cunningham stated a draft ordinance was considered and approved by the HPC. Further, the HPC approved a motion requesting the City Council consider the adoption of this ordinance. In accordance with the City's Board and Commission Policy, the HPC request was forwarded to the City Council by the City Clerk. Council Member Rick Smiley requested that this item be added to the City Council agenda for consideration.

If approved, Title 9, Chapter 7, Section 9-7-12 of the City Code would need to be amended by to add Subsection (T) to read as follows:

*(T) Post on the site that is the subject of a public hearing, as authorized under Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes or this Chapter, or on an adjacent street or highway right-of-way of the site that is the subject of a public hearing, as authorized under Chapter 160A, Article 19, Part 3C of the North Carolina General Statutes or this Chapter, a notice of hearing or a notice of the issuance of a certificate of appropriateness in accordance with the Historic Preservation Commission, Greenville, North Carolina, Rules of Procedure.*

The following is a relevant excerpt from Horizons 2026: Greenville's Community Plan:

#### Chapter 1, Building Great Places

##### Goal 1.5. A Valued History

*Policy 1.51. Preserve Historic Buildings, Landmarks, and Areas: Cultural and historic buildings should be restored and reused in order to foster a sense of place, promote green building practices, and emphasize Greenville's unique heritage. New buildings in historic areas should be compatible with the surrounding neighborhood. Greenville's Historic District and Local Landmark Design Guidelines should continue to be maintained and used. Historic cemeteries should be preserved for their heritage. Preserve heritage important to the history of minority communities in Greenville.*

*Policy 1.5.3. Support Historic Neighborhoods. Encourage revitalization of historic neighborhoods in Greenville in a manner that preserves and enhances the neighborhood identity and character of historic district.*

Mr. Cunningham stated the purchase of signs will be paid for from the Community Development budget.

Mayor Connelly declared the public hearing for the proposed amendment open at 9:32 pm





and invited anyone wishing to speak in favor to come forward.

Hearing none, Mayor Connelly invited comment in opposition. Also hearing none, Mayor Connelly closed the public hearing at 9:33 pm.

Upon motion by Council member Smiley and second by Council member Litchfield, the City Council voted unanimously to approve the ordinance to amend City Code Title 9, Chapter 7, Section 9-7-12 Powers of Preservation Commission.

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**CITY MANAGER’S REPORT**  
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City Manager Wall gave no report.

Upon recommendation of the City Manager, Council Member Smiley moved to cancel the February 25, 2019 City Council meeting. Council Member Bell seconded the motion, which passed unanimously.

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**COMMENTS FROM THE MAYOR AND CITY COUNCIL**  
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The Mayor and City Council made comments about past and future events.

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**ADJOURNMENT**  
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Council Member Smiley moved to adjourn the meeting, seconded by Council Member Bell. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 9:42 pm.

Respectfully submitted,  
*Carol L. Barwick*  
Carol L. Barwick, CMC  
City Clerk



## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Resolution amending the City of Greenville Personnel Policies

**Explanation:** **Abstract:** The proposed resolution amends various Articles and Sections of the City's Personnel Policies.

**Explanation:** The proposed resolution amends various Articles and Sections of the City's Personnel Policies. These Policies were adopted in 2015, and this is the first substantive change since their adoption. These changes are intended to clarify intent and practice, attract and retain employees, and support our employees.

- **Classification plan:** Includes language which authorizes the City Manager to approve reclassifications when the fiscal impact of the reclassification does not require the additional appropriation of funds. Additionally, for clarification purposes, language has been added which authorizes the City Manager to assign positions to City departments as long as the assignments do not exceed the number of positions authorized by City Council.
- **Holiday pay:** Promulgates that eligible non-exempt employees (excluding specified Police and Fire/Rescue personnel) who are required to work on a City-observed holiday will be paid time and one-half their regular rate of pay for the hours worked on the City-observed holiday. Currently, eligible non-exempt employees are paid their regular rate of pay when they work on a City-observed holiday. This change is comparable to holiday pay practices of other employers; the fiscal impact of the change is anticipated to be de minimis.
- **Emergency and adverse weather pay:** Promulgates that, in unusual circumstances such as severe and prolonged weather events, the City Manager may authorize additional days of office closure for non-essential personnel at the employee's usual hourly rate of pay. Currently, emergency and adverse weather pay is capped at two consecutive working days per adverse weather event.

- **Residency requirement:** In an effort to better attract and retain employees, the residency requirement for Fire/Rescue and Police Department employees is rescinded, but allows the City Manager to establish residency requirements within or immediately adjacent to City service areas for designated employees in any department. Additionally, “on-call” employees are defined and the policy clarifies that on-call employees must remain available by telephone and report to work within one hour of notification, to ensure timely service delivery.
- **Blood donation:** In addition to its partnership with the American Red Cross, the proposed amendment allows the City to partner with other City-approved blood banks.
- **Sick leave transfer:** To better attract well-qualified candidates, the cap of 240 hours of unused sick leave available for transfer has been removed. Instead, employees whose last employer was the State of North Carolina or any of its political subdivisions may transfer an unlimited number of unused and unpaid sick leave hours. This change will not negatively impact the City’s budget because the City does not pay for unused sick leave when an employee separates from employment. Rather, eligible unused sick leave is converted to creditable service at the time of retirement.
- **Disciplinary suspension without pay:** Changes the maximum length of suspension from 10 consecutive workdays to 30 consecutive workdays. This change will provide department heads more flexibility when administering discipline, especially in cases involving serious misconduct that require a disciplinary suspension beyond 10 workdays but may not rise to the level of dismissal.

The changes in the current Policies are shown in red and as strikethroughs.

**Fiscal Note:** None

**Recommendation:** Adopt the resolution amending the City of Greenville Personnel Policies

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ATTACHMENTS:

☐ [resolution\\_amending\\_the\\_personnel\\_policies\\_1100375](#)

RESOLUTION NO. \_\_\_\_\_  
 A RESOLUTION AMENDING THE CITY OF GREENVILLE PERSONNEL POLICIES

THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, RESOLVES:

Section 1. The City of Greenville Personnel Policies is hereby amended by amending the Articles and Sections denoted in the table below to read as follows:

Article Number	Proposed amendment(s)
Article II (Equal Employment Opportunity)	<p><b>Section 7.0: Application Retention</b>            Applications for employment shall be retained for a period of three (3) years in accordance with Equal Employment Opportunity Commission guidelines and other applicable recordkeeping regulations.</p>
Article III (The Classification Plan)	<p><b>Section 6.0: Classification of Existing Positions</b>            Department heads must obtain prior approval from the City Manager or his or her designee before making significant organizational changes that affect classifications.</p> <p>A reclassification is the reassignment of a position to a new or existing classification. Requests for reclassifications of positions should be submitted when the responsibilities of the position have significantly changed. Requests for reclassifications require the approval of the respective department head and require submittal of a Job Description Questionnaire and Job Evaluation Manual so that the proposed classification can be evaluated. Reclassification requests must reflect bona fide changes consistent with departmental needs rather than alterations submitted merely to increase employee pay. The classification of positions is based upon the duties and responsibilities required for the position, rather than upon the abilities of the employee.</p> <p>All requests for reclassification shall be submitted in writing by the department head to the Director of Human Resources with justification for reclassification. After review by the Director of Human Resources, a recommendation shall be forwarded to the City Manager. <b>The City Manager is authorized to approve the reclassification when the proposed organizational change is in the best interest of the City and the fiscal impact of the reclassification does not require the additional appropriation of funds.</b></p> <p><b>Section 9.0: Amendment of Classification Plan</b>            Classes of positions shall be added to and deleted from the position classification plan upon the recommendation of the City Manager and with the approval of the City Council. <b>The City Manager is authorized to assign positions to City departments in so far as such assignments do not exceed the number of positions authorized by City Council.</b></p>

Article Number	Proposed amendment(s)
<p>Article IV (The Pay Plan)</p>	<p><b>Section 6.0: Use of Pay Ranges</b>  Pay ranges are intended to furnish administrative flexibility in recognizing individual differences among positions allocated to the same class, in providing employee incentives, and in rewarding employees for meritorious service. The following provisions shall govern the granting of within-the-range increases:</p> <ul style="list-style-type: none"> <li>a. <b>Hiring Rate:</b> The minimum rate established for the class is the normal hiring rate, except in those cases where circumstances, including documented difficulty in recruiting and retention, appear to warrant appointment at a higher rate. Appointment above the minimum step may be made on the recommendation of the department head and Director of Human Resources, and when the City Manager determines that it is necessary in the best interest of the City. Approval will be based on the degree to which the qualifications of the applicant are in excess of the requirements for the class, or that there is a demonstrated shortage of qualified applicants available at the minimum step, or that qualified applicants decline employment at a minimum step.</li> <li>b. <b>Completion of Six Months of Service at Hiring Rate:</b> Upon completion of six months of service at the hiring rate, the supervisor shall review the employee's progress. Based upon the supervisor's and department head's recommendation, and with the approval of the Director of Human Resources, the employee's salary may be increased by 5%. <b>The pay rate of sworn law enforcement personnel and employees in a trainee status may be increased by 5% after successful completion of the applicable probationary period.</b></li> <li>c. The remaining pay range is to be used to reward employees for meritorious service.</li> </ul> <p><b>Section 10.0: Pay of Reclassified Employee/Pay for Employee Affected by Reorganization or Restructuring</b>  A reclassification occurs as a result of a review of job content and is based upon job duties and responsibilities rather than individual performance. With a reclassification, the duties and responsibilities of the position will be changed permanently, materially, and significantly.</p> <p>A reorganization or job restructuring occurs in response to organizational, operational, and/or technological needs. In both situations, an entire class of positions or only one or more individual positions within a class may be affected.</p>

Article Number	Proposed amendment(s)
	<p>The salary and annual performance review date of an employee whose position is reclassified to a lower or lateral classification shall not be affected by the change. When a position is reclassified to a lower or lateral classification due to reorganization or restructuring, the department head, with the City Manager's approval, may waive the probationary period. The employee whose position is reclassified to a higher pay grade due to significant changes in job responsibilities will receive a 5% salary increase or be increased to the minimum of the new pay grade, whichever is greater. The purpose of the reclassification pay increase is to recognize and compensate the employee for taking on increased responsibility. <del>The annual performance review date will be changed to one year from the date of the reclassification.</del> An employee who successfully completes the six-month probationary period following reclassification shall receive a 5% salary increase. In no event shall the initial or probationary increase exceed the maximum step of the pay plan.</p> <p><b>Section 17.0: Holiday Pay</b></p> <p>Regular full-time employees shall be paid their regular hourly rate of pay for all days designated as City holidays, except that Fire/Rescue Officers, Police Officers, and other Police Department employees designated by the Chief of Police shall have holidays credited on a monthly basis such that 1/12th of the total annual hours of holiday time shall be credited each month.</p> <p>Non-exempt employees (excluding Police and Fire/Rescue personnel defined in Section 17.1 of this Article) eligible for holiday pay who are required to work on a City-observed holiday shall be paid <del>their regular rate of pay</del> as follows:</p> <ul style="list-style-type: none"> <li>• If operational requirements of the department do not allow the employee to take a day off within the same workweek as the City-observed holiday, the employee will be paid <b>his or her regular rate of pay</b> for the holiday and <b>time and one-half the regular rate of pay</b> for the hours worked on the City-observed holiday.</li> <li>• If operational requirements of the department allow the employee to take a day off within the same workweek as the City-observed holiday, the employee will be allowed to take a day off with pay within the same workweek <b>at his or her regular rate of pay</b> and will be paid <b>time and one-half the regular rate of pay</b> for the hours worked on the City-observed holiday.</li> </ul> <p><b>Exempt employees (excluding Police and Fire/Rescue personnel defined in Section 17.1 of this Article) who are required to work on a City-observed holiday may be allowed to take time off for the holiday</b></p>

Article Number	Proposed amendment(s)
	<p data-bbox="539 226 1435 294">in accordance with the Management Time Pay Policy in accordance with Section 24.0 of this Article.</p> <p data-bbox="539 331 1435 399">Police and Fire/Rescue personnel will be allowed to take time off for the holiday in accordance with Section 17.1 of this Article.</p> <p data-bbox="539 436 1435 504"><b>Section 17.1: Crediting and Accumulation of Holiday Time for Police and Fire/Rescue Officers</b></p> <ul style="list-style-type: none"> <li data-bbox="636 508 1435 646">a. Fire/Rescue Officers working a 24-hour 15-minute rotating shift, sworn Police Officers, and other Police Department employees designated by the Chief will be credited with holiday time in accordance with this Section.</li> <li data-bbox="636 714 1435 919">b. Fire/Rescue Officers shall be credited with twelve (12) annual holidays at a total of 168 hours of holiday time per year. Police Officers and other designated Police Department employees shall be credited with twelve (12) annual holidays at a total of 96 hours of holiday time per year.</li> <li data-bbox="636 987 1435 1125">c. Holiday time will be credited on a monthly basis of fourteen (14) hours per month for Fire/Rescue Officers and eight (8) hours per month for Police Officers and other designated Police Department employees.</li> <li data-bbox="636 1192 1435 1436">d. Holiday time may be accumulated up to a maximum of 72 hours for Fire/Rescue Officers and up to a maximum of 40 hours for Police Officers and other designated Police Department employees. Upon occurrence, any amount of accumulated holiday time that exceeds the specified maximum accumulation automatically rolls over to the employee's sick leave balance.</li> <li data-bbox="636 1503 1435 1642">e. Only Police Officers, other designated Police Department employees designated by the Police Chief, and Fire/Rescue Officers working a 24-hour 15-minute rotating shift may accumulate holiday leave.</li> </ul> <p data-bbox="539 1675 1435 1709"><b>Section 19.4: Stand-By Duty Distinct from Being On-Call</b></p> <p data-bbox="539 1713 1435 1915">Assignment to stand-by duty is separate and distinct from being on-call or any other duty, however designated, which may involve a response outside normal work hours. Employees are defined as being "on-call" if they are off of the work premises but are required to remain available to be called back to report if the need arises. On-call employees must remain available by telephone and are required to</p>

Article Number	Proposed amendment(s)
	<p data-bbox="539 235 1435 369"><b>report to work within one (1) hour of notification.</b> Employees do not receive extra pay for being on-call. An employee who is required to remain on-call away from the City's premises or who is allowed to leave a message where he or she can be reached is not working.</p> <p data-bbox="539 403 1435 642"><b>Department heads or their designees will identify positions and employees who are required as a condition of employment to be on-call.</b> Employees who are on-call must be available to be called back to work outside scheduled working hours. Employees who are on-call shall not be under the influence of drugs or alcohol while on-call. Reporting to work under the influence of alcohol or drugs shall result in disciplinary action, up to and including dismissal.</p> <p data-bbox="539 676 1435 844">Employees who are on-call are required to respond to phone calls by their supervisor or his or her designee. Employees designated for on-call duty who fail to report to work for assigned duty or who fail to respond to phone calls or efforts to contact them may be subject to disciplinary action, up to and including dismissal.</p> <p data-bbox="539 886 1078 919"><b>Section 22.0: Special Pay Adjustments</b></p> <p data-bbox="539 924 1435 1230">The City Manager or his/her designee may approve a special pay adjustment for limited circumstances such as skills enhancements received by an employee during the course of employment, to retain a valued employee, to compensate an employee for taking on additional responsibilities for a defined period of time (when supplemental interim pay is not applicable), to resolve internal equity issues, and for other justifiable reasons. The City Manager <b>or his or her designee</b> will state in writing why the special pay adjustment has been approved; this documentation will be included in the employee's personnel file.</p> <p data-bbox="539 1272 1399 1306"><b>Section 23.0: Pay Policy for Emergency and Adverse Weather</b></p> <p data-bbox="539 1310 1435 1373">The following provisions shall govern employee pay during situations of adverse weather or emergency conditions:</p> <ul style="list-style-type: none"> <li data-bbox="597 1415 1435 1688">a. If City offices remain open during adverse weather or emergency conditions, any employee who does not come to work as scheduled must account for time not worked by using vacation leave or accumulated holiday leave for time not worked. If no vacation or accumulated holiday leave time is available or if the employee chooses not to use vacation or accumulated holiday leave, the non-exempt employee will not be paid.</li> <li data-bbox="597 1730 1435 1898">b. If an emergency or weather conditions cause the closing of City offices, then all employees not required to work as part of an emergency response or through emergency callback will be paid their usual hourly rate for the first two (2) days of office closure. Should City offices remain closed for more than two</li> </ul>



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	<p>(2) consecutive working days per adverse weather event, then employees not required to work as part of an emergency response or emergency callback will be required to account for time not worked by use of vacation leave or accumulated holiday leave. If no vacation or accumulated holiday leave time is available or if the employee chooses not to use vacation or accumulated holiday leave, the nonexempt employee will not be paid for the hours after the first two (2) days of closure. <b>In unusual circumstances such as severe and prolonged adverse weather events, the City Manager or his or her designee may authorize additional days of office closure at an employee's usual hourly rate for employees not required to work as part of an emergency response or through emergency callback.</b></p> <p>c. Employees who are required to work as part of an emergency response or emergency callback when City offices are closed shall be paid one and one-half times their current hourly rate of pay for all hours they are required to work. The City Manager or his/her designee will announce the time period that the rate of time and-a-half shall be paid.</p> <p>d. The nature of municipal jobs requires employees in some classifications to work through the duration of an emergency and to return the City to a pre-emergency state afterwards. Telecommunicators (including Lead) and non-civilian Police and Fire/Rescue personnel are considered to be emergency personnel. Emergency personnel do not receive any additional compensation for working their normally scheduled shift during the designated closed period. Emergency personnel called in or who work extended shifts will be paid time and a half during the designated period. [See Section 18.0 Emergency Call Back Pay]</p> <p>e. Depending on the emergency, employees other than those designated as emergency personnel may be required to work through the duration of an emergency. These employees will be identified as "essential personnel" by their department head. Department heads will inform employees who will be designated as essential personnel as soon as reasonably possible. Lists of those so designated will be provided to Human Resources for payroll purposes. Essential personnel who are required to work during the designated emergency period shall be paid one and one-half times their regular rate of pay for all hours worked during the designated emergency period. Essential personnel include exempt and non-exempt personnel so designated by the department head. The City</p>

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	<p>Manager may include department heads as essential personnel, at his or her discretion.</p> <p>f. Disciplinary action may result if emergency or essential personnel fail to report to work or fail to remain at work as required during the emergency period.</p> <p>g. If the City Manager announces a delayed opening or early closure of City offices, an employee not required to work shall be paid the straight time rate for the regular work schedule missed. An employee must report to work or remain at work as scheduled. Failure to do so shall result in the loss of adverse weather pay.</p> <p>h. Employees who are on prearranged vacation leave or sick leave must charge leave to the appropriate account.</p>
<p>Article V (Recruitment, Selection, and Employment)</p>	<p><b>Section 2.0: Residency Requirement</b></p> <p><del>Within six months following the completion of the initial employment probationary period, all employees of the Fire/Rescue Department and Police Department are required to maintain their primary residence within an area delineated on the map designated as "Greenville Fire/Rescue and Police Residency Area" on file in the Human Resources Department. The City Manager may extend this time for relocation if, in the City Manager's opinion, the employee is making a diligent effort to relocate within the area delineated on said map. Notwithstanding the provisions of this paragraph, an employee of the Fire/Rescue Department or the Police Department who is a member of the management team as designated by the City Manager shall comply with the management team residency requirements established in this section. Additionally, notwithstanding the provisions of this paragraph, an employee of the Fire/Rescue Department or the Police Department, who has a residency requirement established administratively by the City Manager in accordance with this section of an area which is more limited than the area delineated on the map referred to in this paragraph, shall comply with the residency requirement established administratively by the City Manager.</del></p> <p><del><u>SECTION 2.1 City Manager to Establish Residency Requirement</u></del></p> <p>The City Manager may administratively establish residency requirements within or immediately adjacent to City service areas for designated employees in any department. These residency requirements for designated employees established administratively by the City Manager shall be on file in the Human Resources Department.</p>

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	<p data-bbox="539 226 1435 296"><b>Section 7.4: Evaluation of Probationary Period Following Promotion</b></p> <p data-bbox="539 296 1435 436">An employee who is promoted shall be required to successfully complete a probationary period of a minimum of six months. During and upon completion of the probationary period, the department head shall indicate in writing to the Director of Human Resources:</p> <ul style="list-style-type: none"> <li data-bbox="620 474 1435 575">a. That the employee's supervisor has discussed the employee's progress (accomplishments, strengths, and weaknesses) with the employee;</li> <li data-bbox="620 613 1435 682">b. Whether the employee is performing satisfactory work and should be given a merit salary increase;</li> <li data-bbox="620 682 1435 716">c. Whether the probationary period should be extended;</li> <li data-bbox="620 753 1435 894">d. Whether the employee should be retained in the present position, reinstated in the former position or in a position in the same class at the former salary, transferred at the former salary, or released.</li> </ul> <p data-bbox="539 932 1435 1066">If the recommendation of the appointing department head is to demote, transfer or terminate the employee at the end of the probationary period, the Director of Human Resources shall assist the appointing department head with implementing that decision.</p> <p data-bbox="539 1104 1435 1415">Under special circumstances, an extension of the probationary period, for no more than six (6) months, may be granted. Prior to the end of the probationary period, the employee shall be informed in writing of the reason for and the period of the extension. During the extended probationary period, the supervisor shall carefully evaluate and document the employee's performance and general suitability for employment. To make this decision, the supervisor shall develop performance expectations and objectives, observe the employee, and provide feedback to the employee.</p> <p data-bbox="539 1453 1435 1625"><del>The effective anniversary date for merit consideration shall be one year from the date of the end of the probationary period following promotion. Employees serving a probationary period following promotion shall continue to receive all benefits provided by this policy and under supplementary rules and regulations.</del></p> <p data-bbox="539 1663 1435 1696"><b>Section 11.0: Temporary or Seasonal Employment</b></p> <p data-bbox="539 1696 1435 1896">Positions needed for a specific and short period of time, normally not to exceed twelve (12) months, are classified as temporary or seasonal. Such positions are ineligible for benefits <b>except those required by law</b>. Temporary employees may be hired with the approval of the Director of Human Resources and City Manager or his/her designee for specific assignments of a definite duration. The rate of pay shall be the</p>

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	<p>average rate for similar positions for this area unless stipulated otherwise under the terms of a federal or state grant contract.</p> <p>Temporary and seasonal employees shall be released from their association with the City at the completion of their assignments or when funding for the positions is exhausted. If the temporary or seasonal employee is transferred to a regular full-time or designated part-time position, all benefits of a regular full-time employee will begin to accrue upon the effective date of the transfer.</p>
<p>Article VI (Conditions of Employment)</p>	<p><b>Section 1.0: Workweek</b>  Full-time employees are required to work a minimum of 40 hours weekly <del>or 80 hours biweekly</del>. The work period for Police and Fire/Rescue personnel working on a rotating shift basis without reference to hours in a given day shall be set by the City Manager in compliance with the provisions of the Fair Labor Standards Act.</p> <p>Department heads and other exempt employees shall work those hours necessary to assure the satisfactory performance of their departments, but not less than 40 hours per week. When activities of a particular administrative unit require some other schedule to meet work needs, the City Manager or his/her designee may authorize a deviation from the normal schedule. Departments may adopt alternate work schedules in compliance with Section 18.0 of this Article.</p> <p><b>Section 14.6: Testing Program</b>  The City of Greenville conducts the types of alcohol and drug testing described below. Refusal to submit to a drug and/or alcohol test may result in the employee's termination. Drug tests must follow the procedures and chain of custody requirements adopted by the City.</p> <ol style="list-style-type: none"> <li>1) <u>Pre-employment testing</u>: All candidates selected for full-time and selective part-time positions must submit to a urine drug screen no more than thirty (30) days before beginning employment. Candidates will be advised that any job offer is contingent upon negative drug test results. Pre-hire drug screenings will test for the presence of illegal drugs and substances and the illegal use of prescription drugs. This screen does not include an alcohol test.</li> </ol> <p>A refusal to submit to the drug test or a confirmed positive result on the drug test will disqualify the applicant for employment consideration with the City for a period of two (2) years. Existing employees who are transferred from a non-safety sensitive position to a safety-sensitive position will be required to submit to a drug screen prior to beginning employment in the safety-sensitive position.</p>

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	<p data-bbox="586 226 1442 365"><del>2) <u>Critical incident (post-accident) testing</u>: The City of Greenville reserves the right to test any employee involved in an accident while on the job. Employees will be subject to critical incident testing as follows:</del></p> <ul data-bbox="683 407 1442 936" style="list-style-type: none"> <li><del>• when they are involved in accidents that seriously damage a vehicle, machinery, equipment, or property. The classification of damage as serious involves accidents in which the actual or estimated damage is in excess of \$2,500. For employees in safety-sensitive positions, the actual or estimated damage threshold is lowered to \$1,000;</del></li> <li><del>• in the event of a fatality;</del></li> <li><del>• accident results in an injury to the employee, another City employee, or any other person that requires offsite medical attention;</del></li> <li><del>• the removal by towing of a vehicle involved in an accident;</del></li> <li><del>• when the employee receives a citation for a moving traffic violation arising from the accident.</del></li> </ul> <p data-bbox="634 974 1442 1146">The investigation and subsequent testing must take place within two (2) hours following the accident, if not sooner. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A supervisor or manager must escort the employee to the testing facility.</p> <p data-bbox="586 1184 1442 1461">2) <u>Critical incident testing</u>: The City of Greenville reserves the right to test any employee involved in a critical incident (incident, event, accident, or crash) while on the job or, in the case of police officers or fire/rescue employees, while on the job or while off-duty, but performing the duties of their employment. An employee will be subject to critical incident testing when he or she is involved in a critical incident and any of the following occurs:</p> <ul data-bbox="683 1503 1442 1913" style="list-style-type: none"> <li>• The critical incident involves damage to a vehicle, machinery, equipment, or property wherein the actual or estimated damage to the vehicle, machinery, or property exceeds \$2,500 or when a vehicle involved in the critical incident requires removal by towing. For employees in safety-sensitive positions, the actual or estimated damage threshold is lowered to \$1,000.</li> <li>• The critical incident involves a fatality or results in an injury to the employee, another City employee, or any other person that requires offsite medical attention.</li> <li>• The critical incident results in the employee being criminally charged (including the issuance of a citation</li> </ul>

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	<p style="text-align: center;">for an infraction) arising from the critical incident.</p> <p>The investigation and subsequent testing must take place within two (2) hours following the critical incident, if not sooner. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A supervisor or manager must escort the employee to the testing facility.</p> <p>3) <u>Random testing</u>: Random testing is conducted without cause for employees in safety-sensitive positions. Employees in safety-sensitive positions will be required to submit to drug and/or alcohol testing from time to time without advance notice. An employee could be randomly selected for testing more than once each year. Employees subject to random drug and alcohol testing under this policy will be so advised. Covered employees who are randomly selected for testing will be notified by a supervisor and will be required to report to the specimen collection site immediately.</p> <p>4) <u>Reasonable Suspicion Testing</u>: An employee will be required to submit to drug and/or alcohol testing if the City has reason to believe the employee is impaired, under the influence of, in possession of, or using prohibited drugs or alcohol. Generally, the need for this type of testing is determined from behavioral observation or other indications that the employee has been involved with illegal or controlled substances. Any supervisor recommending drug and/or alcohol testing must have documented specific observations and behaviors that create a reasonable suspicion the person is under the influence of illegal drugs or alcohol. Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A member of supervision/management must escort the employee to the testing facility. The supervisor/manager will make arrangements for the employee to be transported home from testing. Reasonable suspicion that an employee uses or is using or possessing illegal drugs or alcohol may be based on, but is not limited to:</p> <ul style="list-style-type: none"> <li>• Observable phenomena, such as direct observation of drug or alcohol use or possession, and/or the physical symptoms of being under the influence of drugs or alcohol;</li> <li>• A pattern of abnormal conduct or erratic behavior, including abnormal leave patterns;</li> <li>• Arrest or conviction for a drug or alcohol-related offense;</li> <li>• Information provided either by reliable and credible sources</li> </ul>

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	<p>or independently corroborated;</p> <ul style="list-style-type: none"> <li>• Evidence that an employee has tampered with a previous drug test;</li> <li>• Facts or circumstances developed in the course of an authorized investigation of an accident or unsafe work practice.</li> </ul> <p>5) <u>Reinstatement, Return-to-Duty, and Follow-Up Testing</u>: After signing an agreement or participating in substance abuse counseling established by the City, the employee must complete a drug and/or alcohol screen before returning to active employment.</p> <p><b>Section 18.1: Guidelines for Establishing a Departmental Alternate Work Schedule</b></p> <ol style="list-style-type: none"> <li>a. Include supervisors and employees in the planning stage.</li> <li>b. All City offices must be open during regular business hours of 8 a.m. to 5 p.m., Monday through Friday.</li> <li>c. Work may start no earlier than 6 a.m.; the workday must end by 6 p.m. for all administrative (office) staff.</li> <li>d. Each employee must have at least a thirty (30) minute meal break.</li> <li>e. The workday may last no more than ten (10) hours.</li> <li>f. In developing an alternate work schedule, the department's operational needs must be the primary consideration; individual schedule preferences are secondary.</li> <li>g. Department heads shall coordinate alternate work schedules with other departments to avoid disruption or other work difficulty.</li> <li>h. The department head is responsible for monitoring and evaluating alternate work schedules.</li> <li>i. The department head shall be responsible for reporting to the City Manager or his or her designee on the effectiveness of alternate work schedules as requested.</li> <li>j. Once approved by the City Manager <b>or his or her designee</b>, the department head shall inform employees of the alternate work schedule.</li> <li>k. During such periods of alternate work schedules, employees, unless prior written approval is given, shall not work off-duty, secondary employment, or self-employment activities. The employee must present to the department head a written request to work off-duty, secondary employment, or self-employment activities.</li> </ol>
Article VII (Employee Benefits)	<p><b>Section 21.0: Blood Donation</b></p> <p>An employee requesting the opportunity to donate blood to the <del>Red Cross Blood Bank</del> <b>American Red Cross or other City-approved blood</b></p>

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	<p><del>bank</del> during <del>one of the scheduled Red Cross Bloodmobile</del> <del>a hosted blood drive</del> will be allowed up to four (4) hours of time off with pay to do so. Employees must return to work after donating blood and recovering (including partaking nourishment after donating), unless they are donating blood near the end of their work shift. Upon request, the employee shall provide the supervisor with written verification of having donated <del>or attempted to donate blood to the Red Cross</del>. However, if for some reason the employee is unable to donate blood, he/she shall return to work as soon as possible. All blood donations will be coordinated and scheduled by the employee's immediate supervisor.</p> <p><b>Section 27.0: Attendance Incentive Pay</b>  The purpose of attendance incentive pay is to reward employees for exemplary attendance. Regular full-time employees who have completed one (1) full calendar year of employment prior to January 1 of each year and who have used less than thirty-two (32) hours of sick leave during said calendar year will be eligible for incentive pay. For the purpose of this section, sick leave will include sick (excluding sick leave used as funeral leave), FMLA, workers' compensation leave, and leave without pay for any reason. Attendance incentive pay will be granted, subject to the availability of budgeted funding, in accordance with the following schedule:</p> <table border="1" data-bbox="553 1066 1435 1323"> <thead> <tr> <th data-bbox="553 1066 971 1140">Leave taken (in hours)</th> <th data-bbox="971 1066 1435 1140">Incentive Pay (in hours) at current base hourly rate</th> </tr> </thead> <tbody> <tr> <td data-bbox="553 1140 971 1178">0 <del>Less than 8</del></td> <td data-bbox="971 1140 1435 1178">16</td> </tr> <tr> <td data-bbox="553 1178 971 1215">8 to 15</td> <td data-bbox="971 1178 1435 1215">12</td> </tr> <tr> <td data-bbox="553 1215 971 1253">16 to 23</td> <td data-bbox="971 1215 1435 1253">8</td> </tr> <tr> <td data-bbox="553 1253 971 1291">24 to 31</td> <td data-bbox="971 1253 1435 1291">4</td> </tr> <tr> <td data-bbox="553 1291 971 1323">32 or more</td> <td data-bbox="971 1291 1435 1323">0</td> </tr> </tbody> </table> <p><del>Payment will be made only to those in regular full-time employment on the date of payment.</del> The number of hours of sick leave accumulated for the year will be unchanged by any incentive pay.</p>	Leave taken (in hours)	Incentive Pay (in hours) at current base hourly rate	0 <del>Less than 8</del>	16	8 to 15	12	16 to 23	8	24 to 31	4	32 or more	0
Leave taken (in hours)	Incentive Pay (in hours) at current base hourly rate												
0 <del>Less than 8</del>	16												
8 to 15	12												
16 to 23	8												
24 to 31	4												
32 or more	0												
Article VIII (Leave)	<p><b>Section 5.3: Sick Leave - Transfer</b>  Employees hired by the City, whose <del>immediate past employer within the last 90 days</del> <del>last employer</del> was the State of North Carolina, any of its political subdivisions, any local government entity or authority or municipality in North Carolina, may transfer to the City <del>up to 240</del> <del>the accumulated</del> hours of unused <del>and unpaid</del> sick leave, provided the employee has not requested or is receiving retirement benefits from the North Carolina Department of State Treasurer Retirement System. The employee must request this transfer within 90 days of the beginning of employment with the City, and it is the responsibility of the employee to provide bona fide documentation of the amount of unused <del>and unpaid</del> sick leave from the <del>immediate past</del> <del>last</del> employer. <del>For eligible employees who were hired by the City of Greenville prior to</del></p>												



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	<p>April 8, 2019, the employee must request this transfer by July 8, 2019, and it is the responsibility of the employee to provide bona fide documentation of the amount of unused and unpaid sick leave from the last employer. Upon verification of the unused and unpaid sick leave by Human Resources, the employee will be credited with the transferred sick leave. Employees will not be paid for unused sick leave, whether transferred or accumulated, at the time of separation from the City.</p> <p><b>Section 14.0: School Involvement Leave for South Greenville Elementary School</b>  To encourage City employees to volunteer at South Greenville Elementary School, any regular full-time employee may use <del>one (1) hour per week of paid administrative leave (school involvement leave)</del> up to four (4) hours a month not to exceed forty (40) hours of paid administrative leave (school involvement leave) per school year to volunteer at South Greenville Elementary School. Such leave shall be coordinated through the employee's immediate supervisor.</p>
<p>Article X (Separation and Reinstatement)</p>	<p><b>Section 2.0: Resignation</b>  Any employee may resign by submitting in writing the reason for the resignation and the effective date to his or her supervisor and/or department head as far in advance as possible, but a minimum of two (2) weeks' notice is required. Failure to comply with this requirement may be cause for denying future employment with the City. An employee who fails to provide at least two (2) weeks' written notice before resigning or fails to actually work the remaining two (2) weeks, unless circumstances such as disability prevent such, shall lose the right to receive payout of accumulated vacation leave as specified in Article VIII, Section 4.3.</p> <p>The City of Greenville reserves the right to make any notice of resignation effective immediately.</p>
<p>Article XI (Disciplinary Action)</p>	<p><b>Section 3.0: Definitions</b>  (a) <i>Active Written Warning</i> - A written warning is active for a period of eighteen (18) months after being issued. After eighteen (18) months of satisfactory job performance as documented by a satisfactory performance evaluation, the written warning shall become inactive and is not to be used as the basis for any human resources action from that point forward. Any additional active written warning received during the 18-month period will extend the active period of the initial warning by the full period of the subsequent warning(s). Serious disciplinary actions (i.e., suspension without pay, demotion, dismissal) shall not be expunged.</p> <p>(b) <i>Current Unresolved Incident</i> - A current act of unsatisfactory job performance, detrimental personal conduct, or negligence in the performance of duties for which no disciplinary action has previously been taken.</p>

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	<p>(c) <i>Demotion</i> - Demotion is an involuntary movement from a higher level position to a lower level position for disciplinary reasons, with a corresponding permanent reduction in pay. The salary of an employee demoted to a position in a class with a lower pay range shall be adjusted to the maximum of the new pay range or to five percent (5%) below the former salary, whichever is lower.</p> <p>(d) <i>Disciplinary Probation</i> – Disciplinary probation may be used alone or in conjunction with written warnings regarding misconduct issues of the employee that have not been resolved by counseling and/or warnings (both oral and written). The disciplinary probation status serves as a period of formal notice to an employee that a problem exists which may jeopardize continued employment with the City.</p> <p>(e) <i>Disciplinary Suspension Without Pay</i> - A disciplinary suspension without pay is the removal of an employee from work for disciplinary reasons without paying the employee. A disciplinary suspension without pay shall be of a length determined appropriate based on the circumstances, but in any case not less than eight (8) hours nor more than <del>ten (10)</del> <b>thirty (30)</b> consecutive workdays.</p> <p>(f) <i>Dismissal</i> - Dismissal is a decision to separate the employee from employment for documented failure to achieve and maintain satisfactory performance, for an unresolved incident of detrimental personal conduct, or for an unresolved incident of negligence in the performance of duties.</p> <p>(g) <i>Performance Probation</i> – Performance probation may be used when the employee's performance continues to remain unsatisfactory after counseling or written warnings, when performance evaluations are unsatisfactory, or performance requires significant improvement.</p> <p>(h) <i>Pre-Disciplinary Conference</i>. A pre-disciplinary conference is a meeting between the department head <b>and/or department head designated supervisor(s)</b>, a Human Resources Department representative as an observer, and the employee who may be subject to disciplinary action, up to and including dismissal. The employee may request a City employee be present during the conference. The conference is not adversarial and no outside third parties (non-City employee) may be present. A pre-disciplinary conference must be held before the City may demote, suspend without pay, or dismiss an employee.</p>

Article Number	Proposed amendment(s)
	<p data-bbox="540 233 1437 331"><i>(i) Serious Disciplinary Action</i> - Suspension without pay, demotion, and dismissal shall be considered serious disciplinary actions. A written warning is not considered a serious disciplinary action.</p> <p data-bbox="540 369 1437 468"><i>(j) Written Warning</i> - A written warning is a disciplinary action that may be used as a first step in the disciplinary process based on unsatisfactory job performance or minor conduct issues.</p> <p data-bbox="540 510 878 541"><b>Section 3.0: Definitions</b></p> <p data-bbox="589 546 1437 856"><b>a. Detrimental Personal Conduct</b> – Detrimental personal conduct includes, but is not limited to, behavior of such a serious detrimental nature that the functioning of the City may be or has been impaired; the safety of persons or property may be or has been threatened; or the laws of the federal, state, or local government may be or have been violated. Detrimental personal conduct is <u>intentional</u> behavior, rather than inadvertent or negligent behavior. The following are examples of detrimental personal conduct:</p> <ul style="list-style-type: none"> <li data-bbox="613 898 878 930">i. Fraud or theft;</li> <li data-bbox="613 934 1437 997">ii. Communication or acts of threats or violence in the workplace;</li> <li data-bbox="613 1001 1437 1064">iii. Harassing of an employee(s) and/or the public with threatening or obscene language and/or gestures;</li> <li data-bbox="613 1068 1437 1207">iv. Possession of firearms or other lethal weapons on the job, unless required to possess the firearm or weapon as part of the employee’s job duties with the City of Greenville;</li> <li data-bbox="613 1211 1414 1243">v. Request or acceptance of gifts in exchange for favors;</li> <li data-bbox="613 1247 1437 1310">vi. Harassment of an employee(s) and/or the public on the basis of sex or any other legally protected class status;</li> <li data-bbox="613 1314 1437 1413">vii. Retaliation against an employee for using the City’s grievance procedure or engaging in protected activity, as defined by equal employment laws;</li> <li data-bbox="589 1417 1437 1556">viii. Reporting to work under the influence of alcohol or drugs or partaking of such while on duty. Prescribed medication may be taken within the limits set by a physician as long as medically necessary;</li> <li data-bbox="613 1560 1154 1591">ix. Falsification of official City records;</li> <li data-bbox="613 1596 1305 1627">x. Willful violation of known or written work rules;</li> <li data-bbox="613 1631 1437 1694"><b>xi. Unauthorized or inappropriate use of City equipment or property;</b></li> <li data-bbox="613 1698 1437 1761">xii. Insubordination - the willful failure or refusal to carry out a reasonable order from an authorized supervisor;</li> <li data-bbox="613 1766 1437 1829">xiii. Conviction of a felony or an offense that is detrimental to or impacts the employee’s service to the City;</li> </ul>

Article Number	Proposed amendment(s)
	<p>xiv. Wanton or careless disregard of the safety, personnel, performance, work rules, or policies of the City or department to which the employee is assigned;</p> <p>xv. Conduct for which no reasonable person should expect to receive a prior warning.</p> <p><i>Note: The above are intended to be examples, not an exhaustive list, of the types of conduct considered to be detrimental personal conduct.</i></p> <p><b>Section 6.0: Discipline for Unsatisfactory Job Performance</b></p> <p>a. <u>Dismissal</u>  The following guidelines should be used, where appropriate, before a dismissal for unsatisfactory job performance is imposed:</p> <ol style="list-style-type: none"> <li>1. a current unresolved incident of unsatisfactory job performance; <b>and</b></li> <li>2. at least two (2) prior active warnings or other disciplinary actions for unsatisfactory job performance, detrimental personal conduct, or negligence in the performance of duties; <b>and</b></li> <li>3. a pre-disciplinary conference; <b>and</b></li> <li>4. the City Manager <b>or his or her designee</b> concurs with the proposed action of dismissal.</li> </ol> <p><b>Section 8.0: The Pre-Disciplinary Conference</b></p> <p>c) Persons in attendance at the pre-disciplinary conference are:</p> <ul style="list-style-type: none"> <li>• The employee;</li> <li>• The supervisor(s) and/or department head;</li> <li>• A representative of the Human Resources Department whose role is that of observer;</li> <li>• The employee may request a co-worker be present during the conference. The representative must be a City employee and not an outside third party. The conference will not be delayed if the representative is not available on the date of the conference.</li> </ul> <p><b>Section 11.0: Non-Disciplinary Suspension</b></p> <p>During the investigation, hearing, or trial of an employee on any criminal charge, or during required substance abuse screenings, the City Manager <b>or his or her designee</b> may suspend the employee for the duration of the proceedings as a non-disciplinary action. In such cases, based upon the circumstances involved, the City Manager <b>or his or her designee</b> may:</p> <ol style="list-style-type: none"> <li>a. Relieve the employee temporarily of all duties and responsibilities and allow the employee no</li> </ol>

Article Number	Proposed amendment(s)
	<p>compensation or leave privileges for the period of suspension. If the suspension is ended by full reinstatement of the employee, the City Manager <b>or his or her designee</b> may authorize full or partial recovery of pay and benefits for that period of suspension. At the discretion of the City Manager or his/her designee, the employee may be placed on paid administrative leave during the suspension period. If the suspension is ended by a disciplinary suspension, demotion, transfer, or dismissal, procedures as stated in this Article shall be applied, and there shall be no recovery of pay and benefits for the period of the non-disciplinary suspension without pay; or</p> <p>b. Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties.</p> <p>During the course of any civil trial or internal investigation, the City Manager or his/her designee may place the employee on administrative leave with pay during the pendency of the proceedings or investigation. Such leave shall not be considered a disciplinary suspension. As an alternative, based on the circumstances involved, the City Manager <b>or his or her designee</b> may authorize the employee be relieved of current duties and responsibilities and reassigned temporary duties as directed by the Department Head. Such action shall not be considered as a disciplinary probation or demotion.</p>
<p>Article XII (Grievance Procedure)</p>	<p><b>Section 4.0: Filing a Grievance and Steps in Grievance Procedure</b></p> <p>a. <u>Filing a Grievance.</u> <del>An employee or former employee</del> <b>A grievant</b> shall begin the grievance process by filing a written grievance request with the Director of Human Resources within fifteen (15) days of the occurrence or decision the <del>employee</del> <b>grievant</b> is grieving. After determining that the grievance is a grievable issue and that it has been filed in a timely fashion, the Director of Human Resources shall forward within three (3) days to the <del>employee's</del> <b>grievant's</b> department head all information received relating to the grievance.</p> <p>b. <u>Step 1 – Review by <del>Employee's</del> <b>Grievant's</b> Department Head.</u> The first step of the grievance procedure will be to the <del>employee's</del> <b>grievant's</b> department head. The department head shall make a decision within ten (10) days and shall notify the <del>employee</del> <b>grievant</b> in writing. <del>The employee shall sign and date a copy of the department head's response to acknowledge receipt.</del> <b>The decision shall be issued to the</b></p>

Article Number	Proposed amendment(s)
	<p data-bbox="636 235 1435 436">grievant in person which the grievant shall sign and date to acknowledge receipt or, if unable to issue to the grievant in person, by certified mail to the last known address of the grievant. <del>This</del> A copy of the decision shall be sent to the Human Resources Department as part of the record of the grievance.</p> <p data-bbox="591 478 1435 823">c. <u>Step 2 – Hearing by Personnel Advisory Review Committee. Decision by City Manager.</u> If the grievance is not resolved to the satisfaction of the <del>employee</del> grievant during Step 1, the <del>employee</del> grievant may appeal by giving written notice to the Director of Human Resources within five (5) days after receipt of the department head’s response. The Director of Human Resources shall assemble a panel of three (3) City employees from a pool approved by the City Manager and who are trained in conducting employee grievance hearings. This pool is the Personnel Advisory Review Committee.</p> <p data-bbox="539 865 1435 1066">A hearing before the Personnel Advisory Review Committee is available only for grievances involving disciplinary demotions, suspensions without pay, or dismissals. Any other grievance issue will go from the department head to a review by the City Manager or his/her designee which will be the final decision of the grievance procedure.</p> <p data-bbox="539 1108 1435 1453"><b>Section 5.2: Representation of Parties at the Hearing</b> The grievant may choose any other City employee, except a supervisory level employee from his or her department, to assist him/her at the Committee hearing. Such assistance shall not include presenting or representing the grievant during the hearing. The grievant’s department head shall choose someone to represent the department, or may choose to represent the department himself/herself. <del>If an employee</del> the grievant chooses to be represented by an attorney, the City will be represented by an attorney during the PARC process.</p> <p data-bbox="539 1495 1435 1583"><b>Section 5.4: Finality of Decision</b> The decision of the City Manager <del>or his/her designee</del> shall be conclusive and final, and there shall be no further appeal.</p>

Section 2. All inconsistent provisions of former resolutions or policies are hereby repealed.

Section 3. This resolution shall be effective upon its adoption.

ADOPTED this the 8<sup>th</sup> day of April, 2019.

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P.J. Connelly, Mayor

ATTEST:

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Carol L. Barwick, City Clerk

1100375



## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Ordinance revising the Outdoor Dining regulations for the Outdoor Sidewalk Dining ordinance and Uptown Parking Deck Plaza ordinance

**Explanation:** **Abstract:** Revisions to the Outdoor Dining regulations for the Outdoor Sidewalk Dining and Uptown Parking Deck Plaza ordinances.

**Explanation:** The City's current outdoor dining regulations are restrictive to a small area in Uptown Greenville and do not factor for the growth that the City is seeing outside of those areas. Revisions to City ordinance will create a more succinct city-wide ordinance that applies to all areas, where permissible. Standardizing the closing time, fee cost, removing the boundary, and implementing demarcation emblems will help increase the vibrancy of many areas throughout the city.

### **Proposed Changes**

Keep the two outdoor dining ordinances separate due to the difference in available space for tables, chairs, and food service equipment.

Explore standardizing the eligible hours of both ordinances:

- a. Outdoor Sidewalk Dining ordinance: Alter the closing time from 12 AM to 1 AM.
- b. Uptown Parking Deck Plaza ordinance: Alter the closing time from 2 AM to 1 AM.

Enforce a 4-foot minimum clearance between items in the right-of-way and outdoor dining furniture. Currently, there is no minimum standard defined in either of the City's outdoor dining ordinances.

Remove the geographic boundary from the Outdoor Sidewalk Dining ordinance and instead entertain outdoor dining throughout the Uptown area. The Outdoor Sidewalk Dining ordinance is restricted to a 6 block area in Uptown Greenville and does not account for new restaurants that are opening up in areas abutting the Uptown area. Expanding the geographic boundary will enhance the curb appeal of local businesses



outside the current Uptown boundary. This change would require helping the applicant determine the best outdoor dining option for their restaurant, including outdoor dining on private property or City sidewalks.

Use sidewalk dining emblems/medallions to help demark the boundary and promote the program.

Allow businesses to leave dining furniture on the sidewalk overnight by stacking the furniture, pushing it up to the storefront wall, and securing it with a chain.

Standardize the permit fee for both outdoor dining ordinances. Currently, the outdoor sidewalk dining permit costs \$150 to make application, where the Uptown parking deck plaza permit costs \$125. Standardize the fees to \$150 respectively.

**Fiscal Note:**

The outdoor dining demarcation emblems will cost \$920 for 100 custom designed emblems with the City of Greenville logo. The permit fee of \$150 is expected to cover administrative costs.

**Recommendation:**

City Council approve the recommended changes to the outdoor dining ordinances.

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ATTACHMENTS:

☐ **Outdoor\_Dining\_Resolution\_1107066**

ORDINANCE NO. \_\_\_\_\_  
ORDINANCE AMENDING THE PROVISIONS OF THE GREENVILLE CITY CODE  
RELATING TO AN UPTOWN OUTDOOR DINING PERMIT

The City Council of the City of Greenville, North Carolina, does hereby ordain:

Section 1: That Section 6-2-60 of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by rewriting the definition of the *Uptown outdoor dining area* so that it reads: The area where uptown outdoor dining is allowed by permit and which is located in the geographic area contained within the following boundary:

Beginning at the intersection of South Pitt Street with West First Street; thence running along West First Street to Evans Street; thence along East First Street to Reade Street; thence along Reade Street to East Fifth Street; thence along Reade Circle to Cotanche Street; thence along Cotanche Street to East Tenth Street; thence along East Tenth Street to Evans Street; thence along West Tenth Street to Dickinson Avenue; thence along Dickinson Avenue to Atlantic Avenue; thence along Atlantic Avenue to Bonners Lane; thence along Bonners Lane to South Pitt Street; thence along South Pitt Street to East First Street, the Point of Beginning.

Excluded from this area are any right-of-ways maintained by North Carolina Department of Transportation.”

Section 2: That Section 6-2-62 of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by adding subsection (G), so that said subsection read as follows:

(G) The applicant agrees to maintain no less than 4 feet (48 inches) minimum pedestrian clearance at all times and demarcated by a City of Greenville outdoor dining emblem.

Section 3: That Section 6-2-63 of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by rewriting subsections (F) and (J) so that the subsections read as follows:

(F) All furniture must be removed from the outdoor dining area each day by 1:00 a.m., or secured firmly against the storefront wall with a chain or similar locking device. Furniture may be returned to its original state in the outdoor dining area after 6 a.m. the following day.

(J) Umbrellas are allowed provided vertical and horizontal clearances on sidewalks, as required by the North Carolina State Building Code and the Americans with Disabilities Act, are maintained.

Section 4: That Section 6-2-77 of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by adding subsection (F) so that said subsection reads as follows:

(F) Maintain no less than 4 feet (48 inches) minimum pedestrian clearance at all times.

Section 5: That Section 6-2-78 of the Code of Ordinances, City of Greenville, North Carolina, is hereby amended by rewriting subsections (C) and (E) so that the subsections read as follows:

(C) No service of food or alcohol after 1:00 a.m. is allowed in the outdoor dining area. No food or alcohol consumption and/or possession of food or alcohol after 1:00 a.m. is allowed in the outdoor dining area.

(E) Food serving equipment or food service equipment to hold, store, heat, warm, cold, chill or otherwise to keep food to be served may be located in the outdoor dining area. The equipment shall not be stored in the outdoor dining area and shall be removed by 1:00 a.m.

Section 6: That the Manual of Fees for the City of Greenville, North Carolina, be and is hereby amended by rewriting the fee for an Outdoor Dining Permit within the section entitled "Miscellaneous" within the Community Development Fees so that it shall read as follows:

Miscellaneous

<b>Account Number</b>	<b>Service</b>	<b>Fee</b>
010-0000-330-18-12	Outdoor Dining Permit	\$150 flat fee; except \$25 renewal fee if no changes to original plan

Section 7: All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 8: 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 9: This ordinance shall become effective upon its adoption.

This \_\_\_\_ day of April, 2019.

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P.J. Connelly, Mayor

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Carol L. Barwick, City Clerk

#1107066



## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:**

Resolution authorizing condemnation to acquire an electric easement on certain property owned by Harry Salley for the West 5th Street Gateway Streetscape – Phase 2 Project

**Explanation:**

**Abstract:** The West 5th Street Gateway Streetscape – Phase 2 Project will enhance multimodal transportation opportunities, including motor vehicles, bicycles, and pedestrians, to provide safer shared facilities for each, and to invest in streetscape improvements in this area of West Greenville. Acquisition of right-of-way and easements on 13 properties was required to be obtained for the project. The City has successfully acquired right-of-way and/or easements on 12 of the 13 parcels. The thirteenth parcel requires an electric easement, and the City has been unsuccessful in efforts to locate the property owner or his heirs. A clear title will not be able to occur voluntarily for these reasons. A condemnation action to acquire this easement will cure the title issues. The adoption of a resolution authorizing the condemnation is required.

**Explanation:** The City has successfully acquired right-of-way and/or easements on 12 of the 13 parcels necessary for construction of the West 5th Street Gateway Streetscape – Phase 2 Project. The West 5th Street Gateway Streetscape – Phase 2 Project will enhance multimodal transportation opportunities, including motor vehicles, bicycles, and pedestrians, to provide safer shared facilities for each, and to invest in streetscape improvements in this area of West Greenville. The thirteenth parcel requires an electric easement, and the City has been unsuccessful in efforts to locate the property owner or his heirs. The remaining easement to be acquired is located on Parcel number 3995 and is located at 1208 W. Fifth Street. The listed owner is Harry Salley. The attached OPIS map and easement survey demonstrate the location of the property and the limits of the electric easement to be acquired.

All attempts to contact Mr. Harry Salley have been unsuccessful, and the City's only option is to proceed with condemnation action in order to obtain a clear title to this easement. For this reason, the adoption of a resolution authorizing the condemnation is required.

**Fiscal Note:**

Upon the filing of the complaint, the amount estimated by the City (based upon an appraisal of just compensation of the property), will be required to be deposited with the court. In addition to this amount, there will be legal expenses incurred as the action proceeds. Funds to pay for the property acquisition and related expenses are to be paid for from the 2015 Bond proceeds allocated for this project.

**Recommendation:**

It is recommended that City Council approve the attached resolution authorizing condemnation to acquire an easement on certain property owned by the listed owner Harry Salley.

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ATTACHMENTS:

- ❑ **Resolution authorizing Condemnation for Harry Salley 1106934**
- ❑ **Salley Map**
- ❑ **Easement Survey for Harry Salley**

RESOLUTION NO. 19-  
RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE AN EASEMENT ON  
CERTAIN PROPERTY OF HARRY SALLEY FOR THE WEST 5TH STREET GATEWAY  
STREETSCAPE – PHASE 2 PROJECT

WHEREAS, the City Council of the City of Greenville hereby determines that it is necessary and in the public interest to acquire certain property owned by Harry Salley for the public purpose described below; and

WHEREAS, the whereabouts of Mr. Harry Salley, owner, are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, and therefore the proper officials or representatives of the City of Greenville have been unable to contact the owner to seek to acquire the needed interest in this property by negotiated conveyance.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE THAT:

1. The City of Greenville shall acquire by condemnation, for the purposes stated below, the property and interest described as follows:

Being a fifteen foot (15) electrical easement over and upon a portion of the property located at 1208 W. Fifth Street, Greenville, Pitt County, North Carolina, being that property conveyed to Harry Salley by deed recorded in Book U-49, Page 852, being a portion of Lot 2, Block “A”, Riverdale subdivision, as recorded in Map Book 3, Page 114, in the Pitt County Registry, and having Pitt County Tax Assessor’s parcel number 03995, with said easement being more particularly described as a strip of land measured fifteen feet (15) in width, running parallel to, and from all points along the northern right of way line of W. Fifth Street (NCSR 1571), the southern property line of the herein referenced parcel with said easement having an area of 648.4 square feet as shown on the attached map titled “Easement Survey for City of Greenville Across the Property of Harry Salley” as prepared by Spruill & Associates, Inc., Firm License No. C-978, dated February 14, 2018, which reference is made for a more accurate and complete description.

2. The purpose for which the property is being acquired is to enhance multimodal transportation opportunities, including motor vehicles, bicycles, and pedestrians, to provide safer shared facilities for each, and to invest in streetscape improvements in this area of West Greenville for the West 5th Street Gateway Streetscape – Phase 2 Project.

3. The attorneys representing the City of Greenville are directed to institute the necessary proceedings under Chapter 40A of the North Carolina General Statutes to acquire the property herein described.

This the 8th day of April, 2019.

\_\_\_\_\_  
P.J. Connelly, Mayor

ATTEST:

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



# Pitt County Government

Greenville, North Carolina



www.pittcountync.gov



**Parcel:** 03995  
**More Info:** 03995  
**Physical Address:** 1208 W FIFTH ST  
**Owner Name:** SALLEY HARRY  
**OwnerAddress1:** 300 TYSON ST  
**OwnerAddress2:**  
**OwnerAddress3:**  
**City / State / Zip:** GREENVILLE NC 27834  
**NC PIN:** 4678911991  
**Subdivision / Section / Phase:**  
**Prior Legal Description:** RES 1208 WEST 5TH ST  
**Block / Lot:**  
**Tract:**  
**Building Number / Unit:**  
**Acres:** 0.07  
**Current Owner Deed/Document:** 00DC99 00728  
**Map Book:** -  
**Deed / Document Date:** 04/2013  
**Deed / Document Sales Price:** \$0  
**Building Type / Use:** SFR CONST(SFR)  
**Number of Buildings:** 1  
**Year Built:** 1926  
**Total Living Area:** 956  
**Building Value:** \$34,551  
**Extra Features Value:**  
**Land Value:** \$3,290  
**Total Current Market Value:** \$37,841  
**Total 2015 Market Value:** \$16,441  
**Municipality:** GREENVILLE  
**Township:** GREENVILLE  
**Fire Service District:** INSIDE MUNICIPALITY  
**Census Tract:** 701  
**Neighborhood:** 004135  
**Elementary School:** Wahl-Coates ES  
**Middle School:** C M Eppes MS  
**High School:** J H Rose HS

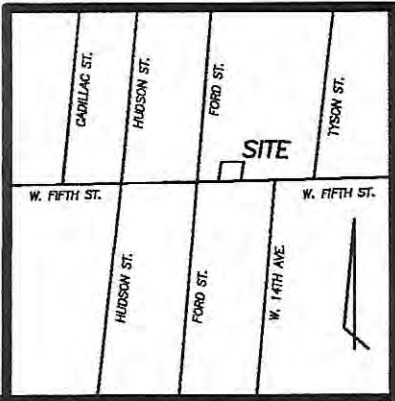
**Disclaimer:** This tax record is prepared for the inventory of real property within Pitt County and is compiled from recorded deeds, plats, tax maps, surveys, and other public records. Users of this data are hereby notified that the aforementioned public primary information sources should be consulted for verification. Pitt County assumes no legal responsibility for the information contained herein.

Copyright © 2017, Pitt County, North Carolina.

**PLEASE NOTE:**

The parcel information is updated nightly and reflects current property values.

Printed: 3/26/2019 4:04:03 PM



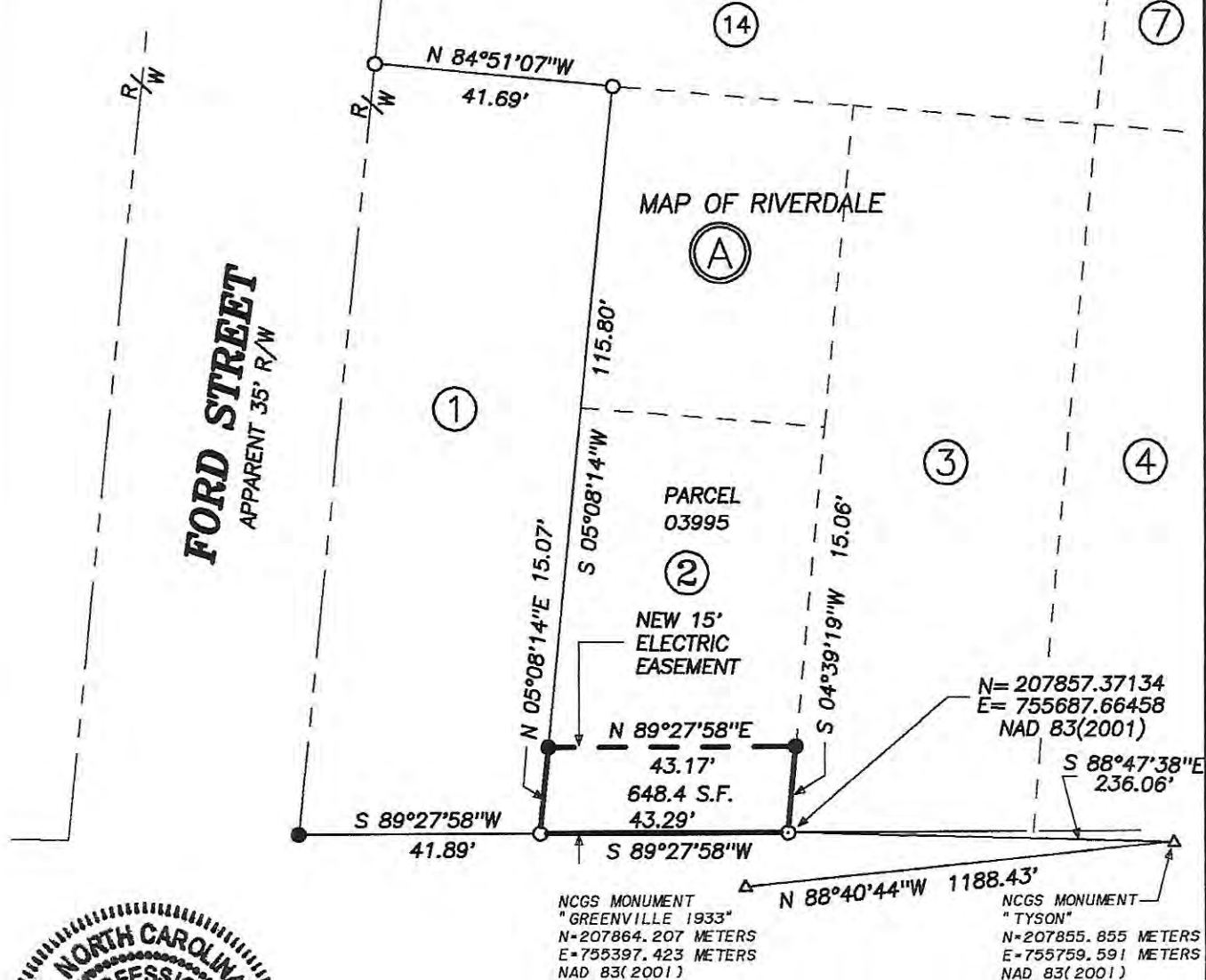
VICINITY MAP  
N.T.S.

- ALL DISTANCES SHOWN ARE HORIZONTAL FIELD DISTANCES,  
NO GRID FACTOR APPLIED  
- THE COMBINED NC GRID FACTOR USED FOR GRID COORDINATE  
CALCULATIONS IS 0.99989470

REFERENCES	LEGEND
D.B. U-49, P. 852	○ EXISTING IRON BAR
M.B. 2, P. 36	○ EXISTING IRON PIPE
PITT COUNTY REGISTRY	X "X" CHISELED IN CONCRETE
	△ EXISTING CONCRETE MONUMENT
	○ IRON PIPE SET
	R/W RIGHT OF WAY

MAP OF RIVERDALE  
M.B. 2, P. 36

NC GRID NORTH  
NAD 83(2001)



**NCSR 1571 ~ WEST FIFTH STREET**  
VARIABLE R/W ~ PAVED

EASEMENT SURVEY FOR  
**CITY OF GREENVILLE**

I CERTIFY THAT THIS SURVEY IS OF A PROPOSED EASEMENT FOR A PUBLIC UTILITY AS DEFINED IN G.S. 62-3 AND THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED REFERENCE SHOWN IN TITLE BLOCK); THAT ANY BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION REFERENCED HEREON; THAT THE CALCULATED RATIO OF PRECISION IS 1: 14,370; THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 14 DAY OF FEBRUARY, 2018.

*Stephen N. Spruill*  
STEPHEN N. SPRUILL, PLS L-2723

ACROSS THE PROPERTY OF

**HARRY SALLEY**

A PORTION OF LOT 2, BLOCK A

MAP OF RIVERDALE

DEED BOOK U-49, PAGE 852

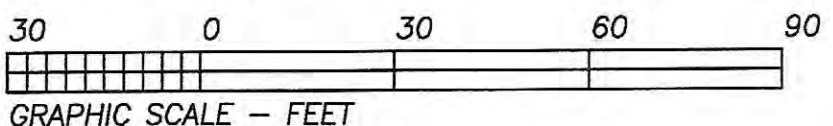
CITY OF GREENVILLE

GREENVILLE TOWNSHIP ~ PITT COUNTY ~ NORTH CAROLINA

DATE: FEBRUARY 8, 2018

SCALE: 1"= 30'

**Spruill & Associates Inc**  
2747 East Tenth Street  
Greenville, North Carolina 27858  
spruill@coastalnet.com  
(252) 757-1200 Firm No. C-978



170.04-17

170.04-17





## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Right-of-Way Encroachment Agreement with HAFCO, Inc.

**Explanation:** **Abstract:** The City has received a request from HAFCO, Inc., to encroach over and upon the public street right-of-way on the west side of Reade Street just north of East 5th Street. The encroachment is for building footings and awning projections that extend into the right-of-way as part of the expansion of Sup Dogs restaurant.

**Explanation:** For City Council's consideration is the Right of Way Encroachment Agreement setting out the terms by which HAFCO, Inc., can encroach over and upon the public street right-of-way of Reade Street.

Staff takes no exception to this request.

**Fiscal Note:** No fiscal impact is anticipated with this action.

**Recommendation:** City Council approve the right-of-way encroachment agreement permitting HAFCO, Inc., to encroach over and upon the public street right-of-way of Reade Street for building footings and awning projections.

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### ATTACHMENTS:

▣ ENC\_HAFCO, INC\_213B\_E\_Fifth\_St\_Building,\_awning\_1106568

▣ **Sup Dog Map**

-----[SPACE ABOVE THIS LINE IS RESERVED FOR RECORDATION DATA]-----

STATE OF NORTH CAROLINA  
COUNTY OF PITT

Prepared by: City of Greenville  
Mail to: City of Greenville PWD  
PO Box 7207  
Greenville, NC 27835

Right of Way Encroachment Agreement  
Reade Circle, parcel number 08436

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THIS AGREEMENT made and entered into this the 8<sup>th</sup> day of April, 2019, by and between the **CITY OF GREENVILLE**, a municipal corporation created under the laws of the State of North Carolina, P.O. Box 7207, Greenville, NC 27835, party of the first Part and hereinafter sometimes referred to as the **CITY**, and **HAFCO, Inc.**, a corporation created under the laws of the State of North Carolina, 213 E. 5<sup>th</sup> Street, Greenville, NC 27834, party of the second party and hereinafter sometimes referred to as the **OWNER**;

W I T N E S S E T H

THAT WHEREAS, the OWNER desires to encroach upon the public right of way of the public street designated as Reade Circle to install building footings and awnings as shown on Attachment "A";

WHEREAS, it is to the material advantage of the OWNER to effect this encroachment, and the CITY, in the exercise of authority conferred upon it by statute, is willing to permit the encroachment within the limits of the right of way as indicated on attachment "A", subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the execution of this Agreement by the CITY, the benefits flowing to the OWNER, and the covenants and agreements herein contained with respect to the obligations of the OWNER hereunder, the CITY does hereby give and grant unto the OWNER, the right and privilege to make the encroachment, as shown on attachment "A", subject to the conditions contained in this Agreement.

TO HAVE AND TO HOLD said encroachment rights under this Agreement unto the OWNER, provided, however, the OWNER performs and abides by the covenants and agreements herein contained.

The covenants and agreements to be performed by the OWNER as a part of the consideration for this encroachment agreement are as follows:

1. All costs of construction and maintenance of the encroaching structure will be at the sole cost and expense of the OWNER.
2. All damages to the right of ways, including the traveled portion of the street located thereon, or to facilities maintained by Greenville Utilities Commission as a result of the construction or maintenance of the encroaching structure, shall be borne by the OWNER, including but not limited to the following:
  - a. Restoring the traveled portion of the street to good, passable condition for use by the public.
  - b. Repairing any damage to the existing curbing or sidewalks.
  - c. Repairing any damage to facilities maintained by Greenville Utilities Commission
3. Any damage to the OWNER's encroaching structure caused by the CITY's or Greenville Utilities Commission use of its right of ways for construction or maintenance work in the ordinary course of its business, shall be borne by the OWNER.
4. The OWNER shall maintain the encroaching structure so that it does not interfere with the utilization of the right of way by the CITY or utilization by the Greenville Utilities Commission of the right of way or facilities maintained by Greenville Utilities Commission.
5. The OWNER shall install and maintain the encroaching structure in such safe and proper condition that it will not obstruct or interfere with the proper maintenance of the right of way, or facilities maintained by Greenville Utilities Commission and if at any time in the future the CITY shall require the removal of or changes in the location of the encroaching structure, the OWNER shall promptly remove or alter the location of the encroaching structure in order to conform to such requirements without cost to the CITY.
6. The OWNER hereby agrees to indemnify and save the CITY and its officers and employees harmless from all damages and claims for damage that may arise by reason of the installation and maintenance of the encroaching structure.
7. The OWNER agrees to exercise every reasonable precaution during construction and maintenance of the encroaching structures to prevent damage to the right of way or facilities maintained by Greenville Utilities Commission. The OWNER shall comply with all applicable rules, regulations, and ordinances of the CITY as well as those of state and federal regulatory agencies. Whenever any installation or maintenance operation by the OWNER or its contractors disturbs the ground surface, the OWNER agrees to return the area as nearly as possible to its condition prior to disturbance.
8. The OWNER agrees to assume the actual cost of any inspection of the OWNER's work considered to be necessary by the CITY.
9. In the event of noncompliance by the OWNER with any of the covenants and agreements herein contained, the CITY reserves the right to stop all works by the OWNER until the OWNER complies, or to cause the removal of the encroaching structure from its right of way or from City property without cost to the CITY.

10. Notwithstanding any other provision of this Agreement, the CITY may terminate the right, privilege, and easement granted herein by the provision of at least thirty-day (30) written notice to the OWNER.

IT IS UNDERSTOOD AND AGREED that this Agreement shall become null and void if actual installation of the encroaching structure is not complete within one (1) year from the date of the execution of this Agreement.

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

HAFCO, INC.

By: \_\_\_\_\_ (Seal)  
Herbert S. Corey, President

CITY OF GREENVILLE

By: \_\_\_\_\_  
P.J. Connelly, Mayor

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Emanuel McGirt, City Attorney

RECOMMENDED:

\_\_\_\_\_  
Kevin Mulligan, P.E., Director of Public Works

State of North Carolina

County of Pitt

I, \_\_\_\_\_, Notary Public of Pitt County, North Carolina, do hereby certify that Carol L. Barwick, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipal corporation, and that by authority duly given and as the act of the City of Greenville through and by the City Council, its governing body, the foregoing instrument was signed in its name by P.J. Connelly, sealed with its corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and Notarial Seal, this the \_\_\_\_\_ day of April, 2019.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
(Print or Type Name of Notary Here)

My Commission Expires: \_\_\_\_\_

State of North Carolina

County of Pitt

I, \_\_\_\_\_ a notary public in and for the aforesaid county and state, certify that Herbert S. Corey, personally appeared before me this day, and stated he is the President of HAFCO INC., a corporation organized and existing under the laws of the State of North Carolina, that the foregoing agreement with the City of Greenville carries on in the usual way the company's business, and acknowledged the due execution of the contract on behalf of the company.

WITNESS my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2019.


\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
(Print or Type Name of Notary Here)

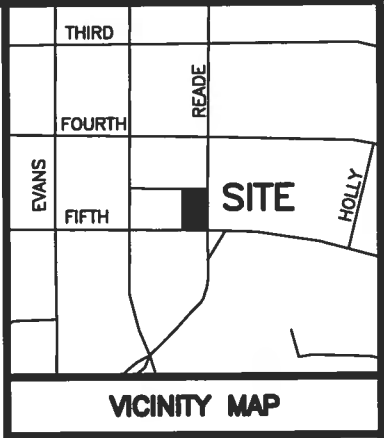
My Commission Expires: \_\_\_\_\_

**NOTES**

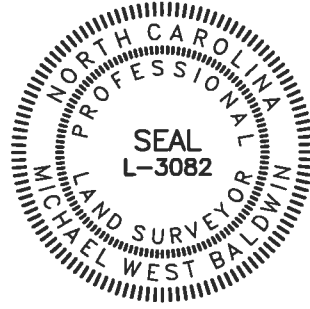
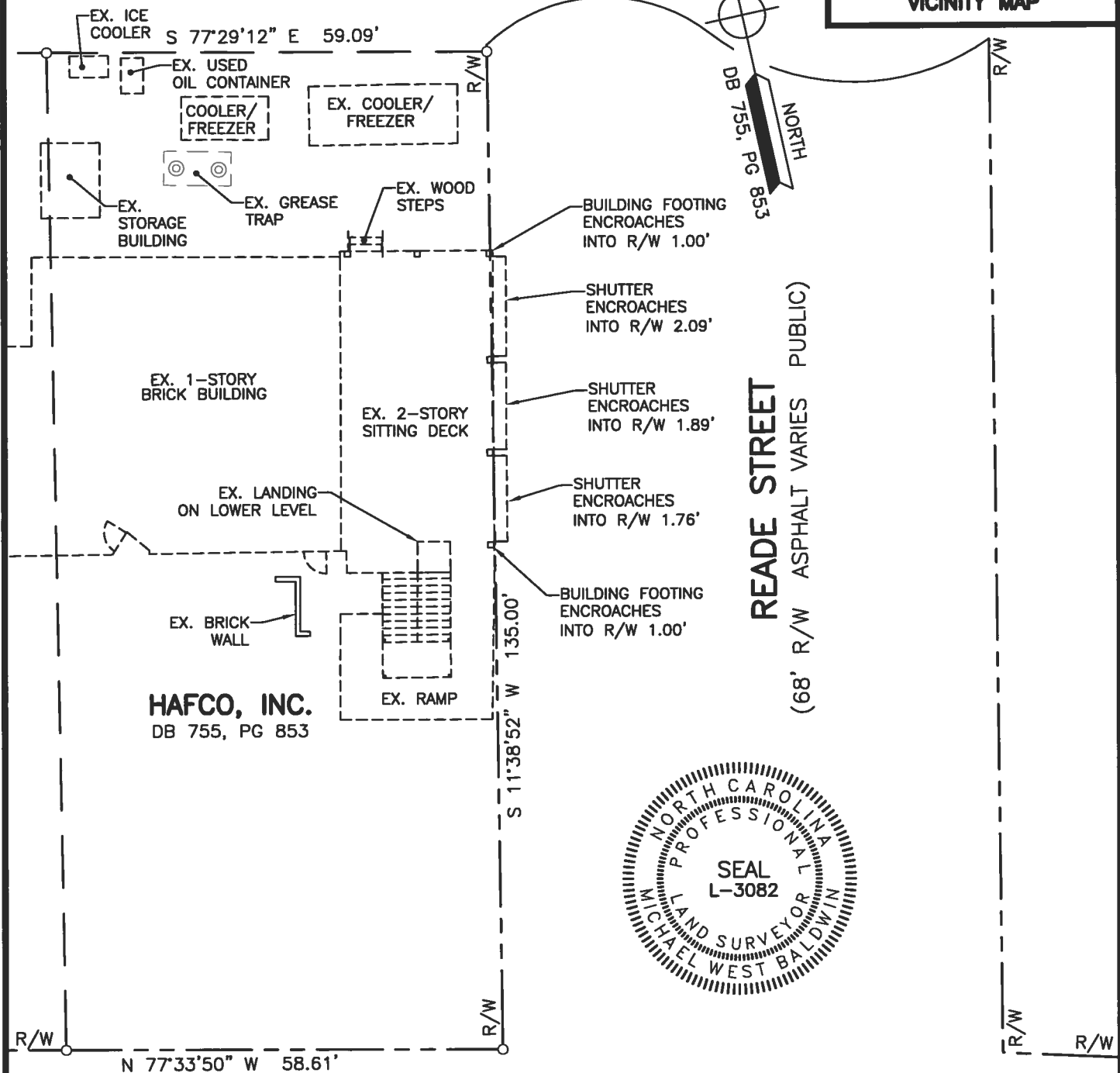
1. ALL AREAS CALCULATED BY COORDINATE GEOMETRY.
2. THIS MAP IS AN EXCEPTION TO THE DEFINITION OF A SUBDIVISION.

**LEGEND**

R/W = RIGHT-OF-WAY  
 EX = EXISTING  
 = NOT TO SCALE



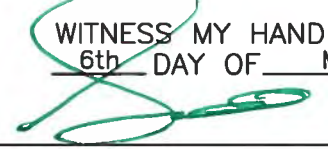
Y:\DRAWINGS\2015 Drawings\15-125 TIDELAND CONST (SUP-DOGS)\ENCROACHMENT MAP.dwg Thu, Mar 07, 2019-8:43am RWELLS



NRW FB \_\_\_\_, PG. \_\_ ACAD: 15-125

I, MICHAEL W. BALDWIN, HEREBY CERTIFY THAT THIS MAP WAS DRAWN UNDER MY DIRECTION AND SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY DIRECTION AND SUPERVISION, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:10,000.

WITNESS MY HAND AND SEAL THIS  
 6th DAY OF MARCH, 2019.



MICHAEL W. BALDWIN, PLS L-3082

CITY STREET ENCROACHMENT MAP FOR

**HAFCO, INC.**

GREENVILLE, GREENVILLE TWP., PITT CO., N.C.

DATE: 03/06/19 SCALE: 1" = 20'

**Baldwin Design Consultants, PA**  
 ENGINEERING - SURVEYING - PLANNING  
 1700-D EAST ARLINGTON BOULEVARD  
 GREENVILLE, NC 27858 252.756.1390

LICENSE# C-3498



## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

---

**Title of Item:** Contract award for professional services for Construction Engineering and Inspection and Construction Materials Testing for City-funded projects

**Explanation:** **Abstract:** The City advertised for professional services for Construction Engineering and Inspection (CEI) and Construction Materials Testing (CMT) services on February 18, 2019. This solicitation included on-call services for City-funded capital improvement projects, some of which may include 2019 Street Resurfacing Project, 2019 Stormwater Improvements Project, Atlantic Avenue Lot B Project, and 2020 Street Resurfacing Project. Funding for these projects comes from various project funds set up for each, to include a combination of Powell Bill, Stormwater, 2015 Bond and General Funds.

**Explanation:** Currently and within the next year, the City has advertised or will be advertising several projects for construction which are City funded. To meet the demands of contract administration, onsite inspection and record keeping, and testing of construction materials such as concrete and asphalt being utilized in the project, the City advertised a Request for Qualifications (RFQ) for professional services for Construction Engineering and Inspection (CEI) and Construction Materials Testing (CMT).

On March 7<sup>th</sup>, staff received three proposals in response to the RFQ. A selection team consisting of four staff reviewed each proposal independently and rated each according to the criteria included in the RFQ. After independent review, the team met together to discuss ratings and select a firm. The selection team unanimously recommended SEPI Engineering and Construction headquartered in Raleigh, NC. SEPI Engineering is a woman-owned business with significant experience performing CEI and CMT work, and their CEI Director lives in Greenville.

The City will enter into an on-call contract with SEPI Engineering with an anticipated total not-to-exceed cost of CEI and CMT services for all projects of \$1,000,000. Staff will negotiate task orders for each individual project as needed. In accordance with City policy, any task orders under \$100,000 would be approved and



executed by the City Manager, while those in excess of \$100,000 would be brought before City Council for approval.

The initial term of the on-call contract will be for two years with the option to renew for one additional year.

**Fiscal Note:**

Funding for this contract will come from a combination of 2015 General Obligation Bond funds, Powell Bill funds, Stormwater funds, and the General fund. The proposed not-to-exceed amount for this contract is \$1,000,000.

**Recommendation:**

City Council award an on-call contract for CEI and CMT services to SEPI Engineering and Construction for a not-to-exceed amount of \$1,000,000 and authorize the City Manager to execute task orders in amounts up to \$100,000, and approval by City Council for those in excess of \$100,000.

---

ATTACHMENTS:

- ▣ **SEPI On Call Contract**

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

AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

TASK ORDER EDITION

Prepared by



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other.

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1420 King Street, Alexandria, VA 22314-2794  
(703) 684-2882  
[www.nspe.org](http://www.nspe.org)

American Council of Engineering Companies  
1015 15th Street N.W., Washington, DC 20005  
(202) 347-7474  
[www.acec.org](http://www.acec.org)

American Society of Civil Engineers  
1801 Alexander Bell Drive, Reston, VA 20191-4400  
(800) 548-2723  
[www.asce.org](http://www.asce.org)

Associated General Contractors of America  
2300 Wilson Boulevard, Suite 400, Arlington, VA 22201-3308  
(703) 548-3118  
[www.agc.org](http://www.agc.org)

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**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES  
TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ (“Effective Date”) between  
\_\_\_\_\_  
City of Greenville (“Owner”) and  
\_\_\_\_\_  
SEPI Engineering and Construction, Inc. (“Engineer”).

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 Scope

- A. Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Engineer's Services."
- B. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.
- C. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 Task Order Procedure

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.

## ARTICLE 2 – OWNER’S RESPONSIBILITIES

### 2.01 General

- A. Owner shall have the responsibilities set forth herein, in Exhibit B, "Owner's Responsibilities," and in each Task Order.
- B. Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of 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 – TERM; TIMES FOR RENDERING SERVICES

### 3.01 Term

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for two (2) years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

### 3.02 Times for Rendering Services

- A. The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time.
- 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 Specific 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 a Task Order 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.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order 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), then Owner and Engineer shall, prior to commencement of final design services, develop a schedule for performance of Engineer's remaining services in order to sequence and coordinate properly such services as are applicable to the work under such separate Construction Contracts. This schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

## 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, the terms of Exhibit C, and the specific Task Order. 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. the compounded amount 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 any Task Order issued 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 may withhold only that portion so contested, and must pay the undisputed portion.
- D. Legislative Actions: ~~(DELETED) If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes sales or use taxes, fees, or charges on Engineer's services or compensation under the Task Order, 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 and the specific Task Order.~~

## 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 estimate 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 (DELETED)**

- A. ~~If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, Engineer's rights and responsibilities with respect thereto will be governed by 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 for a Specific Project 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 shall serve as Owner's prime professional under each Task Order. 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:** Engineer and Owner shall comply with applicable Laws and Regulations.
- I. Prior to the Effective Date of each Task Order, Owner shall provide to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under such Task Order. Engineer shall comply with such policies and procedures pursuant to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.



2. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of such Task Order. 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 Engineer having to verify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.
  - 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 in a Task Order to use other General Conditions.
  - 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, for 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 for 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 employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's 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 a 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. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been itemized and expressly required of Engineer in the authorizing Task Order. 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, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to

Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

603 Use of Documents

- A. All Documents are instruments of service in respect to a Specific 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 Specific 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~~ 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the ~~60~~ 30-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 Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific 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 Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific 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 its Consultants; (3) Owner shall indemnify and hold harmless Engineer and Engineer's 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 or adapts the Documents for extensions of the Specific 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. At all times when any Task Order is under performance, 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 which is applicable to a Specific Project.
- B. ~~At all times when any Task Order is under performance, Owner shall procure and maintain insurance as set forth in Exhibit G.~~
- C. Owner shall require Contractors 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 Contractors.
- 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 under any Task Order and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project shall contain provisions to the effect that Engineer's and 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. Under the terms of any Task Order, or after commencement of performance of a Task Order, 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.

#### 6.05 Suspension and Termination

- A. Suspension
  - i. ~~By Owner: Owner may suspend a Task Order upon seven days written notice to Engineer.~~

2. By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, then Engineer may, after giving seven days written notice to Owner, suspend services under a Task Order.
- B. Termination: The obligation to provide further services under this Agreement, or under a Task Order, 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 of this Agreement or any Task Order 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 under a Task Order 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, neither this Agreement nor the Task Order will 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 Task Order 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 Specific Project is located.

6.07 Successors, Assigns, and Beneficiaries:

- A. Owner and Engineer each is 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. The Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

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. With respect to each Task Order, Specific Project, and Site:

1. 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.
2. 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.
3. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
4. 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 Specific Project affected thereby until Owner: (1) retains appropriate specialist consultant(s) or contractor(s) 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.
5. 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 (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating this Agreement **or Specific Project Task Order** for cause on 30 days notice.
6. 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 this Agreement, any Task Order, or any Specific Project, provided that any such claim, cost, loss, or

damage or judgement 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: ~~(DELETED)~~ 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 any Site, provided that (i) 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 (ii) 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 a Specific Project.
  - F. **No Defense Obligation: The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.**
- 6) 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 of each particular Specific Project.
- F. **Applicability to Task Orders:** The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. **Non-Exclusive Agreement:** Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

## ARTICLE 7 - DEFINITIONS

### 701 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following provisions:
  - 1. **Addenda:** Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
  - 2. **Additional Services:** Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order which are not included in Basic Services for that Task Order.
  - 3. **Agreement:** This "Agreement between Owner and Engineer for Professional Services - Task Order Edition" including those Exhibits listed in Article 8 and any duly executed Task Order.
  - 4. **Application for Payment:** The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
  - 5. **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.
  - 6. **Basic Services:** Specified services to be performed for or furnished to Owner by Engineer in accordance with a Task Order.



7. **Bid:** The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
8. **Bidding Documents:** The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
9. **Change Order:** A document recommended by Engineer, which is signed by a Contractor and Owner to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times.
10. **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.
11. **Construction Agreement:** The written instrument which is evidence of the agreement, contained in the Contract Documents, between Owner and a Contractor covering the Work.
12. **Construction Contract:** The entire and integrated written agreement between Owner and Contractor concerning the Work.
13. **Construction Cost:** The cost to Owner of those portions of an entire Specific 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 a Specific 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.
14. **Consultants:** Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors. The term Engineer includes Engineer's Consultants.
15. **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.
16. **Contract Price:** The moneys payable by Owner to a Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

17. **Contract Times:** The numbers of days or the dates stated in a Construction Agreement to:  
(i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
18. **Contractor:** The entity or individual with which Owner has entered into the Construction Contract.
19. **Correction Period:** The time after Substantial Completion during which a Contractor must correct, at no cost to Owner, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
20. **Defective:** An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment.
21. **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.
22. **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 a Contractor. Shop Drawings are not Drawings as so defined.
23. **Effective Date of the Construction Agreement:** The date indicated in a Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
24. **Effective Date of the Agreement:** The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
25. **Effective Date of the Task Order:** The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
26. **Engineer:** The individual or entity named as such in this Agreement.
27. **Field Order:** A written order issued by Engineer which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
28. **General Conditions:** That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by a Contractor with respect to a Specific Project.
29. **Hazardous Waste:** The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 U.S.C. Section 6903) as amended from time to time.

30. **Laws and Regulations:** Laws or Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
31. **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.
32. **PCBs:** Polychlorinated biphenyls.
33. **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 fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
34. **Project:** The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. **Radioactive Materials:** 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.
36. **Record Drawings:** The Drawings as issued for construction on which Engineer, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which Engineer considers significant based on record documents furnished by Contractor to Engineer and which were annotated by Contractor to show changes made during construction.
37. **Reimbursable Expenses:** The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for a Specific Project for which Owner shall pay Engineer as indicated in Exhibit C.
38. **Resident Project Representative:** The authorized representative, if any, of Engineer assigned to assist Engineer at the Site of a Specific Project during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of the RPR agreed to by Owner. The duties and responsibilities of the RPR will be as set forth in each Task Order.
39. **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.
40. **Shop Drawings:** All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work.
41. **Site:** Lands or areas indicated in the Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of a Contractor.

42. **Specifications:** That part of the Contract Documents prepared by Engineer consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work to be performed by a Contractor and certain administrative details applicable thereto.
43. **Specific Project:** An undertaking of Owner as set forth in a Task Order.
44. **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 a Site.
45. **Substantial Completion:** The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work is sufficiently complete, in accordance with the Contract Documents, so that the Work can be utilized for the purposes for which it is intended.
46. **Supplementary Conditions:** That part of the Contract Documents which amends or supplements the General Conditions.
47. **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.
48. **Task Order:** A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer's compensation, times for performance of services and other relevant information for a Specific Project.
49. **Total Project Costs:** The sum of the Construction Cost, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner's costs for legal, accounting, insurance counseling, or auditing services, or interest and financing charges incurred in connection with a Specific Project, or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
50. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents for a Specific Project. 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 those Contract Documents.
51. **Work Change Directive:** A written directive to a Contractor signed by Owner upon recommendation of the Engineer, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 Exhibits

Attachment I, Task Order (Suggested Form)

Exhibit A, Engineer's Services [NOTE: Services, tasks, and terms in Exhibit A are for reference in preparing specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order].

Exhibit B, Owner's Responsibilities

Exhibit C, Payments to Engineer for Services and Reimbursable Expenses

Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative

Exhibit E, Notice of Acceptability of Work

Exhibit F, Construction Cost Limit (**Not Included**)

Exhibit G, Insurance

Exhibit H, Dispute Resolution (**Not Included**)

Exhibit I, Limitations on Liability (**Not Included**)

Exhibit J, Special Provisions

Exhibit K, Amendment to Task Order

### 8.02 Total Agreement

- A. This Agreement (together with the Exhibits identified as included 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 provided in Exhibit K to this Agreement, "Amendment to Task Order."

### 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 individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party. Each Task Order shall likewise designate representatives of the two parties.

#### 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  
Associates, Inc.

ENGINEER: SEPI Engineering and Construction, Inc.

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

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

Name: P. J. Connelly

Name: Steven L. Scott, PE

Title: Mayor

Title: Sr. Vice President

Engineer License or Firm's

Certificate No. C-2197

State of: North Carolina

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

Date Signed: 3/22/2019

Address for giving notices:

Address for giving notices:

P.O. Box 7207

1025 Wade Avenue

Greenville, NC 27835-7207

Raleigh, NC 27605

DESIGNATED REPRESENTATIVE  
(Paragraph 8.03.A):

DESIGNATED REPRESENTATIVE  
(Paragraph 8.03.A):

Lynn Raynor, PE

C. E. "Neil" Lassiter Jr. PE

Title: Civil Engineer II

Title: Sr. Vice President

Phone Number: 252-329-4620

Phone Number: 919-789-9977

Facsimile Number: 252-329-4535

Facsimile Number: 919-789-9591

E-Mail

E-Mail

Address: lraynor@greenvilenc.gov

Address: nlassiter@sepiengineering.com

This instrument has been pre-audited in the manner required by the Local Budget and Fiscal Control Act.

By \_\_\_\_\_  
(Signature):

Typed Name: Byron Hayes  
Director of Financial Services

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

Account Number: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Emanuel D. McGee, City Attorney

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



Attachment 1  
SUGGESTED FORM OF  
TASK ORDER

This is Task Order  
No. \_\_\_\_\_, consisting of  
\_\_\_\_\_ pages.

**Task Order**

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated \_\_\_\_\_ ("Agreement"), Owner and Engineer agree as follows:

1. Specific Project Data

A. Title: \_\_\_\_\_

B. Description: \_\_\_\_\_

C. Number of Construction Contracts

The Specific Project is anticipated to be constructed under \_\_\_\_\_ Construction Contracts.

2. Services of Engineer

[Check all that apply.]

Study and Report Services

[After reviewing Part 1 of Exhibit A, Engineer's Services, supplement or modify Part 1 as needed for the Specific Project and attach, reference, or insert specific text here.]

Design Services

[After reviewing Part 2 of Exhibit A, Engineer's Services, supplement or modify Part 2 as needed for the Specific Project and attach, reference, or insert specific text here.]

~~Designing to a Construction Cost Limit~~

~~Under this Task Order Engineer will design to a Construction Cost Limit, subject to the terms of Paragraph 5.02 of the Agreement and of Exhibit F to the Agreement. Exhibit F is expressly incorporated by reference. The Construction Cost Limit is \$\_\_\_\_\_. The bidding or negotiating contingency to be added to the Construction Cost Limit is \_\_\_\_\_ percent.~~

Attachment 1  
SUGGESTED FORM OF  
TASK ORDER

Bidding or Negotiating Services

[After reviewing Part 3 of Exhibit A, Engineer's Services, supplement or modify Part 3 as needed for the Specific Project and attach, reference, or insert specific text here.]

Construction and Commissioning Services

[After reviewing Part 4 of Exhibit A, Engineer's Services, supplement or modify Part 4 as needed for the Specific Project and attach reference, or insert specific text here.]

Resident Project Representative Services

Engineer will provide Resident Project Representative services pursuant to Part 4 of Exhibit A; Exhibit D is attached to this Task Order and expressly incorporated by reference.

[If RPR services are not in the scope of the Task Order, do not include any references to RPR services from Exhibit A in any attached, referenced, or inserted specific text regarding Construction Phase services and do not include Exhibit D with the Task Order.]

Other Services

[After reviewing Part 5 of Exhibit A, Engineer's Services, supplement or modify Part 5 as needed for the Specific Project and attach, reference, or insert specific text here.]

Additional Services Requiring an Amendment to Task Order

Part 6 of Exhibit A is incorporated by reference unless otherwise noted.

3. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and in Exhibit B, subject to the following: [Here state any additions or modifications to Exhibit B, for this Specific Project.]

4. Times for Rendering Services

<u>Phase</u>	<u>Completion Date</u>
_____	_____
_____	_____
_____	_____

Attachment 1  
SUGGESTED FORM OF  
TASK ORDER

5. Payments to Engineer

A. Owner shall pay Engineer for services rendered as follows:

Category of Services	Compensation Method	Lump Sum, or Estimate of Compensation for Services
Basic Services (Study and Report, Design, Bidding or Negotiating, Construction and Commissioning, Other Services)	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. <del>Direct Labor Costs Times a</del> Factor (Factor: _____)	
Resident Project Representative	Choose <u>One</u> : A. Lump Sum B. Standard Hourly Rates C. <del>Direct Labor Costs Times a</del> Factor (Factor: _____)	
Additional Services Requiring an Amendment to Task Order	Choose <u>One</u> : A. <b>Lump Sum</b> B. Standard Hourly Rates C. <del>Direct Labor Costs Times a</del> Factor (Factor: _____)	

B. The terms of payment are set forth in Article 4 of the Agreement and in Exhibit C.

6. Consultants:

7. Other Modifications to Agreement:

[Supplement or modify Agreement and Exhibits, if appropriate.]

8. Attachments:

9. Documents Incorporated By Reference:

- 10) Terms and Conditions: Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is \_\_\_\_\_

OWNER:

ENGINEER:

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Engineer License or Firm's  
Certificate No. \_\_\_\_\_  
State of: \_\_\_\_\_

DESIGNATED REPRESENTATIVE FOR  
TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK  
ORDER:

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Address: \_\_\_\_\_

Address: \_\_\_\_\_

E-Mail  
Address: \_\_\_\_\_

E-Mail  
Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

This is **EXHIBIT A**, consisting of 11 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## Engineer's Services

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### **Introduction:**

The following text describes a variety of services that may be included, in whole or in part, in a Task Order issued under the Agreement. Not all possible services are included herein. The descriptions of services provided here shall be revised and/or supplemented for purposes of drafting each Task Order. The items in Parts 1-5 of Exhibit A will be included in a Task Order only if they are expressly included by direct reference or physical incorporation; Part 6 shall be considered as incorporated in whole in all Task Orders unless noted otherwise in the Task Order.

### **PART 1 – STUDY AND REPORT PHASE SERVICES**

#### A1.01 Study and Report Phase

For each Task Order that includes study or report services, select from or supplement the following possible services:

A. The Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for a Specific Project and available data.
2. Advise Owner as to the necessity of Owner's providing data or services of the types described in Exhibit B, and, if requested, assist Owner in obtaining such data and services.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of a Specific 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 for a Specific Project, and, after consultation with Owner, recommend to Owner those solutions which in Engineer's judgment meet Owner's requirements for a Specific 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. The Report will be accompanied by:

Engineer's opinion of Total Project Costs for each solution which is so recommended for a Specific Project with each component separately itemized, including the following, which will be separately itemized:

- a. opinion of probable Construction Cost,
  - b. allowances for contingencies and for the estimated total costs of design, professional, and related services provided by Engineer and,
  - c. on the basis of information furnished by Owner, allowances for other items and services included within the definition of Total Project Costs.
6. Furnish the number of review copies of the Report to Owner within the time period set forth in the Task Order and review it with Owner.
  7. Revise the Report in response to Owner's and other parties' comments, as appropriate, and furnish the number of final copies of the revised Report to the Owner within the time period set forth in the Task Order.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to Owner.

## **PART 2: DESIGN ACTIVITIES**

### **A1.02 Preliminary Design Phase**

For each Task Order that includes preliminary design services, select from or supplement the following possible services:

- A. Engineer shall on the basis of the above acceptance, selection, and authorization:
  1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of a Specific 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, submit a current opinion of probable Construction Cost and any adjustments to Total Project Costs known to Engineer, which will be itemized as provided in the Study and Report Phase Services section above.
  5. Furnish the Preliminary Design Phase documents to and review them with Owner.

6. Submit to Owner the number of final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within the time period set forth in the Task Order.

- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to Owner.

#### A1.03 Final Design Phase

For each Task Order that includes final design services, select from or supplement the following possible services:

##### A. Engineer shall:

1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor. Where appropriate, prepare Specifications in general conformance with the format of the Construction Specifications Institute.
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 a Specific Project and assist Owner in consultations with appropriate authorities.
3. Provide Owner a current opinion of probable Construction Cost and any adjustments to Total **Estimated** Project Costs known to Engineer, itemized as provided in the Study and Report Phase Services section above.
4. Prepare and furnish Bidding Documents for review and approval by Owner, its legal counsel, and other advisors, as appropriate, and assist Owner in the preparation of other related documents.
5. Submit the number of final copies of the Bidding Documents and a current opinion of probable Construction Cost to Owner within the time period set forth in the Task Order.
6. Prepare for, coordinate with, participate in, and respond 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 perform or furnish services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

- B. Engineer's services under the Final Design Phase will be considered complete on the date when the required submittals have been delivered to Owner.

## PART 3: BIDDING AND NEGOTIATION

### A1.04 Bidding or Negotiating Phase

For each Task Order that includes bidding or negotiation services, select from or supplement the following possible services:

#### A. The Engineer shall:

1. Assist Owner in advertising for and obtaining bids or negotiating 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. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
4. Prepare additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
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 below regarding additional compensation for an excessive number of such substitute or "or equal" submittals.
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. Assist Owner with bid protests, rebidding, or renegotiating contracts for construction materials, equipment, or services.
8. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:
  - Facilitate Pre-Bid Conference when statutorily required or as otherwise desired by the Owner.
  - DBE Bidding Assistance if requested by the Owner.

- 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 the Task Order).~~



## **PART 4: CONSTRUCTION AND COMMISSIONING**

### **A1.05 Construction Phase**

For each Task Order that includes Construction Phase services, select from or supplement the following possible services:

**A. Engineer shall provide the following services:**

1. **General Administration of Construction Contract:** Consult with Owner and act as Owner's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of Engineer as assigned in said General Conditions shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, who shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
2. **Resident Project Representative (RPR):** Provide the services of an RPR at the Site of the Specific Project 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 the Task Order and in Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative." 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 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 Work in progress:
  - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, in order 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 the Work in progress or to involve detailed inspections of the Work in progress beyond the responsibilities specifically assigned to Engineer in the Task Order 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 of the Specific Project, 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 the 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, or 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 in 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 the 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 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 in 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 any provisions below regarding additional compensation for evaluation of such substitute or "or equal" submittals.
  13. Inspections and Tests: Require such special inspections or tests of the 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 the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance or progress of the 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, the 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 the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Contract Documents). The responsibilities of Engineer contained in Paragraph A1.05.A.15.a are expressly subject to the limitations set forth in Paragraph A1.05.A.15.b and other express or general limitations in this Agreement and elsewhere.

- 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 the Work as it is performed and furnished have been exhaustive, extended to every aspect of the 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 the 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 the 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 not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided above, 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 above.
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 Site 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. Final Notice of Acceptability of the Work: Conduct a final payment inspection to determine if the completed Specific Project 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 ("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.
19. Defective Work: Together with Owner, visit the Site 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.
20. Correction Period: Together with Owner or Owner's representative, visit the Site within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

- B. Duration of Construction Phase: The Construction Phase will commence with the execution of the first Construction Agreement for a Specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If a Specific Project involves more than one prime contract as indicated in the Task Order, Construction Phase services may be rendered at different times in respect to the separate contracts.

#### A1.06 Commissioning Phase

For each Task Order that includes facilities commissioning services, select from or supplement the following possible services:

- A. Engineer shall:
1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
  2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
  3. Prepare operation and maintenance manuals.
  4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
  5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

### PART 5- OTHER SERVICES

A2.01 For each Task Order, consider the inclusion of the following possible services:

- A. Engineer shall:
1. Prepare applications and supporting documents for private or governmental grants, loans or advances in connection with a Specific Project; prepare or review environmental assessments and impact statements; review and evaluate the effects on the design requirements for a Specific Project of any such statements and documents prepared by others; and assist in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of a Specific Project.
  2. Provide services to make measured drawings of or to investigate existing conditions of facilities, or to verify the accuracy of drawings or other information furnished by Owner.
  3. Provide renderings or models for Owner's use.
  4. Undertake 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; assist in obtaining financing for a Specific Project; evaluate processes available for licensing, and assist 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.
5. In addition to baselines and benchmarks, provide more extensive construction surveys and staking to enable a Contractor to perform its work and any type of property surveys or related engineering services needed for the transfer of interests in real property; and provide other special field surveys.
  6. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
  7. Prepare to serve or serve as a consultant or witness for Owner in any litigation, arbitration or other dispute resolution process related to a Specific Project.

## **PART 6: ADDITIONAL SERVICES REQUIRING AMENDMENT TO TASK ORDER**

### **A2.02 Additional Services Requiring an Amendment to Task Order**

- A. **Advance Written Authorization Required:** During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. The Task Order shall be amended to reflect the inclusion of such Additional Services. Services resulting from significant changes in the scope, extent, or character of the portions of a Specific 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 of the Task Order or are due to any other causes beyond Engineer's control.
1. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A.1.01.A.4.
  2. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
  3. Providing Construction Phase services beyond the Contract Times set forth in the Task Order.
  4. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner, subject to the terms of Paragraph 6.01.F of the Agreement.
  5. Overtime work requiring higher than regular rates.
  6. Other services proposed to be performed or furnished by Engineer not otherwise provided for in this Agreement.

- B. Advance Written Authorization Not Required. Engineer shall advise Owner in advance that Engineer 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. The Task Order shall be amended to reflect the inclusion of such Additional Services.
1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner so as to make the compensation commensurate with the extent of the Additional Services rendered.
  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 any Construction Contract in evaluating and determining the acceptability of a proposed substitution, whether approved or not; 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 in connection with any partial utilization of any part of the Work on a Specific Project by Owner prior to Substantial Completion.
  6. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
  7. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program enacted or provided to Engineer subsequent to the Effect Date of the Task Order that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.
  8. Evaluation of an unreasonable claim or an excessive number of claims or requests for information submitted by a Contractor or others in connection with the Work on a Specific Project.
  9. **Assist Owner as requested with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.**

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## **Owner's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific 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 Specific Project including reports and data relative to previous designs, or investigation at or adjacent to the Site of the Specific Project.
- C. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, furnish or otherwise make available such additional Specific 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 a Specific Project, the Site and adjacent areas.
  - 6. Data or consultations as required for a Specific Project but not otherwise identified in the Agreement, the Exhibits thereto, or the Task Order.
- 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 the Task Order 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 Task Order.
  - G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer for the Specific Project (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 Specific 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 Specific Project. **Pay all permit application fees and required mitigation fees (as applicable).**
  - I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Specific Project:
    - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
    - 2. Legal services with regard to issues pertaining to the Specific Project as Owner requires, a Contractor raises, or Engineer reasonably requests.
    - 3. Such auditing services as Owner requires to ascertain how or for what purpose a 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 Specific Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability 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 the 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 in the Task Order 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 of the Specific Project designed or specified by Engineer, designate in the Task Order a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors. Define and set forth in the Task Order the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer.
- 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 Site.
- 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 for the Specific Project with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by any independent testing laboratory, if Engineer is required to review such documents.
- R. Inform Engineer 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: **To Be Determined**

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

## Payments to Engineer for Services and Reimbursable Expenses

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

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

#### C2.01 Method of Payment

- A. Owner shall pay Engineer for services in accordance with one or more of the following methods as identified in each Task Order:
1. Method A: Lump Sum
  2. Method B: Standard Hourly Rates
  3. ~~Method C: Direct Labor Costs Times a Factor (DELETED)~~
  4. ~~Method D: [Identify any other method to be used to compensate Engineer for some or all \_\_\_\_\_ of its services]~~

#### C2.02 Explanation of Methods

##### A. Method A – Lump Sum

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. Appropriate amounts will be incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
3. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

##### B. Method B – Standard Hourly Rates

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Specific Project, plus Reimbursable Expenses and Consultant's charges, if any.
2. Standard Hourly Rates 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.

3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, Reimbursable Expenses, and Consultants' charges, if any.
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific 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 Consultant's charges, if any.
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. Method C – Direct Labor Costs Times a Factor (~~DELETED~~)

1. ~~For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a Factor of \_\_\_\_\_ for the services of Engineer's employees engaged on the Specific Project, plus Reimbursable Expenses, and Engineer's Consultant's charges, if any. Direct Labor Costs means salaries and wages paid to employees but does not include payroll related costs or benefits.~~
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. ~~The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, Reimbursable Expenses, and Engineer's Consultant's charges, if any.~~
4. ~~The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above designated Factor, plus Reimbursable Expenses and Engineer's Consultant's charges, if any.~~
5. ~~The Direct Labor Costs and the Factor applied to Direct Labor Costs will be adjusted annually (as of \_\_\_\_\_) to reflect equitable changes in the compensation payable to Engineer.~~

D. Method D – (Identify and define any other method to be used to compensate Engineer for some or all of its services)

C2.03 Reimbursable Expenses

Costs incurred by Engineer in the performance of the Task Order in the following categories constitute Reimbursable Expenses;

- A. Transportation and subsistence incidental thereto; advertisements, postage, and shipping costs; providing and maintaining field office facilities including furnishings and utilities; subsistence

and transportation of Resident Project Representative and their assistants; toll telephone calls, faxes, and telegrams; and reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Specific Project-related items in addition to those required under Exhibit A. If authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment **as may be identified in a Specific Project Task Order**. Reimbursable expenses shall be paid at rates set forth in Appendix I to this Exhibit C which shall be adjusted annually (as of January 1) to reflect equitable changes in the rates.

- B. The amounts payable to Engineer for Reimbursable Expenses will be the project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses, **including Consultant services**, allocable to a Specific Project. ~~the~~ **later Consultant's expense shall be multiplied by a factor of 1.15.**

#### C2.04 Serving as a Witness

- A. For services performed by Engineer's employees as witnesses giving testimony in any litigation, arbitration or other legal or administrative proceeding under Paragraph A2.01.A.20, at a rate of 1.0 times the witness's standard hourly rate. Compensation for Consultants for such services will be by reimbursement of Consultants' reasonable charges to Engineer for such services **at a rate of 1.15.**

#### C2.05 Other Provisions Concerning Payment

- A. **Extended Contract Times.** Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. **Estimated Compensation Amounts**
1. Engineer's estimate of the amounts that will become payable for 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 in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall 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 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, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.

#### C. **Maximum Total Compensation Amount**

**Total compensation, in aggregate, for all duly executed Specific Project Task Orders shall not exceed one million dollars (\$1,000,000.00) without amendment to this agreement.**

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated

### Reimbursable Expenses Schedule

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

8.5" x 11" Black & White Copies	\$0.06 /each
8.5" x 11" Color Copies	\$1.00 /each
8.5" x 14" Black & White Copies	\$0.10 /each
8.5" x 14" Color Copies	\$1.00 /each
11" x 17" Black & White Copies	\$0.25 /each
11" x 17" Color Copies	\$2.00 /each
Color Phot all sizes	\$2.50 per square foot
18" x 24" Black & White Plan Prints	\$1.50 /each
24" x 36" Black & White Plan Prints	\$2.50 /each
30" x 42" Black & White Plan Prints	\$5.00 /each
Larger size Plan Prints	subject to square footage
Mylar Prints	\$20.00 - \$40.00 each depending on size
Highly Specialized Equipment	at cost
Mileage	IRS effective rate
Meals	at cost
Lodging	at cost
Consultants	at cost x 1.15

Note: Highly specialized equipment that may be required to perform services for Specific Task Orders shall be identified and reimbursable expense compensation established as part of that Specific Project Task Order.

This is **Appendix 2** to **EXHIBIT C**, consisting of 1 page, referred to in and part of the **Standard Form of Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated

### Standard Hourly Rates Schedule

Current agreements for engineering services stipulate that the standard hourly rates are subject to review and adjustment per Exhibit C. Hourly Rates for services effective on the date of this Agreement are:

<u>EMPLOYEE CLASSIFICATION:</u>	<u>HOURLY RATES:</u>
Principal	\$225.00
Sr. Project Manager II	\$200.00
Sr. Project Manager	\$150.00
Project Manager II	\$125.00
Project Manager I	\$110.00
Project Engineer III	\$130.00
Project Engineer II	\$130.00
Project Engineer I	\$115.00

CAD Technician II	\$90.00
CAD Technician I	\$85.00
Project Manager, PLS	\$140.00
Project Surveyor	\$110.00
Party Chief III	\$100.00
Surveying/SUE Technician IV	\$100.00
Surveying/SUE Technician III	\$95.00
Surveying/SUE Technician II	\$78.00
Surveyor Technician I	\$67.00
Resident Project Representative IV	\$110.00
Resident Project Representative III	\$97.00
Resident Project Representative II	\$90.00
Resident Project Representative I	\$70.00
Intern Tech	\$40.00
Administrative Assistant	\$65.00

This is **EXHIBIT D**, consisting of 5 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

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

The following duties, responsibilities, and limitations of authority may be incorporated in the Task Order for a Specific Project:

#### **DI.01 Resident Project Representative**

- A. 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.
- B. 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, by the RPR, 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 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 guarantees the performances of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in Paragraph A1.05 of Exhibit A as incorporated in the Task Order are applicable.
- C. The duties and responsibilities of the RPR are limited to those of Engineer in the Agreement with the Owner and in the Contract Documents, and are further limited and described 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 a 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 a 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, and 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 Specific Project 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 Specific 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 a Specific 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 Specific 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 Specific 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 startup 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:

- a. 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:

- a. During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by a 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 assist in determining 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. (See Exhibit E).

D. 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 a Contractor, subcontractors, suppliers, or a Contractor's superintendent.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Contractor's work.
5. Advise on, issue directions regarding, or assume control over security 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 a Specific Project in whole or in part.

This is **EXHIBIT E**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

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**NOTICE OF ACCEPTABILITY OF WORK**

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PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION: \_\_\_\_\_

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT: \_\_\_\_\_

ENGINEER: \_\_\_\_\_

NOTICE DATE: \_\_\_\_\_

To: \_\_\_\_\_  
OWNER

And To: \_\_\_\_\_  
CONTRACTOR

From: ENGINEER

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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 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 persons who receive said Notice and rely thereon agree:

1. Said 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. Said Notice reflects and is an expression of the professional judgment of Engineer.
3. Said Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. Said 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 Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner and under the Construction Contract referenced 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 Engineer's Agreement with Owner and the Construction Contract referenced on the reverse hereof.
5. Said Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract referenced 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 – Task Order Edition** dated \_\_\_\_\_

**Insurance**

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

6.04 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:  | \$ 100,000   |
| 3) Disease, Each Employee:   | \$ 500,000   |
| 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 --   |              |
| 1) Combined Single Limit (Bodily Injury and Property Damage):<br>Each Accident | \$ 1,000,000 |
| f. Professional Liability --   |              |
| 1) Each Claim Made   | \$ 2,000,000 |
| 2) Annual Aggregate  | \$ 2,000,000 |
| g. Other (specify):  | \$ _____     |

**2. By Owner: (DELETED)**

~~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—~~

~~1) Combined Single Limit (Bodily Injury and Property Damage):  
Each Accident \_\_\_\_\_ \$ \_\_\_\_\_~~

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

**B. Additional Insureds:**

~~1. Engineer and the Consultants identified in the Task Order for a Specific Project shall 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.~~

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



This is **EXHIBIT J**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_

### Special Provisions

Work for which the Owner may require the services of the Engineer may include, but are not limited to:

- Design services for emergency city infrastructure repairs.
- Design services for repair of storm water drainage system.
- Design services for construction of streets, sidewalks and/or bikelanes.
- Surveying services.
- Geotechnical services.
- Construction administration and inspection of capital improvement projects.
- Obtaining right-of-way or easements for infrastructure repairs or capital improvement projects.
- Research to determine status of existing roads, rights-of-way or easements.
- Engineering analysis of roadway or drainage system failures to determine cause and corrective action(s).

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated \_\_\_\_\_.

**Amendment To Task Order No. \_\_\_\_\_**

1. Background Data:

- a. Effective Date of Task Order Agreement:
- b. Owner:
- c. Engineer:
- d. Specific Project:

2. Description of Modifications

[Include the following paragraphs that are applicable 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 the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner with respect to the Task Order 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 under this Task Order is modified as follows:
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

3. Task Order Summary (Reference only)

- a. Original Task Order amount: \$ \_\_\_\_\_
- b. Net change for prior amendments: \$ \_\_\_\_\_

c. This amendment amount: \$ \_\_\_\_\_  
d. Adjusted Task Order amount: \$ \_\_\_\_\_

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

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order 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: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Contract with Cherry Bekaert, LLP for auditing services for Fiscal Year 2018-2019

**Explanation:** **Abstract:** This item is to approve an audit contract for the fiscal year 2018-2019.

**Explanation:** On April 30, 2015, Cherry Bekaert, LLP was awarded a contract for auditing services for an intended agreement of five years beginning the fiscal year ending June 30, 2015, and continuing through the fiscal year ending June 30, 2019, subject to annual contract approval by City Council. This is the final year of the contract.

The annual contract is attached with the engagement letter describing the auditing services for the fiscal year ending June 30, 2019. The proposed fees for auditing services for the fiscal year ending June 30, 2019 total \$72,000, which is approximately \$13,000 less than the prior fiscal year ending June 30, 2018.

The reduction is due to a \$1,000 decrease in the overall audit fee and a \$12,000 decrease for the auditor to prepare the financial statements for the City. City staff will prepare the financial statements for fiscal year ending June 30, 2019. Fiscal year 2019 will mark the first year that the City has prepared the financial statements. Given this will be a transition year, any ancillary / technical assistance needed from the auditor to fully transition financial statement preparation to the City will be billed by the auditor at a rate of \$150.00 per hour.

**Fiscal Note:** In accordance with the firm's proposal, the cost of the audit for the fiscal year ending June 30, 2019 will be \$72,000. Funds for this contract are available in the Financial Services Department's budget.

**Recommendation:** Approve the auditing contract with Cherry Bekaert, LLP for the fiscal year ending June 30, 2019.

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**ATTACHMENTS:**

- ☐ Audit Contract**
- ☐ LGC**
- ☐ Assistance**

The of and	Governing Board City Council
	Primary Government Unit City of Greenville
	Discretely Presented Component Unit (DPCU) (if applicable) N/A

*Primary Government Unit, together with DPCU (if applicable), hereinafter referred to as Governmental Unit(s)*

and	Auditor Name Cherry Bekaert LLP
	Auditor Address 2626 Glenwood Ave, Suite 200, Raleigh, NC 27608

*Hereinafter referred to as Auditor*

for	Fiscal Year Ending	Audit Report Due Date
	06/30/19	10/31/19

*Must be within four months of FYE*

hereby agree as follows:

1. The Auditor shall audit all statements and disclosures required by U.S. generally accepted auditing standards (GAAS) and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit(s). The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion shall be rendered in relation to (as applicable) the governmental activities, the business- type activities, the aggregate DPCUs, each major governmental and enterprise fund, and the aggregate remaining fund information (non-major government and enterprise funds, the internal service fund type, and the fiduciary fund types).

2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with GAAS. The Auditor shall perform the audit in accordance with *Government Auditing Standards* if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB *Uniform Administration Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and the State Single Audit Implementation Act, the Auditor shall perform a Single Audit. This audit and all associated audit documentation may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the Local Government Commission (LGC). If the audit requires a federal single audit performed under the requirements found in Subpart F of the Uniform Guidance (§200.501), it is recommended that the Auditor and Governmental Unit(s) jointly agree, in advance of the execution of this contract, which party is responsible for submission of the audit and the accompanying data collection form to the Federal Audit Clearinghouse as required under the Uniform Guidance (§200.512).

If the audit and Auditor communication are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners (NC State Board).

**County and Multi-County Health Departments:** The Office of State Auditor will require Auditors of these Governmental Units to perform agreed upon procedures (AUPs) on eligibility determination on certain programs. Both Auditor and Governmental Unit agree that Auditor shall complete and report on these AUPs on

eligibility determination as required by OSA and in accordance with the instructions and timeline provided by OSA.

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2011 revisions, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.

If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.

6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 12).

10. If the Governmental Unit(s) has/have outstanding revenue bonds, the Auditor shall submit to LGC staff, either in the notes to the audited financial statements or as a separate report, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the Auditor shall submit to LGC staff simultaneously with the Governmental Unit's (Units') audited financial statements any other bond compliance statements or additional reports required by the authorizing bond documents, unless otherwise specified in the bond documents.

11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, but not be limited to, the following information: (a) Management's Discussion and Analysis, (b) the financial statements and notes of the Governmental Unit(s) and all of its component units prepared in accordance with GAAP, (c) supplementary information requested by the Governmental Unit(s) or required for full disclosure under the law, and (d) the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board upon completion.

12. If the audit firm is required by the NC State Board, the NCACPA Peer Review Committee, or the Secretary of the LGC to have a pre-issuance review of its audit work, there shall be a statement in the engagement letter indicating the pre-issuance review requirement. There also shall be a statement that the Governmental Unit(s) shall not be billed for the pre-issuance review. The pre-issuance review shall be performed prior to the completed audit being submitted to LGC Staff. The pre-issuance review report shall accompany the audit report upon submission to LGC Staff.

13. The Auditor shall submit the report of audit in PDF format to LGC Staff when (or prior to) submitting the final invoice for services rendered. The report of audit, as filed with the Secretary of the LGC, becomes a matter of public record for inspection, review and copy in the offices of the LGC by any interested parties. Any subsequent revisions to these reports shall be sent to the Secretary of the LGC along with an Audit Report Reissued Form (available on the Department of State Treasurer website). These audited financial statements, excluding the Auditors' opinion, may be used in the preparation of official statements for debt offerings by municipal bond rating services to fulfill secondary market disclosure requirements of the Securities and Exchange Commission and for other lawful purposes of the Governmental Unit(s) without requiring consent of the Auditor. If the LGC Staff determines that corrections need to be made to the Governmental Unit's (Units') financial statements, those corrections shall be provided within three business days of notification unless another deadline is agreed to by LGC staff.

If the OSA designates certain programs to be audited as major programs, as discussed in Item 2, a turnaround document and a representation letter addressed to the OSA shall be submitted to LGC Staff.

14. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the



Secretary of the LGC, this contract may be modified or amended to include the increased time, compensation, or both as may be agreed upon by the Governing Board and the Auditor.

15. If an approved contract needs to be modified or amended for any reason, the change shall be made in writing, on the Amended LGC-205 contract form and pre-audited if the change includes a change in audit fee (pre-audit requirement does not apply to charter schools). This amended contract shall be completed in full, including a written explanation of the change, signed and dated by all original parties to the contract. It shall then be submitted to the Secretary of the LGC for approval. No change to the audit contract shall be effective unless approved by the Secretary of the LGC, the Governing Board, and the Auditor.

16. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 26 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

17. Special provisions should be limited. Please list any special provisions in an attachment.

18. A separate contract should not be made for each division to be audited or report to be submitted. If a DPCU is subject to the audit requirements detailed in the Local Government Budget and Fiscal Control Act and a separate audit report is issued, a separate audit contract is required. If a separate report is not to be issued and the DPCU is included in the primary government audit, the DPCU shall be named along with the parent government on this audit contract. DPCU Board approval date, signatures from the DPCU Board chairman and finance officer also shall be included on this contract.

19. The contract shall be executed, pre-audited (pre-audit requirement does not apply to charter schools), and physically signed by all parties including Governmental Unit(s) and the Auditor, then submitted in PDF format to the Secretary of the LGC.

20. The contract is not valid until it is approved by the Secretary of the LGC. The staff of the LGC shall notify the Governmental Unit and Auditor of contract approval by email. The audit should not be started before the contract is approved.

21. Retention of Client Records: Auditors are subject to the NC State Board of CPA Examiners' Retention of Client Records Rule 21 NCAC 08N .0305 as it relates to the provision of audit and other attest services, as well as non-attest services. Clients and former clients should be familiar with the requirements of this rule prior to requesting the return of records.

22. This contract may be terminated at any time by mutual consent and agreement of the Governmental Unit(s) and the Auditor, provided that (a) the consent to terminate is in writing and signed by both parties, (b) the parties have agreed on the fee amount which shall be paid to the Auditor (if applicable), and (c) no termination shall be effective until approved in writing by the Secretary of the LGC.

23. The Governmental Unit's (Units') failure or forbearance to enforce, or waiver of, any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

24. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the LGC.

25. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.
26. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).
27. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/slg/Pages/Audit-Forms-and-Resources.aspx>.
28. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

**FEEES FOR AUDIT SERVICES**

For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and *Governmental Auditing Standards* (as applicable). Bookkeeping and other non-attest services necessary to perform the audit shall be included under this contract. However, bookkeeping assistance shall be limited to the extent that the Auditor is not auditing his or her own work or making management decisions. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience necessary to oversee the services and accept responsibility for the results of the services. Financial statement preparation assistance shall be deemed a “significant threat” requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. The Auditor shall maintain written documentation of his or her compliance with these standards in the audit work papers.

Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter, but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8, 9, and 12 for details on other allowable and excluded fees.

Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the total of the stated fees below. If the current contracted fee is not fixed in total, invoices for services rendered may be approved for up to 75% of the prior year audit fee. Should the 75% cap provided below conflict with the cap calculated by LGC staff based on the prior year audit fee on file with the LGC, the LGC calculation prevails.

**20 NCAC 03 .0505: All invoices for services rendered in an audit engagement as defined in 20 NCAC 3 .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law.**

**PRIMARY GOVERNMENT FEES**

Primary Government Unit	City of Greenville
Audit	\$ 72,000
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval	\$ 54,000.00

**DPCU FEES (if applicable)**

Discretely Presented Component Unit	N/A
Audit	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval	\$

## SIGNATURE PAGE

## AUDIT FIRM

Audit Firm Cherry Bekaert LLP	
Authorized Firm Representative (typed or printed) April Adams	Signature <i>April Adams</i>
Date 04/03/19	Email Address aadams@cbh.com

## GOVERNMENTAL UNIT

Governmental Unit City of Greenville	
Date Primary Government Unit Governing Board Approved Audit Contract (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
Mayor/Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

## GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

*(Pre-audit certificate not required for charter schools)*

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

*This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.*

Primary Governmental Unit Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address

**SIGNATURE PAGE – DPCU  
(complete only if applicable)**

**DISCRETELY PRESENTED COMPONENT UNIT**

DPCU N/A	
Date DPCU Governing Board Approved Audit Contract (Ref: G.S. 159-34(a) or G.S. 115C-447(a))	
DPCU Chairperson (typed or printed)	Signature
Date	Email Address

Chair of Audit Committee (typed or printed, or "NA")	Signature
Date	Email Address

**DPCU – PRE-AUDIT CERTIFICATE**

*(Pre-audit certificate not required for charter schools)*

Required by G.S. 159-28(a1) or G.S. 115C-441(a1)

*This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act or by the School Budget and Fiscal Control Act.*

DPCU Finance Officer (typed or printed)	Signature
Date of Pre-Audit Certificate	Email Address

Remember to print this form, and obtain all required signatures prior to submission.

**PRINT**

April 3, 2019

Mr. Byron Hayes  
Director of Financial Services  
City of Greenville  
P. O. Box 7207  
Greenville, NC 27835-7207

Dear Mr. Hayes:

This engagement letter between City of Greenville (hereafter referred to as the “City” or “you” or “your” or “management”) and Cherry Bekaert LLP (the “Firm” or “Cherry Bekaert” or “we” or “us” or “our”) sets forth the nature and scope of the services we will provide, the City’s required involvement and assistance in support of our services, the related fee arrangements and other Terms and Conditions, which are attached hereto and incorporated by reference, designed to facilitate the performance of our professional services and to achieve the mutually agreed upon objectives of the City.

## **SUMMARY OF SERVICES**

We will provide the following services to the City as of and for the year ended June 30, 2019:

### **Audit and attestation services**

1. We will audit the basic financial statements of the City as of and for the year ended June 30, 2019 including the governmental activities, the business type activities, each major fund and the remaining fund information.
2. The introductory section and statistical tables accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditor’s report will not provide an opinion or any assurance on that information.
3. We will audit the supplementary information identified in the table of contents of the Comprehensive Annual Financial Report, such as the combining and individual fund statements and schedules and the Schedule of expenditures of Federal and State Awards. As part of our engagement, we will apply certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America.
4. We will apply limited procedures to the Management’s Discussion and Analysis (MD&A); Law Enforcement Officers’ Special Separation Allowance (LEOSSA), Schedules of Changes in Total Pension Liability and Total Pension Liability as a Percentage of Covered Payroll; Other Post-Employment Benefits (OPEB), Schedules of Funding Progress, Employer Contributions, Changes in the Net OPEB Liability and Related Ratios, Contributions, and Investment Returns; and the Local Governmental Employees’ Retirement System Schedules of Proportionate Share of Net Pension Liability (Asset) and Contributions, which will consist of inquiries of City’s management about the methods of preparing the information and comparing the information for consistency with management’s responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the financial statements.

**Nonattest accounting and other services**

We will provide the following additional services:

1. Complete the appropriate sections of and sign the Data Collection Form.

**YOUR EXPECTATIONS**

Our services plan, which includes our audit plan, is designed to provide a foundation for an effective, efficient, and quality-focused approach to accomplish the engagement objectives and meet or exceed the City's expectations. Our service plan will be reviewed with you periodically and will serve as a benchmark against which you will be able to measure our performance. Any additional services that you may request, and that we agree to provide, will be the subject of separate written arrangements.

The City recognizes that our professional standards require that we be independent from the City in our audit of the City's financial statements and our accompanying report in order to ensure that our objectivity and professional skepticism have not been compromised. As a result, we cannot enter into a fiduciary relationship with the City and the City should not expect that we will act only with due regard to the City's interest in the performance of this audit and the City should not impose on us special confidence that we will conduct this audit with only the City's interest in mind. Because of our obligation to be independent of the City, no fiduciary relationship will be created by this engagement or audit of the City's financial statements.

The engagement will be led by April Adams, who will be responsible for assuring the overall quality, value, and timeliness of the services provided to you.

**AUDIT AND ATTESTATION SERVICES**

The objective of our audit is the expression of opinions as to whether the City's basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the Summary of Services section when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on:

- Internal control over financial reporting and compliance with the provisions of applicable laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and *Title 2 U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* ("Uniform Guidance") and the State Single Audit Implementation Act.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the result of that testing, and not to provide an opinion on the effectiveness of the City's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control

and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and the provisions of Uniform Guidance; the Single Audit Act Amendments of 1996; State Single Audit Implementation Act and OMB *Guidance for Grants and Agreements* (2 CFR 200), and will include tests of accounting records, a determination of major programs in accordance with Uniform Guidance, and other procedures as deemed necessary to enable us to express such opinions. We will also issue written reports upon completion of our Single Audit. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or add emphasis-of-matter or other-matter paragraphs. If our opinion is other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express opinions or issue reports, or may withdraw from this engagement.

#### **NONATTEST ACCOUNTING AND OTHER SERVICES**

The accounting and other services described in this section are nonaudit services, which do not constitute audit services under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming City's management responsibilities.

#### **Data Collection Form**

We will complete the appropriate sections of and sign the Data Collection Form that summarizes our audit findings. We will provide copies of our reports to the City; however, it is the City's management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal and state awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the designated federal audit clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period.

#### **City's management responsibilities related to accounting and other services**

For all nonattest services we perform in connection with the engagement, you are responsible for designating a competent employee to oversee the services, make any management decisions, perform any management functions related to the services, evaluate the adequacy of the services, and accept overall responsibility for the results of the services.

Prior to the release of the report, the City's management will need to sign a representation letter acknowledging its responsibility for the results of these services.



**CITY'S MANAGEMENT RESPONSIBILITIES RELATED TO THE AUDIT**

The City's management is responsible for (1) designing, implementing, and maintaining effective internal controls, including internal controls over federal and state awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that the City's management and financial information is reliable and properly reported. The City's management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal and state awards and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationship in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

The City's management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which it is aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit and (4) unrestricted access to persons within the City from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving (1) the City's management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, grantors, regulators, or other. In addition, you are responsible for identifying and ensuring that the City complies with applicable laws, regulations contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts or grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is the City's management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

The City's management is responsible for identifying all federal and state awards received and understanding and complying with the compliance requirements and for the preparation

**City of Greenville**

**April 3, 2019**

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of the schedule of expenditures of federal and state awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal and state awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal and state awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal and state awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period or, if they have changed, the reasons for such changes); and (4) the City has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal and state awards.

You are responsible for the preparation of the supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

The City's management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. The City's management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing City's management views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

The City's management agrees to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal and state awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal and state awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them. The Firm will rely on the City's management providing these representations to us, both in the planning and performance of the audit, and in considering the fees that we will charge to perform the audit.

**City of Greenville**

**April 3, 2019**

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**FEES**

The estimated fee contemplates only the services described in the Summary of Services section of this letter. If the City's management requests additional services not listed above, we will provide an estimate of those fees prior to commencing additional work.

The following summarizes the fees for the services described above:

<u>Description of Services</u>	<u>Estimated Fee</u>
<b>Audit services</b>	
Audit of the financial statements	\$ 72,000

The fees will be billed periodically. Invoices are due on presentation. A service charge will be added to past due accounts equal to 1-1/2% per month (18% annually) on the previous month's balance less payments received during the month, with a minimum charge of \$2.00 per month.

If the foregoing is in accordance with your understanding, please sign a copy of this letter in the space provided and return it to us. If you have any questions, please call April Adams at (919) 782-1040.

Sincerely,

**CHERRY BEKAERT LLP**

*Cherry Bekaert LLP*

ATTACHMENT – Engagement Letter Terms and Conditions

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City of Greenville

ACCEPTED BY: \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**Cherry Bekaert LLP**  
**Engagement Letter Terms and Conditions**

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The following terms and conditions are an integral part of the attached engagement letter and should be read in their entirety in conjunction with your review of the letter.

**LIMITATIONS OF THE AUDIT REPORT**

Should the City wish to include or incorporate by reference these financial statements and our report thereon into *any* other document at some future date, we will consider granting permission to include our report into another such document at the time of the request. However, we may be required by generally accepted auditing standards ("GAAS") to perform certain procedures before we can give our permission to include our report in another document such as an annual report, private placement, regulator filing, official statement, offering of debt securities, etc. You agree that the City will not include or incorporate by reference these financial statements and our report thereon, or our report into any other document without our prior written permission. In addition, to avoid unnecessary delay or misunderstandings, it is important to provide us with timely notice of your intention to issue any such document.

**LIMITATIONS OF THE AUDIT PROCESS**

In conducting the audit, we will perform tests of the accounting records and such other procedures as we consider necessary in the circumstances to provide a reasonable basis for our opinion on the financial statements. We also will assess the accounting principles used and significant estimates made by the City's management, as well as evaluate the overall financial statement presentation.

Our audit will include procedures designed to obtain reasonable assurance of detecting misstatements due to errors or fraud that are material to the financial statements. Absolute assurance is not attainable because of the nature of audit evidence and the characteristics of fraud. For example, audits performed in accordance with GAAS are based on the concept of selective testing of the data being examined and are, therefore, subject to the limitation that material misstatements due to errors or fraud, if they exist, may not be detected. Also, an audit is not designed to detect matters that are immaterial to the financial statements. In addition, an audit conducted in accordance with GAAS does not include procedures specifically designed to detect illegal acts having an indirect effect (e.g., violations of fraud and abuse statutes that result in fines or penalties being imposed on the City) on the financial statements.

Similarly, in performing our audit we will be aware of the possibility that illegal acts may have occurred. However, it should be recognized that our audit provides no assurance that illegal acts generally will be detected, and only reasonable assurance that illegal acts having a direct and material effect on the determination of financial statement amounts will be detected. We will inform you with respect to errors and fraud, or illegal acts that come to our attention during the course of our audit unless clearly inconsequential. In the event that we have to consult with the City's counsel or counsel of our choosing regarding any illegal acts we identify, additional fees incurred may be billed to the City. You agree that the City will cooperate fully with any procedures we deem necessary to perform with respect to these matters.

We will issue a written report upon completion of our audit of the City's financial statements. If, for any reason, we are unable to complete the audit, or are unable to form, or have not formed an opinion on the financial statements, we may decline to express an opinion or decline to issue a report as a result of the engagement. We will notify the appropriate party within your organization of our decision and discuss the reasons supporting our position.

**AUDIT PROCEDURES – GENERAL**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve professional judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the

appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by the City's management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the City or to acts by the City's management or employees acting on behalf of the City. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of the City's management of any material errors and fraud, or illegal acts that come to our attention during the course of our audit. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditor is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditor.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal and state awards; federal and state award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

#### **AUDIT PROCEDURES – INTERNAL CONTROLS**

Our audit will include obtaining an understanding of the City and its environment, including internal controls, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to the City's management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

## AUDIT PROCEDURES - COMPLIANCE

As part of obtaining reasonable assurance about whether the basic financial statements are free of material misstatement, we will perform tests of the City's compliance with provisions of applicable laws and regulations, contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

## NONATTEST SERVICES (IF APPLICABLE)

All nonattest services to be provided in the attached engagement letter (if applicable) shall be provided pursuant to the AICPA Code of Professional Conduct. The AICPA Code of Professional Conduct requires that we establish objectives of the engagement and the services to be performed, which are described under nonattest services in the attached letter.

You agree that the City's designated individual will assume all the City's management responsibilities for the nonattest services we provide; oversee the services by designating an individual, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accept responsibility for them. In order to ensure we provide such services in compliance with all professional standards, the designated individual is responsible for-

- Making all financial records and related information available to us.
- Ensuring that all material information is disclosed to us.
- Granting unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence.
- Identifying and ensuring that such nonattest complies with the laws and regulations.

The accuracy and appropriateness of such nonattest services shall be limited by the accuracy and sufficiency of the information provided by the City's designated individual. In the course of providing such nonattest services, we may provide professional advice and guidance based on knowledge of accounting, tax and other compliance, and of the facts and circumstances as provided by the City's designated individual. Such advice and guidance shall be limited as permitted under the Code of Professional Conduct.

## COMMUNICATIONS

At the conclusion of the audit engagement, we may provide the City's management and those charged with governance a letter stating any significant deficiencies or material weaknesses which may have been identified by us during the audit and our recommendations designed to help the City make improvements in its internal control structure and operations related to the identified matters discovered in the financial statement audit. As part of this engagement we will ensure that certain additional matters are communicated to the appropriate members of the City. Such matters include (1) our responsibility under GAAS; (2) the initial selection of and changes in significant accounting policies and their application; (3) our independence with respect to the City; (4) the process used by City's management in formulating particularly sensitive accounting estimates and the basis for our conclusion regarding the reasonableness of those estimates; (5) audit adjustments, if any, that could, in our judgment, either individually or in the aggregate be significant to the financial statements or our report; (6) any disagreements with the City's

management concerning a financial accounting, reporting or auditing matter that could be significant to the financial statements; (7) our views about matters that were the subject of the City's management's consultation with other accountants about auditing and accounting matters; (8) major issues that were discussed with the City's management in connection with the retention of our services, including, among other matters, any discussions regarding the application of accounting principles and auditing standards; and (9) serious difficulties that we encountered in dealing with the City's management related to the performance of the audit.

We have attached, as required by the North Carolina Local Government Commission, a copy of the report on our most recent peer review.

## **OTHER MATTERS**

### **Access to working papers**

The working papers and related documentation for the engagement are the property of the Firm and constitute confidential information. We have a responsibility to retain the documentation for a period of time to satisfy legal or regulatory requirements for records retention. It is our policy to retain all workpapers and client information for seven years from the date of issuance of the report. It is our policy to retain emails and attachments to emails for a period of 12 months, except as required by any governmental regulation. Except as discussed below, any requests for access to our working papers will be discussed with you prior to making them available to requesting parties. Any parties seeking access to our working papers must agree to sign our standard access letter.

We may be requested to make certain documentation available to regulators, governmental agencies (e.g., SEC, PCAOB, HUD, DOL, etc.) or their representatives ("Regulators") pursuant to law or regulations. If requested, access to the documentation will be provided to the Regulators. The Regulators may intend to distribute to others, including other governmental agencies, our working papers and related documentation without our knowledge or express permission. You hereby acknowledge and authorize us to allow Regulators access to and copies of documentation as requested. In addition, our Firm, as well as all other major accounting firms, participates in a "peer review" program covering our audit and accounting practices as required by the American Institute of Certified Public Accountants. This program requires that once every three years we subject our quality assurance practices to an examination by another accounting firm. As part of the process, the other firm will review a sample of our work. It is possible that the work we perform for the City may be selected by the other firm for their review. If it is, they are bound by professional standards to keep all information confidential. If you object to having the work we do for you reviewed by our peer reviewer, please notify us in writing.

### **Electronic transmittals**

During the course of our engagement, we may need to electronically transmit confidential information to each other, within the Firm, and to other entities engaged by either party. Although email is an efficient way to communicate, it is not always a secure means of communication and thus, confidentiality may be compromised. As an alternative, we recommend using our Client Portal ("Portal") to transmit documents. Portal allows the City, us, and other involved entities to upload and download documents in a secure location. You agree to the use of email, Portal, and other electronic methods to transmit and receive information, including confidential information between the Firm, the City, and other third party providers utilized by either party in connection with the engagement.

### **Subpoenas**

In the event we are requested or authorized by the City, or required by government regulation, subpoena, or other legal process to produce our working papers or our personnel as witnesses with respect to our engagement for the City, the City will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expense, as well as the fees and expenses of our counsel, incurred in responding to such a request at standard billing rates.

### **Dispute resolution procedures**

If any dispute, controversy or claim arises in connection with the performance or breach of this agreement, either party may, on written notice to the other party, request that the matter be mediated. Such mediation would be conducted by a mediator acceptable to both parties. Both parties would exert their best efforts to discuss with each other in good faith their respective positions in an attempt to finally resolve such dispute, controversy, or claim.

### **Waiver of Trial by Jury**

In the event the parties are unable to successfully mediate any dispute, controversy or claim, the parties agree to WAIVE TRIAL BY JURY and agree that the court will hear any matter without a jury.

### **Independent Contractor**

Each Party is an independent contractor with respect to the other and shall not be construed as having a trustee, joint venture, agency or fiduciary relationship.

### **No Third-Party Beneficiaries**

The Parties do not intend to benefit any third party by entering into this Agreement, and nothing contained in this Agreement confers any right or benefit upon any person or entity who or which is not a signatory of this Agreement.

### **TERMS AND CONDITIONS SUPPORTING FEE**

The estimated fees set forth in the attached engagement letter are based on anticipated full cooperation from the City's personnel, timely delivery of requested audit schedules and supporting information, timely communication of all significant accounting and financial reporting matters, the assumption that unexpected circumstances will not be encountered during the audit, as well as working space and clerical assistance as mutually agreed upon and as is normal and reasonable in the circumstances. We strive to ensure that we have the right professionals scheduled on each engagement. As a result, sudden City requested scheduling changes or scheduling changes necessitated by the agreed information not being ready on the agreed upon dates can result in expensive downtime for our professionals. Any last minute schedule changes that result in downtime for our professionals could result in additional fees. Our estimated fee does not include assistance in bookkeeping or other accounting services not previously described. If for any reason the City is unable to provide such schedules, information and assistance, the Firm and the City will mutually revise the fee to reflect additional services, if any, required of us to achieve these objectives.

The estimated fees contemplate that the City will provide adequate documentation of its systems and controls related to significant transaction cycles and audit areas.

In providing our services, we will consult with the City with respect to matters of accounting, financial reporting or other significant business issues as permitted by professional standards. Accordingly, time necessary to affect a reasonable amount of such consultation is reflected in our fee. However, should a matter require research, consultation or audit work beyond that amount, the Firm and the City will agree to an appropriate revision in our fee.

The estimated fees are based on auditing and accounting standards effective as of the date of this engagement letter and known to apply to the City at this time, but do not include any time related to the application of new auditing or accounting standards that impact the City for the first time. If new auditing or accounting standards are issued subsequent to the date of this letter and are effective for the period under audit, we will estimate the impact of any such standard on the nature, timing and extent of our planned audit procedures and will communicate with the City concerning the scope of the additional procedures and the estimated fees.



The City agrees to pay all costs of collection (including reasonable attorneys' fees) that the Firm may incur in connection with the collection of unpaid invoices. In the event of nonpayment of any invoice rendered by us, we retain the right to (a) suspend the performance of our services, (b) change the payment conditions under this engagement letter, or (c) terminate our services. If we elect to suspend our services, such services will not be resumed until your account is paid. If we elect to terminate our services for nonpayment, the City will be obligated to compensate us for all time expended and reimburse us for all expenses through the date of termination.

This engagement letter sets forth the entire understanding between the City and the Firm regarding the services described herein and supersedes any previous proposals, correspondence, and understandings whether written or oral. Any subsequent changes to the terms of this letter, other than additional billings, will be rendered in writing and shall be executed by both parties. Should any portion of this engagement letter be ruled invalid, it is agreed that such invalidity will not affect any of the remaining portions.

## System Review Report

January 10, 2017

To the Partners of Cherry Bekaert LLP  
And the National Peer Review Committee

We have reviewed the system of quality control for the accounting and auditing practice of Cherry Bekaert LLP (the firm), applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2016. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at [www.aicpa.org/prsummary](http://www.aicpa.org/prsummary).

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*; audits of employee benefit plans, audits performed under FDICIA, and examinations of service organizations [Service Organizations Control (SOC) 1 and SOC 2 engagements].

In our opinion, the system of quality control for the accounting and auditing practice of Cherry Bekaert LLP, applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2016, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Cherry Bekaert LLP has received a peer review rating of *pass*.

*EisnerAmper LLP*  
EisnerAmper LLP  
Iselin, NJ

January 13, 2017

Howard Joseph Kies  
Cherry Bekaert LLP  
200 S 10th St Ste 900  
Richmond, VA 23219

Dear Mr. Kies:

It is my pleasure to notify you that on January 12, 2017 the National Peer Review Committee accepted the report on the most recent system peer review of your firm. The due date for your next review is October 31, 2019. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the report had a peer review rating of pass. The Committee asked me to convey its congratulations to the firm.

Sincerely,



Michael Fawley  
Chair—National PRC  
nprc@aicpa.org 919 4024502

cc: Marc T. Fogarty; Raymond R Quintin

Firm Number: 10011816

Review Number 451036

Letter ID: 1139057A

April 3, 2019

Ann Wall  
City Manager  
City of Greenville, North Carolina  
200 West Fifth Street  
Greenville, NC 27858

Dear Ms. Wall:

This engagement letter between City of Greenville, North Carolina (hereinafter referred to as the “City”) and Cherry Bekaert LLP (the “Firm” or “Cherry Bekaert”) sets forth the nature and scope of the services we will provide, the City’s required involvement and assistance in support of our services and the related fee arrangements, designed to facilitate the performance of our professional services and to achieve the mutually agreed-upon objectives of the City.

Our services cannot be relied on to detect errors, fraud, or illegal acts that may occur. However, we will inform you of any material errors and any fraud or illegal acts that come to our attention. In addition, we have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement.

We will provide a senior manager or manager on an as-needed basis at a rate of \$150 per hour to provide assistance to the Department of Financial Services personnel as preparation of the City’s financial statements (in their entirety) is transitioned from Cherry Bekaert to the City and considered to be above and beyond the scope of the audit engagement.

Invoices will be rendered on a weekly basis on the prior week’s service and are payable within 30 days from invoice date. We will cease work if an unpaid invoice goes beyond this date. A service charge will be added to past due accounts equal to 1½% per month (18% annually) on the previous month’s balance less payments received during the month, with a minimum charge of \$2.00 per month. You agree to pay all cost of collection (including reasonable attorney’s fees) that we may incur in connection with the collection of unpaid invoices.

Please indicate your acceptance of the above understanding by signing below. A copy is enclosed for your records. If your needs change, the nature of our services can be adjusted appropriately.

We want to express our appreciation for this opportunity to serve you.

Sincerely,

**CHERRY BEKAERT LLP**



**RESPONSE:**

This letter correctly sets forth the understanding of the City of Greenville, North Carolina.

Accepted by: \_\_\_\_\_

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

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



# City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

**Title of Item:** Report on Bids and Contracts Awarded

**Explanation:** **Abstract:** The Director of Financial Services reports that the following bids and/or contracts were awarded over a certain dollar threshold by the Financial Services Manager and City Manager.

**Explanation:** The Director of Financial Services reports that the following bids and/or contracts were awarded during the month of March.

Date Awarded	Description	Vendor PO Number	Amount	MWBE Vendor?	Does Local Preference Apply?
3/7/2019	Specialty Lawnmower for Recreation & Parks	Smith Turf & Irrigation PO# 19000369	\$62,926.76	No	No
NOTE: NC State Contract					

**Fiscal Note:** Funding for the bids and contracts awarded is included in the City of Greenville 2018 -2019 budget ordinance.

**Recommendation:** That award information be reflected in the City Council minutes.



# City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

**Title of Item:** Various tax refunds greater than \$100

**Explanation:** **Abstract:** Pursuant to North Carolina General Statute 105-381, refunds are being reported to City Council. These are refunds created by a change or release of value for City of Greenville taxes by the Pitt County Tax Assessor. Pitt County Commissioners have previously approved these refunds; they are before City Council for their approval as well. These refunds will be reported as they occur when they exceed \$100.

**Explanation:** The Director of Financial Services reports refunds of the following taxes:

<u>Payee</u>	<u>Adjustment Refunds</u>	<u>Amount</u>
Anderson, Pamela Oestreich	Registered Motor Vehicle	182.57
Blecha, William Edward, Jr	Registered Property Taxes	125.00
Chauncey, Christopher Scott	Registered Motor Vehicle	433.25
Collard, Frederick Paul	Registered Motor Vehicle	163.24
EJ Pope & Sn, Inc.	Registered Property Taxes	204.23
Foreman, Steven Wade	Registered Motor Vehicle	188.79
Hines, Gloria Renee	Registered Motor Vehicle	104.36
Kane, Katherine Dolores	Registered Motor Vehicle	153.76
Koonce, Leroy	Registered Motor Vehicle	182.15
Leaman, James Michael	Registered Motor Vehicle	659.24
McClawhorn, Barbara Sutton	Registered Motor Vehicle	119.52
Pierce, Brian	Registered Motor Vehicle	137.28
Rupke, Curtis Lee	Registered Motor Vehicle	144.84

Thomas, Andrew	Registered Motor Vehicle	133.97
	<b>REFUND TOTAL:</b>	<b>2,932.20</b>

**Fiscal Note:** The total to be refunded is \$2,932.20.

**Recommendation:** Approval of tax refunds by City Council.

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## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Presentations by Boards and Commissions

- a. Firefighters Relief Fund Committee
- b. Police Community Relations Committee

**Explanation:** The Firefighters Relief Fund Committee and the Police Community Relations Committee are scheduled to make their annual presentations to City Council on April 8, 2019.

**Fiscal Note:** No direct cost for the presentations

**Recommendation:** Hear the presentations from the Firefighters Relief Fund Committee and the Police Community Relations Committee

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## City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

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**Title of Item:** Preview of the City's 2019-2020 proposed General Fund budget

**Explanation:** **Abstract:** Staff will provide a preview of the City's 2019-2020 proposed General Fund budget.

**Explanation:** As provided in the Council-adopted budget schedule, staff will present a preview of the City's 2019-20 proposed General Fund budget. This presentation will highlight budgetary issues, such as major revenue and expense items, impacting the General Fund budget for the 2019-20 fiscal year.

A balanced budget for fiscal year 2019-20 will be distributed to the City Council on May 1, 2019, and presented at the May 9, 2019 City Council meeting. Section 160A-148(5) of the North Carolina General Statutes requires the City Council to adopt a balanced budget before July 1. A public hearing on the proposed 2019-20 budget will be held on June 10, 2019, with City Council adoption scheduled for the June 13, 2019 City Council meeting.

**Fiscal Note:** The amount of the budget will be determined by City Council action.

**Recommendation:** Receive the staff preview of the City's 2019-20 proposed General Fund budget.

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# City of Greenville, North Carolina

Meeting Date: 4/8/2019  
Time: 6:00 PM

**Title of Item:** Budget ordinance amendment #9 to the 2018-2019 City of Greenville budget (Ordinance #18-038) and Special Grants Revenue (Ordinance #11-003)

**Explanation:** **Abstract:** This budget amendment is for City Council to review and approve proposed changes to the adopted 2018-2019 budget and other funds as identified.

**Explanation:** Attached for consideration at the April 8, 2019 City Council meeting is an ordinance amending the 2018-2019 City of Greenville budget (Ordinance #18-038) and Special Grants Revenue (Ordinance #11-003).

For ease of reference, a footnote has been added to each line item of the budget ordinance amendment, which corresponds to the explanation below:

<u>Item</u>	<u>Justification</u>	<u>Funds Amended</u>	<u>Net Adjustment</u>
A	To recognize funds received from City employees as well as citizens for the 2019 United Way campaign.	General	\$ 1,370
B	To recognize adjustments made to Sheppard Memorial Library budget as approved by their board on March 20, 2019.	Sheppard Memorial Library	\$ 9,364
C	To recognize funding received within the Public Transportation (Transit) Fund for Greyhound Bus ticket sales.	Public Transportation (Transit)	\$ 23,257
D	To recognize funding received from the US Department of Housing and Urban Development for the LEAD & Healthy Homes Grant.	Special Grants Revenue	\$1,600,000

**Fiscal Note:**

The budget ordinance amendment affects the following funds:

<u>Fund Name</u>	2018-19 Revised <u>Budget</u>	<u>Amendment #9</u>	2018-19 Budget per <u>Amendment #9</u>
General	\$84,829,739	\$ 1,370	\$84,831,109
Debt Service	5,463,492	-	5,463,492
Public Transportation (Transit)	3,256,977	23,257	3,280,234
Fleet Maintenance	4,431,156	-	4,431,156
Sanitation	7,843,096	-	7,843,096
Stormwater Utility	6,408,592	-	6,408,592
Housing	1,824,405	-	1,824,405
Health Insurance	13,562,600	-	13,562,600
Vehicle Replacement	4,332,161	-	4,332,161
Facilities Improvement	3,870,765	-	3,870,765
Capital Reserve	2,413,473	-	2,413,473
Rec & Parks Capital Projects	9,315,712	-	9,315,712
Greenway Capital Projects	2,983,857	-	2,983,857
Public Works Capital Projects	52,975,918	-	52,975,918
CD Capital Projects	18,591,285	-	18,591,285
Enterprise Capital Projects	42,839,245	-	42,839,245
Red Light Camera Program	1,300,000	-	1,300,000
Donations	203,288	-	203,288
Special Revenue Grants	7,215,575	1,600,000	8,815,575
Street Improvement Bond	15,580,000	-	15,580,000
Sheppard Memorial Library	2,479,917	9,364	2,489,281

**Recommendation:** Approve budget ordinance amendment #9 to the 2018-2019 City of Greenville budget (Ordinance #18-038) and Special Grants Revenue (Ordinance #11-003).

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ATTACHMENTS:

▣ **Budget\_Ord\_Amend\_\_9\_1106916**

**ORDINANCE NO. 19-**  
**CITY OF GREENVILLE, NORTH CAROLINA**  
**Ordinance (#9) Amending the 2018-19 Budget (Ordinance #18-038)**  
**and the Special Revenue Grant Fund (Ordinance #11-003)**

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

**Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #18-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:**

	2018-19 Budget per Amend #8	Budget Amendment #9		2018-19 Budget per Amend #9
		A.	Total Amend #9	
<b>ESTIMATED REVENUES</b>				
Property Tax	\$ 33,722,500	\$ -	\$ -	\$ 33,722,500
Sales Tax	19,463,690	-	-	19,463,690
Video Prog. & Telecom. Service Tax	860,935	-	-	860,935
Rental Vehicle Gross Receipts	160,370	-	-	160,370
Utilities Franchise Tax	7,000,000	-	-	7,000,000
Motor Vehicle Tax	1,508,522	-	-	1,508,522
Other Unrestricted Intergov't	886,443	-	-	886,443
Powell Bill	2,220,065	-	-	2,220,065
Restricted Intergov't Revenues	1,290,682	-	-	1,290,682
Licenses, Permits and Fees	4,161,616	-	-	4,161,616
Rescue Service Transport	3,643,346	-	-	3,643,346
Parking Violation Penalties, Leases,	375,000	-	-	375,000
Other Sales & Services	294,803	-	-	294,803
Other Revenues	796,793	1,370	1,370	798,163
Interest on Investments	500,000	-	-	500,000
Transfers In GUC	6,731,296	-	-	6,731,296
Appropriated Fund Balance	1,213,678	-	-	1,213,678
<b>Total Revenues</b>	<b>\$ 84,829,739</b>	<b>\$ 1,370</b>	<b>\$ 1,370</b>	<b>\$ 84,831,109</b>
<b>APPROPRIATIONS</b>				
Mayor/City Council	\$ 430,586	\$ -	\$ -	\$ 430,586
City Manager	2,319,384	-	-	2,319,384
City Clerk	275,649	-	-	275,649
City Attorney	535,708	-	-	535,708
Human Resources	2,855,170	1,370	1,370	2,856,540
Information Technology	3,151,566	-	-	3,151,566
Fire/Rescue	15,253,541	-	-	15,253,541
Financial Services	2,513,669	-	-	2,513,669
Recreation & Parks	7,258,446	-	-	7,258,446
Police	25,396,131	-	-	25,396,131
Public Works	10,416,635	-	-	10,416,635
Community Development	2,999,958	-	-	2,999,958
OPEB	600,000	-	-	600,000
Contingency	4,800	-	-	4,800
Indirect Cost Reimbursement	(1,950,887)	-	-	(1,950,887)
Capital Improvements	-	-	-	-
<b>Total Appropriations</b>	<b>\$ 72,060,357</b>	<b>\$ 1,370</b>	<b>\$ 1,370</b>	<b>\$ 72,061,727</b>
<b>OTHER FINANCING SOURCES</b>				
Transfers to Other Funds	\$ 12,769,382	\$ -	\$ -	\$ 12,769,382
<b>Total Other Financing Sources</b>	<b>\$ 12,769,382</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 12,769,382</b>
<b>Total Approp &amp; Other Fin Sources</b>	<b>\$ 84,829,739</b>	<b>\$ 1,370</b>	<b>\$ 1,370</b>	<b>\$ 84,831,109</b>

**Section II: Estimated Revenues and Appropriations. Sheppard Memorial Library Fund, of Ordinance #18-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:**

	<b>2018-19 Original Budget</b>	<b>B.</b>	<b>Total Amend #9</b>	<b>2018-19 Budget per Amend #9</b>
<b>ESTIMATED REVENUES</b>				
City of Greenville	\$ 1,269,958	\$ -	\$ -	\$ 1,269,958
Pitt County	634,979	(33,785)	(33,785)	601,194
Pitt County - Bethel/Winterville	12,000	-	-	12,000
Town of Bethel	21,108	-	-	21,108
Town of Winterville	165,300	-	-	165,300
State Aid	197,262	(6,580)	(6,580)	190,682
Desk/Copier Receipts	112,500	(2,000)	(2,000)	110,500
Interest	1,500	-	-	1,500
Miscellaneous Income	32,000	6,456	6,456	38,456
Greenville Housing Authority	10,692	-	-	10,692
Transfer In from Fid Fund	-	4,776	4,776	4,776
Appropriated Fund Balance	22,618	40,497	40,497	63,115
<b>Total Revenues</b>	<b>\$ 2,479,917</b>	<b>\$ 9,364</b>	<b>\$ 9,364</b>	<b>\$ 2,489,281</b>

<b>APPROPRIATIONS</b>				
Personnel	\$ 1,663,716	\$ (42,212)	\$ (42,212)	\$ 1,621,504
Operations	805,509	16,109	16,109	821,618
Capital	-	35,467	35,467	35,467
Greenville Housing Authority	10,692	-	-	10,692
<b>Total Appropriations</b>	<b>\$ 2,479,917</b>	<b>\$ 9,364</b>	<b>\$ 9,364</b>	<b>\$ 2,489,281</b>

**Section III: Estimated Revenues and Appropriations. Public Transportation Fund, of Ordinance #18-038 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:**

	<b>2018-19 Budget per Amend #8</b>	<b>C.</b>	<b>Total Amend #9</b>	<b>2018-19 Budget per Amend #9</b>
<b>ESTIMATED REVENUES</b>				
Operating Grant 2018-19	\$ 1,771,993	\$ -	\$ -	\$ 1,771,993
Planning Grant 2018-19	42,000	-	-	42,000
State Maintenance Asst Program	292,055	-	-	292,055
Hammock Source	974	-	-	974
Pitt Community College Bus Fare	9,744	-	-	9,744
Greyhound Bus Tickes	-	23,257	23,257	23,257
Bus Fares	255,297	-	-	255,297
Bus Ticket Sales	108,149	-	-	108,149
Pitt County Bus Service	4,871	-	-	4,871
Transfer from General Fund	771,894	-	-	771,894
Appropriated Fund Balance	-	-	-	-
<b>Total Revenues</b>	<b>\$ 3,256,977</b>	<b>\$ 23,257</b>	<b>\$ 23,257</b>	<b>\$ 3,280,234</b>

<b>APPROPRIATIONS</b>				
Personnel	\$ 1,157,856	\$ -	\$ -	\$ 1,157,856
Operating	1,571,092	23,257	23,257	1,594,349
Capital Improvements	528,029	-	-	528,029
Transfer Out	-	-	-	-
<b>Total Appropriations</b>	<b>\$ 3,256,977</b>	<b>\$ 23,257</b>	<b>\$ 23,257</b>	<b>\$ 3,280,234</b>

**Section IV: Estimated Revenues and Appropriations. Special Revenue Grant Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:**

	<b>2018-19 Revised Budget</b>	<b>D.</b>	<b>Total Amend #9</b>	<b>2018-19 Budget per Amend #9</b>
<b>ESTIMATED REVENUES</b>				
Special Fed/State/Loc Grant	\$ 5,937,194	\$ 1,600,000	\$ 1,600,000	\$ 7,537,194
Transfer From General Fund	1,177,529	-	-	\$ 1,177,529
Transfer From Pre-1994 Entitlement	80,000	-	-	\$ 80,000
Transfer from Other Funds	20,852	-	-	\$ 20,852
<b>Total Revenues</b>	<b><u>\$ 7,215,575</u></b>	<b><u>\$ 1,600,000</u></b>	<b><u>1,600,000</u></b>	<b><u>\$ 8,815,575</u></b>
<b>APPROPRIATIONS</b>				
Personnel	\$ 2,025,536	\$ 229,432	\$ 229,432	\$ 2,254,968
Operating	3,183,654	1,370,568	1,370,568	4,554,222
Capital Outlay	2,006,385	-	-	2,006,385
Transfer to Other Funds	-	-	-	-
<b>Total Appropriations</b>	<b><u>\$ 7,215,575</u></b>	<b><u>\$ 1,600,000</u></b>	<b><u>\$ 1,600,000</u></b>	<b><u>\$ 8,815,575</u></b>

**Section V: All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed:**

Adopted this 8th day of April, 2019

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P. J. Connelly, Mayor

ATTEST:

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