



Agenda

Greenville City Council

**January 6, 2020
6:00 PM
City Council Chambers**

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.

- I. Call Meeting To Order**
- II. Invocation - Mayor Connelly**
- 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. Consent Agenda

1. Minutes from the October 21, December 9, and December 12, 2019 City Council meetings and the December 12, 2019 City Council Workshop
2. Master Right-of-Way Encroachment Agreement with SQF, LLC
3. Master Right-of-Way Encroachment Agreement with USCOC of Greater North Carolina, LLC
4. Resolution of Intent to Close a portion of Atlantic Avenue
5. Resolution of Intent to Close a portion of South Alley Street
6. Resolution of Intent to Close a portion of Bonners Lane
7. Resolution authorizing the submittal of an application to the U.S. Economic Development Administration for a Disaster Relief Act of 2019 Grant for Greenville Utilities Commission's Wastewater Treatment Plant Clarifier Replacement Project
8. Resolution authorizing Greenville Utilities Commission to purchase real property for the Old Tar Road Gate Station as part of the High-Pressure Multiple Gas Facilities Project
9. Request by the Greenville Police Department to utilize Asset Forfeiture Funds to purchase equipment
10. Reimbursement resolution for the proposed Fire-Rescue Station Number 7 and Station 1 Bay Extension
11. Contract Award to Stewart-Cooper-Newell Architects for Design of Fire-Rescue Station 7
12. Contract award to Bill Clark Homes of Greenville LLC for construction of four single-family homes in the Lincoln Park neighborhood
13. Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #1)
14. Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #2)
15. Contract award for professional services for a Mowing/Landscape Maintenance Contract for Greenwood Cemetery and Brown Hill Cemetery (PWD Contract #3)
16. Contract award for professional services for a Mowing/Landscape Maintenance Contract for vacant lot mowing (PWD Contract #4)
17. Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #7)
18. Various tax refunds greater than \$100

VIII. New Business

19. Presentations by Boards and Commissions
 - a. Environmental Advisory Commission
 - b. Affordable Housing Loan Committee
20. Greenville Aquatics and Fitness Center membership for City Council Members
21. Ordinance Approving 2019-2020 Capital Reserve Fund Designations
22. Budget ordinance amendment #7 to the 2019-2020 City of Greenville budget (Ordinance #19-031), the Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Fund (Ordinance #17-024)

IX. Review of January 9, 2020 City Council Agenda

X. City Manager's Report

XI. Comments from Mayor and City Council

XII. Adjournment



City of Greenville,
North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

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- Title of Item:** Minutes from the October 21, December 9, and December 12, 2019 City Council meetings and the December 12, 2019 City Council Workshop
- Explanation:** Proposed minutes from the October 21, December 9, and December 12, 2019 City Council meetings and the December 12, 2019 City Council Workshop are presented for review and approval.
- Fiscal Note:** No direct fiscal impact.
- Recommendation:** Review and approve minutes from the minutes from the October 21, December 9, and December 12, 2019 City Council meetings and December 12, 2019 City Council Workshop.
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ATTACHMENTS:

- ❑ Final_Proposed_Minutes_for_October_21_2019_City_Council_Meeting_1120991
- ❑ Draft_Minutes_of_City_Council_December_9_2019_Meeting_1120505
- ❑ Proposed_City_Council_December_12_2019_Meeting_Minutes_1121000
- ❑ Proposed_City_Council_Minutes_Dec_12_2019_Workshop_1120966

PROPOSED MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, OCTOBER 21, 2019



A regular meeting of the Greenville City Council was held at 6:00 p.m., on Thursday, October 21, 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. Council Member Will Bell gave the invocation, followed by the Pledge of Allegiance.

Those Present:

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

Those Absent:

None

Also Present:

Ann E. Wall, City Manager; Emanuel D. McGirt, City Attorney; and Polly Jones, Interim City Clerk

APPROVAL OF THE AGENDA

Council Member Smiley requested that the City Council consider adding two items to the agenda:

- 1) Appointments to boards and commissions
- 2) Resolution to support the designation of the South Tar Greenway as off-road.

Mayor Connelly requested that the City Council consider adding the appointments to boards and commissions as the first agenda item under New Business.

Motion was made by Council Member Smiley and seconded by Council Member Bell to approve the agenda with the recommended changes. Motion carried unanimously.

PUBLIC COMMENT PERIOD

Andrew Schmidt - 417 S. Cotanche Street

Mr. Schmidt stated that a committee has been hard at work since last spring to help create an African-American cultural trail. The members of the committee are comprised of



dedicated citizens and representatives from the Convention and Visitors Bureau (CVB), East Carolina University, Pitt County Arts Council at Emerge, and Greenville Historic Preservation Commission. This incredible and important project is long overdue not only for this community, but for the region as well. As a destination marketing organization, the CVB must continue to develop cultural opportunities that will diversify the City's and Pitt County's hospitality infrastructure and offerings.

Mr. Schmidt stated that this trail is an excellent opportunity to increase the leisure market in Greenville and Pitt County. Also, it is anticipated that establishing this trail will greatly help the recruitment of meetings and family reunions because planners are looking at substantial cultural experiences for their attendees and the destinations in which they hold their events.

Mr. Schmidt stated that an African-American cultural trail will incorporate the plans of Sycamore Gateway Plaza, which is located on the Greenville Town Common. The Sycamore Gateway Plaza is proposed to serve as the starting point for the trail, providing a comprehensive historical view of the residential community and the church, which once occupied these grounds. The cultural trail will be set up in such a way that allows groups and individuals to enjoy Greenville at their own pace. An app will be developed to support the story for each stop. Tour participants will be able to scan codes at each stop and feel the history of individual stories of each location with pictures and renderings of buildings. Group tours will be an option as well.

Mr. Schmidt stated that additional benefits of the creation of an African-American cultural trail for both Greenville and Pitt County are:

- Celebrating and telling the story of the African-American community
- Acknowledging the many contributions of African-American communities
- Creating an economic development project that will increase travel and tourism
- Increasing the leisure, convention, and SMERF (Social, Military, Educational, Religious/Reunion, Fraternal) markets
- Increasing the amount of diverse cultural offerings for both residents and visitors
- Enhancing place making for Greenville and Pitt County

Mr. Schmidt stated that the African-American Cultural Trail Committee is looking forward to updating the City Council on this project in the spring and will ask the City Council for support at that time.

Pat Grimes Short – PO Box 30404

As the chairman of the African-American Cultural Trail Committee, Ms. Short stated the Committee is gathering untold stories about history so that they will be shared with visitors for tours, conventions, class and family reunions as well as the residents of Greenville. The Committee had six meetings and several tours. At this point, the Committee has five locations for the first tour, which includes the following:



1. Sycamore Gateway Plaza
2. Historical Medical Community
3. Roxy Theater
4. Eppes Heritage Center
5. The "Block" (including African-American owned businesses such as the City Ice House, City Cab Company, Bell's Cafe, Masonic Lodge, Plaza Theater, D. D. Garrett Real Estate Company, Eaton's Shell Station, and York Memorial AME Zion Church).

Ms. Short stated that the Committee toured these sites, interviewed people, and collected pictures and speeches. The tour is scheduled to begin July 1, 2020 and in the future, the tour will be spread out into the County. The Committee will bring an update to the City Council in the spring and hopefully, the City will partner with the Committee.

Mayor Pro-Tem Glover asked if Mr. Bennie Rountree's business would be included in the tour of the "Block".

Ms. Short responded that Mr. Rountree's business could be added to The "Block" tour.

Thomas Taft – 131 Longmeadow Road

As a citizen of Greenville and an investor of property along Dickinson Avenue, Mr. Taft made comments about the Imperial site, stating that he is excited about a hotel coming to downtown Greenville. It is a great project and opportunity. His concern is on a narrow aspect of the plan as it stands now and that is to continue to use surface parking. He is concerned that everything north of Pitt Street Brewing up to Nathaniel Village is going to become a surface parking lot. Dickinson Avenue is booked for two projects and both are requiring surface parking lots, which is fine in the short-term.

Mr. Taft asked the City Council to consider what that means in the long-term. He is extremely concerned about what the backend looks like and how the City will ever get out of using these lots as surface parking lots, if they are tied to a specific code requiring parking for a specific project.

Andrew Moss- 814 Dickinson Avenue

As the owner of the Emporium on Dickinson Avenue, Mr. Moss spoke in favor of the general idea of developing the Imperial site. The proposed plan will increase foot traffic and provide a hotel for visitors and their walkability to places like his business. These are important for the sustainability of the downtown businesses in the future.

Michael Glenn – 632 South Pitt Street

As a resident and business owner in the downtown area, Mr. Glenn stated that he has been investing in downtown Greenville over the past 15 years. A hotel is long overdue and market rate housing is wanted, but it was shocking to watch the developer's presentation to the City Council on October 7, 2019.



Mr. Glenn stated that one of the biggest criticism of Greenville by professional planners is how much paved surface area is in the downtown. Building large surface parking lots in any center city to accommodate a private development of this magnitude is short sighted. The City just completed a two-acre parking lot adjacent to this very site to accommodate a private housing project. It is an entire City block dedicated to private parking. Imagine any other growing downtown community in 2019 building a hotel with a surface parking lot, which, in his opinion, does not fit good urban form. The presented design is a major departure from early concepts for the Imperial site.

Mr. Glenn stated there are no reasons why this vote must happen tonight. The way Greenville continues to grow, the viability and value of this land for development, and a need for a hotel will be here a year from now. If the economics do not support the transformative project that all have been wanting, he suggests that the City and its citizens wait for them. The City Council not only has the responsibility to put these eight acres back on tax rolls, but to do so in a manner that best serves the downtown.

Mr. Glenn stated that Greenville is attractive for opportunity. But, because of the lack of a long list of people who are ready to build on the Imperial site, Greenville is not there yet due to population or the site itself is too large to be taken on by one developer. Whatever happens at the Imperial site belongs to the citizens for the next 40 years or the economy life of the project. Mr. Glenn encouraged the City Council to give careful thought and to move slowly because this project is a big deal.

Louis Warren – 203 North Harding Street

As a faculty member at the East Carolina University (ECU), Mr. Warren stated that he has worked with many different population affiliates who have visited Greenville. He has participated in searches for faculty members. Also, he had many conversations with his colleagues and parents of ECU students and they have expressed a desire for closer accommodations to the campus. The ECU Alumni expressed the same desire and current students are aware and elated about a proposed hotel. Mr. Warren encouraged that the approval for a hotel goes forward.

Zachary Nobles – 507 W. 5th Street

As an East Carolina University (ECU) student and President of the Theta Chi Fraternity, Mr. Nobles stated that the Chapter and its Alumni fully support the building of a hotel. A hotel close to downtown and apartment complexes where ECU students live would be extremely beneficial. Despite there are discrepancies with the parking or whatnots, he feels that the developer has already taken into account those concerns.

Matthew Kegerreis – 201 North Woodlawn Avenue

As a lifelong resident and Manager of Jack Brown's Burger Joint in Greenville, Mr. Kegerreis spoke in support of the Imperial site development. Mr. Kegerreis stated that he is echoing the previous sentiments that potentially growing up instead of out is a better long-term strategy for the area. Selfishly for the business owners, the proposed plan is more conducive to foot traffic in the immediate area.



Jermaine McNair – 3262 Landmark Street

Mr. McNair made comments about the Imperial site development, stating that he followed the previous meetings about this development and became aware of the new conversation and proposal for the hotel. Also, he had the opportunity to have some conversations with the developer, which prompted him to go back to the community to gather feedback so that residents could offer some input for this development.

Mr. McNair stated since the introduction of the project, he feels that all knew that it was going to be an important project and all wanted to make Greenville the next destination city. Also, all knew that this project was going to be critical because of its location, in the nexus of Dickinson Avenue, growing uptown, and West Greenville communities. All saw this as an opportunity to bring these communities together as representation of how all want the growing Greenville to be.

Mr. McNair stated that less than two years ago, several months were spent holding sessions to gather the communities' input and he feels out of place going back to ask residents of the communities again for their input.

Mr. McNair asked whether the City Council has access to the original collection of data and input from the sessions held in West Greenville. Secondly, was the data considered in the process that was chosen to move forward with the development of the Imperial site? Thirdly, if the City Council does not have the data, would the City Council review the data that he gathered, which may not represent the hours of conversation that were held in the communities less than two years ago?

Mr. McNair stated that the West Greenville community was very excited about the opportunity to have some diverse price point housing to be included in the proposal for the development of the Imperial site. It does not sound like that is able to play a role in this new development. In his opinion, the community does not just want to be addressed for input sessions. As this site is in the nexus of three communities, it is an opportunity to build stakeholderhood and to develop leaders in the communities who can continue to provide perpetual input. There are opportunities to balance capital investment with community development and to show in the City's plans that the two can work together.

Mr. McNair stated that some of the tools and strategies that he has drawn out of these conversations are opportunities for our community to benefit from the growth. To propose things such as hiring quotas in the development of the site. He asked could there be hiring of a certain percentage of community members who are historical residents. Will there be an opportunity to engage the hotel to adopt some hiring quotas to make sure that people who reside in the community can also participate in the growth?

Mr. McNair suggested that there could be a committee and not to get its input once, but to continue to plan and gather input to coordinate some community programming. The City Council could take a small percentage of what the City is going to benefit from that site to fund community run projects that will continue to program it with diverse community



representation. The developers could match a percentage of that to show that all are in partnership together and continue to allow our communities to grow together with this growth plan.

Mike Saad – PO Box 873

Mr. Saad spoke in favor of the proposal by Seacoast Communities, LLC to develop the Imperial site. He stated that the exciting part of this proposal is the hotel, which has been discussed for a decade and nothing came to fruition. A couple of different sites have been discussed and this is the closest that the City ever came to having a hotel in the downtown area. It will be wonderful to get another 166 units downtown and a 110-bed hotel is excellent. Dickinson Avenue is really becoming an exciting place.

Mr. Saad stated that he is not excited that the parking will be flat, but a group is willing to invest \$40 million downtown with construction cost rising. Interest rates are great now, but if the City postpones this development for another year, the market might be different. He is excited to see this investment in downtown and Seacoast Communities, LLC is a great group of people.

Mr. Saad stated that there is still more land downtown, but the land is not the size of this property. The East Carolina University has a lot of property downtown and hopefully, the City will transition to more commercial. If the City adds more excitement, developers are creative and they will find new opportunities to build. The fact that if a hotel happens, it could be a catalyst and the City should not undervalue that.

Joe Davis – 427 W. 4th Street

Mr. Davis stated that he is a resident of West Greenville and he is currently redeveloping some land. He would like to share his support for development of West Greenville with market rate housing and a hotel that he feels will bring decent paying jobs and nice housing for residents. This will be another avenue of giving the East Carolina University graduates jobs in property management and hospitality and young adults a reason to stay in Greenville and to have a vibrant area in Greenville.

Candace Pearce

Ms. Pearce stated that she had conversations with the developer about his and everybody's intentions to restore the old office building at the Imperial site and the ideas are fantastic. She is in favor of the hotel project. However, all of the paved property is going to end up with a lot of stormwater.

Ms. Pearce stated that in addition, the Historic Preservation Commission is grateful for the City's work towards the Jones Lee House, which has been moved.

No Spelling of Name Given – No Address Given

Mr. D'Rossi stated that he has been attending City Council meetings for the past two years and the City Council members have inspired him and other students to pursue a role in government. Local government and his civics teacher actually inspired him to pursue a



bigger role. He served as a page for both Senator Don Davis and for Governor Roy Cooper and enjoyed serving under their programs.

CONSENT AGENDA

- Approval to purchase an upgrade for the DataDomain (backup solution) for the City's infrastructure
- Memorandum of Understanding Regarding Involuntary Commitment (IVC) Custody and Transportation
- New Position Requests for Engineering Department
- Contract award for Task Order 1 (final design) for the Cedar Lane/Greenbriar Drainage Improvement Project

Council Member Meyerhoeffer asked that one item be removed from the Consent Agenda for separate discussion, specifically, the new position requests for Engineering Department.

Motion was made by Council Member Meyerhoeffer and seconded by Council Member Bell to approve the remaining items under the Consent Agenda. Motion carried unanimously.

CONSENT AGENDA ITEMS FOR SEPARATE DISCUSSION

NEW POSITION REQUESTS FOR ENGINEERING DEPARTMENT

Council Member Meyerhoeffer stated that some of the primary responsibilities of the Civilian Engineering I position are stormwater and floodplain management plans. Council Member Meyerhoeffer asked if the Civilian Engineering I position counts as one of the 16 employees that the City must hire as it relates to addressing the stormwater and the new commitment that the City is making.

City Manager Wall responded that the two requested positions will be assigned to the City's Land Development Division, and they will be addressing the need for staff to review new development and plans to ensure that they are compliant with all of the City's regulations. The Civilian Engineering I position is not part of the 16 positions that the City Council authorized in the budget for stormwater services.

Motion was made by Council Member Meyerhoeffer and seconded by Council Member Bell to approve the new position requests. Motion carried unanimously.



NEW BUSINESS

(ADDED) APPOINTMENTS TO BOARDS AND COMMISSIONS

Human Relations Council

Mayor Pro-Tem Glover made a motion to appoint Shane Knight to the East Carolina University seat for a one-year term that will expire October 2020. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

Recreation & Parks Commission

Council Member Meyerhoeffer made a motion to appoint Carrie Watson to a first three-year term that will expire May 31, 2022. Council Member Bell seconded the motion and it carried unanimously.

ACQUISITION OF PROPERTY FOR THE FUTURE PARK PROJECT NEAR THE INTERSECTION OF OLD PACTOLUS ROAD AND NE GREENVILLE BOULEVARD

Director Recreation and Parks Gary Fenton delineated the location of the future park project on a map as requested by Mayor Connelly.

Motion was made by Council Member Bell and seconded by Council Member Daniels to approve the acquisition of the property for the future park project near the intersection of Old Pactolus Road and NE Greenville Boulevard. Motion carried unanimously.

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO INSTALLMENT FINANCING AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE REFINANCING OF AN OUTSTANDING INSTALLMENT FINANCING AGREEMENT (Resolution No. 038-19)

Mayor Connelly thanked and commended staff for coming up with an idea so that the City is able to better utilize the parking deck and to increase debt service by \$5,000 per year.

Council Member Meyerhoeffer asked staff to elaborate on the flexibility that the City will have with taxable financing.

Director of Financial Services Byron Hayes explained that in 2014, staff recommended tax exempt installment financing for the parking deck. The resolution, before the City Council this evening, allows the City to refund that for a taxable issuance, which allows more flexibility for the use of the parking deck. Under the current tax exempt installment financing agreement, only about 10% of the parking deck can be used for private uses.

Motion was made by Council Member Smiley and seconded by Council Member Bell to adopt the resolution. Motion carried unanimously.



PRESENTATION OF A LETTER OF INTENT BETWEEN THE CITY OF GREENVILLE AND SEACOAST COMMUNITIES RELATED TO THE COMMERCIAL DEVELOPMENT OF THE IMPERIAL TOBACCO PROPERTY

Assistant City Manager Michael Cowin gave a summary of the project and its requirements, public investment, and the proposed Letter of Intent (LOI) between the City of Greenville and Seacoast Communities, LLC stating that this a two-phase project. Phase 1 of the project will consist of a boutique style hotel with approximately 100 rooms and a rooftop bar and lounge. That is a private investment of approximately \$16 million. Phase 2 will consist of approximately 200 market rate professional units comprised of two separate buildings with a minimum of 1,200 square feet of office and retail. Phase 2 is a projected \$25 million investment. Overall, the proposed developer investment is \$41 million for uptown and Dickinson Avenue in Greenville.

Assistant City Manager Cowin stated that the proposed project puts the Imperial site property back on the tax rolls, increases the number of individuals in uptown Greenville on a daily basis by 300 to 400, increases the annual tax revenues by approximately \$195,000, and enhances the opportunity for future economic growth uptown.

Assistant City Manager Cowin stated that additionally, the proposed project

- Supports Pedestrian Connectivity
- Creates Supply of Professional Market Rate Housing to Meet Demand
- Creates Mixed-Use Retail
- Activates Underutilized Land
- Creates Gathering Space for Community
- Promotes Job Creation
- Creates a Financially Feasible Project
- Restores Historic Office Building

Assistant City Manager Cowin stated that over a 15-year period, the City is looking at approximately \$5.3 million worth of revenues, comprised of approximately \$3 million to sell the property at fair market value and then an additional \$2.3 million in tax revenues. When looking at the public investment back into property and the project to make it happen, the City has \$1.5 million in infrastructure and site development as well as the Capital Investment Grant at \$500,000 for 12 years on the hotel, netting back approximately \$3.2 million to the City over a 15-year basis. The following is a summary of the breakdown in five-year intervals:



15 Year Pro Forma

	Projected Revenue	Projected Expense	Net
Years 1 - 5	\$ 3,355,120	\$ 1,640,400	\$ 1,714,720
Years 6 - 10	976,200	234,000	742,200
Years 11 - 15	976,200	187,200	789,000
Total	\$ 5,307,520	\$ 2,061,600	\$ 3,245,920

Assistant City Manager Cowin stated that \$3.2 million represents an investment that the City can make back into the community into various capital projects to serve all citizens of the City of Greenville. The City Council has not approved any specific project with concerns to the allocation of these resources, but the City needs to move forward with a host of capital projects over the next few years to take it to the next level. That would include the BUILD Grant.

Assistant City Manager Cowin stated that the City is currently in the process of receiving a response about a \$24 million BUILD Grant of which there would be a \$6 million match to extend the City's Greenway to have a complete refurbishment of Fifth Street. The City has the replacement of the 47-year old community pool and that would be tremendous to be able to relocate that pool back into West Greenville and would take a significant investment. Tonight, the City Council looked at the purchase of property for a river-based park north of the river and a host of projects could be looked at as well, and these dollars can be put back into the community.

Assistant City Manager Cowin stated that a Letter of Intent outlines the terms of the project arrangement that are acceptable to both the City and to the developer, which in this case is Seacoast Communities. This Letter of Intent is considered a nonbinding agreement and any contractual terms would be set forth in the purchase agreements for the property.

Assistant City Manager Cowin summarized the overall project requirements, stating that the City of Greenville shall approve the architectural design and all exterior materials and finishes of the project.

Assistant City Manager Cowin stated that Seacoast Communities shall:

- Develop the Project in Two Phases:



Phase 1: Boutique Style Hotel Component

Phase 2: Market Rate Housing Component

- Purchase the Property at Fair Market Value
- Include Features in Both Phases that Reflect and Pay Tribute to the History of the Imperial Tobacco Processing Plant and the Citizens that Both Worked and Lived in the West Greenville Community
- Conduct a Series of Public Input Meetings in West Greenville to receive Input from the Community Regarding Ways to Integrate the Area's History into the Project
- Include an Art Component in the Project
- Fund all Parking Related to the Project
- Install Streetscape Improvements that are in Compliance with the Dickinson Avenue Streetscape Master Plan

Assistant City Manager Cowin summarized the specific requirements for each of the two phases of the project:

Phase 1 Requirements: Boutique Style Hotel

- Seacoast Shall Apply for a Building Permit Within 12 Months of the Purchase Agreement Approval
 - If Permit is not Applied for Within 12 Months Then Ownership of Property Reverts Back to City
 - City has Option to Refund Any Payments Made for Purchase of Property to Seacoast
- Project Shall be Completed Within 20 Months of the Building Permit Issuance
 - The City and Seacoast may Mutually Agree to Extend the Completion Date
 - If the Project is not Completed Within 20 Months, or the Extended Date, the City Shall Begin Accessing Liquidated Damages at a Rate of \$500 per day

Assistant City Manager Cowin stated the following restrictions shall apply to the hotel:

- The Hotel Shall be a Boutique Hotel With Features, and Character Recognized by Hospitality Industry as Boutique in Nature
- The Hotel Shall Have a Minimum of 90 Rooms With a Roof top Bar and Lounge
- The Hotel Shall be Located on the Property Having Principal Frontage Along Dickinson Avenue
- The Hotel Shall be a Hospitality Industry Rated Minimum of 3 Stars

Assistant City Manager Cowin stated that following are the specific requirements for Phase Two of the project:



Phase 2 Requirements: Market Rate Housing

- The City and Seacoast Communities Shall Close on Phase 2 Property as Follows:
 - No Earlier Than the Point at Which Phase 1 is 70-80% Complete
 - No Later Than 6 Months After Completion of Phase 1
- Seacoast Shall Apply for a Building Permit Within 12 Months of the Completion of Phase 1
 - If Permit is not Applied for Within 12 Months Then Ownership of Property Reverts Back to City. City has Option to Refund Any Payments Made for Purchase of Property to Seacoast
- Project Shall be Completed Within 24 Months of the Building Permit
 - The City and Seacoast may Mutually Agree to Extend the Completion Date
 - If the Project is not Completed Within 24 Months, or the Extended Date, the City Shall Begin Accessing Liquidated Damages at a Rate of \$500 per day.

Assistant City Manager Cowin stated the following restrictions shall apply to the market rate housing:

- The Project Shall Include at Least 175 Non-Student Professional Units
- There Shall be No Quad Style Units in the Project. All Units Shall Consist of Studio, 1 Bedroom, 2 Bedroom and 3 Bedroom Units
- Seacoast will Require Only One Lease per Unit with Longer Term Leases
- Seacoast Shall Structure the Leases so as not to Allow Parents of Any Residents to Co-Sign
- Seacoast Shall Include a Minimum of 1,200 Square Feet of Retail in the Project
- Seacoast Shall Periodically Supply the City any Relevant Documentation Requested for Review as to Seacoast's Compliance with the Market Rate Housing Requirements

Assistant City Manager Cowin summarized the historic office building requirements for the project, stating that Seacoast shall stabilize and beautify the building to be consistent with its historic character. Also, Seacoast shall restore the building and place it into service for an office or other commercial use contingent on the developer's ability to secure public funding to assist with the renovation. Such funding would include: 1) Federal and State Historic Tax Credits, 2) City of Greenville Facade Improvement Grant(s), and 3) Potential Local Property tax Incentives Resulting from the Building Receiving the Designation of a Local Historical Landmark.

Assistant City Manager Cowin stated that the City shall be responsible for several public infrastructure improvements, including removal of the existing infrastructure from the site, partial rebuild of Atlantic Avenue, and the construction of the Public Parking Lot/Community Plaza with public art on the lot to be located off of Clark Street. Additionally, the City shall award a Capital Investment Grant as follows:



- Annual Grant Equal to 75% of City Property Taxes Paid by the Developer for the Hotel ONLY
- Grant Shall be Awarded for 12 Years

- Grant Award is Contingent on the Following:
 - Developer's Investment in the Hotel >= \$14 Million
 - Developer Shall Apply for Building Permit Within 12 Months of Purchase Agreement Approval

Council Member Smiley asked about whether the LOI requires that all of the work be would done by public funding.

Assistant City Manager Cowin responded no it does not require that all of the work would be contingent on public funding.

Council Member Daniels stated during the Public Comment Period, Mr. McNair made comments about a committee. Council Member Daniels asked based on the meetings held with the public, what are the possibilities that a group could be created to help with the project in West Greenville.

City Manager Wall responded that the idea is certainly something that could be discussed with the developer. Mr. McNair brought up some interesting points and those could be shared with the developer as the City goes forward with crafting and determining what could be incorporated in the development agreement.

Mayor Connelly stated that one of the discussions brought up during the Public Comment Period was about surface lots. Parking needs are going to change as development takes place in the area. Mayor Connelly asked would the developers consider potentially looking at partnering with the City or entities that might be interested in building a vertical style parking deck.

Mr. Marvin Blount responded that the developers would be open for discussion about partnering with the City or an entity in the City. The development agreement on the 200-space parking lot for University Edge has a clause stating there can be a parking deck built on the parking lot, which is another opportunity for future growth.

Assistant City Manager Cowin stated the 200-space parking lot could be built into structured parking and the City will add a parking lot for its employees, which would include 120 spaces. That parking lot could be built into structured parking as well.

Mr. Blount reported that he had discussions with Mayor Pro-Tem Glover and Council Member Daniels about artwork for the hotel. The hotel developers are amendable to placing artwork or any memorabilia inside the hotel, reflecting on the West Greenville residents' relatives, who worked on the Imperial site years ago. Another update is the suite-spots for these development companies is a 120-room hotel can fit on the site's



footprint covering four stories and the fifth story would be the rooftop bar and lounge. The preferred flag is the Marriott AC.

Council Member Bell recommended that if the City Council enters into new discussion about going vertical with the parking, the City could approach the Golden Leaf Foundation and secure some funding. The project is related to tobacco property.

Council Member Meyerhoeffer asked if the City wanted to build a parking deck tomorrow, it could be done without obstruction and that could be incorporated in the development agreement for this project.

Assistant City Manager Cowin responded that the City must find a temporary relocation for student parking. There is a requirement involving a certain number of feet from the building.

Council Member Meyerhoeffer asked when the City Council is ready to build a parking deck, could that be done on the already built project as well as the future project.

Mr. Blount responded that is correct.

Motion was made by Council Member Litchfield and seconded by Council Member Smiley to approve the preparation of the Letter of Intent. Motion carried unanimously.

BUDGET ORDINANCE AMENDMENT #4 TO THE 2019-2020 COMMUNITY DEVELOPMENT CAPITAL PROJECTS FUND BUDGET (ORDINANCE #17-024) – (Ordinance No. 19-053)

Motion was made by Council Member Smiley and seconded by Council Member Bell to approve budget ordinance amendment #4 to the 2019-2020 Community Development Capital Projects Fund Budget. Motion carried unanimously.

(ADDED) RESOLUTION TO SUPPORT DESIGNATION OF THE SOUTH TAR GREENWAY AS OFF-ROAD – (Resolution No. 037-19)

City Manager Wall stated that copies of this resolution have been distributed to the City Council Members for consideration.

Mayor Connelly stated that the East Coast Greenway Virginia and North Carolina Coordinator, Sarah Sanford, asked the City Council to endorse a letter of support. That endorsement is to incorporate Greenville's section of the South Tar Greenway as an official off-road segment of the Greenway that stretches from Maine to Florida. The signage is already on the City's section of the Greenway.

Motion was made by Council Member Smiley and seconded by Council Member Meyerhoeffer to adopt the resolution supporting the designation of the South Tar Greenway as off-road. Motion carried unanimously.



CITY MANAGER'S REPORT

City Manager Wall thanked the City Council, Seacoast Communities, LLC, and City staff for their hard work as the City moves forward on the development of the Imperial site. Also, she expressed her appreciation to Assistant City Manager Michael Cowin for working diligently on this economic development proposal.

COMMENTS FROM MAYOR AND CITY COUNCIL

Mayor Pro-Tem Glover reported that she is aware that staff is trying to schedule a community meeting about the woman who was walking along the inside southbound lane on Hooker Road when she was struck and killed by two vehicles. Mayor Pro-Tem Glover requested that staff research what type of lighting is needed at that location. She stated that hopefully, improving the lighting would prevent people from being killed or injured while walking across the street. Also, she is aware that police officers travel Hooker Road frequently and emphasize to those seen crossing the street to use the pedestrian walkways. The City should further emphasize and do a campaign about using those walkways on Hooker Road, which would be helpful.

City Manager Wall stated that staff will work with the Police Department and Greenville Utilities Commission to do an inventory on the lighting for that location.

Mayor Pro-Tem Glover reported that there is a similar situation on Dickinson Avenue. A lot of people walk to the grocery stores and some use their wheelchairs.

City Manager Wall stated that staff will investigate the Dickinson Avenue area from 14th Street to Hooker Road.

Mayor Connelly made comments about past and future events.

CLOSED SESSION

Council Member Bell moved to enter closed session in accordance with G.S. §143-318.11 (a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes; and to discuss matters to the location and expansion, and G.S. §143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or



employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. Council Member Daniels seconded the motion, which passed by unanimous vote.

Mayor Connelly declared the City Council in closed session at 7:29 p.m., calling a brief recess to allow the City Council and staff to relocate to Conference Room 337, where he reconvened the closed session at 7:37 p.m.

Upon conclusion of closed session discussion, motion was made by Council Member Bell and seconded by Council Member Daniels to return to open session. Motion was approved unanimously, and Mayor Connelly returned the City Council to open session at 8:02 p.m.

ADJOURNMENT

There being no further business before the City Council, Council Member Smiley moved to adjourn the meeting, seconded by Council Member Bell. The motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 8:03 p.m.

Respectfully Submitted

Polly Jones
Deputy City Clerk

PROPOSED MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, DECEMBER 9, 2019



A regular meeting of the Greenville City Council was held on Monday, December 9, 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. Pastor Rodney Coles delivered the Invocation at the request of the Mayor and City Council. The Greenville Police Department, accompanied by the Greenville Public Safety Pipes and Drums, provided the Presentation of Colors and were followed by Officer Antonio T. Webb singing the *Star Spangled Banner*. The Pledge of Allegiance was led by Mary Kate Connelly, Caroline Connelly, Jayceon Jones, Everett Litchfield, William Litchfield, Conner Meyerhoeffer, Julie Bell Riddick, Francis Jane Riddick, Stephen Michael Riddick, Ja'Kayla Roberson, and Jaylen Roberson.

Those Present:

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

Those Absent:

None

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel McGirt, and City Clerk Valerie Shiuwegar

BOARD OF ELECTIONS CERTIFICATION

City Manager Ann Wall read the results of Greenville's municipal elections held on November 5, 2019, listing the candidates with the highest number of votes. Results were certified by the Pitt County Board of Elections:

- Mayor – P.J. Connelly
- At-Large – Brian Meyerhoeffer, Jr.
- District 1 – Monica Daniels
- District 2 – Rose Glover
- District 3 – Will Bell
- District 4 – Rick Smiley
- District 5 – William Litchfield, Jr.



ADMINISTERING OF OATHS

The Honorable Judge Marvin Blount, III administered the Oath of Office to the 2019-2021 elected officials: Mayor P.J. Connelly, Council Member Brian Meyerhoeffer, Jr., Council Member Monica Daniels, Council Member Rose Glover, Council Member Will Bell, Council Member Rick Smiley, and Council Member William Litchfield, Jr.

ELECTION OF MAYOR PRO-TEM

Mayor Connelly called for nominations for the election of Mayor Pro-Tem.

Council Member Meyerhoeffer nominated Council Member Rose Glover.

Hearing no further nominations, Mayor Connelly declared that the nominations period was closed. Mayor Connelly then called for a vote on the nomination of Council Member Glover for Mayor Pro-Tem. The vote in favor of Council Member was unanimous.

Mayor Connelly announced that Council Member Glover received a majority vote and was elected Mayor Pro-Tem.

OPENING ADDRESS

Mayor Connelly expressed his appreciation for the opportunity to continue serving as Mayor of the City of Greenville. He stated his motto, “Greenville Means Business”, and listed projects and improvements aimed at encouraging development and strengthening infrastructure within the City, noting that they had been accomplished without raising the tax rate. He emphasized the need for all community partners and stakeholders in Pitt County to take a unified approach to promoting and developing the region. He expressed his hope that more collaborative efforts would be achieved throughout the coming years.

ADJOURNMENT

A motion was made by Council Member Bell and seconded by Council Member Daniels to adjourn the meeting. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 6:34 p.m.



Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk

OFFICIAL MINUTES
MEETING OF THE CITY COUNCIL
CITY OF GREENVILLE, NORTH CAROLINA
THURSDAY, DECEMBER 12, 2019



A regular meeting of the Greenville City Council was held on Thursday, December 12, 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. The invocation was given by Reverend Asher J. Panton with Immanuel Baptist Church on behalf of Council Member Smiley, and was followed by the Pledge of Allegiance.

Those Present:

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

Those Absent:

None

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel D. McGirt, City Clerk Valerie Shiuwegar, Assistant City Manager Michael Cowin, Assistant City Manager Ken Graves

APPROVAL OF THE AGENDA

City Manager Wall recommended that the City Council remove Item 10. Resolution Approving the Exchange of Property with POBO, LLC.

Council Member Bell made a motion to approve the recommendation. The motion was seconded by Council Member Daniels and unanimously approved.

City Attorney McGirt recommended that the City Council move the exchange of property with POBO, LLC to its January 2020 meeting.

Council Member Bell made a motion to approve the recommendation. The motion was seconded by Council Member Bell and unanimously approved.

Council Member Bell made a motion to approve the agenda as revised. Council Member Daniels seconded the motion and it carried unanimously.



PUBLIC COMMENT PERIOD

Mayor Connelly opened the public comment period at 6:04 pm, explaining procedures which should be followed by all speakers.

Mr. Jae Yoon stated the importance of reducing plastic and spoke about a program aimed at designing reusable bags. He stated that the program is in need of sponsors.

Mr. David Yoon expressed his appreciation for the litter cameras in the City and stated that he is working on a program that encourages local restaurants to commit to reducing their use of plastics. He listed local restaurants that had pledged their commitment and said that he would be working on adding more in 2020. He stated his support for a Sustainability Manager in the City and suggested that the City consider Chad Carwein.

Ms. Gray Williams, Executive Director of the Greenville Sports Commission, stated her support of constructing beach volleyball courts in the City. She stated that beach volleyball is the fastest growing sport in NCAA Division 1, and the addition of the courts would help bring that market to Greenville.

Ms. Taylor Ringler stated that she is a student at J.H. Rose High School and is active in beach volleyball. She stated that she currently has to travel for practice and tournaments and feels that a local court would help bring inclusiveness into the sport.

Ms. Marjorie Ringler stated that she is Taylor's mother and serves as the team mother for the J.H. Rose High School beach volleyball team. She stated that having local courts would allow increased participation among those that cannot afford to travel. She noted the amount of money that is spent on the different games and tournaments and stated that it would be good to bring that market to Greenville.

Mr. Matthew Hoffman stated that he is a long time participant and supporter of beach volleyball. He conveyed the difficulties in finding regulation-size courts to practice on in Greenville. He stated that beach volleyball is a growing and inclusive sport.

Ms. Riley Cutler stated that she plays beach volleyball and that it is hard to maintain interest with limited courts locally. She stated that she currently travels to Raleigh to practice and play.

Ms. Leigh Cutler stated that she is Riley's mom. She thanked the Council for opportunity to address them and stated that it would be good to have the ability to host tournaments and bring visitors to the area. She stated that there is a lot of talent locally.

Mr. David Perkins stated that he runs the Carolina East Volleyball club and has regional and national players from ages 10 – 18. He stated that they travel to Greensboro, Wilmington, New



Bern, Apex, and Raleigh for tournaments and training. He stated that they are practicing in someone’s backyard and they are limited locally with just one court, so they are not able to advertise the sport widely because he has to limit his numbers. He stated that he is coaching players at J.H. Rose and D.H. Conley and he sees the potential for growing it into a varsity-level sport.

Mr. Don Edwards spoke on behalf of Uptown Properties in favor of placing a hotel on Evans Street. He stated that Uptown Properties has had many years of experience in downtown revitalization and that the company preserves history and does not cut down trees. He noted that their project in Farmville, the construction of lofts that have added \$2 million to the tax base. He expressed his hope of the Uptown area ultimately gaining \$1 billion tax base and becoming a walkable, eco-friendly region.

Mr. Clay Barber introduced himself as an engineer with Sound Rivers and also an owner of Knee Deep Adventures. He expressed his support of the City’s efforts to activate the river as both a community member and business owner.

Hearing no one else who wished to speak during the Public Comment period, Mayor Connelly closed the public comment period at 6:24 p.m.

APPOINTMENTS

APPOINTMENTS OF CITY COUNCIL MEMBERS TO BOARDS AND COMMITTEES

Taxicab Appeal Board

Council Member Meyerhoeffer made a motion to reappoint Mayor Pro-Tem Glover. Council Member Bell seconded the motion and it carried unanimously.

Joint Pay & Benefits Committee

Council Member Litchfield made a motion to reappoint Council Member Smiley. Council Member Bell seconded the motion and it carried unanimously.

Council Member Litchfield made a motion to reappoint Mayor Pro-Tem Glover. Council Member Bell seconded the motion and it carried unanimously.

Other Post-Employment Benefits Trust

Council Member Bell made a motion to reappoint Council Member Litchfield. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

Audit Committee



Mayor Connelly made a direct appointment to reappoint Mayor Pro-Tem Glover, Council Member Meyerhoeffer, and Council Member Smiley.

City Council Economic Development Committee

Mayor Connelly stated that with the City will be appointing three members to the ENC Greenville Alliance Board so he recommended that the City Council abolish the City Council Economic Development Committee.

Council Member Smiley made a motion to that effect. Council Member Bell seconded the motion and it carried unanimously.

APPOINTMENTS TO THE MIDEAST COMMISSION

Council Member Smiley made a motion to appoint Planning & Development Services Director Thomas Barnett and Development Liaison Adrian Atkinson as the regular member and alternate member, respectively, for a term that will commence on January 1, 2020 and end December 31, 2021. Mayor Pro-Tem Glover seconded the motion and it carried unanimously.

CONSENT AGENDA

City Manager Wall introduced the following items on the Consent Agenda:

3. **Minutes from the October 7 and November 14, 2019 City Council Workshops and the November 14, 2019 City Council Meeting**
4. **Award of contract to Farrior and Sons for construction of Beach Volleyball Courts**
5. **Report on Bids and Contracts Awarded**
6. **Various tax refunds greater than \$100**

Council Member Litchfield requested that Item 4 be pulled from the Consent Agenda.

Council Member Smiley made a motion to approve the remaining items on the consent agenda. Council Bell seconded the motion and it was approved unanimously.

NEW BUSINESS



AWARD OF CONTRACT TO FARRIOR AND SONS FOR CONSTRUCTION OF BEACH VOLLEYBALL COURTS – Approved

Council Member Litchfield requested an overview of the advantages of constructing beach volleyball courts in Greenville.

Recreation and Parks Director Fenton stated that staff has researched building four side-by-side courts because they anticipate growth in the community. He stated that local teams have been unable to host and currently must travel to different locations to compete. He anticipates that the construction will allow the potential for tournaments and could translate into significant economic impact. He stated that the Recreation & Parks Department will develop instructional programs to teach the sport. He stated that Boyd Lee Park is an ideal location because of the existing space and facilities onsite to support the new courts.

Council Member Meyerhoeffer asked for details about the number of bids received, the length of construction, and its impact on the other operations and activities at the park.

Staff stated that four bids had been received for this project and the construction is anticipated to be 120 days. The courts will be located on the north side of the park and will be out of the way of the other activities.

Mayor Connelly expressed his overall support of the project and emphasized the importance of being competitive with the bids because of the price of the project.

Council Member Litchfield thanked staff and stated his support of the project because of the anticipated positive impact that it will have on the city.

Council Member Bell made a motion to approve the award of contract to Farrior & Sons for the construction of the beach volleyball courts. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

PUBLIC HEARINGS

ORDINANCE TO ANNEX LANGSTON WEST, PHASE 11, SECTION 2 INVOLVING 8.3920 ACRES LOCATED AT THE CURRENT TERMINUS OF MOXIE LANE – (Ordinance No. 19-056)

Chief Planner Chantae Gooby stated this is a request to annex 8.3920 acres that will yield 22 single family lots. The area is located to the south of the City in District 2 and will be located in the Swift Creek Watershed. She stated that the tax value will be \$5.6 million.

Mayor Connelly declared the public hearing for the proposed rezoning open at 6:46 pm



and invited anyone wishing to speak in favor to come forward. Seeing none, he called on those in opposition to come forward. Seeing none, Mayor Connelly closed the public hearing at 6:47 p.m.

Council Member Bell made a motion to approve. The motion was seconded by Council Member Daniels and unanimously carried.

ORDINANCE REQUESTED BY THE PLANNING AND DEVELOPMENT SERVICES DEPARTMENT TO AMEND THE CITY CODE BY ALTERING REGULATIONS RELATED TO DRIVE-THROUGH FACILITIES AND THE NUMBER OF ALLOWED MENU BOARDS – (Ordinance No. 19-057)

Planner Bradleigh Sceviour stated that the current ordinance allows each establishment one menu. He stated that staff has been working with the Dixon Food Group to update the current regulations to take on a more modern approach. Under the proposed amendment, each order point would have a menu board and pre-browse board that would improve the efficiency of the drive-thru lines. Each order point would have a menu board that measures 6' x 7' and a pre-browse board that measures 4' x 5'. He stated that staff has determined that the request is in conformity with the Horizons Plan.

Mayor Connelly opened the public hearing at 6:50 p.m. and called for speakers in favor of the request to come forward.

Attorney Kenneth Haywood spoke on behalf of his client, Mr. Wayne Dixon, and McDonalds USA. He stated his appreciation for staff's help in this effort to modernize menu reader boards in the City.

Mr. Wayne Dixon thanked the City Council for their consideration.

Seeing no additional speakers in favor of the request, Mayor Connelly called for speakers in opposition to come forward. Seeing none, Mayor Connelly closed the public hearing at 6:52 p.m.

Council Member Litchfield made a motion to approve. The motion was seconded by Mayor Pro-Tem Glover and unanimously approved.

FIRST PUBLIC HEARING FOR THE 2020-2021 ANNUAL ACTION PLAN FOR THE CDBG AND HOME INVESTMENT PARTNERSHIP FUNDS

Senior Planner Tiana Berryman stated that it is time to prepare for the Community Development Block Grant (CDBG) and Housing Urban Development (HUD) through the 2020 Action Plan. She stated that this will be 3rd plan in sequence of 5. Staff will present the draft to the community in the Spring for feedback before submission to HUD in May. She stated that the City will remain focused on programs that promote home ownership and public services. She stated that top priorities include new construction, infrastructure improvements, the acquisition and



demolition of substandard properties, down payment assistance programs, and financial literacy classes to support prospective homebuyers.

Mayor Connelly opened the public hearing at 6:56 p.m. He called for speakers in support of the item to come forward with up to ten minutes allocated to first speaker, and up to three minutes allotted for each additional speaker for a total of 30 minutes.

Mr. Doug Thomas McKinney, a member of the North Carolina Alliance of Social Justice, stated that it is important that people in the impacted areas are involved in making decisions making. He stated that there needs to be more dialogue between the Housing Division and other non-profits in the community. He requested the opportunity become involved and offered to help identify ways to get more people involved.

Ms. Jaquel Simmons, representing the Coalition Against Racism stated her concerns about the displacement of citizens in those areas and her worry that the projects will be handled in a piecemeal fashion. She asked that the residents be involved in the process and stated her appreciation of the City Council's support.

Mayor Connelly called on additional speakers to come forward. Seeing none, he called on speakers in opposition of the item to come forward to speak. Seeing none, Mayor Connelly closed the public hearing at 7:00 p.m.

Council Member Daniels requested that Senior Planner Berryman share information about the Affordable Housing Loan Committee.

Senior Planner Berryman stated that the Affordable Housing Loan Committee is a monthly forum in place for consistent community feedback. The Affordable Housing Loan Committee meets monthly on the 2nd Wednesday at 4 p.m. Notices are posted on the website, and citizens can contact the office at 252-329-4481 for additional information about programs.

Council Member Daniels stated that she had passed along information received from Mr. McKinney to the City Manager and would be in touch with Mr. McKinney to follow up.

OTHER ITEMS OF BUSINESS

PRESENTATION OF A LETTER OF INTENT BETWEEN THE CITY OF GREENVILLE AND CO X HOLDINGS, LLC RELATED TO THE COMMERCIAL DEVELOPMENT OF EVANS STREET PROPERTY FOR A BOUTIQUE STYLE HOTEL – Approved

Mr John Sandlin with Co X Holdings, LLC introduced himself to the City Council and stated that he would be available to answer questions after the presentation.



Assistant City Manager Cowin presented a Letter of Intent (LOI) that outlined the project requirements, public parking and public investment. He stated that the hotel would be located between 4 & 5th Streets. He stated that current projections are looking at a development investment between \$16-19 million. He stated that the project would put the property back on the tax roll and would help increase the number of individuals in Uptown on a longer basis, further enhancing opportunities for economic development in the urban core. He stated that the estimates are very conservative and do not include potential additional tax revenues and expanded activity in uptown, but noted that if they were included, the projections presented would be doubled. He stated that the LOI is non-binding and the terms would be confirmed in an agreement. Co X Holdings, LLC would be required to apply for a building permit within 12 months. If they are not able to secure the permit within 13 months, the City would have the option to issue a refund minus the deposit. The project must be completed within 20 months or face a fine of \$500 per day. Other required components include streetscape improvements, art, at least 60 rooms with a lounge, 3 starts, and references from other municipalities. He stated that there would be a leasing option for parking. Rates would be adjusted as Council approves lease rates in manual of fees. He stated that revenue generation from parking would total at least \$50k per year.

The City Council expressed concerns regarding the businesses in the area that would be potentially impacted by construction. The City Council asked staff to engage with the business community, look at stronger incentives to make sure that the project is completed on time, and to work out more details regarding timelines with the developer before the City enters into an agreement. The City Council further noted the impact that this would have on the city's skyline and asked that the developer be aware of how that would look.

Council Member Bell made a motion to approve. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

BUDGET ORDINANCE AMENDMENT #6 TO THE 2019-2020 CITY OF GREENVILLE BUDGET (ORDINANCE 19-031), THE FEMA-HURRICANE PROJECT FUND (ORDINANCE 17-002), AND THE RECREATION & PARKS CAPITAL PROJECTS FUND (ORDINANCE 17-024)

Financial Director Byron Hayes presented adjustments for the listed funds and stated that operating would increase to \$142.8 million operating.

Council Member Smiley made a motion to approve. Council Member Bell seconded the motion and it carried unanimously.

UPDATE ON BRADFORD CREEK PUBLIC GOLF COURSE



Council Member Bell stated that he would like to hear an update on Bradford Creek’s operations under Caspar Golf at a future meeting.

City Manager Wall stated that staff will bring an update before the City Council at a January 2020 meeting.

CITY MANAGER’S REPORT

City Manager Wall expressed her anticipation for the new year and voiced her appreciation of the employees for the work that they do, and to the City Council for their patience and consideration.

COMMENTS FROM THE MAYOR AND CITY COUNCIL

The Mayor and City Council wished everyone a Happy Holiday and encouraged citizens to attend the City’s first annual New Year’s Eve celebration at the Greenville Town Common.

ADJOURNMENT

Council Member Bell moved to adjourn the meeting, seconded by Council Member Daniels. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 7:30 pm.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk

PROPOSED MINUTES
CITY COUNCIL WORKSHOP
CITY OF GREENVILLE, NORTH CAROLINA
THURSDAY, DECEMBER 12, 2019



A workshop of the Greenville City Council was held on Thursday, December 12, 2019, in Conference Room 337, located on the third floor at City Hall, with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 4:14 p.m.

Those Present:

Mayor P.J. Connelly, Mayor Pro-Tem Rose Glover, Council Member Monica Daniels, Council Member Will Bell, Council Member Rick Smiley, and Council Member Brian Meyerhoeffer, Jr.

Those Absent:

Council Member William Litchfield, Jr.

Also Present:

City Manager Ann E. Wall, City Attorney Emanuel McGirt, City Clerk Valerie Shiuwegar, Assistant City Manager Michael Cowin, Assistant City Manager Ken Graves

APPROVAL OF THE AGENDA

Council Member Bell made a motion to approve the agenda as presented. Council Member Daniels seconded the motion and it carried unanimously.

REVISIONS TO THE CITY OF GREENVILLE'S NEIGHBORHOOD TRAFFIC CALMING GUIDELINES

Traffic Engineer Stacy Pigford presented proposed revisions of the City of Greenville's Neighborhood Traffic Calming Guidelines to the City Council. She stated that the policy had been created in 2001 with updates in 2008 and 2015 to the qualifying point system. She stated that under this proposed revision, staff will send residents a notice by mail rather than requiring a petition. If residents do not agree with the requested traffic calming measures, they will have two weeks to provide their responses to the City. If staff receives responses from over 50% of the residents, then the project will not move forward. She stated that the proposed update will streamline the process and it make it more efficient. It was noted that the proposed update would eliminate forums and would not make any changes to the current qualifications.

Mayor Connelly asked if there are additional options besides speed cushions.



City Engineer Rik DiCesare stated that the cushions had been placed in the Uptown region to help calm the traffic and help enforce speeding regulations. He stated the City employs traffic cushions because larger emergency vehicles are able to maneuver over them quickly, minimizing impact on response time. Staff noted that the white rails near the speed cushions on 5th Street are for the bike lanes.

Council Member Daniels voiced concerns about participation and requested that staff look into additional methods to put out notices, such as establishing neighborhood contacts and telephone notices.

City Manager Wall stated that staff would process all feedback received back the City Council and look into updated traffic calming options and notice options.

BUILD GRANT UPDATE

Engineer Lynn Raynor provided the City Council with an update on the BUILD Grant. He stated that the grant would allow the City to provide connectivity to four main regions of Greenville: West Greenville, the Medical District, the Uptown Region, and East Carolina University (ECU). He laid out the specific components and phases of the project to the City Council.

Engineer Raynor stated that one of the requirements of the award is a match of local funds in the amount of \$6 million. He stated that the City is the largest partner along with ECU, the North Carolina Department of Transportation (NCDOT), the Arts Council, and Taft Family Ventures. He stated that the project must be shovel-ready with funds obligated by September 2021.

City Manager Wall stated that the design would need to be done April 2021 – June 2021 before staff can move on to construction phasing. She stated that 2 phases are already designed but it would make sense to do 5th Street in one full project.

Assistant City Manager Cowin stated that the City had requested \$18 million and had been awarded \$15 million. He stated that the City is close to coming up with \$216K towards closing the gap. He advised that the project will impact a number of employers along the 5th Street corridor. He stated that moving forward, the City will need to consider engaging with community partners, appropriating additional funds, changing the scope of the projects, or employing a combination of those options. He advised that the amounts presented for each project were a projected part of the grant proposal and are subject to change based on the economic climate.

The City Council requested that staff look into engaging state partners as well.

TOWN CREEK PEDESTRIAN BRIDGE UPDATE



Recreation & Parks Director Gary Fenton stated that the Greene Street Bridge, a structure that had been preserved and relocated to the south of the Town Creek Culvert, is an important part of the City's greenway system. He stated that there are plans to repaint it and add interchangeable colored lights to it that can be changed to show support for local events. He stated that the City will be able to rent it out as a venue for weddings and events.

ADJOURNMENT

There being no further business before the City Council, motion was made by Council Member Bell and seconded by Council Member Daniels to adjourn the meeting. Motion carried unanimously. Mayor Connelly adjourned the meeting at 5:09 p.m.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Master Right-of-Way Encroachment Agreement with SQF, LLC

Explanation: **Abstract:** The City has received a request from SQF, LLC to encroach over and upon the public street right-of-ways of the City for installation, operation, and maintenance of communication facilities.

Explanation: For City Council's consideration is the Master Right-of-Way Encroachment Agreement setting out the terms by which SQF, LLC can encroach over and upon the public street rights-of-ways of the City.

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 SQF, LLC, to encroach over and upon the public street right-of-ways of the City for installation, operation, and maintenance of communication facilities.

ATTACHMENTS:

- ☐ Agreement

-----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 ENG
PO Box 7207
Greenville, NC 27834

Master Rights of Way Encroachment Agreement

THIS AGREEMENT made and entered into this the _____ of _____, 20__ 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 referred to as the “**City**”, and **SQF, LLC**, a Delaware LLC authorized to do business in North Carolina, party of the second part, and hereinafter referred to as “**PERMITTEE.**”

W I T N E S S E T H

WHEREAS, PERMITTEE, party of the second part, desires to encroach upon the public rights of way of the public streets within the corporate limits of the City of Greenville for the installation, operation, and maintenance of a Small Wireless Network and associated facilities; and

WHEREAS, it is to the material advantage of PERMITTEE to effect this encroachment, and the CITY, in the exercise of authority conferred upon it by North Carolina General Statute § 160A-296, is willing to permit the encroachment within specific locations within the City public rights of way of the public streets within the corporate limits of Greenville as approved by the Director of Public Works, subject to the terms and conditions of this Agreement, the provisions of the Code of Ordinances, City of Greenville, North Carolina, and the provisions of North Carolina General Statute § 160A-400.50 et seq.; and

NOW, THEREFORE, in consideration of the execution of this Agreement by the CITY, the benefits flowing to PERMITTEE , and the covenants and agreements herein contained with respect to the obligations of PERMITTEE hereunder, the CITY does hereby give and grant unto PERMITTEE the right and privilege to make the encroachment as shown on all permits to construct the encroachment, subject to the conditions contained in this Agreement; and

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

The covenants and agreements by and between the CITY and PERMITTEE as a part of the consideration for this encroachment agreement are as follows:

SECTION 1. DEFINITIONS

For the purposes of this agreement, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise defined by Federal or State law. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Communications Services means all services that PERMITTEE is authorized to provide under Law.

GUC means Greenville Utilities Commission.

Facilities includes, without limitation, cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, surface location markers, utility poles, appurtenances, and related facilities to be located by the PERMITTEE in the Public Rights of Way of the CITY and used or useful for the provision of communications services it is authorized by law to provide.

NCDOT means North Carolina Department of Transportation.

LAW means any local, state or federal legislative, judicial or administrative order, certificate, decision statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Agreement, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 70, codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the North Carolina Utilities Commission pursuant thereto.

PUBLIC RIGHTS OF WAY or PUBLIC WAY means the surface, the airspace above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, utility easement hereafter held by the City or other public rights-of-way now or which shall entitle the CITY and PERMITTEE to the use thereof for the purpose of installing and maintaining small wireless facilities owned by the PERMITTEE. No reference herein to the "public way" shall be deemed to be a representation or guarantee by the CITY that its title to any property is sufficient to permit its use for such purpose, and PERMITTEE shall, by its use of such terms, be deemed to gain only such rights to use property in the CITY as the CITY may have the undisputed right and power to give or as granted by Federal or State law.

STATE means the State of North Carolina.

SECTION 2. GENERAL PROVISIONS

- a. Use of Public Rights of Way. For the purpose of installation, operation and maintenance of small wireless facilities, PERMITTEE may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public streets and ways within the corporate limits of Greenville such cables, conduits, splice boxes, cabinets, hand holes, manholes, vaults, equipment, surface location markers, and other appurtenances as are necessary to the operation of the small wireless facilities provided, however, that, subject to applicable Law, PERMITTEE shall comply with all design, construction, safety, and performance provisions contained in this Agreement and other applicable local ordinances. The PERMITTEE accepts the City right-of-way "as is" and "where is" and assumes all risks related to the use. The CITY is not liable for any damage to Small Wireless Facility Equipment due to an event causing damage to the Small Wireless Facility Equipment except where such damage is caused by the sole negligence or willful misconduct of the CITY.
- b. Location of Public Rights of Way and Existing Utilities. It is the responsibility of PERMITTEE to determine the location of the public rights of way and utilities located thereof and to show the same on construction drawings. PERMITTEE shall notify other utility owners and provide protection and safeguards to prevent damage or interruption to existing facilities and to maintain accessibility to existing utilities. Cost to repair, restore, or relocate existing facilities due to this encroachment shall be the responsibility of PERMITTEE. To the extent applicable, PERMITTEE agrees to fully comply with Underground Utility Safety and Damage Prevention Act, Article 8A of Chapter 87 of the NCGS.
- c. Use of Areas Outside the Public Rights of Way. This Agreement only covers the encroachment over and upon the public rights of way of the public streets maintained by the CITY within the corporate limits of Greenville. PERMITTEE shall secure all necessary easements, permits, permission, or approval for encroachment or other use of property outside the CITY maintained right of ways. Upon request, PERMITTEE shall provide to the CITY documentation of the above mentioned easements, permits, permissions and encroachments or use of properties outside the public street rights of way maintained by the CITY.
- d. Police Powers. PERMITTEE's rights are subject to the police powers of the CITY to adopt and enforce ordinances for the health, safety and welfare of the public to extent allowed by law. Subject to applicable Law, PERMITTEE shall comply with all applicable general laws and ordinances enacted by the CITY pursuant to that power (for instance, City's noise ordinance).
- e. E-verify. If this agreement is subject to NCGS § 143-133.3, the PERMITTEE and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

SECTION 3. TERM

Term. The term of this Agreement is twenty (20) years (the "First Term"). At the end of the First Term, the Agreement shall automatically renew for successive one-year terms unless terminated by either party as provided herein or unless superseded by a new or amended agreement. Notwithstanding the foregoing, the grant of Permission to encroach shall become void, and this Agreement terminated, if the Applicant does not begin installation of the Facilities within one (1) year of the date of this Agreement (unless mutually agreed upon in writing by the parties) and thereafter diligently pursue installation to completion.

SECTION 4. CONSTRUCTION AND TECHNICAL STANDARDS

- a. Compliance with Construction and Technical Standards. PERMITTEE shall construct, install and maintain its small wireless facilities in an orderly and workmanlike manner and in a manner consistent with all laws, City ordinances, construction standards, current technological standards and governmental requirements, which standards are incorporated by reference herein.
- b. Tree Trimming Plan for Overhead Lines. After approval by the CITY of the small wireless facility, PERMITTEE shall submit to the CITY a tree trimming plan if required by the Director of Public Works for review and approval by the City Arborist.
- c. Structural Engineering Analysis. The PERMITTEE shall submit a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Small Wireless Facility Equipment can reasonably support the proposed Small Wireless Facility Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location. The PERMITTEE shall inspect the City right-of-way on which the PERMITTEE's Small Wireless Facility Equipment will be placed and shall base its determination of the suitability of the City right-of-way for PERMITTEE's purposes on such inspection, on a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Small Wireless Facility Equipment can reasonably support the proposed Small Wireless Facility Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location.
- d. Approval of Construction Plans. Prior to the placement or installation of any part of the PERMITTEE's facilities within public rights of way, PERMITTEE shall first submit to the Director of Public Works a Construction Plan, sealed by a Professional Engineer and/or Land Surveyor licensed in the State, including a concise description of the facilities proposed to be erected or installed, specifications, engineering drawings, and detailed plans indicating the proposed location of all such facilities and their relationship with existing utilities including the location of the right of way and all above and below ground structures located within the right of way. All permits issued by the CITY shall become part of this agreement.
- e. Pole Attachment. PERMITTEE shall provide the CITY with written verification of PERMITTEE's right to attach to poles along the path of the fiber optic cable when said poles are to be utilized, and that there is sufficient clearance for attachment.
- f. Identification of Facilities. All above ground structures shall be marked to identify the owner of the structure and emergency contact for the same.
- g. NCDOT Approval. PERMITTEE shall submit to the CITY written verification of approval of the PERMITTEE's final construction plans from the North Carolina Department of Transportation (NCDOT) where NCDOT right of ways are involved, and evidence of the coordination of construction with other utilities along PERMITTEE's facilities route.
- h. No placement or installation of any part of the PERMITTEE'S facilities shall be commenced by any person until construction permits and written approval has been issued by the Director of Public Works; provided further, that such permits and approval shall not be unreasonably withheld and action thereon shall be taken within a reasonable period of time as allowed by law.

- i. PERMITTEE shall provide the following to the Director of Public Works at least three (3) working days before the start of construction.
 - (1) Application for a Right-of-Way Excavation & Restoration Permit
 - (2) Proposed schedule of operations.
 - (3) The name(s) and phone numbers of the project contact person(s).
 - (4) Tree trimming plan for overhead lines.

- j. Traffic Control Plan. PERMITTEE shall submit with the original application and coordinate with the City Traffic Engineer, a traffic control plan prepared in accordance with the Manual on Uniform Traffic Control Devices and amendments or supplements thereto (MUTCD) as published by the Federal Highway Administration at least forty-eight (48) hours prior to the start of construction. PERMITTEE shall install and maintain all traffic control devices in accordance with the plan and MUTCD. Street or lane closures shall be limited to the hours between 8:30AM and 4:30 PM, Monday-Friday or as approved by the City Traffic Engineer.

- k. Record Drawings. Within sixty (60) days after the completion of any construction activities of the small wireless facilities within the encroachment areas, PERMITTEE shall provide to the Director of Public Works copies of the record drawings, being two (2) printed copies along with a PDF file of the same, and a digital version compatible with ESRI GIS software.

- l. Requirement for Underground Installations. All installations that can practicably be placed underground shall be underground where feasible and shall be underground in those areas of the CITY where all utilities serving the area are underground at the time of installation. In areas where other utility facilities are above ground at the time of installation, PERMITTEE may install its service above ground on such facilities. All cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. At such time as all utilities and cable serving the area are required to be placed underground by the CITY or are placed underground, PERMITTEE shall likewise place its services underground without cost to the CITY.

- m. Applicable Standards. PERMITTEE shall at all times comply with the (1) applicable Federal, State and local regulations; and (2) the standards as set forth in this Agreement.

- n. Interference with Persons, Improvements, Public and Private Property and Utilities. PERMITTEE's small wireless facilities shall be located, erected and maintained so that such system shall:
 - (1) Not endanger or interfere with the health, safety or lives of persons;
 - (2) Not interfere with the utilization of the right of way by the CITY or utilization by the GUC of the right of way or facilities maintained by GUC;
 - (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction, repair or removal;
 - (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction, repair or removal; and

- (5) Not obstruct, hinder or interfere with any gas, electric, water or other utilities, cable, telecommunication or telephone facilities located within the CITY.
- o. Excavation and Work in Public Streets; Application; Restoration; Damage.
- (1) Prior to the start of any permitted work under this agreement, the PERMITTEE shall make application for a Right-of-Way Excavation and Restoration Permit.
 - (2) PERMITTEE shall install the cable by directional boring. PERMITTEE may excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfacing in or on any street, right-of-way, or public place as necessary for directional boring. Manholes and handholes shall not be visible in residential areas unless approved by the Director of Public Works who may require a route change. If authorized in writing by the Director of Public Works, sidewalks may be excavated for the placement of manholes and handholes.
 - (3) Excavations or borings made by PERMITTEE under the public streets, rights-of-way or public places of the CITY, pursuant to this Agreement, shall be made in compliance with the ordinances and regulations of the CITY in effect at the time of such excavation.
 - (4) Prior to any excavation in or boring under the public streets or rights-of-way of the CITY, PERMITTEE shall notify all utilities that may be affected by such excavation in or boring under the street, rights-of-way or property upon which the work is to be done, and the nature of the work to be performed. Additionally, the services of North Carolina One-Call may be used to notify its member utilities.
 - (5) In situations deemed by the PERMITTEE to constitute an emergency involving a danger to the public health, safety and welfare, PERMITTEE shall notify the Director of Public Works of the nature and the location and of the potential hazard.
 - (6) During the installation, repair or removal of PERMITTEE's facilities in or on any street, right of way or public place, PERMITTEE agrees to provide at all times proper signs, signal lights, flagmen, barricades, and other warning devices for the protection of pedestrian and vehicular traffic in conformance with the approved Traffic Control Plan and MUTCD.
 - (7) PERMITTEE shall exercise due care in the operation, installation, alteration, repair or removal of its system. If any utility or property of the CITY or GUC, real or personal, is damaged, impaired or destroyed as a result of either the negligent or intentional acts of PERMITTEE, its employees, agents or persons operating under its direction, supervision or control, PERMITTEE shall be liable to the CITY for such damages, including but not limited to the cost to repair or replace the utility or property.
 - (8) Immediately after PERMITTEE installs or repairs its system, PERMITTEE shall refill any excavations according to the technical specifications of the CITY. PERMITTEE shall restore and replace landscaping destroyed, disturbed, or damaged by such work in accordance with the technical specifications of the CITY and subject to the inspection of the Director of Public Works.
 - (9) If the installation, alteration, repair or removal of the facilities in or on any street, right of way or public place requires the temporary removal of bricks, grates, trees or other property or

materials belonging to the CITY, PERMITTEE shall, until such materials are reinstalled, and in the exercise of due care, store said property or materials in a safe place satisfactory to the CITY to minimize the risk of damage or theft.

- (10) PERMITTEE shall preserve and protect all trees and shrubbery located within the streets, rights of way, and public places of the CITY from damage by PERMITTEE. PERMITTEE shall comply with the regulations of the CITY concerning the preservation and protection of trees and shrubs. PERMITTEE shall pay to the CITY the cost of treating, removing and replacing any tree or shrub on the streets, rights-of-way and public places of the CITY which has been damaged or destroyed as a result of the work of PERMITTEE.
- (11) Whenever the CITY, GUC, or NCDOT, or their successors or assigns, within the exercise of reasonable police power, for the benefit of the public safety, plan to widen, modify, close, relocate, grade or regrade any public street, sidewalk, or other public way, in, along, under or across, which PERMITTEE shall have installed any of its facilities, it shall be the duty of PERMITTEE, upon reasonable notice by the proper authority, and at no cost to the CITY, GUC, or NCDOT to remove or relocate as necessary its facilities.
- (12) PERMITTEE shall, on the request of any person holding a building moving permit issued by the CITY, temporarily raise or lower its lines to permit the moving of buildings. The expense of such temporary removal, raising or lowering of lines shall be paid by the person requesting the same, and PERMITTEE shall have the authority to require such payment in advance. PERMITTEE shall be given not less than fifteen (15) working days advance notice to arrange for such temporary line changes.
- (13) All necessary easements over and under private property, or encroachments upon NCDOT rights of ways, or railroad rights of way shall be acquired by PERMITTEE. The CITY neither promises nor contracts to obtain or acquire rights of way for the construction, installation, maintenance or operation of the PERMITTEE's system. PERMITTEE shall provide the CITY upon demand and within fifteen (15) days written verification of NCDOT's approval for the small wireless facility which encroaches upon NC's rights of way and owner approval for encroachments along any railroad or other rights of way or on private property.
- (14) Any damage to PERMITTEE's encroaching structure caused by the CITY's or GUC's use of its rights of way for construction or maintenance work in the ordinary course of its business, shall be borne by PERMITTEE except where such damage is caused by the sole negligence or willful misconduct of the CITY.
- (15) Removal and Abandonment.
 - a) If this Agreement is terminated and if PERMITTEE has no other legal right to keep its facilities in place, PERMITTEE agrees to promptly vacate and remove its above-ground facilities at its own expense, provided that the Director of the Department of Public Works may, at that time, agree in writing, upon the written request of PERMITTEE to allow abandonment of some or all of its above-ground facilities in place, if PERMITTEE will transfer ownership of any abandoned facilities to the CITY. PERMITTEE may abandon underground facilities in place.

- b) Should any removal or abandonment of facilities in place be approved by the Director of Public Works, PERMITTEE shall thereafter apply for and obtain any necessary permits.
- c) If any portion of the above-ground facilities covered under this Agreement are no longer used by the PERMITTEE, or are abandoned for a period in excess of 180 days, the PERMITTEE shall notify the CITY and shall vacate and remove the facilities at its own expense within a reasonable time.

SECTION 5. EMERGENCY CONTACTS

- a. Coordination of Emergency Events. In case of an emergency, CITY will act to protect the public health and safety of its citizens and to protect public and private property, notwithstanding any provision in this Agreement. In the event addressing the emergency impacts the Permittee's Small Wireless Facility Equipment, the CITY will make every reasonable effort to coordinate its emergency response with the PERMITTEE. PERMITTEE shall post on all Small Wireless Facility poles the emergency contact information of the PERMITTEE.
- b. Notice of Changes: PERMITTEE will keep emergency contact information current, and provide the Director of Public Works with information as to changes within a reasonable time.
- c. Response to Network Emergency: In case of a network emergency, PERMITTEE may access its Small Wireless Facility Equipment without first obtaining a permit to disturb the City right-of-way provided PERMITTEE has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, PERMITTEE shall conduct its activities within the City right-of-way in such a manner as to protect public and private property. PERMITTEE will make every reasonable effort to coordinate its emergency response with the CITY. To that end, prior to entering the City right-of-way, PERMITTEE will contact the Director and give notice to CITY of the network emergency and an estimated time period to address the situation.

SECTION 6. TRANSFER OF OWNERSHIP OR CONTROL

- a. No transfer of ownership or control of the small wireless facility shall occur unless approved by the CITY. A transfer of ownership or control of the small wireless facility shall comply with all applicable Federal, State and Local Laws. The PERMITTEE shall promptly notify the CITY of its intent to transfer ownership or control of the small wireless facility and shall provide the CITY with a true copy of all the documents relating to ownership transfer. The transferee is required to accept this Agreement and all of its terms, provisions, and any amendments at the time of transfer. Performance bond and letter of credit, insurance are required from the transferee before the transfer is complete. Notification to the CITY shall be as outlined herein. Notwithstanding anything herein to the contrary, PERMITTEE shall be permitted to transfer ownership and control of its facilities to any other entity with which it is affiliated through ownership (for example, a corporate parent, a subsidiary, or a subsidiary of a corporate parent) providing that such other entity undertakes all the obligations of PERMITTEE under this Agreement.

- b. Grant of Third Party Rights. Notwithstanding any provision in this Agreement to the contrary, the CITY agrees and acknowledges that PERMITTEE shall have the right to grant to third parties indefeasible rights of use and/or a right to use its facilities, which are subject to the rights that have been granted to PERMITTEE under this Agreement and that such actions by PERMITTEE shall not constitute a transfer of ownership or control of the facilities or require the prior approval by the CITY.
- c. Restoration of Property. In removing its Small Wireless Network and associated facilities, PERMITTEE shall not excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfaces in or on any street, right-of-way or public place. PERMITTEE shall refill, at its own expense, any excavation and boring that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to PERMITTEE's removal of its facilities without affecting the electrical, television, telephone or other telecommunication cable, wires or attachments or the utilities. The CITY shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance, performance bond and letter of credit as provided herein shall continue in full force and effect during the period of removal until full compliance by PERMITTEE with the terms and conditions of this paragraph and this Agreement.
- d. Restoration by CITY; Reimbursement of Costs. In the event of a failure by PERMITTEE to complete any work required by c. above, or any other work required by CITY ordinance within the time as may be established and to the satisfaction of the CITY, the CITY may cause such work to be done and PERMITTEE shall reimburse the CITY the cost thereof within fifteen (15) days after receipt of an itemized list of such costs or the CITY may recover such costs through the performance bond provided by PERMITTEE. The CITY shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

SECTION 7. PERFORMANCE BOND, LETTER OF CREDIT, INSURANCE, AND INDEMNIFICATION

- a. Performance Bond or Letter of Credit.
 - (1) At the time this Agreement is accepted, PERMITTEE shall deliver to the CITY:
 - a) Letter of credit issued by a federally-insured banking institution in the amount of one hundred thousand dollars (\$100,000) or
 - b) Performance bond issued by a surety licensed in North Carolina in the amount of \$100,000

The bond or letter of credit shall be a security fund. Failure to timely obtain, file and maintain said bond or letter of credit shall constitute a substantial violation within the meaning of this section.

- (2) The security fund shall serve as security for:
 - a) The faithful performance by PERMITTEE of all the terms and conditions of the Agreement;

- b) Any expenditure, damage or loss incurred by the CITY occasional by PERMITTEE's unexcused or uncured failure to comply with all lawful rules, regulations, orders, permits and other directives of the CITY issued pursuant to this Agreement; and
 - c) The payment by PERMITTEE of all liens and taxes, and all damages, claims, costs or expenses which the CITY has been compelled to pay or incur by reason of any act or default of PERMITTEE, and all other payments due the CITY from PERMITTEE pursuant to this Agreement.
 - d) The costs and expenses incurred by the CITY as a result of PERMITTEE's abandonment of the small wireless facility at any time during the term of the Agreement or any extension thereto; or
- (3) If PERMITTEE fails to repay to the CITY any damages, costs or expenses which the CITY shall be compelled to pay by reason of any act or default of PERMITTEE in connection with this Agreement, the CITY may then demand payment from the security fund.
 - (4) The letter of credit shall be issued to the City of Greenville and shall be made payable upon a draft submitted by the CITY and accompanied by the written statement of an appropriately authorized official for the CITY that payment is due the CITY under the terms of this Agreement as a result of a default by PERMITTEE. The CITY shall be the beneficiary under the performance bond. PERMITTEE shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose. During the term of the Agreement, the letter of credit shall be maintained in the amount of one hundred thousand dollars (\$100,000), or the performance bond shall be maintained in the amount of one hundred thousand dollars (\$100,000).

b. Insurance.

- (1) All Certificates of Insurance must be furnished before work begins. A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.
- (2) PERMITTEE shall immediately advise the CITY of any litigation arising out of this Agreement that may develop that would affect this insurance.
- (3) Neither the provisions of this section nor any damages recovered by the CITY hereunder shall be construed or limit the liability of PERMITTEE under the Agreement or for damages.
- (4) PERMITTEE shall provide at least 30 days' prior written notice to CITY of cancellation or non-renewal of any required coverage that is not replaced.
- (5) All insurance policies provided under the provisions of this ordinance or the Agreement shall be written by companies authorized to do business in the State of North Carolina and approved by the State Commissioner of Insurance.
- (6) PERMITTEE shall include the City of Greenville as an Additional Insured to the General Liability and Automobile Liability policies including those of its subcontractors while working hereunder.

(7) **Commercial General Liability:**

Limits:

Each Occurrence:	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The form of coverage must be the ISO CG 00 01 policy or equivalent as approved by the State of North Carolina Department of Insurance. Certificates evidencing ongoing completed operations coverage shall be provided for at least two years following the termination or expiration of this Agreement.

(8) **Commercial Automobile Liability:**

Limits:

\$1,000,000 combined single limit.

The City of Greenville must be added as an Additional Insured on the Commercial Auto Liability policy.

(9) **Workers' Compensation Insurance:**

Limits:

Workers Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

Workers Compensation must include all employees.

(10) **Umbrella Liability:**

An Umbrella or excess Liability policy covering General Liability, Automobile Liability and Employers Liability with a minimum limit of \$10,000,000 is required. PERMITTEE may use any combination of primary and excess to meet required total limits.

Notwithstanding the forgoing, PERMITTEE may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event PERMITTEE elects to self-insure its obligation under this Agreement to include CITY as an additional insured, the following conditions apply: (i) CITY shall promptly and no later than thirty (30) days after notice thereof provide PERMITTEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide PERMITTEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) CITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of PERMITTEE; and (iii)

CITY shall fully cooperate with PERMITTEE in the defense of the claim, demand, lawsuit, or the like.

c. Indemnification.

- (1) To the maximum extent allowed by law, the PERMITTEE shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this agreement as a result of acts or omissions of the PERMITTEE or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (1) the PERMITTEE shall at its sole expense defend Indemnitees.
- (2) Definitions. As used in subsections (1) above and (3) below – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this agreement). “Indemnitees” means City and GUC, and their officers, officials, independent contractors, agents, and employees, excluding the PERMITTEE.
- (3) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this agreement.
- (4) Survival. This section shall remain in force despite termination of this agreement (whether by expiration of the term or otherwise) and termination of the services of the PERMITTEE under this agreement.
- (5) Limitations of the PERMITTEE’s Obligation. If this section is in, or is in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection (1) above shall not require the PERMITTEE to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

SECTION 8. NOTICES

Except as otherwise provided herein, all notices from PERMITTEE to the CITY pursuant to this Agreement shall be to the City Manager or his/her designee as follows:

City of Greenville
P.O. Box 7207
Greenville, NC 27835
Attention: City Manager

And to PERMITTEE

SQF, LLC
16 Middle Street, 4th Floor
Portland, ME 04101

PERMITTEE shall maintain with the CITY a telephone number and an address for service of notices by mail. PERMITTEE shall be required to advise the CITY of such addresses and telephone numbers and any changes thereof.

SECTION 9. FAILURE OF CITY TO ENFORCE THIS AGREEMENT, NO WAIVER OF THE TERMS THEREOF

PERMITTEE shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 10. SEVERABILITY

- a. **Invalidity.** If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on PERMITTEE and the CITY.
- b. **Court Action.** Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares any section, deemed by the CITY to be material, invalid, in whole or in part, or (ii) requires PERMITTEE either to

(a) perform any act which is inconsistent with any section deemed by the CITY to be material; or (b) cease performing any act deemed by the CITY to be material, the CITY shall so notify PERMITTEE and the CITY and PERMITTEE shall, in good faith, renegotiate that term or those terms of this Agreement.

SECTION 11. RIGHTS CUMULATIVE

All rights and remedies given to the CITY and PERMITTEE by this Agreement shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the CITY and PERMITTEE, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the CITY and PERMITTEE and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

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.

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST

Valerie Shiuwegar, City Clerk

SQF, LLC

By: _____
Joshua Broder, President

APPROVED AS TO FORM:

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

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

Byron Hayes, Director of Financial Services

Account Number _____

Project Code (if applicable) _____

RECOMMENDED:

Kevin Mulligan, Public Works Director

**State of North Carolina
County of Pitt**

I, _____, a Notary Public of said County and State, do hereby certify that Valerie Shiuwegar 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 the Mayor, P.J. Connelly, sealed with corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____

State of _____

County of _____

I, _____, a notary public in and for the aforesaid county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of _____, a _____ company organized and existing under the laws of the State of _____, (3) acknowledged that the foregoing agreement with the City of Greenville carries on in the usual way the company's business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Master Right-of-Way Encroachment Agreement with USCOC of Greater North Carolina, LLC

Explanation: **Abstract:** The City has received a request from USCOC of Greater North Carolina, LLC to encroach over and upon the public street right-of-ways of the City for installation, operation, and maintenance of communication facilities.

Explanation: For City Council's consideration is the Master Right-of-Way Encroachment Agreement setting out the terms by which USCOC of Greater North Carolina, LLC can encroach over and upon the public street rights-of-ways of the City.

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 USCOC of Greater North Carolina, LLC to encroach over and upon the public street right-of-ways of the City for installation, operation, and maintenance of communication facilities.

ATTACHMENTS:

- ▣ **Agreement**

-----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 ENG
PO Box 7207
Greenville, NC 27834

Master Rights of Way Encroachment Agreement

THIS AGREEMENT made and entered into this the _____ of _____, 20__ 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 referred to as the “**City**”, and **USCOC of Greater North Carolina, LLC**, a Delaware limited liability company authorized to do business in North Carolina, party of the second part, and hereinafter referred to as “**PERMITTEE.**”

W I T N E S S E T H

WHEREAS, PERMITTEE, party of the second part, desires to encroach upon the public rights of way of the public streets within the corporate limits of the City of Greenville for the installation, operation, and maintenance of a Small Wireless Network and associated facilities; and

WHEREAS, it is to the material advantage of PERMITTEE to effect this encroachment, and the CITY, in the exercise of authority conferred upon it by North Carolina General Statute § 160A-296, is willing to permit the encroachment within specific locations within the City public rights of way of the public streets within the corporate limits of Greenville as approved by the Director of Public Works, subject to the terms and conditions of this Agreement, the provisions of the Code of Ordinances, City of Greenville, North Carolina, and the provisions of North Carolina General Statute § 160A-400.50 et seq.; and

NOW, THEREFORE, in consideration of the execution of this Agreement by the CITY, the benefits flowing to PERMITTEE , and the covenants and agreements herein contained with respect to the obligations of PERMITTEE hereunder, the CITY does hereby give and grant unto PERMITTEE the right and privilege to make the encroachment as shown on all permits to construct the encroachment, subject to the conditions contained in this Agreement; and

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

The covenants and agreements by and between the CITY and PERMITTEE as a part of the consideration for this encroachment agreement are as follows:

SECTION 1. DEFINITIONS

For the purposes of this agreement, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise defined by Federal or State law. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

Communications Services means all services that PERMITTEE is authorized to provide under Law.

GUC means Greenville Utilities Commission.

Facilities includes, without limitation, cables, conduits, converters, splice boxes, cabinets, handholds, manholes, vaults, equipment, surface location markers, utility poles, appurtenances, and related facilities to be located by the PERMITTEE in the Public Rights of Way of the CITY and used or useful for the provision of communications services it is authorized by law to provide.

NCDOT means North Carolina Department of Transportation.

LAW means any local, state or federal legislative, judicial or administrative order, certificate, decision statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement, as amended, now in effect or subsequently enacted or issued during the term of this Agreement, including, but not limited to, the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub.L. No. 104-104, 110 Stat. 70, codified at 47 U.S.C., and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the North Carolina Utilities Commission pursuant thereto.

PUBLIC RIGHTS OF WAY or PUBLIC WAY means the surface, the airspace above the surface and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, park, parkway, waterway, utility easement hereafter held by the City or other public rights-of-way now or which shall entitle the CITY and PERMITTEE to the use thereof for the purpose of installing and maintaining small wireless facilities owned by the PERMITTEE. No reference herein to the "public way" shall be deemed to be a representation or guarantee by the CITY that its title to any property is sufficient to permit its use for such purpose, and PERMITTEE shall, by its use of such terms, be deemed to gain only such rights to use property in the CITY as the CITY may have the undisputed right and power to give or as granted by Federal or State law.

STATE means the State of North Carolina.

SECTION 2. GENERAL PROVISIONS

- a. Use of Public Rights of Way. For the purpose of installation, operation and maintenance of small wireless facilities, PERMITTEE may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the public streets and ways within the corporate limits of Greenville such cables, conduits, splice boxes, cabinets, hand holes, manholes, vaults, equipment, surface location markers, and other appurtenances as are necessary to the operation of the small wireless facilities provided, however, that, subject to applicable Law, PERMITTEE shall comply with all design, construction, safety, and performance provisions contained in this Agreement and other applicable local ordinances. The PERMITTEE accepts the City right-of-way "as is" and "where is" and assumes all risks related to the use. The CITY is not liable for any damage to Small Wireless Facility Equipment due to an event causing damage to the Small Wireless Facility Equipment except where such damage is caused by the negligence or willful misconduct of the CITY.
- b. Location of Public Rights of Way and Existing Utilities. It is the responsibility of PERMITTEE to determine the location of the public rights of way and utilities located thereof and to show the same on construction drawings. PERMITTEE shall notify other utility owners and provide protection and safeguards to prevent damage or interruption to existing facilities and to maintain accessibility to existing utilities. Cost to repair, restore, or relocate existing facilities due to this encroachment shall be the responsibility of PERMITTEE. To the extent applicable, PERMITTEE agrees to fully comply with Underground Utility Safety and Damage Prevention Act, Article 8A of Chapter 87 of the NCGS.
- c. Use of Areas Outside the Public Rights of Way. This Agreement only covers the encroachment over and upon the public rights of way of the public streets maintained by the CITY within the corporate limits of Greenville. PERMITTEE shall secure all necessary easements, permits, permission, or approval for encroachment or other use of property outside the CITY maintained right of ways. Upon request, PERMITTEE shall provide to the CITY documentation of the above mentioned easements, permits, permissions and encroachments or use of properties outside the public street rights of way maintained by the CITY.
- d. Police Powers. PERMITTEE's rights are subject to the police powers of the CITY to adopt and enforce ordinances for the health, safety and welfare of the public to extent allowed by law. Subject to applicable Law, PERMITTEE shall comply with all applicable general laws and ordinances enacted by the CITY pursuant to that power (for instance, City's noise ordinance).
- e. E-verify. If this agreement is subject to NCGS § 143-133.3, the PERMITTEE and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

SECTION 3. TERM

Term. The term of this Agreement is twenty (20) years (the "First Term"). At the end of the First Term, the Agreement shall automatically renew for successive one-year terms unless terminated by either party as provided herein or unless superseded by a new or amended agreement. Notwithstanding the foregoing, the grant of Permission to encroach shall become void, and this Agreement terminated, if the Applicant does not begin installation of the Facilities within one (1) year of the date of this Agreement (unless mutually agreed upon in writing by the parties) and thereafter diligently pursue installation to completion.

SECTION 4. CONSTRUCTION AND TECHNICAL STANDARDS

- a. Compliance with Construction and Technical Standards. PERMITTEE shall construct, install and maintain its small wireless facilities in an orderly and workmanlike manner and in a manner consistent with all laws, City ordinances, construction standards, current technological standards and governmental requirements, which standards are incorporated by reference herein.
- b. Tree Trimming Plan for Overhead Lines. After approval by the CITY of the small wireless facility, PERMITTEE shall submit to the CITY a tree trimming plan if required by the Director of Public Works for review and approval by the City Arborist.
- c. Structural Engineering Analysis. The PERMITTEE shall submit a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Small Wireless Facility Equipment can reasonably support the proposed Small Wireless Facility Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location. The PERMITTEE shall inspect the City right-of-way on which the PERMITTEE's Small Wireless Facility Equipment will be placed and shall base its determination of the suitability of the City right-of-way for PERMITTEE's purposes on such inspection, on a structural engineering analysis by a North Carolina registered professional engineer certifying that the pole or other structure that is proposed to support the Small Wireless Facility Equipment can reasonably support the proposed Small Wireless Facility Equipment considering the conditions of the street and the anticipated hazards from traffic to be encountered at the location.
- d. Approval of Construction Plans. Prior to the placement or installation of any part of the PERMITTEE's facilities within public rights of way, PERMITTEE shall first submit to the Director of Public Works a Construction Plan, sealed by a Professional Engineer and/or Land Surveyor licensed in the State, including a concise description of the facilities proposed to be erected or installed, specifications, engineering drawings, and detailed plans indicating the proposed location of all such facilities and their relationship with existing utilities including the location of the right of way and all above and below ground structures located within the right of way. All permits issued by the CITY shall become part of this agreement.
- e. Pole Attachment. PERMITTEE shall provide the CITY with written verification of PERMITTEE's right to attach to poles along the path of the fiber optic cable when said poles are to be utilized, and that there is sufficient clearance for attachment.
- f. Identification of Facilities. All above ground structures shall be marked to identify the owner of the structure and emergency contact for the same.
- g. NCDOT Approval. PERMITTEE shall submit to the CITY written verification of approval of the PERMITTEE's final construction plans from the North Carolina Department of Transportation (NCDOT) where NCDOT right of ways are involved, and evidence of the coordination of construction with other utilities along PERMITTEE's facilities route.
- h. No placement or installation of any part of the PERMITTEE'S facilities shall be commenced by any person until construction permits and written approval has been issued by the Director of Public Works; provided further, that such permits and approval shall not be unreasonably withheld and action thereon shall be taken within a reasonable period of time as allowed by law.

- i. PERMITTEE shall provide the following to the Director of Public Works at least three (3) working days before the start of construction.
 - (1) Application for a Right-of-Way Excavation & Restoration Permit
 - (2) Proposed schedule of operations.
 - (3) The name(s) and phone numbers of the project contact person(s).
 - (4) Tree trimming plan for overhead lines.

- j. Traffic Control Plan. PERMITTEE shall submit with the original application and coordinate with the City Traffic Engineer, a traffic control plan prepared in accordance with the Manual on Uniform Traffic Control Devices and amendments or supplements thereto (MUTCD) as published by the Federal Highway Administration at least forty-eight (48) hours prior to the start of construction. PERMITTEE shall install and maintain all traffic control devices in accordance with the plan and MUTCD. Street or lane closures shall be limited to the hours between 8:30AM and 4:30 PM, Monday-Friday or as approved by the City Traffic Engineer.

- k. Record Drawings. Within sixty (60) days after the completion of any construction activities of the small wireless facilities within the encroachment areas, PERMITTEE shall provide to the Director of Public Works copies of the record drawings, being two (2) printed copies along with a PDF file of the same, and a digital version compatible with ESRI GIS software.

- l. Requirement for Underground Installations. All installations that can practicably be placed underground shall be underground where feasible and shall be underground in those areas of the CITY where all utilities serving the area are underground at the time of installation. In areas where other utility facilities are above ground at the time of installation, PERMITTEE may install its service above ground on such facilities. All cables shall be installed, where possible, parallel with electric and telephone lines. Multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations. At such time as all utilities and cable serving the area are required to be placed underground by the CITY or are placed underground, PERMITTEE shall likewise place its services underground without cost to the CITY.

- m. Applicable Standards. PERMITTEE shall at all times comply with the (1) applicable Federal, State and local regulations; and (2) the standards as set forth in this Agreement.

- n. Interference with Persons, Improvements, Public and Private Property and Utilities. PERMITTEE's small wireless facilities shall be located, erected and maintained so that such system shall:
 - (1) Not endanger or interfere with the health, safety or lives of persons;
 - (2) Not interfere with the utilization of the right of way by the CITY or utilization by the GUC of the right of way or facilities maintained by GUC;
 - (3) Not interfere with the free and proper use of public streets, alleys, bridges, easements or other public ways, places or property, except to the minimum extent possible during actual construction, repair or removal;
 - (4) Not interfere with the rights and reasonable convenience of private property owners, except to the minimum extent possible during actual construction, repair or removal; and

- (5) Not obstruct, hinder or interfere with any gas, electric, water or other utilities, cable, telecommunication or telephone facilities located within the CITY.
- o. Excavation and Work in Public Streets; Application; Restoration; Damage.
- (1) Prior to the start of any permitted work under this agreement, the PERMITTEE shall make application for a Right-of-Way Excavation and Restoration Permit.
 - (2) PERMITTEE shall install the cable by directional boring. PERMITTEE may excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfacing in or on any street, right-of-way, or public place as necessary for directional boring. Manholes and handholes shall not be visible in residential areas unless approved by the Director of Public Works who may require a route change. If authorized in writing by the Director of Public Works, sidewalks may be excavated for the placement of manholes and handholes.
 - (3) Excavations or borings made by PERMITTEE under the public streets, rights-of-way or public places of the CITY, pursuant to this Agreement, shall be made in compliance with the ordinances and regulations of the CITY in effect at the time of such excavation.
 - (4) Prior to any excavation in or boring under the public streets or rights-of-way of the CITY, PERMITTEE shall notify all utilities that may be affected by such excavation in or boring under the street, rights-of-way or property upon which the work is to be done, and the nature of the work to be performed. Additionally, the services of North Carolina One-Call may be used to notify its member utilities.
 - (5) In situations deemed by the PERMITTEE to constitute an emergency involving a danger to the public health, safety and welfare, PERMITTEE shall notify the Director of Public Works of the nature and the location and of the potential hazard.
 - (6) During the installation, repair or removal of PERMITTEE's facilities in or on any street, right of way or public place, PERMITTEE agrees to provide at all times proper signs, signal lights, flagmen, barricades, and other warning devices for the protection of pedestrian and vehicular traffic in conformance with the approved Traffic Control Plan and MUTCD.
 - (7) PERMITTEE shall exercise due care in the operation, installation, alteration, repair or removal of its system. If any utility or property of the CITY or GUC, real or personal, is damaged, impaired or destroyed as a result of either the negligent or intentional acts of PERMITTEE, its employees, agents or persons operating under its direction, supervision or control, PERMITTEE shall be liable to the CITY for such damages, including but not limited to the cost to repair or replace the utility or property.
 - (8) Immediately after PERMITTEE installs or repairs its system, PERMITTEE shall refill any excavations according to the technical specifications of the CITY. PERMITTEE shall restore and replace landscaping destroyed, disturbed, or damaged by such work in accordance with the technical specifications of the CITY and subject to the inspection of the Director of Public Works.
 - (9) If the installation, alteration, repair or removal of the facilities in or on any street, right of way or public place requires the temporary removal of bricks, grates, trees or other property or

materials belonging to the CITY, PERMITTEE shall, until such materials are reinstalled, and in the exercise of due care, store said property or materials in a safe place satisfactory to the CITY to minimize the risk of damage or theft.

- (10) PERMITTEE shall preserve and protect all trees and shrubbery located within the streets, rights of way, and public places of the CITY from damage by PERMITTEE. PERMITTEE shall comply with the regulations of the CITY concerning the preservation and protection of trees and shrubs. PERMITTEE shall pay to the CITY the cost of treating, removing and replacing any tree or shrub on the streets, rights-of-way and public places of the CITY which has been damaged or destroyed as a result of the work of PERMITTEE.
- (11) Whenever the CITY, GUC, or NCDOT, or their successors or assigns, within the exercise of reasonable police power, for the benefit of the public safety, plan to widen, modify, close, relocate, grade or regrade any public street, sidewalk, or other public way, in, along, under or across, which PERMITTEE shall have installed any of its facilities, it shall be the duty of PERMITTEE, upon reasonable notice by the proper authority, and at no cost to the CITY, GUC, or NCDOT to remove or relocate as necessary its facilities.
- (12) PERMITTEE shall, on the request of any person holding a building moving permit issued by the CITY, temporarily raise or lower its lines to permit the moving of buildings. The expense of such temporary removal, raising or lowering of lines shall be paid by the person requesting the same, and PERMITTEE shall have the authority to require such payment in advance. PERMITTEE shall be given not less than fifteen (15) working days advance notice to arrange for such temporary line changes.
- (13) All necessary easements over and under private property, or encroachments upon NCDOT rights of ways, or railroad rights of way shall be acquired by PERMITTEE. The CITY neither promises nor contracts to obtain or acquire rights of way for the construction, installation, maintenance or operation of the PERMITTEE's system. PERMITTEE shall provide the CITY upon demand and within fifteen (15) days written verification of NCDOT's approval for the small wireless facility which encroaches upon NC's rights of way and owner approval for encroachments along any railroad or other rights of way or on private property.
- (14) Any damage to PERMITTEE's encroaching structure caused by the CITY's or GUC's use of its rights of way for construction or maintenance work in the ordinary course of its business, shall be borne by PERMITTEE except where such damage is caused by the sole negligence or willful misconduct of the CITY.
- (15) Removal and Abandonment.
 - a) If this Agreement is terminated and if PERMITTEE has no other legal right to keep its facilities in place, PERMITTEE agrees to promptly vacate and remove its above-ground facilities at its own expense, provided that the Director of the Department of Public Works may, at that time, agree in writing, upon the written request of PERMITTEE to allow abandonment of some or all of its above-ground facilities in place, if PERMITTEE will transfer ownership of any abandoned facilities to the CITY. PERMITTEE may abandon underground facilities in place.

- b) Should any removal or abandonment of facilities in place be approved by the Director of Public Works, PERMITTEE shall thereafter apply for and obtain any necessary permits.
- c) If any portion of the above-ground facilities covered under this Agreement are no longer used by the PERMITTEE, or are abandoned for a period in excess of 180 days, the PERMITTEE shall notify the CITY and shall vacate and remove the facilities at its own expense within a reasonable time.

SECTION 5. EMERGENCY CONTACTS

- a. Coordination of Emergency Events. In case of an emergency, CITY will act to protect the public health and safety of its citizens and to protect public and private property, notwithstanding any provision in this Agreement. In the event addressing the emergency impacts the Permittee's Small Wireless Facility Equipment, the CITY will make every reasonable effort to coordinate its emergency response with the PERMITTEE. PERMITTEE shall post on all Small Wireless Facility poles the emergency contact information of the PERMITTEE.
- b. Notice of Changes: PERMITTEE will keep emergency contact information current, and provide the Director of Public Works with information as to changes within a reasonable time.
- c. Response to Network Emergency: In case of a network emergency, PERMITTEE may access its Small Wireless Facility Equipment without first obtaining a permit to disturb the City right-of-way provided PERMITTEE has conducted network trouble-shooting and diagnostic tests and has reasonably identified the point or points of network failure or malfunction. While acting under this provision to address a network emergency, PERMITTEE shall conduct its activities within the City right-of-way in such a manner as to protect public and private property. PERMITTEE will make every reasonable effort to coordinate its emergency response with the CITY. To that end, prior to entering the City right-of-way, PERMITTEE will contact the Director and give notice to CITY of the network emergency and an estimated time period to address the situation.

SECTION 6. TRANSFER OF OWNERSHIP OR CONTROL

PERMITEE's interest under this agreement may be freely assigned in connection with the transfer of PERMITEE's FCC authorization to operate commercial mobile radio base stations in North Carolina RSA No. 14, so that the name and identity of the holder of PERMITEE's interest hereunder can be consistent with the name and identity of the holder of said FCC authorization. Any other assignment of this Agreement by PERMITEE shall require CITY's prior written consent, CITY agrees, shall not unreasonably be withheld. No assignment shall be effected pursuant to this Section unless PERMITEE shall notify CITY in writing setting forth the name, address, and telephone number of such assignee.

- a. A transfer of ownership or control of the small wireless facility shall comply with all applicable Federal, State and Local Laws. The PERMITTEE shall promptly notify the CITY of its intent to transfer ownership or control of the small wireless facility and shall provide the CITY with a true copy of all the documents relating to ownership transfer. The transferee is required to accept this Agreement and all of its terms, provisions, and any amendments at the time of transfer. Performance bond and letter of credit, insurance are required from the transferee before the transfer is complete. Notification to the

CITY shall be as outlined herein. Notwithstanding anything herein to the contrary, PERMITTEE shall be permitted to transfer ownership and control of its facilities to any other entity with which it is affiliated through ownership (for example, a corporate parent, a subsidiary, or a subsidiary of a corporate parent) providing that such other entity undertakes all the obligations of PERMITTEE under this Agreement.

- b. Grant of Third Party Rights. Notwithstanding any provision in this Agreement to the contrary, the CITY agrees and acknowledges that PERMITTEE shall have the right to grant to third parties indefeasible rights of use and/or a right to use its facilities, which are subject to the rights that have been granted to PERMITTEE under this Agreement and that such actions by PERMITTEE shall not constitute a transfer of ownership or control of the facilities or require the prior approval by the CITY.
- c. Restoration of Property. In removing its Small Wireless Network and associated facilities, PERMITTEE shall not excavate or disturb pavement, curb, gutters, sidewalks, driveways, or other surfaces in or on any street, right-of-way or public place. PERMITTEE shall refill, at its own expense, any excavation and boring that shall be made by it and shall leave all public ways and places in as good a condition or better as that prevailing prior to PERMITTEE's removal of its facilities without affecting the electrical, television, telephone or other telecommunication cable, wires or attachments or the utilities. The CITY shall inspect and approve the condition of the public ways and public places and cables, wires, attachments, and poles after removal. The liability, indemnity, insurance, performance bond and letter of credit as provided herein shall continue in full force and effect during the period of removal until full compliance by PERMITTEE with the terms and conditions of this paragraph and this Agreement.
- d. Restoration by CITY; Reimbursement of Costs. In the event of a failure by PERMITTEE to complete any work required by c. above, or any other work required by CITY ordinance within the time as may be established and to the satisfaction of the CITY, the CITY may cause such work to be done and PERMITTEE shall reimburse the CITY the cost thereof within fifteen (15) days after receipt of an itemized list of such costs or the CITY may recover such costs through the performance bond provided by PERMITTEE. The CITY shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

SECTION 7. PERFORMANCE BOND, LETTER OF CREDIT, INSURANCE, AND INDEMNIFICATION

- a. Performance Bond or Letter of Credit.
 - (1) At the time this Agreement is accepted, PERMITTEE shall deliver to the CITY:
 - a) Performance bond issued by a surety licensed in North Carolina in the amount of \$100,000

The bond shall be a security fund. Failure to timely obtain, file and maintain said bond shall constitute a substantial violation within the meaning of this section.

- (2) The security fund shall serve as security for:

- a) The faithful performance by PERMITTEE of all the terms and conditions of the Agreement;
 - b) Any expenditure, damage or loss incurred by the CITY occasioned by PERMITTEE's unexcused or uncured failure to comply with all lawful rules, regulations, orders, permits and other directives of the CITY issued pursuant to this Agreement; and
 - c) The payment by PERMITTEE of all liens and taxes, and all damages, claims, costs or expenses which the CITY has been compelled to pay or incur by reason of any act or default of PERMITTEE, and all other payments due the CITY from PERMITTEE pursuant to this Agreement.
 - d) The costs and expenses incurred by the CITY as a result of PERMITTEE's abandonment of the small wireless facility at any time during the term of the Agreement or any extension thereto; or
- (3) If PERMITTEE fails to repay to the CITY any damages, costs or expenses which the CITY shall be compelled to pay by reason of any act or default of PERMITTEE in connection with this Agreement, the CITY may then demand payment from the security fund.
 - (4) The letter of credit shall be issued to the City of Greenville and shall be made payable upon a draft submitted by the CITY and accompanied by the written statement of an appropriately authorized official for the CITY that payment is due the CITY under the terms of this Agreement as a result of a default by PERMITTEE. The CITY shall be the beneficiary under the performance bond. PERMITTEE shall not use the security fund for other purposes and shall not assign, pledge or otherwise use this security fund as security for any purpose. During the term of the Agreement the performance bond shall be maintained in the amount of one hundred thousand dollars (\$100,000).

b. Insurance.

- (1) All Certificates of Insurance must be furnished before work begins. A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified.
- (2) PERMITTEE shall immediately advise the CITY of any litigation arising out of this Agreement that may develop that would affect this insurance.
- (3) Neither the provisions of this section nor any damages recovered by the CITY hereunder shall be construed or limit the liability of PERMITTEE under the Agreement or for damages.
- (4) PERMITTEE shall provide at least 30 days' prior written notice to CITY of cancellation or non-renewal of any required coverage that is not replaced.
- (5) All insurance policies provided under the provisions of this ordinance or the Agreement shall be written by companies authorized to do business in the State of North Carolina and approved by the State Commissioner of Insurance.

(6) PERMITTEE shall include the City of Greenville as an Additional Insured to the General Liability and Automobile Liability policies including those of its subcontractors while working hereunder.

(7) **Commercial General Liability:**

Limits:

Each Occurrence:	\$1,000,000
General Aggregate Limit	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

The form of coverage must be the ISO CG 00 01 policy or equivalent as approved by the State of North Carolina Department of Insurance. Certificates evidencing ongoing completed operations coverage shall be provided for at least two years following the termination or expiration of this Agreement.

(8) **Commercial Automobile Liability:**

Limits:

\$1,000,000 combined single limit.

The City of Greenville must be added as an Additional Insured on the Commercial Auto Liability policy.

(9) **Workers' Compensation Insurance:**

Limits:

Workers Compensation: Statutory for the State of North Carolina

Employers Liability: Bodily Injury by Accident \$1,000,000 each accident

Bodily Injury by Disease \$1,000,000 policy limit

Bodily Injury by Disease \$1,000,000 each employee.

Workers Compensation must include all employees.

(10) **Umbrella Liability:**

An Umbrella or excess Liability policy covering General Liability, Automobile Liability and Employers Liability with a minimum limit of \$5,000,000 is required. PERMITTEE may use any combination of primary and excess to meet required total limits.

Notwithstanding the forgoing, PERMITTEE may, in its sole discretion, self-insure any of the required insurance under the same terms as required by this Agreement. In the event PERMITTEE elects to self-insure its obligation under this Agreement to include CITY as an additional insured, the following conditions apply: (i) CITY shall promptly and no later than thirty (30) days after notice thereof provide PERMITTEE with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this Section and provide

PERMITTEE with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii) CITY shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of PERMITTEE; and (iii) CITY shall fully cooperate with PERMITTEE in the defense of the claim, demand, lawsuit, or the like.

c. Indemnification.

- (1) To the maximum extent allowed by law, the PERMITTEE shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this agreement as a result of acts or omissions of the PERMITTEE or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (1) the PERMITTEE shall at its sole expense defend Indemnitees with legal counsel.
- (2) Definitions. As used in subsections (1) above and (3) below –
“Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this agreement). “Indemnitees” means City and GUC, and their officers, officials, independent contractors, agents, and employees, excluding the PERMITTEE.
- (3) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this agreement. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this agreement.
- (4) Survival. This section shall remain in force despite termination of this agreement (whether by expiration of the term or otherwise) and termination of the services of the PERMITTEE under this agreement.
- (5) Limitations of the PERMITTEE’s Obligation. If this section is in, or is in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection (1) above shall not require the PERMITTEE to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

SECTION 8. NOTICES

Except as otherwise provided herein, all notices from PERMITTEE to the CITY pursuant to this Agreement shall be to the City Manager or his/her designee as follows:

City of Greenville
P.O. Box 7207
Greenville, NC 27835
Attention: City Manager

And to PERMITTEE

USCOC of Greater North Carolina, LLC
Attention: Real Estate Lease Administration
8410 West Bryn Mawr Avenue
Chicago, IL 60631

PERMITTEE shall maintain with the CITY a telephone number and an address for service of notices by mail. PERMITTEE shall be required to advise the CITY of such addresses and telephone numbers and any changes thereof.

SECTION 9. FAILURE OF CITY TO ENFORCE THIS AGREEMENT, NO WAIVER OF THE TERMS THEREOF

PERMITTEE shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of the CITY upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 10. SEVERABILITY

- a. **Invalidity.** If any term, condition or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder hereof and the application of such term, condition or provision to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, provisions and conditions hereof shall, in all other respects, continue to be effective and to be complied with. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision which had been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect and shall thereafter be binding on PERMITTEE and the CITY.
- b. **Court Action.** Notwithstanding anything to the contrary, in the event that any court, agency, commission, legislative body or other authority of competent jurisdiction (i) declares any section,

deemed by the CITY to be material, invalid, in whole or in part, or (ii) requires PERMITTEE either to (a) perform any act which is inconsistent with any section deemed by the CITY to be material; or (b) cease performing any act deemed by the CITY to be material, the CITY shall so notify PERMITTEE and the CITY and PERMITTEE shall, in good faith, renegotiate that term or those terms of this Agreement.

SECTION 11. RIGHTS CUMULATIVE

All rights and remedies given to the CITY and PERMITTEE by this Agreement shall be in addition to and cumulative with any and all other rights or remedies, existing or implied, now or hereafter available to the CITY and PERMITTEE, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Agreement or otherwise existing or given may be exercised from time to time and as often and in such order as may be deemed expedient by the CITY and PERMITTEE and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

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.

CITY OF GREENVILLE

By: _____
P.J. Connelly, Mayor

ATTEST

Valerie Shiuwegar, City Clerk

USCOC of Greater North Carolina, LLC

By: _____
Title:

APPROVED AS TO FORM:

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION:

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

Byron Hayes, Director of Financial Services

Account Number _____

Project Code (if applicable) _____

RECOMMENDED:

Kevin Mulligan, Public Works Director

**State of North Carolina
County of Pitt**

I, _____, a Notary Public of said County and State, do hereby certify that Valerie Shiuwegar 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 the Mayor, P.J. Connelly, sealed with corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and Notarial Seal, this the ____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____

State of Illinois

County of Cook

I, _____, a notary public in and for the aforesaid county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of **USCOC of Greater North Carolina, LLC**, a Delaware limited liability company organized and existing under the laws of the State of Delaware, (3) acknowledged that the foregoing agreement with the City of Greenville carries on in the usual way the company’s business, and (4) acknowledged the due execution of the contract on behalf of the company. This the _____ day of _____, 20__.

_____, Notary Public

(Print or Type Name of Notary Here)

My Commission Expires: _____



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Resolution of Intent to Close a portion of Atlantic Avenue

Explanation: This item is to consider a Resolution of Intent to Close a portion of Atlantic Avenue from the southern right-of-way of Eighth Street to a location about 405 feet north of Dickinson Avenue.

Fiscal Note: Upon the effective date of the Resolution to Close by City Council, yearly maintenance estimated at \$629 will no longer be required and the City will no longer receive \$167 in Powell Bill funds for maintenance of this street section.

Recommendation: Approve the Resolution of Intent to Close a portion of Atlantic Avenue located south of Eighth Street and about 405 feet north of Dickinson Avenue setting a public hearing on February 13, 2020 to consider the Resolution to Close.

ATTACHMENTS:

☐ **Resolution_for_Street_Closing_Atlantic_Avenue_1121510**

RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE
DECLARING ITS INTENT TO CLOSE A PORTION OF ATLANTIC AVENUE
LOCATED SOUTH OF EIGHTH STREET AND NORTH OF DICKINSON AVENUE

WHEREAS, the City Council intends to close a portion of Atlantic Avenue in accordance with the provisions of G.S. 160A-299;

THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina, that it is the intent of the City Council to close a portion of Atlantic Avenue, more particularly described as follows:

Location: Being that certain tract or parcel of land lying and being situate in the City of Greenville, Greenville Township, Pitt County, North Carolina and being bounded on the north and south by portions of Atlantic Avenue to remain open, on the east by the property of City of Greenville known as Tax Parcel 34561, on the west by the property of City of Greenville known as Tax Parcel 11698, and being more particularly described as follows:

Description: Commencing at an existing iron pipe located at the intersection of the eastern right of way line of Atlantic Avenue with the northwest right of way line of Dickinson Avenue (NCSR 1620); said point being the southernmost corner of Pitt County Tax Parcel 34561; thence with the eastern right of way line of Atlantic Avenue, N 09°21'46"E - 96.92 feet to an existing drill hole; thence continuing with the eastern right of way of Atlantic Avenue, N10°00'00"E - 308.25 feet to a point and being the POINT OF BEGINNING; thence from said beginning point so established and leaving said eastern right of way of Atlantic Avenue, N 80°00'00"W - 40.00 feet to a point on the western right of way line of Atlantic Avenue common with the east line of Parcel 11698 standing in the name of City of Greenville as described in Deed Book 3035, Page 638; thence along and with said western right of way line of Atlantic Avenue and the east line of said Parcel 11698, N 10°00'00"E - 454.45 feet, more or less, to a point at the intersection of the western right of way line of Atlantic Avenue with the prolongation of the southern right of way line of Eighth Street; thence leaving said western right of way line of Atlantic Avenue and with the prolongation of the southern right of way line of said Eighth Street, S 79°58'15"E - 40.00 feet, more or less, to a point on the eastern right of way line of Atlantic Avenue common with the west line of Parcel 34561 standing in the name of City of Greenville as described in Deed Book 3035, Page 638; thence along and with the eastern right of way line of Atlantic Avenue and the west line of said Parcel 34561, S10°00'00"W - 454.43 feet, more or less, to the POINT OF BEGINNING containing 0.42 acre, more or less, and being a portion of the right of way of Atlantic Avenue lying between Eighth Street and Dickinson Avenue. This description has been prepared based on information found in or calculated from Map Book 76, Pages 56-58 and from information found in other deeds referenced herein. All deed books

and map books referred to in this description are found in the Pitt County Registry; no field survey was performed in the preparation of this description.

BE IT FURTHER RESOLVED that a public hearing will be held in the Council Chamber, City Hall, Greenville, North Carolina, on the 13th day of February, 2020, at 6:00 p.m., to consider the advisability of closing the aforesaid street section. At such public hearing, all objections and suggestions will be duly considered.

BE IT FURTHER RESOLVED that a copy of this resolution be published once a week for four (4) consecutive weeks in The Daily Reflector; that a copy of this resolution be sent by certified mail to the owners of property adjacent to the above described street, as shown on the County tax records, and that a copy of this resolution be posted in at least two (2) places along the portion of the street to be closed.

Duly adopted this the 6th day of January, 2020.

P.J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Resolution of Intent to Close a portion of South Alley Street

Explanation: This item is to consider a Resolution of Intent to close a portion of South Alley Street from the western right-of-way of Atlantic Avenue to the eastern right-of-way of CSX Railroad.

Fiscal Note: Upon the effective date of the Resolution to Close by City Council, yearly maintenance estimated at \$143 will no longer be required and the City will no longer receive \$38 in Powell Bill funds for maintenance of this street section.

Recommendation: Approve the Resolution of Intent to Close a portion of South Alley Street from the western right-of-way of Atlantic Avenue to the eastern right-of-way of CSX Railroad, setting a public hearing on February 13, 2020 to consider the Resolution to Close.

ATTACHMENTS:

☐ **Resolution_of_Intent_to_Close_Portion_of_South_Alley_Street_1121514**

RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE
DECLARING ITS INTENT TO CLOSE A PORTION OF SOUTH ALLEY STREET
FROM THE WESTERN RIGHT OF WAY OF ATLANTIC AVENUE TO THE
EASTERN RIGHT OF WAY OF CSX RAILROAD

WHEREAS, the City Council intends to close a portion of South Alley Street in accordance with the provisions of G.S. 160A-299;

THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina, that it is the intent of the City Council to close a portion of South Alley Street, more particularly described as follows:

Location: Being that certain tract or parcel of land lying and being situate in the City of Greenville, Greenville Township, Pitt County, North Carolina and being a portion of the right of way of South Alley Street lying between the eastern right of way line of CSX Railroad and the western right of way line of Atlantic Avenue and being more particularly described as follows:

Description: Commencing at North Carolina Geodetic Survey Monument "Tyson" having NC grid coordinates of N= 207855.855 meters and E= 755759.591 meters NAD 83(2001); thence S 73°54'37"E 2289.77 feet to an existing iron pipe at the intersection of the eastern right of way line of CSX Railroad with the southern right of way line of Bonners Lane at the northwest corner of Pitt County Tax Parcel 13544; thence along the chord of a curve, said curve being the eastern right of way line of CSX Railroad common with the west line of said Parcel 13544, S 06°50'54"W 26.03 feet to an iron pipe set; thence continuing with the eastern right of way line of CSX Railroad common with the west line of Parcel 13544 and Parcel 22418 S 06°46'33"W 222.12 feet to an iron pipe set at the intersection of the eastern right of way line of CSX Railroad with the northern right of way line of South Alley Street at the southwest corner of said Parcel 22418 standing in the name of Redevelopment Commission of Greenville, NC as described in Deed Book 3327, Page 422 having NC grid coordinates of N=207587.238 meters and E= 756421.456 meters NAD 83(2001) and being the POINT OF BEGINNING; thence from said beginning point so established along and with the northern right of way line of South Alley Street common with the south line of the aforementioned Parcel 22418 S 83°17'44"E 0.37 feet to an existing iron pipe; thence continuing with said northern right of way line of South Alley St. and the south line of said Parcel 22418 S 83°17'44"E 132.80 feet to an existing iron bar at the intersection of the northern right of way line of South Alley Street with the western right of way line of Atlantic Avenue common with the southeast corner of said Parcel 22418; thence along the western right of way line of Atlantic Avenue S 06°10'37"W 41.03 feet to a P.K. nail set at the intersection of the southern right of way line of South Alley Street with the western right of way line of Atlantic Avenue common with the northeast corner of Parcel 11698 standing in the name of

City of Greenville as described in Deed Book 3035, Page 638; thence with the southern right of way line of South Alley Street common with the north line of Parcel 11698 N 83°21'22"W 133.60 feet to an iron pipe set at the intersection of the eastern right of way line of CSX Railroad with the southern right of way line of South Alley Street and being 37.50 feet from the centerline of said railroad tracks, thence along and with said eastern right of way line of CSX Railroad N 06°46'33"E 41.17 feet to the POINT OF BEGINNING containing 5482.50 square feet as show on a map titled "Street Closing Map for a portion of Bonners Lane and South Alley Street" dated September 25, 2019 as prepared by Spruill and Associates, Inc. All distances are horizontal field distances, no grid factor applied; the combined NC grid factor used for grid coordinate calculations is 0.99989763. All deed books referred to in this description are found in the Pitt County Registry and all Parcels referred to are Pitt County Tax Parcels.

BE IT FURTHER RESOLVED that a public hearing will be held in the Council Chamber, City Hall, Greenville, North Carolina, on the 13th day of February, 2020, at 6:00 p.m., to consider the advisability of closing the aforesaid street section. At such public hearing, all objections and suggestions will be duly considered.

BE IT FURTHER RESOLVED that a copy of this resolution be published once a week for four (4) consecutive weeks in The Daily Reflector; that a copy of this resolution be sent by certified mail to the owners of property adjacent to the above described street, as shown on the County tax records, and that a copy of this resolution be posted in at least two (2) places along the portion of the street to be closed.

Duly adopted this the 6th day of January, 2020.

P.J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Resolution of Intent to Close a portion of Bonners Lane

Explanation: This item is to consider a Resolution of Intent to Close a portion of Bonners Lane from the western right-of-way of Atlantic Avenue to the eastern right-of-way of CSX Railroad.

Fiscal Note: Upon the effective date of the Resolution to Close by City Council, yearly maintenance estimated at \$149 will no longer be required and the City will no longer receive \$40 in Powell Bill funds for maintenance of this street section.

Recommendation: Approve the Resolution of Intent to Close a portion of Bonners Lane from the western right-of-way of Atlantic Avenue to the eastern right-of-way of CSX Railroad, setting a public hearing on February 13, 2020 to consider the Resolution to Close.

ATTACHMENTS:

☐ Resolution of Intent to Close Portion of Bonners Lane 1121515

RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE
DECLARING ITS INTENT TO CLOSE A PORTION OF BONNERS LANE
FROM THE WESTERN RIGHT OF WAY OF ATLANTIC AVENUE TO THE
EASTERN RIGHT OF WAY OF CSX RAILROAD

WHEREAS, the City Council intends to close a portion of Bonners Lane in accordance with the provisions of G.S. 160A-299;

THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville, North Carolina, that it is the intent of the City Council to close a portion of Bonners Lane, more particularly described as follows:

Location: Being that certain tract or parcel of land lying and being situate in the City of Greenville, Greenville Township, Pitt County, North Carolina and being that portion of the right of way Bonners Lane lying between the eastern right of way line of CSX Railroad and a prolongation of the western right of way line of Atlantic Avenue being more particularly described as follows:

Description: Commencing at North Carolina Geodetic Survey Monument "Tyson" having NC grid coordinates of N= 207855.855 meters and E= 755759.591 meters NAD 83(2001); thence S 73°54'37"E 2289.77 feet to an existing iron pipe at the intersection of the eastern right of way line of CSX Railroad with the southern right of way line of Bonners Lane at the northwest corner of Pitt County Tax Parcel 13544 standing in the name of City of Greenville as described in Deed Book 1239, Page 859 having NC grid coordinates of N=207662.451 meters and E= 756430.108 meters NAD 83(2001) and being the POINT OF BEGINNING; thence from said beginning point so established along and with the eastern right of way line of CSX railroad and along the arc of a curve to the right, being at all points 37.50 feet from the centerline of said railroad tracks and having a radius of 4462.34 feet, a central angle of 00°13'54", an arc length of 18.03 feet and a chord of N 07°07'53"E 18.03 feet to an iron pipe set on the northern right of way line of Bonners Lane common with the south line of Parcel 29123 standing in the name of Norfolk Southern Railroad Company as described in Deed Book W-8, Page 4; thence with said northern right of way line of Bonners Lane and the south line of said Parcel 29123 S 81°46'43"E 10.63 feet to an existing iron pipe and S 81°46'43"E 1.87 feet to an existing iron pipe located at the southwest corner of Parcel 19978 standing in the name of Redevelopment Commission of Greenville as described in Deed Book 2265, Page 374; thence continuing with the northern right of way line Bonners Lane and the south line of said Parcel 19978 S 81°46'43"E 14.14 feet to an existing iron pipe and S 81°46'43"E 72.59 feet to an iron pipe set at the southwest corner of Parcel 11302 standing in the name of City of Greenville as described in Deed Book 1661, Page 854; thence continuing with the northern right of way line of Bonners Lane and the south line of

said Parcel 11302 S 82°53'59"E 30.82 feet to an iron pipe set on a prolongation of the western right of way line of Atlantic Avenue; thence along said prolongation of the western right of way line of Atlantic Avenue S 06°12'00"W 18.34 feet to an existing X chiseled in the concrete curb & gutter at the intersection of the southern right of way line of Bonners Lane with the western right of way line Atlantic Avenue at the northeast corner of Parcel 13314 standing in the name of Redevelopment Commission of Greenville, NC as described in Deed Book 3327, Page 422; thence with the southern right of way line of Bonners Lane and the north line of said Parcel 13314 and with the north lines of Parcels 13545 and 13544, both standing in the name of City of Greenville and both being described in Deed Book 1239, Page 859 N 81°54'50"W 130.35 feet to the POINT OF BEGINNING containing 2336.9 square feet as show on a map titled "Street Closing Map for a portion of Bonners Lane and South Alley Street" dated September 25, 2019 as prepared by Spruill and Associates, Inc. All distances are horizontal field distances, no grid factor applied; the combined NC grid factor used for grid coordinate calculations is 0.99989763. All deed books referred to in this description are found in the Pitt County Registry and all Parcels referred to are Pitt County Tax Parcels.

BE IT FURTHER RESOLVED that a public hearing will be held in the Council Chamber, City Hall, Greenville, North Carolina, on the 13th day of February, 2020, at 6:00 p.m., to consider the advisability of closing the aforesaid street section. At such public hearing, all objections and suggestions will be duly considered.

BE IT FURTHER RESOLVED that a copy of this resolution be published once a week for four (4) consecutive weeks in The Daily Reflector; that a copy of this resolution be sent by certified mail to the owners of property adjacent to the above described street, as shown on the County tax records, and that a copy of this resolution be posted in at least two (2) places along the portion of the street to be closed.

Duly adopted this the 6th day of January, 2020.

P.J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item:

Resolution authorizing the submittal of an application to the U.S. Economic Development Administration for a Disaster Relief Act of 2019 Grant for Greenville Utilities Commission's Wastewater Treatment Plant Clarifier Replacement Project

Explanation:

Abstract: Greenville Utilities Commission seeks approval to make application for a Disaster Relief Act of 2019 Grant for the Wastewater Treatment Plant Clarifier Replacement Project.

Explanation: On June 3, 2019, Congress passed H.R. 2157, Additional Supplemental Appropriations for Disaster Relief Act of 2019. The Act appropriated \$600M in funding for necessary expenses related to flood mitigation, disaster relief, long-term recovery, and restoration of infrastructure in areas that received a major disaster designation as a result of Hurricanes Florence and Michael, as well as other natural disasters occurring in calendar years 2018 and 2019. This money is made available in the form of grants through the Department of Commerce Economic Development Administration (EDA). Pitt County was made eligible for this EDA grant funding as part of a FEMA Disaster Declaration as of 11/15/18 based on Hurricane Florence.

Greenville Utilities Commission (GUC) was notified by the Mid-East Commission that our Wastewater Treatment Plant Clarifier Replacement Project is eligible to receive up to \$6M in grant funding based on the criteria in place for the grants. The EDA grant is limited to 80% of the project cost and would therefore require a 20% GUC funding match. The EDA requires that the City of Greenville be a co-applicant for this grant application.

On December 19, 2019, the GUC Board of Commissioners adopted a Resolution authorizing the submittal of an application to the U.S. Economic Development Administration for a Disaster Relief Act of 2019 Grant for the Wastewater Treatment Plant Clarifier Replacement Project and recommends similar action by City Council.

In order to move ahead with this application, it is necessary for the GUC Board of Commissioners and the Greenville City Council to authorize the appropriate officials

to make application for the EDA grant. The attached resolution will also grant approval for accepting the award of an EDA Grant for the Clarifier Replacement Project.

Fiscal Note: No costs to the City.

Recommendation: Adopt the attached resolution

ATTACHMENTS:

- ▣ **Resolution**

RESOLUTION AUTHORIZING THE CITY OF GREENVILLE
TO BE A CO-APPLICANT WITH THE GREENVILLE
UTILITIES COMMISSION FOR A GRANT APPLICATION TO
THE US ECONOMIC DEVELOPMENT ADMINISTRATION
FOR THE WASTEWATER TREATMENT PLANT CLARIFIER
PROJECT

WHEREAS, the Greenville Utilities Commission (the “Commission”) has determined that it is necessary to acquire and construct certain improvements to the Combined Enterprise System (collectively the “Additional Improvements”); and

WHEREAS, the City of Greenville, North Carolina (the “City”) supports the Commission’s acquisition and construction of certain improvements to its combined enterprise system (collectively, the “Additional Improvements”); and

WHEREAS, the City desires to support the Commission in applying for an Economic Development Administration (EDA) Grant (the “Grant”) for the Additional Improvements by joining in such application as a co-applicant; and

WHEREAS, if the application is successful, the City approves Commission’s acceptance of the award of the Grant.

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

Section 1. The General Manager/CEO of the Commission and such other officers of the City and the Commission as may be appropriate are hereby authorized to apply to the EDA for the Grant.

Section 2. The General Manager/CEO of the Commission and such other officers of the City and the Commission as may be appropriate are hereby authorized and directed to accept and execute the award of such Grant.

Section 3. The officers, agents and employees of the City and Commission are hereby authorized and directed to do all acts and things required of them by the provisions of the award of the Grant.

Section 4. Any and all actions heretofore taken by the City and the Commission and the officers, agents, and employees of the City and the Commission in connection with the transactions authorized and approved hereby and hereby ratified and confirmed.

Section 5. Any and all resolutions of the City and the Commission or portions thereof in conflict with the provision of this Resolution are hereby repealed to the extent of such conflict.

Section 6. This resolution shall take effect immediately upon its passage.

Adopted this the __th day of _____, 2020.

P.J. Connelly
Mayor

ATTEST:

Valerie Shiuwegar
City Clerk



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Resolution authorizing Greenville Utilities Commission to purchase real property for the Old Tar Road Gate Station as part of the High-Pressure Multiple Gas Facilities Project

Explanation: **Abstract:** Greenville Utilities Commission seeks to purchase real property located on the west side of Old Tar Road (parcel 07032) for the construction of a new gas gate station.

Explanation: Greenville Utilities Commission has identified a property suitable for the location of the Old Tar Road Gate Station to be constructed as part of the High-Pressure Multiple Gas Facilities Project. The recommended property is located on the west side of Old Tar Road, approximately 1,135' south of the intersection with Laurie Ellis Road. The parcel is contiguous to Piedmont Natural Gas' easement for their Transmission Line 439 that is currently under construction. The property is owned by the Pedro Balderas Trust (dated May 19, 2015, and any amendments thereto). The owners have agreed to sell the property for \$25,000 which is slightly less than the appraised value for the site.

On December 19, 2019, the GUC Board of Commissioners adopted a resolution approving the purchase of real property for a new gas gate station for \$25,000, authorized the appropriate officials to execute the necessary documentation to complete such purchase, and recommend similar action by City Council.

Fiscal Note: No cost to the City.

Recommendation: Adopt the attached resolution

ATTACHMENTS:

- ▣ **Resolution - Purchase of Real Property - Gas Gate Station Old Tar Road**

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF GREENVILLE, NORTH CAROLINA,
AUTHORIZING THE ACQUISITION
OF PROPERTY FOR A NATURAL GAS GATE STATION

WHEREAS, Piedmont Natural Gas has recently purchased easements to relocate its Main Gas Line from its current location which runs through the City of Greenville, to south of Greenville near Old Tar and Laurie Ellis Roads; and

WHEREAS, such relocation makes it necessary for Greenville Utilities Commission ("Commission") of the City of Greenville ("City"), North Carolina, to also relocate its natural gas facilities in this area; and

WHEREAS, such relocation requires the acquisition of property for the installation of a new gas main connection from a proposed gas gate station; and

WHEREAS, Commission has identified certain property that it deems suitable for the location of what is to be called the "Old Tar Road Gate Station" which is to be constructed as part of the High-Pressure Multiple Gas Facilities Project (GCP10099); and

WHEREAS, such property is located on the west side of Old Tar Road approximately 1,135 feet south of the intersection with Laurie Ellis Road and is contiguous to the Piedmont Natural Gas easement for its transmission line 439 that is currently under construction; and

WHEREAS, such property is currently owned by the Pedro Balderas Trust (dated May 19, 2015, and any amendments thereto) which has agreed to sell the subject property to the City for the use and benefit of Commission for \$25,000.00; and

WHEREAS, an independent appraisal has determined \$25,000.00 to be a fair price for such property; and

WHEREAS, the acquisition of such property is deemed to be in the best interest of the rate payers of Commission and the taxpayers of the City; and

WHEREAS, Section 160A of the General Statutes of North Carolina authorizes acquisition of real property for such purposes; and

WHEREAS, the acquisition of real property for such purposes requires approval of both Commission and the City Council of the City.

WHEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE RESOLVES THAT:

1. The appropriate City Officials are hereby authorized to execute the appropriate documentation necessary to complete the purchase of the subject property for the sales price of \$25,000.00 as agreed upon between Commission and owner, the Pedro Balderas Trust (dated May 19, 2015, and any amendments thereto).

Adopted this the _____ day of _____, 2020.

CITY OF GREENVILLE

By: _____
P. J. CONNELLY, MAYOR

ATTEST:

VALERIE SHIUWEGAR, CITY CLERK

[SEAL]



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Request by the Greenville Police Department to utilize Asset Forfeiture Funds to purchase equipment

Explanation: **Abstract:** The Greenville Police Department (GPD) is requesting authorization to purchase equipment for the department by utilizing the Asset Forfeiture Funds. These funds are the direct result of money and property seized during criminal investigations.

Explanation: The GPD is seeking approval to use Asset Forfeiture Funds to purchase equipment for the department. The following is a description of proposed expenditures requested from the Forfeiture accounts.

Purchase of an Unmanned Aerial Vehicle (UAV)

- This item is requested to increase the complement of available UAVs so that extended operations and multiple vantage points are possible.
- The current UAV program consists of a training UAV and a mission-ready UAV. We have one certified pilot who serves as the coordinator for the program and is currently working to establish an operator per shift so we remain fully operationally ready regardless of schedules and availability.
- UAVs are extremely valuable to GPD in regard to efforts related to fugitive apprehension, special events, missing person searches, and any aspect of daily work that would require an aerial view.
- The requested amount includes needed parts and accessories for the current UAV as well as a second fully-functional unit.
- Anticipated Expense: **\$49,634**. No funds exist for this purchase in our current GPD operational accounts.

Replacement of Crisis Response 'Throw Phone' System

- This replacement item is a critical piece of equipment that is utilized in various situations to permit our negotiators to speak with suspects, victims, and others in crisis situations who may not be willing to present themselves to officers.

- Currently members of the team are utilizing a very outdated device that is not reliable and is in need of upgrades that negate the expense due to the age of the device.
- Anticipated Expense: **\$28,500**. No funds exist for this purchase in our current GPD operational accounts.

Purchase of TASER Electronic Control Devices (ECD)

- GPD has issued the TASER ECDs for several years and over that time we have upgraded the units and changed the training associated with the program to ensure we are relevant and supported by TASER (now Axon Enterprise, Inc.).
- Currently there are units that do not yet have an ECD issued to them. These 30 new devices will ensure that all officers in the Field Operations Bureau have an ECD assigned, aid in replacing several devices that are at the end of life, and provide the necessary training for the new platform.
- In addition to the actual devices, this request will address the need for training and duty cartridges for all of GPD's ECDs, necessary holsters and accessories, and a new training suit to be used by GPD Master TASER Instructors.
- Anticipated Expense: **\$126,552**. No funds exist for this purchase in our current GPD operational accounts.

Purchase of RFID Tagging System and Money Counter

- This item is requested to aid in the efficiency of tagging, placing, and locating high-risk items in property/evidence.
- It will provide the ability to track an item any time it leaves or re-enters the property/evidence storage room, to further aid in security of these high-risk items. This system will also allow staff to generate reports where this capability is not currently available.
- The money counter is self-explanatory and will enable a more efficient and safe way of counting money than the current hands-on process.
- This will reduce human error and money counts will be receipted with the number of denominations and a listing of serial numbers for each case.
- **Anticipated Expense: \$43,391**. No funds exist for this purchase in our current GPD operational accounts.

Fiscal Note:

The anticipated expenditure from the Asset Forfeiture accounts is \$248,077. The City's Forfeiture accounts have an approximate available balance of \$430,000.

Recommendation:

Staff recommends approval to use Asset Forfeiture funds to purchase the requested equipment.



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Reimbursement resolution for the proposed Fire-Rescue Station Number 7 and Station 1 Bay Extension

Explanation: **Abstract:** This item is for the City Council to approve the reimbursement resolution for the proposed Fire-Rescue Station Number 7 and Station 1 Bay Extension installment financing agreement. The issuance of this debt is planned for May 2020.

Explanation: As part of the budget amendment at the August 19, 2019 City Council meeting, staff included a budget to establish the capital project for Construction of Fire-Rescue Station #7 within the Fire-Rescue Capital Project Fund. Spending for this project is scheduled to begin in January. Staff is requesting approval of the attached reimbursement resolution, which will allow the City to reimburse itself for costs expended prior to the actual installment purchase transaction for this project.

Fiscal Note: The reimbursement resolution is in the amount of \$6,600,000.

Recommendation: Approve the attached reimbursement resolution.

ATTACHMENTS:

☐ [Fire_Station_7_Reimbursement_Resolution_1112029](#)

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF GREENVILLE, NORTH CAROLINA,
DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF
ONE OR MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE
AND/OR TO BE MADE IN CONNECTION WITH THE CONSTRUCTION OF
FIRE RESCUE STATION #7 AND THE STATION #1 BAY EXTENSION

WHEREAS, the City of Greenville, North Carolina (the “Issuer”) is a political subdivision organized and existing under the laws of the State of North Carolina; and

WHEREAS, the Issuer has paid, beginning no earlier than November 15, 2019, and will pay, on and after the date hereof, certain expenditures (the “Expenditures”) in connection with the acquisition, construction and/or equipping of the Greenville Fire Rescue Station #7 and the Bay Expansion at Fire Rescue Station #1, as described in more detail in Exhibit A attached hereto (the “Project”); and

WHEREAS, the City Council of the Issuer (the “City Council”) has determined that those moneys previously advanced no more than 60 days prior to the date hereof and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the Issuer for the Expenditures from the proceeds of one or more issues of tax-exempt obligations (the “Tax-Exempt Obligations”);

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA, as follows:

Section 1. The City Council hereby declares the Issuer’s intent to reimburse the Issuer with the proceeds of the Tax-Exempt Obligations for the Expenditures with respect to the Project made on and after November 15, 2019, which date is no more than 60 days prior to the date hereof. The Issuer reasonably expects on the date hereof that it will reimburse the Expenditures with the proceeds of the Tax-Exempt Obligations.

Section 2. Each Expenditure was and will be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditure), (b) a cost of issuance with respect to tax-exempt financings, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the Issuer so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Issuer.

Section 3. The maximum aggregate principal amount of the Tax-Exempt Obligations expected to be issued for the Project is \$6,600,000.

Section 4. The Issuer will make a reimbursement allocation, which is a written allocation by the Issuer that evidences the Issuer’s use of proceeds of tax-exempt financings to reimburse an

Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the respective Project with respect to which such Expenditure is paid is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The Issuer recognizes that exceptions are available for certain “preliminary expenditures,” costs of issuance, certain de minimis amounts, expenditures by “small issuers” (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least five years.

Section 5. This resolution shall take effect immediately upon its passage.

PASSED AND ADOPTED this 6th day of January, 2020.

P.J. Connelly, Mayor

Attested to:

Valerie P. Shiuwegar, City Clerk

DESCRIPTION OF PROJECT

Greenville Fire Rescue Station #7 and Station #1 Bay Extension

Project Description

The Greenville Fire Rescue Station #7 project will involve the construction and outfit of a new fire station in Greenville, NC. The Fire Station will be constructed on Bayswater Road and is anticipated to cost \$6,000,000. The project will also include the bay extension at Fire Rescue Station #1. This is anticipated to cost \$600,000.



CITY OF GREENVILLE
NORTH CAROLINA

CERTIFICATION OF THE CITY CLERK

I hereby certify that I am the duly appointed and acting City Clerk of the City of Greenville, North Carolina, and as such I am the legal custodian of the Official Minutes and Records of the City of Greenville, North Carolina. I further attest and certify that the foregoing is a true copy of Resolution No. ____-20, which was duly adopted by the Greenville City Council at their meeting held on January 6, 2020

In witness whereof, I have hereunto set my hand and the official seal of the City of Greenville, North Carolina, on this the 6th day of January, 2020.

Valerie P. Shiuwegar
City Clerk

SEAL



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract Award to Stewart-Cooper-Newell Architects for Design of Fire-Rescue Station 7

Explanation: **Abstract:** A Request for Qualifications and letters of interest was issued in March 2019 for design services from qualified architectural firms, and six agencies submitted proposals. After a thorough review of the proposals, City staff recommended entering into negotiations to contract architectural services with Stewart-Cooper-Newell Architects to design Fire-Rescue Station 7. City Council approved this request in June. After a thorough review and a negotiated price that falls in line with the amount budgeted for design fees, City staff recommends award to Stewart-Cooper-Newell for professional services for the design of Fire-Rescue Station 7.

Explanation: The City has acquired land to build a Fire-Rescue Station in the area along Firetower Road in an effort to reduce response times and maintain adequate fire, rescue, and EMS service to that area of the city. Over the past few years, the Fire-Rescue Department has undergone an accreditation process. Data discovered in this self-assessment has reaffirmed the need for a fire-rescue station to be built in this area. Additional needs such as a backup IT server room and a 911 communications center have also been identified as future needs and will be included in this initial design process for capital planning purposes.

The City of Greenville Fire-Rescue Department, with assistance from the Public Works and Financial Services Departments, has been in negotiation with Stewart-Cooper-Newell over the past four months. After an initial proposal was made, City staff was able to negotiate the price down to better fit the project scope and remain on budget. The current contract reflects the needs identified by the City and meets budgetary constraints placed by City Council. The contract will include schematic design for a 20,000 square foot building to include the Fire-Rescue Station and a 911 communications center with an IT server room. The proposal will then continue to complete all design phases for the Fire-Rescue Station, to include design development, construction documents, bidding and negotiation, and construction

administration. While the current capital funding will not allow for the full buildout of the 911 communications center, including it here will provide the City information for future expansion at this site.

Fiscal Note:

Design fees for this contract will be \$520,000 with a contingency of \$52,000. The remainder of the budgeted design fees will be used for any permits, inspections, and other associated fees not covered in the contract that are common to projects of this type. The funds will be distributed from the total project budget of \$6,000,000, which will come from debt financing.

Recommendation:

City Council award the professional services contract to Stewart-Cooper-Newell Architects for the design of Fire-Rescue Station 7 and authorize the City Manager (in consultation with the City Attorney) to make revisions to the contract before the City signs it, so long as the contract does not exceed the contract amount referenced in this item.

ATTACHMENTS:

- ▣ **Contract with Stewart-Cooper-Newell Architects**



Stewart · Cooper · Newell

December 11, 2019 revised

Chief Jeremy Anderson
Greenville Fire/Rescue
500 South Greene Street
Greenville, NC 27834

Re: Design Services Proposal for:
New Fire Station No. 7 / Dispatch Center

Dear Captain Anderson,

Thank you and the Selection Committee for selecting Stewart-Cooper-Newell Architects for the new Station No.7 project. We are thrilled to have the opportunity to offer our design services for this exciting project. We will do our best to make Greenville our most satisfied client yet.

Project Understanding: The New Station No.7 is anticipated to be approximately 20,000 SF, located on a 6.01 acre Parcel Number 82543, on Bayswater Road, adjacent to East Firetower Road. Based on conversations with the City, it is anticipated that the Fire Department functions will be housed in approximately 15,000 SF, and the Dispatch Center will be housed in approximately 5,000 SF. We understand that the Site is properly zoned for the proposed use and that no rezoning, special exception permits, or variances will be required. Likewise, we assume that no roadway improvements will be required on the adjacent roadways.

BASIC DESIGN SERVICES

Our proposal for the new station design services would include architectural, structural, civil, landscape, mechanical, electrical, and plumbing design as appropriate in the following phases:

	<u>FD</u>	<u>Dispatch</u>	<u>Total</u>
Schematic Design Phase	\$ 67,500	\$20,000	\$ 87,500
Design Development Phase	\$ 67,500	*	\$ 67,500
Construction Document Phase	\$180,000	*	\$180,000
Bidding/Negotiation Phase	\$ 22,500	*	\$ 22,500
<u>Construction Administration</u>	<u>\$112,500</u>	<u>*</u>	<u>\$112,500</u>
TOTAL BASIC DESIGN FEE	\$450,000	\$20,000	\$470,000

**Not included in Scope of Services*

architecture
needs assessment
master planning
interiors
consulting

James C. Stewart, AIA | Kenneth C. Newell, AIA | James R. Stumbo, AIA
719 East Second Avenue • Gastonia, NC 28054
P: 704.865.6311
F: 704.865.0046
1.800.671.0621 www.scn-architects.com



BASIC DESIGN SERVICES FEE PROPOSAL

The proposed fee to provide the above BASIC DESIGN SERVICES is \$450,000 for all design phases of the Fire Station, \$20,000 for the Schematic Design phase of the Dispatch Center, plus reimbursables.

OPTIONAL ADDITIONAL COMMUNICATIONS DESIGN SERVICES

During the presentation of the Design Team's qualifications, Stewart-Cooper-Newell Architects (SCNA) presented Mission Critical Partners (MCP) as a potential, valuable team member. In this Phase 1 proposal, MCP would provide an additional level of professional services, in peer review support of SCNA and the other engineering team members, to review the design documents and provide recommendations for the overall facility and the engineering of specialized public safety-grade systems to include, at a minimum, structured cabling system, facility grounding, mission critical technology systems, communications, audiovisual (AV) and security for the 911/EOC spaces. MCP would work directly with the Design Team as well as the City in consultation with the City Project Manager to ensure that the Design Team's construction documents contain the proper infrastructure to support the specialized systems that will be required by the PSAP spaces.

Should the City elect to solicit it, we will also be happy to offer MCP's services in a Phase 2 scope that is identified as Technology Infrastructure, Migration, and Transition Planning. Phase 2 would be proposed after the scope of Phase 1 is known.

ADDITIONAL COMMUNICATIONS DESIGN SERVICES FEE PROPOSAL

The proposed fee to provide the above ADDITIONAL COMMUNICATIONS DESIGN SERVICES has been deleted since only Schematic Design services for the Dispatch Center is proposed in this revised scope of services. The previously quoted \$20,000 is being utilized for the Schematic Design services for the Dispatch Center as shown above.

ADDITIONAL LEED DESIGN SERVICES

It is our understanding that the City will require that LEED Silver (v4) be targeted for this project. The Design Team will work with City staff to pursue this sustainability goal, if so directed.

ADDITIONAL LEED DESIGN SERVICES FEE PROPOSAL

The proposed fee to provide the above ADDITIONAL LEED DESIGN SERVICES is \$50,000, plus reimbursables. LEED Fundamental Commissioning will also be required for this LEED project, but can be performed outside of the Design Team, by the City's separate consultant. If the City elects to utilize the Design Team for Fundamental Commissioning, the fee for such is an additional \$19,000, making the Total Additional LEED Design Services proposal \$69,000.



REIMBURSABLE EXPENSES ALLOWANCE

All Reimbursable Expenses (travel expenses such as mileage, meals and lodging) will be invoiced against a \$12,000 Reimbursable Expense Allowance. The Reimbursable Expense Allowance can only be increased by the approval of the City, if needed.

Excluded Services:

- Site Surveys
- Rezoning/Variance Applications
- Geotechnical Analysis
- 3rd Party Professional Construction Cost Estimates
- Special Inspection, Material and Compaction Testing during Construction

The City will perform any necessary traffic studies, hazardous material studies, and abatement separate from this proposal.

If this proposal is acceptable, please let us know and we will make it an exhibit to an AIA Agreement for your review and signature. Please let me know if you have any questions regarding our proposal or would like any additional information. We look forward to working with you on this important project.

Sincerely,

Ken Newell

Ken Newell, AIA, LEED-AP BD+C

N/Projects/JP Greenville NC FD 911/Greenville NC FD 911 rProp 121119.doc

Sec. 11. Sec. 11. Indemnification.

(a) (Definitions). These definitions apply to this Section unless otherwise stated.

Contractor – Each party to this contract including Architect, except the City of Greenville.

Construction agreement -- any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, or appliance, including moving, demolition, and excavating connected therewith.

Defend – to pay for or furnish counsel at the expense of the Contractor to defend any of the Indemnitees against claims alleged or brought against any of the Indemnitees by a third party alleged or brought in any court or other tribunal, including forms of alternative dispute resolution required by law or contract, before the court or tribunal has reached a final determination of fault.

Derivative parties -- with respect to a party, any of that party's subcontractors, agents, employees, or other persons or entities for which the party may be liable or responsible as a result of any statutory, tort, or contractual duty.

Design professional -- a person or entity who is licensed under and provides professional services regulated by Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Design professional agreement -- any promise or agreement in, or in connection with, a contract or agreement with a design professional to provide design professional services.

Design professional services -- a service or work performed by a design professional for which licensure is required under Chapters 83A, 89A, 89C, 89E, or 89F of the N. C. General Statutes.

Fault – a breach of contract; negligent, reckless, or intentional act or omission constituting a tort under applicable statutes or common law; or violations of applicable statutes or regulations.

Indemnitees -- City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

Subcontractor – any person or entity, of any tier, providing labor or material through the Contractor for use on the project at issue in the applicable construction agreement or design professional agreement.

(b) (Standard Indemnification). (i) The Contractor shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or its derivative parties. In performing its duties under this subsection “i,” the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (ii) “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses. Included without limitation within “Charges” are (1) interest and reasonable attorney’s fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract.

(c) (Restriction regarding Indemnitees’ Negligence). This contract shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

(d) (Restriction regarding Fault). Nothing in this contract requires the Contractor to indemnify or hold harmless Indemnitees or any other person or entity against losses, damages, or expenses unless the fault of the Contractor or its derivative parties is a proximate cause of the loss, damage, or expense indemnified.

(e) (Restriction regarding Negligence). Nothing in this contract requires the Contractor, provided that it is a design professional, to defend Indemnitees or any other person or entity against liability or claims for damages, or expenses, including attorney’s fees, proximately caused or alleged caused by the professional negligence, in whole or in part of the Contractor, the City, or their derivative parties, whether the claim is alleged or brought in tort or contract.

(f) (Liability when at Fault). It is agreed without limitation that nothing in this contract shall be interpreted to exclude from any indemnity or hold harmless provisions enforceable under subsection (c) and (d) any attorneys' fees, litigation or arbitration expenses, or court costs actually incurred by the City to defend against third party claims alleged in any court, tribunal, or alternative dispute resolution procedure required of the City by law or by contract, if the fault of the Contractor or its derivative parties is a proximate cause of the attorney's fees litigation or arbitration expenses, or court costs to be indemnified.

(g) (Insurance contracts and Bonds) This Section does not affect an insurance contract, workers’ compensation, or any other agreement issued by an insurer; and those subsections do not apply to lien or bond claims asserted under Chapter 44A of the N.C. General Statutes.

(h) (Other Provisions) When this Section or any subsection or combination of subsections of this Section applies, it applies to every provision in this contract outside of this Section that would require the Contractor to indemnify, hold harmless, or defend Indemnitees regardless of whether the section in question is titled "indemnification," "warranty," or otherwise.

(i) (Survival) This Section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(j) (Compliance with law). It is agreed that this Section shall be applied to the maximum extent allowed by law and limited only as necessary to comply with N.C.G.S. § 22B-1.

AIA[®] Document B104[™] – 2017

Standard Abbreviated Form of Agreement Between Owner and Architect

AGREEMENT made as of the Seventeenth (17th) day of December in the year Two Thousand Nineteen (2019)

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Greenville
500 South Greene Street
Greenville, North Carolina 27834

and the Architect:
(Name, legal status, address and other information)

Stewart-Cooper-Newell Architects, P.A.
719 East Second Avenue
Gastonia, North Carolina 28054
Telephone Number: (704) 865-6311
Fax Number: (704) 865-0046

for the following Project:
(Name, location and detailed description)

Greenville Fire Station No. 7 / Dispatch Center

New Fire Station No. 7 to be located on a 6.01 acre Parcel Number 82543, on Bayswater Road, adjacent to East Firetower Road. The Fire Department will be approximately 15,000 SF, and the Dispatch Center will be approximately 5,000 SF.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

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User Notes:

(1497581677)

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2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	SUPPLEMENTAL AND ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth below:

(State below details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, and other information relevant to the Project.)

See Proposal / Scope Letter dated December 11, 2019 (Revised), attached as Exhibit "A", Page 1 – 3.

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

The use of Building Information Modeling (BIM) and other Digital Data is yet to be determined. Should BIM or similar tools be utilized on this project, Articles 1.3 and 1.3.1 will apply, and the referenced AIA Documents will become an Addendum to this Agreement.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying

Init.

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User Notes:

(1497581677)

2

party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.2 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.8:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability
\$1,000,000 / \$2,000,000 Aggregate
- .2 Automobile Liability
\$500,000
- .3 Workers' Compensation
Statutory Limits
- .4 Professional Liability
\$1,000,000 / \$2,000,000 Aggregate

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, civil, landscape, plumbing, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on (1) the accuracy and completeness of the services and information furnished by the Owner and (2) the Owner's approvals. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.2 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.3 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. Based upon typical Agency review comments and approvals encountered with public funded projects, the Architect has budgeted 40 work hours for the response to said Agency comments.

§ 3.2 Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

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§ 3.2.2 The Architect shall discuss with the Owner the Owner's program, schedule, budget for the Cost of the Work, Project site, and alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the Project requirements.

§ 3.2.3 The Architect shall consider the relative value of alternative materials, building systems and equipment, together with other considerations based on program, aesthetics, and any sustainable objectives, in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.4 Based on the Project requirements, the Architect shall prepare Design Documents for the Owner's approval consisting of drawings and other documents appropriate for the Project and the Architect shall prepare and submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.5 The Architect shall submit the Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Construction Documents Phase Services

§ 3.3.1 Based on the Owner's approval of the Design Documents, the Architect shall prepare for the Owner's approval Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.4.4.

§ 3.3.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.3.3 The Architect shall submit the Construction Documents to the Owner, update the estimate for the Cost of the Work and advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.3.4 The Architect, following the Owner's approval of the Construction Documents and of the latest estimate of the Cost of the Work, shall assist the Owner in obtaining bids or proposals and awarding and preparing contracts for construction.

§ 3.4 Construction Phase Services

§ 3.4.1 General

§ 3.4.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A104™-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. If the Owner and Contractor modify AIA Document A104-2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.4.1.3 Subject to Section 4.2, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.4.2 Evaluations of the Work

§ 3.4.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.2, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully

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completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.4.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents and has the authority to require inspection or testing of the Work.

§ 3.4.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.4.2.4 When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 3.4.2.5 The Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.4.3 Certificates for Payment to Contractor

§ 3.4.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.4.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 3.4.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.4.4 Submittals

§ 3.4.4.1 The Architect shall review and approve, or take other appropriate action, upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or any construction means, methods, techniques, sequences or procedures.

§ 3.4.4.2 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

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§ 3.4.4.3 The Architect shall review and respond to written requests for information about the Contract Documents. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

§ 3.4.5 Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.4.6 Project Completion

The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

- .1 The Architect shall provide, as a part of the Basic Services, one final inspection after the Contractor notifies the Architect that the project is complete.
- .2 The Architect shall, upon final inspection, prepare a written punch list of items to be completed or corrected and promptly provide the list to the Contractor.
- .3 The Contractor shall be required to complete the project and the items on the punch list and provide all required closeout documents within 30 days of the final inspection.
- .4 The Architect shall provide one (1) re-inspection to verify that the Contractor has completed the project and the final inspection punch list. The Owner and the Contractor shall be promptly notified of any deficiencies noted during this inspection so that they can immediately make the necessary corrections.
- .5 Any additional re-inspections necessitated due to deficiencies being noted under 3.6.6.1.4 above and any additional time required by the Architect due to closeout documents being incomplete or the contractor not submitting the documents within 30 days of the final inspection will be billed to the owner on an hourly rate plus reimbursable expenses as detailed in the attached Exhibit B.
- .6 The Owner and Architect agree that the services of the Architect that occur beyond a 60-day period from the initial final inspection will be billed to the owner on an hourly rate plus reimbursable expenses as detailed in the attached Exhibit B.
- .7 The Owner, by force of contract, shall have the right to deduct the charges of the Architect incurred under section 3.6.6.1.4 and 3.6.6.1.5 from either the Contractor's last application for payment or from liquidated damages charged to the Contractor.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services are not included in Basic Services but may be required for the Project. The Architect shall provide the Supplemental Services indicated below, and the Owner shall compensate the Architect as provided in Section 11.2. Supplemental Services may include programming, site evaluation and planning, environmental studies, civil engineering, landscape design, telecommunications/data, security, measured drawings of existing conditions, coordination of separate contractors or independent consultants, detailed cost estimates, on-site project representation beyond requirements of Section 4.2.2, value analysis, interior architectural design, tenant related services, preparation of record drawings, commissioning, sustainable project services, and any other services not otherwise included in this Agreement. *(Identify below the Supplemental Services that the Architect is required to provide and insert a description of each Supplemental Service, if not further described in an exhibit attached to this document.)*

See Proposal / Scope Letter dated December 11, 2019, attached as Exhibit "A", Page 1 – 3.

§ 4.2 The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Architect shall notify the Owner. The Architect shall not provide the Additional Services until the Architect receives the Owner's written authorization. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3.

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§ 4.2.1 The Architect shall provide services necessitated by a change in the Initial Information, changes in previous instructions or approvals given by the Owner, or a material change in the Project including size; quality; complexity; the Owner's schedule or budget for Cost of the Work; or procurement or delivery method as an Additional Service.

§ 4.2.2 The Architect has included in Basic Services one (1) visit per month to the site by the Architect during construction. The Architect shall conduct site visits in excess of that amount as an Additional Service.

§ 4.2.3 The Architect shall, as an Additional Service, provide services made necessary by a Contractor's proposed change in the Work. The Architect shall prepare revisions to the Architect's Instruments of Service necessitated by Change Orders and Construction Change Directives as an Additional Service.

§ 4.2.4 If the services covered by this Agreement have not been completed within Eighteen (18) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project; a written legal description of the site; and services of geotechnical engineers or other consultants, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.4 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.5 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests; tests for air and water pollution; and tests for hazardous materials.

§ 5.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service within three days of discovery.

§ 5.8 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.9 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

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§ 5.10 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, construction procurement activities have not commenced within 90 days after the Architect submits the Construction Documents to the Owner the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's current budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums when due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other, for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

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§ 8.1.4 The Architect and the Owner waive delay damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all delay damages due to either party's termination.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 Mediation, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.3 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

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permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect as follows:

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- .1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the predesign, site analysis, or Schematic Design Phase; or,
 - .2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase or any subsequent phase.
- .2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:
- As negotiated at time of request.

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A104-2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 The Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.9 To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Architect and Architect's officers, directors, partners, employees, agents and Architect's Consultants, and any of them, to Owner and anyone claiming by, through or under Owner, for any and all claims, losses, costs of damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract or warranty express or implied of Architect or Architect's officers, directors,

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partners, employees, agents of Architect's Consultants or any of them, shall not exceed the total compensation received by Architect under this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)

Architect's Basic Services Fee for Schematic Design Phase through Construction Administration Phase for the Fire Department shall be Four Hundred Fifty Thousand Dollars (\$450,000.00), plus Twenty Thousand Dollars (\$20,000.00) for Schematic Design Phase for the Dispatch Center for a Total Basic Design Fee of Four Hundred Seventy Thousand Dollars (\$470,000.00), plus, reimbursable expenses as defined in Article 11.8 and attached Exhibit "B".

	Fire Dept.	Dispatch	Total
Schematic Design Phase	\$ 67,500	\$20,000	\$ 87,500
Design Development Phase	\$ 67,500		\$ 67,500
Construction Document Phase	\$180,000		\$180,000
Bidding / Negotiation Phase	\$ 22,500		\$ 22,500
Construction Admin. Phase	\$112,500		\$112,500
TOTAL BASIC DESIGN FEE	\$450,000	\$20,000	\$470,000

Additional LEED Design Services: LEED Silver (v4) – Architect's fee shall be Fifty Thousand Dollars (\$50,000.00), plus reimbursable expenses as defined in Article 11.8 and attached Exhibit "B". If the City elects to utilize the Design Team for Fundamental Commissioning, the fee would be an additional Nineteen Thousand Dollars (\$19,000.00), making the Total Additional LEED Design Services fee Sixty Nine Thousand Dollars (\$69,000.00).

See Proposal / Scope Letter dated December 11, 2019, attached as Exhibit "A", Page 1 – 3.

- .2 Percentage Basis
(Insert percentage value)

() % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- .3 Other
(Describe the method of compensation)

§ 11.2 For Supplemental Services identified in Section 4.1, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

As mutually agreed as services are required.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

As mutually agreed as services are required.

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§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus Twenty percent (20%), or as follows:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	percent ()	%)
Design Development Phase	percent ()	%)
Construction Documents Phase	percent ()	%)
Bidding / Negotiations	percent ()	%)
Construction Phase	Percent ()	%)

(Row deleted)

Total Basic Compensation	one hundred	percent ()	%)
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§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Hourly Rate & Reimbursable Exhibit "B"

Employee or Category	Rate
----------------------	------

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally maintained by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

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§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Twenty percent (20 %) of the expenses incurred.

§ 11.9 Payments to the Architect

§ 11.9.1 Initial Payment

An initial payment of One Thousand Dollars (\$ 1,000.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.9.2 Progress Payments

§ 11.9.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Thrity (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

1.5 % per month

§ 11.9.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.9.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

§ 11.9.2.4 If the Owner does not intend to make payment to the Architect by the due date, or is not able to do so, the Owner will provide written notification of such to the Architect. Such written notification shall occur at least two days prior to the payment due date. The written notification shall also clearly state the reasons for the payment not being made on time.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

§ 12.1 The Architect shall be named as Additional Insured on the Builder's Risk Insurance Policy that will be furnished by either the Owner or the General Contractor.

The Architect shall also be named as Additional Insured on the General Liability and Auto Liability Policies that will be furnished by the General Contractor as a part of the General Construction Contract.

The Insurance Companies furnishing the policies for all of the above coverages will be required to furnish a waiver of its rights of subrogation on the General Liability and Worker's Compensation policies, against the Architect, the Architect's Employees and the Architect's Consultants.

The Insurance Policies and Waivers must be furnished to the Architect prior to the beginning of construction.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B104™-2017, Standard Abbreviated Form of Agreement Between Owner and Architect

.2

(Paragraphs deleted)

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Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Exhibit "A" - Scope / Proposal Letter dated December 11, 2019

Exhibit "B" - Hourly Rate & Reimbursable Schedule

This Agreement entered into as of the day and year first written above.

CITY OF GREENVILLE, NORTH CAROLINA

STEWART-COOPER-NEWELL ARCHITECTS, P.A.

OWNER *(Signature)*

P. J. Connelly, Mayor
(Printed name and title)



ARCHITECT *(Signature)*

Kenneth C. Newell, AIA, LEED-AP BD+C,
President
(Printed name, title, and license number, if required)

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Item #11



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award to Bill Clark Homes of Greenville LLC for construction of four single-family homes in the Lincoln Park neighborhood

Explanation: **Abstract:** The City plans to construct four (4) single-family units in the Lincoln Park neighborhood as part of the West Greenville revitalization efforts. Staff solicited bids from contractors for construction of these new units, and Bill Clark Homes of Greenville was determined to be the lowest responsive, responsible bidder to complete the project construction.

Background: Housing Division staff is working to create and preserve affordable housing within West Greenville with new construction, owner-occupied rehabilitation, down payment assistance, and housing provider non-profit funding. This is a concentrated effort to maximize resources in a centralized location. Aligned with the 2019-2020 Annual Action Plan, staff is working to procure and recruit private and non-profit contractors to aid in the construction of new units along Fleming Street. Staff has solicited bids from contractors for construction of the new units and received interest from four (4) local contractors. Bill Clark Homes of Greenville LLC has been determined the lowest responsive, responsible bidder to complete the project construction. The four (4) new units will be available to households at or below 80% of area median income with down payment assistance available up to 20% of the purchase price to qualifying buyers.

Other investment in the neighborhood includes substantial rehabilitation of owner-occupied units, lead hazard control and healthy home repairs to owner and renter-occupied units, and infrastructure improvements.

Fiscal Note: The proposed contract with Bill Clark Homes of Greenville LLC for construction of four (4) single-family units is \$485,600.

Recommendation: Staff recommends executing an agreement with Bill Clark Homes of Greenville LLC for construction of four (4) single-family units in the Lincoln Park neighborhood.

ATTACHMENTS:

▣ **Lincoln_Park-Bill_Clark_Contract_1120985**

**BID BOND APPLICABLE ON THIS CONTRACT
CITY OF GREENVILLE
HOUSING PRODUCTION PROGRAM
CONSTRUCTION AGREEMENT**

THIS AGREEMENT made this ____ day of _____, 20__ by and between Bill Clark Homes of Greenville (a corporation organized and existing under the laws of the State of North Carolina), hereinafter called the “Contractor”, and City of Greenville of Pitt County, North Carolina, hereinafter called the “City”.

WITNESSETH:

That the Contractor and the City for the consideration stated herein mutually agree as follows:

1. STATEMENT OF WORK

The Contractor shall furnish all supervision, labor, materials, machinery, tools equipment and services, and transportation services, and perform and complete all work required for the construction of four (4) single family homes in an efficient and skillful manner on the property described as follows:

Lot #2 Parcel 082307, Lot #3 Parcel 082308, Lot #4 Parcel 082309, Lot #5 Parcel 082310

Located in Greenville, North Carolina

all in strict accordance with the General Specifications for Construction and the plans which are attached hereto as Schedule 1 and form a part of this contract as fully as if set forth here.

All materials or labor required for the completion of this contract shall be paid by the Contractor and in no event shall any amount be charged to the City for these items. No lead paint will be used under any circumstances.

2. PAYMENT

The Contractor shall be paid by the City the sum of **\$485,600.00** for single family home construction and improvements listed herein. The City of Greenville will pay the Contractor in three (3) draws based upon the completion of items in accordance with the attached Contractor Draw Form with the first draw at 33% completion of all four (4) units and the final draw once a Certificate of Occupancy has been issued for each of the four (4) units.

Before payment of the agreed sum shall be made, an inspection of the construction shall be made by the City and, the Contractor shall execute a lien release and warranty on a form to

be furnished by the City relative to the work performed, materials furnished, and certification that all amounts due for labor and/or materials have been paid.

3. WARRANTY

The Contractor understands that all materials furnished under this contract are under warranty for a full year (12 months) from the date of the approved building inspection and receipt of the Certificate of Occupancy, and that this responsibility includes work as well as materials. Exceptions to the above are normal and reasonable wear and tear or damages caused by homeowner or by accident.

4. PERFORMANCE

In the event that the performance by Contractor is unsatisfactory and unacceptable for any reason, upon inspection, the Contractor agrees to undertake to correct such deficiencies as noted at no cost to the City; the Contractor agrees that no lien of any nature shall be recorded or asserted against the property or the City described herein until a period of fourteen (14) days has elapsed after inspection and full approval of the work under this contract made by the owner or their authorized representative; provided that this provision does not waive any lien nor subrogate any lien that accrues to the Contractor's benefit.

5. LIQUIDATED DAMAGES FOR DELAYS

If the Contractor does not complete the work in the time specified in the contract, including any extensions for excusable delays, the Contractor shall pay the sum of one hundred dollars (**\$100.00**) per day in liquidated damages until the work is completed. Liquidated damages will be paid to the City. The contractor shall not be charged with liquidated damages for any delays in the completion of the work due to severe weather, such as hurricanes, tornadoes, cyclones, and other extreme weather conditions.

6. PERMITS, CODES, NOTICES AND COMMENCEMENT OF PERFORMANCE

The Contractor shall give all notices required by and comply with all applicable laws, ordinances and codes of all local authorities and shall, at their own expense, secure and pay the fees or charges for all permits required for the performance of the contract work. Prior to commencement of performance, the Contractor shall give written notice to the City of the date said work will commence.

The Contractor agrees that performance as specified herein shall commence not later than 20 days from the date of this contract and shall be completed within 120 days from commencement of performance.

7. STANDARD OF CARE

The Contractor shall be responsible for all damages to persons or property that occur as a result of his/her fault or negligence in connection with the execution of the work and shall

be responsible for the proper care and protection for all work performed until completion and final acceptance.

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages. To persons or property, either on or off site which occur as a result of performance. Contractor agrees to observe all applicable laws and building and construction codes.

8. INDEMNIFICATION OF OWNER

The Contractor shall indemnify and save harmless the City from liability for any injury or damages to persons or property resulting from this performance under this contract.

9. INSURANCE

The Contractor shall carry or require that there be carried Worker's Compensation Insurance for all his/her employees and any employees of subcontractors in accordance with the State's Worker's Compensation laws and shall carry sufficient liability insurance under a contractor's public liability insurance policy to protect against claims arising out of performance of the contract. The Contractor will furnish to the City evidence of comprehensive public liability insurance protecting the City for not less than \$300,000 in the event of bodily injury including death and \$100,000 in the event of property damage arising out of the work performed by the Contractor's employees or the employees of any subcontractor in accordance with State or local laws governing Workmen's Compensation.

PROPERTY INSURANCE

- (a) The Contractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained until final payment has been made or until no person or entity other than the City has an insurable interest in the property whichever is later. This insurance shall include interests of the City and the Contractor.
- (b) The Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Contractor's services and expenses required as a result of such insured loss.

Guarantee of Performance

The Contractor shall guarantee the performance of the work performed pursuant to this agreement by the provision of a performance bond in a form complying with the provisions of North Carolina Statute 44A-33. The money or performance bond shall be a guarantee (a) for the faithful performance and completion of the work in strict accordance with the terms of the agreement, (b) for the repair, or replacement where required, or the cost of repair or replacement of all work performed under the provisions of the agreement provisions, and (c) for the guarantee of the payment of all persons supplying labor and material in connection with the work performed under the agreement. The deposit or performance bond may draw upon as necessary for the aforelisted purposes and shall be maintained in accordance with program guidelines.

10. SUBCONTRACTS

The Contractor shall not execute an agreement with any other General Contractor or permit any other contractor to perform any work included in this contract except for generally accepted items such as but not limited to: framing, plumbing, electrical HVAC, roofing, vinyl siding, insulation, pest control, floor covering, painting and lead based paint abatement without the written approval of the City of such agreement or permission.

11. EQUAL OPPORTUNITY EMPLOYMENT

During the performance of this contract, the Contractor agrees to the following:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for conspicuous places available to employees and applicants for employment, notices to be provided by the City setting forth the provision of this nondiscrimination clause.
- (b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- (c) The Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. ONLY CONTRACT

This Contract shall be the only contract between the parties hereto related to this lot and no other prior or subsequent contract shall be valid or binding against the Owner.

13. ENCUMBRANCES

The City shall not encumber the property or make any conveyance of the property during the construction without the written notification to the Contractor.

14. DISPUTES

All claims or disputes between the City and Contractor arising out of or related to the work will be heard and mediated by City of Greenville Director of Planning and Development Services Department. If a mutually agreed upon decision is reached the decision will be final. Disputes, claims or requests must be filed in writing to the City of Greenville Community Development Department within a reasonable time after the dispute has arisen.

Unless otherwise agreed in writing, the Contractor will continue with the work and maintain its progress during the mediation proceedings. The City may continue to make payments to the Contractor in accordance with the Construction Agreement.

Federal Contracting Requirements

This Contract will be funded in whole or in part with federal funding. As such, federal laws, regulations, policies and related administrative practices apply to this Contract. The most recent of such federal requirements, including any amendments made after the execution of this Contract shall govern the Contract, unless the federal government determines otherwise. This section identifies the federal requirements that may be applicable to this contract. The Vendor is responsible for complying with all applicable provisions, updates or modifications that occur in the future relating to these clauses.

To the extent possible, the federal requirements contained in the most recent version of the Uniform Administrative Requirements for federal awards (Uniform Rules) codified at 2.C.F.R., Part 200, including any certifications and contractual provisions required by any federal statutes or regulation referenced therein to be included in this contract are deemed incorporated into this contract by reference and shall be incorporated into any sub-agreement or subcontract executed by the Vendor pursuant to its obligations under this Contract. The Vendor and its sub-contractors, if any, hereby represent and covenant that they are have complied and shall comply in the future with the applicable provisions of the original contract then in effect and with all applicable federal, state, and local laws, regulations, and rules and local policies and procedures, as amended from time to time, relating to Work to be performed under this contract.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

Access to Records

The following access to records requirements apply to this contract:

- (1) The contractor agrees to provide the City of Greenville, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide City access to construction or other work sites pertaining to the work being completed under the contract.

Termination for Convenience (General Provision)

The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid the Contractor. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.

Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision)

The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor ten (10) calendar days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If Contractor fails to remedy to the City's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) calendar after receipt by Contractor of

written notice from the City setting forth the nature of said breach or default, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Contractor and its sureties for said breach or default.

Breaches and Dispute Resolution

Performance During Dispute - Unless otherwise directed by City of Greenville, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City of Greenville and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the City of Greenville is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City of Greenville or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Changes

Any change in the contract cost, modification, change order, or constructive change must be allowable, allocable, within the scope of its funding, grant or cooperative agreement, and reasonable for the completion of project scope. All changes and/or amendments to the contract will be outlined in detail, formalized in writing, and signed by the authorized representative of each party. A Contractor's failure to do so shall constitute a material breach of the contract.

Waiver of Remedies for any Breach

In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

Equal Opportunity

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, 3 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

Clean Air Act

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Sect. 7401 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal Assistance.

Clean Water

- (1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Sect. 1251 et seq. The Contractor agrees to report each violation as required.
- (2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance.

Procurement of Recovered Materials

Vendor and subcontractor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the regulatory provisions of 40 CFR Part 247. In the performance of this contract and to the extent practicable, the Vendor and subcontractors are to use products containing the highest percentage of recovered materials for items designated by the Environmental Protection Agency (EPA) under 40 CFR Part 247 whenever:

1. The contract requires procurement of \$10,000 or more of a designated item during the fiscal year; or
2. The Vendor has procured \$10,000 or more of a designated item using Federal funding during the previous fiscal year.

Section 6002(c) establishes exceptions to the preferences for recovery EPA-Designed products if the Vendor can demonstrate the item is:

- Not reasonably available within a timeframe providing for compliance with the contract performance schedule;
- Fails to meet reasonable contract performance requirements; or
- Is only available at an unreasonable price.

Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Suspension and Debarment

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by the City. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The

bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Energy Conservation

The Vendor and subcontractors agrees to comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321, et seq.

Davis-Bacon Requirements

If applicable to this contract, the Vendor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141-348).

1. Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalent thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Vendor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided* that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Vendor and its subcontractors at the site of the work in a prominent and accessible place where it can easily be seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Vendor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Vendor, the laborers, or mechanics to be employed in the classification, or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii) (B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Vendor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Vendor does not make payments to a trustee or other third person, the Vendor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program: *Provided* that the Secretary of Labor has found, upon the written request of the Vendor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Vendor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. *Withholding.*

The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Vendor under this contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Vendor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Vendor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of work, all or part of the wages required by the contract, the Sponsor may, after written notice to the Vendor, Sponsor, Applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. *Payrolls and Basic Records.*

(i) Payrolls and basic records relating thereto shall be maintained by the Vendor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 1(b)(2)(B) of the Davis-Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Vendor shall maintain records that show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and that show the costs anticipated or the actual costs incurred in providing such benefits. Vendors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The Vendor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Vendor will submit the payrolls to the applicant, Sponsor, or Owner, as the case may be, for transmission to the Sponsor. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (*e.g.* the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at www.dol.gov/whd/forms/wh347instr.htm or its successor site. The prime Vendor is responsible

for the submission of copies of payrolls by all subcontractors. Vendors and subcontractors shall maintain the full social security number and current address of each covered worker and shall provide them upon request to the Sponsor if the agency is a party to the contract, but if the agency is not such a party, the Vendor will submit them to the applicant, sponsor, or Owner, as the case may be, for transmission to the Sponsor, the Vendor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime Vendor to require a subcontractor to provide addresses and social security numbers to the prime Vendor for its own records, without weekly submission to the sponsoring government agency (or the applicant, Sponsor, or Owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Vendor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) The payroll for the payroll period contains the information required to be provided under 29 CFR § 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR § 5.5(a)(3)(i), and that such information is correct and complete;

(2) Each laborer and mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations 29 CFR Part 3;

(3) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Vendor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Vendor or subcontractor shall make the records required under paragraph (3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the sponsor, the Sponsor, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Vendor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Vendor, Sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. *Apprentices and Trainees.*

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Vendor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Vendor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Vendor's or sub-Vendor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Vendor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding

journeyman wage rate on the wage determination that provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Vendor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The Vendor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

6. Subcontracts.

The Vendor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR Part 5.5(a)(1) through (10) and such other clauses as the Sponsor may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination: Debarment.

A breach of the contract clauses in paragraph 1 through 10 of this section may be grounds for termination of the contract, and for debarment as a Vendor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Vendor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. *Certification of Eligibility.*

(i) By entering into this contract, the Vendor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Vendor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001.

Copeland "Anti-Kickback" Act

Vendor. The Vendor must comply with the requirements of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) and the requirements of 29 C.F.R. Part 3 *as may be applicable*, which are incorporated by reference into this contract.

Vendor and subcontractors are prohibited from inducing, by any means, any person employed on the project to give up any part of the compensation to which the employee is entitled. The Vendor and each subcontractor must submit to the Owner, a weekly statement on the wages paid to each employee performing on covered work during the prior week

Subcontracts. The Vendor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for the compliance by any subcontractor or lower tier subcontractors with all of these contract clauses.

Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a Vendor and sub-Vendor as provided in 29 C.F.R. § 5.12."

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers must be in compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

1. Overtime requirements. No Vendor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Vendor and any subcontractor responsible

therefor shall be liable for the unpaid wages. In addition, such Vendor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. The Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Vendor or subcontractor under any such contract or any other Federal contract with the same prime Vendor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Vendor, such sums as may be determined to be necessary to satisfy any liabilities of such Vendor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontractors. The Vendor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Vendor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

CERTIFICATION REGARDING LOBBYING
(must be submitted with bid if \$100K or more)

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned [Contractor] certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2)

herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subContracts, subgrants, and Contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in federally funded projects are produced in the United States, unless a waiver has been granted or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7 and include microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content. (Braun's conversion processes have been determined to constitute final assembly for minivans converted for wheelchair access. Eldorado's conversion processes have been determined to constitute final assembly for minivans converted for wheelchair access.)

A bidder or offeror must submit to the City of Greenville the appropriate Buy America certification (below) with all bids or offers, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 C.F.R. Part 661.5.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

GENERAL TERMS AND CONDITIONS

1. **NON-DISCRIMINATION**: The City of Greenville does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the City are expected to fully comply with the City's non-discrimination policy.
2. **NON-COLLUSION**: Respondents, by submitting a signed proposal, certify that the accompanying submission is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under North Carolina or United States law.
3. **PAYMENT TERMS**: The City agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The City does not agree to the payment of late charges or finance charges assessed by the seller or vendor for any reason. Invoices are payable in U.S.funds.
4. **GOVERNING LAW**: Any agreement, contract or purchase order resulting from this invitation to bid, request for proposals or request for qualifications or quotes, shall be governed by the laws of the State of North Carolina.
5. **ACCEPTANCE/REJECTION OF PROPOSALS**: The City of Greenville reserves the right to award to the Firm who will best serve the interests of the City. The City also reserves the right to waive minor variations in the specifications and in the bidding

process, as well as to accept in whole or in part such proposal(s) where it deems it advisable in protection of the best interests of the City. The City further reserves the right to accept or reject any or all bids/proposals, and to award or not award a contract based on this proposal.

6. **E-VERIFY COMPLIANCE**: The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Contractor utilizes a Subcontractor, the Contractor shall require the Subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. By submitting a proposal, the Proposer represents that their firm and its Subcontractors are in compliance with the requirements of Article 2 Chapter 64 of the North Carolina General Statutes.
7. **CONFLICT OF INTEREST**: Each proposer shall affirm that no official or employee of the City of Greenville is directly or indirectly interested in this proposal for any reason of personal gain.
8. **EQUAL EMPLOYMENT OPPORTUNITY CLAUSE**: The City of Greenville has adopted an Equal Employment Opportunity Clause, which is incorporated into all specifications, purchase orders and contracts, whereby a vendor agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry. A copy of this clause may be obtained at the City Clerk's Office, located in City Hall-200 W. Fifth Street Greenville, NC. By submitting a proposal, the firm is attesting that they are an Equal Opportunity Employer.
9. **MWBE PROGRAM: Minority and/or Women Business Enterprise (MWBE) Program**
It is the policy of the City of Greenville to provide minorities and women equal opportunity for participating in all aspects of the City's contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchase, and professional and personal service contracts. In accordance with this policy, the City has adopted a Minority and Women Business Enterprise (M/WBE) Plan and subsequent program, outlining verifiable goals.
The City has established a 10% Minority Business Enterprise (MBE) and 6% Women Business Enterprise (WBE) goal for the participation of M/WBE firms in supplying goods and services for the completion of this project. All firms submitting bids agree to utilize minority and women-owned suppliers and service providers whenever possible.
Questions regarding the City's M/WBE Program should be directed to the M/WBE Office at (252) 329-4462.
10. **FEDERAL LAW**: Federal law (Rehabilitation Act and ADA) prohibits handicapped discrimination by all governmental units. By submitting a proposal, the vendor is attesting to its policy of nondiscrimination regarding the handicapped.
11. **TAXES**: Sales taxes may be listed on the proposal, but as a separate item. No charge will be allowed for Federal Excise and Transportation tax from which the City is exempt.
12. **WITHDRAWAL OF PROPOSALS**: No bid/proposal may be changed or withdrawn after the stated time and date for submittal. Bids/proposals submitted shall be binding for ninety (90) days after the date of submittal.

13. **SERVICES PERFORMED**: All services rendered under this agreement will be performed at the Seller's own risk and the Seller expressly agrees to indemnify and hold harmless The City of Greenville, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
14. **INDEPENDENT CONTRACTOR**: It is mutually understood and agreed the Seller is an independent contractor and not an agent of the City of Greenville, and as such, Seller, his or her agents and employees shall not be entitled to any City employment benefits, such as but not limited to vacation, sick leave, insurance, workers's compensation, pension or retirement benefits.
15. **VERBAL AGREEMENT**: The City will not be bound by any verbal agreements.
16. **INSURANCE REQUIREMENTS**: Contractor shall maintain at its own expense
 - (a) **Commercial General Liability** Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage; City of Greenville, 200 W. Fifth St. Greenville, NC 27834 shall be named as additional insured.
 - (b) **Professional Liability** insurance in an amount not less than \$1,000,000 per occurrence-if providing professional services;
 - (c) **Workers Compensation Insurance** as required by the general statutes of the State of North Carolina and Employer's Liability Insurance not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit;
 - (d) **Commercial Automobile Insurance** applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 per occurrence as applicable. Certificates of Insurance shall be furnished prior to the commencement of Services.
17. **IRAN DIVESTMENT ACT**: Vendor certifies that; (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 143-6A-4; (ii) it will not take any actions causing it to appear on any such list during the terms of this contract, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on any list.

GENERAL REQUIREMENTS

The Contractor will keep the premises clean and orderly during the course of the work and remove all debris at the completion of the work. Materials and equipment that have been removed and replaced as part of the work shall belong to the Contractor.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

Bill Clark Homes of Greenville LLC

Date

By: _____ (SEAL)
Lance Clark

City of Greenville

Date

By : _____ (SEAL)
Ann E. Wall, City Manager

ATTEST: _____

APPROVED AS TO FORM

Emanuel D. McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Services

(#1120985 v-2)

**City of Greenville
Contractor Draw Form**

Address: _____

Contract Date: _____

Contractor: _____

Contract Price: \$ _____

	Items Completed	%	Contract	Draws		
			Cost	1	2	3
1	Permits	6	\$00,000.00	\$00.00	\$00.00	\$00.00
2	Clearing/Grading/Fill	3				
3	Footing, Underground Plumbing, Soil Treatment	5				
4	Foundation/Slab Poured	6				
5	Exterior Walls/Tie Beam	6				
6	Roof Trusses	6				
7	Roof Sheathing/Felt	4				
8	Interior Framing Complete	5				
9	Windows/Exterior Door Frames Set	4				
10	2 nd Plumbing/Tub Set	2				
11	Wiring Rough-In	4				
12	HVAC-Ducts Installed	2				
13	Roof Shingles/Tiles Installed	4				
14	Insulation (walls & ceilings)	2				
15	Exterior Trim/Soffits	3				
16	Drywall Hung	4				
17	Drywall Finish	3				
18	Interior Trim/Interior Doors Installed	4				
19	Interior Paint	3				
20	Siding/Brick	4				
21	Exterior Paint Complete	3				
22	Exterior Doors & Garage Door Installed	2				
23	Cabinets/Countertops Installed	3				
24	Plumbing Finish	1				
25	Electrical Finish	1				
26	Finish Flooring – Carpet/Vinyl/Tile	2				
27	Appliances Installed	2				
28	HVAC –Compressor/Air Handler Installed	3				
29	Driveway/Walks Installed	1				
30	Landscaping	2				
	Total Contract Amount	100				

The improvements were personally inspected by me and found to be _____ % complete to date and the required inspection has passed.

Rehabilitation Officer

Date

Draw Amount: _____

Approved: _____
Housing Administrator

Thomas Barnett, Director of Planning and
Development Services Department



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #1)

Explanation: **Abstract:** The City advertised for professional services for a Mowing/Landscape Maintenance Contract (PWD Contract #1) on October 8, 2019. The solicitation included a Mowing/Landscape Maintenance Contract for the locations listed below (PWD Contract #1):

Charles Blvd/NC 43 from 10th Street to Firetower Road
Signature Drive from NC 43 to Dead-end
Arlington Blvd. from Memorial Drive to W. 5th Street
Firetower Road from Highway 11 to Corey Road
McGregor Downs Road from W. 5th Street to B's BBQ Road
Allen Road from Stantonsburg Rd. to Dickinson Avenue
Highway 33 from Greenville Blvd. to Portertown Road
Greenville Blvd./Hwy 264 from 10th Street to Whichard Road
Stantonsburg Road from Moye Blvd. to 264 Bypass including interchange
Dickinson Avenue and S. Memorial Drive Intersection
N. Greene Street from Tar River to Airport/Mumford Road
Regency Blvd. from S. Memorial Drive to Evans Street

Explanation: The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal during each cycle. Mowing cycles (which include both litter removal and then mowing) are based on bi-weekly schedules with mowing beginning on April 1st and lasting through November 1st. Litter removal only cycles will typically occur between November 1st and April 1st.

On November 13th, staff received eight (8) proposals in response to the RFQ. Third Street Facility Services was the lowest bidder.

The City will enter into a contract with Third Street Facility Services in the amount of \$115,600 annually and \$346,800 for a three (3) year period beginning FY 2020 and ending FY 2023.

Fiscal Note: Funding for this contract is provided through the Public Works operational budget.

Recommendation: City Council award a landscape maintenance contract to Third Street Facility Services in the amount of \$346,800 (3 year amount). The annual amount is expected to be \$115,600.

ATTACHMENTS:

- ❑ **Mowing Contract #1 Bid Tab**
- ❑ **Mowing_Contract_1_1121078**
- ❑ **Contract 1 Exhibit A Attachment**

THIS CONTRACT made and entered into the _____ day of January, 2020 by and between the City of Greenville, a municipal corporation, Party of the First Part and hereinafter referred to as the CITY, and Third Street Facility Services, Party of the Second Part and hereinafter referred to as the CONTRACTOR;

WITNESSETH

WHEREAS, the CITY has issued an Invitation to Bid for mowing services for City Wide Right of Way Mowing, and

WHEREAS, the CONTRACTOR is the successful bidder with its proposal to provide mowing services for contract area designated as Contract 1, City Wide Right of Way Mowing.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties contained herein, the parties hereto agree as follows:

1) DESCRIPTION OF WORK:

The CONTRACTOR shall provide mowing services for City Wide Rights- of- Way Mowing Contract 1 as designated by the Buildings & Grounds Superintendent within the Public Works Department. The services to be provided shall be as described in the Invitation to Bid attached hereto, labeled as Exhibit "A", and herein incorporated by reference. The Contractor's e-verify affidavit which was submitted with the Invitation to bid is part of this contract. Said services shall be commenced by the CONTRACTOR, no later than ten (10) days after the issuance of a Notice to Proceed.

2) PAYMENT:

The CITY shall pay the CONTRACTOR for said mowing services performed in monthly installments based on areas mowed and approved for payment. The CITY will pay the CONTRACTOR for all approved work completed in accordance with specifications and found acceptable by the City within thirty (30) days after receipt of an invoice. It is understood and agreed by both parties that a monthly invoice and payment

shall be based upon the areas completed by the CONTRACTOR during the previous month at the rate of \$4,800 per cycle for mowing and litter pickup and a rate of \$3,880 per cycle for litter pickup only.

3) TERM:

The initial term of this contract shall commence upon issuance of Notice to Proceed and conclude upon December 31, 2020. This contract may be extended in writing by the CITY in its sole discretion, annually for up to a total of two (2) additional years starting on January 1st and ending on December 31st of the same year.

4) COMPLIANCE WITH ALL REGULATIONS:

The CONTRACTOR must comply with all legislation and federal, state and CITY regulations and program guidelines that may be applicable to the work executed under this contract.

5) TERMINATION:

The CITY may terminate this contract for nonperformance, or for unacceptable performance, or for any other reason as determined by the Public Works Director or his designee. The CITY will give written notice to the CONTRACTOR specifying areas of nonperformance or unacceptable performance and the CONTRACTOR shall have ten (10) days to rectify. In the event the condition(s) identified in the written notice to the CONTRACTOR are not rectified, the CITY will give the CONTRACTOR a written notice of termination. Upon receipt, the CONTRACTOR is expected to remove all employees and equipment from the premises immediately.

6) BUILDING AND GROUNDS SUPERINTENDENT:

The CITY employs within the Public Works Department a full time Building and Grounds Superintendent or designee who will be overseeing the requirements of this contract. The Building and Grounds Superintendent's office is located at the Public Works Complex, 1500 Beatty Street, Greenville, NC. The CONTRACTOR is expected to keep the Building and Grounds Superintendent or designee informed of work progress and plans daily. All directions and communications from the CITY to the CONTRACTOR shall be through the Building and Grounds Superintendent or designee.

7) CONTRACTOR'S SUPERVISOR:

The CONTRACTOR shall furnish a competent supervisor who shall be on the job and available to the CITY's Building and Grounds Superintendent or designee at all times that the CONTRACTOR'S work crews are on City property. The CONTRACTOR's supervisor shall have full authority over the CONTRACTOR's work crews and shall monitor and direct them responsibly. CONTRACTOR's supervisor must have a telephone number to be contacted as needed.

8) LABOR, EQUIPMENT AND SUPPLIES:

The CONTRACTOR shall furnish all labor, equipment and supplies needed to fulfill its obligation under this contract. The CITY will furnish no equipment, supplies, or fuel under this contract.

9) LICENSES:

The CONTRACTOR shall have and maintain all necessary and legally required licenses and permits to enable performance of the services.

10) DAMAGE TO CONTRACTORS PROPERTY:

Should fire, theft, vandalism or other casualty, damage or destroy the equipment or property belonging to the CONTRACTOR while on CITY property, the CITY shall be under no obligation to replace or in any way compensate the CONTRACTOR for said property.

11) HOLD HARMLESS:

a. The CONTRACTOR shall indemnify and hold harmless the CITY from and against any liability, loss, cost, damage suit, claim, or expense arising occurrence on the part of the CONTRACTOR and its officers, servants, agents or employees arising from its activities, operations, and performance of services while on CITY property and further agrees to release and discharge the CITY and its agents and employees from all claims or liabilities arising from or caused by the CONTRACTOR in fulfilling its obligations under this contract.

b. It is understood and agreed by the parties that CITY will assume no liability for damages, injury, or

other loss to the CONTRACTOR, its employees or property, tools or equipment, or to other persons or properties located on CITY facilities resulting from the CONTRACTOR'S activities and operations while performing services under this contract. The CONTRACTOR shall assume full and complete liability for any and all damages to CITY or private properties caused by or resulting from its activities, operations, and that of its employees, agents and officers.

12) INSURANCE:

The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required, and such insurance has been approved in writing by the CITY. Insurance required shall remain in effect through the term of this contract.

a. Workers' Compensation:

The CONTRACTOR must maintain during the life of this contract, Workers' Compensation Insurance for all employees performing work at the various property locations of the project under this contract, or as otherwise required by North Carolina General Statutes.

b. Public Liability and Property Damage:

The CONTRACTOR must maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the OWNER. The City of Greenville shall be named as an additional insured on all coverage.

c. Other Insurance:

The CONTRACTOR shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory

limits.

d. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

e. Proof of Carriages:

The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the CITY.

13) AMENDING THE CONTRACT:

Any changes to this contract shall be in writing and must be signed by all parties before it will be considered to be in effect.

14) NON-ASSIGNABILITY:

This contract, or any portion thereof, shall not be assigned by either party without the express written consent of the other party.

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

CITY OF GREENVILLE

BY: _____

NAME: _____

TITLE: _____

Attest _____

TITLE: _____

Address for giving notices:

PO BOX 7207
Greenville, NC 27835-7207

THIRD STREET FACILITY SERVICES

BY: _____

NAME: _____

TITLE: _____

Address for giving notices:

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Services

Account Number: 010-01-5561-000-000-528385

INVITATION TO BID
BID # 19-20-05

CITY OF GREENVILLE
PUBLIC WORKS DEPARTMENT
BUILDING AND GROUNDS DIVISION
MOWING / LANDSCAPE CONTRACTS # 1, 2, and 7
CITY OF GREENVILLE, NORTH CAROLINA



Mandatory

Pre-Bid Meeting: Tuesday, October 22, 2019@ 3:00 p.m.
Public Works Department Conference Room
1500 Beatty Street, Greenville, NC

Bid Due Date: Wednesday, November 13, 2019@ 3:00 pm

Contact Persons:

Questions regarding the bid package:

Ms. Denisha Harris
Financial Services Manager
Telephone: 252-329-4862
Fax: 252-329-4464
Email: dharris@greenvillenc.gov

Questions regarding the specifications:

Devin Thompson
Building and Grounds Superintendent
Telephone: 252-329-4522
Fax: 252-329-4535
Email: dthompson@greenvillenc.gov

CITY OF GREENVILLE
 ADVERTISEMENT FOR BIDS
 `CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT BUILDING AND
 GROUNDS DIVISION MOWING CONTRACTS_

The City of Greenville, NC is requesting bids for `Public Works Department Building and Grounds Division Mowing Contracts_ as listed below. The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal on each contract area (Contracts 1, 2, and 7) per scope of work and specifications.

Contract # 1- Every Two Weeks Cycle

Charles Blvd/NC 43 from 10th Street to Firetower Road
 Signature Drive from NC 43 to Deadend
 Arlington Blvd. from Memorial Drive to W. 5th Street
 Firetower Road from Highway 11 to Corey Road
 McGregor Downs Road from W. 5th Street to B's BBQ Road
 Allen Road from Stantonsburg Rd. to Dickinson Ave.
 Highway 33 from Greenville Blvd. to Portertown Rd.
 Greenville Blvd./264 from 10th St. to Whichard Rd.
 Stantonsburg Rd. from Moye Blvd. to 264 Bypass including interchange
 Dickinson Ave. and S. Memorial Drive Intersection
 N. Greene Street from Tar River to Airport/Mumford Rd.
 Regency Blvd. from S. Memorial Dr. to Evans St.

Contract # 2- Weekly Cycle

*Hooker Road/Moye Boulevard from Greenville Boulevard to Stantonsburg Road
 *Dickinson Railroad Overpass from Home Builders to Moye Boulevard
 4th St. and Eastern St. Intersection Triangle
 Peace Garden at Reade and Evans Street
 University Edge Parking lot at Bonners and Clark Street
 Museum of Art
 Reade Circle and Reade St. from Dickinson Ave. to 1st Street
 1st Street from Town Commons to Avery Street
 Cotanche Street from 1st to 4th Street
 Madison Circle cul-de-sac
 Beaumont Circle cul-de-sac
 Morningside Circle cul-de-sac
 Middleton Place cul-de-sac
 Austin Place cul-de-sac
 W. 5th St. and Pitt St. intersection rights-of-way
 Elm Street from 10th St. to Fern Drive
 *Arlington Blvd. from Greenville Blvd. to Memorial Dr.
 *W. 5th St. from Pitt Street to B's BBQ Rd.
 *E. 5th St. and 10th St. Intersection

Contract #7- Facilities: Weekly Cycle

Intergenerational Center (W. Fifth Street and Ward Streets)
W. Fifth Street Police Substation (1024 W. Fifth Street)
431 W. 5th Street Property
City of Greenville P. S. Annex (Northland Dr.)

Sealed proposals will be received by the City of Greenville until Wednesday, November 13, 2019 @ 3:00 pm at the Public Works Department located at 1500 Beatty Street, Greenville, NC 27834 with the company name, Attention: Devin Thompson, and the words City of Greenville Public Works Department Mowing Contract # 1,2, and 7 Bid written on the outside of the sealed envelope. Bids will not be opened and read aloud at this time.

A Mandatory Pre-bid Conference will be held at the Public Works Department Conference Room on Tuesday, October 22, 2019 at 3:00 p.m. The City of Greenville reserves the right to reject any or all bids, waive any informality, and award contracts that appear to be in its best interest. The right is reserved to hold any or all proposals for a period of ninety (90) days from the bid opening thereof.

From the date of this advertisement until the date and time the bids are due, the specifications of the proposed work and/or a complete description of the apparatus, supplies, materials, or equipment are and will continue to be on file in the office of the City of Greenville Financial Services Manager, 201 W. Fifth Street, Greenville, NC, or at the Public Works Department located at 1500 Beatty Street, Greenville N.C., during regular business hours, and available to prospective bidders. Inquiries regarding the bidding process or documents should be directed to the Financial Services Manager at dharris@greenvillenc.gov or by telephone (252) 329-4862. Minority/Women owned business are encouraged to submit proposals.

Denisha Harris, Financial Services Manager
City of Greenville
P O Box 7207
Greenville, NC 27835-7207



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #2)

Explanation: **Abstract:** The City advertised for professional services for a Mowing/Landscape Maintenance Contract (PWD Contract #2) on October 8, 2019. The solicitation included a Mowing/Landscape Maintenance Contract for the locations listed below (PWD Contract #2):

Hooker Road/Moye Boulevard from Greenville Boulevard to Stantonsburg Road
Dickinson Railroad Overpass from Home Builders to Moye Boulevard
4th Street and Eastern Street Intersection Triangle
Peace Garden at Reade and Evans Street
University Edge Parking lot at Bonners and Clark Street
Museum of Art
Reade Circle and Reade Street from Dickinson Avenue to 1st Street
1st Street from Town Commons to Avery Street
Cotanche Street from 1st Street to 4th Street
Madison Circle cul-de-sac
Beaumont Circle cul-de-sac
Morningside Circle cul-de-sac
Middleton Place cul-de-sac
Austin Place cul-de-sac
W. 5th Street and Pitt Street intersection rights-of-way
Elm Street from 10th Street to Fern Drive
Arlington Blvd. from Greenville Blvd. to Memorial Drive
W. 5th Street from Pitt Street to B's BBQ Road
E. 5th Street and 10th Street Intersection

Explanation: The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal during each cycle. Mowing/Litter collection cycles are based on weekly schedules with mowing beginning on April 1st and

lasting through November 1st. Litter removal only cycles will typically begin on November 1st and continue through April 1st.

On November 13th, staff received five (5) proposals in response to the RFQ. WB Denton LLC was the lowest responsible, responsive bidder.

The City will enter into a contract with WB Denton LLC in the amount of \$49,120 annually and \$147,360 for a three (3) year period beginning FY 2020 and ending FY 2023.

Fiscal Note: Funding for this contract is provided through the Public Works operational budget.

Recommendation: City Council award a landscape maintenance contract to WB Denton LLC in the amount of \$147,360 (3 year amount). The annual amount is expected to be \$49,120.

ATTACHMENTS:

- ❑ **Mowing Contract #2 Bid Tab**
- ❑ **Mowing_Contract_2_1121083**
- ❑ **Contract 2 Exhibit A Attachment**

THIS CONTRACT made and entered into the _____ day of January, 2020 by and between the City of Greenville, a municipal corporation, Party of the First Part and hereinafter referred to as the CITY, and WB Denton, LLC., Party of the Second Part and hereinafter referred to as the CONTRACTOR;

WITNESSETH

WHEREAS, the CITY has issued an Invitation to Bid for mowing services for City Wide Right of Way Mowing, and

WHEREAS, the CONTRACTOR is the successful bidder with its proposal to provide mowing services for contract area designated as Contract 2, City Wide Right of Way Mowing.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties contained herein, the parties hereto agree as follows:

1) DESCRIPTION OF WORK:

The CONTRACTOR shall provide mowing services for City Wide Rights- of- Way Mowing Contract 2 as designated by the Buildings & Grounds Superintendent within the Public Works Department. The services to be provided shall be as described in the Invitation to Bid attached hereto, labeled as Exhibit "A", and herein incorporated by reference. The Contractor's e-verify affidavit which was submitted with the Invitation to bid is part of this contract. Said services shall be commenced by the CONTRACTOR, no later than ten (10) days after the issuance of a Notice to Proceed.

2) PAYMENT:

The CITY shall pay the CONTRACTOR for said mowing services performed in monthly installments based on areas mowed and approved for payment. The CITY will pay the CONTRACTOR for all approved work completed in accordance with specifications and found acceptable by the City within thirty (30) days after receipt of an invoice. It is understood and agreed by both parties that a monthly invoice and payment

shall be based upon the areas completed by the CONTRACTOR during the previous month at the rate of \$1,347.50 per cycle for mowing and litter pickup and a rate of \$305.00 per cycle for litter pickup only.

3) TERM:

The initial term of this contract shall commence upon issuance of Notice to Proceed and conclude upon December 31, 2020. This contract may be extended in writing by the CITY in its sole discretion, annually for up to a total of two (2) additional years starting on January 1st and ending on December 31st of the same year.

4) COMPLIANCE WITH ALL REGULATIONS:

The CONTRACTOR must comply with all legislation and federal, state and CITY regulations and program guidelines that may be applicable to the work executed under this contract.

5) TERMINATION:

The CITY may terminate this contract for nonperformance, or for unacceptable performance, or for any other reason as determined by the Public Works Director or his designee. The CITY will give written notice to the CONTRACTOR specifying areas of nonperformance or unacceptable performance and the CONTRACTOR shall have ten (10) days to rectify. In the event the condition(s) identified in the written notice to the CONTRACTOR are not rectified, the CITY will give the CONTRACTOR a written notice of termination. Upon receipt, the CONTRACTOR is expected to remove all employees and equipment from the premises immediately.

6) BUILDING AND GROUNDS SUPERINTENDENT:

The CITY employs within the Public Works Department a full time Building and Grounds Superintendent or designee who will be overseeing the requirements of this contract. The Building and Grounds Superintendent's office is located at the Public Works Complex, 1500 Beatty Street, Greenville, NC. The CONTRACTOR is expected to keep the Building and Grounds Superintendent or designee informed of work progress and plans daily. All directions and communications from the CITY to the CONTRACTOR shall be through the Building and Grounds Superintendent or designee.

7) CONTRACTOR'S SUPERVISOR:

The CONTRACTOR shall furnish a competent supervisor who shall be on the job and available to the CITY's Building and Grounds Superintendent or designee at all times that the CONTRACTOR'S work crews are on City property. The CONTRACTOR's supervisor shall have full authority over the CONTRACTOR's work crews and shall monitor and direct them responsibly. CONTRACTOR's supervisor must have a telephone number to be contacted as needed.

8) LABOR, EQUIPMENT AND SUPPLIES:

The CONTRACTOR shall furnish all labor, equipment and supplies needed to fulfill its obligation under this contract. The CITY will furnish no equipment, supplies, or fuel under this contract.

9) LICENSES:

The CONTRACTOR shall have and maintain all necessary and legally required licenses and permits to enable performance of the services.

10) DAMAGE TO CONTRACTORS PROPERTY:

Should fire, theft, vandalism or other casualty, damage or destroy the equipment or property belonging to the CONTRACTOR while on CITY property, the CITY shall be under no obligation to replace or in any way compensate the CONTRACTOR for said property.

11) HOLD HARMLESS:

a. The CONTRACTOR shall indemnify and hold harmless the CITY from and against any liability, loss, cost, damage suit, claim, or expense arising occurrence on the part of the CONTRACTOR and its officers, servants, agents or employees arising from its activities, operations, and performance of services while on CITY property and further agrees to release and discharge the CITY and its agents and employees from all claims or liabilities arising from or caused by the CONTRACTOR in fulfilling its obligations under this contract.

b. It is understood and agreed by the parties that CITY will assume no liability for damages, injury, or

other loss to the CONTRACTOR, its employees or property, tools or equipment, or to other persons or properties located on CITY facilities resulting from the CONTRACTOR'S activities and operations while performing services under this contract. The CONTRACTOR shall assume full and complete liability for any and all damages to CITY or private properties caused by or resulting from its activities, operations, and that of its employees, agents and officers.

12) INSURANCE:

The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required, and such insurance has been approved in writing by the CITY. Insurance required shall remain in effect through the term of this contract.

a. Workers' Compensation:

The CONTRACTOR must maintain during the life of this contract, Workers' Compensation Insurance for all employees performing work at the various property locations of the project under this contract, or as otherwise required by North Carolina General Statutes.

b. Public Liability and Property Damage:

The CONTRACTOR must maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the OWNER. The City of Greenville shall be named as an additional insured on all coverage.

c. Other Insurance:

The CONTRACTOR shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory

limits.

d. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

e. Proof of Carriages:

The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the CITY.

13) AMENDING THE CONTRACT:

Any changes to this contract shall be in writing and must be signed by all parties before it will be considered to be in effect.

14) NON-ASSIGNABILITY:

This contract, or any portion thereof, shall not be assigned by either party without the express written consent of the other party.

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

CITY OF GREENVILLE

BY: _____

NAME: _____

TITLE: _____

Attest _____

TITLE: _____

Address for giving notices:

PO BOX 7207
Greenville, NC 27835-7207

WB Denton, LLC.

BY: _____

NAME: _____

TITLE: _____

Address for giving notices:

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Services

Account Number: 010-01-5561-000-000-528385

INVITATION TO BID
BID # 19-20-05

CITY OF GREENVILLE
PUBLIC WORKS DEPARTMENT
BUILDING AND GROUNDS DIVISION
MOWING / LANDSCAPE CONTRACTS # 1, 2, and 7
CITY OF GREENVILLE, NORTH CAROLINA



Mandatory

Pre-Bid Meeting: Tuesday, October 22, 2019@ 3:00 p.m.
Public Works Department Conference Room
1500 Beatty Street, Greenville, NC

Bid Due Date: Wednesday, November 13, 2019@ 3:00 pm

Contact Persons:

Questions regarding the bid package:

Ms. Denisha Harris
Financial Services Manager
Telephone: 252-329-4862
Fax: 252-329-4464
Email: dharris@greenvillenc.gov

Questions regarding the specifications:

Devin Thompson
Building and Grounds Superintendent
Telephone: 252-329-4522
Fax: 252-329-4535
Email: dthompson@greenvillenc.gov

CITY OF GREENVILLE
 ADVERTISEMENT FOR BIDS
 `CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT BUILDING AND
 GROUNDS DIVISION MOWING CONTRACTS_

The City of Greenville, NC is requesting bids for `Public Works Department Building and Grounds Division Mowing Contracts_ as listed below. The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal on each contract area (Contracts 1, 2, and 7) per scope of work and specifications.

Contract # 1- Every Two Weeks Cycle

Charles Blvd/NC 43 from 10th Street to Firetower Road
 Signature Drive from NC 43 to Deadend
 Arlington Blvd. from Memorial Drive to W. 5th Street
 Firetower Road from Highway 11 to Corey Road
 McGregor Downs Road from W. 5th Street to B's BBQ Road
 Allen Road from Stantonsburg Rd. to Dickinson Ave.
 Highway 33 from Greenville Blvd. to Portertown Rd.
 Greenville Blvd./264 from 10th St. to Whichard Rd.
 Stantonsburg Rd. from Moye Blvd. to 264 Bypass including interchange
 Dickinson Ave. and S. Memorial Drive Intersection
 N. Greene Street from Tar River to Airport/Mumford Rd.
 Regency Blvd. from S. Memorial Dr. to Evans St.

Contract #2- Weekly Cycle

*Hooker Road/Moye Boulevard from Greenville Boulevard to Stantonsburg Road
 *Dickinson Railroad Overpass from Home Builders to Moye Boulevard
 4th St. and Eastern St. Intersection Triangle
 Peace Garden at Reade and Evans Street
 University Edge Parking lot at Bonners and Clark Street
 Museum of Art
 Reade Circle and Reade St. from Dickinson Ave. to 1st Street
 1st Street from Town Commons to Avery Street
 Cotanche Street from 1st to 4th Street
 Madison Circle cul-de-sac
 Beaumont Circle cul-de-sac
 Morningside Circle cul-de-sac
 Middleton Place cul-de-sac
 Austin Place cul-de-sac
 W. 5th St. and Pitt St. intersection rights-of-way
 Elm Street from 10th St. to Fern Drive
 *Arlington Blvd. from Greenville Blvd. to Memorial Dr.
 *W. 5th St. from Pitt Street to B's BBQ Rd.
 *E. 5th St. and 10th St. Intersection

Contract #7- Facilities: Weekly Cycle

Intergenerational Center (W. Fifth Street and Ward Streets)
W. Fifth Street Police Substation (1024 W. Fifth Street)
431 W. 5th Street Property
City of Greenville P. S. Annex (Northland Dr.)

Sealed proposals will be received by the City of Greenville until Wednesday, November 13, 2019 @ 3:00 pm at the Public Works Department located at 1500 Beatty Street, Greenville, NC 27834 with the company name, Attention: Devin Thompson, and the words City of Greenville Public Works Department Mowing Contract # 1,2, and 7 Bid written on the outside of the sealed envelope. Bids will not be opened and read aloud at this time.

A Mandatory Pre-bid Conference will be held at the Public Works Department Conference Room on Tuesday, October 22, 2019 at 3:00 p.m. The City of Greenville reserves the right to reject any or all bids, waive any informality, and award contracts that appear to be in its best interest. The right is reserved to hold any or all proposals for a period of ninety (90) days from the bid opening thereof.

From the date of this advertisement until the date and time the bids are due, the specifications of the proposed work and/or a complete description of the apparatus, supplies, materials, or equipment are and will continue to be on file in the office of the City of Greenville Financial Services Manager, 201 W. Fifth Street, Greenville, NC, or at the Public Works Department located at 1500 Beatty Street, Greenville N.C., during regular business hours, and available to prospective bidders. Inquiries regarding the bidding process or documents should be directed to the Financial Services Manager at dharris@greenvillenc.gov or by telephone (252) 329-4862. Minority/Women owned business are encouraged to submit proposals.

Denisha Harris, Financial Services Manager
City of Greenville
P O Box 7207
Greenville, NC 27835-7207



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award for professional services for a Mowing/Landscape Maintenance Contract for Greenwood Cemetery and Brown Hill Cemetery (PWD Contract #3)

Explanation: **Abstract:** The City advertised for professional services for a Landscape Maintenance Contract on October 8, 2019. The solicitation included a Landscape Maintenance Contract for Greenwood Cemetery and Brown Hill Cemetery (PWD Contract #3). Part of the City's cemetery management includes the mowing and general appearance of Greenwood Cemetery and Brown Hill Cemetery.

Explanation: The mowing scope of work consists of litter removal, finish mowing, weed trimming, and clipping/debris removal during each cycle. Mowing cycles are based on weekly schedules with mowing beginning on April 1st and lasting through November 1st.

On November 13th, staff received six (6) proposals in response to the RFQ. Shivers Lawn Care Service was the lowest bidder.

The City will enter into a contract with Shivers Lawn Care Service in the amount of \$1,915 per mowing cycle at an estimated cost of \$58,000 annually and \$174,000 for a three (3) year period beginning FY 2020 and ending FY 2023.

Fiscal Note: Funding for this contract is provided through the Public Works operational budget.

Recommendation: City Council award a landscape maintenance contract to Shivers Lawn Care Service in the amount of \$174,000 (3 year amount). The annual amount is expected to be \$58,000.

ATTACHMENTS:

- ▣ **Mowing Contract #3 Bid Tab**
- ▣ **Mowing_Contract_3_1121085**
- ▣ **Contract 3 Exhibit A Attachment**

		Public Works Department Building and Grounds Division						
		Mowing Contract 3 Bid Opening						
		November 13, 2019 at 3 p.m.						
Company Name	Reference Sheet	Contractor Information Sheet	E-Verify Form	Addendum Acknowledged	Contract 3 Bid			
WB Denton LLC	Included	Included	Included	Included	\$2,325.00			
Hilliard's Lawn Maintenance	Included	Included	Included	Included	\$3,120.00			
Shivers Lawn Care Service	Included	Included	Included	Included	\$1,915.00			
WAC	Included	Included	Included	Included	\$3,600.00			
BT Carawan LawnCare Inc	Included	Included	Included	Included	\$4,550.70			
Precision Lawn Care and Landscaping	Included	Included	Included	Included	\$2,400.00			
Bid Certified By:								
Name: Devin Thompson								
Title: Buildings and Ground Superintendent								
Signature: <i>Devin Thompson</i>								
Date: 11/20/2019								
								END

THIS CONTRACT made and entered into the _____ day of January, 2020 by and between the City of Greenville, a municipal corporation, Party of the First Part and hereinafter referred to as the CITY, and Shiver's Lawn Care Service, Party of the Second Part and hereinafter referred to as the CONTRACTOR;

WITNESSETH

WHEREAS, the CITY has issued an Invitation to Bid for mowing services for City Wide Right of Way Mowing, and

WHEREAS, the CONTRACTOR is the successful bidder with its proposal to provide mowing services for contract area designated as Contract 3, City Wide Right of Way Mowing.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties contained herein, the parties hereto agree as follows:

1) DESCRIPTION OF WORK:

The CONTRACTOR shall provide mowing services for City Wide Rights- of- Way Mowing Contract 3 as designated by the Buildings & Grounds Superintendent within the Public Works Department. The services to be provided shall be as described in the Invitation to Bid attached hereto, labeled as Exhibit "A", and herein incorporated by reference. The Contractor's e-verify affidavit which was submitted with the Invitation to bid is part of this contract. Said services shall be commenced by the CONTRACTOR, no later than ten (10) days after the issuance of a Notice to Proceed.

2) PAYMENT:

The CITY shall pay the CONTRACTOR for said mowing services performed in monthly installments based on areas mowed and approved for payment. The CITY will pay the CONTRACTOR for all approved work completed in accordance with specifications and found acceptable by the City within thirty (30) days after receipt of an invoice. It is understood and agreed by both parties that a monthly invoice and payment

shall be based upon the areas completed by the CONTRACTOR during the previous month at the rate of \$1,915.00 per mowing cycle for Contract 3.

3) TERM:

The initial term of this contract shall commence upon issuance of Notice to Proceed and conclude upon December 31, 2020. This contract may be extended in writing by the CITY in its sole discretion, annually for up to a total of two (2) additional years starting on January 1st and ending on December 31st of the same year.

4) COMPLIANCE WITH ALL REGULATIONS:

The CONTRACTOR must comply with all legislation and federal, state and CITY regulations and program guidelines that may be applicable to the work executed under this contract.

5) TERMINATION:

The CITY may terminate this contract for nonperformance, or for unacceptable performance, or for any other reason as determined by the Public Works Director or his designee. The CITY will give written notice to the CONTRACTOR specifying areas of nonperformance or unacceptable performance and the CONTRACTOR shall have ten (10) days to rectify. In the event the condition(s) identified in the written notice to the CONTRACTOR are not rectified, the CITY will give the CONTRACTOR a written notice of termination. Upon receipt, the CONTRACTOR is expected to remove all employees and equipment from the premises immediately.

6) BUILDING AND GROUNDS SUPERINTENDENT:

The CITY employs within the Public Works Department a full time Building and Grounds Superintendent or designee who will be overseeing the requirements of this contract. The Building and Grounds Superintendent's office is located at the Public Works Complex, 1500 Beatty Street, Greenville, NC. The CONTRACTOR is expected to keep the Building and Grounds Superintendent or designee informed of work progress and plans daily. All directions and communications from the CITY to the CONTRACTOR shall be through the Building and Grounds Superintendent or designee.

7) CONTRACTOR'S SUPERVISOR:

The CONTRACTOR shall furnish a competent supervisor who shall be on the job and available to the CITY's Building and Grounds Superintendent or designee at all times that the CONTRACTOR'S work crews are on City property. The CONTRACTOR's supervisor shall have full authority over the CONTRACTOR's work crews and shall monitor and direct them responsibly. CONTRACTOR's supervisor must have a telephone number to be contacted as needed.

8) LABOR, EQUIPMENT AND SUPPLIES:

The CONTRACTOR shall furnish all labor, equipment and supplies needed to fulfill its obligation under this contract. The CITY will furnish no equipment, supplies, or fuel under this contract.

9) LICENSES:

The CONTRACTOR shall have and maintain all necessary and legally required licenses and permits to enable performance of the services.

10) DAMAGE TO CONTRACTORS PROPERTY:

Should fire, theft, vandalism or other casualty, damage or destroy the equipment or property belonging to the CONTRACTOR while on CITY property, the CITY shall be under no obligation to replace or in any way compensate the CONTRACTOR for said property.

11) HOLD HARMLESS:

a. The CONTRACTOR shall indemnify and hold harmless the CITY from and against any liability, loss, cost, damage suit, claim, or expense arising occurrence on the part of the CONTRACTOR and its officers, servants, agents or employees arising from its activities, operations, and performance of services while on CITY property and further agrees to release and discharge the CITY and its agents and employees from all claims or liabilities arising from or caused by the CONTRACTOR in fulfilling its obligations under this contract.

b. It is understood and agreed by the parties that CITY will assume no liability for damages, injury, or

other loss to the CONTRACTOR, its employees or property, tools or equipment, or to other persons or properties located on CITY facilities resulting from the CONTRACTOR'S activities and operations while performing services under this contract. The CONTRACTOR shall assume full and complete liability for any and all damages to CITY or private properties caused by or resulting from its activities, operations, and that of its employees, agents and officers.

12) INSURANCE:

The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required, and such insurance has been approved in writing by the CITY. Insurance required shall remain in effect through the term of this contract.

a. Workers' Compensation:

The CONTRACTOR must maintain during the life of this contract, Workers' Compensation Insurance for all employees performing work at the various property locations of the project under this contract, or as otherwise required by North Carolina General Statutes.

b. Public Liability and Property Damage:

The CONTRACTOR must maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the OWNER. The City of Greenville shall be named as an additional insured on all coverage.

c. Other Insurance:

The CONTRACTOR shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory

limits.

d. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

e. Proof of Carriages:

The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the CITY.

13) AMENDING THE CONTRACT:

Any changes to this contract shall be in writing and must be signed by all parties before it will be considered to be in effect.

14) NON-ASSIGNABILITY:

This contract, or any portion thereof, shall not be assigned by either party without the express written consent of the other party.

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

CITY OF GREENVILLE

BY: _____

NAME: _____

TITLE: _____

Attest _____

TITLE: _____

Address for giving notices:

PO BOX 7207
Greenville, NC 27835-7207

Shiver's Lawn Care Service

BY: _____

NAME: _____

TITLE: _____

Address for giving notices:

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Services

Account Number: 010-01-5561-000-000-528385

INVITATION TO BID
BID # 19-20-06

CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT
BUILDING AND GROUNDS DIVISION
MOWING/LANDSCAPE MAINTENANCE CONTRACT # 3
GREENWOOD CEMETERY AND BROWN HILL CEMETERY

CITY OF GREENVILLE
NORTH CAROLINA



Find yourself in good company

MANDATORY

PRE-BID MEETING: TUESDAY, OCTOBER 22, 2019@3:00 P.M.
PUBLIC WORKS DEPARTMENT CONFERENCE ROOM
1500 BEATTY STREET, GREENVILLE, NC

BID DUE DATE: WEDNESDAY, NOVEMBER 13, 2019@3:00 PM

CONTACT PERSONS

QUESTIONS REGARDING THE BID PACKAGE:

Ms. Denisha Harris
Financial Services Manager
Telephone (252) 329-4862
Fax: (252) 329-4464
E mail: dhamis@greenvillenc.gov

QUESTIONS REGARDING THE SPECIFICATIONS:

Mr. Devin Thompson
Building and Grounds Superintendent
Telephone (252) 329-4522
Fax: (252) 329-4535
E mail: dthompson@greenvillenc.gov

CITY OF GREENVILLE
ADVERTISEMENT FOR BIDS FOR CONTRACT # 3

Sealed bids will be received by the City of Greenville until Wednesday, November 13, 2019@ 3:00 p.m. at the Public Works Department located at 1500 Beatty Street, Greenville, NC 27834 for Contract # 3 (Mowing of Greenwood and Brown Hill Cemeteries). All bids will be marked with the date and time they are received by reception staff. Bids will not be opened and read aloud at this time.

A mandatory pre-bid conference will be held at the Public Works Conference Room on Tuesday, October 22, 2019 at 3:00 p.m. The City of Greenville reserves the right to reject any or all bids, waive any informality and award contracts that appear to be in its best interest. The right is reserved to hold any or all proposals for a period of ninety (90) days from the bid opening thereof.

From the date of this advertisement until the date and time bids are due, the specifications of the proposed work and/or a complete description of the apparatus, supplies, materials or equipment are and will continue to be on file in the office of the City of Greenville Financial Services Manager, 201 W. 5th Street, Greenville, NC 27834, or the Public Works Department, 1500 Beatty Street, Greenville N.C. during regular business hours, and available to prospective bidders. Inquiries should be directed to the Financial Services Manager at the above address --- Telephone (252) 329-4862. Minority/Women owned businesses are encouraged to submit proposals.

Denisha Harris
Financial Services Manager
City of Greenville
1500 Beatty Street
Greenville, NC 27834



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award for professional services for a Mowing/Landscape Maintenance Contract for vacant lot mowing (PWD Contract #4)

Explanation: **Abstract:** The City advertised for professional services for a Mowing/Landscape Maintenance Contract (PWD Contract #4) on October 8, 2019. The solicitation included a Mowing/Landscape Maintenance Contract for vacant lots (PWD Contract #4).

Explanation: The scope of work shall include litter removal; mowing, weed trimming, and clipping/debris removal for this contract. Mowing cycles are based on monthly schedules with mowing beginning on April 1st and lasting through November 1st.

On November 13th, staff received seven (7) proposals in response to the RFQ. JDR Lawncare Inc. was the lowest bidder.

The City will enter into a contract with JDR Lawncare Inc. in the amount of \$1,677.50 per mowing cycle of 122 acres at an estimated cost of \$16,775 annually and \$50,325 for a three (3) year period beginning FY 2020 and ending FY 2023. The submitted bid price is \$13.75 per acre.

Fiscal Note: Funding for this contract is provided through the Public Works operational budget.

Recommendation: City Council award a landscape maintenance contract to JDR Lawncare Inc. in the amount of \$50,325 (3 year amount). The annual amount is expected to be \$16,775.

ATTACHMENTS:

- ▣ **Mowing Contract #4 Bid Tab**
- ▣ **Mowing_Contract_4_1121087**
- ▣ **Contract 4 Exhibit A Attachment**

		Public Works Department Building and Grounds Division						
		Mowing Contract 4 Bid Opening						
		November 13, 2019 at 3 p.m.						
Company Name	Reference Sheet	Contractor Information Sheet	E-Verify Form	Addendum Acknowledged	Contract 4 Bid			
WB Denton LLC	**	**	**	**	NO BID			
Hilliard's Lawn Maintenance	Included	Included	Included	Included	\$65.00			
Third Street Facility Services	Included	Included	Included	Included	\$80.00			
Shivers Lawncare Services	Included	Included	Included	Included	\$28.00			
J&J Turf Services LLC	Included	Included	Included	Included	\$35.00			
JDR Lawncare Inc	Included	Included	Included	Included	\$13.75			
WAC	Included	Included	Included	Included	\$40.00			
BT Caravan Lawncare Inc	Included	Included	Included	Included	\$60.00			
Bid Certified By:								
Name: Devin Thompson								
Title: Buildings and Ground Superintendent								
Signature: <i>Devin Thompson</i>								
Date: 11/20/2019								
END								

THIS CONTRACT made and entered into the _____ day of January, 2020 by and between the City of Greenville, a municipal corporation, Party of the First Part and hereinafter referred to as the CITY, and JDR Lawn Care, Inc., Party of the Second Part and hereinafter referred to as the CONTRACTOR;

WITNESSETH

WHEREAS, the CITY has issued an Invitation to Bid for mowing services for City Wide Right of Way Mowing, and

WHEREAS, the CONTRACTOR is the successful bidder with its proposal to provide mowing services for contract area designated as Contract 4, City Wide Right of Way Mowing.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties contained herein, the parties hereto agree as follows:

1) DESCRIPTION OF WORK:

The CONTRACTOR shall provide mowing services for City Wide Rights- of- Way Mowing Contract 4 as designated by the Buildings & Grounds Superintendent within the Public Works Department. The services to be provided shall be as described in the Invitation to Bid attached hereto, labeled as Exhibit "A", and herein incorporated by reference. The Contractor's e-verify affidavit which was submitted with the Invitation to bid is part of this contract. Said services shall be commenced by the CONTRACTOR, no later than ten (10) days after the issuance of a Notice to Proceed.

2) PAYMENT:

The CITY shall pay the CONTRACTOR for said mowing services performed in monthly installments based on areas mowed and approved for payment. The CITY will pay the CONTRACTOR for all approved work completed in accordance with specifications and found acceptable by the City within thirty (30) days after receipt of an invoice. It is understood and agreed by both parties that a monthly invoice and payment

shall be based upon the areas completed by the CONTRACTOR during the previous month at the rate of \$13.75 per acre mowed for Contract 4.

3) TERM:

The initial term of this contract shall commence upon issuance of Notice to Proceed and conclude upon December 31, 2020. This contract may be extended in writing by the CITY in its sole discretion, annually for up to a total of two (2) additional years starting on January 1st and ending on December 31st of the same year.

4) COMPLIANCE WITH ALL REGULATIONS:

The CONTRACTOR must comply with all legislation and federal, state and CITY regulations and program guidelines that may be applicable to the work executed under this contract.

5) TERMINATION:

The CITY may terminate this contract for nonperformance, or for unacceptable performance, or for any other reason as determined by the Public Works Director or his designee. The CITY will give written notice to the CONTRACTOR specifying areas of nonperformance or unacceptable performance and the CONTRACTOR shall have ten (10) days to rectify. In the event the condition(s) identified in the written notice to the CONTRACTOR are not rectified, the CITY will give the CONTRACTOR a written notice of termination. Upon receipt, the CONTRACTOR is expected to remove all employees and equipment from the premises immediately.

6) BUILDING AND GROUNDS SUPERINTENDENT:

The CITY employs within the Public Works Department a full time Building and Grounds Superintendent or designee who will be overseeing the requirements of this contract. The Building and Grounds Superintendent's office is located at the Public Works Complex, 1500 Beatty Street, Greenville, NC. The CONTRACTOR is expected to keep the Building and Grounds Superintendent or designee informed of work progress and plans daily. All directions and communications from the CITY to the CONTRACTOR shall be through the Building and Grounds Superintendent or designee.

7) CONTRACTOR'S SUPERVISOR:

The CONTRACTOR shall furnish a competent supervisor who shall be on the job and available to the CITY's Building and Grounds Superintendent or designee at all times that the CONTRACTOR'S work crews are on City property. The CONTRACTOR's supervisor shall have full authority over the CONTRACTOR's work crews and shall monitor and direct them responsibly. CONTRACTOR's supervisor must have a telephone number to be contacted as needed.

8) LABOR, EQUIPMENT AND SUPPLIES:

The CONTRACTOR shall furnish all labor, equipment and supplies needed to fulfill its obligation under this contract. The CITY will furnish no equipment, supplies, or fuel under this contract.

9) LICENSES:

The CONTRACTOR shall have and maintain all necessary and legally required licenses and permits to enable performance of the services.

10) DAMAGE TO CONTRACTORS PROPERTY:

Should fire, theft, vandalism or other casualty, damage or destroy the equipment or property belonging to the CONTRACTOR while on CITY property, the CITY shall be under no obligation to replace or in any way compensate the CONTRACTOR for said property.

11) HOLD HARMLESS:

a. The CONTRACTOR shall indemnify and hold harmless the CITY from and against any liability, loss, cost, damage suit, claim, or expense arising occurrence on the part of the CONTRACTOR and its officers, servants, agents or employees arising from its activities, operations, and performance of services while on CITY property and further agrees to release and discharge the CITY and its agents and employees from all claims or liabilities arising from or caused by the CONTRACTOR in fulfilling its obligations under this contract.

b. It is understood and agreed by the parties that CITY will assume no liability for damages, injury, or

other loss to the CONTRACTOR, its employees or property, tools or equipment, or to other persons or properties located on CITY facilities resulting from the CONTRACTOR'S activities and operations while performing services under this contract. The CONTRACTOR shall assume full and complete liability for any and all damages to CITY or private properties caused by or resulting from its activities, operations, and that of its employees, agents and officers.

12) INSURANCE:

The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required, and such insurance has been approved in writing by the CITY. Insurance required shall remain in effect through the term of this contract.

a. Workers' Compensation:

The CONTRACTOR must maintain during the life of this contract, Workers' Compensation Insurance for all employees performing work at the various property locations of the project under this contract, or as otherwise required by North Carolina General Statutes.

b. Public Liability and Property Damage:

The CONTRACTOR must maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the OWNER. The City of Greenville shall be named as an additional insured on all coverage.

c. Other Insurance:

The CONTRACTOR shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory

limits.

d. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

e. Proof of Carriages:

The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the CITY.

13) AMENDING THE CONTRACT:

Any changes to this contract shall be in writing and must be signed by all parties before it will be considered to be in effect.

14) NON-ASSIGNABILITY:

This contract, or any portion thereof, shall not be assigned by either party without the express written consent of the other party.

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

CITY OF GREENVILLE

BY: _____

NAME: _____

TITLE: _____

Attest _____

TITLE: _____

Address for giving notices:

PO BOX 7207
Greenville, NC 27835-7207

JDR Lawn Care, Inc.

BY: _____

NAME: _____

TITLE: _____

Address for giving notices:

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Services

Account Number: 010-01-5561-000-000-528385

INVITATION TO BID
BID # 19-20-07

CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT
BUILDING AND GROUNDS DIVISION
MOWING / LANDSCAPE MAINTENANCE
CONTRACT # 4-VACANT LOT MOWING
CITY OF GREENVILLE
NORTH CAROLINA



Mandatory

Pre-Bid Meeting: Tuesday October 22, 2019@ 3:00 p.m.
Public Works Department Conference Room
1500 Beatty Street, Greenville, NC

Bid Due Date: Wednesday, November 13, 2019@ 3:00 pm

Contact Persons:

Questions regarding the bid package:

Ms. Denisha Harris
Financial Services Manager
Telephone: 252-329-4862
Fax: 252-329-4464
Email: dharris@greenvillenc.gov

Questions regarding the specifications:

Devin Thompson
Building and Grounds Superintendent
Telephone: 252-329-4522
Fax: 252-329-4535
Email: dthompson@greenvillenc.gov

CITY OF GREENVILLE
 ADVERTISEMENT FOR BIDS
 `CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT BUILDING AND
 GROUNDS DIVISION VACANT LOT MOWING`_

The City of Greenville, NC is requesting proposals for `Public Works Department Building and Grounds Division Vacant Lot Mowing`_ as listed below. The scope of work will include litter removal, mowing, weed trimming, and clipping removal on the contract area per scope of work and specifications.

Contract #4-Vacant Lot Mowing

The list of current parcels/lots will be provided to contractors at the mandatory pre-bid meeting. Note: This list will updated again to reflect current lots to be mowed prior to beginning of work on the contract. The list of parcels provides the contractor an estimation of acreage but the acreage may fluctuate during the contract period.

Sealed proposals will be received by the City of Greenville until `Wednesday, November 13, 2019@ 3:00 pm` at the Public Works Department located at 1500 Beatty Street, Greenville, NC 27835-7207 with the company name, Attention: Devin Thompson, and the words City of Greenville Public Works Department Mowing Contract #4 Bid written on the outside of the sealed envelope. Bids will not be opened and read aloud at this time.

A Mandatory Pre-bid Conference will be held at the Public Works Conference Room located at 1500 Beatty Street on `Tuesday October 22, 2019@ 3 p.m.` The City of Greenville reserves the right to reject any or all bids, waive any informality, and award contracts that appear to be in its best interest. The right is reserved to hold any or all bids for a period of ninety (90) days from the bid opening thereof.

From the date of this advertisement until the date and time the proposals are due, the specifications of the proposed work and/or a complete description of the apparatus, supplies, materials or equipment are and will continue to be on file in the office of the City of Greenville Financial Services Manager, 201 W. Fifth Street, Greenville, NC, or at the Public Works Department located at 1500 Beatty Street, Greenville N.C., during regular business hours, and available to prospective bidders. Inquiries regarding the bidding process or documents should be directed to the Financial Services Manager at dharris@greenvillenc.gov or by telephone (252) 329-4862. Minority/Women owned business are encouraged to submit proposals.

Denisha Harris, Financial Services Manager
 City of Greenville
 P O Box 7207
 Greenville, NC 27835-7207



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Contract award for professional services for a Mowing/Landscape Maintenance Contract for various locations as listed (PWD Contract #7)

Explanation: **Abstract:** The City advertised for professional services for a Mowing/Landscape Maintenance Contract (PWD Contract #7) on October 8, 2019. The solicitation included a Mowing/Landscape Maintenance Contract for the locations listed below (PWD Contract #7):

Intergenerational Center (W. Fifth Street and Ward Streets)
W. Fifth Street Police Substation (1024 W. Fifth Street)
431 W. 5th Street Property
City of Greenville P. S. Annex (Northland Drive)

Explanation: The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal during each cycle. Mowing cycles (which includes litter removal) are based on weekly schedules with mowing beginning on April 1st and lasting through November 1st.

On November 13th, staff received eight (8) proposals in response to the RFQ. J&J Turf Services LLC was the lowest bidder.

The City will enter into a contract with J&J Turf Services LLC in the amount of \$250 per mowing cycle at an estimated cost of \$7,500 annually and \$22,500 for a three (3) year period beginning FY 2020 and ending FY 2023.

Fiscal Note: Funding for this contract is provided through the Public Works operational budget.

Recommendation: City Council award a landscape maintenance contract to J&J Turf Services LLC in the in the amount of \$22,500 (3 year amount). The annual amount is expected to be \$7,500.

ATTACHMENTS:

- ❑ Mowing Contract #7 Bid Tab**
- ❑ Mowing_Contract_7_1121088**
- ❑ Contract 7 Exhibit A Attachment**

Public Works Department Building and Grounds Division
Mowing Contract 7 Bid Opening
November 13, 2019 at 3 p.m.

Company Name	Reference Sheet	Contractor Information Sheet	E-Verify Form	Addendum Acknowledged	Contract 7 Bid
Hilliard's Lawn Maintenance	Included	Included	Included	Included	\$2,448.68
WB Denton LLC	Included	Included	Included	Included	\$305.00
Third Street Facility Services	Included	Included	Included	Included	\$312.00
Creative Cuts Lawn and Landscape	Included	Included	Included	Included	\$1,065.00
J&J Turf Services LLC	Included	Included	Included	Included	\$250.00
JDR LawnCare Inc	Included	Included	Included	Included	\$255.00
WAC	Included	Included	Included	Included	\$390.00
BT Carawan LawnCare Inc	Included	Included	Included	Included	\$3,500.00
Precision Lawn Care and Landscaping	Included	Included	Included	Included	NO BID
Bid Certified By:					
Name: Devin Thompson					
Title: Buildings and Ground Superintendent					
Signature: <i>Devin Thompson</i>					
Date: 11/20/2019					

END

THIS CONTRACT made and entered into the _____ day of January, 2020 by and between the City of Greenville, a municipal corporation, Party of the First Part and hereinafter referred to as the CITY, and J&J Turf Services, LLC, Party of the Second Part and hereinafter referred to as the CONTRACTOR;

WITNESSETH

WHEREAS, the CITY has issued an Invitation to Bid for mowing services for City Wide Right of Way Mowing, and

WHEREAS, the CONTRACTOR is the successful bidder with its proposal to provide mowing services for contract area designated as Contract 7, City Wide Right of Way Mowing.

NOW, THEREFORE, for and in consideration of the mutual obligations of the parties contained herein, the parties hereto agree as follows:

1) DESCRIPTION OF WORK:

The CONTRACTOR shall provide mowing services for City Wide Rights- of- Way Mowing Contract 7 as designated by the Buildings & Grounds Superintendent within the Public Works Department. The services to be provided shall be as described in the Invitation to Bid attached hereto, labeled as Exhibit "A", and herein incorporated by reference. The Contractor's e-verify affidavit which was submitted with the Invitation to bid is part of this contract. Said services shall be commenced by the CONTRACTOR, no later than ten (10) days after the issuance of a Notice to Proceed.

2) PAYMENT:

The CITY shall pay the CONTRACTOR for said mowing services performed in monthly installments based on areas mowed and approved for payment. The CITY will pay the CONTRACTOR for all approved work completed in accordance with specifications and found acceptable by the City within thirty (30) days after receipt of an invoice. It is understood and agreed by both parties that a monthly invoice and payment

shall be based upon the areas completed by the CONTRACTOR during the previous month at the rate of \$250.00 per mowing cycle for Contract 7.

3) TERM:

The initial term of this contract shall commence upon issuance of Notice to Proceed and conclude upon December 31, 2020. This contract may be extended in writing by the CITY in its sole discretion, annually for up to a total of two (2) additional years starting on January 1st and ending on December 31st of the same year.

4) COMPLIANCE WITH ALL REGULATIONS:

The CONTRACTOR must comply with all legislation and federal, state and CITY regulations and program guidelines that may be applicable to the work executed under this contract.

5) TERMINATION:

The CITY may terminate this contract for nonperformance, or for unacceptable performance, or for any other reason as determined by the Public Works Director or his designee. The CITY will give written notice to the CONTRACTOR specifying areas of nonperformance or unacceptable performance and the CONTRACTOR shall have ten (10) days to rectify. In the event the condition(s) identified in the written notice to the CONTRACTOR are not rectified, the CITY will give the CONTRACTOR a written notice of termination. Upon receipt, the CONTRACTOR is expected to remove all employees and equipment from the premises immediately.

6) BUILDING AND GROUNDS SUPERINTENDENT:

The CITY employs within the Public Works Department a full time Building and Grounds Superintendent or designee who will be overseeing the requirements of this contract. The Building and Grounds Superintendent's office is located at the Public Works Complex, 1500 Beatty Street, Greenville, NC. The CONTRACTOR is expected to keep the Building and Grounds Superintendent or designee informed of work progress and plans daily. All directions and communications from the CITY to the CONTRACTOR shall be through the Building and Grounds Superintendent or designee.

7) CONTRACTOR'S SUPERVISOR:

The CONTRACTOR shall furnish a competent supervisor who shall be on the job and available to the CITY's Building and Grounds Superintendent or designee at all times that the CONTRACTOR'S work crews are on City property. The CONTRACTOR's supervisor shall have full authority over the CONTRACTOR's work crews and shall monitor and direct them responsibly. CONTRACTOR's supervisor must have a telephone number to be contacted as needed.

8) LABOR, EQUIPMENT AND SUPPLIES:

The CONTRACTOR shall furnish all labor, equipment and supplies needed to fulfill its obligation under this contract. The CITY will furnish no equipment, supplies, or fuel under this contract.

9) LICENSES:

The CONTRACTOR shall have and maintain all necessary and legally required licenses and permits to enable performance of the services.

10) DAMAGE TO CONTRACTORS PROPERTY:

Should fire, theft, vandalism or other casualty, damage or destroy the equipment or property belonging to the CONTRACTOR while on CITY property, the CITY shall be under no obligation to replace or in any way compensate the CONTRACTOR for said property.

11) HOLD HARMLESS:

a. The CONTRACTOR shall indemnify and hold harmless the CITY from and against any liability, loss, cost, damage suit, claim, or expense arising occurrence on the part of the CONTRACTOR and its officers, servants, agents or employees arising from its activities, operations, and performance of services while on CITY property and further agrees to release and discharge the CITY and its agents and employees from all claims or liabilities arising from or caused by the CONTRACTOR in fulfilling its obligations under this contract.

b. It is understood and agreed by the parties that CITY will assume no liability for damages, injury, or

other loss to the CONTRACTOR, its employees or property, tools or equipment, or to other persons or properties located on CITY facilities resulting from the CONTRACTOR'S activities and operations while performing services under this contract. The CONTRACTOR shall assume full and complete liability for any and all damages to CITY or private properties caused by or resulting from its activities, operations, and that of its employees, agents and officers.

12) INSURANCE:

The CONTRACTOR shall not commence work under this contract until he has obtained all insurance required, and such insurance has been approved in writing by the CITY. Insurance required shall remain in effect through the term of this contract.

a. Workers' Compensation:

The CONTRACTOR must maintain during the life of this contract, Workers' Compensation Insurance for all employees performing work at the various property locations of the project under this contract, or as otherwise required by North Carolina General Statutes.

b. Public Liability and Property Damage:

The CONTRACTOR must maintain during the life of this contract such Public Liability and Property Damage Insurance as shall protect from claims for damage for personal injury, including accidental death, as well as from claims for property damages which may arise from operations under this contract, whether such operation be by himself or by any subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of such insurance shall not be less than \$500,000 for injuries, subject to the same limits per person and \$1,000,000 for property damage or otherwise needed to protect the interests of the OWNER. The City of Greenville shall be named as an additional insured on all coverage.

c. Other Insurance:

The CONTRACTOR shall furnish such additional insurance as may be required by the General Statutes of North Carolina, including motor vehicle insurance in amounts not less than statutory

limits.

d. Cancellation:

Each certificate of insurance shall bear the provision that the policy cannot be altered or canceled in less than ten (10) days after mailing written notice to the assured of such alteration or cancellation, sent registered mail.

e. Proof of Carriages:

The CONTRACTOR shall furnish the CITY with satisfactory proof of carriage of the insurance required before written approval of such insurance is granted by the CITY.

13) AMENDING THE CONTRACT:

Any changes to this contract shall be in writing and must be signed by all parties before it will be considered to be in effect.

14) NON-ASSIGNABILITY:

This contract, or any portion thereof, shall not be assigned by either party without the express written consent of the other party.

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

CITY OF GREENVILLE

BY: _____

NAME: _____

TITLE: _____

Attest _____

TITLE: _____

Address for giving notices:

PO BOX 7207
Greenville, NC 27835-7207

J&J Turf Services, LLC.

BY: _____

NAME: _____

TITLE: _____

Address for giving notices:

APPROVED AS TO FORM:

Emanuel McGirt, City Attorney

PRE-AUDIT CERTIFICATION

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

Byron Hayes, Director of Financial Service

Account Number: 010-01-5561-000-000-528385

INVITATION TO BID
BID # 19-20-05

CITY OF GREENVILLE
PUBLIC WORKS DEPARTMENT
BUILDING AND GROUNDS DIVISION
MOWING / LANDSCAPE CONTRACTS # 1, 2, and 7
CITY OF GREENVILLE, NORTH CAROLINA



Mandatory

Pre-Bid Meeting: Tuesday, October 22, 2019@ 3:00 p.m.
Public Works Department Conference Room
1500 Beatty Street, Greenville, NC

Bid Due Date: Wednesday, November 13, 2019@ 3:00 pm

Contact Persons:

Questions regarding the bid package:

Ms. Denisha Harris
Financial Services Manager
Telephone: 252-329-4862
Fax: 252-329-4464
Email: dharris@greenvillenc.gov

Questions regarding the specifications:

Devin Thompson
Building and Grounds Superintendent
Telephone: 252-329-4522
Fax: 252-329-4535
Email: dthompson@greenvillenc.gov

CITY OF GREENVILLE
 ADVERTISEMENT FOR BIDS
 `CITY OF GREENVILLE PUBLIC WORKS DEPARTMENT BUILDING AND
 GROUNDS DIVISION MOWING CONTRACTS`_

The City of Greenville, NC is requesting bids for `Public Works Department Building and Grounds Division Mowing Contracts`_ as listed below. The scope of work will include litter removal, finish mowing, weed trimming, and clipping/debris removal on each contract area (Contracts 1, 2, and 7) per scope of work and specifications.

Contract # 1- Every Two Weeks Cycle

Charles Blvd/NC 43 from 10th Street to Firetower Road
 Signature Drive from NC 43 to Deadend
 Arlington Blvd. from Memorial Drive to W. 5th Street
 Firetower Road from Highway 11 to Corey Road
 McGregor Downs Road from W. 5th Street to B's BBQ Road
 Allen Road from Stantonsburg Rd. to Dickinson Ave.
 Highway 33 from Greenville Blvd. to Portertown Rd.
 Greenville Blvd./264 from 10th St. to Whichard Rd.
 Stantonsburg Rd. from Moye Blvd. to 264 Bypass including interchange
 Dickinson Ave. and S. Memorial Drive Intersection
 N. Greene Street from Tar River to Airport/Mumford Rd.
 Regency Blvd. from S. Memorial Dr. to Evans St.

Contract #2- Weekly Cycle

*Hooker Road/Moye Boulevard from Greenville Boulevard to Stantonsburg Road
 *Dickinson Railroad Overpass from Home Builders to Moye Boulevard
 4th St. and Eastern St. Intersection Triangle
 Peace Garden at Reade and Evans Street
 University Edge Parking lot at Bonners and Clark Street
 Museum of Art
 Reade Circle and Reade St. from Dickinson Ave. to 1st Street
 1st Street from Town Commons to Avery Street
 Cotanche Street from 1st to 4th Street
 Madison Circle cul-de-sac
 Beaumont Circle cul-de-sac
 Morningside Circle cul-de-sac
 Middleton Place cul-de-sac
 Austin Place cul-de-sac
 W. 5th St. and Pitt St. intersection rights-of-way
 Elm Street from 10th St. to Fern Drive
 *Arlington Blvd. from Greenville Blvd. to Memorial Dr.
 *W. 5th St. from Pitt Street to B's BBQ Rd.
 *E. 5th St. and 10th St. Intersection

Contract #7- Facilities: Weekly Cycle

Intergenerational Center (W. Fifth Street and Ward Streets)
W. Fifth Street Police Substation (1024 W. Fifth Street)
431 W. 5th Street Property
City of Greenville P. S. Annex (Northland Dr.)

Sealed proposals will be received by the City of Greenville until Wednesday, November 13, 2019 @ 3:00 pm at the Public Works Department located at 1500 Beatty Street, Greenville, NC 27834 with the company name, Attention: Devin Thompson, and the words City of Greenville Public Works Department Mowing Contract # 1,2, and 7 Bid written on the outside of the sealed envelope. Bids will not be opened and read aloud at this time.

A Mandatory Pre-bid Conference will be held at the Public Works Department Conference Room on Tuesday, October 22, 2019 at 3:00 p.m. The City of Greenville reserves the right to reject any or all bids, waive any informality, and award contracts that appear to be in its best interest. The right is reserved to hold any or all proposals for a period of ninety (90) days from the bid opening thereof.

From the date of this advertisement until the date and time the bids are due, the specifications of the proposed work and/or a complete description of the apparatus, supplies, materials, or equipment are and will continue to be on file in the office of the City of Greenville Financial Services Manager, 201 W. Fifth Street, Greenville, NC, or at the Public Works Department located at 1500 Beatty Street, Greenville N.C., during regular business hours, and available to prospective bidders. Inquiries regarding the bidding process or documents should be directed to the Financial Services Manager at dharris@greenvillenc.gov or by telephone (252) 329-4862. Minority/Women owned business are encouraged to submit proposals.

Denisha Harris, Financial Services Manager
City of Greenville
P O Box 7207
Greenville, NC 27835-7207



City of Greenville, North Carolina

Meeting Date: 1/6/2020
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:

Payee	Adjustment Refunds	Amount
Adam Symborski	Registered Motor Vehicle	166.91
Asa Spain	Registered Motor Vehicle	124.66
David Epler	Registered Motor Vehicle	146.07
East Coast Counseling, Inc	Registered Motor Vehicle	549.17
Edward Paldino	Registered Motor Vehicle	155.46
James Travis Rouse	Registered Motor Vehicle	292.99
Jeremy Sylvester	Registered Motor Vehicle	200.13
Joann Giannetto	Registered Motor Vehicle	182.17

Karen McCord	Individual Property Taxes	284.60
Lemmie Lee	Registered Motor Vehicle	170.00
Marsha Roberts	Registered Motor Vehicle	121.09
Norman Brooks	Registered Motor Vehicle	152.48
Pitt & Greene EMC	Registered Motor Vehicle	758.61
Sylvester Odeke	Registered Motor Vehicle	263.58
Tara Hurdle	Registered Motor Vehicle	208.86
Todd Fraley	Registered Motor Vehicle	129.41
Zahi Darawsheh	Registered Motor Vehicle	121.09
	REFUND TOTAL:	\$4,027.28

Fiscal Note: The total to be refunded is \$4,027.28.

Recommendation: Approval of tax refunds by City Council.



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Presentations by Boards and Commissions

- a. Environmental Advisory Commission
- b. Affordable Housing Loan Committee

Explanation: The Environmental Advisory Commission and Affordable Housing Loan Committee are scheduled to make their annual presentation to the City Council on January 6, 2020.

Fiscal Note: No direct fiscal impact.

Recommendation: Hear presentations from the Environmental Advisory Commission and the Affordable Housing Loan Committee.



City of Greenville,
North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Greenville Aquatics and Fitness Center membership for City Council Members

Explanation: **Abstract:** This is a request to allow City Council Members to join the Greenville Aquatics and Fitness Center using the City employee membership rate.

Explanation: The City of Greenville employees receive membership in the Greenville Aquatics and Firtness Center as a benefit in order to promote wellness and reduce health care costs. The recommendation is to extend participation at the reduced City employee membership rate to members of City Council.

Fiscal Note: Participation will have a neglible impact on budget.

Recommendation: Extend the City employee membership benefit in the Greenville Aquatics and Fitness Center to City Council Members.



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Ordinance Approving 2019-2020 Capital Reserve Fund Designations

Explanation: **Abstract:** An update on the Capital Reserve Fund will be provided, and Council is asked to consider an ordinance approving 2019-2020 Capital Reserve Fund designations based on Budget Ordinance Amendment #7, which will also be considered at the January 6, 2020 City Council meeting.

Explanation: Attached for Council consideration is an ordinance approving the 2019-2020 Capital Reserve Fund designations as included in Budget Ordinance Amendment #7. Budget Ordinance Amendment #7 includes an adjustment within the Capital Reserve designations of \$1.6 million from various NCDOT projects to serve as a portion of the local match needed for the BUILD Grant. An additional appropriation of \$416,882 from the General Fund to the Capital Reserve Fund for the BUILD Grant project.

The following documents are attached:

1. Capital Reserve Fund - Detail of Designations

- This report shows the Capital Reserve Fund balance that was approved by City Council on March 25, 2019, changes to those designations, and the proposed designations as of the January 6, 2020 City Council meeting.

2. Ordinance Amending the Fund

- This document reflects the proposed projects that have been included in the Capital Reserve Fund at this time. The Local Budget and Fiscal Control Act requires that a transfer to the Capital Reserve Fund state (i) the approximate periods of time during which the monies are to be accumulated for each purpose, (ii) the approximate amounts to be accumulated for each purpose, and (iii) the sources from which monies for each purpose will be derived.

Fiscal Note: The Capital Reserve Fund balance stands at approximately \$5,044,098 and reflects the capital project priorities of the City Council as included in Budget Ordinance Amendment #7

Recommendation: Approve 2019-2020 Capital Reserve Fund designations and adopt the Capital Reserve Fund ordinance.

ATTACHMENTS:

- ☐ **Update_to_Capital_Reserve_Fund_Ordinance_612543**
- ☐ **Capital_Reserve_Designations_1121187**

ORDINANCE NO. 20-
AN ORDINANCE AMENDING THE CAPITAL RESERVE FUND
FOR THE CITY OF GREENVILLE

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

Section I. The Capital Reserve Fund is amended as follows:

<u>Amount</u>	<u>Sources of Monies</u>	<u>Purpose</u>	<u>Accumulation Period</u>
\$ 140,487	CVA Fund	Convention Center Project (s)	10 years
1,792,860	General Fund	Dickinson Avenue Streetscape	5 years
93,869	General Fund	NCDOT Projects	5 years
2,016,882	General Fund	BUILD Grant	5 years
<u>1,000,000</u>	General Fund	Industrial Site	5 years
<u>\$ 5,044.098</u>			

Section II. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section III. This ordinance will become effective upon its adoption.

Adopted this 6th day of January, 2020.

P.J. Connelly, Mayor

ATTEST:

Valarie P. Shiuwegar, City Clerk

City of Greenville
Capital Reserve Fund - Detail of Designations - January, 2020

Purpose	Approved Designations March 25, 2019	Inc/(Dec)	Proposed Designations January 6, 2020
Convention Center Project(s)	\$ 140,487	\$ -	\$ 140,487
Dickinson Avenue Streetscape	1,792,860	-	1,792,860
Transportation			
DOT Project - Firetower NC43 to 14th Street	187,480	(187,480)	-
DOT Project - Firetower 14th Street to NC33	594,389	(500,520)	93,869
DOT Project - Evans Street Widening	-	-	-
DOT Project - 14th Street Widening	-	-	-
Street Signal Conversion	912,000	(912,000)	-
BUILD Grant	- ^A	2,016,882	2,016,882
Subtotal Transportation	<u>1,693,869</u>	<u>416,882</u>	<u>2,110,751</u>
Industrial Site	1,000,000	-	1,000,000
Total	<u><u>\$ 4,627,216</u></u>	<u><u>\$ 416,882</u></u>	<u><u>\$ 5,044,098</u></u>

^A Transfer to increase local match needed for BUILD Grant



City of Greenville, North Carolina

Meeting Date: 1/6/2020
Time: 6:00 PM

Title of Item: Budget ordinance amendment #7 to the 2019-2020 City of Greenville budget (Ordinance #19-031), the Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Fund (Ordinance #17-024)

Explanation: **Abstract:** This budget amendment is for City Council to review and approve proposed changes to the adopted 2019-2020 budget and other funds as identified.

Explanation: Attached for consideration at the January 6, 2020, City Council meeting is an ordinance amending the 2019-2020 City of Greenville budget (Ordinance #19-031), the Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Fund (Ordinance #17-024).

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 close the Brownfield 4 Project and roll the remaining unrestricted funding to the General Fund.	Grants General	\$ 27,419
B	To close the Thomas Langston Road Extension Project and roll the remaining unrestricted funding to the General Fund.	PW Cap Proj General	\$ 63,181
C	To appropriate revenue received from the Comdata E-payables process in Financial Services and decrease appropriated Fund Balance.	General	\$ 12,523
D	To establish the Station 1 Bay Extension project in the Fire/Rescue Capital Projects Fund	FR Cap Proj	\$ 600,000
E	To transfer funds from appropriate Fund Balance in the General Fund to provide additional match funding for the BUILD Grant	General Cap Resrv	\$ 416,882

Fiscal Note:

The budget ordinance amendment affects the following funds:

<u>Fund Balance</u>	<u>2019-20</u> <u>Original</u> <u>Budget</u>	<u>Amend #6</u>	<u>2019-20</u> <u>Budget per</u> <u>Amend #6</u>
General	\$ 86,910,591	\$ 416,882	\$ 87,327,473
Debt Service	5,559,881	-	5,559,881
Public Transportation (Transit)	3,335,374	-	3,335,374
Fleet Maintenance	4,635,802	-	4,635,802
Sanitation	8,001,526	-	8,001,526
Stormwater	9,820,127	-	9,820,127
Housing	1,733,500	-	1,733,500
Health Insurance	14,003,384	-	14,003,384
Vehicle Replacement	4,759,009	-	4,759,009
Facilities Improvement	3,667,375	-	3,667,375
Capital Reserve	390,000	416,882	806,882
Convention & Visitors Authority	1,645,047	-	1,645,047
Sheppard Memorial Library	2,515,964	-	2,515,964
Public Works Capital Projects	55,970,096	(3,917,666)	52,052,430
Rec & Parks Capital Projects	9,783,052	-	9,783,052
Fire/Rescue Capital Projects	6,000,000	600,000	6,600,000
Donations	280,687	-	280,687
Greenways Capital Projects	6,565,846	-	6,565,846
Street Improvement Bond	16,852,567	-	16,852,567
Red Light Camera Program	1,400,000	-	1,400,000
FEMA-Hurricane Project	2,212,100	-	2,212,100
Community Development Capital	18,804,227	-	18,804,227
Special Revenue Grant	8,839,958	(452,581)	8,387,377

Recommendation:

Approve budget ordinance amendment #7 to the 2019-2020 City of Greenville budget (Ordinance #19-031), Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Fund (Ordinance #17-024).

ATTACHMENTS:

▣ **Budget_Amendment__7_1121189**

ORDINANCE NO. 20-
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#7) Amending the 2019-20 Budget (Ordinance #19-031), the Special Revenue Grant Fund
(Ordinance #11-003), and the Capital Projects Fund (Ordinance #17-024)

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

Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #19-031 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2019-20 Revised Budget	Budget Amendment #6					Total Amend #7	2019-20 Budget per Amend #7
		A.	B.	C.	E.			
ESTIMATED REVENUES								
Property Tax	\$ 34,306,950	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 34,306,950
Sales Tax	20,404,423	-	-	-	-	-	-	20,404,423
Video Prog. & Telecom. Service Tax	869,544	-	-	-	-	-	-	869,544
Rental Vehicle Gross Receipts	165,181	-	-	-	-	-	-	165,181
Utilities Franchise Tax	7,100,000	-	-	-	-	-	-	7,100,000
Motor Vehicle Tax	1,568,863	-	-	-	-	-	-	1,568,863
Other Unrestricted Intergov't	895,982	-	-	-	-	-	-	895,982
Powell Bill	2,182,000	-	-	-	-	-	-	2,182,000
Restricted Intergov't Revenues	597,674	-	-	-	-	-	-	597,674
Licenses, Permits and Fees	4,433,229	-	-	-	-	-	-	4,433,229
Rescue Service Transport	3,205,109	-	-	-	-	-	-	3,205,109
Parking Violation Penalties, Leases,	247,302	-	-	-	-	-	-	247,302
Other Sales & Services	389,868	-	-	-	-	-	-	389,868
Other Revenues	864,187	27,419	63,181	12,523	-	103,123	-	967,310
Interest on Investments	850,000	-	-	-	-	-	-	850,000
Transfers In GUC	6,639,369	-	-	-	-	-	-	6,639,369
Appropriated Fund Balance	2,190,910	(27,419)	(63,181)	(12,523)	416,882	313,759	-	2,504,669
Total Revenues	\$ 86,910,591	\$ -	\$ -	\$ -	\$ 416,882	\$ 416,882	\$ -	\$ 87,327,473
APPROPRIATIONS								
Mayor/City Council	\$ 530,273	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 530,273
City Manager	2,497,630	-	-	-	-	-	-	2,497,630
City Clerk	285,386	-	-	-	-	-	-	285,386
City Attorney	531,965	-	-	-	-	-	-	531,965
Human Resources	2,887,004	-	-	-	-	-	-	2,887,004
Information Technology	3,302,329	-	-	-	-	-	-	3,302,329
Engineering	5,228,222	-	-	-	-	-	-	5,228,222
Fire/Rescue	15,908,008	-	-	-	-	-	-	15,908,008
Financial Services	2,603,807	-	-	-	-	-	-	2,603,807
Recreation & Parks	7,393,535	-	-	-	-	-	-	7,393,535
Police	26,029,451	-	-	-	-	-	-	26,029,451
Public Works	5,890,724	-	-	-	-	-	-	5,890,724
Planning & Development	3,095,657	-	-	-	-	-	-	3,095,657
OPEB	700,000	-	-	-	-	-	-	700,000
Contingency	100,000	-	-	-	-	-	-	100,000
Indirect Cost Reimbursement	(1,950,887)	-	-	-	-	-	-	(1,950,887)
Capital Improvements	-	-	-	-	-	-	-	-
Total Appropriations	\$ 75,033,104	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 75,033,104
OTHER FINANCING SOURCES								
Transfers to Other Funds	\$ 11,877,487	\$ -	\$ -	\$ -	\$ 416,882	\$ 416,882	\$ -	\$ 12,294,369
Total Other Financing Sources	\$ 11,877,487	\$ -	\$ -	\$ -	\$ 416,882	\$ 416,882	\$ -	\$ 12,294,369
Total Approp & Other Fin Sources	\$ 86,910,591	\$ -	\$ -	\$ -	\$ 416,882	\$ 416,882	\$ -	\$ 87,327,473

Section II: Estimated Revenues and Appropriations. Public Works Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2019-20 Revised Budget	B.	Total Amend #7	2019-20 Budget per Amend #7
ESTIMATED REVENUES				
Occupancy Tax	\$ 118,000	\$ -	\$ -	\$ 118,000
Transfers from Other Funds	18,613,918	(303,455)	(303,455)	18,310,463
Other Income	2,742,685	(11,440)	(11,440)	2,731,245
Spec Fed/State/Loc Grant	24,454,467	(705,968)	(705,968)	23,748,499
Spec Fed/State/Loc Grant	944,223	-	-	944,223
Bond Proceeds	9,096,803	(2,896,803)	(2,896,803)	6,200,000
Total Revenues	<u>\$ 55,970,096</u>	<u>\$ (3,917,666)</u>	<u>\$ (3,917,666)</u>	<u>\$ 52,052,430</u>

APPROPRIATIONS				
Stantonsburg Rd./10th St Con Project	\$ 6,194,950	\$ -	\$ -	\$ 6,194,950
Computerized Traffic Signal System	8,883,151	-	-	8,883,151
Thomas Langston Rd. Project	3,980,847	(3,980,847)	(3,980,847)	-
Sidewalk Development Project	1,616,301	-	-	1,616,301
GTAC Project	9,336,917	-	-	9,336,917
Energy Efficiency Project	777,600	-	-	777,600
King George Bridge Project	1,341,089	-	-	1,341,089
Energy Savings Equipment Project	2,591,373	-	-	2,591,373
Convention Center Expansion Project	4,718,000	-	-	4,718,000
Pedestrian Improvement Project	210,761	-	-	210,761
Street Lights & Cameras	1,526,225	-	-	1,526,225
F/R Station 3 Parking Lot	139,551	-	-	139,551
F/R Station 2 Bay Expansion	244,655	-	-	244,655
Parking Lot Enhancements	81,903	-	-	81,903
Street Improvements Project	11,782,805	-	-	11,782,805
Safe Routes to School	1,297,223	-	-	1,297,223
Imperial Demolition	214,178	-	-	214,178
Transfer to General Fund	-	63,181	63,181	63,181
Transfer to Street Improvement	1,002,567	-	-	1,002,567
Transfer to Recreation & Parks Capital	30,000	-	-	30,000
Total Appropriations	<u>\$ 55,970,096</u>	<u>\$ (3,917,666)</u>	<u>\$ (3,917,666)</u>	<u>\$ 52,052,430</u>

Section III: Estimated Revenues and Appropriations. Capital Reserve Fund, of Ordinance #19-031 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2019-20 Budget per Amend #6	E.	Total Amend #7	2019-20 Budget per Amend #7
ESTIMATED REVENUES				
Transfers from General Fund	\$ 390,000	\$ 416,882	\$ 416,882	\$ 806,882
Total Revenues	<u>\$ 390,000</u>	<u>\$ 416,882</u>	<u>\$ 416,882</u>	<u>\$ 806,882</u>
APPROPRIATIONS				
Increase in Reserve	\$ 390,000	\$ 416,882	\$ 416,882	\$ 806,882
Total Appropriations	<u>\$ 390,000</u>	<u>\$ 416,882</u>	<u>\$ 416,882</u>	<u>\$ 806,882</u>

Section IV: Estimated Revenues and Appropriations. Fire/Rescue Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<u>2019-20 Revised Budget</u>	<u>D.</u>	<u>Total Amend #7</u>	<u>2019-20 Budget per Amend #7</u>
ESTIMATED REVENUES				
Debt Proceeds	\$ 6,000,000	\$ 600,000	\$ 600,000	\$ 6,600,000
Total Revenues	<u>\$ 6,000,000</u>	<u>\$ 600,000</u>	<u>\$ 600,000</u>	<u>\$ 6,600,000</u>
APPROPRIATIONS				
Fire Station #7	\$ 6,000,000	\$ -	\$ -	\$ 6,000,000
Fire Station #1 Bay Extension	-	600,000	600,000	600,000
Total Appropriations	<u>\$ 6,000,000</u>	<u>\$ 600,000</u>	<u>\$ 600,000</u>	<u>\$ 6,600,000</u>

Section V: 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:

	<u>2019-20 Revised Budget</u>	<u>A.</u>	<u>Total Amend #7</u>	<u>2019-20 Budget per Amend #7</u>
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 7,561,577	\$ (400,000)	\$ (400,000)	\$ 7,161,577
Transfer From General Fund	1,177,529	-	-	\$ 1,177,529
Transfer From Pre-1994 Entitlement	80,000	(52,581)	(52,581)	\$ 27,419
Transfer from Other Funds	20,852	-	-	\$ 20,852
Total Revenues	<u>\$ 8,839,958</u>	<u>\$ (452,581)</u>	<u>(452,581)</u>	<u>\$ 8,387,377</u>
APPROPRIATIONS				
Personnel	\$ 2,268,228	\$ (15,000)	\$ (15,000)	\$ 2,253,228
Operating	4,565,345	(465,000)	(465,000)	4,100,345
Capital Outlay	2,006,385	-	-	2,006,385
Transfers	-	27,419	27,419	27,419
Total Appropriations	<u>\$ 8,839,958</u>	<u>\$ (452,581)</u>	<u>\$ (452,581)</u>	<u>\$ 8,387,377</u>

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

Adopted this 6th day of January, 2020

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk

#1121189