



Agenda

Greenville City Council

April 5, 2021

6:00 PM

**This meeting will be virtual and conducted via Zoom. See the City's website
(www.greenvillenc.gov) for details.**

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 - Council Member Smiley**
- III. Pledge of Allegiance**
- IV. Roll Call**
- V. Approval of Agenda**
- VI. Public Comment Period**

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

- VII. Consent Agenda**

1. Minutes from the March 8, 2021 City Council Workshop and the March 8, 2021 and March 11, 2021 City Council Meetings
2. Public Art Recommendation for Dave Mirra Memorial Sculpture
3. Public Art Recommendation for Emerald Loop Intersection Pavement Art
4. Resolution Granting an Electric Easement for the Use of Greenville Utilities Commission at Wildwood Park
5. Resolution Relating to the Issuance of up to \$38,500,000 Greenville Utilities Commission Combined Enterprise System Revenue and Revenue Refunding Bonds, Series 2021A
6. Order Authorizing a \$7,979,298 Installment Refinancing Agreement and Related Resolutions for the refunding of the City of Greenville's Series 2011 General Obligation Bonds, 2015 Special Obligation Revenue Bonds, and 2019 Taxable Installment Sale
7. Contract award to SEPI, Inc. for Construction Engineering and Inspection Services associated with the MetroNet Fiber Installation Project
8. Contract Award to IMEC Group LLC for the Construction of Improvements to the Eppes Recreation Center
9. Contract with Cherry Bekaert, LLP for Auditing Services for Fiscal Year 2020-2021
10. Contract award to AAR of North Carolina, Inc. for the replacement of EPDM Roofs at the Greenville Convention Center
11. Approval of Agreement with Tyler Technologies for Support Services and Updates for Munis
12. Various tax refunds greater than \$100

VIII. New Business

13. Boards & Commissions Annual Presentations
 - a. Pitt-Greenville Airport Authority
14. Budget Ordinance Amendment #8 to the 2020-2021 City of Greenville Budget (Ordinance #20-025), Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Funds (Ordinance #17-024)
15. Fiscal Year 2021 Third Quarter General Fund Financial Update

IX. Review of April 8, 2021 City Council Agenda

X. City Manager's Report

XI. Comments from Mayor and City Council

XII. Adjournment






City of Greenville, North Carolina

Meeting Date: 04/05/2021

<u>Title of Item:</u>	Minutes from the March 8, 2021 City Council Workshop and the March 8, 2021 and March 11, 2021 City Council Meetings
<u>Explanation:</u>	Minutes from the March 8, 2021 Workshop and the March 8, 2021 and March 11, 2021 City Council meetings are presented for the City Council's review and approval.
<u>Fiscal Note:</u>	No direct fiscal impact.
<u>Recommendation:</u>	Review and approve the presented minutes.

ATTACHMENTS

-  [Draft Minutes City Council Workshop March 8 2021.pdf](#)
-  [Proposed March 8 2021 Minutes.pdf](#)
-  [Proposed March 11 2021 Minutes.pdf](#)

OFFICIAL MINUTES
CITY COUNCIL WORKSHOP
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, MARCH 8, 2021



A workshop of the Greenville City Council was held remotely on Monday, March 8th, 2021, using Zoom with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 4:04 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, 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, City Clerk Valerie Shiuwegar, Assistant City Manager Michael Cowin and Assistant City Manager Ken Graves

Approval of the Agenda

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

1.) PRESENTATION BY KRIS SMITH OF METRONET

Ms. Kris Smith, Governmental Affairs Manager for MetroNet, shared the construction communication plan and what the city can expect during construction. Ms. Smith gave the timeline of the communications:

- 45-30 days- letters are mailed out before construction begins in a residential area.
- 10-14 days- brightly colored postcards are placed on doors
- 5-7 days- street teams go out and places turf signs in yards

Larger version of the turf signs, approximately the size of a realtor sign, will be strategically placed before work begins. Construction easement flyers will be placed on homes and will include the name and telephone number of the crew foreman. Ms. Smith noted that flyers will be multilingual. She stated that the website will include an interactive map and an “Ask questions” tab where residents can ask questions and upload pictures of concerns in their neighborhood. Ms. Smith stated that the average response time is within 1 business day. She stated that crews will restore areas after construction within a 24 to 48-hour period, up to 3 days if there is substantial weather.

Ms. Smith said MetroNet workers will be easily to spot by the signage on vehicles, vests, and picture badges with crew names.

Ms. Smith shared the ticketing process. Any time a citizen calls customer service a ticket will be generated. She stated she will be monitoring tickets and meeting with city officials on a monthly basis to go over tickets and discuss the rate of response. Ms. Smith stated that the website will have videos of what citizens can expect in their neighborhoods that explains the level of construction needed to replace cables that haven't been dug up in 60 years. Work will begin in April along South Arlington Blvd, down Commerce Street and heading into downtown.

Ms. Daniels asked about how far services extend beyond the airport, to areas such as Countryside Estates, Red Oak and Greenville Terrace?

Ms. Smith stated that she would confirm those areas and follow up with the City Council. Council Member Meyerhoeffer noted that it appears that Greenfield Blvd is covered according to MetroNet's website.

Ms. Glover voiced concerns of the West Greenville area, noting a need for school-aged children to connect for classes.

Mayor Connelly stated that there is a provision in the contract that will provide for service at one community center for citizens without internet. He requested that Mayor Pro-Tem Glover and Council Member Daniels be included in discussions regarding designating that community center.

2.) PRESENTATION BY BOYS AND GIRLS CLUB OF THE COASTAL PLAINS

Kimberly Boyd, President and CEO of the Boys and Girls Club of the Coastal Plains, shared the vision of the Boys and Girls 17 clubs in 7 counties in Eastern North Carolina with the main office located here in Greenville. Ms. Boyd stated the Boys and Girls Club's interest in establishing a club in West Greenville at the Lucille Gorham Intergenerational Center. Ms. Boyd introduced her staff Ms. Dre Nix, Chief Operating Officer (COO), Mr. Greg Tys, Vice President (VP) of Operations and Ms. Shonda Levett, Regional Vice President for all 5 Pitt County clubs.

Ms. Boyd shared the potential for impactful programs through partnerships in the community, with agencies such as the Pitt Council on Aging, NC Cooperative Extension, Vidant, ECU Dental School and ECU School of Social Work. Ms. Boyd stated that they are interested in moving senior leadership members of the Boys and Girls club to the top floor of the building and utilizing the lower level as a community center. She stated that children, seniors and the community will be an all-encompassing focus at the Lucille Gorham Intergenerational Community Center. She stated that activities would be scheduled year-round and they have reached out to the Superintendent of Pitt County Schools to see how the Boys and Girls Club can assist the school system during the summer months

Ms. Nix stated that impactful programs can create a broader mindset in children and can decrease participation in sexual activities, drug use, underage drinking, and school absences.

The Mayor and City Council expressed their appreciation for the presentation and their support of programs for youth and seniors that will continue the work of the Lucille Gorham Intergenerational Center. They further suggested that the Boys and Girls Club reach out to the Sheppard Memorial Library about the possibility of a library branch in the area.

3.) PUBLIC ART RECOMMENDATION FOR DAVE MIRRA SCULPTURE AT THE EXTREME PARK AT JAYCEE PARK

Ms. Holly Garriott, Executive Director of the Pitt County Arts Council at Emerge, detailed the proposed sculpture in memory of late BMX rider Dave Mirra, a local celebrity who put Greenville on the map during his career by helping the city establish itself as a BMX Pro-town USA city and expanded recreational opportunities in the city. She stated that the sculpture titled *The Dave Mirra Legacy: Stay Brave, Stay Strong* will be positioned in the grassy area of the entrance of the skate park. Ms. Garriott provided the dimensions of the stainless steel sculpture stating a height of approximately 14 feet tall with base is about 4x4 feet wide. She stated that this is a donation so there is no process selection by the Arts Council, but they have reviewed the plans and have been in communication with the stakeholders and artist, Don Wigent, Brian Lee, and Mike Laird. She stated that there is no anticipated cost to city because the installation and foundation will be covered by family and friends of the late Mr. Mirra. The time frame for installation is Spring of 2021. Recreation and Parks staff member will be supervising the installation. She stated the Art Council's recommendation to approve the sculpture.

4.) PUBLIC ART RECOMMENDATION FOR EMERALD LOOP PAVEMENT ART AND LIGHTING PLAN

Ms. Garriott next presented an update on the Emerald Loop Lighting Project. She stated that this project was approved by the City Council in August of 2020. Ms. Garriott stated that Greenville was designated as a Smart City in 2018 by the North Carolina Arts Council and noted that Greenville was the fifth city to gain this designation in North Carolina and the only city this fiscal year to still receive funding through the pandemic. She stated that the Arts Council is still waiting on the status of a \$75k grant given by The National Endowment for the Arts.

Ms. Garriott stated that the first project of the Emerald Loop project will be installation of a star in the road at the intersection of Reade and Evans. Ms. Garriott displayed the intersection pavement art done in a hexagonal pattern either in a 3 or 4 color design. She stated that Duratherm will be applied by a company call Cactx. The Duratherm process includes a stencil that is placed on the asphalt and a machine goes down into the surface and implements the color material. The lifespan of this is 10 years and the Arts Council will fund any maintenance.

Ms. Garriott stated that the implementation time frame is the end of May through June and the Arts Council will work with representatives from the City and Uptown Greenville to reduce the impact on businesses and traffic.

Ms. Garriott stated that the next phase will focus on hiring an artistic lighting designer to create standards, specifications, and recommendations for lighting plans of the Municipal Building, radio tower, and other buildings to create a cohesive lighting plan for the city. Haddad and Drugan, the design team hired for the project, will stay to help with the façade illumination plan. She stated the cost of the project has already been approved in the FY 2021 project for \$40,000. The recommendation is to approve the implementation of the first year of the Emerald Loop Project including the intersection pavement art at Reade and Evans.

Council Member Smiley asked if the design is pointing north to south, such as a compass orientation.

Ms. Garriott replied that the purpose of the design is to create a route to guide people through the Uptown area.

Adjournment

There being no further business before the City Council, motion was made by Council Member Bell and seconded by Council Member Meyerhoeffer to adjourn the meeting. Motion carried unanimously. Mayor Connelly adjourned the meeting at 5:10 p.m.

Prepared by:
Camillia Smith
Deputy Clerk

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk

DRAFT MINUTES
CITY COUNCIL MEETING
CITY OF GREENVILLE, NORTH CAROLINA
MONDAY, MARCH 8, 2021



A meeting of the Greenville City Council was held on Monday, March 8, 2021, electronically via Zoom, with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 6:00 p.m. and called on Council Member Litchfield to provide the invocation. The invocation was followed by the Pledge of Allegiance.

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, City Clerk Valerie Shiuwegar, Deputy Clerk Camillia Smith, Assistant City Manager Michael Cowin, Assistant City Manager Ken Graves

Approval of the Agenda

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

Public Comment Period

Mayor Connelly opened the public comment period at 6:07 pm, explaining the public comment procedures. There being no speakers present and no emailed public comments, Mayor Connelly closed the Public Comment Period at 6:08 p.m.

Consent Agenda

City Manager Wall presented the following items to the City Council for approval:

1. Approval of Minutes from the February 8, 2021 City Council Workshop and the February 8, 2021 and February 11, 2021 City Council Meetings
2. Ordinance enacting and adopting Supplement #2020-S13 to the City of Greenville Code of Ordinances
3. Ordinance Amending the City Code and Dissolving the Community Appearance Commission



4. Resolution Accepting Dedication of Rights-of-Way and Easements for Davenport Farms at Emerald Park Phase 4 - Cluster
5. Approval of Application for a North Carolina Parks and Recreation Trust Fund (PARTF) grant in support of Wildwood Park
6. Approval to purchase replacement network/security hardware
7. Approval to lease four replacement Sanitation Slide Loaders for the Public Works Department
8. Contracts with HH Architecture and JKF Architecture for on-call architectural/engineering services
9. Various tax refunds greater than \$100

Attorney McGirt advised that ordinance for Item 3 would need to be amended. Mayor Connelly requested that the item be pulled and added to New Business for further clarification. Council Member Smiley made a motion to pull Item 3 and approve the remaining items on the Consent Agenda. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

New Business

3. (PULLED FROM CONSENT AGENDA) ORDINANCE AMENDING THE CITY CODE AND DISSOLVING THE COMMUNITY APPEARANCE COMMISSION – **UNANIMOUSLY APPROVED**

City Attorney McGirt stated that Section 1 of the proposed ordinance would need to be amended to state:

Section 1: That Title 2, Chapter 3 of the City Code is amended by deleting Article D entitled “*COMMUNITY APPEARANCE COMMISSION*” in its entirety. Title 2, Chapter 3, Article D, which consists of Sections 2-3-41 through 2-3-44, is repealed.

Council Member Smiley made a motion to approve the ordinance as amended. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

10. ANNUAL BOARDS AND COMMISSIONS PRESENTATION - **PRESENTATION HEARD**

Environmental Advisory Commission

Dr. Robert Shaw, Environmental Advisory Commission (EAC) Chair, provided a brief report on the focus of the EAC and its mission to find ways to reduce greenhouse gas emissions in the city.



Dr. Shaw summarized action taken by the Commission in 2020:

- Met with the City Manager to discuss a sustainability office and the City’s current efforts in reducing energy usage
- Reviewed a presentation by Chad Carwein, East Carolina University (ECU) Sustainability Manager, on how greenhouse gas emission inventories are utilized at ECU
- Submitted a proposal to adopt a stream
- Submitted an application for a grant for glass recycling

Dr. Shaw provided additional updates, stating that the stormwater grant had been restructured to focus on school-age environmental education. He stated that a major goal of the Commission for 2021 is to conduct a greenhouse gas emissions inventory. He stated that the Commission is in the process of applying for the Duke School of Environment’s Client Centered Master’s Project, which would aid with that goal.

The City Council expressed appreciation for the Commission and staff’s continued efforts despite some limitations due to the pandemic.

7. BUDGET ORDINANCE AMENDMENT #7 TO THE 2020-2021 CITY OF GREENVILLE BUDGET (ORDINANCE #20-025) SPECIAL REVENUE GRANT FUND (ORDINANCE #11-003), AND THE CAPITAL PROJECTS FUNDS (ORDINANCE #17-024) – UNANIMOUSLY APPROVED

Financial Services Director Byron Hayes stated that the proposed ordinance includes adjustments to the following funds:

- General Funds
- Facilities Improvement Fund
- Fire/Rescue Capital Projects Fund
- Rec & Parks Capital Projects Fund
- Public Works Capital Projects Fund
- Grants Special Revenue Fund



CITY OF GREENVILLE
BUDGET ORDINANCE AMENDMENT #7

	Description	Funds	Budget Impact	Amount
A	Transfer funds from Fire Station #7 project to Fire Station #1 bay extension project	F/R Cap Proj	Neutral	\$ 4,500
B	To appropriate occupancy tax within the Public Works Capital Projects Fund and transfer to the Facility Improvement Projects Fund for Convention Center HVAC upgrades	PW Cap Proj FIP	Increase	\$ 50,000
C	Reclassify general liability insurance budget based on year-to-date actual claims experience	General	Neutral	\$ 28,000

CITY OF GREENVILLE
BUDGET ORDINANCE AMENDMENT #7

	Description	Funds	Budget Impact	Amount
D	To move funds from the Police Department to the Special Revenue Fund for the remaining local match for the ShotSpotter project	General	Neutral	\$ 32,107
E	To Reclassify contract services budget from Public Works Department to Planning & Development Department for the Emerald Loop.	General	Neutral	\$ 40,000
F	To Recognize funding received for the NCMG grant within the Rec & Parks Capital Project Fund and transfer to the Special Revenue Fund to complete current year grant requirements	RP Cap Proj. Spec Rev	Increase	\$ 24,383

Council Member Smiley asked how current federal actions might impact municipalities and its budgets.

Staff stated that Greenville may receive some stimulus funds, but further direction is being sought from the City’s lobbyists and the federal government.

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



Review of the March 11, 2021 Agenda

City Manager Wall reviewed the March 11, 2021 agenda:

1. Appointments to Boards and Commissions
2. Ordinance to annex Davenport Farms at Emerald Point, Phase 5 involving 6.3832 acres located at the terminus Jade Lane
3. Ordinance requiring the repair or the demolition and removal of the dwelling located at 300 Clairmont Circle, Tax Parcel #16182

City Manager's Report

City Manager Wall stated that she did not have any items to report.

Comments from the Mayor and City Council

The Mayor and City Council welcomed Mayor Pro-Tem Glover back and expressed congratulatory wishes to Recreation & Parks Director Gary Fenton on his upcoming retirement and Assistant Recreation & Parks Director on his upcoming promotion to Recreation & Parks Director.

Adjournment

Mayor Pro-Tem Glover moved to adjourn the meeting. The motion was seconded by Council Member Daniels. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 6:38 p.m.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk

PROPOSED MINUTES
CITY COUNCIL MEETING
CITY OF GREENVILLE, NORTH CAROLINA
THURSDAY, MARCH 11, 2021



A meeting of the Greenville City Council was held on Thursday, March 11, 2021, electronically via Zoom, with Mayor P.J. Connelly presiding. Mayor Connelly called the meeting to order at 6:00 p.m. The invocation was led by Mayor Connelly and was followed by the Pledge of Allegiance.

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 Meyerhoeffler, Jr.

Those Absent:

None.

Also Present:

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

Approval of the Agenda

City Manager Wall requested that the City Council add Special Recognitions to the agenda to recognize Mr. Fred Baxter and Mr. Donnie Hardee, retiring members of the Fire/Rescue Department.

Council Member Smiley made a motion to approve the agenda with the recommended changes, adding the Special Recognitions after the Public Comment Period. Council Member Bell seconded the motion and it carried unanimously.

Public Comment Period

Mayor Connelly opened the public comment period at 6:07 p.m., explaining the public comment procedures. There being no registered speakers and no public comment received in the public input inbox, Mayor Connelly closed the public comment period at 6:08 p.m.

(ADDED) Special Recognitions

City Retirees

City Manager Wall and Chief Eric Griffin recognized two retirees from the Fire/Rescue Department: Mr. Fred Baxter with 22.5 years of service, and Mr. Donnie Hardee, Jr. with 30 years of service.



Mayor Connelly and the City Council commended Mr. Baxter and Mr. Hardee for their years of leadership and service to the community.

Girl Scouts 109th Anniversary

Mayor Connelly further commended the Girl Scouts on their 109th anniversary and read a proclamation in their honor:

WHEREAS, the year 2021 marks the 109th anniversary of Girl Scouts of the USA, the largest and most successful leadership program for girls in the world; and

WHEREAS, Girl Scouts unleashes the G.I.R.L. (Go-getter, Innovator, Risk-taker, Leader)TM in every girl, preparing her for a lifetime of leadership; and

WHEREAS, Girl Scouts combines time-tested, research-backed methods with exciting, modern programming that speaks to today's girls and is designed to cater to the strengths of girls' leadership development; and

WHEREAS, Girl Scouts offers girls 21st century programming in science, technology, engineering, and math (STEM); the outdoors; entrepreneurship; and beyond, helping girls develop invaluable life skills and take the lead early and often; and

WHEREAS, as the world's premier leadership development organization for girls, Girl Scouts welcomes girls of all backgrounds and interests who want to develop the courage, confidence, and the character to make the world a better place; and

WHEREAS, research shows that girls learn best in an all-girl, girl-led environment in which their specific needs are addressed and met; and

WHEREAS, the Girl Scout Award, the highest and most prestigious award in Girl Scouting, calls on Girl Scouts in grades 9-12 to take on projects that have a measurable and sustainable impact on a community by first assessing a need, designing a solution, completing a project, and inspiring others to sustain it; and

WHEREAS, with more than 100 years of experience, Girl Scouts brings a wealth of knowledge to programs that deliver girls cornerstone experiences with benefits that last a lifetime; and

WHEREAS, more than 50 million women are Girl Scouts alums, and 2.6 million girls and adults are current members.

NOW, THEREFORE, I, P.J. Connelly, Mayor of Greenville, North Carolina, applaud the Girl Scout Movement and NC Coastal Pines for providing girls with a safe, inclusive, all-girl space



where they can hone their skills and develop leadership abilities and do hereby proclaim the week of March 7 – 13, 2021 as

GIRL SCOUT WEEK

Farmville Central High School Boys Basketball 2A State Championship

Mayor Connelly next congratulated the Farmville Central High School Boys Basketball team on their 2A State Championship win. In honor of the occasion, the lights on the Greene Street Pedestrian Bridge were lit in gold, the school’s color.

Appointments

The following appointments were made to the City’s boards and commissions:

Affordable Housing Loan Committee

Mayor Pro-Tem Glover made a motion to reappoint:

- Jack Brock
- Derek Cherry
- Ronita Jones
- Anne Fisher
- Deborah Spencer

Council Member Smiley seconded the motion and it carried unanimously.

Environmental Advisory Commission

Council Member Meyerhoeffer made a motion to appoint Dr. Jeffery McKinnon to the board. Council Member Smiley seconded the motion.

Council Member Bell lost connection to the meeting at 6:17 p.m.

The motion carried unanimously by an affirmative vote of 5:0 by the Council Members that were present: Mayor Pro-Tem Glover, Council Member Daniels, Council Member Smiley, Council Member Litchfield, and Council Member Meyerhoeffer.

Firefighters Relief Fund Committee

Council Member Smiley made a motion to reappoint Will Franklin to the Committee. Mayor Pro-Tem Glover seconded the motion and it carried unanimously by an affirmative vote of 5:0 by the Council Members that were present: Mayor Pro-Tem Glover, Council Member Daniels, Council Member Smiley, Council Member Litchfield, and Council Member Meyerhoeffer.

Human Relations Council



Mayor Pro-Tem Glover made a motion to appoint Logan Harrison to the Council. Council Member Meyerhoeffer seconded the motion and it carried unanimously by an affirmative vote of 5:0 by the Council Members that were present: Mayor Pro-Tem Glover, Council Member Daniels, Council Member Smiley, Council Member Litchfield, and Council Member Meyerhoeffer.

Police Community Relations Committee

Council Member Daniels appointed Keevon Gainer to the Committee.

Youth Council

Mayor Pro-Tem Glover made a motion to appoint Sadie Smith to the Council. Council Member Meyerhoeffer seconded the motion.

Council Member Bell rejoined the meeting at 6:20 p.m.

The motion carried unanimously by an affirmative vote of 6:0 by the full City Council.

Mayor Connelly appointed Council Member Daniels to serve as the City Council Liaison to the Multimodal Transportation Commission.

New Business

2.) ORDINANCE TO ANNEX DAVENPORT FARMS AT EMERALD POINT, PHASE 5 INVOLVING 6.832 ACRES LOCATED AT THE TERMINUS OF JADE LANE - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MARCH 15, 2021 AT 6:00 P.M*

Chief Planner Chantae Gooby delineated the area and provided an overview of the request. She stated that the area can accommodate 26 single-family lots under the proposal.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:27 p.m. and invited speakers in favor of the request to come forward. There being no speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the request in the Public Input mailbox, Mayor Connelly closed the public hearing at 6:28 p.m. and called for board discussion.



Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

3.) ORDINANCE REQUIRING THE REPAIR OR DEMOLITION AND REMOVAL OF THE DWELLING LOCATED AT 300 CLAIRMONT CIRCLE, TAX PARCEL #16182 - *PUBLIC HEARING HELD AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; ACTION SCHEDULED TO BE TAKEN ON MARCH 15, 2021 AT 6:00 P.M.*

Assistant Planning & Development Services Director Les Everett provided an overview of the request to the City Council. He stated that there have been 12 Code Enforcement cases initiated on the property since 1998 and he noted that the property has been vacant and the utilities have been turned off since 2014. He outlined the following figures:

- Delinquent taxes - \$1,315.40
- Building Tax Value - \$93,297.00
- Land Tax Value - \$7,700.00
- Total Tax Value - \$100,997.00
- Estimated Cost to Repair - \$79,453 (estimate to meet the minimum standards)
- Estimated Cost of Demolition - \$10,000 (includes asbestos testing, abatement if needed, and demolition)

Assistant Director Everett stated staff's recommendation to approve the proposed ordinance and advised that staff would be ready to begin the demolition immediately following the 90-day waiting period.

Addressing questions about timing from the City Council, Assistant Director Everett stated that the 90-day waiting period is mandated by both ordinance and State statute.

City Manager Wall stated that demolition numbers have dropped since 2016 in an effort to encourage owners to address issues without the City's involvement. She stated that she has asked Planning & Development Services to look into how many units need attention and she will bring that information back to the City Council.

Hearing no questions from the City Council for staff, Mayor Connelly opened the public hearing at 6:44 p.m. and invited speakers in favor of the request to come forward. There being no speakers at the meeting to speak in favor of the item and there being no messages in favor of the request in the Public Input mailbox, Mayor Connelly called on speakers in opposition to come forward. There being no speakers at the meeting in opposition to the item and no messages in opposition of the



request in the Public Input mailbox, Mayor Connelly closed the public hearing at 6:45 p.m. and called for board discussion.

Hearing no comments from the City Council, Mayor Connelly cited Senate Bill 704 and stated that the City Council would delay action to allow a period of 24-hours after the public hearing has been held to receive additional comments from the public.

City Manager's Report

City Manager Wall recommended that the City Council cancel the March 22, 2021 meeting.

Council Member Smiley made a motion to cancel the March 22, 2021 meeting. Council Member Meyerhoeffer seconded the motion and it carried unanimously.

Comments from the Mayor and City Council

The Mayor and City Council asked that the community keep Detective Verdin in their thoughts and prayers for a speedy recovery.

Recess

Council Member Daniels made a motion to recess the meeting to Monday, March 15, at 6:00 p.m. Council Member Smiley seconded the motion and it carried unanimously.

Reconvene

The City Council reconvened its meeting electronically using Zoom on Monday, March 15, at 6:00 p.m. Council Members present included 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.

The State implemented rules of procedure for electronic meetings during declared States of Emergency. Public bodies are required to accept input on public hearing items up to 24 hours after public hearings are held. Those that were interested in submitting their comments to the City Council after public hearings held on Thursday, March 11, 2021, were instructed to email their comments to publicinput@greenvillenc.gov. The City Council did not receive any comments for any of the public hearings held at its March 11, 2021, meeting.

The City Council took the following action:

2.) **ORDINANCE TO ANNEX DAVENPORT FARMS AT EMERALD POINT, PHASE 5 INVOLVING 6.832 ACRES LOCATED AT THE TERMINUS OF JADE LANE - PUBLIC HEARING HELD ON MARCH 11, 2021 AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; UNANIMOUSLY APPROVED**

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



3.) ORDINANCE REQUIRING THE REPAIR OR DEMOLITION AND REMOVAL OF THE DWELLING LOCATED AT 300 CLAIRMONT CIRCLE, TAX PARCEL #16182 - - *PUBLIC HEARING HELD ON MARCH 11, 2021 AND MEETING WAS RECESSED TO ALLOW PUBLIC COMMENT 24 HOURS AFTER THE HEARING; UNANIMOUSLY APPROVED*

Mayor Pro-Tem Glover made a motion to approve the request. Council Member Daniels seconded the motion and it carried unanimously.

Adjournment

Council Member Meyerhoeffer moved to adjourn the meeting. The motion was seconded by Council Member Bell. There being no further discussion, the motion passed by unanimous vote and Mayor Connelly adjourned the meeting at 6:08 p.m.

Respectfully submitted,

Valerie Shiuwegar

Valerie Shiuwegar
City Clerk



City of Greenville,
North Carolina

Meeting Date: 04/05/2021

<u>Title of Item:</u>	Public Art Recommendation for Dave Mirra Memorial Sculpture
<u>Explanation:</u>	The Pitt County Arts Council at Emerge received a donation of a sculpture from Dave Mirra's family and friends to be placed outside of the Extreme Park at Jaycee Park.
<u>Fiscal Note:</u>	No fiscal impact.
<u>Recommendation:</u>	Approval of the proposed public art project.

ATTACHMENTS

 [PCAC_DAVE MIRRA SCULPTURE RECOMMENDATION_sm.pdf](#)



PITT COUNTY
ARTS
COUNCIL AT
EMERGE

**CIVIC ARTS COMMITTEE
RECOMMENDATION FOR PUBLIC ART
PLACEMENT ON PUBLIC PROPERTY**

REQUESTED

AGENDA DATE: April 5, 2021

PROJECT: Dave Mirra Memorial Sculpture

LOCATION: Outside of the Extreme Park at Jaycee Park

TYPE OF ART: Sculpture

PROJECT TYPE: Commission RFP RFQ Community Donation

ARTIST(S): Mike Laird, Brian Lee, Don Wigent

TITLE: "The Dave Mirra Legacy: Stay Brave, Stay Strong"

PROJECT

STATEMENT: Dave Mirra helped bring Greenville to national recognition as BMX ProTown USA. This put Greenville, NC on the map increasing tourism, economic development, and a new culture, activity, and facility for our Recreation and Parks Department. Now, a group of friends and artists have come together to create a sculpture in his memory.

SIZE ESTIMATE: 14'x4'x4'

SELECTION PROCESS: This is a donation from Dave Mirra's family and friends, and the artists. The sculpture has been approved by the Civic Arts Committee on March 3, 2021, the Pitt County Arts Council's Board of Directors on March 18, 2021, and the City of Greenville Recreation & Parks liaisons on the logistics subcommittee.

SUBCOMMITTEE: Mike Watson, Matt Amante, Daniel Dhers, Mike Laird, Holly Garriott

COMMITTEE'S

COMMENTS: Dave Mirra was such a substantial citizen and supporter of the Greenville Recreation programming, and instrumental in getting the Extreme Park implemented and active. The Civic Arts Committee supports the addition of this sculpture that pays homage to

SURFACE: Stainless Steel

IMPLEMENTATION

TIMEFRAME: Spring 2021

STAKEHOLDERS/
PARTNERS/

SUPPORTERS: Friends and Family of Dave Mirra
Pitt County Arts Council at Emerge
City Department Liaison: City of Greenville Public Works

PROJECT

BUDGET: \$15,000 (in-kind)

COST TO CITY: \$0

FUNDED BY: Friends and Family of Dave Mirra

IMPLEMENTATION

PROCESS: The Friends of Dave Mirra will implement the construction of the concrete foundation and installation of the sculpture with oversight and supervision of the Recreation & Parks Staff.

MAINTENANCE: The Friends and family of Dave Mirra will fund any maintenance and repair to the sculpture. Recreation and Parks Staff will oversee and make recommendations when needed for repair or maintenance.

CIVIC ARTS

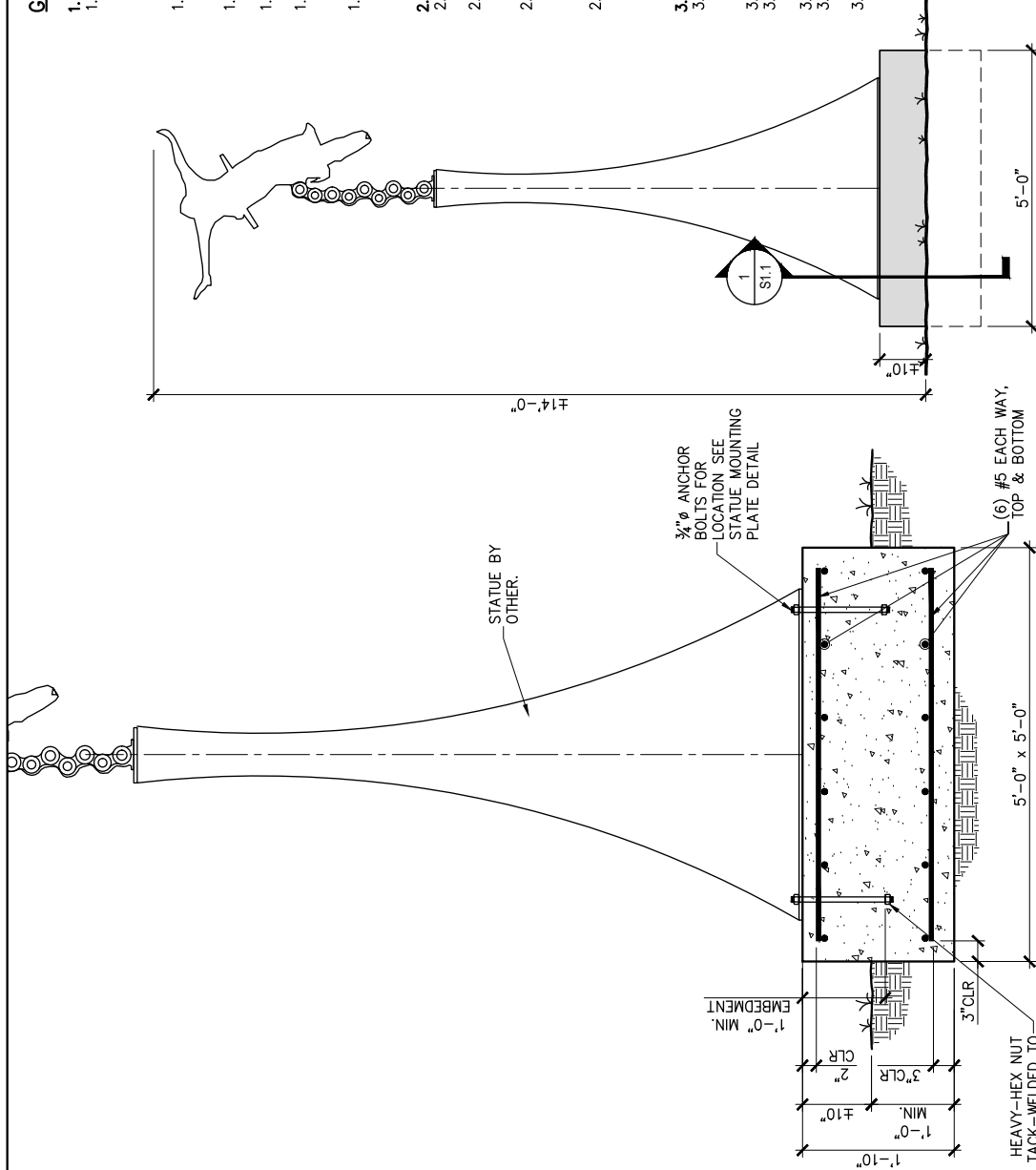
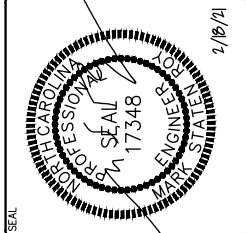
RECOMMENDS: It is the recommendation of the Civic Arts Committee to approve the implementation of “Dave Mirra: Stay Brave, Stay Strong” outside of the Extreme Park at Jaycee Park (exact location to be determined).

ATTACHMENTS: Final Design of “Dave Mirra: Stay Brave, Stay Strong”
Elevation of Sculpture and Concrete Foundation
Proposed Location of the sculpture



GENERAL STRUCTURAL NOTES:

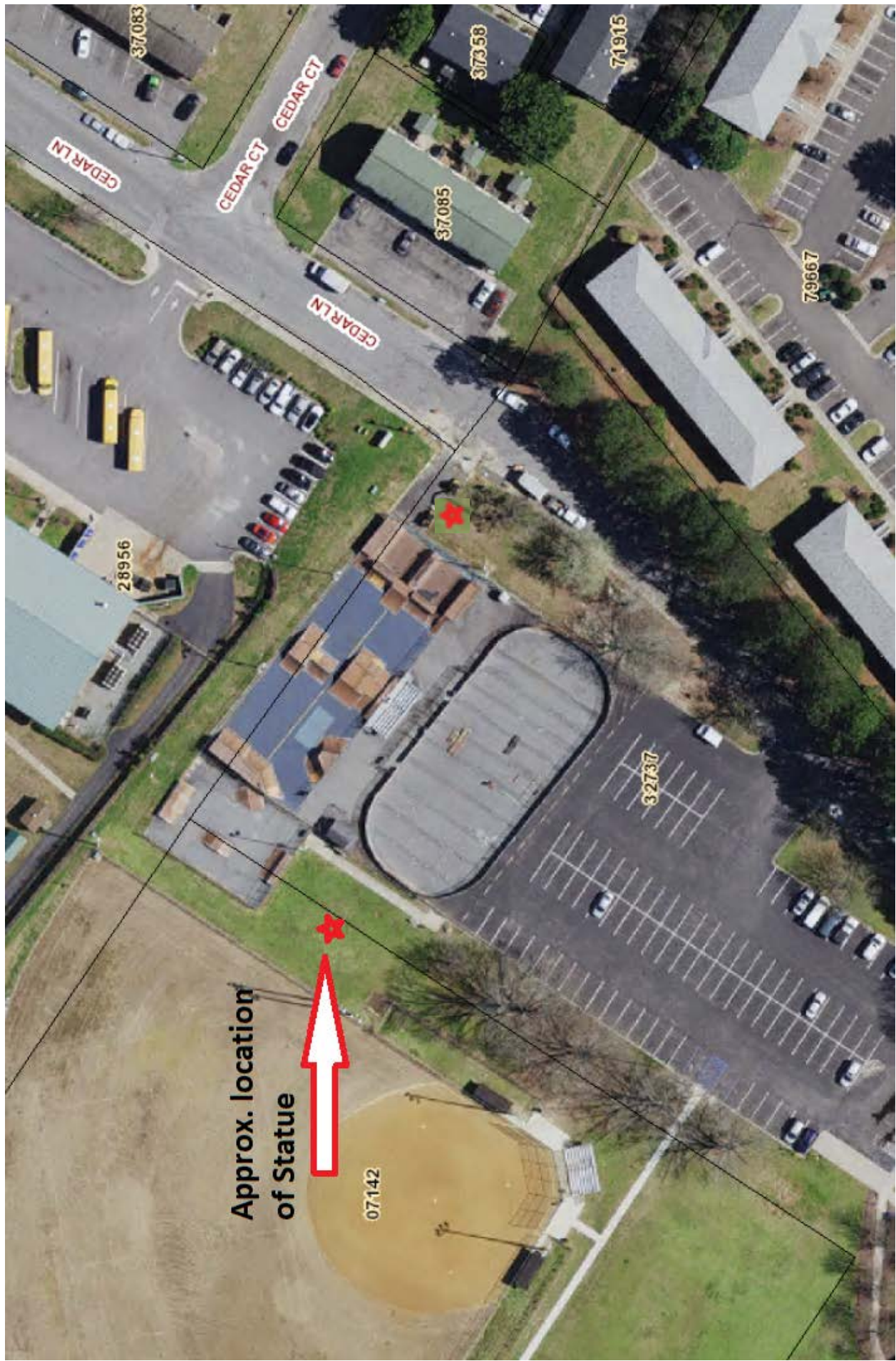
- GENERAL NOTES**
1. METHODS, PROCEDURES AND SEQUENCES OF CONSTRUCTION ARE THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR SHALL TAKE ALL NECESSARY PRECAUTIONS TO MAINTAIN AND INSURE THE INTEGRITY OF THE STRUCTURE AT ALL STAGES OF CONSTRUCTION.
 - 1.1. THE CONTRACTOR SHALL BE FAMILIAR WITH ALL SITE CONDITIONS AND SHALL BE RESPONSIBLE FOR ALL UNDERGROUND UTILITY CHECKS.
 - 1.2. FOOTINGS ARE DESIGNED FOR 122 MPH WIND VELOCITY. (GREENVILLE, NC)
 - 1.3. FOUNDATION DESIGN IS BASED ON A PRESUMPTIVE MAXIMUM ALLOWABLE SOIL BEARING CAPACITY OF 2,000 PSF.
 - 1.4. COORDINATE FOUNDATIONS AND ANCHOR BOLT SIZES/LOCATIONS AND ELECTRICAL CONDUIT LOCATIONS WITH STATUE INFORMATION.
 - 1.5. VERIFY STATUE LOCATION AND ORIENTATION WITH OWNER AND LOT SETBACK REQUIREMENTS BEFORE CONSTRUCTION IS STARTED.
 - 1.6. **FOUNDATION**
 2. ALL FOOTINGS SHALL BE ON UNDISTURBED SOIL OR 98% COMPACTED FILL PER ASTM D698.
 - 2.1. NO FOOTINGS OR SLABS SHALL BE POURED INTO OR AGAINST SUBGRADE CONTAINING FREE WATER, FROST, ICE OR LOOSE MATERIAL.
 - 2.2. EXCAVATIONS FOR FOOTINGS SHALL HAVE THE SIDES AND BOTTOMS TEMPORARILY LINED WITH 6 MIL. POLYETHYLENE IF PLACEMENT OF CONCRETE DOES NOT OCCUR WITHIN 24 HRS OF THE EXCAVATION OF THE FOOTING.
 - 2.3. ADVERSE FOUNDATION CONDITIONS NOTED DURING CONSTRUCTION SUCH AS SOFT SOILS, ORGANIC MATTER, ETC., SHALL BE REPORTED TO THE ENGINEER BEFORE FURTHER CONSTRUCTION IS ATTEMPTED.
 - 2.4. **CONCRETE**
 3. ALL CONCRETE PLACED, SHALL HAVE NORMAL WEIGHT COARSE AGGREGATES, AND SHALL HAVE MINIMUM COMPRESSIVE STRENGTH (f_c) OF 3000 PSI AT 28 DAYS.
 - 3.1. NO CALCIUM CHLORIDE SHALL BE USED IN ANY CONCRETE. CHAMFER ALL EXPOSED EXTERNAL CORNERS OF CONCRETE WITH 3/4" x 45 DEGREE CHAMFER, UNLESS OTHERWISE NOTED.
 - 3.2. ALL REINFORCING SHALL CONFORM TO ASTM A615, GRADE 60. DETAIL AND FABRICATE REINFORCING STEEL IN ACCORDANCE WITH THE ACI DETAILING MANUAL.
 - 3.3. PROVIDE SMOOTH FORM FINISH ON EXPOSED CONCRETE SURFACES.
 - 3.4. PROVIDE SMOOTH FORM FINISH ON EXPOSED CONCRETE SURFACES.
 - 3.5. PROVIDE SMOOTH FORM FINISH ON EXPOSED CONCRETE SURFACES.
 - 3.6. PROVIDE SMOOTH FORM FINISH ON EXPOSED CONCRETE SURFACES.



MIRRA STATUE PEDESTAL DETAIL
 1 S1.1 3/4" = 1'-0"

MIRRA STATUE ELEVATION VIEW
 1 S1.1 1/2" = 1'-0"

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**Approx. location
of Statue**



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Public Art Recommendation for Emerald Loop Intersection Pavement Art

Explanation: In 2018, the City of Greenville was designated a SmART City and the Pitt County Arts Council was awarded a SmART Initiatives grant by the North Carolina Arts Council. A SmART City Resource Team was formed with many partners and stakeholders from both the private and public sectors. The Emerald Loop project was chosen as the project that would transform our Center City through the Arts.

In 2019, Haddad/Drugan was chosen by a Request for Qualifications (RFQ) process to create the Emerald Loop Vision Plan, a plan that took a year of research, stakeholder meetings, and community engagement. The Emerald Loop Vision Plan and the implementation timeline were approved by City Council in August of 2020. This is Year 1 of the plan.

Presented to Council for approval is the first major project of the Emerald Loop Vision Plan. The project consists of Intersection Pavement Art at the intersection of Reade and Evans Streets, the Lighting Design RFQ, and the planning for Year 2, including the Emerald Loop Trolleys, shelters, and implementation of a lighting plan.

The Intersection Pavement Art is a design pattern made by Haddad/Drugan made of Duratherm material. The pattern will be sent to Cactx, a contractor out of Winston-Salem who will be applying the Duratherm through the process of heating the asphalt and embossing a stencil of the design. The Duratherm, a plastic material, is then imprinted into the recessed area of the asphalt. Cactx will be working with the City of Greenville Engineering Department to implement the accepted traffic management plan, and will subcontract the traffic management to a local company who will safely close the intersection and set detours. The subcommittee, working with the Engineering Department and Public Works, is looking to find a weekend to perform the work so it will have the least amount of impact on area businesses and residents. The work will take 2-4 days depending on weather and process. Attached with this agenda item is a visual of the art design.

Fiscal Note: Approximately \$40,000 is included in the City of Greenville's approved Fiscal Year 2020-21 Budget for this project.

Recommendation: Approval of the Proposed Public Art Project.

ATTACHMENTS

 [PCAC_EMERALD LOOP READE EVANS PAVEMENT
ART_RECOMMENDATION_sm.pdf](#)



PITT COUNTY
ARTS
COUNCIL AT
EMERGE

**CIVIC ARTS COMMITTEE
RECOMMENDATION FOR PUBLIC ART
PLACEMENT ON PUBLIC PROPERTY**

REQUESTED

AGENDA DATE: April 5, 2021

PROJECT: Emerald Loop Intersection Pavement Art

LOCATION: Intersection of Reade & Evans Streets

TYPE OF ART: Pavement Art

PROJECT TYPE: Commission RFP RFQ Community Donation

ARTIST(S): Haddad/Drugan

TITLE: Emerald Loop: Year 1

PROJECT
STATEMENT:

In 2018, the City of Greenville was designated a SmART City and the Pitt County Arts Council was awarded a SmART Initiatives grant by the North Carolina Arts Council. A SmART City Resource Team was formed with many partners and stakeholders from both the private and public sectors. The Emerald Loop project was chosen as the project that would “Transform our Center City through the Arts.” In 2019, Haddad/Drugan was chosen by a Request for Qualifications (RFQ) process to create the Emerald Loop Vision Plan, a plan that took a year of research, stakeholder meetings, and community engagement. The Emerald Loop Vision Plan and the implementation timeline were approved by City Council in August of 2020. This is Year 1 of the plan.

SIZE ESTIMATE: Approximately 36’x36’

SELECTION
PROCESS:

Haddad/Drugan were chosen from nearly 50 national applicants to complete the Emerald Loop Vision Plan. They did this under the supervision of the SmART City Resource Team, made up of various partners and stakeholders. The Emerald Loop Vision Plan and Implementation Timeline were approved by the City Council in August of 2020. Within this plan were the first two major projects designed by Haddad/Drugan, the Intersection Pavement Art at Reade and Evans, and the Emerald Loop Trolleys, shelters, and stops, as well as recommendations for releasing a RFQ for the district wide lighting plan. The Trolleys, shelters, and stops were moved to Year 2.

These recommendations have been approved by the Emerald Loop Steering Committee, the Civic Arts Committee, and the Pitt County Arts Council's Board of Directors.

SUBCOMMITTEE: Lisa Kirby, Rik DiCesare, Kevin Mulligan, Laura Haddad, Tom Drugan, Myriah Shewchuk, Sharon Rhue, Denise Dickens, Leigh Ann Wilder, Holly Garriott

**COMMITTEE'S
COMMENTS:**

The Civic Arts Committee, the Emerald Loop Steering Committee, the Emerald Loop Resource Team, and our stakeholders are excited to begin the first projects of the Emerald Loop. With the approval of the Emerald Loop Vision Plan, we are dedicated to bring this vision to fruition. Year 1 will include the first intersection pavement art, the Lighting Design RFQ, and the planning for our Year 2, including the Emerald Loop Trolleys, shelters, and implementation of a lighting plan.

**SURFACE/
MATERIALS:**

Duratherm embossed into Asphalt

IMPLEMENTATION

TIMEFRAME:

Late May or June 2021: Intersection Pavement Art
April 2021: Release of the RFQ for Artistic Lighting Designer

**STAKEHOLDERS/
PARTNERS/**

SUPPORTERS:

Pitt County Arts Council at Emerge
City Department Liaisons:
City of Greenville Engineering Department and Public Works
North Carolina Arts Council
Pitt County
GUC
Uptown Greenville
Greenville-Pitt County Convention & Visitor's Bureau
Greenville-Pitt County Chamber of Commerce
Greenville-ENC Alliance
East Carolina University
Vidant Health
Electrocities
Private Sector, Developers and Supporters

PROJECT

BUDGET:

\$100,000 for Year 1 of Emerald Loop
(including Intersection, Lighting RFQ and Planning for Year 2)

COST TO CITY:

\$40,000

FUNDED BY:

Pitt County Arts Council
City of Greenville
North Carolina Arts Council
Pitt County
National Endowment for the Arts "Our Town" grant pending
(Funding by several other stakeholder and granting agencies pending)

IMPLEMENTATION

PROCESS:

Haddad/Drugan's design of the pattern will be sent to Cactx, a contractor out of Winston-Salem who will be applying the Duratherm through the process of heating the asphalt, and embossing a stencil of the design. The Duratherm, a plastic material, is then imprinted into the recessed area of the asphalt. Cactx will be working with the City of Greenville's Engineering Department to implement the accepted traffic management plan, and will subcontract the traffic management to a local company who will safely close the intersection and set detours. The subcommittee, working with the Engineering Department and Public Works, is looking to find a weekend to perform the work so it will have the least amount of impact on area businesses and residents. The work will take 2-4 days depending on weather and process.

MAINTENANCE:

The life span of the Duratherm can be around 10 years, although minor maintenance may be needed starting at 5 years. The Pitt County Arts Council will oversee and fund any maintenance needed with supervision from the City's Engineering and Public Works Departments, until the intersection is scheduled to be repaved by the City of Greenville. At that time it will be decided whether the intersection goes back to plain asphalt, a new design, or the original design.

CIVIC ARTS

RECOMMENDS:

It is the recommendation of the Civic Arts Committee for the City Council to approve the implementation of the first year of the Emerald Loop Project, including the Intersection Pavement Art at the intersection of Reade and Evans Streets.

ATTACHMENTS:

Design of the Intersection of Evans/Reade by Haddad/Drugan,
3 Color and 4 Color Variations
Design of Intersection of Evans/Reade by Haddad/Drugan with
dimensions and street view of design.
Timeline of the Emerald Loop Project

3-COLOR LIGHTER TO DARK

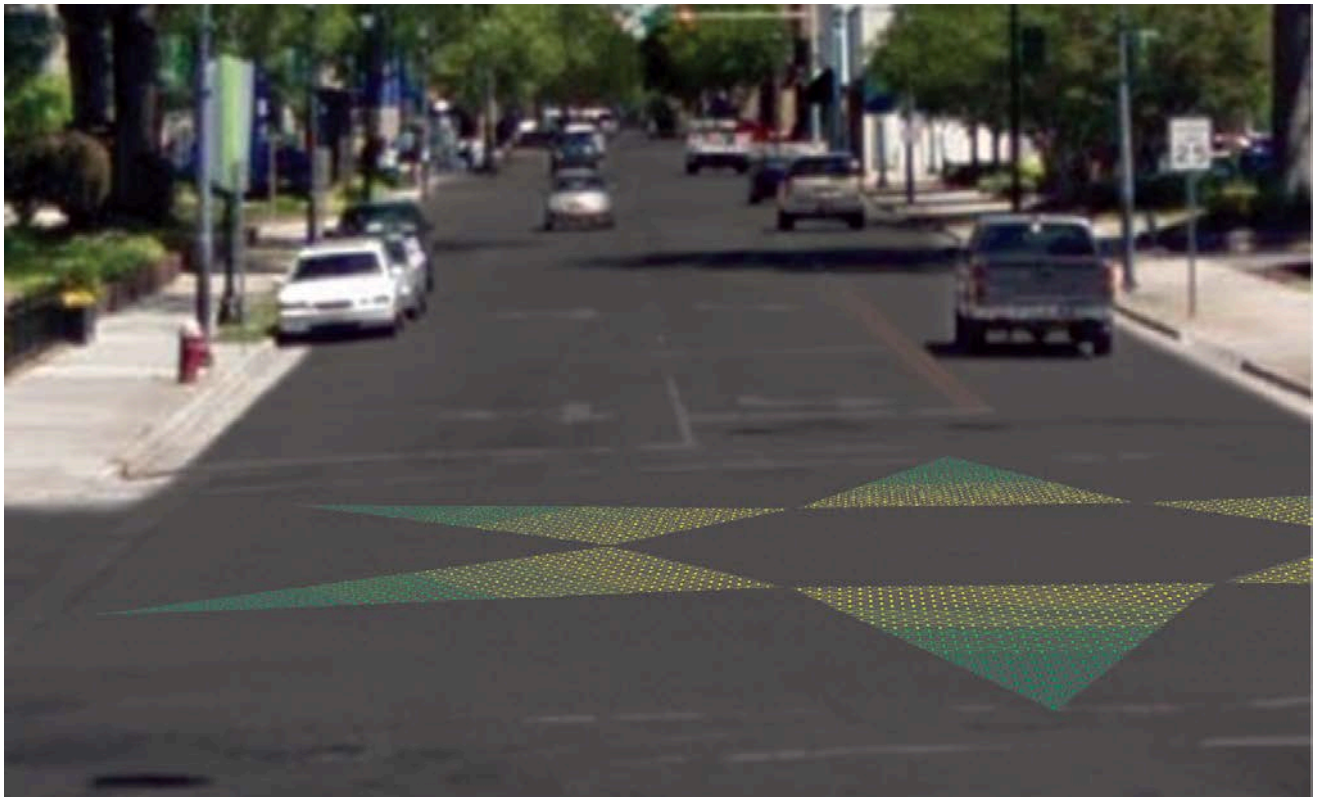
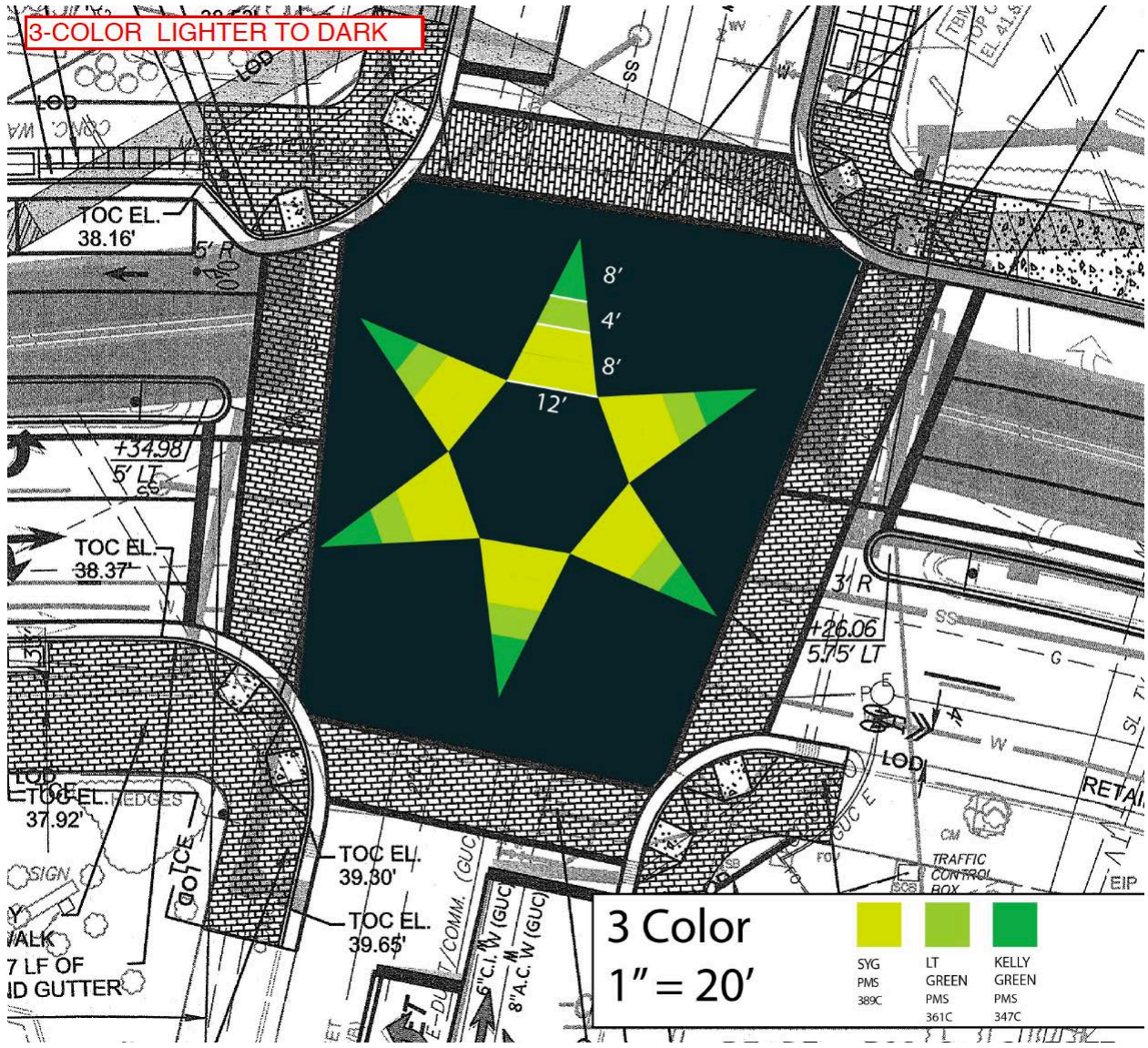


4-COLOR GREENER



Design will either be 3-color or 4-color of "Large Star Design" by Haddad/Drugan.

3-COLOR LIGHTER TO DARK





Examples of Duratherm Process and Recessed Application

The Emerald Loop

A Transformational Project for the City of Greenville



Greenville was designated a SmART City by the NC Arts Council in 2018. The SmART Resource Team was formed including City staff and community leaders from the public and private sector. The Emerald Loop was chosen to be the project that would transform our Center City through the arts. In 2019, Haddad/Drugan was chosen from nearly 50 national applicants to create the Emerald Loop Vision Plan. With nearly a year of community engagement, meetings, and research, this plan is one that is unique to Greenville, defining our identity and impacting our economy in a much needed way. The Emerald Loop is a conceptual necklace connecting Greenville's existing and envisioned cultural gems. The "Loop" is a multimodal circuit encouraging pedestrian traffic within the inner loop, and vehicular traffic within the outer loop. The goal is to connect our artistic and cultural gems, while simultaneously bringing together our neighborhoods and community.

The Pitt County Arts Council is the project manager for the Emerald Loop planning process, but this is truly a partnership between both the public and private sector. Representatives on the SmART Resource Team and major stakeholders have included representatives from the City of Greenville, Pitt County, Pitt County Arts Council, East Carolina University, Vidant, GUC, Uptown Greenville, Pitt-Greenville Chamber of Commerce, NC Civil, Greenville Museum of Art, Greenville-ENC Alliance, the African American Cultural Trail Committee, and multiple private developers and community members.

Timeline of the Emerald Loop Project

- Year 1:**
- Gateway Street Paving Treatment (Evans St. & Reade Circle Intersection)
 - RFQ for Lighting Standards and Specs for the Emerald Loop

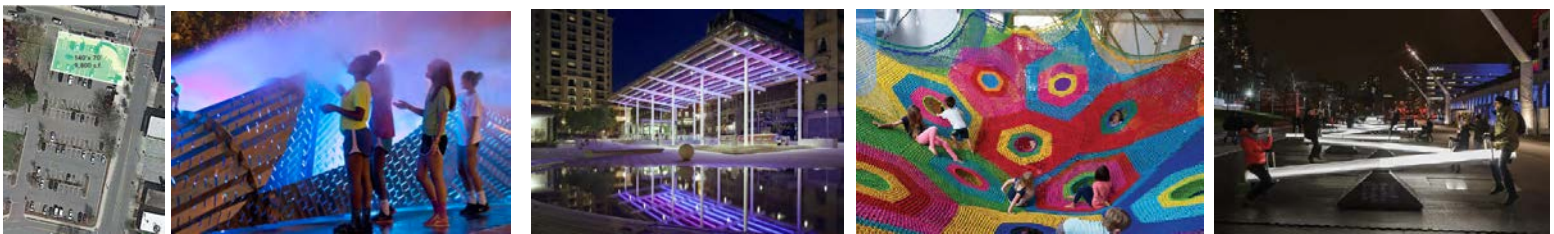


- Year 2:**
- Emerald Loop Trolley
 - Trolley Signs and Shelters
 - Lighting of Municipal and Stakeholder Buildings
 - Gateway Street Paving Treatments (5th & Pitt, Evans & 5th St., and E. 5th & Reade and Culvert Connector Crosswalk)



- Years 3-4:**
- 10th Street Underpass Murals and Lighting
 - Gateway Light Poles
 - Planning for Five Points Plaza

- Year 5:**
- Five Points Plaza with integrated iconic sculpture and other art elements



Throughout this plan, the Pitt County Arts Council at Emerge will continue acting as the Civic Arts Facilitator for the City of Greenville, with the support from the Civic Arts Committee and the Greenville Mural Group, and will continue encouraging murals and public art throughout the area. There will be a Secret Squirrel Scavenger Hunt including micro-murals on the ArtWalk venues. We are also working with the African American Cultural Trail Committee to combine efforts and include stops like the Sycamore Hill Gateway and Roxy Theatre on the Loop.

The Pitt County Arts Council and the City of Greenville applied for the National Endowment for the Arts *Our Town Grant* for \$75,000 for 2022, and have already received \$30,000 from the North Carolina Arts Council. We have five-year commitments from the City, Pitt County, as well as the North Carolina Arts Council as partners in this project. The Pitt County Arts Council is fundraising for the outstanding amounts for this leading capital project.

Go to: <https://pittcountyarts.org/community/arts-district> for the full Emerald Loop Vision Plan.



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Resolution Granting an Electric Easement for the Use of Greenville Utilities Commission at Wildwood Park

Explanation: As part of phase one development of Wildwood Park, the City plans to provide electrical service to the three existing shelters on the property. During phase one construction, lights will be installed in the northern most shelter. Providing electricity to all three shelters during phase one will allow staff to plan for additional development of the shelters in the future. As part of future phases, City staff has plans to potentially enclose one of the shelters to create a rentable indoor event space.

In order to provide the requested electrical service, Greenville Utilities Commission (GUC) is requiring a 15' wide, 225' long underground electric easement in Wildwood Park in order to install a new transformer. The easement is required to be surveyed and recorded with the Pitt County Register of Deeds. In addition, this easement includes an access easement.

The approval of this resolution will allow for phase one development plans to continue at Wildwood Park.

Fiscal Note: The approximate cost to map the easement and install the required transformer and associated service wires and conduit is \$30,678.50. These costs are included in the Wildwood Park Development budget that was approved as part of Council's 2020-21 adopted budget.

Recommendation: Approve the attached resolution granting a 15' wide underground electric easement for the use of GUC.

ATTACHMENTS

- [📄 Resolution Easement to GUC.pdf](#)
- [📄 1144735 - Electric Utility Easement - 1 - COG.DOCX](#)

RESOLUTION NO. -21

RESOLUTION AUTHORIZING GRANTING OF AN ELECTRIC EASEMENT FOR THE
USE OF THE GREENVILLE UTILITIES COMMISSION

WHEREAS, the City of Greenville (“City”) desires to provide electrical service to the three existing open air shelters at Wildwood Park;

WHEREAS, in response Greenville Utilities Commission (“GUC”) requests the City to grant an electric and access easement on a certain portion of the Wildwood Park (as described below);

WHEREAS, N.C.G.S. § 160A-273 authorizes the City to grant an easement across city property;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby approve the granting of an electric and access easement for the use and benefit of GUC upon a 3,386.32 square foot area on the Wildwood Park property owned by the City of Greenville (the “Property”) and described in Deed Book 3996, at Page 494, Deed Book 3863 at Page 527, and Deed Book 4012, at Page 124, Pitt County Registry of Deeds, and P.N. 86710. The area of the electrical easement is shown on the attached map labeled “Easement Acquisition Map for Greenville Utilities Commission Property of: City of Greenville”, a copy of which is attached hereto as Exhibit A.

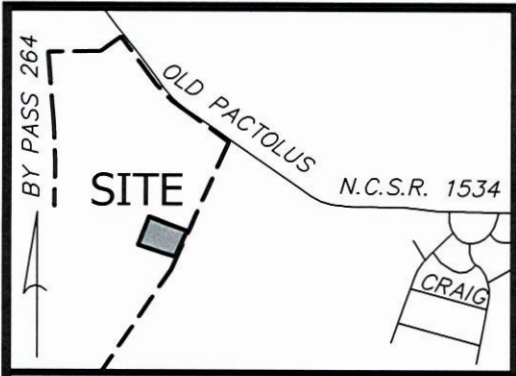
BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the Mayor or City Manager is hereby authorized to execute the appropriate instruments necessary to grant the easement on the Property for the benefit of GUC.

This the 5th day of April, 2021.

P.J. Connelly, Mayor

ATTEST:

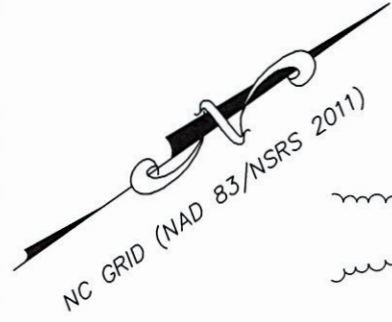
Valerie Shiuwegar, City Clerk



VICINITY MAP (NOT TO SCALE)

NOTES

1. ALL DISTANCES ARE HORIZONTAL GROUND MEASUREMENTS.
2. AREA DETERMINED BY COORDINATES.
3. PROPERTY IS SUBJECT TO ANY EASEMENTS, RIGHT-OF-WAYS, AND RESTRICTIVE COVENANTS WHICH MAY BE OF RECORD.
4. THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A TITLE COMMITMENT REPORT. RIVERS AND ASSOCIATES, INC. DOES NOT CLAIM THAT ALL MATTERS OF RECORD WHICH MAY OR MAY NOT AFFECT THE SUBJECT PROPERTY ARE SHOWN HEREON.
5. NO POINTS SET UNLESS OTHERWISE INDICATED.
6. REFERENCE RIVERS AND ASSOCIATES DRAWING W-3878 FOR COMPLETE TOPOGRAPHIC AND PLANIMETRIC INFORMATION. PLANIMETRIC INFORMATION DEPICTED HEREON WAS TAKEN FROM TOPOGRAPHIC SURVEY PERFORMED BY RIVERS AND ASSOCIATES, INC. REFERENCE DRAWING W-3879, SIGNED 3/16/2020.
7. SITE IS LOCATED WITHIN THE FEMA FLOODWAY.



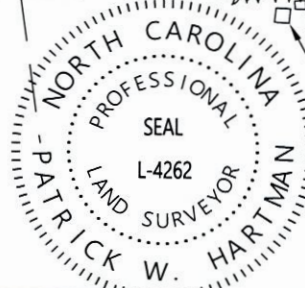
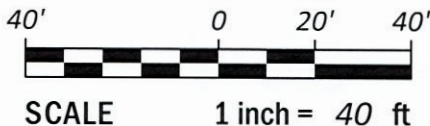
REFERENCES:

- D.B. 4012 PG. 124
- P.N. 86710
- D.B. 3996 PG. 494
- D.B. 3863 PG. 527
- M.B. 22 PG. 25
- M.B. 24 PG. 125
- D.B. M 43 PG. 384
- D.B. 696 PG. 437
- M.B. 60 PG. 174

LEGEND

	PROPERTY LINE
	EXISTING EASEMENT
	PROPOSED EASEMENT
	EDGE OF WOODS
N/F	NOW OR FORMERLY
P.N.	PARCEL NUMBER
EIP ○	EXISTING IRON PIPE
PG.	PAGE
D.B.	DEED BOOK
WDRF	WOOD RAIL FENCE

N/F
ROSA B. WILSON HEIRS
D.C. 97-169
D.B. 293 PG. 292
P.N. 25421



EASEMENT AREA=3,386.32 SF ±

SHEET 1 OF 1
DRAWING NO. G-1254-X
SCALE 1"= 40' DRAFT: PH

REVISIONS:

NORTH CAROLINA
PITT COUNTY

I, PATRICK W. HARTMAN, PLS, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION BY RB/JA FROM 2/25/2020 - 3/10/2020 (DEED DESCRIPTIONS RECORDED IN BOOKS REFERENCED HEREON); THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED HEREON; THAT THE RATIO OF PRECISION IS 1:10,000+. THAT NORTH BASIS AND COORDINATES LISTED WERE DERIVED FROM MULTIPLE NCGS RTN OBSERVATIONS ON SURVEY; CLASS A SURVEY WITH A POSITIONAL ACCURACY OF 2 CM. I FURTHER CERTIFY PURSUANT TO G.S. 47-30(f)(11)c.4. THAT THIS SURVEY IS OF A PROPOSED EASEMENT FOR A PUBLIC UTILITY AS DEFINED IN G.S. 62-3. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 18TH DAY OF FEBRUARY, 2021.

Patrick W. Hartman
PROFESSIONAL LAND SURVEYOR LICENSE NO. L-4262

NC License: F-0334
Rivers & ASSOCIATES, INC.
riversandassociates.com Since 1918
Engineers
Planners
Surveyors
Landscape Architects
107 East Second Street
Greenville, NC 27858
(252) 752-4135

**EASEMENT ACQUISITION MAP FOR:
GREENVILLE UTILITIES COMMISSION
PROPERTY OF:
CITY OF GREENVILLE
3050 BLUE HERON DRIVE
GREENVILLE, N.C. 27834
GREENVILLE, PACTOLUS TOWNSHIP, PITT CO., N.C.**

Prepared by: Phillip R. Dixon, Attorney
File: Greenville Utilities Commission
Post Office Box 1847
Greenville, NC 27835

PN 86710

NORTH CAROLINA
PITT COUNTY

GRANT OF ELECTRICAL EASEMENT
AND ACCESS EASEMENT FOR
INGRESS, EGRESS, AND REGRESS
DATE _____

KNOW ALL MEN BY THESE PRESENTS, that the undersigned "GRANTOR" (City of Greenville), for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration to it in hand paid by GREENVILLE UTILITIES COMMISSION of the City of Greenville, Pitt County, North Carolina, 401 South Greene Street (PO Box 1847), Greenville, NC 27835-1847, hereinafter referred to as the "COMMISSION," the receipt of which is hereby acknowledged, does hereby grant the City of Greenville, a body politic and corporate in Pitt County, North Carolina, for use of the "COMMISSION," its licensees, successors and assigns, the right, privilege and easement to go in, through, under, and upon lands of the GRANTOR located in Pactolus Township, Pitt County, North Carolina, and more fully described as follows:

A Permanent Electrical Easement fifteen (15') feet in width, more or less, and 226 feet in length, more or less (Dimensions are not an absolute measurement and may vary in length), containing 3,386.32 sq. ft., more or less, across a portion of Tax Parcel No. 86710, according to the records in the Office of the Tax Administration of Pitt County, NC (Reference is hereby made to Deed Book 3996 at Page 494, Deed Book 3863 at Page 527, and Deed Book 4012 at Page 124, Pitt County Public Registry), extending from an Existing Iron Pipe (EIP), the north property corner of Tax Parcel No. 25421, property now or formerly owned by Rosa B. Wilson Heirs, and the Grantor's south property line; thence N 41°27'52" E 48.11', more or less, to a point, the Point of Beginning; cornering, thence N 54°03'25" W 225.68', more or less, to a point; cornering, thence N 35°15'20" E 15.00', more or less, to a point; cornering, thence S 54°03'25" E 225.83', more or less, to a point; cornering, thence S 35°50'54" W 15.00', more or less, to a point, the Point of Beginning; all as more particularly shown as the shaded portion on the sketch entitled "Easement Acquisition Map For: Greenville Utilities Commission Property of: City of Greenville 3050 Blue Heron Drive Greenville, N.C. 27834 Greenville Pactolus TWNSP., Pitt Co., N.C." dated February 18, 2021, prepared by Patrick W. Hartman, PLS License No. L-4262, Rivers & Associates, Inc., 107 East Second Street Greenville, NC 27858, NC License: F-0334, Telephone No. (252) 752-4135, Drawing No. G-1254-X, which is marked Exhibit "A" and is attached hereto and made a part hereof, and to which reference is hereby made for a more particular and accurate description of the subject easement.

and to construct, install, operate and maintain an electrical easement in a manner suitable to the Commission upon, across, under and through said premises within an easement and right of way strip of the width, location and approximate length hereinafter defined and to be utilized by the Commission a permanent easement and a temporary construction easement for the public use with the right to do all things necessary or convenient thereto, including the following:

- (a) the right of officers, agents, and workmen of the Commission and its contractors to go to and from said right of way strip at all times over the above described land by such route or routes as shall occasion the least practicable inconvenience to Grantor, including private roads and ways then existing thereon, on foot or by conveyance, with materials, machinery, supplies and equipment as may be desirable; provided that except in emergencies, existing roads and ways thereon shall be used to the extent that they afford

ingress and egress to and from the right of way strip; and to construct, reconstruct, work upon, repair, alter, inspect and in general do any other thing necessary or convenient to maintain and operate said lines for the purpose aforesaid;

- (b) the right and privilege to enter upon the land included in the construction easement hereinabove described for the purpose of constructing said utility facilities, and the right and privilege at all times to enter upon the land included in the area of the permanent easement hereinabove described for the maintenance and repair of said utility facilities;
- (c) the right to clear, and keep cleared, from said right of way strip all structures (other than ordinary fences, but when Commission desires, such fences may be opened and reclosed or temporarily removed and replaced, or Commission may provide suitable gates therein) and all vegetation which may interfere with the utility facilities herein described and to use (1) chemicals which are not injurious to human beings, domestic animals, fish or game, (2) machinery, and (3) other forms of equipment and devices in so doing;
- (d) the right to install, construct, repair, maintain and operate all utility lines, structures and appurtenant facilities of the Commission.

The structures and appurtenant facilities installed by the Commission shall be and remain the property of the Commission and may be removed by it at any time and from time to time.

Grantor reserves the right to use the lands in and over which the right of way and easement rights are hereby granted for all purposes not inconsistent with said right of way and easement rights, except that Grantor agrees that (1) no buildings or permanent structures, wells, septic tanks, absorption pits, underground or overhead storage tanks, burial plots, or any other obstruction which might interfere with the construction, maintenance and operation of said utility facilities shall be placed within the area of said strip without the express written permission of the Commission; and (2) the Commission's facilities shall in no way be interfered with or endangered by the Grantor or Grantor's licensees, successors or assigns, without the express written permission of the Commission.

The Commission agrees that it will repair, rebuild, replace or pay the actual damages sustained as mutually agreed upon by the Commission and Grantor, and pay the actual damages to actual crops inside said right of way strip on the above land caused by the construction, operation, maintenance, inspection, rebuilding and removal of said lines, and in going to and from said right of way strip, and will repair any extraordinary damage to any bridge or to any road due to heavy hauling to and from the said right of way strip if claim is made within a period of thirty (30) days after such damages are sustained by Grantor.

Additional terms of this Grant of Easement, if any, are set forth on Exhibit "B" which is attached hereto and made a part hereof, which said terms are hereby incorporated by reference as fully as set forth herein verbatim.

Any notice to be given by one party to the other party hereunder may be delivered or deposited postage prepaid addressed to the following:

Grantor:	City of Greenville P.O. Box 7207 Greenville, North Carolina 27835
Commission:	Greenville Utilities Commission 401 S. Greene Street P.O. Box 1847 Greenville, North Carolina 27835

TO HAVE AND TO HOLD the aforesaid rights, privileges and construction easement unto the Grantee for such period of time as may be required to complete the construction of said utility facilities, and thereafter a permanent easement unto the Grantee and its successors, licensees and assigns for the uses and purposes hereinabove set forth.

And Grantor, for the Grantor and for the Grantor's heirs, executors, administrators, licensees, successors and assigns, covenants to and with the Commission, its licensees, successors and assigns, that Grantor is lawfully seized of the above described land in fee and has the right to convey the said rights, easements and privileges herein described; that the same is

free and clear from any and all encumbrances not satisfactory to the Commission; that the Commission shall have quiet and peaceful possession, use and enjoyment of the afore described easement of right of way, rights and privileges; that the Grantor shall execute such further assurances thereof as may be required by the Commission; and Grantor will forever warrant and defend the title to the said easement of right of way, rights and privileges against the lawful claims of all persons whomsoever.

Commission shall indemnify and hold Grantor harmless from and against any and all liabilities that may occur during or as a result of activities performed by Commission when it accesses the Easement area.

The singular shall include the plural and reference to gender shall include masculine, feminine and neuter.

IN WITNESS WHEREOF, Grantor has caused these presents to be signed in its corporate name by its duly authorized corporate officers, duly attested and its corporate seal hereunto affixed, all by authority of its Board of Directors duly given, this the day and year first above written.

CITY OF GREENVILLE, NORTH CAROLINA

By: _____
P.J. Connelly, Mayor

Attest:

Valerie Shiuwegar, Clerk

[SEAL]

NORTH CAROLINA
PITT COUNTY

I, _____, a Notary Public of the aforesaid County and State, certify that Valerie Shiuwegar personally came before me this day and acknowledged that she is the Clerk of the City of Greenville, North Carolina, and that by authority duly given and as the act of the City of Greenville, North Carolina, the foregoing instrument was signed in its name by its Mayor, P.J. Connelly, sealed with its seal and attested by her as its Clerk.

WITNESS my hand and seal, this the _____ day of _____, 2021.

NOTARY PUBLIC

My Commission Expires: _____

AGREEMENT TO CUT, TRIM, REMOVE, AND CLEAR DANGEROUS TREES
ON ADJOINING PROPERTY TO PREVENT UNDUE INTERFERENCE
WITH ELECTRIC TRANSMISSION LINES

Grantor hereby grants to the City of Greenville, for the use and benefit of Greenville Utilities Commission (Grantee), an Access Easement for Ingress, Egress, and Regress, to go upon the property of Grantor at reasonable times and with the least interference to any reasonable use of Grantor of such property in order to cut, trim, remove, and clear any dangerous trees or vegetation that may interfere unreasonably (in the discretion of the Grantee), in the reasonable opinion of the Grantee, with the operation and maintenance of any electric transmission line constructed across property of Grantor.

The parties stipulate and agree that it is anticipated that an overhead electric transmission line will be established from the outward boundaries of the electric transmission line so as to designate an approximately forty-five degree (45°) angle within which any trees or vegetation may be cut, or trimmed, or removed, or cleared.

Grantee will designate an Engineer to designate all dangerous trees and vegetation with advanced notice to Grantor, and Grantor hereby agrees that thereafter Grantee, or its employees or agents, may reasonably remove or top off, at its option, any such dangerous trees or vegetation as herein provided.

This Exhibit "B" sets forth additional terms and conditions of the Grant of Easement executed by Grantor to the City of Greenville, for the use and benefit of Greenville Utilities Commission. This Exhibit "B" is hereby incorporated and made a part of such Grant of Easement as fully as set forth herein verbatim, and all such terms are hereby incorporated by reference to Exhibit "B."

Exhibit "B"



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Resolution Relating to the Issuance of up to \$38,500,000 Greenville Utilities Commission Combined Enterprise System Revenue and Revenue Refunding Bonds, Series 2021A

Explanation: In December of 2020, Greenville Utilities Commission and the City of Greenville each adopted a resolution authorizing certain actions with respect to the issuance of revenue refunding bonds that will provide a net present value savings to the Commission. The Commission is also in the process of acquiring the existing water and sewer system assets of the Town of Bethel, and finds it necessary to issue bonds to retire existing indebtedness of the Town of Bethel for the additional improvements made to the system by Bethel. To that end, the Commission at its March 18, 2021 Board meeting, approved a resolution that authorizes and directs the officers, agents and employees of the Commission to do all acts and things required of them by the provisions of the resolution and recommends the City Council adopt a similar resolution relating to the issuance of the Series 2021A Bonds that:

- Approve the selection of J.P. Morgan Securities LLC, as underwriter, and McGuire Woods LLP, as underwriter's counsel
- Make the findings and determination required by the Local Government Commission
- Approve the Preliminary Official Statement
- Authorize and direct the officers, agents, and employees to do all acts and things required of them by the provisions of the series resolution

It is anticipated the revenue refunding bonds will provide a net present value savings to the Commission of approximately 7% or \$2 million.

Retiring Bethel's existing debt is subject to approval of the agreement to transfer Bethel's assets to the Commission. Retiring the debt will provide for a smooth transition of Bethel's assets to the Commission and also provide an anticipated net present value savings of 18% or \$655,000.

Fiscal Note: No cost to the City.

Recommendation: Adopt the attached resolution.

ATTACHMENTS

 [Greenville Rev 2021 Series Resolution.docx](#)

A remote electronic meeting of the City Council of the City of Greenville, North Carolina was held by use of simultaneous communication pursuant to Section 166A-19.24 of the North Carolina General Statutes at 6:00 p.m. on April 5, 2021. All Council Members participated by use of simultaneous communication.

Present: Mayor P.J. Connelly, presiding, and Councilmembers

Absent: _____

Also present: Ann Wall, City Manager; Valerie P. Shiuwegar, City Clerk; Emanuel D. McGirt, City Attorney; _____

* * * * *

_____ introduced the following resolution, a copy of which had been provided to each Councilmember and which was read by its title:

RESOLUTION NO. __ - 21

SERIES RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$38,500,000 GREENVILLE UTILITIES COMMISSION COMBINED ENTERPRISE SYSTEM REVENUE AND REVENUE REFUNDING BONDS, SERIES 2021A OF THE CITY OF GREENVILLE, NORTH CAROLINA, PURSUANT TO THE PROVISIONS OF THE BOND ORDER ADOPTED BY THE CITY COUNCIL OF SAID CITY ON AUGUST 11, 1994 AND AMENDED AND RESTATED AS OF APRIL 13, 2000, AND REQUESTING THE LOCAL GOVERNMENT COMMISSION OF NORTH CAROLINA TO SELL ALL THE BONDS BY NEGOTIATED SALE.

WHEREAS, the City of Greenville, North Carolina (the “City”), a municipal corporation in Pitt County, North Carolina, owns certain public utility or public service enterprise facilities comprising an electric system, a natural gas system, a sanitary sewer system and a water system, within and without the corporate limits of the City (collectively, the “Combined Enterprise System”); and

WHEREAS, in accordance with Chapter 861 of the 1991 Session Laws of North Carolina, the Greenville Utilities Commission (the “Commission”) has been created for the

proper management of the public utilities of the City, within and without the corporate limits of the City, with responsibility for the entire supervision and control of the management, operation, maintenance, improvement and extension of the public utilities of the City, including the Combined Enterprise System; and

WHEREAS, the City Council of the City (the “City Council”) adopted on August 11, 1994 and amended and restated as of April 13, 2000 a Bond Order authorizing and securing Greenville Utilities Commission Combined Enterprise System Revenue Bonds of the City (the “Order”); and

WHEREAS, Section 211 of the Order authorizes the issuance of revenue refunding bonds of the City in one or more series from time to time to provide funds to (a) refund any Outstanding Parity Indebtedness and Outstanding Subordinate Indebtedness (as such terms are defined in the Order) issued under the Order and (b) pay expenses incidental and necessary or convenient thereto, and the Commission has requested the City to refund and retire all or a portion of the existing Outstanding Parity Indebtedness and Outstanding Subordinate Indebtedness described in Exhibit A hereto by issuing revenue refunding bonds pursuant to Section 211 of the Order; and

WHEREAS, on January 11, 2021 the City Council adopted a resolution making certain findings and authorizing certain actions to proceed with such refunding, and also authorizing and directing the City staff to proceed with filing an application with the Local Government Commission for approval of the issuance and sale of such revenue bonds; and

WHEREAS, Section 210 of the Order authorizes the issuance of additional revenue bonds of the City in one or more series from time to time to provide funds to (a) pay all or any part of the cost of any Additional Improvements (as defined in the Order) and (b) pay expenses incidental and necessary or convenient thereto; and

WHEREAS, the Commission has determined to acquire the existing water and sewer system assets of the Town of Bethel, North Carolina (and incorporate the Bethel system into the Combined Enterprise System) (the “2021 Additional Improvements”), which assets constitute Additional Improvements under the Order, and in connection with the acquisition of the 2021 Additional Improvements, it is necessary to retire certain of the existing indebtedness of the Town of Bethel that encumber the 2021 Additional Improvements, and the Commission has requested the City to pay the cost of retiring such indebtedness by issuing additional revenue bonds as authorized by Section 210 of the Order, which revenue bonds would be combined with the revenue refunding bonds described above for purposes of issuance into a Series of Bonds designated “Combined Enterprise System Revenue and Revenue Refunding Bonds, Series 2021A (the “Series 2021A Bonds”); and

WHEREAS, the City Council has received information to the effect that the City will be able to satisfy the requirements of Section 210 and Section 211 of the Order with respect to such series of revenue bonds; and

WHEREAS, pursuant to Section 210 and Section 211 of the Order, such revenue bonds are to have such terms and provisions as may be provided by a series resolution to be adopted by the City Council prior to the issuance thereof; and

WHEREAS, the Commission has adopted a resolution to the effect that it approves the provisions of this resolution and recommends to the City Council that the City Council adopt this resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GREENVILLE, NORTH CAROLINA DOES HEREBY DETERMINE AND RESOLVE, as follows:

Section 1. Definitions. Unless otherwise required by the context, capitalized words and terms used in this Resolution (this “Series Resolution”) and not otherwise defined herein shall have the same meanings in this Series Resolution as such words and terms are given in the Order, and the following words and terms shall have the following meanings:

“Refunded Indebtedness” means the existing Outstanding Parity Indebtedness and Outstanding Subordinate Indebtedness described in Exhibit A hereto, to be refunded by the revenue refunding bonds issued pursuant to Section 211 of the Order and this Series Resolution.

“Securities Depository” means The Depository Trust Company, New York, New York or other recognized securities depository selected by the City, which maintains a book-entry system in respect of municipal securities such as the Series 2021A Bonds, and shall include any substitute for or successor to the securities depository initially acting as Securities Depository.

“Securities Depository Nominee” means, as to any Securities Depository, such Securities Depository or the nominee of such Securities Depository in whose name there shall be registered on the registration books maintained by the Bond Registrar the Series 2021A Bond certificates to be delivered to and immobilized at such Securities Depository during the continuation with such Securities Depository of participation in its book-entry system.

“2021 Additional Improvements” means improvements to the Combined Enterprise System consisting of the acquisition of the Town of Bethel water and sewer system. All of the 2021 Additional Improvements constitute “Additional Improvements” as defined in the Order.

Section 2. Authorization and Details of the Series 2021A Bonds.

(A) Authorization of the Issuance of the Series 2021A Bonds. Pursuant to the Enabling Act and Section 211 of the Order, the City Council hereby authorizes the issuance of revenue refunding bonds of the City to provide funds, together with any other available funds, to: (1) refund the Refunded Indebtedness and (2) pay certain costs and expenses incurred in connection with the issuance of the revenue refunding bonds. In addition, pursuant to the Enabling Act and Section 210 of the Order, the City Council hereby authorizes the issuance of revenue bonds of the City to provide funds, together with any other available funds, to: (1) pay certain of the costs of the 2021 Additional Improvements, and (2) pay certain costs and expenses incurred in connection with the issuance of the revenue bonds. Such bonds shall be issued under the Order as a single series of Bonds designated “Greenville Utilities Commission Combined Enterprise

System Revenue and Revenue Refunding Bonds, Series 2021A” (the “Series 2021A Bonds”) in the aggregate principal amount not to exceed \$38,500,000.

(B) Bond Provisions. The Series 2021A Bonds shall be dated, shall consist of Serial or Term Bonds, or a combination thereof, shall bear interest at the rates, shall mature, subject to optional redemption and mandatory sinking fund redemption, in the amounts and on the dates, all as hereinafter provided.

(C) Details, Interest Payment Dates. The Series 2021A Bonds shall be numbered consecutively 2021 R-1 and up, shall be in the denomination of five thousand dollars (\$5,000) and integral multiples thereof and shall be registered and exchangeable, and the transfer thereof may be registered, all in accordance with the provisions of the Order. Interest on the Series 2021A Bonds shall be payable semi-annually on the dates determined by a Delegate pursuant to Section 3(D) of this Series Resolution, until the Series 2021A Bonds are retired in accordance with the Order.

(D) Book-Entry. The Depository Trust Company (“DTC”), New York, New York, is hereby appointed as Securities Depository for the Series 2021A Bonds. Upon the issuance of the Series 2021A Bonds, one fully registered Series 2021A Bond will be registered in the name of Cede & Co., as nominee for DTC, for each maturity. So long as Cede & Co. is the registered owner of the Series 2021A Bonds, as nominee of DTC, references herein to the Owners of the Series 2021A Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Series 2021A Bonds.

The interest of each of the beneficial owners of the Series 2021A Bonds will be recorded through the records of a DTC participant. Transfers of beneficial ownership interests in the Series 2021A Bonds which are registered in the name of Cede & Co. will be accomplished by book entries made by DTC and, in turn, by the DTC participants and indirect participants who act on behalf of the beneficial owners of Series 2021A Bonds.

DTC may determine to discontinue providing its service with respect to the Series 2021A Bonds at any time by giving notice to the City and the Trustee and discharging its responsibilities with respect thereto under applicable law. If there is no successor Securities Depository appointed by the City, the City shall deliver Series 2021A Bonds in definitive form to the beneficial owners thereof. The City may determine not to continue participation in the system of book-entry transfers through DTC (or a successor Securities Depository) at any time by giving reasonable notice to DTC (or a successor Securities Depository). In such event, the City will deliver Series 2021A Bonds in definitive form to the beneficial owners thereof pursuant to the Order and this Series Resolution. Prior to any transfer of the Series 2021A Bonds outside the Book-Entry Only system (including, but not limited to, the initial transfer outside the Book-Entry Only system) the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

The City and the Bond Registrar shall recognize DTC or its nominee, Cede & Co., while the registered owner, as the Owner of the Series 2021A Bonds for all purposes, including notices and voting. Conveyance of notices and other communications by DTC to DTC participants and by DTC participants and indirect participants to beneficial owners of the Series 2021A Bonds will be governed by arrangements among DTC, DTC participants and indirect participants, subject to any statutory and regulatory requirements as may be in effect from time to time.

The City may enter into amendments to any agreement between the City and DTC or any successor Securities Depository relating to the book-entry system to be maintained with respect to the Series 2021A Bonds without the consent of the Owners or beneficial owners of the Series 2021A Bonds.

Section 3. Delegation and Standards. The City Council hereby delegates to each of the City Manager, the Director of Financial Services of the City, the General Manager/Chief Executive Officer of the Commission and the Chief Financial Officer of the Commission or her or his designee (each a “Delegate”), subject to the limitations contained herein, the power to determine and carry out the following with respect to the Series 2021A Bonds:

(A) Principal Amount. To determine the aggregate principal amount of the Series 2021A Bonds, such principal amount not to exceed \$38,500,000;

(B) Interest Rates. To determine the interest rate or rates on the Series 2021A Bonds, no such rate to exceed five and one-half percent (5.50%) per annum;

(C) Maturities. To determine the maturities and maturity amounts of the Series 2021A Bonds, no such maturity to extend beyond December 31, 2041;

(D) Interest and Principal Payment Dates. To determine the semi-annual interest payment dates and the first interest payment date as well as the principal payment dates for the Series 2021A Bonds;

(E) Serial and Term Bonds. To determine which Series 2021A Bonds are Serial and Term Bonds, and the Sinking Fund Requirements for any such Term Bonds;

(F) Redemption Provisions. To determine the optional redemption provisions permitted by Section 5 of this Series Resolution, including the first optional redemption date and the Redemption Prices;

(G) Dated Date. To determine the dated date of the Series 2021A Bonds;

(H) Date of Sale. To determine the date of sale of the Series 2021A Bonds (such date of sale not to be later than December 31, 2021);

(I) Negotiated Sale. To approve the sale of the Series 2021A Bonds via a negotiated sale in accordance with the provisions of Section 12 of this Series Resolution, provided that the effective interest cost of the Series 2021A Bonds shall not exceed five percent (5.0%) per annum;

(J) Parity Indebtedness Reserve Fund. To determine whether to make a deposit to the credit of the Parity Indebtedness Reserve Fund or to a separate account in the Parity Indebtedness Reserve Fund to specifically secure the Series 2021A Bonds; and

(K) Other Provisions. To determine any other provisions deemed advisable and not in conflict with the provisions of this Series Resolution.

The authorization to determine the foregoing matters is fully vested in each of the Delegates individually and does not have to be exercised by joint action. Each Delegate shall consult with the other Delegates as needed to carry out the duties so delegated.

Section 4. Series Certificate. A Delegate shall execute a certificate or certificates (collectively, the “Series Certificate”) evidencing determinations or other actions taken pursuant to the authority granted in Sections 3, 5 and 6 of this Series Resolution, and the Series Certificate shall be conclusive evidence of the action taken and the approval of the City Council.

Section 5. Optional Redemption of the Series 2021A Bonds. The Series 2021A Bonds shall be subject to redemption prior to maturity, at the option of the City and the Commission, in whole or in part on any date, from any moneys that may be made available for such purpose, on any date within the redemption periods and at the Redemption Prices, plus accrued interest thereon to the date fixed for redemption, as determined by a Delegate pursuant to Section 3(F) of this Series Resolution; provided, however, that the Series 2021A Bonds may be made non-callable.

Section 6. Sinking Fund Redemption Provisions for the Series 2021A Bonds. If any of the Series 2021A Bonds shall be designated in the Series Certificate to be Term Bonds, such Term Bonds shall be subject to mandatory redemption in part on each date specified in the Series Certificate, in amounts equal to the respective Sinking Fund Requirements therefor set out in the Series Certificate, upon notice as provided in Article III of the Order except as hereinafter provided, at a Redemption Price equal to 100% of the principal amount of the Term Bonds to be redeemed, plus accrued interest thereon to the date fixed for redemption. The final Sinking Fund Requirement shall be due on the respective stated maturities of the Series 2021A Bonds that are Term Bonds.

Section 7. Redemption Notice. Notice of any redemption of the Series 2021A Bonds shall be given as provided in Article III of the Order.

Any notice of optional redemption of the Series 2021A Bonds may state that it is conditioned upon there being available an amount of money sufficient to pay the redemption price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price if any such condition so specified is not satisfied. If a redemption does not occur after a conditional notice is given due to an insufficient amount of funds on deposit under the terms of the Bond Order, the corresponding notice of redemption will be deemed to be revoked.

Section 8. Form of the Series 2021A Bonds. The Series 2021A Bonds and the Certificate of the Local Government Commission and the Certificate of Authentication to be endorsed on the Series 2021A Bonds shall be substantially in the following forms, with such

variations, omissions and insertions as are required or permitted by the Order or this Series Resolution:

No. 2021 R -1 \$_____

United States of America
State of North Carolina

CITY OF GREENVILLE

Greenville Utilities Commission Combined Enterprise System
Revenue and Revenue Refunding Bonds, Series 2021A

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
_____, 20__	_____, 2021	_____%	

Principal Amount: _____ DOLLARS (\$_____)

Registered Owner: CEDE & CO.

The City of Greenville (the “City”), a municipal corporation in Pitt County, North Carolina, exercising public and essential governmental functions, is justly indebted and for value received hereby promises to pay, solely from the special fund provided therefor as hereinafter set forth, to the Registered Owner shown above or registered assigns or legal representative, on the maturity date specified above (or earlier as stated hereinafter), upon the presentation and surrender hereof at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A., in Jacksonville, Florida, or any successor bond registrar (the “Bond Registrar”), the Principal Amount shown above in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and to pay, solely from said special fund, in whose name this Series 2021A Bond (or one or more Predecessor Bonds, as defined in the Order hereinafter mentioned), is registered at the close of business on the regular record date for such interest, which shall be the 15th day of the calendar month next preceding an interest payment date (the “Regular Record Date”), interest on said principal sum from the date of this Series 2021A Bond or from the _____ 1 or _____ 1 next preceding the date of authentication to which interest shall have been paid, unless such date of authentication is a _____ 1 or _____ 1 to which interest shall have been paid, in which case from such date, on _____ 1 and _____ 1 in each year, commencing _____, in like coin or currency, at the rate per annum specified above until payment of said principal sum. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the person who was the registered owner on such Regular Record Date and may be paid to the person in whose name this Series 2021A Bond (or one or more Predecessor Bonds) is registered at the close of business on a Special Record Date (as defined in the Order) for the payment of such defaulted interest to be fixed by the Trustee hereinafter mentioned, notice whereof being

given to registered owners not less than ten (10) days prior to such Special Record Date, or may be paid in any other lawful manner not inconsistent with the requirements of applicable law or any securities exchange on which the Series 2021A Bonds may be listed and upon such notice as may be required by such law or exchange, all as more fully provided in the Order.

This Series 2021A Bond is one of a duly authorized series of revenue bonds of the City, designated “Greenville Utilities Commission Combined Enterprise System Revenue and Revenue Refunding Bonds, Series 2021A”, consisting of Serial Bonds maturing on _____ 1 in the years 20__ through 20__ [and Term Bonds maturing on _____ 1, 20__ and _____ 1, 20__]. The Series 2021A Bonds are being issued to provide funds, together with any other available funds, to (i) refund certain indebtedness previously issued by the City under the Order to finance improvements to the Combined Enterprise System (as such terms are hereinafter defined), (ii) finance certain of the costs of acquiring water and sewer facilities that will be added to the Combined Enterprise System and (iii) pay certain costs and expenses incurred in connection with the issuance of the Series 2021A Bonds. Pursuant to the Enabling Act (as hereinafter defined), the Greenville Utilities Commission (the “Commission”) is responsible for the management, operation, maintenance, improvement and extension of the Combined Enterprise System.

The Series 2021A Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Series Resolution, as hereinafter defined. One Series 2021A Bond certificate with respect to each date on which the Series 2021A Bonds are stated to mature, registered in the name of the Securities Depository Nominee (as defined in the Series Resolution) is being issued and required to be deposited with the Bond Registrar (as defined in the Series Resolution) and immobilized in its custody. The book-entry system will evidence positions held in the Series 2021A Bonds by the Securities Depository’s participants, beneficial ownership of the Series 2021A Bonds in the principal amount of \$5,000 or any multiple thereof being evidenced in the records of such participants. Transfers of ownership will be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The City, the Bond Registrar and the Trustee will recognize the Securities Depository Nominee, while the registered owner of this Series 2021A Bond, as the owner of this Series 2021A Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on, this Series 2021A Bond, (ii) notices and (iii) voting. Transfer of principal, interest and any redemption premium payments to participants of the Securities Depository will be the responsibility of the Securities Depository, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Series 2021A Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. The City, the Bond Registrar and the Trustee will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, the Securities Depository’s participants or persons acting through such participants. While the Securities Depository Nominee is the registered owner of this Series 2021A Bond, notwithstanding the provisions hereinabove contained, payments of principal of, redemption premium, if any, and interest on this Series 2021A Bond shall be made in accordance with existing arrangements between the Bond Registrar or its successors under the Order and the Series Resolution and the Securities Depository.

All of the Series 2021A Bonds are issued under and pursuant to the Constitution and laws of the State of North Carolina, including Chapter 861 of the 1992 Session Laws of North Carolina and The State and Local Government Revenue Bond Act, as amended (collectively, the “Enabling Act”), a Bond Order duly adopted on August 11, 1994 and amended and restated as of April 13, 2000 (the “Order”) by the City Council of the City (the “City Council”), and a series resolution duly adopted on April 5, 2021 (the “Series Resolution”) by the City Council. The Order designates the assets comprising the electric system, natural gas system, sanitary sewer system and water system of the City as the “Combined Enterprise System”). The City has heretofore issued under the Order other bonds on a parity with this Series 2021A Bond, and provides for the issuance from time to time under the conditions, limitations and restrictions therein set forth of additional Bonds (as hereinafter defined) to provide funds for paying all or any part of the cost of acquiring and constructing other Additional Improvements (as defined in the Order) and to refund any Bonds issued under the Order and Indebtedness (as defined in the Order) other than Bonds (such additional Bonds, these Series 2021A Bonds and the parity bonds heretofore issued being herein collectively called the “Bonds”). The Order provides that such Bonds are secured by a pledge, charge and lien upon and payable from certain receipts and rights to receive receipts of the Combined Enterprise System (the “Receipts”) after paying or making provision for the payment of Current Expenses (as defined in the Order) (the “Net Receipts”).

Unless otherwise provided, Bonds issued under the Order are secured by the Net Receipts on a parity (such obligations and the Bonds being herein collectively called “Parity Indebtedness”). The Order provides that the City may issue other obligations that are secured by a pledge, charge and lien upon and payable from the Net Receipts subordinate and junior in right of payment to Parity Indebtedness (“Subordinate Indebtedness”) or which are not secured by a pledge, charge or lien upon the Net Receipts but are payable from the Net Receipts (“Additional Indebtedness” and, together with the Existing Indebtedness, as defined in the Order, “Other Indebtedness”) under the conditions, limitations and restrictions therein set forth. The Order also provides that the City may assume other indebtedness that is secured on a parity with Parity Indebtedness or Subordinate Indebtedness or that is payable from Net Receipts.

Reference is hereby made to the Order for provisions, among others, with respect to the custody and application of the proceeds of Bonds, the collection and disposition of Receipts, the special fund charged with and made available for the payment of the interest and the redemption premium, if any, on and the principal of the Bonds and any other Parity Indebtedness, the nature and extent of the security for the Bonds, the Existing Indebtedness and any other Parity Indebtedness, Subordinate Indebtedness and Additional Indebtedness thereby created, the terms and conditions on which the Bonds of each series are or may be issued or the payment of debt service on other Parity Indebtedness, Subordinate Indebtedness or Additional Indebtedness may be incurred or assumed, the rights, duties and obligations of the City, the Bond Registrar and the Trustee and the rights of the registered owners of the Bonds. A certified copy of the Order is on file at the corporate trust office of The Bank of New York Mellon Trust Company, N.A. (the “Trustee”), in the City of Jacksonville, Florida. By the acceptance of this Series 2021A Bond, the registered owner hereof assents to all of the provisions of the Order.

The Order provides for the creation of a special fund designated the “Greenville Utilities Commission Parity Indebtedness Service Fund” (the “Parity Indebtedness Service Fund”), which special fund is made available for and charged with the payment of the principal of and the

interest on all Bonds and any other Parity Indebtedness, and also provides for the deposit to the credit of said special fund of the Net Receipts to the extent and in the manner provided in the Order. The Order further provides for transfers to the credit of the Parity Indebtedness Service Fund from other funds created by the Order and made available thereunder to make up any deficiencies in said Fund with respect to all Bonds and any other Parity Indebtedness, all to the extent and in the manner provided in the Order.

The Order provides for the charging, revising and collecting by the Commission of rates, fees and charges for the use of and for the services and facilities furnished or to be furnished by the Combined Enterprise System in order to produce at all times sufficient Receipts, together with certain other available funds, to pay the Current Expenses and to pay the principal of and interest on all Parity Indebtedness, Subordinate Indebtedness and Other Indebtedness as the same shall become due.

The Net Receipts are pledged by the Order to the payment of the principal of and the interest and any redemption premium on the Bonds and other Parity Indebtedness and then Subordinate Indebtedness as provided in the Order. In addition, the moneys in the Parity Indebtedness Service Fund and moneys in the Parity Indebtedness Reserve Fund or qualified reserve fund substitutes established in connection with the issuance of certain of the outstanding Bonds are pledged by the Order as further security for the payment of all Parity Indebtedness and the interest thereon as provided in the Order; provided, however, that pursuant to the Series Resolution, certain Bonds are not secured by such Parity Indebtedness Reserve Fund or qualified reserve fund substitutes. This Series 2021A Bond is not secured by the Parity Indebtedness Reserve Fund. The City is not obligated to pay the Bonds or Indebtedness other than Bonds except from the Net Receipts or other moneys made available therefor under the Order. Neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof, including the City, is pledged to the payment of the principal of and the interest and any redemption premium on this bond.

The Series 2021A Bonds are issuable as fully registered Bonds, in such denominations as the City may by resolution determine. At the designated corporate trust office of the Bond Registrar, in the manner and subject to the limitations and conditions provided in the Order, Series 2021A Bonds may be exchanged for an equal aggregate principal amount of Series 2021A Bonds of the same maturity, of authorized denominations and bearing interest at the same rate.

The transfer of this Series 2021A Bond is registrable by the registered owner hereof in person or by his attorney or legal representative at the principal corporate trust office of the Bond Registrar but only in the manner and subject to the limitations and conditions provided in the Order and the Series Resolution and upon surrender and cancellation of this Series 2021A Bond. Upon any such registration of transfer the City shall execute and the Bond Registrar shall authenticate and deliver, in exchange for this Series 2021A Bond, a new bond or bonds, registered in the name of the transferee, of authorized denominations, in aggregate principal amount equal to the principal amount of this Series 2021A Bond, of the same series and maturity and bearing interest at the same rate. The City or the Bond Registrar may make a charge for every such exchange or registration of transfer of bonds sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or registration of transfer, but no other charge shall be made to any registered owner for the privilege of

exchanging or registering the transfer of bonds. Neither the City nor the Bond Registrar shall be required to make any such exchange or registration of transfer of Bonds of a series during the fifteen (15) days immediately preceding the date of first giving of notice of any redemption of Bonds of such series or any portion thereof or of any Bonds after such Bonds or any portion thereof has been selected for redemption.

The Series 2021A Bonds maturing on or after _____ 1, 20__ are subject to redemption, at the option of the City, in whole or in part (by lot within a maturity), at any time on or after _____ 1, 20__, at a redemption price equal to _____% of the principal amount of the Series 2021A Bonds plus accrued interest thereon to the redemption date.

Not more than ninety (90) days and at least thirty (30) days before the redemption date of any Series 2021A Bonds, the Bond Registrar shall cause a notice of any such redemption, either in whole or in part, signed by the Bond Registrar, to be mailed, first-class, postage prepaid, to the North Carolina Local Government Commission and all registered owners of Series 2021A Bonds or portions of Series 2021A Bonds to be redeemed at their addresses as they appear on the registration books of the City kept by the Bond Registrar, as provided in the Order, but failure so to mail any such notice shall not affect the validity of the proceedings for such redemption as to any registered owners to whom such notice was given as so required. The City shall also cause a notice of any such redemption to be given as provided in the Order. On the date designated for redemption, notice having been given as aforesaid, the Series 2021A Bonds or portions of Series 2021A Bonds so called for redemption shall become and be due and payable at the Redemption Price provided for the redemption of such Series 2021A Bonds or portions thereof on such date, and, if the moneys for payment of the Redemption Price and the accrued interest are held by the Bond Registrar, as provided in the Order, interest on such Series 2021A Bonds or portions thereof shall cease to accrue, such Series 2021A Bonds or portions thereof shall cease to be entitled to any benefit or security under the Order, and the registered owners thereof shall have no rights in respect of such Series 2021A Bonds or portions thereof except to receive payment of the redemption price thereof and the accrued interest so held by the Bond Registrar. If a portion of this Series 2021A Bond shall be called for redemption, a new Series 2021A Bond or Bonds in principal amount equal to the unredeemed portion hereof will be issued to the registered owner upon surrender hereof.

Any notice of optional redemption of the Series 2021A Bonds may state that it is conditioned upon there being available an amount of money sufficient to pay the redemption price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price if any such condition so specified is not satisfied. If a redemption does not occur after a conditional notice is given due to an insufficient amount of funds under the terms of the Bond Order, the corresponding notice of redemption will be deemed to be revoked.

The moneys in the Parity Indebtedness Service Fund and the Redemption Fund (as defined in the Order) available for the purchase or redemption of Bonds shall be allocated to all series of Bonds outstanding under the Order in the manner provided in the Order.

In certain events, on the conditions, in the manner and with the effect set forth in the Order, the principal of all Bonds then outstanding under the Order may become or may be

declared due and payable before their stated maturities, together with the interest accrued thereon.

Modifications or alterations of the Order may be made by the City only to the extent and in the circumstances permitted by the Order.

As declared by the Enabling Act, this Series 2021A Bond, subject only to the provisions for registration and registration of transfer stated herein and contained in the Order, is an investment security within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code of the State of North Carolina.

This Series 2021A Bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required by the Constitution and laws of the State of North Carolina, the Order and the Series Resolution to happen, exist and be performed precedent to and in the issuance of this Series 2021A Bond have happened, exist and have been performed as so required.

This Series 2021A Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Order until this Series 2021A Bond shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the City of Greenville, North Carolina has caused this Series 2021A Bond to be signed by the Mayor and the City Clerk of the City and the corporate seal of the City to be impressed hereon, all as of the Dated Date set forth above.

CITY OF GREENVILLE, NORTH CAROLINA

[SEAL]

By [manual signature]
Mayor

[manual signature]
City Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within Bonds has been approved under the provisions of The State and Local Government Revenue Bond Act of North Carolina.

[manual signature]

Secretary, Local Government
Commission of North Carolina

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the series designated therein and issued under the provisions of the within-mentioned Order.

THE BANK OF NEW YORK MELLON TRUST
COMPANY, N.A.

as Bond Registrar

By _____

Date of authentication: _____

ASSIGNMENT

FOR VALUE RECEIVED the undersigned registered owner thereof hereby sells, assigns and transfers unto _____

the within Bond and all rights thereunder and hereby irrevocably constitutes and appoints _____ attorney to register the transfer of said Bond on the books kept for registration thereof, with full power of substitution in the premises

Dated: _____

NOTICE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

NOTICE: Signature must be guaranteed by an institution which is a participant in the Securities Transfer Agent Medallion Program (STAMP) or similar program.

Section 9. Application of Proceeds of the Series 2021A Bonds. Simultaneously with the delivery of the Series 2021A Bonds, the Trustee shall apply the proceeds of the Series 2021A Bonds or cause said proceeds to be applied, including any amount received as accrued interest, as follows:

(A) the amount required to redeem the Refunded Indebtedness shall be paid to the holder of the Refunded Indebtedness;

(B) the amount required to retire the indebtedness of the Town of Bethel that is being retired from proceeds of the Series 2021A Bonds in connection with the acquisition of the 2021 Additional Improvements shall be paid to the holder of the Bethel indebtedness; and

(C) the remaining net proceeds of the Series 2021A Bonds shall be deposited to the Operating Checking Account to be used to pay costs of issuance of the Series 2021A Bonds.

Section 10. Application of Certain Revenues. Subject to the provisions of Section 507 of the Order, the Commission shall, on or before the twenty-fifth (25th) day of the month preceding the months determined pursuant to Section 3(D) of this Series Resolution, withdraw from the Operating Checking Account moneys held for the credit of the Appropriate Operating Funds in such amounts as shall be necessary for the purpose of making the following transfers:

(A) To the Trustee for deposit to the credit of the Interest Account created by the Order, such amount thereof (or the entire sum so withdrawn if less than the required amount) as is sufficient to make full and timely payment of the interest to become due and payable on the Series 2021A Bonds on the next ensuing semi-annual interest payment date, after taking into account any amounts then held for the credit of the Interest Account created by the Order (including amounts transferred from the Construction Fund) for the payment of such interest.

(B) To the Trustee for deposit to the credit of the Principal Account created by the Order, such amount, if any, of the balance remaining after making the transfer under clause (i) above (or the entire balance if less than the required amount) as is sufficient to make full and timely payment of the principal of any Series 2021A Serial Bonds to become due and payable on the next ensuing principal payment date, after taking into account any amounts then held for the credit of the Principal Account created by the Order for the payment of such principal.

(C) If any of the Series 2021A Bonds shall be designated Term Bonds in the Series Certificate, to the Trustee for deposit to the credit of the Sinking Fund Account created by the Order, such amount, if any, of the balance remaining after making the transfers under clauses (i) and (ii) above (or the entire balance if less than the required amount) as is equal to the Sinking Fund Requirement for the Term Bonds to be retired on the next ensuing sinking fund payment date, after taking into account any amounts held for the credit of the Sinking Fund Account created by the Order for satisfaction of such Sinking Fund Requirement.

Section 11. Official Statement. The City, at the request of the Commission, has selected J.P. Morgan Securities LLC to be the underwriter of the Series 2021A Bonds (the "Underwriter"), and approves the engagement by the Underwriter of McGuireWoods LLP as its counsel for the transaction.

The draft of the Preliminary Official Statement relating to the Series 2021A Bonds (the "Preliminary Official Statement") is hereby approved. The City hereby authorizes the use and

distribution of the Preliminary Official Statement by the Underwriter in substantially the form presented, together with such changes, modifications and deletions as the Mayor of the City or any Delegate, with the advice of counsel, may deem necessary and appropriate. The City authorizes and consents to the preparation and distribution of a final Official Statement relating to the Series 2021A Bonds (the “Official Statement”), in substantially the form of the Preliminary Official Statement, together with such changes as are necessary to reflect the final terms of the Series 2021A Bonds. The City Manager of the City (or if the City Manager is not available, the Director of Financial Services of the City) and the General Manager or the Chief Financial Officer of the Commission are each hereby authorized and directed to execute and deliver the Official Statement on behalf of the City and the Commission, in substantially the form of the Preliminary Official Statement, together with such changes, specifications, and deletions as any Delegate, with the advice of counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 12. LGC Requested to Award the Series 2021A Bonds. The City Council hereby requests the Local Government Commission of North Carolina (the “LGC”) to award the Series 2021A Bonds at negotiated sale without advertisement to the Underwriter in the amount and at the interest rates fixed pursuant to this Series Resolution, subject to the approval thereof by any Delegate. If the LGC awards the Series 2021A Bonds as hereinabove requested, the provisions of the Bond Purchase Agreement between the Underwriter and the LGC relating to the purchase of the Series 2021A Bonds (the “Bond Purchase Agreement”) and presented to the City Council for its consideration are hereby approved in all respects, and each of the City Manager of the City and the Director of Financial Services are hereby authorized to signify such approval by the execution of the Bond Purchase Agreement in substantially the form presented, such execution to be conclusive evidence of the approval thereof by the City. In addition, the Commission shall signify its approval of the Bond Purchase Agreement by the execution of the Bond Purchase Agreement by the General Manager or the Chief Financial Officer of the Commission.

Section 13. Continuing Disclosure. The City and the Commission hereby undertake, for the benefit of the beneficial owners of the Series 2021A Bonds, to provide to the Municipal Securities Rulemaking Board (the “MSRB”):

(A) by not later than seven months from the end of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2021, audited financial statements of the Commission for such Fiscal Year, if available, prepared in accordance with Section 159-39 of the General Statutes of North Carolina, as it may be amended from time to time, or, if such audited financial statements of the Commission are not available by seven months from the end of such Fiscal Year, unaudited financial statements of the Commission for such Fiscal Year to be replaced subsequently by audited financial statements of the Commission to be delivered within 15 days after such audited financial statements become available for distribution;

(B) by not later than seven months from the end of each Fiscal Year, commencing with the Fiscal Year ending June 30, 2021, the financial and statistical data as of a date not earlier than the end of the preceding Fiscal Year for the type of

information included under the following headings to the Official Statement relating to the Series 2021A Bonds (1) “The Combined Enterprise System - The Electric System (capacity and consumption figures) - Electric Service Rates, Number of Connections and - Major Users”; (2) “The Combined Enterprise System - The Water System (capacity and consumption figures) -- Water Service Rates, - Water Service Tap Fees, - Number of Connections and - Major Users;” (3) “The Combined Enterprise System - The Sanitary Sewer System (capacity figures)”; Sewer Service Rates, - Sewer Service Tap Fees, - Number of Connections and - Major Users”; (4) “The Combined Enterprise System - The Natural Gas System (capacity and consumption figures) - Natural Gas Rates, - Number of Connections, Gas Consumption and - Major Users”; and (5) “The Combined Enterprise System - Billing and Collection Procedures” to the extent such items are not included in the audited financial statements referred to in (A) above;

(C) in a timely manner, not in excess of ten business days after the occurrence of the event, notice of any of the following events with respect to the Series 2021A Bonds:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults; if material
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 570-TEB) or other material notices or determinations with respect to or events affecting the tax-exempt status of the Series 2021A Bonds;
- (7) modification to the rights of security holders; if material
- (8) bond calls, other than calls for mandatory sinking fund redemption, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the Series 2021A Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the City or the Commission;

(13) the consummation of a merger, consolidation, or acquisition involving the City or the Commission or the sale of all or substantially all of the assets of the City or the Commission, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional paying agent or the change of name of a paying agent, if material;

(15) incurrence of a financial obligation (as defined below) of the City or the Commission, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the City or the Commission, any of which affect beneficial owners of the Series 2021A Bonds, if material; and

(16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the City or the Commission, any of which reflect financial difficulties;

(D) in a timely manner, notice of a failure of the City or the Commission to provide required annual financial information described in (A) or (B) above on or before the date specified.

All information provided to the MSRB as described in this Section shall be provided in an electronic format as prescribed by the MSRB and accompanied by identifying information as prescribed by the MSRB.

The City may meet the continuing disclosure filing requirement described above by complying with any other procedure that may be authorized or required by the United States Securities and Exchange Commission.

For the purposes of this Section, “financial obligation” means (a) a debt obligation, (b) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation, or (c) a guarantee of either clause (a) or (b). The term “financial obligation” shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Rule 15c2-12 issued under the Securities Exchange Act of 1934.

If the City or the Commission fails to comply with the undertaking described above, the Trustee (upon being indemnified to its satisfaction, to the extent allowable by law) or any beneficial owner of the Series 2021A Bonds then Outstanding may take action to protect and enforce the rights of beneficial owners with respect to such undertaking, including an action for specific performance; provided, however, that failure to comply with such undertaking shall not be an event of default under the Order and shall not result in any acceleration of payment of the Series 2021A Bonds.

The City and the Commission reserve the right to modify from time to time the information to be provided to the extent necessary or appropriate in the judgment of the City and the Commission, provided that:

(a) any such modification may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City or the Commission; and

(b) the information to be provided, as modified, would have complied with the requirements of Rule 15c2-12 issued under the Securities Exchange Act of 1934 (“Rule 15c2-12”) as of the date of the Official Statement, after taking into account any amendments or interpretations of Rule 15c2-12, as well as any changes in circumstances; and

(c) any such modification does not materially impair the interests of the beneficial owners, as determined either by parties unaffiliated with the City or the Commission (such as Bond Counsel), or by approving vote of the registered owners of not less than a majority in principal amount of the Series 2021A Bonds then Outstanding pursuant to the terms of the Bond Order, as it may be amended from time to time.

The City and the Commission agree that any such modification shall not take effect except upon thirty (30) days’ prior written notice to the Underwriter, unless waived in writing by such Underwriter.

The City and the Commission also agree that the annual financial information containing the amended operating data or financial information will explain, in narrative form, the reasons for the amendments and the impact of the change in the type of operating data or financial information being provided.

The provisions of this Section 13 shall terminate upon payment, or provision having been made for payment in a manner consistent with Rule 15c2-12, in full of the principal of and interest on all of the Series 2021A Bonds.

Section 14. Authorization to City and Commission Officials. The officers, agents and employees of the City and the Commission and the officers and agents of the Trustee and the Bond Registrar are hereby authorized and directed to do all acts and things required of them by the provisions of the Series 2021A Bonds, the Order, the Bond Purchase Agreement, this Series Resolution and any other documents relating to the issuance of the Series 2021A Bonds for the full, punctual and complete performance of the terms, covenants, provisions and agreements therein.

Section 15. Ratification. Any and all actions heretofore taken by the City and the officers, agents and employees of the City in connection with the transactions authorized and approved hereby are hereby ratified and confirmed.

Section 16. Conflicts. Any and all resolutions of the City or portions thereof in conflict with the provisions of this Resolution are hereby repealed to the extent of such conflict.

Section 17. No Broker Confirmations. Although the City and the Commission each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the City and the Commission agree that broker confirmations of investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered by the Trustee.

Section 18. Electronic Communications to the Trustee. The Trustee shall have the right to accept and act upon directions or instructions delivered using Electronic Means (defined below); provided, however, that the City or the Commission, as the case may be, shall provide to the Trustee an incumbency certificate listing Authorized Officers with the authority to provide such directions or instructions (each an “Authorized Officer”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the City or the Commission elects to give the Trustee directions or instructions using Electronic Means and the Trustee in its discretion elects to act upon such directions or instructions, the Trustees’ understanding of such directions or instructions shall be deemed controlling. The City and the Commission each understands and agrees that the Trustee cannot determine the identity of the actual sender of such directions or instructions and that the Trustee shall conclusively presume that directions or instructions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The City and the Commission, as the case may be, shall each be responsible for ensuring that only Authorized Officers transmit such directions or instructions to the Trustee and that all Authorized Officers treat applicable user and authorization codes, passwords and/or authentication keys as confidential and with extreme care. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee’s reliance upon and compliance with such directions or instructions notwithstanding such directions or instructions conflict or are inconsistent with a subsequent written direction or written instruction. Each of the City and the Commission agree: (i) to assume all risks arising out of the use of Electronic Means to submit directions or instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized directions or instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting directions or instructions to the Trustee and that there may be more secure methods of transmitting directions or instructions; (iii) that the security procedures (if any) to be followed in connection with its transmission of directions or instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures. “Electronic Means” shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, or another method or system specified by the Trustee as available for use in connection with its services hereunder.

Section 19. Redemption of Refunded Indebtedness. Subject to the next succeeding sentence, the City Council hereby determines to redeem the Refunded Indebtedness on the first date that the refunding thereof shall be practicable following the issuance of the Series 2021A Bonds. If, on or prior to the sale date of the Series 2021A Bonds, the Delegate shall determine that it is in the best economic interests of the City not to refund all or any portion of such

Refunded Indebtedness, the Delegate is hereby authorized to determine for the City not to proceed with refunding all or such portion of the Series 2021A Bonds.

The Trustee is hereby directed to provide notices of such redemptions at the times and in the manner required by the Refunded Indebtedness as directed by the Delegate.

Section 20. Effective Date. This Series Resolution shall take effect immediately upon its adoption.

Passed and adopted this the 5th day of April, 2021.

After consideration of the foregoing resolution, Council member _____ moved for the passage thereof, which motion was duly seconded by Council member _____, and the foregoing resolution was passed by the following vote:

Ayes: _____
_____.

Noes: _____.

* * * * *

I, Valerie P. Shiuwegar, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City at a regular meeting held on April 5, 2021, as it relates in any way to the passage of the foregoing resolution and that said proceedings are recorded in the minutes of said Council. The meeting was held by use of simultaneous communication pursuant to Section 166A-19.24 of the North Carolina General Statutes, as amended, with multiple ways for members of the public to observe the actions taken, and all of the requirements for a remote meeting, including the requirement for notice thereof, specified in said Section 166A-19.24 were met.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law.

WITNESS my hand and the official seal of said City, this ___ day of April, 2021.

City Clerk
City of Greenville, North Carolina

[SEAL]

EXHIBIT A

PROPOSED REFUNDED INDEBTEDNESS

\$3,795,000.00 1.84% Refunding Revenue Bonds Series 2013 issued in 2013, due in annual installments of \$540,000 2021-2027.

\$6,880,814.50 2.48% Clean Water State Revolving Fund note issued in 2008, due in annual installments of \$688,081.45 2021- 2030.

\$134,746.00 2.50% Public Drinking Water State Revolving Fund note issued in 2010, due in annual installments of \$13,475.60 2021- 2030.

\$299,276.25 2.50% Public Drinking Water State Revolving Fund note issued in 2010, due in annual installments of \$23,021.25 2021- 2033.

\$33,525.00 2.205% Public Drinking Water State Revolving Fund note issued in 2010, due in annual installments of \$3,352.50 2021-2030.

\$1,908,931.50 2.205% Public Drinking Water State Revolving Fund note issued in 2010, due in annual installments of \$190,893.15 2021-2030.

\$5,319,600.00 2.455% Clean Water State Revolving Fund note issued in 2010, due in annual installments of \$443,300.00 2021-2032.

\$839,473 2.010% Public Drinking Water State Revolving Fund note issued in 2012, due in annual installments of \$64,574.80 2021-2033.

\$8,872,284.20 2.455% Clean Water State Revolving Fund note issued in 2013, due in annual installments of \$682,483.40 2021-2033.

\$5,091,963.25 2.00% Clean Water State Revolving Fund note issued in 2017, due in annual installments of \$299,527.25 2021-2037.



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Order Authorizing a \$7,979,298 Installment Refinancing Agreement and Related Resolutions for the refunding of the City of Greenville's Series 2011 General Obligation Bonds, 2015 Special Obligation Revenue Bonds, and 2019 Taxable Installment Sale

Explanation: Financial Services Department staff have been working with First Southwest Company (the City's Financial Advisors) to refinance the 2011 General Obligation Bonds, 2015 Special Revenue Installment Sale, and 2019 Taxable Installment Sale. Given the current interest rate environment, staff has reviewed all of the City's outstanding debt in efforts of finding areas of potential interest savings. The City is issuing an amount not to exceed \$7,979,298 in Installment Financing to refinance the listed debt issuance. The sale date is scheduled for May 11, 2021.

The terms of this refinancing indicate a savings of approximately \$303,731 over the next 10 years.

Fiscal Note: The refunding sale of General Obligation Bonds and Installment Financing will not exceed \$7,979,298. This refunding will save approximately \$303,731 of debt service over the remaining 10 years of payments.

Recommendation: Approve the Resolution Authorizing the Execution and Delivery of a Second Amendment to Installment Financing Agreement and a First Supplemental Trust Agreement and Related Documents in Connection with Interest Rate Reductions for Certain Outstanding Obligations of the City. Authorize the Director of Financial Services and City Clerk to file Sworn Statement of Debt and Statement of Total Estimated Interest.

ATTACHMENTS

- [❏ Approving Resolution-Greenville 2021 Interest Rate Modifications.DOC](#)
- [❏ Second Amendment to Taxable IFA.DOC](#)
- [❏ First Amendment to Third Supplemental.pdf](#)
- [❏ Sworn Statement of Debt-Greenville 2021 G.O.R. \(PP\).DOC](#)
- [❏ Statement of Total Estimated Interest-Greenville 2021 G.O.R. \(PP\).DOC](#)

A regular meeting of the City Council of the City of Greenville, North Carolina was held remotely by electronic means at 6:00 p.m. on April 5, 2021.

Present: Mayor P.J. Connelly, presiding, and Council Members

Absent: Council Members

Also Present: _____

* * * * *

_____ introduced the following resolution the title of which was read and a copy of which had been previously distributed to each Council Member:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO INSTALLMENT FINANCING AGREEMENT AND A FIRST AMENDMENT TO THIRD SUPPLEMENTAL TRUST AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH INTEREST RATE REDUCTIONS FOR CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY

BE IT RESOLVED by the City Council (the “City Council”) of the City of Greenville, North Carolina (the “City”):

Section 1. The City Council does hereby find and determine as follows:

(a) The City has heretofore entered into an Installment Financing Agreement, dated as of May 15, 2014 (as previously amended, the “Agreement”), between the City and Capital One Public Funding, LLC (“Capital One”), pursuant to which the Lender advanced to the City funds in the amount of \$4,997,546 for the purpose of financing the construction costs of a parking garage in the uptown district of the City located at E. Fourth Street, Greenville, North Carolina 27858 (the “Project”). As security for the performance by the City of its obligations under the

Agreement, the City has executed and delivered a Deed of Trust, dated as of May 15, 2014, in favor of the Lender granting a lien on the site of the Project. The current interest rate payable by the City under the Agreement is 3.50% per annum.

(b) The City has heretofore issued its \$4,200,000 City of Greenville, North Carolina Special Obligation Revenue Bond, Series 2015 (the “Series 2015 Bond”) pursuant to a Trust Agreement, dated as of March 15, 2001, as supplemented by a Third Supplemental Trust Agreement, dated as of January 1, 2015 (the “Third Supplemental Trust Agreement”), each between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), for the purpose of financing the renovation of the Greenville Convention Center. The Trust Agreement authorizes the issuance of Bonds (as defined in the Trust Agreement), including the Series 2015 Bond, securing the payment thereof and of any Parity Debt (as defined in the Trust Agreement) by pledging and assigning its rights in and to the Pledged Revenues (as defined in the Trust Agreement). The Series 2015 Bond was issued to Capital One and continues to be held by Capital One. The current interest rate payable by the City on the Series 2015 Bond is 3.25% per annum.

(c) The City and Capital One have determined to modify (i) the interest rate payable by the City under the Agreement from 3.50% per annum to 2.50% per annum and the prepayment terms of the Agreement and (ii) the interest rate payable by the City on the Series 2015 Bond from 3.25% per annum to 2.25% per annum and the redemption terms of the Series 2015 Bond.

(d) The above-described transactions (the “Interest Rate Reduction Transactions”) will be evidenced by, (i) with respect to the Agreement, a Second Amendment to Installment Financing Agreement, to be dated as of the date of delivery thereof (the “Second Amendment”), between the City and Capital One, and (ii) with respect to the Series 2015 Bond, a First Amendment to

Third Supplemental Trust Agreement, to be dated as of the date of delivery thereof (the “First Amendment” and, together with the Second Amendment, the “Amendments”), between the City and the Trustee, as consented to by Capital One, and a related allonge to the Series 2015 Bond (the “Allonge”) to reflect the amendments included in the Second Amendment.

Section 2. In order to provide for the Interest Rate Reduction Transactions, the City is hereby authorized to enter into the Amendments. The City Council hereby approves the Amendments and, with respect to the Series 2015 Bond, the Allonge, in substantially the forms presented at this meeting. The Mayor, the City Manager and the Director of Financial Services of the City are each hereby authorized to execute and deliver on behalf of the City the Amendments and the Allonge in substantially the forms presented at this meeting, containing such insertions, deletions and modifications as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the City Council of any such changes. The City Clerk or any Deputy or Assistant City Clerk is hereby authorized and directed to affix the official seal of the City to said documents, as required, and to attest the same.

Section 3. The Mayor, the City Manager, the Director of Financial Services and the City Clerk of the City, and any other officers, agents and employees of the City, are hereby authorized and directed to execute and deliver such other documents, instruments, closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions contemplated by this resolution, including, without limitation, documentation related to the maintenance of tax-exempt status of the Series 2015 Bond.

Section 4. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing resolution entitled “RESOLUTION AUTHORIZING THE

EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO INSTALLMENT FINANCING AGREEMENT AND A FIRST AMENDMENT TO THIRD SUPPLEMENTAL TRUST AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH INTEREST RATE REDUCTIONS FOR CERTAIN OUTSTANDING OBLIGATIONS OF THE CITY” was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Valerie Shiuwegar, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City at a regular meeting held on April 5, 2021, as relates in any way to the adoption of the foregoing resolution and that said proceedings are to be recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that proper notice of such regular meeting was given as required by North Carolina law, including the notice of the holding of such meeting by electronic means as may be required by Section 143-318.13 and Section 166A-19.24 of the General Statutes of North Carolina, as amended.

WITNESS my hand and the official seal of said City this 5th day of April, 2021.

City Clerk

[SEAL]

Draft No. 1
March 18, 2021

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

SECOND AMENDMENT TO INSTALLMENT FINANCING AGREEMENT

Dated as of April __, 2021

between

CITY OF GREENVILLE, NORTH CAROLINA

and

CAPITAL ONE PUBLIC FUNDING, LLC

Amending the Installment Financing Agreement, dated as May 15, 2014, between the City of Greenville, North Carolina and Capital One Public Funding, LLC, as amended by the First Amendment thereto, dated November 15, 2019

SECOND AMENDMENT TO INSTALLMENT FINANCING AGREEMENT

This SECOND AMENDMENT TO INSTALLMENT FINANCING AGREEMENT, dated as of April __, 2021 (the “Second Amendment”), between the CITY OF GREENVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the “City”), and CAPITAL ONE PUBLIC FUNDING, LLC, a limited liability company duly organized and existing under the laws of the State of New York (the “Lender”), amending the Installment Financing Agreement, dated as of May 15, 2014 (the “Original Agreement”), as amended by the First Amendment thereto, dated as of November 15, 2021 (the “First Amendment”), (the Original Agreement, the First Amendment and the Second Amendment being referred to herein collectively as the “Agreement”);

WITNESSETH:

WHEREAS, pursuant to Section 160A-20 of the General Statutes of North Carolina, the City of Greenville, North Carolina (the “City”) may finance (a) the purchase of real or personal property or (b) the construction of fixtures or improvements on real property by contracts that create in the property so acquired or in the fixtures or improvements, or in all or some portion of the property upon which the fixtures or improvements are located, or in both, a security interest to secure repayment of the moneys advanced or made available for such purchase or construction;

WHEREAS, the City and the Lender have heretofore entered into the Original Agreement, pursuant to which the Lender advanced funds to the City to provide for the construction costs of a parking garage in the uptown district of the City located at E. Fourth Street, Greenville, North Carolina 27858 (the “Project”);

WHEREAS, pursuant to the First Amendment the City and the Lender modified the interest rate payable under the Original Agreement from 3.25% to 3.50%, changed the principal amortization of the outstanding principal amount of the Agreement and made certain other related amendments all as set forth in the First Amendment (which actions resulted in the interest component of the Installment Payments payable by the City to the Lender under the Agreement becoming included in the gross income of the Lender for federal income taxation purposes);

WHEREAS, the City and the Lender have determined to further modify the interest rate payable and prepayment terms of the Agreement as provided herein;

WHEREAS, the City and the Lender have each duly authorized the execution and delivery of this Second Amendment;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

SECTION 1. As of the date of this Second Amendment, the unpaid principal balance under the Agreement is \$2,839,886.06

SECTION 2. Section 4 of the First Amendment (which amended Section 4.1(a) of the Original Agreement) is hereby amended to read as follows:

“(a) The City shall repay the Advancement, with interest, computed at the rate of (i) 3.25% per annum to November 15, 2019, (ii) 3.50% from November 15, 2019 to April __, 2021, and thereafter 2.50%. Notwithstanding the foregoing sentence, the interest payable on the \$165,588.79 principal component of the Installment Payment due on June 1, 2021 shall bear interest at a rate of 3.50% per annum. Interest computations shall be based upon a 360-day year consisting of twelve 30-day months.”

SECTION 3. Exhibit A to the First Agreement is hereby deleted and replaced in its entirety with Exhibit A as attached to this Second Amendment.

SECTION 4. Notwithstanding any other provision of the Agreement, from and after April __, 2021, the Installment Payments are not subject to prepayment at the option of the City and may only be prepaid with the consent of the Lender.

SECTION 5. Except as amended and supplemented by this Second Amendment, the terms and provisions of the Original Agreement and First Amendment are hereby ratified and confirmed.

SECTION 6. This Second Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

SECTION 7. This Second Amendment shall inure to the benefit of and shall be binding upon the City and the Lender and their respective successors and assigns.

SECTION 8. The Second Amendment is effective as of April __, 2021.

(signatures to follow)

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date and year first above written.

CITY OF GREENVILLE, NORTH CAROLINA

By: _____
City Manager

CAPITAL ONE PUBLIC FUNDING, LLC

By: _____
Assistant Vice President

EXHIBIT A

INSTALLMENT PAYMENT SCHEDULE

<u>Installment Payment Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
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[Updated amortization schedule to be inserted.]

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

FIRST AMENDMENT TO THIRD SUPPLEMENTAL TRUST AGREEMENT

Dated as of April __, 2021

between

CITY OF GREENVILLE, NORTH CAROLINA

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
Trustee

Authorizing and Securing

City of Greenville, North Carolina
Special Obligation Revenue Bond, Series 2015

Amending the Third Supplemental Trust Agreement, dated as of January 1, 2015,
between the City of Greenville, North Carolina and The Bank of New York
Mellon Trust Company, N.A., as Trustee

FIRST AMENDMENT TO THIRD SUPPLEMENTAL TRUST AGREEMENT

This FIRST AMENDMENT TO THIRD SUPPLEMENTAL TRUST AGREEMENT, dated as of April __, 2021 (the “First Amendment”), between the CITY OF GREENVILLE, NORTH CAROLINA, a municipal corporation duly organized and validly existing under the laws of the State of North Carolina (the “City”), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association duly organized and existing under the laws of the United States of America and having its designated corporate trust office in Jacksonville, Florida, which is authorized under such laws to exercise trust powers (the “Trustee”), amending the Third Supplement Trust Agreement, dated as of January 1, 2015 (the “Third Supplemental Trust Agreement”), between the City and the Trustee;

WITNESSETH:

WHEREAS, the City and the Trustee have heretofore entered into a Trust Agreement, dated as of March 15, 2001 (the “Trust Agreement”), between the City and the Trustee, for the purpose of authorizing the issuance of Bonds (as defined in the Trust Agreement) and securing the payment thereof and of any Parity Debt (as defined in the Trust Agreement) by pledging and assigning its rights in and to the Pledged Revenues (as defined in the Trust Agreement);

WHEREAS, pursuant to the Trust Agreement and the Third Supplemental Trust Agreement, the City has heretofore issued its \$4,200,000 City of Greenville, North Carolina Special Obligation Revenue Bond, Series 2015 (the “Series 2015 Bond”) for the purposes set forth in the Third Supplemental Trust Agreement;

WHEREAS, the Series 2015 Bond is currently outstanding in the principal amount of \$3,805,000, and the current registered owner (the “Owner”) of the Series 2015 Bond is Capital One Public Funding, LLC (“Capital One”);

WHEREAS, the City and Capital One have determined to modify the interest rate payable and redemption terms of the Series 2015 Bond and the Third Supplemental Trust Agreement as provided herein;

WHEREAS, the City and the Trustee desire to enter into this First Amendment in order to modify certain provisions of the Third Supplement Trust Agreement and the Series 2015 Bond as set forth below and have determined that the conditions set forth in Section 1102 of the Trust Agreement have been satisfied and met; and

WHEREAS, Capital One, as the Owner of the Series 2015 Bond, by its execution of this First Amendment, has consented to this First Amendment and waived any notice requirements under Section 1102 of the Trust Agreement as evidenced by its signature below;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Trustee hereby agree as follows:

SECTION 1. As of the date of this First Amendment, the unpaid and outstanding principal amount of the Series 2015 Bond is \$3,805,000.

SECTION 2. The first paragraph of Section 2.03 of the Third Supplemental Trust Agreement is hereby amended to read as follows:

“Section 2.03. Details of the Series 2015 Bond. The Series 2015 Bond shall be dated the date of its delivery, shall bear interest until its payment, such interest to the maturity thereof being payable on June 1, 2015 and semiannually thereafter on June 1 and December 1 in each year, and shall be payable in principal installments as set forth in Schedule I to the Series 2015 Bond. The interest rate on the Series 2015 Bond shall be computed at the rate of 3.25% per annum to April __, 2021, and thereafter 2.25%. Notwithstanding the foregoing sentence, the interest payable on the \$125,000 principal component of the Installment Payment due on June 1, 2021 shall bear interest at a rate of 3.25% per annum.”

SECTION 3. Sections 3.01 and 3.02 of the Third Supplemental Trust Agreement are hereby deleted and replaced with the following:

“Section 3.01. Redemption of the Series 2015 Bond. From and after April __, 2021, the Series 2015 Bond is not subject to redemption at the City’s option.”

SECTION 4. The Series 2015 Bond is hereby supplemented and amended in the manner set forth in the First Allonge to the Series 2015 Bond, which is attached hereto as Exhibit A and shall be deemed incorporated into, and constitute a part of, the Series 2015 Bond from and after the effective date of this First Amendment, which shall be the date first shown above. The updated Schedule I to the Series 2015 Bond is hereby incorporated by reference into the Third Supplemental Trust Agreement to replace the prior Schedule I.

SECTION 5. Except as amended and supplemented by this First Amendment, the terms and provisions of the Third Supplemental Trust Agreement are hereby ratified and confirmed.

SECTION 6. This First Amendment may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterpart shall constitute but one and the same instrument.

SECTION 7. This First Amendment shall inure to the benefit of and shall be binding upon the City, the Trustee and the Owner and their respective successors and assigns.

SECTION 8. This First Amendment is effective as of April __, 2021.

IN WITNESS WHEREOF, the City and the Trustee have caused this First Amendment to be executed in their respective names by their respective duly authorized officers all as of the date first written above.

CITY OF GREENVILLE, NORTH CAROLINA

By: _____
City Manager

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

By: _____
Vice President

Acknowledged, Consented and Agreed to by:

CAPITAL ONE PUBLIC FUNDING, LLC

By: _____
Assistant Vice President

FIRST ALLONGE TO THE SERIES 2015 BOND

The \$4,200,000 City of Greenville, North Carolina Special Obligation Revenue Bond, Series 2015, dated January 13, 2015 (the “Series 2015 Bond”), consisting of one registered bond designated “R-1”, is hereby modified and amended as follows:

1. The first paragraph of page 2 of the Series 2015 Bond is hereby amended to add the following sentence to such paragraph:

“Notwithstanding any provision of this bond to the contrary, the interest rate on this Bond shall be computed at the rate of 3.25% per annum to to April __, 2021, and thereafter 2.25%. Notwithstanding the foregoing sentence, the interest payable on the \$125,000 principal component of the Installment Payment due on June 1, 2021 shall bear interest at a rate of 3.25% per annum.”

2. The first, second, third and fourth full paragraphs on page 3 of the Series 2015 Bond are hereby deleted and replaced with the following:

“From and after April __, 2021, the Series 2015 Bond is not subject to redemption at the City’s option.”

3. Schedule I to the Series 2015 Bond is hereby deleted and replaced with updated Schedule I attached hereto. Such updated Schedule I reflects the interest rate modification described in paragraph 1 of this Allonge.

4. Except as modified and amended by this First Allonge to the Series 2015 Bonds, the terms and provisions of the Series 2015 Bond shall remain in full force and effect.

5. The provisions of this First Allonge shall become effective on April __, 2021.

IN WITNESS WHEREOF, the City of Greenville, North Carolina has caused this First Allonge to the Series 2015 Bond to be executed and delivered in its name by its Mayor, sealed with its official seal and attested to by the City Clerk, all as of the ___ day of April, 2021.

CITY OF GREENVILLE, NORTH CAROLINA

[SEAL]

By: _____
Mayor

Attest:

City Clerk

Revised Schedule I

Payment Date

Principal

Interest

Total

[Updated amortization schedule to be inserted.]

**CITY OF GREENVILLE, NORTH CAROLINA
 SWORN STATEMENT OF DEBT MADE PURSUANT TO THE
 LOCAL GOVERNMENT BOND ACT, AS AMENDED**

I, Byron Hayes, Director of Financial Services of the City of Greenville, North Carolina, having been designated by the City Council of the City to make and file with the City Clerk a statement of the debt of said City pursuant to The Local Government Bond Act, as amended, DO HEREBY CERTIFY that the following is a true statement as shown by the books in my office, not taking into consideration any debt incurred or to be incurred in anticipation of the collection of taxes or other revenues or in anticipation of the sale of bonds other than funding and refunding bonds:

(a) GROSS DEBT

a(1)	Outstanding debt evidenced by bonds:	
	Public Improvement Bonds, Series 2011	\$ 1,760,000
	Refunding Bonds, Series 2016	6,170,000
	Street and Pedestrian Transportation Bonds, Series 2016	6,400,000
	Street and Pedestrian Transportation Bonds, Series 2020	<u>7,850,000</u>
	Total	<u>\$22,180,000</u>
a(2)	Bonds authorized by orders introduced, but not yet adopted:	
	Refunding Bonds	<u>\$1,700,000</u>
a(3)	Unissued bonds authorized by adopted orders:	\$ <u> -0-</u>
a(4)	Outstanding debt, not evidenced by bonds:	\$ <u> -0-</u>
(a)	GROSS DEBT, being the sum of a(1), a(2), a(3) and a(4):	<u>\$23,880,000</u>

(b) DEDUCTIONS

b(1)	Funding and refunding bonds authorized by orders introduced but not yet adopted:	\$ <u>1,700,000</u>
b(2)	Funding and refunding bonds authorized but not yet issued:	\$ <u> -0-</u>
b(3)	The amount of money held in sinking funds or otherwise for the payment of any part of the principal of gross debt other than debt incurred for water, gas, electric light or power purposes or sanitary sewer purposes (to the extent that the bonds are deductible under G.S. 159-55(b)):	\$ <u> -0-</u>

b(4)	Bonded debt included in gross debt and incurred, or to be incurred, for water, gas, electric light or power purposes:	\$ <u> -0-</u>
b(5)	Bonded debt included in gross debt and incurred, or to be incurred, for sanitary sewer system purposes (to the extent that said debt is made deductible by G.S. 159-55(b)):	\$ <u> -0-</u>
b(6)	Uncollected special assessments heretofore levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred to the extent that such assessments will be applied, when collected, to the payment of any part of the gross debt:	\$ <u> -0-</u>
b(7)	The amount, as estimated by the Director of Financial Services, of special assessments to be levied for local improvements for which any part of the gross debt (that is not otherwise deducted) was or is to be incurred, to the extent that the special assessments, when collected, will be applied to the payment of any part of the gross debt:	\$ <u> -0-</u>
(b)	DEDUCTIONS, being the sum of b(1), b(2), b(3), b(4), b(5), b(6) and b(7):	<u>\$1,700,000</u>
(c) NET DEBT		
(c)	NET DEBT, being the difference between the GROSS DEBT (a) and the DEDUCTIONS (b):	<u>\$22,180,000</u>
(d) ASSESSED VALUE		
(d)	ASSESSED VALUE of property subject to taxation by the City, as revealed by the City tax records and certified to the City by the assessor:	<u>\$7,783,609,500</u>
(e) PERCENTAGE		
(e)	Percentage which the NET DEBT (c) bears to the ASSESSED VALUE (d):	<u>0.2845%</u>

The foregoing statement is true.

Director of Financial Services

STATE OF NORTH CAROLINA)
)
COUNTY OF PITT) ss:

Subscribed and sworn to before me this _____ day of April, 2021.

[SEAL]

Notary Public

Printed Name: _____

My Commission expires: _____

* * * * *

I, Valerie Shiuwegar, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of a statement which was filed with me at a meeting of the City Council of said City held on April 5, 2021, after the introduction of an order authorizing bonds of said City, and that said statement is open to public inspection in my office.

WITNESS my hand and official seal of said City this 5th day of April, 2021.

City Clerk

[SEAL]

**CITY OF GREENVILLE, NORTH CAROLINA
STATEMENT OF TOTAL ESTIMATED INTEREST PURSUANT TO THE
LOCAL GOVERNMENT BOND ACT, AS AMENDED**

I, Byron Hayes, Director of Financial Services of the City of Greenville, North Carolina (the “City”), having been designated by the City Council of the City (the “City Council”) to make and file with the City Clerk a statement of total estimated interest pursuant to The Local Government Bond Act, as amended, DO HEREBY CERTIFY as follows:

1. On April 5, 2021, the City Council introduced a bond order authorizing the issuance by the City of \$1,700,000 General Obligation Refunding Bonds (the “Bonds”).

2. If the Bonds are duly authorized and issued, I have estimated that the total amount of interest to be paid by the City over the expected term of the Bonds to be \$131,938. Such estimate is based on the following assumptions:

(a) The Bonds will be issued on May 11, 2021 in the aggregate principal amount of \$1,635,000.

(b) The Bonds will be sold at a purchase price equal to the par amount thereof.

(c) The Bonds will mature on June 1, \$175,000 2022 to 2024, inclusive, \$170,000 2025, \$165,000 2026 and 2027, \$160,000 2028, \$155,000 2029, \$150,000 2030 and \$145,000 2031.

(d) The Bonds will not be redeemed prior to their stated maturities.

(e) The Bonds will bear interest at a rate of 1.50% per annum. Such interest rate is a fair market estimate of interest rate to be borne by the Bonds and used by the City for planning purposes.

The total estimated amount of interest on the Bonds over the expected term of the Bonds is preliminary and for general purposes only. The City makes no assurances that the assumptions upon which such estimate is based will occur, and the occurrence of certain of such assumption is beyond the control of the City. Differences between the actual circumstances at the time the Bonds are issued and the assumptions set forth above could result in significant differences between the total amount of estimated interest and the total amount of actual interest to be paid on the Bonds if and when issued. The validity of the Bonds is not subject to challenge on the grounds that the actual interest to be paid on the Bonds when issued is different than the total amount of estimated interest on the Bonds set forth above.

Signed this ____ day of April, 2021.

Director of Financial Services

I, Valerie Shiuwegar, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of a statement of total estimated interest which was filed with me at a meeting of the City Council of said City held on April 5, 2021, after the introduction of an order authorizing bonds of said City, and that said statement is open to public inspection in my office.

WITNESS my hand and official seal of said City this 5th day of April, 2021.

City Clerk

[SEAL]



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Contract award to SEPI, Inc. for Construction Engineering and Inspection Services associated with the MetroNet Fiber Installation Project

Explanation: The City recently advertised for construction inspection services associated with the MetroNet project. These services are anticipated to include daily inspections associated with road, sidewalk and ROW repair, adherence to approved traffic control plans, issues management, utility mark-out coordination, and other activities associated with the installation of 1 million feet of underground fiber associated with MetroNet.

The City advertised a Request for Qualifications (RFQ) for construction, engineering and inspection as well as materials testing on January 29, 2021 with a due date of February 18, 2021. Four firms submitted responses to the RFQ. These firms were as follows:

1. SEPI, Inc.
2. ECS Southeast, LLC
3. S&ME, Inc and
4. Gannett Fleming

City staff from the Public Works Department and the City Manager's Office reviewed these submissions based on the following criteria:

- o Completeness of Response to RFQ
- o Applicable Previous Experience of firm or team proposed
- o Qualifications of individuals proposed for the duties, and
- o Project Management Methods or Processes Proposed

The most qualified firm in response to this RFQ was determined to be SEPI, Inc. SEPI, Inc has recently served as the inspection team for the Google Fiber installation within the cities of Durham and Charlotte. These projects were the most similar to the work that will be performed with the City limits.

The scope of services associated with this CEI contract will include:

1. Observing METRONET installation of conduit as part of the fiber installation
2. Verifying that METRONET's installation of fiber conforms with agreements between City and METRONET
3. Standard proctor value on the subgrade
4. In-place density testing on the subgrade in accordance with NCDOT protocols
5. In place density testing on the aggregate base in accordance with NCDOT protocols
6. Monitor sedimentation and erosion control devices and document revisions
7. Monitor traffic control plans for compliance with submitted and approved

- plans
8. Monitor utility conflicts and relocations
 9. Inspect asphalt repair/laydown operations
 10. Inspect sidewalk and ROW repairs are in conformance with City/NCDOT standards as well as COG/METRONET agreements
 11. Maintain project documentation in accordance with minimum City of Greenville and where applicable, NCDOT standards
 12. Provide project closeout.

SEPI Inc. will provide approximately 5,000 hours of construction engineering and inspection services over the duration of the project. SEPI will provide construction technicians, a project manager, and senior engineer as directed by the City, with a not-to-exceed amount of \$521,600.

Fiscal Note: Funds for CEI consultant services associated with the installation of MetroNet fiber have been appropriated.

Recommendation: Staff recommends authorizing a contract for CEI services associated with the MetroNet fiber installation project to SEPI, Inc in the amount not to exceed \$521,600.

ATTACHMENTS

-  [COG-#1144908-v1-COG_Agreement_for_CEI_Services_Metronet_SEPI_V1.pdf](#)
-  [2021 Greenville Fiber Optic Installation CEI Fee and Scope Proposal R4.pdf](#)

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

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



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ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

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

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

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ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

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

THIS IS AN AGREEMENT effective as of _____ , _____ (“Effective Date”) between

City of Greenville, NC (“Owner”) and

SEPI Inc. (“Engineer”).

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

Construction Engineering and Inspection Services to the City of Greenville, NC for a period of 2 years from the effective date of the Agreement for work associated with the installation of fiber as part of the METRONET project, which may be extended for an additional year by the Owner, in its sole discretion.

("Project").

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

Scope of services will include Construction Management; Construction Administration and material verification associated with the METRONET fiber installation project, performed to City of Greenville (COG) standards, and where applicable under or to NCDOT encroachment specifications.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

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

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

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

3.02 *Time for Completion*

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

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its

invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer may be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said forty-fifth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

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

5.02 *Designing to Construction Cost Limit*

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

5.03 *Opinions of Total Project Costs*

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

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer shall employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.

3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.

- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such

expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on

extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Engineer shall deliver certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and

Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.

- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. Suspension:

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

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

1. For cause,

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

failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

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

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

D. Payments Upon Termination:

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

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

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any

assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

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

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to

identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

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

incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
 - 1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 - 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 - 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 - 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.

5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

14. *Engineer* – The individual or entity named as such in this Agreement. For the purpose of this agreement, where "Engineer" is written, it shall mean "Architect".
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.

- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

[NOTE TO USER: If an exhibit is not included, indicate "not included" after the listed exhibit item]

8.02 Total Agreement:

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

8.03 Designated Representatives:

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

8.04 Engineer's Certifications:

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *E-Verify Compliance:*

The Engineer shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Engineer furnishes services, programs or goods to the owner utilizing a subcontract, the Engineer shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The Engineer represents that the Engineer and its subcontractors are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

8.06 *Iran Divestment Act Certification:*

The Engineer hereby certifies that, it is not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. The Engineer shall not utilize in the performance of the Agreement any subcontractor that is identified on the Iran Final Divestment List.

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

Owner:
City of Greenville

Engineer:
SEPI Inc.

Signature: _____

Signature
: _____

By: _____

By: _____

Title: Mayor

Title: Sr. Vice President , CEI Director

Date _____

Date _____

Signed: _____

Signed: _____

Engineer License or Firm's
Certificate No. _____

State of: North Carolina

Address for giving notices:

Address for giving notices:

1500 Beatty Street

Greenville, NC

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Kevin Mulligan

Neil Lassiter

Title: Public Works Director

Title: Sr. Vice President , CEI Director

Phone Number: 252-329-4520

Phone Number: 919-747-5840

Facsimile
Number: _____

Facsimile Number: _____

E-Mail Address: kmulligan@greenvillenc.gov

E-Mail Address: nlassiter@sepiinc.com

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, CPA, Director of Financial Services

Various accounts utilized based on projects

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

Engineer's Services

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

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

PART 1 – BASIC SERVICES

- A 1.01 This contract is for inspection services for two years from the effective date of the agreement. The Owner, in its sole discretion, may extend this period for an additional year by providing notice of the extension to the Engineer in writing. The Engineer shall provide all or some of the basic services as set forth below when directed by task order:

Scope of services will include Construction management; Construction administration and Material verification associated with this project, performed to City of Greenville (COG) standards, and where applicable under or to NCDOT encroachment specifications.

This will include, at a minimum, the following:

- Observing METRONET installation of conduit as part of the fiber installation
- Verifying that METRONET's installation of fiber conforms with agreements between City and METRONET
- Standard proctor value on the subgrade
- In-place density testing on the subgrade in accordance with NCDOT protocols
- In place density testing on the aggregate base in accordance with NCDOT protocols
- Monitor sedimentation and erosion control devices and document revisions
- Monitor traffic control plans for compliance with submitted and approved plans
- Monitor utility conflicts and relocations
- Inspect asphalt repair/laydown operations
- Inspect sidewalk and ROW repairs are in conformance with City/NCDOT standards as well as COG/METRONET agreements
- Maintain project documentation in accordance with minimum City of Greenville and where applicable, NCDOT standards
- Provide project closeout.

Engineer's personnel are to have all equipment necessary to conduct their work in their possession at all times. All equipment should be well maintained, recently calibrated, and in good working order. Engineer will provide appropriate vehicle for requirements of project. Engineer will provide reliable computer with WIFI capability. Engineer's construction technician shall inspect construction phases for roadway/structure construction projects under the supervision of the construction project manager, or other supervisory personnel.

Engineer's construction technician shall act and make decisions independently for routine project issues and to foster partnering relationships with the City, contractors, general public, or other project stakeholders.

Engineer's construction technician will monitor the work of METRONET contractors to ensure quality control and contractor compliance of moderate complexity. The inspector should be flexible in his responsibilities and will use the direction of the Project Manager and COG to incorporate plan changes and/or non-conformance of the contractor.

Engineer's construction technician shall maintain daily work diaries and other project documentation. Engineer's construction Project Manager's function shall be to manage the assigned elements of the construction project to assure quality of the contractor's compliance with the approved plans and contract documents. Where needed, Engineer may conduct preconstruction meetings, conduct weekly progress meetings, prepare reports, manage project personnel staffing, project inspection, and contract administration.

A1.02 General Administration

- a) Project construction administration will be directed by the COG
- b) Engineer shall take direction from COG on schedule
- c) Engineer shall coordinate necessary contractor communications with COG Inspection Project Manager
- d) Engineer shall invoice time based upon time on the project and performing duties associated with COG project.
- e) Engineer will observe and inspect project per project contract, plans, permits, COG and where applicable, NCDOT Standards and Specifications.

A1.03 Project Quantities

- a) Engineer will follow design plans (and any field plan revisions) to monitor routing and where necessary calculate quantities and document material received in accordance with City of Greenville standard practices.
 - b) Project Special Provisions – Engineer will observe and interpret the project special provisions for this project using the most current revisions in the contract document.
 - c) Engineering Review – Engineer will review contractor field installation procedures.
 - d) Permit Review – COG will review and approve METRONET permit applications for fiber optic cable installation. Engineer will familiarize themselves with approved permit applications so that they are adhered to during METRONET fiber/conduit installations.
- Construction Engineering and Inspection Services:

A1.04 Daily Inspection

- a) Engineer will observe daily operations of METRONET per City standards and specifications.
- b) Engineer shall document daily operations of METRONET per COG standards and specifications, and in accordance to the NCDOT Construction Manual with the approved daily report form. All needed forms will be identified prior to project to ensure correct documentation is used.

- c) Materials Received – Engineer will record all material received per NCDOT standards specifications and in accordance to the NCDOT Construction Manual, unless otherwise noted.
- d) Maintain Pay Record Book – Engineer will record and document any pay items per COG and NCDOT standards, specifications, and the NCDOT Construction Manual, unless otherwise noted.
- e) Subgrade Evaluation – Engineer will observe and inspect subgrade operations, including density tests.
- f) Material Testing - where appropriate and identified by scope/City, Engineer will provide field testing per City/NCDOT standards and specifications and within frequencies specified in the NCDOT Minimum Sampling Guide. All testing technicians assigned to this project shall be certified by NCDOT.

A1.05 QA/QC process

- a) Engineer’s Project Manager will conduct project inspections to ensure compliance and quality of work.
- b) On-Site PM Review - This will be done as needed for a documentation review
- c) Coordination with job progress will be part of the QC process.
- d) Weekly Progress Meetings will be held with COG, METRONET, and other stakeholders.

2. Other City Services:

City, through its City Manager, Assistant City Manager, Director of Public Works may authorize the consultant to perform such selected services on an as needed basis.

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

Owner's Responsibilities

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

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

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

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

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

limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

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

(Exhibit B – Owner’s Responsibilities)

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

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-2: Negotiated Lump Sum

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

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation For Basic Services – negotiated lump sum for each task order

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

- ~~1. A negotiated lump sum for each task order issued to the Engineer.~~
- ~~2. In no event shall total compensation for services under Paragraph C2.01 be greater than \$750,000 without going to City Council for an increase in authorization level, based on the following estimated distribution of compensation:~~
 - ~~a. Study and Report Phase _____ \$ _____~~
 - ~~b. Preliminary Design Phase _____ \$ _____~~
 - ~~c. Final Design Phase _____ \$ _____~~
 - ~~d. Bidding or Negotiating Phase _____ \$ _____~~
 - ~~e. Construction Phase _____ \$ _____~~
 - ~~f. Post Construction Phase _____ \$ _____~~
- ~~3. Engineer may alter the distribution of compensation between individual phases of the work noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by Owner. See also C2.03.C2 below.~~
- ~~4. The total estimated compensation for Engineer’s services included in the breakdown by phases as noted in Paragraph C2.01.A3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer’s Consultants’ charges.~~
5. The amounts billed for Engineer’s services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of

Engineer's employees times Standard Hourly Rates for each applicable billings class, plus Reimbursable Expenses and Engineer's Consultants' charges.

Standard Hourly Rates

Position Class	Rate (\$/hour)
Project Manager	\$140
Sr Project Engineer	\$200
Resident Project Inspector III	\$100
Resident Project Inspector I	\$80

~~6. The Standard Hourly Rates and Reimbursable Expenses Schedule will be adjusted annually (as of _____) to reflect equitable changes in the compensation payable to Engineer.~~

~~C2.02 Compensation For Reimbursable Expenses~~

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

~~C2.03 Other Provisions Concerning Payment~~

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

~~G. Estimated Compensation Amounts:~~

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

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

This is ~~EXHIBIT D~~, consisting of _____ pages, referred to in and part of the ~~Agreement between Owner and Engineer for Professional Services~~ dated _____, _____.

~~[Note to User: Delete this Exhibit D if Engineer will not be providing Resident Project Representative Services under Paragraph A1.05.A.2]~~

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

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

~~D1.01 Resident Project Representative~~

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

~~4. *Liaison:*~~

- ~~a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.~~
- ~~b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.~~
- ~~c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.~~

~~5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.~~

~~6. *Shop Drawings and Samples:*~~

- ~~a. Record date of receipt of Samples and approved Shop Drawings.~~
- ~~b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.~~
- ~~c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.~~

~~7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.~~

~~8. *Review of Work and Rejection of Defective Work:*~~

- ~~a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.~~
- ~~b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.~~

~~9. *Inspections, Tests, and System Start-ups:*~~

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

~~10. Records:~~

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

~~11. Reports:~~

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

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

L. ~~Resident Project Representative shall not:~~

1. ~~Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or equal" items).~~
2. ~~Exceed limitations of Engineer's authority as set forth in this Agreement.~~
3. ~~Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.~~
4. ~~Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.~~
5. ~~Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.~~
6. ~~Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.~~

- ~~7. Accept shop drawing or sample submittals from anyone other than Contractor.~~
- ~~8. Authorize Owner to occupy the Project in whole or in part.~~

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

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

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

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

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

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

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

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

~~F5.02 — *Designing to Construction Cost Limit*~~

- ~~A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$_____.~~
- ~~B. A bidding or negotiating contingency of _____ percent will be added to any Construction Cost limit established.~~
- ~~C. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.~~
- ~~D. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.~~
- ~~E. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.~~
- ~~F. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit. Owner shall pay Engineer's cost to provide such modification services, including the costs of the services of its Consultants, all overhead expenses reasonably related thereto, and Reimbursable Expenses, but without profit to Engineer on account of such services. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.~~

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

Insurance

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

G6.04 *Insurance*

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

1. By Engineer:

- | | |
|---------------------------------------------------------|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | <u>\$1,000,000</u> |
| 2) Disease, Policy Limit: | <u>\$1,000,000</u> |
| 3) Disease, Each Employee: | <u>\$1,000,000</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$2,000,000</u> |

The aggregate limit must apply per project. The form of coverage must be the ISO CG 00 01 policy as approved by the State of North Carolina Department of Insurance. If a form of coverage other than the CG 00 01 is used, it must be approved by the City. Any endorsed exclusions or limitations from the standard policy must be clearly stated in writing and attached to the Certificate of Insurance. Completed Operations coverage must be maintained for the period of the applicable statute of limitations.

- | | |
|----------------------------------------------------|--------------------|
| d. Professional Liability – | |
| 1) Each Claim Made | <u>\$1,000,000</u> |
| 2) Annual Aggregate | <u>\$2,000,000</u> |
| e. Commercial Automotive Liability (if applicable) | <u>\$1,000,000</u> |

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

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:
 - a. _____
Engineer
 - b. _____
Engineer's Consultant
 - c. _____
Engineer's Consultant
2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

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

Dispute Resolution

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

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

~~H6.08 Dispute Resolution~~

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

~~[or]~~

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

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

~~are not subject to arbitration under this paragraph may be resolved in any court of competent jurisdiction.~~

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

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

Limitations of Liability

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

A. Limitation of Engineer's Liability

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

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

[or]

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

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

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

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

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

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

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

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

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

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

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

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

- A. ~~B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner’s officers, directors, members, partners, agents, employees, consultants,~~

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

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

Special Provisions

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

E-Verify Affidavit

STATE OF NORTH CAROLINA

AFFIDAVIT

CITY OF GREENVILLE

I, _____ (the individual attesting below), being duly authorized by and on behalf of _____ (the entity bidding on project hereinafter "Employer") after first being duly sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This ___ day of _____, 20__.

Signature of Affiant

Print or Type Name: _____

State of North Carolina City of _____

Signed and sworn to (or affirmed) before me, this the _____

day of _____, 20__.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

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

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

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

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

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

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

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

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date
Signed: _____

Date Signed: _____

RALEIGH

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Suite 600
Raleigh, NC 27603
O: 919.789.9977
F: 919.789.9591

CHARLOTTE

11020 David Taylor Dr
Suite 300
Charlotte, NC 28262
O: 704.714.4880
F: 704.714.4885

WILMINGTON

5030 New Centre Dr
Suite B
Wilmington, NC 28403
O: 910.523.5715
F: 910.523.5716

CHARLESTON

460 King St
Suite 200
Charleston, SC 29403
O: 843.804.8486
F: 843.203.9049

BEAUFORT

2015 Boundary St
Suite 233
Beaufort, SC 29902
O: 843.929.6854

March 26, 2021

Kevin Mulligan, PE
Public Works Director
City of Greenville
Greenville, NC 27858

Subject: **City of Greenville – Fiber Optic Installation - Construction Engineering and Inspection Services**

Dear Mr. Mulligan,

SEPI Engineering & Construction, Inc. (SEPI) is pleased to provide the City of Greenville with a scope and fee proposal for Professional Construction Engineering and Inspection Services for the **Installation of Fiber Optic Services** throughout the City. This estimate is based upon our understanding of the project information and scope of work as provided by City of Greenville Public Works Staff.

SEPI offers our clients a wide spectrum of services and we pride ourselves on being a full-service civil engineering and construction management firm with a 19-year history of providing professional engineering consulting services throughout North Carolina and the southeastern United States. Our services include site/civil engineering; land planning; surveying; environmental; planning; roadway design; traffic engineering; water resources; environmental remediation; construction engineering and inspection; and operations and maintenance. Our multi-disciplined structure enables SEPI to provide full consulting services for every step of a project from inception to implementation. SEPI is a certified Women’s Business Enterprise (WBE) in North Carolina, South Carolina, and Florida. Our corporate office is located in Raleigh, with branch offices located in Wilmington, Charlotte, Charleston SC, and Beaufort SC.

Scope and Fee

Our scope of services includes your potential desire to have all construction management; construction administration; material verification associated with this project, performed to minimum City of Greenville standards, and where applicable under NCDOT encroachment specifications. The scope of this project would include the following:

- * Standard proctor value on the subgrade
- * In place density testing on the subgrade in accordance with NCDOT protocols



- * In place density testing on the aggregate base in accordance with NCDOT protocols
- * Monitor sedimentation and erosion control devices and document revisions
- * Monitor traffic control plans for compliance
- * Monitor utility conflicts and relocations
- * Inspect asphalt repair/laydown operations
- * Maintain project documentation in accordance with minimum City of Greenville and where applicable, NCDOT standards
- * Provide project closeout.

SEPI construction technicians will have all equipment necessary to conduct their work in their possession at all times. All equipment will be well maintained, recently calibrated, and in good working order. SEPI will provide appropriate vehicle for requirements of project. SEPI will provide reliable computer with WIFI capability.

The Construction Technician has the ability to inspect construction phases for roadway/structure construction projects under the supervision of the construction project manager, or other supervisory personnel. The work by the Construction Technician is predicated upon the requirement to act and make decisions independently for routine project issues and to foster partnering relationships with the **City of Greenville**, contractors, the general public, or other project stakeholders. The Construction Technician will monitor the work of contractors to ensure quality control and contractor compliance of moderate complexity. The inspector will be flexible in his responsibilities and will use the direction of the engineer to incorporate plan changes and/or non-conformance of the contractor. This technician also maintains diaries and other project documentation.

The SEPI Construction Manager's function is to manage the assigned elements of a construction project to assure quality of the contractor's compliance with the plans and contract documents, conduct preconstruction meetings, conduct weekly progress meetings, prepare reports, manage project personnel staffing, project inspection, and contract administration.

The fees noted below include travel time and management/coordination/administration. Any direct expenses required beyond those considered customary will be reviewed with the **City of Greenville** for approval prior to expense.

Introduction:

SEPI Engineering & Construction (SEPI) will be assisting the **City of Greenville** on Construction Engineering and Inspection and Construction inspection services for the subject project.



Description of Work Required:

Based upon information provided by the **City of Greenville**, construction technicians are needed for the **inspection of the installation of fiber optic cable throughout the City of Greenville, NC.** Scope of work will include compaction testing of asphalt repair; monitoring sedimentation and erosion control devices; monitoring traffic control; monitor utility conflicts and relocations; inspection of asphalt repair/laydown; and closeout as needed for this project in accordance to minimum **City of Greenville** standards.

Project Administration:

- 1.1 General Administration
- 1.2 Project construction administration will be directed by the **City of Greenville (COG)**
- 1.3 SEPI will take direction from **COG** on schedule
- 1.4 SEPI will coordinate all contractor communications with **COG** Project Manager
- 1.5 SEPI fee is based upon on an average 48 hours/week. Actual time invoiced will be based upon time on the project and performing duties associated with **COG** project.
- 1.6 SEPI will observe and inspect project per project contract, plans, permits, **City of Greenville**, and where applicable NCDOT Standards and Specifications.

General Design:

- 2.1 Project Materials - SEPI will follow design plans (and any field plan revisions) to document material received in accordance with **City of Greenville** standard practices and will be based upon the latest version of the Project Special Provisions.
- 2.2 Project Special Provisions - SEPI will observe and interpret the project special provisions for this project using the most current revisions in the contract document.
- 2.3 Engineering Review – SEPI will review contractor field installation procedures.
- 2.4 Permit Review – SEPI will review and process contractor permit applications for fiber optic cable installation.

Construction Engineering and Inspection Services:

- 3.1 Daily Inspection - SEPI will observe daily operations of contractor per **City of Greenville** standards and specifications.
- 3.2 Project Diaries - SEPI will document daily operations of contractor per **City of Greenville** standards and specifications, and in accordance to the NCDOT Construction Manual with the approved daily report form. All needed forms will be identified prior to project to ensure correct documentation is used.
- 3.3 Materials Received - SEPI will record all material received per NCDOT standards specifications and in accordance to the NCDOT Construction Manual, unless otherwise noted.



3.4 Subgrade Evaluation - SEPI will observe and inspect subgrade operations for areas that are being repaired, including density tests.

3.5 Material Testing - where appropriate and identified by scope, SEPI will provide field testing per NCDOT standards and specifications and within frequencies specified in the NCDOT Minimum Sampling Guide. All testing technicians assigned to this project will be certified by NCDOT.

QA/QC:

4.1 As part of SEPI's QA/QC process, SEPI's Project Manager will conduct project inspections to ensure compliance and quality of work.

4.2 On-Site PM Review - This will be done as needed for a documentation review

4.3 Coordination with job progress will be part of the QC process.

4.4 Weekly Progress Meetings will be held with **COG**, contractor, and other stakeholders.

Project Schedule:

5.1 SEPI will coordinate the monitoring of work associated with this project when the scope and fee is approved by **COG**.

Exclusions:

6.1 If additional services are needed, this will be further negotiated.

Invoicing:

7.1 SEPI will send invoices monthly.

Estimate

Scope of work will include compaction testing of asphalt surfacing and repair; observation of utility installation; sedimentation and erosion control; daily reporting; and project closeout.

Construction Technician(s) – 4960 hours; Project Manager – 480 hours; Senior Project Engineer – 80 hours.

Total Cost with labor and directs - \$521,600

Construction technician time is based on one full time (1) Inspector III and two (2) Inspector I part time; for a twelve (12) month construction/closeout period.





Statement of Firm Being on Register.

SEPI is properly registered with the North Carolina Board of Registration for Professional Engineers and Land Surveys and carries the requested professional liability insurance coverage.

We have the financial capacity to undertake this assignment and have the accounting system to identify project costs accurately.

STATEMENT OF FIRM BEING ON REGISTER

SEPI is properly registered with the North Carolina Board of Registration for Professional Engineers and Land Surveys and carries the requested professional liability insurance coverage.

We have the financial capacity to undertake this assignment and have the accounting system to identify project costs accurately.

DATE OF MOST RECENT PRE-QUALIFICATION

SEPI has obtained its NCDOT Prequalification through 7/31/2021. The SEPI Team will comply with all applicable federal, state, and local regulations regarding equal employment opportunity.

SEPI maintains Workers Compensation Insurance and General Liability Insurance coverage of \$2,000,000 for our Firm. Upon receipt of a Notice of Intent to Award (NIA) and/or Notice of Award, our team can provide Certificates of Insurance.

CONFIDENTIALITY

This proposal was prepared by SEPI solely for your internal use in evaluating SEPI's services. SEPI considers the pricing technical and business information containing in this estimate to be proprietary and confidential. This proposal and the information contained herein shall not be used for any purpose other as specifically stated above and shall not be disclosed to any other party without SEPI's prior written consent.

Sincerely,

C. E. "Neil" Lassiter, PE
Senior Vice-President – CEI Director



The return of this executed document will serve as the Notice to Proceed.

Accepted By:

Print: _____

Signature: _____

Date: _____





City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Contract Award to IMEC Group LLC for the Construction of Improvements to the Eppes Recreation Center

Explanation: The Recreation & Parks Department is seeking to award a construction contract for capital renovations to the Eppes Recreation Center located at 400 Nash Street. The design of this project, led by HH Architecture, began November 10, 2020. The primary scope of work will include the addition of a teen lounge and significant improvements to the front entrance. The following is a brief description of each component:

Teen Lounge: The teen lounge will provide youth in the community a secure place to play video/board games and socialize with friends. The setup of the lounge will be similar to that of the South Greenville Recreation Center.

Improvements to the Front Entrance: The improvements to the front entrance, located on the Nash Street side of the facility, are intended to ensure security of the facility and assist staff in providing quality customer service. Currently there are several entrances to the center without a true front entrance. With this improvement, all visitors and staff will enter the facility and be greeted by an Eppes Recreation Center employee. This is similar to the current procedure at the South Greenville Recreation Center, which has been very successful. The front entrance improvements will enhance the interior and exterior aesthetics of the facility and provide a more customer service oriented experience for visitors.

The scope of the project will also include the following improvements:

- Installation of HVAC in the Eppes Alumni Cultural and Heritage Center, as well as the Police Athletic League classrooms
- Other aesthetic improvements to the Eppes Alumni Cultural and Heritage Center
- Exterior improvements to the south side of the recreation center
- ADA accessibility

An Advertisement for Bids was published on March 1, and bids were due March 25. The lowest responsible, responsive bidder was IMEC Group LLC with a base bid of \$1,121,500 and the Alternate 1 bid was \$10,000.

Other submitted bids are as follows:

Berry Building Group - base bid: \$1,159,500 and Alternate 1 bid: \$2,400
Team NC Construction - base bid: \$1,249,000 and Alternate 1 bid: \$11,000
Muter Construction - base bid: \$1,250,000 and Alternate 1 bid: \$9,500
A.R. Chesson Construction - base bid: \$1,469,783 and Alternate 1 bid: \$6,513

Construction is planned to begin in May and conclude in the fall of 2021.

Fiscal Note: The amount of the construction contract shall not exceed \$1,131,500, and includes Liquidated Damages if construction target dates are not met. Funding to finance the improvements was included in the Council Adopted Fiscal Year 2020-21 City Budget.

Recommendation: Staff recommends City Council award the construction contract for improvements to the Eppes Recreation Center to IMEC Group LLC in the amount of \$1,131,500.

ATTACHMENTS

-  [1145090 - _Contract_ - _Eppes_Rec._Center_ - _1_ - _COG \(1\) - 1 - COG.DOCX](#)
-  [20-072 Eppes Rec Center_Low Bidder Recommendation Letter and Attachments.pdf](#)

AIA[®] Document A101[™] - 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the _____ day of April in the year Two Thousand Twenty One

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

BETWEEN the Owner:

(Name, legal status, address and other information)

City of Greenville
Recreation and Parks
P.O. Box 7207
Greenville, NC 27835

and the Contractor:

(Name, legal status, address and other information)

IMEC Group, LLC
1299 D Parkway Drive
Goldsboro, NC 27534

for the following Project:

(Name, location and detailed description)

Eppes Recreation Center Addition and Renovations
400 Nash Street
Greenville, NC 27834

The Architect:

(Name, legal status, address and other information)

HH Architecture
1100 Dresser Ct.
Raleigh, NC 27609

The Owner and Contractor 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.

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

The parties should complete A101[™]-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201[™]-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ELECTRONIC COPYING of any portion of this AIA[®] Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[X] Not later than one hundred eighty two (182) calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be One Million One Hundred Thirty-One and Five Hundred Dollars (\$ 1,131,500.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
A. Preferred Alternate No. A: Indicate cost increase to provide and install owner-preferred lock cylinder hardware as selected by a single-source manufacturer. The product provided must be a <i>TBD</i> lock cylinder meeting the requirements of the specifications Division 8 "Door Hardware." 1. Alternate: In lieu of the base bid, lock cylinders by <i>BEST</i> .	\$0
B. Add Alternate No. 1: Replace downspouts on East and South side of existing Building. 1. Remove existing downspouts on East and South side of existing building. Replace with prefinished round Aluminum downspouts to match existing size.	\$10,000.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
A. Allowance No. 1: Unit-Cost Allowance for unsuitable soils removal. 1. Provide in the base bid an allowance of 110 CY of unsuitable soil removal.	\$24.00 per CY

2. Changes to the Contract Price shall be made be Unit Prices contained in the Form of Proposal.
- B. Allowance No. 2: Unit-Cost Allowance for structural soil fill.** \$35.00 per CY
1. Provide in the base bid an allowance of 110 CY of structural soil fill.
 2. Changes to the Contract Price shall be made per the Unit Prices contained in the Form of Proposal.
- C. Allowance No. 3: Lump-Sum Allowance: Include the sum of \$50,000 for the Lobby History Exhibit and graphic image on exterior perforated metal fins at east side of addition** \$50,000.00
1. This allowance includes material, receiving, handling, and installation costs, and Contractor overhead and profit.

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
A. Unit Price No. 1: Removal of unsatisfactory soil.	CY	\$24.00
1. Description: Unsatisfactory soil excavation and disposal off-site and replacement with satisfactory fill material or engineered fill from off-site, as required, according to Section 312000 "Earth Moving."		
2. Unit of Measurement: Cubic yard of soil excavated, based on in-place surveys of volume before and after removal.		
3. Quantity Allowance: Coordinate unit price with allowance adjustment requirements in Section 012100 "Allowances."		
B. Unit Price No. 2: Provide structural soil fill.	CY	\$35.00
1. Description: Replacement from unsatisfactory soil excavation with satisfactory fill material or engineered fill from off-site, as required, according to Section 312000 "Earth Moving."		
2. Unit of Measurement: Cubic yard of soil excavated, based on in-place surveys of volume before and after removal.		
3. Quantity Allowance: Coordinate unit price with allowance adjustment requirements in Section 012100 "Allowances."		

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

\$1000 a day

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

<< >>

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

<< >>

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the **Twenty Fifth** day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the **Twenty Fifth** day of the **following** month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (**30**) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

2.5%

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

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<< >>
<< >>
<< >>

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other (Specify)

<< >>

If the Owner and Contractor 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, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

<< >>

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

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<< >>
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§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

<>
<>
<>
<>
<>
<>

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

<>

§ 8.7 Other provisions:

<>

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

<>

- .5 Drawings

Drawings titled “Eppes Recreation Center Addition and Renovations” and dated March 1, 2021. The Drawing Index is shown on G001 sheet of this set.

- .6 Specifications

Specifications titled “Project Manual Volumes 1 & 2 for the Eppes Recreation Center Addition and Renovations” dated March 1, 2021. Included in the Specifications is a Table of Contents listing all sections.

.7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	March 11, 2021	
Addendum No. 2	March 18, 2021	
Addendum No. 3	March 18, 2021	

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

1. E-verify and Iran Divestment Certification
2. Insurance and Bonds Addendum

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

ATTEST:

CITY OF GREENVILLE

Valerie Shiuwegar
Clerk

P.J. Connelly
Mayor

**NORTH CAROLINA ACKNOWLEDGEMENT BY CITY OF GREENVILLE
PITT COUNTY**

I _____, a Notary Public in and for the aforesaid County and State, do hereby certify that Valerie Shiuwegar personally appeared before me this day and acknowledged that she is Clerk of CITY OF GREENVILLE, a North Carolina municipal corporation, and that by authority duly given and as the act of the CITY OF GREENVILLE, the foregoing instrument was signed in its corporate name by its Mayor, sealed with its corporate seal, and attested by herself as Clerk.

Witness my hand and Notarial Seal, this the _____ day of _____, 20_____.

My Commission expires: _____

Notary Public

(Official Seal)

[CONTRACTOR]

BY: _____

PRINTED NAME: _____

TITLE: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

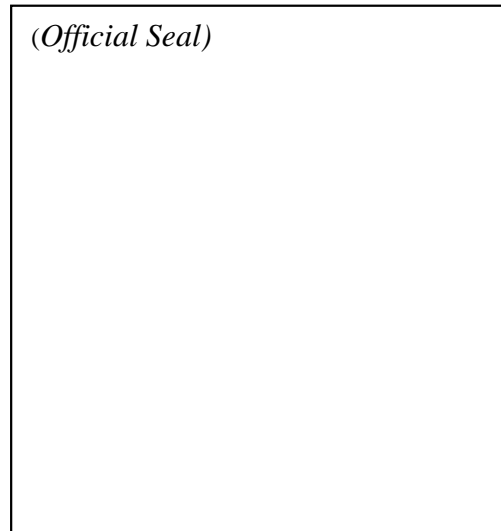
I certify that the following person personally appeared before me this day, acknowledging to me that he signed the foregoing document for the purpose(s) stated therein, in the capacity indicated therein: _____.

Date: _____

Signature of Notary Public

Notary's printed or typed name

My commission expires: _____



Notary seal or stamp must appear within this box.

APPROVED AS TO FORM:

BY: _____
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.

_____ Date _____
Byron Hayes, Director of Financial Services

Account Number _____

Project Code
(if applicable) _____



HH ARCHITECTURE

March 30, 2021

Mike Watson
Parks Coordinator
Greenville Recreation and Parks Department
2000 Cedar Lane | PO Box 7207
Greenville, NC 27835

Re: **Eppes Recreation Center Addition & Renovations**
City of Greenville
Greenville Recreation and Parks Department
HH #20-072

Dear Mike:

This letter is to recommend that the above referenced project be awarded to:

IMEC Group, LLC
1299 D Parkway Drive
Goldsboro, NC 27534
License #: 72860

The basis of this award is the compilation of the base bid amount plus accepted alternates as follows.

Base Bid	\$1,121,500.00
Alternate #1	\$ 10,000.00
Preferred Alternate A	\$ 0,000.00
Total	\$1,131,500.00

Budget Summary:

Estimated Construction Cost	\$1,000,000.00
Total Bid Amount	\$1,131,500.00
Amount Over Budget	\$131,500.00

The project scope consists of a new main entrance addition that includes ADA accessibility and a lobby area with security measures incorporated. Additionally, the project includes renovations to create a new teen room in the northwest corner of the building and a new HVAC in the south wing of the building, including new ceilings and lighting. Display of historical items from the original C.M. Eppes High School Alumni Association collection is a part of the project.

The project bid alternates include the following:

- Preferred Alternate No. A: In lieu of the base bid, lock cylinders by *BEST*.
- Alternate No. 1: Replace downspouts on east and south side of existing building

Single Prime bids were received on Thursday, March 26, 2021 at 2:00 PM at the Greenville Recreation and Parks Department, 2000 Cedar Lane, Greenville, NC 27835. Five (5) general contractors submitted bids.

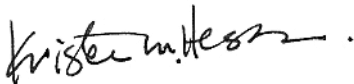
Prior to the bid opening, the following occurred:

- The time was declared 2:00 PM and bidding declared closed.
- The question was asked: "Have bidders present received all addenda?" All had received the three (3) issued addenda.
- The question was asked: "Was anyone denied the right to bid?" No one was denied the right to bid.
- The question was asked: "Are there any objections to proceeding with the bid opening at this time?" There were no objections.

The bids were read aloud including name of bidder, license number, bid security, base bid and all alternates. It was announced that no decision on the low bidder would be given at that time.

Please see attached Certified Bid Tabulation for the results of the bid opening.

Sincerely,



Kristen M. Hess, AIA, LEED AP
Principal

Attachments:

- Three (3) original Certified Bid Tabulations
- Form of Proposal from IMEC Group, LLC
- HUB Certified and Minority Business Participation forms and Affidavits from IMEC Group, LLC

Cc: Don Octigan, Greenville Recreation and Parks Department
Dean Foy, Greenville Recreation and Parks Department
Denisha Harris, Greenville Recreation and Parks Department

BID TAB

For Bids Received: March 25, 2021 at 2:00 pm

Job Title: **Eppes Recreation Center Addition and Renovations**
Greenville Recreation and Parks

HH ARCHITECTURE

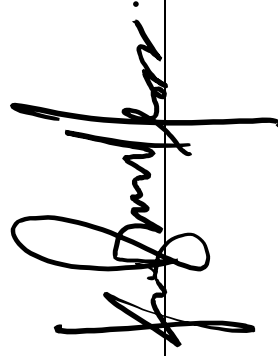
1100 DRESSER COURT RALEIGH, NC 27609
919 828-2301 TEL 919 828-2303 FAX HH-ARCH.COM

HH #: 20-072

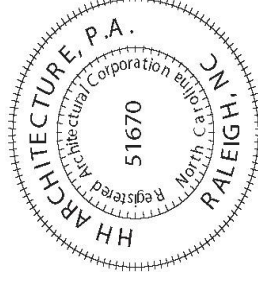
General Contractors		Base Bid	Alternate 1	Preferred Alternate A	5% Bid Bond	MBE	Addenda Received	Signed
Team NC Construction		\$1,249,000	\$11,000	\$0	Yes	Yes	Yes	Yes
License #	75093							
Muter Construction		\$1,250,000	\$9,500	\$0	Yes	Yes	Yes	Yes
License #	73095							
Berry Building Group		\$1,159,500	\$2,400	\$0	Yes	Yes	Yes	Yes
License #	81204							
IMEC Group		\$1,121,500	\$10,000	\$0	Yes	Yes	Yes	Yes
License #	72860							
A. R. Chesson Construction		\$1,469,783	\$6,513	\$0	Yes	Yes	Yes	Yes
License #	13540							

Alternate 1 New Downspouts East and South Side of Existing Building
Preferred Best Lock Cylinders
Alternate A

I certify that the above is a true and accurate tabulation of the bids received on March 25, 2021.



Kristen M. Hess, AIA



BID TAB

HH ARCHITECTURE

1100 DRESSER COURT RALEIGH, NC 27609
919 828-2301 TEL 919 828-2303 FAX HH-ARCH.COM

For Bids Received: March 25, 2021 at 2:00 pm

Job Title: **Eppes Recreation Center Addition and Renovations**
Greenville Recreation and Parks

HH #: 20-072

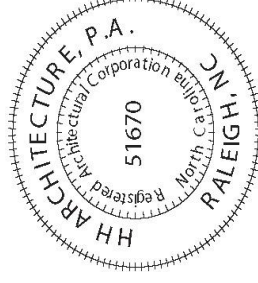
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Alternate 1 New Downspouts East and South Side of Existing Building
Preferred Best Lock Cylinders
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Kristen M. Hess, AIA



BID TAB

For Bids Received: March 25, 2021 at 2:00 pm
 Job Title: **Eppes Recreation Center Addition and Renovations**
 Greenville Recreation and Parks
 HH #: 20-072

HH ARCHITECTURE

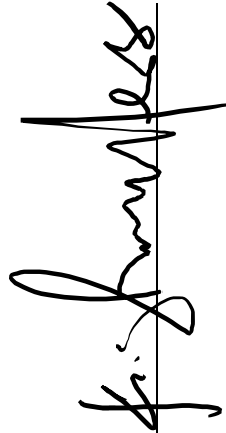
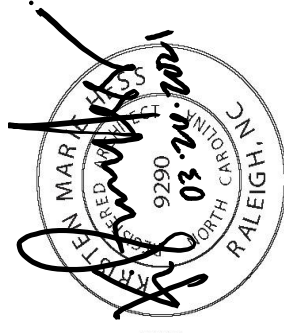
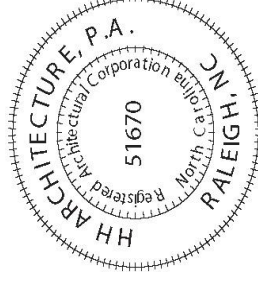
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IMEC Group		\$1,121,500	\$10,000	\$0	Yes	Yes	Yes	Yes
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License #	13540							

Alternate 1 New Downspouts East and South Side of Existing Building
 Preferred Best Lock Cylinders
 Alternate A

I certify that the above is a true and accurate tabulation of the bids received on March 25, 2021.

Kristen M. Hess, AIA

(USE THIS FORM ONLY)

SUBMIT PROPOSALS IN CARE OF:

Recreation and Parks Department
City of Greenville
2000 Cedar Lane
Greenville, NC 27858
(252) 329-4242

BIDDER'S FIRM NAME IMEC Group LLC

DATE: 03/25/21

PROPOSAL: Eppes Recreation Center Addition and Renovation

The Undersigned, as Bidder, hereby declares that only person or persons interested in this proposal as principals or principals is or are named herein and that no other persons than herein mentioned has any interest in this proposal or in the contract to be entered, that this proposal is made without connection with any other person, company or parties making a bid or proposal; and that it is in all respect fair and in good faith without collusion or fraud.

The bidder further declares that he has examined the site of the work and informed himself fully in regard to all conditions pertaining to the place where the work is to be done; that he has examined the specifications for the work and the contract documents relative thereto, and has read all special provisions furnished prior to the opening of bids, that he has satisfied himself relative to the work to be performed.

Materials to be furnished shall be in compliance with standard specifications and special provisions. CONTRACTOR'S responsibility shall continue uninterrupted until expiration of the warranty period as stated in the specifications after completion of the work. The owner (City of Greenville) reserves the right to select any or all of the alternates and to increase or decrease the total contract amount utilizing the unit prices supplied by the CONTRACTOR in the bid form.

The Bidder agrees, if his proposal is accepted, to contract with the City of Greenville, 101 City Hall Plaza, Greenville, NC 27701, in the form of contract specified, to furnish all necessary materials, equipment, machinery, tools, apparatus, means of transportation, and labor necessary to complete within the time allotted as specified, the General Construction work on the Owner's property, in complete accordance with the Plans, Specifications, and Contract Documents bearing the title **Eppes Recreation Center Addition and Renovations**, with a definite understanding that no money will be allowed for extra work except as set forth in the Contract Documents for the sums as follows:

Base Bid:

(\$ 1,121,500.⁰⁰/₁₀₀) One million, One hundred twenty one thousand five hundred dollars

ADDENDA

The following addenda are acknowledged as having been received and noted, the provisions for which are included in the proposal(s). Failure to acknowledge receipt of any addenda will subject the bidder to disqualification. CONTRACTOR to sign.

Addendum No. 1: 3/11/21 [Signature]
Addendum No. 2: 3/18/21 [Signature]
Addendum No. 3: 3/18/21 [Signature]

ALTERNATES

Should any of the alternates as described in the contract documents be accepted, the amount written below shall be the amount to be "added to" the base bid.

Preferred Alternate A: Best Lock Cylinders

-0-

Add Alternate No. 1: Replace Downspouts on East and South Sides of Existing Building

Ten thousand dollars ⁰⁰/₁₀₀ \$10,000.00

UNIT PRICES

Unit prices quoted and accepted shall apply throughout the life of the contract, except as otherwise specifically noted. Unit prices shall be applied, as appropriate, to compute the total value of changes in the base bid quantity of the work all in accordance with the contract documents.

GENERAL CONTRACT:

No. 1	<u>Removal of unsatisfactory soil</u>	<u>CY</u>	Unit Price (\$)	<u>24.00</u>
No. 2	<u>Provide Structural Soil Fill</u>	<u>CY</u>	Unit Price (\$)	<u>35.00</u>

REQUIRED FORMS

The following forms have been completed by the CONTRACTOR and are attached hereto. CONTRACTOR to sign.

MBE / WBE Form(s):

Refer to the Instructions section found on page 3 of the MBE / WBE Forms in the Project Manual.

Bid Bond for City of Greenville:

Refer to the Bid Bond forms found in the Project Manual. *Use these forms only.*

Respectfully submitted this 25th day of March, 2021.

Signature: 

Title: Project Manager / Estimator

Firm: IMEC Group, LLC

Address: 1299 D Parkway Drive
Goldensboro, NC 27534

License No. 72860

Expiration Date: 12-31-21

City of Greenville AFFIDAVIT A – Listing of Good Faith Efforts

County of Wayne

(Name of Bidder)

Affidavit of IMEC Group LLC

I have made a good faith effort to comply under the following areas checked:

Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)

- 1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- 5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- 6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- 9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority/Women Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority/women business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 3/25/21 Name of Authorized Officer: George Ward

Signature: [Signature]

Title: VP



State of NC, County of Wayne

Subscribed and sworn to before me this 25th day of March 2021

Notary Public Cathy H Bizzell Cathy #Bizzell

My commission expires July 24, 2021

Identification of Minority/Women Business Participation

I, JMEC Group, LLC
(Name of Bidder)

do hereby certify that on this project, we will use the following minority/women business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

Firm Name, Address and Phone #	Work type	*MWBE Category
Phoenix Construction 8360 NC Hwy 42 Holt Springs, NC 27540 910.890.8797	Metal Panels Metal Fins Metal wall/scaffit	WBE
P&O Architectural Precast, Inc 323 E. Railroad St. Lagrange, NC 28551 252.566.9811	Pre Cast	F

*MWBE categories: Black, African American (B), Hispanic, Latino (L), Asian American (A) American Indian (I), Female (F), Socially and Economically Disadvantaged (S), Disabled (D)

If you will not be utilizing MWBE contractors, please certify by entering zero "0"

The total value of MBE business contracting will be (\$) 4,765.

The total value of WBE business contracting will be (\$) 151,700.00.

Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid Attach to Bid
The Contractor shall enter into and supply copies of fully executed subcontracts with each MWBE or supply signed Letter(s) of Intent to the Project Manager after award of contract and prior to Notice to Proceed. Any amendments to subcontracts shall be submitted to the Project Manager prior to execution.

Instructions

The Bidder shall provide with the bid the following documentation:

- Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit A (if subcontracting)

OR

- Identification of Minority/Women Business Participation
(if participation is zero, please mark zero—Blank forms will be considered nonresponsive)
- Affidavit B (if self-performing; will need to provide documentation of similar projects in scope, scale and cost)

Within 72 hours or 3 business days after notification of being the apparent low bidder who is subcontracting anything must provide the following information:

- Affidavit C (if aspirational goals are met or are exceeded)

OR

- Affidavit D (if aspirational goals are not met)

After award of contract and prior to issuance of notice to proceed:

- Letter(s) of Intent or Executed Contracts

****With each pay request, the prime contractors will submit the Proof of Payment Certification, listing payments made to MWBE subcontractors.**

*****If a change is needed in MWBE Participation, submit a Request to Change MWBE Participation Form. Good Faith Efforts to substitute with another MWBE contractor must be demonstrated.**

Minimum Compliance Requirements:

All written statements, affidavits, or intentions made by the Bidder shall become a part of the agreement between the Contractor and the City for performance of contracts. Failure to comply with any of these statements, affidavits or intentions or with the minority business guidelines shall constitute a breach of the contract. A finding by the City that any information submitted (either prior to award of the contract or during the performance of the contract) is inaccurate, false, or incomplete, shall also constitute a breach of the contract. Any such breach may result in termination of the contract in accordance with the termination provisions contained in the contract. It shall be solely at the option of the City whether to terminate the contract for breach or not. In determining whether a contractor has made Good Faith Efforts, the CITY will evaluate all efforts made by the Contractor and will determine compliance in regard to quantity, intensity, and results of these efforts.

MBForms 2002-
Revised July 2010
Updated 2019

BID BOND for the City of Greenville

Contract name and number or other description of the Contract: One-story addition to a recreation center, renovations to existing building and a new room added to the existing building
Name of Bidder: IMEC Group, LLC Eppes Recreation Center- Greenville, NC

Name, address, and telephone number of Surety's N. C. Resident Agent: N/A

Telephone number of Surety's home office: 816-235-3700

Surety is a corporation organized and existing pursuant to the laws of the State of: NH

Amount of this bond: check (a) or (b):
___(a) (write or type the amount in words and figures) All numbers in this section are in U. S. dollars.

(\$ 5% of Bid Amount)
 (b) five percent of the amount of the proposal

Bond number: Bid

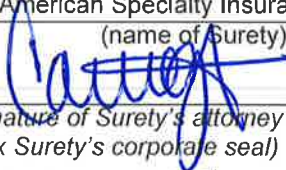
Date of execution of this bond: March 25, 2021

Obligee: CITY OF GREENVILLE, a North Carolina municipal corporation.

KNOW ALL PERSONS BY THESE PRESENTS, that the Surety executing this bond, which Surety is duly licensed to act as surety in North Carolina, is held and firmly bound unto the City of Greenville, Obligee, in the penal sum of the amount stated above, for the payment of which sum, well and truly to be made, the Surety binds itself and its successors and assigns, jointly and severally, by these presents. Whereas the Bidder is herewith submitting a proposal for the Contract referred to above, and the Bidder desires to file this Bid Bond in lieu of making the cash deposit pursuant to G.S. 143-129; NOW THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION is such, that if the Bidder shall be awarded the contract for which the bond is submitted, and shall, within ten days after the award is made, execute and deliver to the Obligee the contract and give satisfactory surety as required by G.S. 143-129, then this obligation shall be null and void, otherwise to remain in full force and virtue; and if the Bidder fails or refuses to so execute and deliver said contract or give said satisfactory surety, the Surety shall upon demand forthwith pay to the Obligee the full penal sum of this bond. The Surety waives all extensions of time, and notice of extensions of time, for the opening of proposals and for the modification, award, execution, and delivery of the contract. IN WITNESS WHEREOF, the Surety has executed this instrument under its seal as of the date of execution indicated above, pursuant to authority of its governing body.

North American Specialty Insurance Company

(name of Surety)



(signature of Surety's attorney in fact)

(Affix Surety's corporate seal)

Courtney W. Judge, Attorney-In-Fact

(Instructions to Surety: If you use a raised corporate seal, press hard enough to make it legible.)

ACKNOWLEDGMENT OF SURETY'S EXECUTION OF BID BOND

State of MD County of Baltimore

I, Mai-Ling Rodriguez, a notary public in and for said county and state, certify that Courtney W. Judge personally appeared before me this day and acknowledged that he or she is Attorney in Fact for North American Specialty Insurance Company, the Surety named in the foregoing Bid Bond, in which bond the Obligee is the City of Greenville, and that he or she executed said bond, under the seal of the Surety, on behalf of the Surety.

This the 25 day of March, 2021.

My commission expires:
4/17/2025



Notary Public Mai-Ling Rodriguez

MAI-LING RODRIGUEZ
Notary Public-Maryland
Baltimore County
My Commission Expires
4/17/25

SWISS RE CORPORATE SOLUTIONS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY
WESTPORT INSURANCE CORPORATION

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Kansas City, Missouri and Washington International Insurance Company a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Kansas City, Missouri, and Westport Insurance Corporation, organized under the laws of the State of Missouri, and having its principal office in the City of Kansas City, Missouri, each does hereby make constitute and appoint:

THOMAS A. WHIPPLE, BRIAN C. WHIPPLE, JOHN T. WHIPPLE, DOUGLAS J. DIXON, LAURA E. SCHOLZE
COURTNEY W. JUDGE, ZACHARY D. DIXON, and MAI-LING RODRIGUEZ JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of: TWO HUNDRED MILLION (\$200,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on March 24, 2000 and Westport Insurance Corporation by written consent of its Executive Committee dated July 18, 2011.

RESOLVED, that any two of the President, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached.



By Steven P. Anderson, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company & Senior Vice President of Westport Insurance Corporation

By Michael A. Ito, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company & Senior Vice President of Westport Insurance Corporation



IN WITNESS WHEREOF, North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 3RD day of SEPTEMBER, 20 20.

North American Specialty Insurance Company
Washington International Insurance Company
Westport Insurance Corporation

State of Illinois
County of Cook ss:

On this 3RD day of SEPTEMBER, 20 20, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of

Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation and Michael A. Ito Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Vice President and Assistant Secretary of North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 25 day of March, 20 21.

Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company & North American Specialty Insurance Company & Vice President & Assistant Secretary of Westport Insurance Corporation

City of Greenville AFFIDAVIT D – Good Faith Efforts

County of Wayne

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 16% participation by minority/women business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

Affidavit of IMEC GROUP LLC I do hereby certify that on the _____

(Name of Bidder)

EPPE RECREATION CENTER ADDITION AND RENOVATIONS

(Project Name)

Project ID# _____ Amount of Bid \$ 1,121,500.00

I will expend a minimum of 11.5 % of the total dollar amount of the contract with minority business enterprises and a minimum of 4 % of the total dollar amount of the contract with women business enterprises. Minority/women businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. (Attach additional sheets if required)

Name and Phone Number	*MWBE Category	Work description	Dollar Value
IMEC GROUP LLC 919.429.6052	B	GC'S - DEMO	129,000
HINE SITEWORK 919.736.8990	F	SITEWORK	46,100
ARROW EXTERMINATORS 336.273.6253	F	EXTERMINATING	600.00

*Minority categories: Black, African American (B), Hispanic or Latino (L), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (S) Disabled (D)

Examples of documentation required to demonstrate the Bidder's good faith efforts to meet the goals set forth in these provisions include, but are not necessarily limited to, the following:

- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

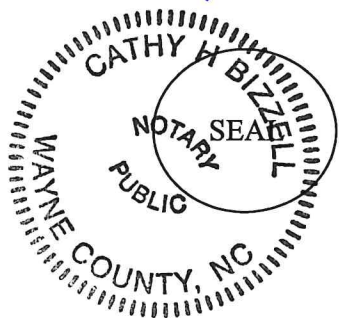
Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Do not submit with the bid Do not submit with the bid Do not submit with the bid Do not submit with the bid

Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with MWBE Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: 3/29/21 Name of Authorized Officer: George Ward
Signature: [Signature]
Title: VP



State of NC, County of WAYNE
Subscribed and sworn to before me this 29th day of March 2021
Notary Public Cathy H. Bizzell CATHY H. BIZZELL
My commission expires July 24, 2021



City of Greenville,
North Carolina

Meeting Date: 04/05/2021

Title of Item: Contract with Cherry Bekaert, LLP for Auditing Services for Fiscal Year 2020-2021

Explanation: Cherry Bekaert has been the City's auditor for the previous six years, with the current engagement period beginning with Fiscal Year Ending June 30, 2020 and ending with the Fiscal Year ending June 30, 2022. The annual contract attached describes the auditing services for the Fiscal Year Ending June 30, 2021. The proposed contract will be for the second year of the three-year period. The proposed fees for auditing services for the fiscal year ending June 30, 2021 total \$74,500, which is a \$1,500 increase from the prior year contract (2.0%).

Fiscal Note: In accordance with the firm's proposal, the cost of the audit for the Fiscal Year Ending June 30, 2021 will be \$74,500. Funds for this contract are available in the Financial Services Department's budget.

Recommendation: Approve the auditing contract with Cherry Bekaert, LLP for the fiscal year ending June 30, 2021.

ATTACHMENTS

 [City of Greenville, NC Audit 6-30-2021 Eng Ltr and LGC Contract..pdf](#)

February 9, 2021

VIA EMAIL:

bhayes@greenvillenc.gov

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

Dear Mr. Hayes:

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

Summary of services

We will provide the following services to the City as of and for the year ended June 30, 2021:

Audit and attestation services

1. We will audit the basic financial statements of the City as of and for the year ended June 30, 2021 including the governmental activities, the business type activities, each major fund and the remaining fund information.
2. The introductory section and statistical tables accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements and our auditor’s report will not provide an opinion or any assurance on that information.
3. We will audit the supplementary information identified in the table of contents of the Comprehensive Annual Financial Report, such as the combining and individual fund statements and schedules and the Schedule of Expenditures of Federal and State Awards. As part of our engagement we will apply certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America.
4. We will apply limited procedures to the Management’s Discussion and Analysis (MD&A); Law Enforcement Officers’ Special Separation Allowance (LEOSSA), Schedules of Changes in Total Pension Liability and Total Pension Liability as a Percentage of Covered Payroll; Other Post-Employment Benefits (“OPEB”), Schedules of Funding Progress, Employer Contributions, Changes in the Net OPEB Liability and Related Ratios, Contributions, and Investment Returns; and the Local Governmental Employees’ Retirement System Schedules of Proportionate Share of Net Pension Liability (Asset)

and Contributions, which will consist of inquiries of City's management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the financial statements.

Nonattest accounting and other services

We will provide the following additional services:

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

Your expectations

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

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

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

Audit and attestation services

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

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

The report on internal control and compliance will include a paragraph that states (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the City's internal control on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control over financial reporting and compliance. The paragraph will also state that the report is not suitable for any other purpose. If during our audit we become aware that the City is subject to an audit requirement that is not encompassed in the terms of the engagement, we will communicate to City's management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

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

Nonattest accounting and other services

In connection with any of the audit, accounting, or other services noted below, we will provide a copy of all schedules or other support for you to maintain as part of your books and records supporting your basic financial statements. You agree to take responsibility for all documents provided by Cherry Bekaert and will retain copies based on your needs and document retention policies. By providing these documents to you, you confirm that Cherry Bekaert is not responsible for hosting your records or maintaining custody of your records or data and that Cherry Bekaert is not providing business continuity or disaster recovery services. You confirm you are responsible for maintaining internal controls over your books and records including business continuity and disaster recovery alternatives. In addition, any documents provided to Cherry Bekaert by the City in connection with these services will be considered to be copies and will not be retained by Cherry Bekaert after completion of the accounting and other services. You are expected to retain anything you upload to a Cherry Bekaert portal and are responsible for downloading and retaining anything we upload in a timely manner. Portals are only meant as a method of transferring data, are not intended for the storage of client information, and may be deleted at any time. You are expected to maintain control over your accounting systems to include the licensing of applications and the hosting of said applications and data. We do not provide electronic security or back-up services for any of your data or records. Giving us access to your accounting system does not make us hosts of information contained within.

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

In conjunction with providing these accounting and other services, we may use third party software or templates created by Cherry Bekaert for use on third party software. Management expressly agrees that the City has obtained no rights to use such software or templates and that Cherry Bekaert's use of the City's data in those applications is not deemed to be hosting, maintaining custody, providing business continuity, or disaster recovery services.

Data collection form

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

City's management responsibilities related to accounting and other services

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

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

City's management responsibilities related to the audit

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

regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationship in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

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

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

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving (1) the City's management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, former employees, grantors, regulators, or other. In addition, you are responsible for identifying and ensuring that the City complies with applicable laws, regulations contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, or grant agreements that we report.

The City's management is responsible for identifying all federal and state awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal and state awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal and state awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal and state awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal and state awards that includes our report thereon OR make the audited financial statements readily available to intended users of the schedule of expenditures of federal and state awards no later than the date the schedule of expenditures of federal and state awards is issued with our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal and state awards in accordance with the Uniform Guidance, (2) you believe the schedule of expenditures of federal and state awards, including its form and content, is stated fairly in accordance with the Uniform Guidance, (3) the methods of measurement or presentation have not changed from those used in the prior period or, if they have changed, the reasons for such changes), and (4) the City has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal and state awards.

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

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

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

Indemnification for known misrepresentations

The Firm will rely on the City's management providing the above noted representations to us, both in the planning and performance of the audit, and in considering the fees that we will charge to perform the audit.

Fees

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

The following summarizes the fees for the services described above:

Description of services	Estimated fee
Audit services	
Audit of the financial statements	\$74,500
Each major program after the first two major programs	\$ 3,500

The fees will be billed periodically. Invoices are due on presentation. A service charge will be added to past due accounts equal to 1½% per month (18% annually) on the previous month's balance less payments received during the month, with a minimum charge of \$2.00 per month.

If the foregoing is in accordance with your understanding, please sign a copy of this letter in the space provided and return it to us. No change, modification, addition, or amendment to this letter shall be valid unless in writing and signed by all parties. The parties agree that this letter may be electronically signed and that the electronic signatures will be deemed to have the same force and effect as handwritten signatures.

If you have any questions, please call April Adams at (919) 782-1040.

Sincerely,

CHERRY BEKAERT LLP



ATTACHMENT – Engagement Letter Terms and Conditions

CITY OF GREENVILLE

ACCEPTED BY: _____

TITLE: _____ DATE: _____

Cherry Bekaert LLP

Engagement Letter Terms and Conditions

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

Limitations of the audit report

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

Limitations of the audit process

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

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

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

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

Audit procedures – general

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve professional judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by the City's management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the City or to acts by the City's management or employees acting on behalf of the City. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits, nor do they expect auditors to provide reasonable assurance of detecting waste and abuse.

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

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

Audit procedures – internal controls

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

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

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

Audit procedures - compliance

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

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

Nonattest services (if applicable)

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

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

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

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

Communications

At the conclusion of the audit engagement, we may provide the City's management and those charged with governance a letter stating any significant deficiencies or material weaknesses which may have been identified by us during the audit and our recommendations designed to help the City make improvements in its internal control structure and operations related to the identified matters discovered in the financial statement audit. As part of this engagement, we will ensure that certain additional matters are communicated to the appropriate members of the City. Such matters include (1) our responsibilities under GAAS, (2) the initial selection of and changes in significant accounting policies and their application, (3) our independence with respect to the City, (4) the process used by City's management in formulating particularly sensitive accounting estimates and the basis for our conclusion regarding the reasonableness of those estimates, (5) audit adjustments, if any, that could, in our judgment, either individually or in the aggregate be significant to the financial statements or our report, (6) any disagreements with the City's management concerning a financial accounting, reporting, or auditing matter that could be significant to the financial statements, (7) our views about matters that were the subject of the City's management's consultation with other accountants about auditing and accounting matters, (8) major issues that were discussed with the City's management in connection with the retention of our services, including, among other matters, any discussions regarding the application of accounting principles and auditing standards, and (9) serious difficulties that we encountered in dealing with the City's management related to the performance of the audit.

Other matters

Access to working papers

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

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

Electronic transmittals

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

Use of third party providers

In the normal course of business, we may on occasion use the services of an independent contractor or a temporary or loaned employee, all of whom may be considered a third party service provider. On these occasions, we remain responsible for the adequate oversight of all services performed by the third party service provider and for ensuring that all services are performed with professional competence and due professional care. We will adequately plan and supervise the services provided by the third party service provider; obtain sufficient relevant data to support the work product; and review compliance with technical standards

applicable to the professional services rendered. We will enter into a contractual agreement with the third party service provider to maintain the confidentiality of information and be reasonably assured that the third party service provider has appropriate procedures in place to prevent the unauthorized release of confidential information to others.

Subpoenas

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

Dispute resolution provision

This Dispute Resolution Provision sets forth the dispute resolution process and procedures applicable to any dispute or claim arising out of or relating to this engagement letter or the services provided hereunder, or any other audit or attest services provided by or on behalf of the Firm or any of its subcontractors or agents to the City or at its request (“Disputes”), and shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise.

Mediation

All Disputes shall be first submitted to nonbinding confidential mediation by written notice to the parties, and shall be treated as compromise and settlement negotiations under the standards set forth in the Federal Rules of Evidence and all applicable state counterparts, together with any applicable statutes protecting the confidentiality of mediations or settlement discussions. If the parties cannot agree on a mediator, the International Institute for Conflict Prevention and Resolution (“CPR”), at the written request of a party, shall designate a mediator.

Arbitration procedures

If a Dispute has not been resolved within 90 days after the effective date of the written notice beginning the mediation process (or such longer period, if the parties so agree in writing), the mediation shall terminate and the Dispute shall be settled by binding arbitration to be held at a mutually agreeable location. The arbitration shall be conducted in accordance with the CPR Rules for Non-Administered Arbitration that are in effect at the time of the commencement of the arbitration, except to the extent modified by this Dispute Resolution Provision (the “Rules”). The arbitration shall be conducted before a panel of three arbitrators. Each of the City and the Firm shall designate one arbitrator in accordance with the “screened” appointment procedure provided in the Rules, and the two party-designated arbitrators shall jointly select the third in accordance with the Rules. No arbitrator may serve on the panel unless he or she has agreed in writing to enforce the terms of the engagement letter and to abide by the terms of the Rules. Except with respect to the interpretation and enforcement of these arbitration procedures (which shall be governed by the Federal Arbitration Act), the arbitrators shall apply the laws of the Commonwealth of Virginia (without giving effect to its choice of law principles) in connection with the Dispute. The arbitrators may render a summary disposition relative to all or some of the issues, provided that the responding party

has had an adequate opportunity to respond to any such application for such disposition. Any discovery shall be conducted in accordance with the Rules. The result of the arbitration shall be binding on the parties, and judgment on the arbitration award may be entered in any court having jurisdiction.

Costs

Each party shall bear its own costs in both the mediation and the arbitration; however, the parties shall share the fees and expenses of both the mediators and the arbitrators equally.

Waiver of trial by jury

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

Independent contractor

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

No third party beneficiaries

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

Statute of limitations

The City agrees not to bring any claims against any partner or employee of the Firm in any form for any reason. The City and the Firm agree that any suit arising out of or related to the services contemplated by this engagement letter must be filed within one year after the cause of action arises. The cause of action arises upon the earlier of (i) delivery of the final work product for which the firm has been engaged, (ii) where applicable, filing of the final work product for which the firm has been engaged, or (iii) the date which the services contemplated under this engagement letter are terminated by either party.

Terms and conditions supporting fees

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

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

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

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

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

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

Report on the Firm's System of Quality Control

October 22, 2019

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

We have reviewed the system of quality control for the accounting and auditing practice of Cherry Bekaert LLP (the firm) applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2019. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards). A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under Government Auditing Standards, including compliance audits under the Single Audit Act; audits of employee benefit plans, an audit performed under FDICIA, an audit of broker-dealers, and an examination of service organizations [SOC 1 engagement].

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Cherry Bekaert LLP applicable to engagements not subject to PCAOB permanent inspection in effect for the year ended April 30, 2019, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of pass, pass with deficiency(ies) or fail. Cherry Bekaert LLP has received a peer review rating of pass.

EisnerAmper LLP
EisnerAmper LLP

January 21, 2020

Michelle Thompson
Cherry Bekaert LLP
2626 GLENWOOD AVE STE 200
RALEIGH, NC 27608-1367

Dear Michelle Thompson:

It is my pleasure to notify you that on January 15, 2020, the National Peer Review Committee accepted the report on the most recent System Review of your firm. The due date for your next review is October 31, 2022. This is the date by which all review documents should be completed and submitted to the administering entity.

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

Thank you for your cooperation.

Sincerely,



Michael Fawley
Chair, National PRC
nprc@aicpa.org
+1.919.402.4502

National Peer Review Committee

cc: Marc Fogarty, David Bettler

Firm Number: 900010011816

Review Number: 568293

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

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

and	Auditor Name Cherry Bekaert LLP
	Auditor Address 3800 Glenwood Avenue, Suite #200, Raleigh, NC 27612

Hereinafter referred to as Auditor

for	Fiscal Year Ending 06/30/21	Audit Report Due Date 10/31/21
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Must be within four months of FYE

hereby agree as follows:

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

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

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

3. If an entity is determined to be a component of another government as defined by the group audit standards, the entity's auditor shall make a good faith effort to comply in a timely manner with the requests of the group auditor in accordance with AU-6 §600.41 - §600.42.
4. This contract contemplates an unmodified opinion being rendered. If during the process of conducting the audit, the Auditor determines that it will not be possible to render an unmodified opinion on the financial statements of the unit, the Auditor shall contact the LGC Staff to discuss the circumstances leading to that conclusion as soon as is practical and before the final report is issued. The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.
5. If this audit engagement is subject to the standards for audit as defined in *Government Auditing Standards*, 2018 revision, issued by the Comptroller General of the United States, then by accepting this engagement, the Auditor warrants that he/she has met the requirements for a peer review and continuing education as specified in *Government Auditing Standards*. The Auditor agrees to provide a copy of the most recent peer review report to the Governmental Unit(s) and the Secretary of the LGC prior to the execution of an audit contract. Subsequent submissions of the report are required only upon report expiration or upon auditor's receipt of an updated peer review report. If the audit firm received a peer review rating other than pass, the Auditor shall not contract with the Governmental Unit(s) without first contacting the Secretary of the LGC for a peer review analysis that may result in additional contractual requirements.
- If the audit engagement is not subject to *Government Accounting Standards* or if financial statements are not prepared in accordance with U.S. generally accepted accounting principles (GAAP) and fail to include all disclosures required by GAAP, the Auditor shall provide an explanation as to why in an attachment to this contract or in an amendment.
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to LGC Staff within four months of fiscal year end. If it becomes necessary to amend this due date or the audit fee, an amended contract along with a written explanation of the delay shall be submitted to the Secretary of the LGC for approval.
7. It is agreed that GAAS include a review of the Governmental Unit's (Units') systems of internal control and accounting as same relate to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor shall make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his/her findings, together with his recommendations for improvement. That written report shall include all matters defined as "significant deficiencies and material weaknesses" in AU-C 265 of the *AICPA Professional Standards (Clarified)*. The Auditor shall file a copy of that report with the Secretary of the LGC.
8. All local government and public authority contracts for audit or audit-related work require the approval of the Secretary of the LGC. This includes annual or special audits, agreed upon procedures related to internal controls, bookkeeping or other assistance necessary to prepare the Governmental Unit's (Units') records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.
9. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit(s) until the invoice has been approved by the Secretary of the LGC. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices for Audit work shall be submitted in PDF format to the Secretary of the LGC for approval. The invoice marked 'approved' with approval date shall be returned to

the Auditor to present to the Governmental Unit(s) for payment. This paragraph is not applicable to contracts for audits of hospitals.

10. In consideration of the satisfactory performance of the provisions of this contract, the Governmental Unit(s) shall pay to the Auditor, upon approval by the Secretary of the LGC if required, the fee, which includes any costs the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (federal and state grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts. This does not include fees for any pre-issuance reviews that may be required by the NC Association of CPAs (NCACPA) Peer Review Committee or NC State Board of CPA Examiners (see Item 13).

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

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

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

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

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

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

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

17. A copy of the engagement letter, issued by the Auditor and signed by both the Auditor and the Governmental Unit(s), shall be attached to this contract, and except for fees, work, and terms not related to audit services, shall be incorporated by reference as if fully set forth herein as part of this contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract shall take precedence. Engagement letter terms that conflict with the contract are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 28 of this contract. Engagement letters containing indemnification clauses shall not be accepted by LGC Staff.

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

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

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

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

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

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

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

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

26. E-Verify. Auditor shall comply with the requirements of NCGS Chapter 64 Article 2. Further, if Auditor utilizes any subcontractor(s), Auditor shall require such subcontractor(s) to comply with the requirements of NCGS Chapter 64, Article 2.

27. **Applicable to audits with fiscal year ends of June 30, 2020 and later.** For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct and Governmental Auditing Standards, 2018 Revision (as applicable). Financial statement preparation assistance shall be deemed a "significant threat" requiring the Auditor to apply safeguards sufficient to reduce the threat to an acceptable level. If the Auditor cannot reduce the threats to an acceptable level, the Auditor cannot complete the audit. If the Auditor is able to reduce the threats to an acceptable level, the documentation of this determination, including the safeguards applied, must be included in the audit workpapers.

All non-attest service(s) being performed by the Auditor that are necessary to perform the audit must be identified and included in this contract. The Governmental Unit shall designate an individual with the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the services and accept responsibility for the results of the services performed. If the Auditor is able to identify an individual with the appropriate SKE, s/he must document and include in the audit workpapers how he/she reached that conclusion. If the Auditor determines that an individual with the appropriate SKE cannot be identified, the Auditor cannot perform both the non-attest service(s) and the audit. See "Fees for Audit Services" page of this contract to disclose the person identified as having the appropriate SKE for the Governmental Unit.

28. **Applicable to audits with fiscal year ends of June 30, 2021 and later.** The auditor shall present the audited financial statements including any compliance reports to the government unit's governing body or audit committee in an official meeting in open session as soon as the audited financial statements are available but not later than 45 days after the submission of the audit report to the Secretary. The auditor's presentation to the government unit's governing body or audit committee shall include:

- a) the description of each finding, including all material weaknesses and significant deficiencies, as found by the auditor, and any other issues related to the internal controls or fiscal health of the government unit as disclosed in the management letter, the Single Audit or Yellow Book reports, or any other communications from the auditor regarding internal controls as required by current auditing standards set by the Accounting Standards Board or its successor;
- b) the status of the prior year audit findings;
- c) the values of Financial Performance Indicators based on information presented in the audited financial statements; and
- d) notification to the governing body that the governing body shall develop a "Response to the Auditor's Findings, Recommendations, and Fiscal Matters," if required under 20 NCAC 03 .0508.

29. Information based on the audited financial statements shall be submitted to the Secretary for the purpose of identifying Financial Performance Indicators and Financial Performance Indicators of Concern.

30. Applicable to charter school contracts only: No indebtedness of any kind incurred or created by the charter school shall constitute an indebtedness of the State or its political subdivisions, and no indebtedness of the charter school shall involve or be secured by the faith, credit, or taxing power of the State or its political subdivisions.

31. All of the above paragraphs are understood and shall apply to this contract, except the following numbered paragraphs shall be deleted (See Item 16 for clarification).

32. The process for submitting contracts, audit reports and invoices is subject to change. Auditors and units should use the submission process and instructions in effect at the time of submission. Refer to the N.C. Department of State Treasurer website at <https://www.nctreasurer.com/state-and-local-government-finance-division/local-government-commission/submitting-your-audit>

33. All communications regarding audit contract requests for modification or official approvals will be sent to the email addresses provided on the signature pages that follow.

34. Modifications to the language and terms contained in this contract form (LGC-205) are not allowed.

FEEES FOR AUDIT SERVICES

1. For all non-attest services, the Auditor shall adhere to the independence rules of the AICPA Professional Code of Conduct (as applicable) and *Governmental Auditing Standards, 2018 Revision*. Refer to Item 27 of this contract for specific requirements. The following information must be provided by the Auditor; contracts presented to the LGC without this information will be not be approved.

Financial statements were prepared by: Auditor Governmental Unit Third Party

If applicable: Individual at Governmental Unit designated to have the suitable skills, knowledge, and/or experience (SKE) necessary to oversee the non-attest services and accept responsibility for the results of these services:

Name:	Title and Unit / Company:	Email Address:
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

OR Not Applicable (Identification of SKE Individual not applicable for GAAS-only audit or audits with FYEs prior to June 30, 2020.)

2. Fees may not be included in this contract for work performed on Annual Financial Information Reports (AFIRs), Form 990s, or other services not associated with audit fees and costs. Such fees may be included in the engagement letter but may not be included in this contract or in any invoices requiring approval of the LGC. See Items 8 and 13 for details on other allowable and excluded fees.

3. Prior to submission of the completed audited financial report, applicable compliance reports and amended contract (if required) the Auditor may submit invoices for approval for services rendered, not to exceed 75% of the billings for the last annual audit of the unit submitted to the Secretary of the LGC. Should the 75% cap provided below conflict with the cap calculated by LGC Staff based on the billings on file with the LGC, the LGC calculation prevails. All invoices for services rendered in an audit engagement as defined in 20 NCAC .0503 shall be submitted to the Commission for approval before any payment is made. Payment before approval is a violation of law. (This paragraph not applicable to contracts and invoices associated with audits of hospitals).

PRIMARY GOVERNMENT FEES


Primary Government Unit	City of Greenville
Audit Fee	\$ 74,500
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$ 3,500 for each major program after the first two
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval <i>(not applicable to hospital contracts)</i>	\$ 60,000.00

DPCU FEES (if applicable)

Discretely Presented Component Unit	N/A
Audit Fee	\$
Additional Fees Not Included in Audit Fee:	
Fee per Major Program	\$
Writing Financial Statements	\$
All Other Non-Attest Services	\$
75% Cap for Interim Invoice Approval <i>(not applicable to hospital contracts)</i>	\$

SIGNATURE PAGE

AUDIT FIRM

Audit Firm* Cherry Bekaert LLP	
Authorized Firm Representative (typed or printed)* April Adams	Signature* 
Date* 02/09/21	Email Address* aadams@cbh.com

GOVERNMENTAL UNIT

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

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

GOVERNMENTAL UNIT – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

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

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

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

DISCRETELY PRESENTED COMPONENT UNIT

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

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

DPCU – PRE-AUDIT CERTIFICATE

Required by G.S. 159-28(a1) or G.S. 115C-441(a1).
Not applicable to hospital contracts.

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

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

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

PRINT



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Contract award to AAR of North Carolina, Inc. for the replacement of EPDM Roofs at the Greenville Convention Center

Explanation: The Public Works Department, in conjunction with The East Group, completed plans and specifications for the replacement of the roof at the Greenville Convention Center. The roof replacement will involve the replacement of the original existing EPDM membrane roof that is at the end of its useful life.

The project was advertised for bids with the bid opening scheduled for February 16, 2021. A total of nine (9) bids were received with AAR of North Carolina, Inc. submitting the lowest, responsible, responsive bid in the amount of \$334,800. The (9) submitted bids were from:

Curtis Construction, Inc.
AAR of North Carolina, Inc.
Triangle Roofing Services, Inc.
Bar Roofing and Maintenance
The Hamlin Companies
Baker Roofing Company
Service Roofing and Sheet Metal
Owens Roofing, Inc.
Wayne Roofing and Sheet Metal Co.

AAR of North Carolina, Inc. submitted a base bid of \$306,700. Two alternates were also included in the bid package. Alternate 1 is to include adding additional insulation to meet current code "R" value (most recent insulation code) and Alternate 2 was a deduction for a lesser membrane roof system. Public Works is recommending the Base Bid and Alternate 1. The total of the base bid along with Alternate 1 is \$334,800. AAR of North Carolina, Inc. is roughly 1.5% lower than the next lowest bid and roughly 30% lower than the highest bidder.

The Public Works Department, Purchasing Division, and The East Group have completed review of the submitted bids and past construction projects listed by AAR of North Carolina, Inc. The bid process and resulting materials are all in compliance with both local and state regulations.

Once awarded and provided with a Notice to Proceed (NTP), AAR of North Carolina, Inc. will have 90 days to complete the project. The Convention Center

is currently the location for COVID-19 vaccinations. The City has coordinated this project with both Vidant and the Convention Center. The issuance of the NTP will factor in any limitations based on current use of the facility.





Fiscal Note:

The proposed budget for this construction is \$334,800. Funding for this project will be provided by the Facilities Improvement Project Fund for Project 15, Convention Center Roof. The FIP Fund is then reimbursed by the proceeds from the Convention Center sales tax revenue.

Recommendation:

City Council award the base bid along with Alternate 1 for the Greenville Convention Center Replacement of EPDM Roofs to AAR North Carolina, Inc. in the amount of \$334,800.

ATTACHMENTS

-  [Contract - AAR of North Carolina.pdf](#)
-  [Certified Bid Tabulation - sorted by base bid amount.pdf](#)
-  [Bond.pdf](#)
-  [Greenville Convention Center.pdf](#)

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 16th day of March in the year Two Thousand Twenty One
(In words, indicate day, month and year.)

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

City of Greenville
1500 Beatty Street
Greenville, NC 27834

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

AAR of North Carlina, Inc.
665 Peddycord Road
Kernersville, NC 27284

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

City of Greenville, Convention Center Replacement of EPDM Roofs
303 Greenville Blvd., SW
Greenville, NC 27834

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

The East Group, PA
324 Evans St.
Greenville, NC 27858

The Owner and Contractor 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.

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
- 2 THE WORK OF THIS CONTRACT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

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[✓] Not later than Ninety (90) calendar days from the date of commencement of the Work.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

(Table deleted)

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Hundred Thirty-Four Thousand Eight Hundred Dollars (\$ 334,800.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
Alternate 1	Add \$28,100.00

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

(Table deleted)

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
Replacement of 200 square feet of existing 2 layers of 1.5" thick polyisocyanurate insulation.	N/A

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

(Table deleted)

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Owner has the right to withhold from compensation otherwise to be paid the amount of Three Hundred Dollars (\$300.00) per day that the work is not completed after the completion date defined above as liquidated damages reasonably determined to be incurred by the Owner as a result of such delay.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

The Twenty-Fifth (25th) day of each month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Sixty (60) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2007, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2007; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

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§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Upon 50% completion of the work, if the Owner determines that the Contractor's performance is unsatisfactory, an amount equal to 5% of a progress payment to be made in accordance with the provisions of this Agreement will be deducted and retained from each progress payment. Upon 50% completion of the work, if the Owner determines that the Contractor's performance is satisfactory, an amount no greater than 5% of a progress payment to be made accordance with the provisions of this Agreement will be deducted and retained from each progress payment provided that the sum of the amounts deducted and retained from all progress payments made is no greater than 2.5% of the sum of the amounts of the progress payments made. The Owner shall retain the amounts deducted from a progress payment until final payment is to be made in accordance with the provisions of this Agreement.

(Paragraphs deleted)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2007.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2** a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

(Paragraph deleted)

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other (*Specify*)

If the Owner and Contractor 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, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Ross Peterson
Buildings and Grounds Supervisor
Public Works
City of Greenville
1500 Beatty Street
Greenville, NC 27834

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

David Newbury
Project Manager
AAR of North Carolina, Inc.
655 Peddycord Road
Kernersville, NC 27284

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

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(Paragraphs deleted)

§ 8.7 Other provisions:

Iran Divestment Act Certification:

The Contractor hereby certifies that, it is not on the Iran Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. The Contractor shall not utilize in the performance of the Agreement any subcontractor that is identified on the Iran Final Divestment List.

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. The Contractor represents that the Contractor and its subcontractors are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2007, General Conditions of the Contract for Construction
- .4

- .5 Drawings

See attached Exhibit "B" – Drawing List

- .6 Specifications

See attached Exhibit "C" – Specifications Table of Contents

- .7 Addenda, if any:

Number	Date	Pages
Addendum 1	01-27-21	4
Addendum 2	02-05-21	7
Addendum 3	02-12-21	1

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
00938	Supplementary Conditions to General Conditions of the Contract for Construction AIA Document A201 – 2007 Edition	01-15-21	6

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| (Paragraphs deleted)

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

| _____
OWNER (Signature)

| P.J. Connelly Mayor

(Printed name and title)

CONTRACTOR (Signature)

Brad Kurth Sr. Vice-President

(Printed name and title)

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AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 16th day of March in the year Two Thousand Twenty One
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

City of Greenville, Convention Center Replacement of EPDM Roofs
303 Greenville Blvd., SW
Greenville, NC 27834

THE OWNER:
(Name, legal status and address)

City of Greenville
1500 Beatty Street
Greenville, NC 27834

THE CONTRACTOR:
(Name, legal status and address)

AAR of North Carlina, Inc.
665 Peddycord Road
Kernersville, NC 27284

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

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.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

§ A.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

(Table deleted)

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

(Table deleted)

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

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(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

(Paragraphs deleted)

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 2010 04 13, and CG 2037 04 13.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$ 2,000,000.00) each occurrence, Two Million Dollars (\$ 2,000,000.00) general aggregate, and Two Million Dollars (\$ 2,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

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- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$ 1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

(Paragraphs deleted)

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [] **§ A.3.3.2.1** Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible,

and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

(Paragraphs deleted)

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

(Table deleted)

§ A.3.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract sum. The amount of each bond shall be equal to 100% of the Contract Sum.

§ A.3.4.2 The Contractor shall deliver the required bonds to the Architect not later than three day following the date the Agreement is entered into, or if the work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Architect that such bonds will be furnished.

§ A.3.4.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the Power of Attorney.

§ A.3.4.4 Bonds shall be executed on AIA Standard Form A-312, Performance Bond and Materials Payment Bond, with amount shown on each part of bond equal to 100% of the total amount, payable by terms of the Contract. Surety shall be a company licensed to do business in the State where the project is located and shall be acceptable to the Owner.

§ A.3.4.5 Bonds shall be dated the same as, or subsequent to, the Contract and shall be accompanied by a current Power of Attorney. Bond shall be furnished in sufficient number of copies so that one copy can be bond with each copy of the Agreement.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

§ A.4.2 The Owner, not the Architect, shall be listed as "Certificate Holder" on all policies and certificates. Architect is listed as Additional Insured.

Init.

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User Notes:

(1517045803)

**CITY OF GREENVILLE
POLICE FIRE-RESCUE HEADQUARTERS
ROOF REPLACEMENT**

EXHIBIT "B" DRAWINGS

GENERAL

- Cover Sheet
- G1.1 Construction Notes and Drawing Index
- G1.2 North Carolina Building Code Summary

ARCHITECTURAL

- A0.1 Architectural Symbols and Abbreviations
- A1.1 Roof Demolition Plan
- A3.1 Roof Plan
- A6.1 Elevations
- A6.2 Elevations
- A7.1 Roof Sections
- A7.2 Roof Sections and Details

**CITY OF GREENVILLE
POLICE FIRE-RESCUE HEADQUARTERS
ROOF REPLACEMENT**

EXHIBIT "C" SPECIFICATIONS TABLE OF CONTENTS

BIDDING DOCUMENTS

00100	Invitation to Bid
00101	Advertisement for Bids
00201	City of Greenville MBE-WBE Plan
00215	Document Clarification Request (DCR)
00231	Product Substitutions During Bid
00400	Bid Form
00401	Reference Information
00402	MWBE-Forms City of Greenville
00403	E Verify Affidavit
00404	Iran Divestment Act

CONTRACT DOCUMENTS

00797	AIA Referenced Documents
00938	Supplementary Conditions.

DIVISION 1 - GENERAL REQUIREMENTS

01110	Summary of Work
01230	Alternates
01250	Contract Modification Procedures
01290	Payment Procedures
01310	Project Management and Coordination
01315	Project Meetings
01330	Submittal Procedures
01400	Quality Requirements
01420	References
01500	Temporary Facilities and Controls
01600	Product Requirements
01631	Product Substitutions
01700	Execution Requirements
01731	Cutting and Patching
01732	Selective Demolition
01770	Closeout Procedures
01788	Warranties and Bonds

DIVISION 2 - SITE CONSTRUCTION Not Used

DIVISION 3 – CONCRETE Not Used

DIVISION 4 – MASONRY Not Used

DIVISION 5 – METALS Not Used

DIVISION 6 - WOOD AND PLASTICS

06100	Rough Carpentry
06161	Roof Sheathing and Insulation

DIVISION 7 - THERMAL AND MOISTURE PROTECTION

07540	Thermoplastic Membrane Roofing
07710	Manufactured Roof Specialties

DIVISION 8 – Thru DIVISION 16 Not Used

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January 15, 2021
Project No. 20200132

EXHIBIT "C"



ADDENDUM NO. 1

Client / Facility: City of Greenville	TEG Project No.: 20200132
Project Name: Convention Center Replacement of EPDM Roofs	Client Project No.: n/a
Addendum Date: January 27, 2021	For Bids Due On: 2-16-2021

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 Fax 252.830.3954

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 Fax 919.784.9331

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This Addendum has become a part of the drawings and specifications for the above project.

Each Contractor shall be responsible for notifying their subcontractors and material suppliers of the contents of this Addendum.

Revised or newly issued drawings contained in this Addendum shall supersede and shall take precedence over any conflicting information in the original drawings. Revised or newly issued specifications contained in this Addendum shall supersede and shall take precedence over any conflicting information in the original specifications.

Pre-bid conference and site visit requirements have been revised in:

"SECTION 00100 - INVITATION TO BID" and

"Advertisement for Bids"

Refer to the following documents

SECTION 00100 - INVITATION TO BID – revised 1-27-21

Sealed bids will be received by The City of Greenville up until **4:00 pm February 16, 2021** at the reception counter of the City of Greenville Public Works Facility, 1500 Beatty Street, Greenville, NC 27834 for furnishing all labor, materials and equipment entering into the construction of the **City of Greenville, Convention Center Replacement of EPDM Roofs** project in accordance with the documents prepared by The East Group, PA.

The City of Greenville will follow "Informal Bidding Procedures" for this project. Proposals will be privately opened, and a certified tabulation of the proposals will be made available after contract has been awarded.

The basis of the contract will be a Single Prime General Contract.

A Pre-Bid Conference will be held at 2:00 pm February 2, 2021

Attendance at the pre-bid conference is not mandatory, but is strongly encouraged.

In order to minimize impact on the Vaccine activities occurring at the Convention Center, the pre-bid conference and associated parking will occur at the adjacent Hilton Hotel. Please enter via Landmark Street, park, and enter the Hilton from the rear. Someone will be posted at the rear entrance to direct attendees to the pre-bid conference meeting room. See attached aerial image.

A site visit will be held after the Pre-Bid Conference. Attendance at the site visit is not mandatory, but is strongly encouraged. The attendees will be conducted by City of Greenville personnel to the rear entrance of the Convention Center, and to the internal roof access ladder. Additional site visits will be available on February 9, 2021 by appointment. Parking and access for these 2-9-21 site visits will be as stated above for the pre-bid conference.

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A Bid Bond in the amount of 5% of the base bid will be required with each bid.

The Owner reserves the right to reject any or all bids and waive any and all defects and informalities in the submission of any bid.

END OF SECTION 00100

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Advertisement for Bids – revised 1-27-21

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Lump sum proposals will be received for the following:

- Single Prime Bids will also be received for all Contract work

Complete Plans, Specifications and Contract Documents will be available free from the City of Greenville's Website.

All questions regarding plans are to be referred to the architect of record, **Richard Johnson AIA** of The East Group, P.A. via email at Richard.johnson@eastgroup.com.

The Owner reserves the right to reject any and/or all bids and to waive any and all defects and informalities in the submission of any bid.

Abbreviated Written Summary: Briefly and without force and effect upon the contract documents, the work of the Prime Contracts can be summarized as follows:

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The installation of additional rigid insulation, cover board, and single ply membrane roofing over the existing EPDM roofing areas. The work will include new coping, gutters, downspouts, and misc flashing and accessories as shown or specified.

All contractors must be properly licensed under the State Laws governing their respective trades.

All contractors are advised that the Owner has a minority and women participation policy for construction projects. Refer to the specifications for a detailed description of this policy.

The Owner reserves the right to reject any and/or all bids and to waive any and all defects and informalities in the submission of any bid.

Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, of an amount equal to not less than 5 percent of the proposal. In lieu thereof a bidder may offer a bid bond of 5 percent of the bid executed by a surety company licensed under the Laws of North Carolina to execute such bond conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond, and upon failure to forthwith make payment, the surety shall pay to the obligee an amount equal to double the amount of said bond. Said deposits shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required by law.

Performance and Payment Bond will be required for one hundred percent (100%) of the contract price.

Payment will be made on the basis of ninety percent (90%) of monthly estimates and final payment made upon completion and acceptance of work.

A contractor Reference Form, listing 3 client references of similar work is required.

No bid may be withdrawn after the scheduled closing time for the receipt of bids for a period of 60 days.

The Owner encourages the participation of MBE and WBE firms. Refer to the project manual for specific requirements.

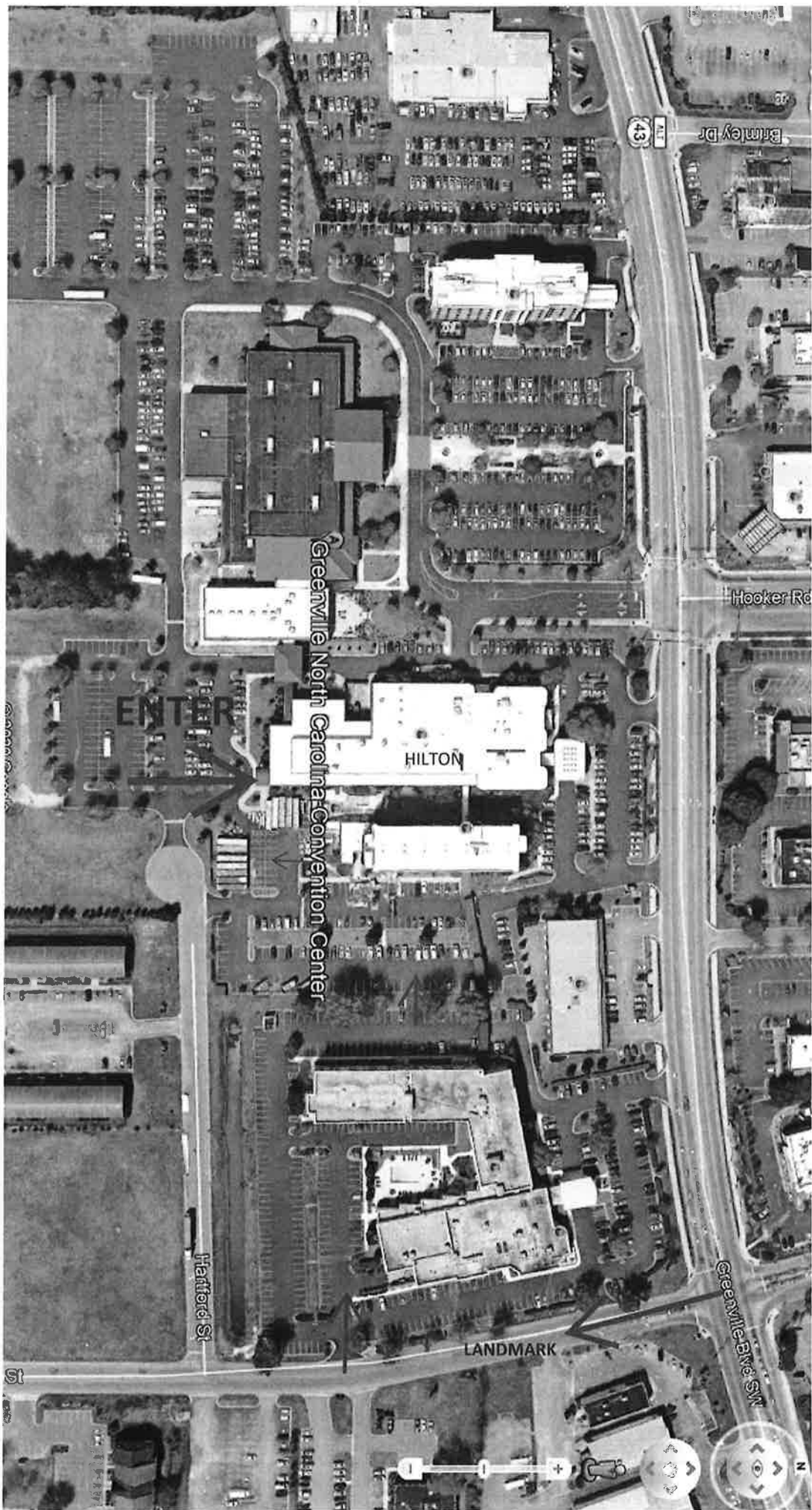
Signed: Denisha Harris,
Financial Services Manager
City of Greenville

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ADDENDUM NO. 2

Client / Facility:	City of Greenville	TEG Project No.:	20200132
Project Name:	Convention Center Replacement of EPDM Roofs	Client Project No.:	n/a
Addendum Date:	February 5, 2021	For Bids Due On:	2-16-2021

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This Addendum has become a part of the drawings and specifications for the above project.

Minutes of the Pre-Bid Conference, and associated clarifications and additions, are as follows and are hereby made a part of this Addendum:

Pre-Bid Conference

Client / Facility:	City of Greenville	TEG Project No.:	20200132
Project Name:	Convention Center - Replacement of EPDM Roofs	Client Project No.:	
Meeting Location:	Hilton	Meeting Date:	2-2-21

Purpose of Meeting:	Pre-Bid Conference
----------------------------	--------------------

Attendees

Name	Company	Email Address
Ross Peterson	City of Greenville	RPeterson@greenvillenc.gov
Brady Knowles	Owens Roofing, Inc.	brady@owensroofinginc.com bert@owensroofinginc.com
Juan Rios	Curtis Construction	estimating@curtiscc.com
Mark Stewart	Hamlin Roofing Co	stewart@hamlincos.com
Hunter Steed	Wayne Roofing & Sheet Metal	hlswayneroofting@yahoo.com
Taft Mowtin	Baker Roofing Company	tmartin@bakerroofing.com
Jake Bowman	Muter Construction	JBowman@muterconstruction.com
David Newberg	AARNC	DavidN@aarnc.com
Jason Darrah	BAR Roofing	JDARRAN9@yahoo.com
Paul Tyndall	Service Roofing	PTyndall@serviceroofing.com

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Joe Holland	Service Roofing	JHolland@serviceroofing.com
Jimmy Sturm	Premier Building Products	jimmy@premierbldgproducts.com
Brad Shaltz	Triangle Roofing	Brad@Triangleroof.com
Jim McClure	McClure Metals Specialties	jameshayesmclure@earthlink.net
Richard Johnson	The East Group	Richard.johnson@eastgroup.com

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Requirements for Bid:

1. All contractors must be properly licensed under the State Laws governing their respective trades.
2. All contractors are advised that the Owner has a minority and women participation policy for construction projects. Refer to the specifications for a detailed description of this policy.
3. Each proposal shall be accompanied by a cash deposit or a certified check drawn on some bank or trust company insured by the Federal Deposit Insurance Corporation, of an amount equal to not less than 5 percent of the proposal. In lieu thereof a bidder may offer a bid bond of 5 percent of the bid executed by a surety company licensed under the Laws of North Carolina to execute such bond conditioned that the surety will upon demand forthwith make payment to the obligee upon said bond if the bidder fails to execute the contract in accordance with the bid bond, and upon failure to forthwith make payment, the surety shall pay to the obligee an amount equal to double the amount of said bond. Said deposits shall be retained by the Owner as liquidated damages in event of failure of the successful bidder to execute the contract within ten days after the award or to give satisfactory surety as required by law.
4. A Performance and Payment Bond will be required for one hundred percent (100%) of the contract price.
5. A contractor Reference Form, listing 3 client references of similar work is required.
6. For approval of alternate products and systems - adhere to the procedure described in section 00231 – Product Substitutions During Bid
7. The period for non withdrawal of bids is 60 consecutive calendar days.

Minority and Women Business Enterprise Plan Special Provisions

1. Each Bidder must comply with the City of Greenville’s Minority and Women Business Enterprise Plan – see the specifications for the requirements.
2. The bidder must provide the completed required MBE-WBE forms with their bid.
3. Please contact Denisha Harris at dharris@greenvillenc.gov 252-329-4862 for a list of minority contractors/ businesses.
4. DOT list of minority contractors will be acceptable. Visit the following link for a list www.doa.nc.gov/hub.

General On Site Conditions

1. The Greenville Convention Center is currently being fully utilized for the provision of Covid 19 vaccinations. It is anticipated that this activity will continue for a few months.
 - a. All Contractor activity shall be conducted in a way that does not disrupt this on-going vaccination effort.

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- b. After bids are opened, and an apparent low bidder has been determined, detailed planning will be undertaken by the Owner and the apparent low bidder. An agreed upon written plan to address job site safety and the particular needs of the Vaccination program will be generated from this planning process and will be included in the contract documents. For purposes of bidding, the following can be assumed:
 - i. Materials shall be staged for construction on the roof and shall be dispersed so that the weight of materials and equipment does not exceed the allowable roof live load of 20 lbs/sf.
 - ii. The Contractor/contractor's personnel will be provided with reasonable use of portions of the site adjacent to the Southern side of the building for staging and roof access.
 - iii. Contractor/contractor's personnel will not be able to use existing internal roof access.
 - iv. Contractor/contractor's personnel will not have access to interior of the existing building.
 - v. Contractor shall provide portable toilet and hand wash facilities in a location near the building approved by the owner.
2. Contractor/contractor's personnel will not be able to use existing electrical power and should provide for all construction power needs by the use of portable generators located by the contractor on the roof at a sufficient distance from existing roof top HVAC equipment so as not to allow associated exhaust to enter building.
3. Contractor/contractor's personnel cannot close any of the surrounding streets at any time.
4. Hours during which work shall be accomplished are 7:00 am to 5:00 pm Monday thru Friday.
5. Work at other times will require Owner approval in writing.
6. All existing concrete or asphalt pavement shall be repaired as necessary to return to current condition at the end of the project.
7. All damaged landscaping shall be replaced with landscaping of matching type and size of what was damaged.
8. No smoking, alcohol, or firearms will be allowed for construction related personnel on the project site.

Sealed bids will be received by The City of Greenville up until 4:00 pm February 16, 2021 at the reception counter of the City of Greenville Public Works Facility, 1500 Beatty Street, Greenville, NC 27834

Site Visits: All site visits shall be by appointment only and all persons visiting site shall be accompanied by an Owner's designated representative at all times.

The following times are available for site visits:

1. February 2, 2021, Immediately after the Pre-Bid meeting.
2. February 9, 2021, By appointment –

a. contact Owner's designated representative - Ross Peterson, at RPeterson@greenvillenc.gov or use (252) 916-0798 if needed

Project Review

Without force and effect upon the work defined and required by the project manual and drawings, the work includes the installation of additional rigid insulation, cover board, and single ply membrane

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roofing over the existing EPDM roofing areas. The work will include new coping, gutters, downspouts, and misc. flashing and accessories as shown or specified.

A. A 20 year roofing system warranty is required.

a. Warranty shall not exclude peak wind gusts up to 72 mph.

Alternates:

Alternate No.1 - Provide an additional 1.5" layer of polyisocyanurate insulation to the roof assembly as indicated on the drawings.

Alternate No. 2 – Provide new 60 mil fully adhered white TPO membrane as manufactured by Firestone or Carlisle in lieu of Fibertite (KEE) membrane indicated in base bid.

Alternate No. 3 – is hereby removed from the project.

Allowances:

Contractors shall include the replacement of 200 sf of existing 2 layers of 1.5" rigid polyisocyanurate insulation in their base bids.

Existing Gas Lines, HVAC units, condensate lines and electrical outlets:

1. The Owner will remove existing gas lines prior to start of work on this project and reinstall these gas lines after completion of the work of this project. Adjustment of gas valves and misc changes in routing made necessary by reduction in existing clearance associated by this re-roofing will be made by owner.
2. Owner will raise or eliminate existing electrical outlets in the face of HVAC curbs as needed to achieve required clearances.
3. Existing rooftop HVAC units will remain in place during the work of this project.
 - a. Existing flashing at top of HVAC curbs will remain.
 - b. Existing membrane on vertical sides of HVAC curbs will be replaced with new membrane as work of this project.
4. Removal of the existing condensate lines is work of this contract. The owner will install new condensate lines to the existing HVAC units after completion of work of this project.

TimeLine:

1. The duration of the project is 90 consecutive calendar days after which liquidated damages will apply in the amount of \$300 per calendar day until project achieves substantial completion.
2. The timeline is subject to adjustment during the pre-award detailed planning process between the apparent low bidder and the owner described above.

Existing Testing:

- a. Fastener pullout tests were conducted on three areas of the existing roof. Average pullout force was 1,000 lbs.
- b. Contractors shall still conduct pull out tests in accordance with specification section 07534-3.1-G.

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Permit Fees:

1. NOTE: The City of Greenville will waive the permit fees on this project. The contractor is still required to obtain a permit from the City of Greenville for all work.

All questions and concerns:

5. All questions or concerns, excepting ones related to owner’s MBE/WBE Plan and requirements, must be submitted prior to 5:00pm on 2-12-21. Such questions shall be submitted by email using the 00215 Document Clarification Request (DCR) form included in the project manual.
6. If a question is answered on site by either the owner or architect, it must be followed up in writing using the attached DCR form. Please submit all questions, excepting ones related to owner’s MBE/WBE Plan and requirements, to: Richard Johnson of the East Group, via email at richard.johnson@eastgroup.com.

Clarifications and additions

1. Warranty - In addition to the MRM 20 year warranty, a Roofing Installer's warranty including all components of the roofing system is required for a period of 5 years from date of substantial completion. See attached warranty form
2. Cover board shall be glass-mat, water-resistant gypsum board, or ASTM C1278/C1278M fiber-reinforced gypsum board per 07534 -2.4- D
3. Rigid insulation and Coverboard shall be mechanically attached.
4. Drawing A3.1 – General notes do not apply to work of this project. See attached sheet A3.1
5. Specifications – 07534 – 2.4 – C - Rigid insulation shall be grade 2 with a minimum compression strength of 20 psi.
6. The Basis of design for Coping system is “Permatite Gold” system by “Metal Era” fabricated from .050 aluminum with 2 coat Fluoropolymer Finish.
7. The roofing system elements shall be designed for the following minimum uplift pressures, which already include a safety factor:
 - a. Roof field and perimeter zone 90 psf
 - b. Roof corners 120 psf
 - c. Metal perimeter and corners 120 psf
 - i. Roof system submittals shall include confirmation that all elements of the system comply with these uplift design pressures and shall graphically indicate fastener patterns and spacing.
8. The scope of this project is limited to areas where EPDM roof membrane is existing. Roof areas with existing TPO membrane are not included in this project.
9. Specification Division 7 - Section 1.6 - B.5:
 - a. The requirement to “Maintain full-time supervisor/foreman, not workman/foreman ...” is intended to provide the quality enhancement derived from an experienced person whose job is to continually supervise and inspect the work of the other craftsmen installing the roofing system, and whose attention is not divided from this full time need by engaging in providing installation labor.
10. Subject to meeting the design uplift pressures indicated above, the TPO membrane for alternate 2 can be adhered with the MRM’s standard bonding adhesive.



Corporate Office
 324 Evans St
 Greenville
 NC 27858
 Tel 252.758.3746
 Fax 252.830.3954

Raleigh Office
 4325 Lake Boone Trail
 Suite 311
 Raleigh
 NC 27607
 Tel 919.784.9330
 Fax 919.784.9331

www.eastgroup.com

ROOFING INSTALLER'S WARRANTY

a. WHEREAS _____ of _____, herein called the "Roofing Installer," has performed roofing and associated work ("work") on the following project:

- i. Owner: The City of Greenville, NC
- ii. Address: 200 W Fifth Street, Greenville, NC
- iii. Building Name Greenville Convention Center
- iv. Address: 1 Exposition Dr. Greenville, NC
- v. Substantial Completion _____
- vi. Warranty Period: 5 Years from date of Substantial Completion.
- vii. Expiration Date: _____

b. AND WHEREAS Roofing Installer has contracted to warrant said work against leaks and faulty or defective workmanship for designated Warranty Period,

c. NOW THEREFORE Roofing Installer hereby warrants, subject to terms and conditions herein set forth, that during Warranty Period he will, at his own cost and expense, make or cause to be made such repairs to or replacements of said work as are necessary to correct faulty and defective work and as are necessary to maintain said work in a watertight condition.

d. This Warranty is made subject to the following terms and conditions:

i. Specifically excluded from this Warranty are damages to work and other parts of the building, and to building contents, caused by:

- 1. lightning;
- 2. peak gust wind speed exceeding 72 mph;
- 3. fire
- 4. failure of roofing system substrate, including cracking, settlement, excessive deflection, deterioration, and decomposition;
- 5. faulty construction of parapet walls, copings, chimneys, skylights, vents, equipment supports, and other edge conditions and penetrations of the work;
- 6. vapor condensation on bottom of roofing; and
- 7. activity on roofing by others, including construction contractors, maintenance personnel, other persons, and animals, whether authorized or unauthorized by Owner.

ii. When work has been damaged by any of foregoing causes, Warranty shall be null and void until such damage has been repaired by Roofing Installer and until cost and expense thereof have been paid by Owner or by another responsible party so designated.

iii. Roofing Installer is responsible for damage to work covered by this Warranty but is not liable for consequential damages to building or building contents resulting from leaks or faults or defects of work.

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 -



iv. During Warranty Period, if Owner allows alteration of work by anyone other than Roofing Installer, including cutting, patching, and maintenance in connection with penetrations, attachment of other work, and positioning of anything on roof, this Warranty shall become null and void on date of said alterations, but only to the extent said alterations

affect work covered by this Warranty. If Owner engages Roofing Installer to perform said alterations, Warranty shall not become null and void unless Roofing Installer, before starting said work, shall have notified Owner in writing, showing reasonable cause for claim, that said alterations would likely damage or deteriorate work, thereby reasonably justifying a limitation or termination of this Warranty.

v. During Warranty Period, if original use of roof is changed and it becomes used for, but was not originally specified for, a promenade, work deck, spray-cooled surface, flooded basin, or other use or service more severe than originally specified, this Warranty shall become null and void on date of said change, but only to the extent said change affects work covered by this Warranty.

vi. Owner shall promptly notify Roofing Installer of observed, known, or suspected leaks, defects, or deterioration and shall afford reasonable opportunity for Roofing Installer to inspect work and to examine evidence of such leaks, defects, or deterioration.

vii. This Warranty is recognized to be the only warranty of Roofing Installer on said work and shall not operate to restrict or cut off Owner from other remedies and resources lawfully available to Owner in cases of roofing failure. Specifically, this Warranty shall not operate to relieve Roofing Installer of responsibility for performance of original work according to requirements of the Contract Documents, regardless of whether Contract was a contract directly with Owner or a subcontract with Owner's General Contractor.

b. IN WITNESS THEREOF, this instrument has been duly executed
 this _____ day of _____,
 _____.

- i. Authorized Signature: _____
- ii. Name: _____
- iii. Title: _____

2.

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 NC 27858
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 Fax 252.830.3954

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ADDENDUM NO. 3

Client / Facility: City of Greenville	TEG Project No.: 20200132
Project Name: Convention Center Replacement of EPDM Roofs	Client Project No.: n/a
Addendum Date: February 12, 2021	For Bids Due On: 2-16-2021

Corporate Office
 324 Evans St
 Greenville
 NC 27858
 Tel 252.758.3746
 Fax 252.830.3954

Raleigh Office
 4325 Lake Boone Trail
 Suite 311
 Raleigh
 NC 27607
 Tel 919.784.9330
 Fax 919.784.9331

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This Addendum has become a part of the drawings and specifications for the above project.

Clarifications and additions

1. Subject to conformance with plans and specifications:
 - a. The gutters, downspouts, and drip edge may be shop fabricated - The copings shall remain pre-manufactured per Addendum 2.
 - b. Flex Membrane International Corp. is an accepted supplier of the 60 mil TPO membrane for Alternate 2.
2. Removal of the existing EPDM from all vertical surfaces and the tops of the parapet walls is required prior to installation of the new membrane. These surfaces include the parapet walls, all curbs, and the low slope roof to wall conditions shown in details 3/A7.2 and 4/A7.2.
3. Walkway Pads are not part of the scope of this project
4. Coating for all metal shall be a 2 coat Fluoropolymer finish

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 -

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

**SUPPLEMENTARY CONDITIONS
TO GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION AIA DOCUMENT
A201 – 2007 EDITION**

The following supplements modify, change, delete from or add to the "General Conditions of the Contract Construction", AIA Document A201, 2007 Edition. Where any Article of the General Conditions is modified or any Paragraph, Subparagraph or Clause thereof is modified or deleted by these supplements, the unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

ARTICLE 3 CONTRACTOR

3.5 WARRANTY

3.5.1 Add the following Subparagraph: "The Contractor will assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties."

3.6 TAXES

Add the following Subparagraph: "North Carolina and county sales taxes are included within the Contract Sum and are not in addition to the Contract Sum. The Contractor shall make a monthly accounting of the taxes paid so the Owner may file for reimbursement."

3.18 INDEMNIFICATION

3.18.1 After the words "(other than the Work itself)" delete "but only to the extent caused by the negligent acts or omissions" and substitute "caused by acts or omissions of".

ARTICLE 5 SUBCONTRACTORS

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.3 Delete the 2nd sentence and substitute: "If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum shall be increased by the lesser of the following: (1) the difference between the subcontract amount proposed by the person or entity recommended by the Contractor and the subcontract amount proposed by the person or entity accepted or designated by the Owner and the Architect; or (2) the amount by which the subcontract amount proposed by the person or entity accepted or designated by the Owner and the Architect exceeds the amount set forth in the Schedule of Values, if any, which is applicable to the Work covered by such subcontract."

5.3 SUBCONTRACTUAL RELATIONS

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

Add at the end of the Subparagraph: "The agreement between the Contractor and Subcontractor shall include but are not limited to the requirements of liability insurance and workers' compensation insurance either as part of the Contractor's policies or by separate policy provided by the Subcontractor, an indemnification agreement for injuries or damages caused by the acts or omissions of the Subcontractor, and that no privity exists between the Subcontractor and the Owner."

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.3 At the end of the Subparagraph, add: "Except as permitted in Paragraph 7.3 and Subparagraph 9.7, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents."

7.2 CHANGE ORDERS

Add the following Subparagraph: "Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents."

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.7 Add the following Subparagraph: "The term, "allowance for overhead and profit," wherever mentioned in this Contract, shall be limited by the following conditions:

"Overhead Costs" shall include the following: Supervision, superintendent, wages of timekeepers, watchmen and clerks, hand tools, incidentals, general office expense, and all other expenses not included in "cost" as defined in Subparagraph 7.3.6 and including all costs associated with time extensions granted as a part of change orders.

Overhead and profit shall not exceed 15% of the value of labor and material for Work performed by the Contractor. If the work is performed by a Subcontractor, the Contractor's overhead and profit shall not exceed 7 ½ %."

ARTICLE 8 TIME

8.3 DELAYS AND EXTENSIONS OF TIME

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

8.3.1 In Line 4 delete: "pending mediation and arbitration, or".

ARTICLE 9 PAYMENTS AND COMPLETION

9.7 FAILURE OF PAYMENT

9.7.1 In Line 4, delete the phrase: "or awarded by binding dispute resolution".

9.8 SUBSTANTIAL COMPLETION

9.8.1 Add after the phrase "for its intended use": "; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project."

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Add at the end of the Subparagraph: "All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received by the Owner."

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1 Add at the end of the Subparagraph: "In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any materialman or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic."

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.2 Add the following Clause: "The insurance required by Subparagraph 11.1.1 shall be written with an "A" rated company and written for not less than the following, or greater if required by law:

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

1. Worker's Compensation – State, Statutory
2. Comprehensive General Liability (including Premises – Operations; Independent Contractors' Protective; Products and Completed Operations; All Risk Property Damage):
 - a. Bodily Injury/Property Damage: \$2,000,000 each occurrence
\$2,000,000 annual aggregate
 - b. Property Damage Liability Insurance will provide X, C, or U coverage as applicable.
3. Contractual Liability:
 - a. Bodily Injury/Property Damage: \$2,000,000 each occurrence
\$2,000,000 annual aggregate
4. Personal Injury, with Employment Exclusion deleted
- \$1,000,000 annual aggregate
5. Comprehensive Automobile Liability:
 - a. Bodily Injury/Property Damage: \$1,000,000 each person
\$1,000,000 each occurrence

11.3 PROPERTY INSURANCE

11.3.1 In the first sentence, delete "Unless otherwise provided, the Owner " and substitute "The Contractor". Add at the end of the Subparagraph:

"The form of policy for this coverage shall be completed value. If the Owner is damaged by the failure of the Contractor to maintain such insurance, then the Contractor shall bear all reasonable costs properly attributable thereto."

11.3.1.2 Delete Clause 11.3.1.2 in its entirety.

11.3.1.3 Delete Clause 11.3.1.3 in its entirety.

11.3.4 Delete Subparagraph 11.3.4 in its entirety.

11.3.6 Delete Subparagraph 11.3.6 and substitute the following: "Before an exposure to loss may occur, the Contractor shall file with the Owner two (2) certified copies of the policy or policies providing this Property Insurance coverage, each containing those endorsements specifically related to the Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the Contractor."

11.3.7 Modify Subparagraph 11.3.7 by substituting "Contractor" for "Owner" at the end of the first sentence.

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

11.3.8 Modify Subparagraph 11.3.8 by substituting "Contractor" for "Owner" as fiduciary; except that at the first reference to "Owner" in the first sentence, the word "this" should be substituted for "Owner's".

11.3.9 Modify Subparagraph 11.3.9 by substituting "Contractor" for "Owner" each time the latter word appears and in line 5 delete the phrase "or in accordance with the method of binding dispute resolution selected in the agreement between the Owner" and "Contractor".

11.3.10 Modify Subparagraph 11.3.10 by substituting "Contractor" for "Owner" each time the latter word appears and deleting all words in the Subparagraph after the word "power" in the second line.

ARTICLE 15 CLAIMS AND DISPUTES

15.1.2 Add at the end of the Subparagraph: "Failure of the Contractor to give timely notice of a claim shall constitute waiver of the claim."

15.1.5.2 Add at the end of the Clause: "Claims for extension of the Contract Time, described in Subparagraph 15.1.5.1 for "Bad Weather" shall be submitted by the Contractor for consideration by the Architect when the weather has an adverse effect on the scheduled construction only under the following conditions:

1. If the number of days during which there was in excess of .02 inches of rain per day, exceeds by 105% the average number of days during which there was in excess of .02 inches of rain per day for that same month for the immediately preceding five (5) years.
2. If the number of days during which the temperature did not exceed 32.0° F in the period from 7:00 a.m. to 5:00 p.m., exceeds by 105% the average number of days during which the temperature did not exceed 32.0° F in the period from 7:00 a.m. to 5:00 p.m. for that same month for the immediately preceding five (5) years.

The Architect will not consider any claims for extension of time due to "Bad Weather", except as outlined in this section."

15.2.5 Delete the Subparagraph as written and substitute: "The Architect will approve or reject Claims by written decision. The decision shall state the reasons for approval or rejection and shall notify the parties of any change in the Contract Sum or Contract Time or both. The decision of the Architect shall be final and binding on the parties but subject to voluntary arbitration or litigation."

15.2.6

Delete this Paragraph in its entirety.

**CITY OF GREENVILLE
CONVENTION CENTER
REPLACEMENT OF EPDM ROOFS**

15.4 MEDIATION

Delete this Paragraph in its entirety.

15.4 ARBITRATION

Delete this Paragraph in its entirety.

END OF SUPPLEMENTARY CONDITIONS

APPROVED AS TO FORM:

BY: _____
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.

_____ Date _____
Byron Hayes, Director of Financial Services

Account Number _____

Project Code (if applicable) _____

BID TABULATION

Client / Facility:	City Of Greenville	TEG Project No.:	20200132
Project Name:	Convention Center Replacement of EPDM Roofs	bids received - 2-16-21	

Bidder	License Number	Bid Bond	Addenda Acknowledged			Bid signed	Bid sealed	References Provided	E Verify Affidavit	Base Bid	Alternate 1	Alternate 2	Base Bid plus Alternate 1	Base Bid plus Alternate 2	Base Bid plus Alternate 1&2
			#1	#2	#3										
Curtis Construction, Inc.	3529	*	*	*	*	*	*	*		\$304,300.00	\$36,100.00	-\$64,600.00	\$340,400.00	\$239,700.00	\$275,800.00
AAR of North Carolina, Inc.	21667	*	*	*		*	*	*	*	\$306,700.00	\$28,100.00	-\$64,600.00	\$334,800.00	\$242,100.00	\$270,200.00
Triangle Roofing Services, Inc.	49606	*	*	*	*	*	*	*		\$319,700.00	\$24,000.00	-\$67,400.00	\$343,700.00	\$252,300.00	\$276,300.00
Bar Roofing and Maintenance	79808	*	*	*		*	*	*		\$326,000.00	\$32,500.00	-\$34,000.00	\$358,500.00	\$292,000.00	\$324,500.00
The Hamlin Companies	5855	*	*	*	*	*	*	*	*	\$329,112.00	\$33,063.00	-\$44,757.00	\$362,175.00	\$284,355.00	\$317,418.00
Baker Roofing Company	5812	*	*	*		*		*	*	\$379,800.00	\$30,500.00	-\$85,500.00	\$410,300.00	\$294,300.00	\$324,800.00
Service Roofing and Sheet Metal	7183	*	*	*	*	*	*	*	*	\$390,943.00	\$55,353.00	-\$90,636.00	\$446,296.00	\$300,307.00	\$355,660.00
Owens Roofing, Inc.	24442	*	*	*		*	*	*		\$393,355.00	\$42,000.00	-\$40,000.00	\$435,355.00	\$353,355.00	\$395,355.00
Wayne Roofing and Sheet Metal Co.	20665	*	*	*	*	*	*	*		no bid	\$27,500.00	\$261,500.00	no bid	\$261,500.00	\$289,000.00

Deduct was mathematically derived from bidder supplied information

Amount was mathematically derived from bidder supplied

The above tabulation represents the bids received on 2-16-21 at 4:00 pm

Signed 

Richard Johnson AIA - Architect of Record

Performance Bond

Bond No. 30123317

CONTRACTOR:

(Name, legal status and address)

AAR of North Carolina, Inc.
655 Peddycord Road
Kernersville, NC 27284

SURETY: Western Surety Company

(Name, legal status and principal place of business)

151 N. Franklin Street
17th Floor
Chicago, IL 60606

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

City of Greenville
1500 Beatty Street
Greenville, NC 27834

CONSTRUCTION CONTRACT

Date: March 16, 2021

Amount: \$334,800.00 Three Hundred Thirty Four Thousand Eight Hundred Dollars and 00/100

Description:

(Name and location)

City of Greenville, Convention Center Replacement of EPDM Roofs, 303 Greenville Blvd., SW, Greenville, NC 27834

BOND

Date: March 17, 2021

(Not earlier than Construction Contract Date)

Amount: \$334,800.00 Three Hundred Thirty Four Thousand Eight Hundred Dollars and 00/100

Modifications to this Bond: None

See Section 16

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

AAR of North Carolina, Inc.

SURETY

Company:

(Corporate Seal)

Western Surety Company



Signature:

Brad Kurth

Name: Brad Kurth
and Title: Sr. Vice President

(Any additional signatures appear on the last page of this Performance Bond.)

Signature:

Elizabeth A. Dyer

Name: Elizabeth A. Dyer
and Title: Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Marsh & McLennan Agency LLC
P. O. Box 12748
Roanoke, VA 24028

540-982-3511

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

The East Group, PA
324 Evans St.
Greenville, NC 27858

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

CNA SURETY

Payment Bond

Bond No. 30123317

CONTRACTOR:

(Name, legal status and address)

AAR of North Carolina, Inc.
655 Peddycord Road
Kernersville, NC 27284

SURETY: Western Surety Company

(Name, legal status and principal place of business)

151 N. Franklin Street
17th Floor
Chicago, IL 60606

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

City of Greenville
1500 Beatty Street
Greenville, NC 27834

CONSTRUCTION CONTRACT

Date: March 16, 2021

Amount: \$334,800.00 Three Hundred Thirty Four Thousand Eight Hundred Dollars and 00/100

Description:

(Name and location)

City of Greenville, Convention Center Replacement of EPDM Roofs, 303 Greenville Blvd., SW, Greenville, NC 27834

BOND

Date: March 17, 2021

(Not earlier than Construction Contract Date)

Amount: \$334,800.00 Three Hundred Thirty Four Thousand Eight Hundred Dollars and 00/100

Modifications to this Bond: None

See Section 18

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)


AAR of North Carolina, Inc.

SURETY

Company:

(Corporate Seal)

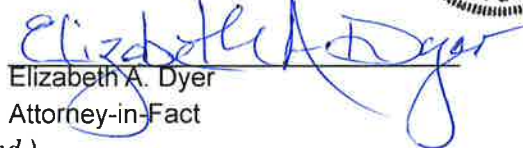
Western Surety Company

Signature: 

Name Brad Kurth

and Title: Sr. Vice President

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: 

Name Elizabeth A. Dyer

and Title: Attorney-in-Fact



(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:**OWNER'S REPRESENTATIVE:**

(Architect, Engineer or other party:)

Marsh & McLennan Agency LLC

P. O. Box 12748

Roanoke, VA 24028

540-982-3511

The East Group, PA

324 Evans St.

Greenville, NC 27858

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature:

Name and Title:

Address

Signature:

Name and Title:

Address

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Elizabeth A. Dyer , Individually

of Roanoke, VA its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

Surety Bond No.: 30123317
Principal: AAR of North Carolina, Inc.
Obligee: City of Greenville

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 27th day of February, 2018.



WESTERN SURETY COMPANY

Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 27th day of February, 2018, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires
June 23, 2021



J. Mohr
J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 17th day of March, 2021.



WESTERN SURETY COMPANY

L. Nelson
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/19/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh & McLennan Agency, LLC P.O. Box 12748 Roanoke VA 24028	CONTACT NAME: PHONE (A/C. No. Ext): 540-342-9087	FAX (A/C. No.): 212-948-9955
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Selective Insurance Company of America		12572
INSURER B: Markel American Insurance Company		28932
INSURER C: Great American Alliance Ins Co		26832
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** 961705528 **REVISION NUMBER:**

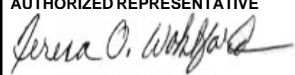
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Indp Contractor <input checked="" type="checkbox"/> XCU/ Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC <input type="checkbox"/> OTHER:			S2257200	5/1/2020	5/1/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Prop Dmg Ded \$ \$10,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> MCS-90			S2257200	5/1/2020	5/1/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp/Coll Ded \$ \$500/\$1,000
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			MKLM4EUL100633	5/1/2020	5/1/2021	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
C	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	WCE59095400	5/1/2020	5/1/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: City of Greenville, Convention Center Replacement of EPDM Roofs
 303 Greenville Blvd., SW
 Greenville, NC 27834
 The certificate holder is included as Additional Insured under the General Liability with respect to work performed by the insured if required by written contract for the referenced job and/or contract.
 Per the cancellation clause contained in the policies noted on this certificate, the policy provisions include at least 30 days notice of cancellation except for non-payment of premium.

CERTIFICATE HOLDER **CANCELLATION**

City of Greenville 1500 Beatty Street Greenville, NC 27834	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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POLICY PERIOD, COVERAGE TERRITORY

SECTION IV, B.7. - Policy Period, Coverage Territory is deleted in its entirety and replaced with the following:

Under this Coverage Form, we cover “accidents” and “losses” occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the “Coverage Territory”.

We also cover “loss” to or “accidents” involving a covered “auto” while being transported between any of these places.

TWO OR MORE COVERAGE FORMS OR POLICIES ISSUED BY US - DEDUCTIBLES

The following is added to **SECTION IV, B.8. - Two Or More Coverage Forms Or Policies Issued By Us:**

If a “loss” covered under this Coverage Form also involves a “loss” to other property resulting from the same “accident” that is covered under this policy or another policy issued by us or any member company of ours, only the highest applicable deductible will be applied.

AMENDMENTS TO SECTION V - DEFINITIONS

BODILY INJURY INCLUDING MENTAL ANGUISH (Not Applicable in New York)

The definition of bodily injury is deleted in its entirety and replaced by the following:

“Bodily injury” means bodily injury, sickness, or disease sustained by a person, including death resulting from any of these. “Bodily injury” includes mental anguish resulting from bodily injury, sickness or disease sustained by a person.

ADDITIONS TO SECTION V - DEFINITIONS

COVERAGE TERRITORY

“Coverage Territory” means:

1. The United States of America (including its territories and possessions), Canada and Puerto Rico; and
2. Anywhere in the world, except for any country or jurisdiction that is subject to trade or other economic sanction or embargo by the United States of America, if a covered “auto” is leased, hired, rented, or borrowed without a driver for a period of 30 days or less, and the insured’s responsibility to pay “damages” is determined in a “suit” on the merits in and under the substantive law of the United States of America (including its territories and possessions), Puerto Rico, or Canada, or in a settlement we agree to.

If we are prevented by law, or otherwise, from defending the “insured” in a “suit” brought in a location described in Paragraph 2. above, the insured will conduct a defense of that “suit”. We will reimburse the “insured” for the reasonable and necessary expenses incurred for the defense of any such “suit” seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.

EXTRA HEAVY TRUCK

“Extra Heavy Truck” means a truck with a gross vehicle weight rating of 45,001 pounds or more.

HEAVY TRUCK

“Heavy Truck” means a truck with a gross vehicle weight rating of 20,001 pounds to 45,000 pounds.

LIGHT TRUCK

“Light Truck” means a truck with a gross vehicle weight rating of 10,000 pounds or less.

MEDIUM TRUCK

“Medium Truck” means a truck with a gross vehicle weight rating of 10,001 pounds to 20,000 pounds.

SOCIAL SERVICE VAN OR BUS

“Social Service Van or Bus” means a van or bus used by a government entity, civic, charitable or social service organization to provide transportation to clients incidental to the social services sponsored by the organization, including special trips and outings.

TELEMATIC DEVICE

“Telematic Device” includes devices designed for the collection and dissemination of data for the purpose of monitoring vehicle and/or driver performance. This includes Global Positioning System technology, wireless safety communications and automatic driving assistance systems, all integrated with computers and mobile communications technology in automotive navigation systems.

VOLUNTEER WORKER

“Volunteer worker” means a person who performs business duties for you, for no financial or other compensation.

EXPANDED AUDIO, VISUAL, AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III, B.4. - Exclusions

This exclusion does not apply to the following:

1. Global positioning systems;
2. "Telematic devices"; or
3. Electronic equipment that reproduces, receives or transmits visual or data signals and accessories used with such equipment, provided such equipment is:
 - a. Permanently installed in or upon the covered "auto" at the time of the "loss";
 - b. Removable from a housing unit that is permanently installed in the covered "auto" at the time of the "loss";
 - c. Designed to be solely operated by use of power from the "auto's" electrical system; or
 - d. Designed to be used solely in or upon the covered "auto".

For each covered "loss" to such equipment, a deductible of \$50 shall apply, unless the deductible otherwise applicable to such equipment is less than \$50, at which point the lower deductible, if any, will apply.

COMPREHENSIVE DEDUCTIBLE - LOCATION TRACKING DEVICE

The following is added to **SECTION III, D. - Deductible:**

Any Comprehensive Coverage Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the covered "auto" is equipped with a location tracking device and that device was the sole method used to recover the "auto".

PHYSICAL DAMAGE LIMIT OF INSURANCE

SECTION III, C. - Limit Of Insurance is deleted in its entirety and replaced with the following:

The most we will pay for a "loss" in any one "accident" is the lesser of:

1. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
2. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

AMENDMENTS TO SECTION IV - BUSINESS AUTO CONDITIONS

DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT OR LOSS

The following is added to SECTION IV, A.2.a. - Duties In The Event Of Accident, Claim, Suit Or Loss:

The notice requirements for reporting "accident" claim, "suit" or "loss" information to us, including provisions related to the subsequent investigation of such "accident", claim, "suit" or "loss" do not apply until the "accident", claim, "suit" or "loss" is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;
3. An executive officer or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company;
5. Your elected or appointed officials, trustees, board members or your insurance manager, if you are an organization other than a partnership, joint venture or limited liability company.

But, this section does not amend the provisions relating to notification of police or protection or examination of the property that was subject to the "loss".

WAIVER OF SUBROGATION

SECTION IV, A.5. - Transfer Of Rights Of Recovery Against Others To Us is deleted in its entirety and replaced with the following:

We waive any right of recovery we may have against any person or organization because of payments we make for "bodily injury" or "property damage" resulting from the ownership, maintenance or use of a covered "auto" but only when you have assumed liability for such "bodily injury" or "property damage" in an "insured contract". In all other circumstances, if a person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us.

MULTIPLE DEDUCTIBLES

The following is added to **SECTION IV, A. - Loss Conditions:**

If a "loss" from one event involves two or more covered "autos" and coverage under Comprehensive or Specified Causes of Loss applies, only the highest applicable deductible will be applied.

CONCEALMENT, MISREPRESENTATION OR FRAUD

The following is added to **SECTION IV, B.2. - Concealment, Misrepresentation Or Fraud:**

If you should unintentionally fail to disclose any existing hazards in your representations to us prior to the inception date of the policy or during the policy period in connection with any newly discovered hazards, we will not deny coverage under this Coverage Form based upon such failure.

HIRED AUTO PHYSICAL DAMAGE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions**:

Physical Damage coverage is hereby extended to apply to Physical Damage "loss" to "autos" leased, hired, rented or borrowed without a driver. We will provide coverage equal to the broadest coverage available to any covered "auto" shown in the Declarations. But, the most we will pay for "loss" to each "auto" under this coverage extension is the lesser of:

1. The Limit of Insurance stated in the ElitePac Schedule; or
2. The actual cash value of the damaged or stolen property as of the time of the "loss"; or
3. The actual cost of repairing or replacing the damaged or stolen property with other property of like kind and quality. A part is of like kind and quality when it is of equal or better condition than the pre-accident part. We will use the original equipment from the manufacturer when:
 - (a) The operational safety of the vehicle might otherwise be impaired;
 - (b) Reasonable and diligent efforts to locate the appropriate rebuilt, aftermarket or used part have been unsuccessful; or
 - (c) A new original equipment part of like kind and quality is available and will result in the lowest overall repair cost.

For each leased, hired, rented or borrowed "auto" our obligation to pay "losses" will be reduced by a deductible equal to the highest deductible applicable to any owned "auto" for that coverage. No deductible will be applied to "losses" caused by fire or lightning.

SECTION IV, B. 5. Other Insurance Condition, Paragraph 5.b. is deleted in its entirety and replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

1. Any covered "auto" you lease, hire, rent, or borrow; and
2. Any covered "auto" hired or rented by your "employee" under a contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

HIRED AUTO LOSS OF USE COVERAGE

The following is added to **SECTION III, A.4. - Coverage Extensions**:

We will pay expenses for which you are legally responsible to pay up to the Limit of Insurance shown on the ElitePac Schedule per "accident" for loss of use of a leased, hired, rented or borrowed "auto" if it results from an "accident".

This coverage extension does not apply to Emergency Services Organizations, Governmental Entities, and Schools.

AUTO LOAN/LEASE GAP COVERAGE (Not Available in New York)

The following is added to **SECTION III, A.4. - Coverage Extensions**:

In the event of a total "loss" to a covered "auto" we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Physical Damage Coverage Section of the policy; and
2. Any:
 - a. Overdue lease/loan payments at the time of "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear, high mileage or similar charges;
 - c. Security deposits not refunded by the lessor or financial institution;
 - d. Costs for extended warranties, credit life, health, accident, or disability insurance purchased with the loan or lease; and
 - e. Carry-over balances from previous leases or loans.

You are responsible for the deductible applicable to the "loss" for the covered "auto".

PERSONAL EFFECTS

The following is added to **SECTION III, A.4. - Coverage Extensions**:

If this policy provides Comprehensive Coverage for a covered "auto" you own and that covered "auto" is stolen, we will pay up to the Limit of Insurance shown on the ElitePac Schedule, without application of a deductible, for lost personal effects that were in the covered "auto" at the time of theft. Personal effects do not include jewelry, tools, money, securities or valuable papers. This coverage is excess over any other collectible insurance.

AIRBAG COVERAGE

The following is added to **SECTION III, B.3.a. - Exclusions**:

Mechanical breakdown does not include the accidental discharge of an airbag.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

Any person or organization whom you have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional "insured" on your policy. Such person or organization is an additional "insured" only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by your ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured". This provision only applies if:

1. It is required in the written contract, written agreement or written permit identified in this section;
 2. It is permitted by law; and
 3. The written contract or written agreement has been executed (executed means signed by a named insured) or written permit issued prior to the "bodily injury" or "property damage".
- C. If this policy provides Auto Liability coverage for Non-Owned Autos, the following extension is applicable accordingly:

EMPLOYEES AS INSURED

If this policy provides Auto Liability coverage for Non-Owned Autos, the following is added to **SECTION II, A.1. - Who Is An Insured:**

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's" name with your permission, while performing duties related to the conduct of your business.

AMENDMENTS TO SECTION III - PHYSICAL DAMAGE COVERAGE

If this policy provides Comprehensive, Specified Causes of Loss or Collision coverage, the following extensions are applicable for those "autos" for which Comprehensive, Specified Causes of Loss or Collision coverage is purchased:

TOWING AND LABOR

SECTION III, A.2. - Towing is deleted in its entirety and replaced with the following:

We will pay all reasonable towing and labor costs up to the maximum Limit of Insurance shown on the ElitePac Schedule per tow each time a covered Private Passenger Auto, "Social Service Van or Bus" or "Light Truck" is disabled and up to the maximum Limit of Insurance per tow each time a covered "Medium Truck", "Heavy Truck" or "Extra Heavy Truck" is disabled.

For labor charges to be eligible for reimbursement the labor must be performed at the place of disablement.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

GLASS BREAKAGE DEDUCTIBLE

The following is added to **SECTION III, A.3. - Glass Breakage - Hitting A Bird Or Animal - Falling Objects or Missiles:**

If damaged glass is repaired rather than replaced, no deductible will apply for such repair. This extension does not apply to Emergency Services Organizations and Governmental Entities.

ADDITIONAL TRANSPORTATION EXPENSES

SECTION III, A.4.a. - Transportation Expenses is deleted in its entirety and replaced with the following:

We will pay up to the maximum Limit of Insurance shown on the ElitePac Schedule for temporary transportation expenses that you incur because of any "loss" to a covered "auto", but only if the covered "auto" carries the coverages and meets the requirements described in **1.** or **2.** below:

1. We will pay temporary transportation expenses for total theft of a covered "auto". We will only pay for such expenses incurred during the period beginning 24 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".
2. For "loss" other than total theft of a covered "auto" under Comprehensive or Specified Causes of Loss Coverage, or for any "loss" under Collision Coverage to a covered "auto", we will only pay for those temporary transportation expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the number of days reasonably required to repair or replace the covered "auto" or 30 days.

Paragraph **2.** of this extension does not apply while there are spare or reserve "autos" available to you for your operations.

This coverage extension does not apply to Emergency Services Organizations and Governmental Entities.

ElitePac® Commercial Automobile Extension

COMMERCIAL AUTO
CA 78 09NC 11 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Business Auto Coverage Form apply unless modified by the endorsement.

AMENDMENTS TO SECTION II - LIABILITY COVERAGE

A. If this policy provides Auto Liability coverage for Owned Autos, the following extensions are applicable accordingly:

NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following is added to **SECTION II, A.1. - Who Is An Insured:**

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no similar insurance available to that organization. However:

1. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
2. Coverage does not apply to "bodily injury" or "property damage" resulting from an "accident" that occurred before you acquired or formed the organization.

No person or organization is an "insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

EXPENSES FOR BAIL BONDS AND LOSS OF EARNINGS

Paragraphs (2) and (4) of **SECTION II, A.2.a. - Supplementary Payments** are deleted in their entirety and replaced with the following:

- (2) Up to the Limit of Insurance shown on the ElitePac Schedule for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" covered under this policy. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request. This includes actual loss of earnings because of time off from work, which we will pay up to the Limit of Insurance shown on the ElitePac Schedule.

EMPLOYEE INDEMNIFICATION AND EMPLOYER'S LIABILITY AMENDMENT

The following is added to **SECTION II, B.4. - Exclusions**

This exclusion does not apply to a "volunteer worker" who is not entitled to workers compensation, disability or unemployment compensation benefits.

FELLOW EMPLOYEE COVERAGE

The **Fellow Employee** Exclusion, **SECTION II, B.5. -** is deleted in its entirety.

CARE, CUSTODY OR CONTROL AMENDMENT

The following is added to **SECTION II, B.6. - Exclusions:**

This exclusion does not apply to property owned by anyone other than an "insured", subject to the following:

1. The most we will pay under this exception for any one "accident" is the Limit of Insurance stated in the ElitePac Schedule; and
 2. A per "accident" deductible as stated in the ElitePac Schedule applies to this exception.
- B. If this policy provides Auto Liability coverage for Owned Autos or Non-Owned Autos, the following extension is applicable accordingly:

LIMITED LIABILITY COMPANIES

The following is added to **SECTION II, A.1. - Who Is An Insured:**

If you are a limited liability company, your members and managers are "insureds" while using a covered "auto" you don't own, hire or borrow during the course of their duties for you.

BLANKET ADDITIONAL INSUREDS - As Required By Contract

The following is added to **SECTION II, A.1. - Who Is An Insured:**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Insured AAR of North Carolina, Inc.		Policy No. WC E590954 00	
Company Great American Alliance Insurance Company	Effective Date	Premium \$	Endorsement No.
Authorized Representative Rutherford, Marsh & McLennan			

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Any Person or Organization for whom the named insured has agreed by written contract to furnish this waiver for the state of North Carolina

Contracting, Installation, Service and Repair General Liability Extended ElitePac® Endorsement

COMMERCIAL GENERAL LIABILITY
CG 79 88 01 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

1. BLANKET ADDITIONAL INSUREDS

a. Ongoing Operations

SECTION II — WHO IS AN INSURED is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above;

Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed under that contract, agreement, or permit when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of your ongoing operations.

If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of your ongoing operations, then such person or organization is an additional insured only with respect to "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by your ongoing operations performed under that contract, agreement, or permit.

b. Completed Operations

SECTION II — WHO IS AN INSURED is amended to include as an additional insured:

1. Any person or organization for whom you are performing or have performed operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above;

Such person or organization is an additional insured only with respect to their liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard" when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard".

If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard", then such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by "your work" performed under that contract, agreement, or permit and included in the "products-completed operations hazard".

- c. The coverages provided in Paragraphs a. and b. do not apply unless the written contract or written agreement has been signed by the Named Insured or written permit issued prior to the "bodily injury", "property damage" or "personal and advertising injury".

d. **Exclusions**

- (1) With respect to the insurance afforded to additional insureds under a. **Ongoing Operations** the following is added to 2. **Exclusions** under **SECTION I — COVERAGE A — BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or

- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- (2) With respect to the insurance afforded to these additional insureds under a. **Ongoing Operations** and b. **Completed Operations**, the following is added to 2. **Exclusions** under **SECTION I — COVERAGE A — BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This insurance does not apply to:

"Bodily injury", "property damage", or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (a) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- (b) Supervisory, inspection, architectural or engineering activities.

e. **Conditions**

With respect to the insurance afforded to these additional insureds under a. **Ongoing Operations** and b. **Completed Operations** the following is added to Paragraph 4. **Other Insurance**, a. **Primary Insurance** under **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**:

This insurance is primary and will not contribute with any other insurance available to an additional insured under this coverage part provided that:

- (1) The additional insured is a Named Insured under such other insurance.
- (2) You have agreed in a written contract, written agreement or written permit to include that additional insured on your General Liability policy on a primary and/or non-contributory basis.

2. **PROPERTY DAMAGE CARE, CUSTODY OR CONTROL**

The following is added to **Exclusion j.** under **SECTION I — COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Paragraphs (4) and (5) do not apply for the limited purpose of providing the coverage and sub-limits of liability as set forth below.

We will pay those sums that the insured becomes legally obligated to pay as damages arising out of "property damage" to:

- (1) Personal property in the care, custody or control of the insured; and

(2) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations.

The most we will pay under (1) and (2) above in any one "occurrence" or for all damages during any one policy period is a sub-limit of \$100,000.

These limits are included in and not in addition to the Limits of Insurance shown in the Declarations of the Commercial General Liability Policy.

Our right and duty to defend the insured against any "suit" for damages under (1) and (2) above ends when we have used up the applicable sub-limit of liability in the payment of judgments or settlements under it.

3. OTHER INSURANCE AMENDMENT — SUPPLEMENTAL COVERAGE FOR INSURED'S INVOLVEMENT IN A CONSOLIDATED (WRAP-UP) IN SURANCE PROGRAM OR SIMILAR PROJECT

The following is added to **SECTION IV — COMMERCIAL GENERAL LIABILITY CONDITIONS**, Paragraph 4. **Other Insurance b. Excess Insurance (1)(a)**:

(v) That is covered by a consolidated (wrap-up) or similar insurance program provided by the prime contractor/project manager or owner of the construction project in which you are involved for your ongoing operations or operations included within the "products-completed operations hazard", unless such consolidated (wrap-up) or similar program is specifically excluded from coverage on this policy.

4. FELLOW EMPLOYEE EXTENSION

Under **SECTION II — WHO IS AN INSURED** Paragraphs 2.a. and 2.a. (1) are replaced by the following:

a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture, or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. The Employers Liability exclusion (**SECTION I — COVERAGES; COVERAGE A, exclusion e.**) does not apply to this provision. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) Arising out of his or her providing or failing to provide professional health care services.

5. CONTRACTUAL LIABILITY (RAILROADS)

Definition 9. Insured Contract is amended as follows:

Paragraph c. is deleted in its entirety and replaced with the following:

Any easement or license agreement;

Paragraph f.(1) is deleted in its entirety.

6. CONTRACTUAL LIABILITY AMENDMENT — (PERSONAL AND ADVERTISING INJURY)

If it is required in a written contract, written agreement or written permit with the insured that any contractual liability exclusion for Personal Injury be removed from the policy, then Exclusion e. **Contractual Liability** under **COVERAGE B PERSONAL AND ADVERTISING INJURY, 2. Exclusions** is deleted in its entirety and replaced with the following:

e. Contractual Liability

"Personal and advertising Injury" for which the insured has assumed liability in a contract or agreement arising out of an "advertisement". This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement"

7. WAIVER OF GOVERNMENTAL IMMUNITY

We will waive, both in the adjustment of claims and in the defense of "suits" against the insured, any governmental immunity of the insured, unless the insured requests in writing that we not do so.

Waiver of immunity as a defense will not subject us to liability for any portion of a claim or judgment in excess of the applicable limit of insurance.

8. DAMAGE TO PREMISES RENTED TO YOU

The Limit of Insurance for Damage To Premises Rented To You is increased to \$1,000,000.

b. Anyone considered an insured under **SECTION II - WHO IS AN INSURED;**

2. Not done intentionally to cause harm to another person.
3. Not directly or indirectly related to the employment, prospective employment or termination of employment of any person or persons by any insured.
4. Not arising out of any "advertisement" by the insured.

B. The following definition is added to **SECTION V - DEFINITIONS:**

"Discrimination" means:

- a. Any act or conduct that would be considered discrimination under any applicable federal, state, or local statute, ordinance or law;
- b. Any act or conduct that results in disparate treatment of, or has disparate impact on, a person, because of that person's race, religion, gender, sexual orientation, age, disability or physical impairment; or
- c. Any act or conduct characterized or interpreted as discrimination by a person based on that person's race, religion, gender, sexual orientation, age, disability or physical impairment.

It does not include acts or conduct characterized or interpreted as sexual intimidation or sexual harassment, or intimidation or harassment based on a person's gender.

Electronic Data

The following definition is added to **SECTION V - DEFINITIONS:**

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cell, data processing devices or any other media which are used with electronically controlled equipment. For the purpose of the Electronic Data Liability coverage provided by this endorsement, Definition 17. "Property damage" is deleted in its entirety and replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property. All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purpose of the Electronic Data Liability coverage provided by this endorsement, "electronic data" is not tangible property.

Employee Amendment

Definition 5. "Employee" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced by the following:

5. "Employee" includes a "leased worker", or a "temporary worker". If you are a School, "Employee" also includes a student teacher.

Golfing Facility

The following definition is added to **SECTION V - DEFINITIONS:**

"Golfing facility" means a golf course, golf club, driving range, or miniature golf course.

Mental Anguish Amendment

(This provision does not apply in New York).

Definition 3. "Bodily injury" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced with the following:

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be "bodily injury").

Not-for-profit Member

The following definition is added to **SECTION V - DEFINITIONS:**

"Not-for-profit member" means a person who is a member of a not-for-profit organization, including clubs and churches, who receives no financial or other compensation.

3. An "executive officer" or insurance manager, if you are a corporation;
4. Your members, managers or insurance manager, if you are a limited liability company; or
5. Your elected or appointed officials, officers, members, trustees, board members, commission members, agency members, or your administrator or your insurance manager if you are an organization other than a partnership, joint venture, or limited liability company.

Primary and Non-Contributory Provision

The following is added to Paragraph 4. **Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is primary to and we will not seek contribution from any other insurance available to an additional insured under this policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in a written contract, written agreement or written permit that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

Unintentional Failure To Disclose Hazards

The following is added to Paragraph 6. **Representations** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

However, if you should unintentionally fail to disclose any existing hazards in your representations to us at the inception date of the policy, or during the policy period in connection with any additional hazards, we shall not deny coverage under this Coverage Part based upon such failure to disclose hazards.

Waiver Of Transfer Of Rights Of Recovery

The following is added to Paragraph 8. **Transfer of Rights Of Recovery Against Others To Us** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

We will waive any right of recovery we may have against a person or organization because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations or "your work" done under a written contract or written agreement and included in the "products-completed operations hazard", if:

1. You have agreed to waive any right of recovery against that person or organization in a written contract or written agreement;
2. Such person or organization is an additional insured on your policy; or

3. You have assumed the liability of that person or organization in that same contract, and it is an "insured contract".

The section above only applies to that person or organization identified above, and only if the "bodily injury" or "property damage" occurs subsequent to the execution of the written contract or written agreement.

Liberalization

The following condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If we revise this Coverage Part to provide more coverage without additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

Two or More Coverage Parts or Policies Issued By Us

(This provision is not Applicable in the state of New York or Wisconsin).

The following condition is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

It is our intention that the various coverage parts or policies issued to you by us, or any company affiliated with us, do not provide any duplication or overlap of coverage. We have exercised diligence to draft our coverage parts and policies to reflect this intention. However, if the facts and circumstances that will respond to any claim or "suit" give rise to actual or claimed duplication or overlap of coverage between the various coverage parts or policies issued to you by us or any company affiliated with us, the limit of insurance under all such coverage parts or policies combined shall not exceed the highest applicable limit under this coverage, or any one of the other coverage forms or policies.

This condition does not apply to any Excess or Umbrella policy issued by us specifically to apply as excess insurance over this coverage part or policy to which this coverage part is attached.

SECTION V - DEFINITIONS

Discrimination

(This provision does not apply in New York).

- A. The following is added to Definition 14. "Personal and advertising injury":

"Personal and advertising injury" also means "discrimination" that results in injury to the feelings or reputation of a natural person, however only if such "discrimination" or humiliation is:

1. Not done by or at the direction of:
 - a. The insured; or

- (1) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;
- (2) The construction, erection or removal of elevators; or
- (3) The ownership, maintenance or use of any elevators covered by this insurance.

This insurance does not apply to:

- (a) "Bodily injury" or "property damage" arising out of operations performed for the federal government, state or municipality; or
- (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard".

With respect to Paragraphs 2. through 4., this insurance does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been signed by the Named Insured or written permit issued prior to the "bodily injury" or "property damage" or "personal and advertising injury".

Broad Form Vendors Coverage

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured any person or organization (referred to below as vendor) for whom you have agreed in a written contract or written agreement to provide coverage as an additional insured under your policy. Such person or organization is an additional insured only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business. However, the insurance afforded the vendor does not apply to:

- a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement; however this exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;

- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business in connection with the sale of the product; or
- f. Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part of ingredient of any other thing or substance by or for the vendor; however this insurance does not apply to any insured person or organization, from who you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

The provisions of this coverage extension do not apply unless the written contract or written agreement has been signed by the Named Insured prior to the "bodily injury" or "property damage".

Incidental Malpractice

Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics if you are not in the business or occupation of providing any such professional services.

This also does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

This provision does not apply if you are a Social Service or Senior Living risk.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS - Amendments

Knowledge Of Occurrence, Claim, Suit Or Loss

The following is added to Paragraph 2. **Duties in the Event of Occurrence, Offense, Claim or Suit** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

The requirements under this paragraph do not apply until after the "occurrence" or offense is known to:

1. You, if you are an individual;
2. A partner, if you are a partnership;

2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above:

Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts of omissions of those acting on your behalf;

in the performance of your ongoing operations performed for the additional insured in Paragraph 1., above.

However, this insurance does not apply to:

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services by or for you, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- b. Supervisory, inspection, architectural or engineering activities.

Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

A person or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. Other Additional Insureds

Any of the following persons or organizations with whom you have agreed in a written contract, written agreement or written permit that such persons or organizations be added as an additional insured on your commercial general liability policy:

1. Lessors of Leased Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

2. Managers or Lessors of Premises

Any person or organization from whom you lease premises, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you.

This insurance does not apply to any "occurrence" which takes place after you cease to be a tenant of that premises.

3. Mortgagees, Assignees or Receivers

Any person or organization with respect to their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of your premises.

This insurance does not apply to any "occurrence" which takes place after the mortgage is satisfied, or the assignment or receivership ends.

4. Any Person or Organization Other Than A Joint Venture

Any person or organization (other than a joint venture of which you are a member), but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts of omissions of those acting on your behalf in the performance of your ongoing operations or in connection with property owned by you.

5. State or Governmental Agency or Political Subdivision - Permits or Authorizations

Any state or governmental agency or subdivision or political subdivision, but only with respect to:

- a. Operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization; or
- b. The following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

B. Subparagraph 1.d. under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is deleted in its entirety and replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$1,000 a day because of time off from work.

SECTION II - WHO IS AN INSURED - Amendments

Not-for-Profit Organization Members

The following paragraph is added to **SECTION II - WHO IS AN INSURED**:

If you are an organization other than a partnership, joint venture, or a limited liability company, and you are a not-for-profit organization, the following are included as additional insureds:

1. Your officials;
2. Your trustees;
3. Your members;
4. Your board members;
5. Your commission members;
6. Your agency members;
7. Your insurance managers;
8. Your elective or appointed officers; and
9. Your "not-for-profit members".

However only with respect to their liability for your activities or activities they perform on your behalf.

Employees As Insureds Modified

- A. Subparagraph 2.a.(1)(a) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" to a "temporary worker" caused by a co-"employee" who is not a "temporary worker".
- B. Subparagraph 2.a.(2) under **SECTION II - WHO IS AN INSURED** does not apply to "property damage" to the property of a "temporary worker" or "volunteer worker" caused by a co-"employee" who is not a "temporary worker" or "volunteer worker".
- C. Subparagraph 2.a.(1)(d) under **SECTION II - WHO IS AN INSURED** does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

With respect to this provision only, Subparagraph (1) of Exclusion 2. e. **Employer's Liability** under **SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply.

Newly Formed Or Acquired Organizations

- A. Subparagraph 3.a. under **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced with the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier. However, **COVERAGE A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

- B. The following paragraph is added to **SECTION II - WHO IS AN INSURED**, Paragraph 3:

If you are engaged in the business of construction of dwellings three stories or less in height, or other buildings three stories or less in height and less than 25,000 square feet in area, you will also be an insured with respect to "your work" only, for the period of time described above, for your liability arising out of the conduct of any partnership or joint venture of which you are or were a member, even if that partnership or joint venture is not shown as a Named Insured. However, this provision only applies if you maintain or maintained an interest of at least fifty percent in that partnership or joint venture for the period of that partnership or joint venture.

This provision does not apply to any partnership or joint venture that has been dissolved or otherwise ceased to function for more than thirty-six months.

With respect to the insurance provided by this provision, **Newly Formed or Acquired Organizations**, the following is added to **SECTION IV - COMMERCIAL GENERAL LIABILITY**, Paragraph 4. **Other Insurance**, Subparagraph b. **Excess Insurance**:

The insurance provided by this provision, **Newly Formed or Acquired Organizations**, is excess over any other insurance available to the insured, whether primary, excess, contingent or on any other basis.

(All other provisions of this section remain unchanged)

Blanket Additional Insureds - As Required By Contract

Subject to the **Primary and Non-Contributory** provision set forth in this endorsement, **SECTION II - WHO IS AN INSURED** is amended to include as an additional insured:

A. Owners, Lessees or Contractors/Architects, Engineers and Surveyors

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and

B. Paragraph 6. under **SECTION III - LIMITS OF INSURANCE** is deleted in its entirety and replaced with the following:

6. Subject to Paragraph 5. above, the most we will pay under **COVERAGE A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage caused by fire, lightning or explosion, while rented to you or temporarily occupied by you with permission of the owner, for all such damage caused by fire, lightning or explosion proximately caused by the same event, whether such damage results from fire, lightning or explosion or any combination of the three, is the amount shown in the Declarations for the Damage To Premises Rented To You Limit.

C. Paragraph a. of Definition 9. "Insured contract" under **SECTION V - DEFINITIONS** is deleted in its entirety and replaced with the following:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with the permission of the owner is not an "insured contract";

Electronic Data Liability

A. Exclusion p. **Access or Disclosure Of Confidential Or Personal Information And Data-related Liability** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is deleted in its entirety and replaced by the following:

p. **Access or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to **SECTION III - LIMITS OF INSURANCE**:

Subject to 5. above, the most we will pay under **COVERAGE A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence" is a sub-limit of \$100,000.

SECTION I - COVERAGE C MEDICAL PAYMENTS EXCLUSIONS

Any Insured Amendment

Exclusion a. **Any Insured** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

a. **Any Insured**

To any insured.

This exclusion does not apply to:

- (1) "Not-for-profit members";
- (2) "Golfing facility" members who are not paid a fee, salary, or other compensation; or
- (3) "Volunteer workers".

This exclusion exception does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

Product Amendment

Exclusion f. **Products-Completed Operations Hazard** under **COVERAGE C MEDICAL PAYMENTS, 2. Exclusions** is deleted in its entirety and replaced with the following:

f. **Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

This exclusion does not apply to "your products" sold for use or consumption on your premises, while such products are still on your premises.

This exclusion exception, does not apply if **COVERAGE C MEDICAL PAYMENTS** is excluded by another endorsement to this Coverage Part.

SECTION I - SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

Expenses For Bail Bonds And Loss Of Earnings

A. Subparagraph 1.b. under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B** is deleted in its entirety and replaced with the following:

b. Up to \$5,000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

ElitePac® General Liability Extension Endorsement

COMMERCIAL GENERAL LIABILITY
CG 73 00 01 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies the insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The **SECTIONS** of the Commercial General Liability Coverage Form identified in this endorsement will be amended as shown below. However, **if (a) two or more Coverage Parts of this policy, or (b) two or more forms or endorsements within the same Coverage Part apply to a loss**, coverage provision(s) with the broadest language will apply, unless specifically stated otherwise within the particular amendment covering that loss.

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

COVERAGES - Amendments

SECTION I - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

EXCLUSIONS

Employer's Liability Amendment

(This provision is not applicable in the State of New York).

The following is added to Exclusion **e. Employer's Liability** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**:

This exclusion also does not apply to any "temporary worker".

Non-Owned Aircraft, Auto or Watercraft

A. Paragraph **(2)** of Exclusion **g. Aircraft, Auto Or Watercraft** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is deleted in its entirety and replaced with the following:

(2) A watercraft you do not own that is:

- (a)** Less than 26 feet long and not being used to carry persons or property for a charge; or
- (b)** At least 26 feet, but less than 60 feet long, and not being used to carry persons or property for a charge. Any person is an insured who uses or is responsible for the use of such watercraft with your expressed or implied consent. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition **4. Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**.

B. The following is added to Exclusion **g. Aircraft, Auto Or Watercraft** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**:

This exclusion does not apply to:

- (6)** Any aircraft, not owned or operated by any insured, which is hired, chartered or loaned with a paid crew. However, if the insured has any other valid and collectible insurance for "bodily injury" or "property damage" that would be covered under this provision, or on any other basis, this coverage is then excess, and subject to Condition **4. Other Insurance, b. Excess Insurance** under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**.

Damage To Premises Rented to You

A. The last paragraph of Paragraph **2. Exclusions** under **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE** is deleted in its entirety and replaced with the following:

Exclusions **c. through n.** do not apply to damage by fire, lightning or explosion to premises rented to you or temporarily occupied by you with the permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE**.

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ElitePac® General Liability Extension Endorsement

COMMERCIAL GENERAL LIABILITY
CG 73 00 01 19

SUMMARY OF COVERAGES (including index)

This is a summary of the various additional coverages and coverage modifications provided by this endorsement. No coverage is provided by this summary. Refer to the actual endorsement (Pages 3-through-9) for changes affecting your insurance protection.

DESCRIPTION	PAGE FOUND
Additional Insureds - Primary and Non-Contributory Provision	Page 8
Blanket Additional Insureds - As Required By Contract	Page 5
<ul style="list-style-type: none">• Owners, Lessees or Contractors (includes Architects, Engineers or Surveyors)• Lessors of Leased Equipment• Managers or Lessors of Premises• Mortgagees, Assignees and Receivers• Any Other person or organization other than a joint venture• Grantors of Permits	
Broad Form Vendors Coverage	Page 7
Damage To Premises Rented To You (Including Fire, Lightning or Explosion)	Page 3
Electronic Data Liability (\$100,000)	Page 4
Employee Definition Amended	Page 9
Employees As Insureds Modified	Page 5
Employer's Liability Exclusion Amended (Not applicable in New York)	Page 3
Incidental Malpractice Exclusion modified	Page 7
Knowledge of Occurrence, Claim, Suit or Loss	Page 7
Liberalization Clause	Page 8
Mental Anguish Amendment (Not applicable to New York)	Page 9
Newly Formed or Acquired Organizations	Page 5
Non-Owned Aircraft	Page 3
Non-Owned Watercraft (under 60 feet)	Page 3
Not-for-profit Members - as additional insureds	Page 5
Personal And Advertising Injury - Discrimination Amendment (Not applicable in New York)	Page 8
Products Amendment (Medical Payments)	Page 4
Supplementary Payments Amended - Bail Bonds (\$5,000) and Loss of Earnings (\$1,000)	Page 4
Two or More Coverage Parts or Policies Issued By Us	Page 8
Unintentional Failure to Disclose Hazards	Page 8
Waiver of Transfer of Rights of Recovery (subrogation)	Page 8
When Two or More Coverage Parts of this Policy Apply to a Loss	Page 3



City of Greenville, North Carolina

Meeting Date: 04/05/2021

<u>Title of Item:</u>	Approval of Agreement with Tyler Technologies for Support Services and Updates for Munis
<u>Explanation:</u>	<p>The City utilizes the Munis system for nearly all financial and human resources functions. In order to keep the system up to date and secure, the City pays Tyler Technologies an annual fee to maintain the system and provide support services.</p> <p>The annual maintenance agreement charges will be \$132,979.71 for the period of May 27, 2021 through May 26, 2022. City Council approval is required.</p>
<u>Fiscal Note:</u>	Total of \$132,979.71 for one-year maintenance agreement. Funds are included in the City Council-approved budget for Fiscal Year 2020-2021.
<u>Recommendation:</u>	Approve the one-year maintenance agreement with Tyler Technologies.

ATTACHMENTS

 [ERP Contract.pdf](#)

AGREEMENT

Pursuant to this Agreement, the City of Greenville, North Carolina (hereinafter referred to as ("the **City**" or "**Client**") and Tyler Technologies, Inc. (hereinafter referred to as "**Tyler**"), agree to assume the following obligations:

WITNESSETH

WHEREAS, on September 11, 2012, the **City** issued a Request for Proposals for the ERP Systems Replacement;

WHEREAS, **Tyler** submitted a proposal in response to the **City**'s request;

and

WHEREAS, **Tyler** was determined and found to be the lowest responsive and responsible offeror.

NOW THEREFORE, in consideration of the foregoing, the **City** and **Tyler** desire to enter into this Agreement for the performance of the services, duties, obligations, equipment and software stated and identified in the foregoing documents.

SECTION A – DOCUMENTS

The parties to this Agreement state and declare that the following documents are incorporated herein to the extent such documents are not superseded or modified by subsequent documents attached hereto and that these documents shall form and be made a part of the Agreement of the parties as follows:

Exhibit 1 – City of Greenville Request for Proposals for ERP System Replacement (Issued September 11, 2012)

Exhibit 2 – Offer by Tyler Technologies, Inc. to Request for Proposals for ERP System Replacement with attachments (Dated October 23, 2012)

Exhibit 3 – Statement of Work

Exhibit 4 – Functional Specifications

Exhibit 5 – Interfaces

Exhibit 6 – Tyler Business Travel Policy

Exhibit 7 – Adobe End User License Agreement

Exhibit 8 – Investment Summary

Exhibit 9 – Tyler Support Call Process

SECTION B – PREMISE

1. Site Preparation: The **Client** is responsible for any site preparation necessary to install any equipment to perform the services provided under this Agreement.

2. Equipment Goods Return: Any equipment furnished or provided by **Tyler** in accordance with this Agreement shall be in good working order and be maintained in good working order as provided in the maintenance agreement. **Tyler** will provide all services and software identified in the attachments and exhibits to this Agreement.

3. Order of Precedence: In the event of conflict within this Agreement, including exhibits, the following order of precedence shall govern:

- Contract Sections A-G and Exhibits 3-10
- Exhibit 2 (Offer by Tyler Technologies, Inc. to Request for Proposals for ERP System Replacement with attachments - Dated October 23, 2012)
- Exhibit 1 (City of Greenville Request for Proposals for ERP System Replacement - Issued September 11, 2012)

4. The City agrees to provide an integrated software system (the “System”), license the necessary software for that System (the “Software”), and to receive the services (the “Services”) offered by Tyler in its proposal including any best and final offer under the terms and conditions stated in this Agreement. The City agrees to pay for such services as accepted in the proposal and as applicable by any best and final offer of Tyler which are accepted by the City and made as a separate exhibit attached to and made a part of this Agreement. The scope of this Agreement shall include this request for proposal, the proposal of Tyler, the contract terms of Tyler and attachments. The scope of this Agreement does not include any modifications, amendments, conditions, alternatives, or requirements that are not reduced to writing, signed by all parties.

SECTION C – SOFTWARE LICENSE AGREEMENT

1. License Grant.

(a) Upon the Effective Date, Tyler hereby grants to Client a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler Software Products set forth in the investment summary attached hereto as Exhibit 8 (“Investment Summary”) and related interfaces (collectively, the “Tyler Software Products”) and Tyler user guides provided in or with the Tyler Software Products (“User Guides”) for Client's internal business purposes only and otherwise subject to the terms and conditions of this Agreement. This license is revocable by Tyler if Client fails to comply with the terms and conditions of this Agreement, including without limitation, Client's failure to timely pay the Software fees in full. Upon Client's payment in full for the Tyler Software Products, this license will become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.

(b) Tyler shall retain ownership of, including all intellectual property rights in and to, the Tyler Software Products and User Guides.

(c) The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to Tyler prior to the Effective Date.

(d) The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. Client shall pay Tyler for the cost of new media or any required technical assistance to accommodate the transfer. Client shall provide advance written notice to Tyler of any such transfer.

(e) Client acknowledges and agrees that the Tyler Software Products and User Guides are proprietary to Tyler and have been developed as trade secrets at Tyler's expense. Client shall use best efforts to keep the Tyler Software Products and User Guides confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or User Guides by any party.

(f) The Tyler Software Products may not be modified by anyone other than Tyler. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on, and the warranty for, the Tyler Software Products will be void. Client shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products.

(g) Client may make copies of the Tyler Software Products for archive purposes only. Client shall repeat any and all proprietary notices on any copy of the Tyler Software Products. Client may make copies of the Tyler User Guides for internal use only.

(h) Tyler maintains an escrow agreement with an escrow services company under which Tyler places the source code of each major release of the Tyler Software Products. At Client's request, Tyler will add Client as a beneficiary to such escrow agreement. Client will pay the annual beneficiary fees directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary.

(i) In the event Client acquires from Tyler any edition of Tyler Content Manager software other than Enterprise Edition, the license for Content Manager is restricted to use with Tyler applications only. If Client wishes to use Tyler Content Management software with non-Tyler applications, Client must purchase or upgrade to Tyler Content Manager Enterprise Edition.

2. License Fees. Client agrees to pay Tyler, and Tyler agrees to accept from Client as payment in full for the license granted herein, the Software fees set forth in the Investment Summary.

3. Intentionally omitted.

4. Limited Warranty.

4.1 UNLESS MODIFIED BY AMENDMENT, THE WARRANTIES IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, OR WHETHER ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION AND FITNESS FOR A PARTICULAR PURPOSE, AND NO OTHER REPRESENTATIONS OR WARRANTIES HAVE FORMED THE BASIS OF THE BARGAIN HEREUNDER EXCEPT AS PROVIDED IN SECTION C, PARAGRAPH 4.11.

4.2. **Tyler** warrants that the Tyler Software Products will perform as specified in its User Guides and will meet the **Client's** requirements as indicated in Exhibit 4 ("Functional Specifications"), subject to Section 4.8 *infra*.

4.3. **Tyler** warrants that it possesses the necessary intellectual rights to license to **Client** the Licensed Standard Software provided hereunder.

4.4. Tyler warrants that any interfaces performed by Tyler for Client will operate as described in the specifications agreed between the parties and maintained through new releases of the Tyler Software Products so long as Client has a maintenance agreement with Tyler. Tyler is not responsible for defects in the interface caused by changes in the 3rd party products sharing the interface.

4.5. **Tyler** warrants that:

(a) The licensed Software and associated materials do not infringe any intellectual property rights of any third party;

(b) There are no actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party concerning any licensed software provided by Tyler or any custom interfaces or custom software provided by Tyler in the performance of this Agreement;

(c) Upon installation, the licensed Software and associated materials do not contain any surreptitious programming codes, viruses, Trojan Horses, "back doors" or other means to facilitate or allow unauthorized access to the **City's** information systems;

(d) The licensed Software and associated materials do not contain any timer, counter, lock or similar device (other than security features specifically approved by **Client** in the Specifications) that inhibits or in any way limits the Software's ability to operate in accordance with this Agreement.

4.6. Tyler's recommended hardware configuration is sufficient to support an average three (3) second response time for common inquiries, excluding batch and report jobs. Should the system fail to meet this standard, Tyler agrees in good faith to correct the cause thereof, provided Client has complied with Tyler's recommended hardware configuration.

4.7. Warranty of Integration: For as long as Client has a maintenance agreement with Tyler in place, Tyler represents and warrants that all Tyler provided Tyler Software Products, configurations, modifications, customizations, data conversions and interfaces shall function properly and in accordance with, the Functional Specifications and Tyler's User Guides, separately and as a fully integrated system. In the event of conflict, the Functional Specifications shall take precedence over Tyler's User Guides until January 1, 2016. Thereafter, Tyler represents and warrants that (i) all Tyler-provided ERP Software configurations, modifications, customizations, data conversions and interfaces shall function properly and in accordance with Tyler's then-current User Guides, and (ii) when operated together will operate in accordance with industry standards, subject to any constraints of Client's or Client-provided environment.

4.8. Warranty of Fitness for a Particular Purpose: The City has presented detailed technical specifications of the particular purpose for which the licensed software is intended. The City has provided detailed descriptions and criteria of how the system can be defined to accomplish this particular purpose. The City has also defined the exact procedures and techniques to be employed in testing whether the system has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about the City's particular purpose, the Tyler at the time this Agreement is in force has (1) reason and opportunity to know the particular purpose for which products are required, and (2) that the City is relying on the Tyler's experience and knowledge of the licensed software to provide those which are most suitable and appropriate. Therefore, the Tyler warrants that the system is fit for the purposes for which it is intended as described in this Tyler Proposal in response to the Client's RFP, as modified by this Agreement.

4.9. For the purposes of this Agreement, a "Defect" is defined as a failure of the Tyler Software Products (including, as defined supra, interfaces developed by Tyler for Client) to substantially conform to the Tyler User Guides in effect for the version of the Tyler Software then implemented as the Live Production ERP system and the responses to the functional specifications as set forth in Exhibit 4 ("Functional Specifications"). In the event of conflict between the Tyler User Guides in effect for the version of the Tyler Software then implemented as the Live Production ERP system and the Functional Specifications, then until January 1, 2017, the Functional Specifications shall control, thereafter the then-current Tyler User Guides shall control. Tyler agrees that the warranted functionality shall not be removed in future releases of the Tyler Software Products, except in connection with compliance with state or federal mandates, however, Tyler may in such future releases, provide the functionality by a different method, manner, process, or way. A Tyler Software Product is "Defective" if it contains a Defect. For as long as a current Maintenance Agreement is in place, Tyler warrants that the Tyler Software Products will not contain Defects. If the Tyler Software Products do not perform as warranted, Tyler will use reasonable efforts, consistent with industry standards, to cure the Defect in accordance with Tyler's then-current support call process (Tyler's current support call process is set forth in the document attached hereto as Exhibit 9). Should Tyler be unable to cure the Defect or provide a replacement product, Client will be entitled to a refund of the Software fee paid for the Defective Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing January 1, 2017, which will be Client's sole remedy should Tyler be unable to cure the Defect or provide a replacement product.

4.10 Tyler certifies that the Tyler Software Products licensed herein will remain available and supported for a minimum of five (5) years from the Live Production Date and that any material changes to Tyler company or

products will not affect Client's implementation or support during such five-year period.

4.11 The warranties in this Section 4 are in addition to, not in place of, the other warranties indicated in this Agreement: D(6), D(9), F(6), G(5), G(16), and G(31).

5. Intellectual Property Infringement Indemnification.

5.1. **Tyler** shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the **City** to **Tyler**. Client shall retain ownership of all Client data, Client algorithms, Client forms, Client reports and Client-developed executables.

5.2. **Tyler**, at its own expense, shall defend any action brought against the **City** to the extent that such action is based upon a claim that the Tyler Software Products or services, if used in accordance with this Agreement, infringes a United States' patent, or copyright or violates a trade secret. **Tyler** shall pay those costs and damages finally awarded against the **City** in any such action. Such defense and payment shall be conditioned on the following:

(i) That **Tyler** shall be notified within a reasonable time in writing by the **City** of any such claim;

That the City shall give Tyler reasonable cooperation, information, and assistance in connection with the claim and,

(ii) That **Tyler** shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the **City** shall have the option retain counsel in connection with such action at its own expense.

5.3. Should any services or Tyler Software Products supplied by **Tyler**, or the operation thereof in accordance with this Agreement, be determined to be infringing a United States patent, copyright, or a trade secret, or the use of such Tyler Software Product or service be enjoined, **Tyler** shall, at its option and expense, either procure for the **City** the right to continue using the services or Tyler Software Product, or replace or modify the same to become non-infringing and continue to meet the warranties of this Agreement in all material respects. If Tyler determines that neither of these options can reasonably be taken, **Tyler** shall terminate Client's license for the infringing Tyler Software Product and refund to Client as follows: If the claim for infringement occurs prior to the first day of Live Production of the applicable Tyler Software Product, then Tyler will refund to Client all software, professional services fees, and maintenance fees paid by Client. If the claim for infringement occurs thereafter, then Tyler will refund to Client the Software fee paid for the infringing Tyler Software Product as depreciated on a straight-line basis over a seven (7) year period commencing January 1, 2015.

5.4. Exceptions to Tyler's Obligations. Tyler will have no liability hereunder if the claim of infringement or an adverse final judgment rendered by a court of competent jurisdiction results from:

(i) Client's use of a previous version of a Tyler Software Product and the claim would have been avoided had Client used the current version of the Tyler Software Product;

(ii) Client's combining the Tyler Software Product with devices or products not provided or explicitly permitted or recommended by Tyler;

(iii) Use of a Tyler Software Product in applications, business environments or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such application, environment or business process would not have given rise to the claim;

(iv) Corrections, modifications, alterations or enhancements that Client made to the Tyler Software Product and such correction, modification, alteration or enhancement is determined by a court of competent jurisdiction to be a contributing cause of the infringement;

(v) Use of the Tyler Software Product by any person or entity other than Client or Client's employees, or Client's court designated providers and contractors; or

(vi) Client's willful infringement, including Client's continued use of the infringing Tyler Software Product after

Client becomes aware that such infringing Tyler Software Product is or is likely to become the subject of a claim hereunder.

5.5. Nothing stated herein, however, shall affect **Tyler's** ownership in or rights to its preexisting intellectual property and proprietary rights.

6. Successor Software. As long as Client maintains a continuous Maintenance Agreement with Tyler for each of the Tyler Software Products and (i) in the event a Tyler software product is no longer supported, and (ii) Tyler makes available successor software products (e.g., software products based on a new technical architecture) ("Successor Products") with substantially similar price, features, and functionality to the Tyler software product within seven (7) years from the Effective Date, then Client, at its sole discretion, may transfer the Tyler Software Product to the Successor Products, for no additional license fees. In the event Client elects to transfer the Tyler Software Products to the Successor Products, Client shall return to Tyler the Tyler Software Products and pay the then-current maintenance fees for the Successor Products, fees for services, and fees for third party hardware and software associated with the transfer to the Successor Products Tyler's then current rate(s).

SECTION D – PROFESSIONAL SERVICES AGREEMENT

1. Services. Tyler shall provide the services set forth in the Investment Summary at Client's election, including Consulting, Training, Conversion, and other miscellaneous Services.

2. Professional Services Fees.

(a) Notwithstanding specific prices to the contrary set forth in the Investment Summary, all Consulting and Training services will be invoiced in half-day and full-day increments.

(b) Expenses will be billed in accordance with the then-current Tyler Business Travel Policy, based on Tyler's usual and customary practices. Copies of receipts will be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee will be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available.

(c) Tyler Staff meal reimbursement does not include alcohol.

3. Additional Services.

(a) Training and/or consulting services utilized in excess of those set forth in the Investment Summary and additional related services not set forth in the Investment Summary will be billed at Tyler's then-current rates.

(b) Programming and/or interface quotes are estimates based on Tyler's understanding of the specifications supplied by Client. In the event Client requires additional work performed above the specifications provided, Tyler will submit to Client an amendment containing an estimate of the charges for the additional work.

4. Limitation of Liability. Except for Liquidated Damages, in no event shall Tyler be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the provision or quality of the services or the use of the Tyler Software Products. Tyler's liability for damages and expenses arising out of this Professional Services Agreement, whether based on a theory of contract or tort, including negligence and strict liability will be limited to two (2) times the total fees set forth in the Investment Summary and paid by Client. Such fees reflect and are set in reliance upon this limitation of liability.

5. Cancellation.

(a) In the event Client cancels services **scheduled by the parties to be performed onsite** less than two (2) weeks in advance, and such cancellation is not due to Tyler's failure to perform pursuant to this Agreement, Client is liable to Tyler for (i) all non-refundable expenses **reasonably** incurred by Tyler on Client's behalf in connection with such scheduled services; and (ii) daily fees associated with the canceled services if Tyler is

unable to re-assign its personnel. Tyler will use best efforts to reassign its personnel in the event of such a cancellation. This provision shall not apply in the event of Force Majeure. Additionally, Tyler shall waive Client's liability for Client's first cancellation, if any, subject to this provision.

(b) In the event Tyler cancels services previously **scheduled by the parties to be performed onsite** less than two (2) weeks in advance, and such cancellation is not due to Client's failure to perform pursuant this Agreement, the Client shall be entitled to recover or receive as a credit any expenses **reasonably** incurred by the Client in connection with such scheduled services. Tyler's liability hereunder shall only accrue if City has provided a good faith, itemized estimate of any such costs prior to the notice of cancellation being received. This provision shall not apply in the event of Force Majeure. Additionally, Client shall waive Tyler's liability for Tyler's first cancellation, if any, subject to this provision.

(c) Recovery by a party of amounts for expenses pursuant this section shall not exceed \$1,000.00 per day of onsite services cancelled.

(d) This section shall not apply in the event of Force Majeure.

6. **Services Warranty.** Tyler warrants that it shall perform services in a professional, workmanlike manner, consistent with industry standards. In the event Tyler provides services that do not conform to this warranty, Tyler will re-perform the services at no additional cost to Client.

7. **Personnel.** Tyler shall at all times utilize qualified personnel in providing Services to Client. In the event Tyler personnel provide services that do not conform to the warranties herein or are otherwise deemed unacceptable to Client, Tyler will be given an opportunity to correct the deficiency. In the event the deficiency persists, the Client may require the removal of personnel in question, however, both parties shall work towards a mutually agreeable remedy in the event of a change in Project Manager or other personnel, including the effect upon the timelines and milestones set forth in the Statement of Work, and the Project Manager's participation level. Tyler shall perform the services contemplated herein without unreasonably interfering with the activities of the Client's staff or visitors.

8. **Client Property.** All persons working for or on behalf of Tyler whose duties bring them upon the Client's premises shall obey the rules and regulations that are established by the Client and shall comply with the reasonable directions of the Client.

9. **Hardware Recommendations.** Tyler shall provide recommended system configuration and hardware compatibility information for Client's initial installation, planned hardware upgrades and replacements in the Statement of Work, which the City is relying upon given Tyler's experience with similar Client situations. By doing so, Tyler warrants that the recommended hardware configuration is sufficient to operate the Software and environment.

10. **Final Acceptance.** The Client requires four (4) months to perform an audit to determine if the ERP System meets all specifications. This activity can only be started once the project has been completed and all modules of the ERP System are in live production. During this period, the Client will perform an audit of the ERP System. If after conducting the audit the Tyler Software Products or the ERP System as a whole does not function in compliance with the requirements of this Agreement, the Client shall have the option, upon notice to Tyler to:

(i) Terminate this entire Agreement for cause in accordance with the provisions of this Agreement in Section G, Article 41 in the event of a Priority 1 issue; or

(ii) Accept the Tyler Software Products or ERP System at its then level of performance; or

(iii) Permit the audit period to be further extended for such period as mutually agreed upon by the parties in writing; or

(iv) Accept those modules of the ERP System that are in compliance with the requirements of this Agreement and require Tyler to conform the remaining portions to the requirements of this Agreement as agreed upon in writing and within a mutually agreed upon duration; or

(v) Pursue such remedies as may be available to Client at law or in equity.

If after conducting the audit the Tyler Software Products and the ERP System as a whole does comply with the requirements detailed in this Agreement, Tyler and the Client will issue and execute a Final Acceptance.

11. Liquidated Damages. All extensions of timeframes and deadlines must be in writing and signed by mutually by the parties. Client and Tyler acknowledge and agree that the Client will incur costs if Tyler fails to meet one or more of the dates set forth in the Statement of Work for Live Production of the Tyler Software Products (“Live Production Date”). The parties further acknowledge and agree that the costs that the Client might reasonably be anticipated to accrue as a result of such failures are difficult to ascertain due to their indefiniteness and uncertainty. Accordingly, Tyler agrees to pay liquidated damages at the rate of Five Hundred Dollars (\$500.00) per day for each business day that Tyler is late in meeting a Live Production Date set forth in the Statement of Work (“Liquidated Damages”) due to Tyler’s failure to perform pursuant to this Agreement. Tyler will not be responsible, and hence will have no liability hereunder, for delays or nonperformance caused by the Client, including but not limited to Client’s (i) failure to meet its payment obligations under this Agreement, (ii) failure to timely meet its assigned tasks under acceptance testing, the Statement of Work or related project plan in a timely manner, (iii) failure to have all required hardware installed, operational, and ready to accommodate installation of the Tyler Software Products by the dates outlined in the Statement of Work or related project plan, or (iv) failure to build and complete its Chart of Accounts in accordance with the Statement of Work or related project plan unless failure to do so is caused solely by Tyler's delay. Tyler will not be responsible for Liquidated Damages resulting from delays or non-performance caused by a third party. The City reserves the right to terminate this Agreement either for cause or at its convenience without incurring additional costs, expenses, penalties or claims as a result of Tyler’s repeated failure to comply with the dates provided in the Statement of Work or any extension reduced to writing and signed by both parties.

SECTION E – MAINTENANCE AGREEMENT

1. Scope of Agreement. Client agrees to purchase and Tyler agrees to provide maintenance services for the Tyler Software Products in accordance with the following terms and conditions. It is specifically understood and agreed that this Maintenance Agreement shall extend to interfaces developed by Tyler for the Client which shall be supported as provided herein.

2. Term of Agreement.

This Maintenance Agreement for the MUNIS Software Products is effective on the installation of the MUNIS Software Products and will remain in force for an initial one (1) year term and may be renewed for additional one (1) year terms by mutual agreement at then-current pricing, but subject to limitations applicable to increases included *infra*, in writing by the parties subject to the availability of funds. Any notice of extension or renewal shall be provided in writing by the party desiring the extension not less than forty-five (45) calendar days before the expiration of the current term of the Maintenance Agreement. Provided Client maintains a continuous Maintenance Agreement with Tyler and complies with the terms and conditions herein, including payment for ongoing maintenance services, Tyler shall provide maintenance and support services of the Tyler Software Products listed in the Investment Summary for a period of at least seven (7) years from the Effective Date.

Tyler shall increase the annual Maintenance fees in accord with the following schedule:

- Year 2 fees will not increase over the list prices of the Tyler Software Products (as shown in the Investment Summary, before waiver/discount);
- Year 3 fees will not increase over the list prices of the Tyler Software Products (as shown in the Investment Summary, before waiver/discount);
- Year 4 fees will increase no more than three percent (3%) more than the previous year’s fees;
- Year 5 fees will increase no more than three percent (3%) more than the previous year’s fees;
- Year 6 fees will increase no more than three percent (3%) more than the previous year’s fees;
- Year 7 fees will increase no more than five percent (5%) more than the previous year’s fees;
- Year 8 fees will increase no more than five percent (5%) more than the previous year’s fees;

- Year 9 fees will increase no more than five percent (5%) more than the previous year's fees; and
- Year 10 fees will increase no more than five percent (5%) more than the previous year's fees.

3. Payment.

(a) Maintenance fees will be invoiced by Tyler annually in advance. Tyler shall provide Client with not less than forty-five (45) calendar days written notice of any change in annual Maintenance fees, subject to the availability of funds.

(b) Additional Charges. Any maintenance services performed by Tyler for Client which are not covered by this Maintenance Agreement, as set forth in Section E(5), including materials and expenses, will be billed to Client at the rate of \$150 per hour (with a four(4)-hour minimum) for a period of (2) years from the Effective Date. Any additional services must be executed in writing and signed by the parties.

(c) Tyler reserves the right to suspend maintenance services if Client fails to pay undisputed Maintenance fees within sixty (60) calendar days of the due date. Tyler shall reinstate maintenance services upon Client's payment of all past due Maintenance fees, including all such fees for the periods during which services were suspended.

4. Maintenance Services Terms and Conditions. For as long as a current Maintenance Agreement is in place, Tyler shall:

(a) In a professional, good and workmanlike manner, perform its obligations in accordance with Tyler's then-current support call process (Tyler's current support call process is set forth in the document attached hereto as Exhibit 9) in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If Client modifies the Tyler Software Products without Tyler's prior written consent, Tyler's obligations to provide maintenance services on and warrant the Tyler Software Products will be void.

(b) Provide telephone support on the Tyler Software Products. Tyler personnel shall accept telephone calls during the hours set forth in Exhibit 9 – Tyler Support Call Process.

(c) Continuously maintain a master set of the Tyler Software Products on appropriate media, a hardcopy printout of source code to the Tyler Software Products, and Tyler User Guides.

(d) Maintain personnel that are appropriately trained to be familiar with the Tyler Software Products in order to provide maintenance services.

(e) Provide Client with all releases Tyler makes to the Tyler Software Products that Tyler makes generally available without additional charge to customers possessing a Tyler annual Maintenance Agreement. Third Party Products; and installation, Consulting and Training services related to the new releases will be provided to Client at the rates set forth in this Agreement for a period of two (2) years from the Effective Date and at then-current rates thereafter. Client acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the Tyler Software Products as they exist without Client customization or modification.

(f) Support prior releases of the Tyler Software Products in accordance with Tyler's then-current release life cycle policy.

(g) Modify the MUNIS Software Products to remain compliant with state and federal mandates, for no additional license or maintenance fees, provided; however, that Tyler shall have a reasonable time to adapt the MUNIS Software Products to comply with changes in the laws.

5. Limitations and Exclusions. Maintenance fees do not include installation or implementation of the Tyler Software Products, onsite support (unless Tyler cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, and support outside Tyler's normal business hours.

6. Client Responsibilities.

(a) Client shall provide, at no charge to Tyler, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.

(b) Tyler currently utilizes "Go To Assist" as a secure commercial PC to PC remote connectivity tool to provide

remote maintenance services. Client shall maintain for the duration of the Agreement a high-speed Internet connection capable of connecting to Client's PCs and server. Tyler strongly recommends that Client also maintain a modem or VPN for backup connectivity purposes. Tyler, at its option, will use the connection to assist with problem diagnosis and resolution. Tyler must complete a VPN vendor request form from the City before VPN access will be provided.

SECTION F – THIRD PARTY PRODUCT AGREEMENT

1. Agreement to License or Sell Third Party Products. For the price set forth in the Investment Summary, Tyler agrees to license or sell and deliver to Client, and Client agrees to accept from Tyler the System Software and Hardware set forth in the Investment Summary (collectively, the “Third Party Products”).

2. License of System Software.

(a) Upon Client's payment in full of the System Software fees, Tyler shall grant to Client and Client shall accept from Tyler a non-exclusive, nontransferable, non-assignable license to use the System Software and related documentation for Client's internal business purposes, subject to the terms and conditions set forth herein.

(b) The developer of the System Software (each a “Developer”, collectively “Developers”) shall retain ownership of the System Software.

(c) The right to transfer the System Software to a replacement hardware system is governed by the Developer. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to Client. Client shall provide advance written notice to Tyler of any such transfer.

(d) Client acknowledges and agrees that the System Software and related documentation are proprietary to the Developer and have been developed as trade secrets at the Developer's expense. Client shall use best efforts to keep the System Software and related documentation confidential and to prevent any misuse, unauthorized use, or unauthorized disclosure of the System Software and related documentation by any party.

(e) Client shall not perform decompilation, disassembly, translation or other reverse engineering on the System Software.

(f) Client may make copies of the System Software for archive purposes only. Client shall repeat any and all proprietary notices on any copy of the System Software. Client may make copies of the documentation accompanying the System Software for internal use only.

3. Delivery. Unless otherwise indicated in the Investment Summary, the prices for Third Party Products include costs for shipment while in transit from the Developer or supplier to Client.

4. Installation and Acceptance. Unless otherwise noted in the Investment Summary, the Tyler Software Product installation fee includes installation of the Third Party Products.

5. Site Requirements. Client shall provide a suitable environment, location and space for the installation and operation of the Third Party Products; sufficient and adequate electrical circuits for the Third Party Products; and installation of all required cables.

6. Warranties.

(a) Tyler is authorized by each Developer to grant licenses or sublicenses to the System Software.

(b) Tyler warrants that each System Software product will be new and unused, will operate upon installation in accord with functionality representations by Tyler in its Proposal.

(c) Client acknowledges and agrees that Tyler is not the manufacturer of the Third Party Products. As such, Tyler does not warrant or guarantee the condition or operating characteristics of the Third Party Products. Tyler hereby grants and passes through to Client any warranty that Tyler may receive from the Developer or supplier of the Third Party Products. Notwithstanding the foregoing, Tyler warrants that as long as the Third Party Products perform as warranted by the Developer or supplier of the Third Party Products upon installation, the Tyler Software Products will integrate with the Third Party Products as specified by Tyler in its Proposal.

7. Maintenance.

(a) In the event Client elects not to purchase through Tyler maintenance services on the System Software, it will be the responsibility of Client to repair and maintain the System Software and purchase enhancements as necessary after acceptance. Tyler will reasonably assist Client in making warranty claims for System Software.

(b) In the event Client elects to purchase through Tyler maintenance services on the System Software, Tyler will facilitate resolution of a defect in a System Software product with the Developer.

(c) In the event the Developer charges a fee for future System Software release(s), Client will be required to pay such fee.

SECTION G – GENERAL TERMS AND CONDITIONS

1. Taxes. The fees set forth in the Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by Tyler to the proper authorities and shall be reimbursed by Client to Tyler. In the event Client possesses a valid direct-pay permit, Client will forward such permit to Tyler on the Effective Date, in accordance with Section G (19). In such event, Client will be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, Client will provide Tyler with Client's tax-exempt certificate.

2. Invoice Dispute.

(a) In the event Client believes products or services do not conform to warranties in this Agreement, Client will provide written notice to Tyler within thirty (30) calendar days of receipt of the applicable invoice. Client is allowed an additional fifteen (15) calendar days to provide written clarification and details. Tyler will provide a written response to Client that will include either a justification of the invoice or an adjustment to the invoice. Tyler and Client will develop a plan to outline the reasonable steps to be taken by Tyler and Client to resolve any issues presented in Client's notice to Tyler. Client may only withhold payment of the amount actually in dispute until Tyler completes its action items outlined in the plan. Notwithstanding the foregoing, if Tyler is unable to complete its actions outlined in the plan because Client has not completed its action items outlined in the plan, Client will remit full payment of the invoice.

(b) Any invoice not disputed as described above will be deemed accepted by Client. Tyler reserves the right to suspend delivery of all services in the event Client fails to pay an invoice not disputed as described above within sixty (60) calendar days of receipt of invoice.

3. Force Majeure; Client Assistance.

Client acknowledges that the implementation of the Tyler Software Products is a cooperative process requiring the time and resources of Client personnel. Client shall, and shall cause Client personnel to, use all reasonable efforts to cooperate with and assist Tyler as may be reasonably required to meet the project deadlines and other milestones agreed to by the parties for implementation. Tyler shall not be liable for failure to meet such deadlines and milestones when such failure is due to Force Majeure (as defined below) or to the failure by Client personnel to provide such cooperation and assistance (either through action or omission).

Timely performance is essential to the successful initial implementation and ongoing operation of the licensed software described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure, including, without limitation, accidents, acts of God, fire, explosion, vandalism, storm, weather conditions, labor strikes, effects of third parties, orders or other delays beyond the reasonable control of the Parties.

(1) Force Majeure Requisites. Force majeure delays shall not be allowed unless:

(a) Within seven (7) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

(b) Within seven (7) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

(2) **120 Day Maximum/Default.** Under no circumstances shall delays caused by a force majeure extend beyond one hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the one hundred-twenty (120) days] written notice of permission of the other party. Failure to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

(3) **Right of Cancellation.** Either party shall have the right to cancel the contract Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. If a cancellation due to a Force Majeure occurs before title passes to the City, Tyler may keep any parts of the System it can salvage without interfering with or damaging City's equipment or software, but must remove same at its own expense. If cancellation occurs due to a Force Majeure after title passes to the City, the System shall remain with the City and the Vendor shall be entitled to any such payments as have accrued according to the payment schedule and otherwise required pursuant to a termination of this Agreement.

4. Indemnification.

(a) Tyler shall indemnify and hold harmless Client and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from Tyler's negligence or willful misconduct.

(b) To the extent permitted by law, Client shall indemnify and hold harmless Tyler and its agents, officials and employees from and against any and all direct claims, losses, liabilities, damages, costs and expenses (including reasonable attorney's fees and costs) for personal injury or property damage arising from Client's negligence or willful misconduct.

5. Warranty Against Improper Financial Interest. **Tyler** warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the **City** for the purpose of obtaining any contract or award issued by the **City**. **Tyler** further warrants that, excepting its own employees, no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the **City**, except as shall have been expressly communicated to the Director, Financial Services in writing prior to acceptance of the Agreement or award in question. **Tyler** and its authorized signatory further warrant that no officer or employee of the **City** has any direct or indirect financial or personal beneficial interest, in the subject matter of this Agreement; obligation or contract for future award of compensation as an inducement or consideration for making this Agreement. Subsequent discovery by the **City** of non-compliance with these provisions shall constitute sufficient cause for immediate termination of this Agreement. Violations of this provision may result in debarment of **Tyler** as provided by law or termination for default at the sole determination of the **City**.

6. Dispute Resolution. Either party will notify the other in writing within thirty (30) calendar days of becoming aware of a dispute. If the parties cannot resolve such dispute within thirty (30) calendar days of the other's receipt of written notice, the parties agree to participate in mediation with a mutually chosen mediator. Mediation shall take place in North Carolina. Thereafter, either party may assert its other rights and remedies under this Agreement within a court of competent jurisdiction.

6.1. Nothing in this Article will prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

7. No Intended Third Party Beneficiaries; No Waiver of Immunities. This Agreement is entered into solely for the benefit of Tyler and Client. Nothing in this Agreement is intended, nor should it be construed, to create any

rights, claims, or benefits or assume any liability for or on behalf of any third party, or to waive any immunities or limitations conferred under federal or state law.

8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of Client's state of domicile. Venue shall be proper in the courts of Pitt County, North Carolina.

9. Entire Agreement. This Agreement represents the entire agreement of Client and Tyler with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Client hereby acknowledges that in entering into this Agreement it did not rely on any information not explicitly set forth in this Agreement.

10. Severability. If any term or provision of this Agreement or the application thereof, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

11. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by Tyler or Client, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent Tyler or Client from enforcing each and every term of this Agreement thereafter.

12. Multiple Originals and Signatures. This Agreement, any extensions, modifications or amendments shall be executed in duplicate originals, any of which shall be independently treated as an original document.

13. Amendment. This Agreement may only be modified by written amendment signed by authorized representatives of both parties.

15. No Multi-year Fiscal Obligation on City; Non-appropriation. If Client should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, Client may unilaterally terminate this Agreement only upon thirty (30) days written notice to Tyler specifically setting forth the termination date. Upon termination, Client shall remit payment for all products and services delivered to Client and all expenses incurred by Tyler prior to the termination date as set forth in the written notice.

16. Approval of Governing Body. Client represents and warrants to Tyler that this Agreement has been approved by its governing body and is a binding obligation upon Client.

17. No Assignment. Neither party may assign its rights and responsibilities under this Agreement without prior written permission, which shall not be unreasonably withheld or delayed, except that Tyler may, without the prior express written permission of the Client, assign this Agreement in its entirety to the surviving entity of any merger or consolidation or to any purchaser of substantially all of Tyler's assets as long as the surviving entity agrees to be bound to the terms of this Agreement.

18. Successors and Assigns. This Agreement shall inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

19. Notices. All notices or communications required or permitted as a part of this Agreement will be in writing and will be deemed delivered when:

- (1) Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party.

(2) If not actually received, ten (10) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the respective other party at the address set forth in this Agreement or such other address as the party may have designated by notice or Agreement amendment to the other party.

(3) Actually received.

19.1 Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of a new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Tyler Technologies, Inc.
1 Tyler Drive
Yarmouth, ME 04096
Attention: Contracts Manager

City of Greenville
200 West Fifth Street
Greenville, NC 27834
Attention: Jon Hoggard

20. Independent Contractor. This is not an agreement of partnership or employment of Tyler or any of Tyler's employees by Client. Tyler is an independent contractor for all purposes under this Agreement.

21. Insurance. Prior to performing services under this Agreement, Tyler shall provide Client with certificates of insurance evidencing the following minimum insurance coverage:

- (a) Commercial general liability of at least \$2,000,000;
- (b) Automobile liability of at least \$1,000,000;
- (c) Professional liability of at least \$1,000,000; and
- (d) Workers compensation complying with statutory requirements.

21.1 Tyler shall cause the Client to be named as additional insured on Tyler's Commercial General Liability policy until Live Production.

22. Confidentiality. In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the competitive bidding process, the **City** may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. **Tyler** may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, Tyler declares that it has formed a good faith opinion, after having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. *However, under no circumstances shall price information be designated as confidential.* The **City** may serve as custodian of **Tyler's** confidential information and not as an arbiter of claims against **Tyler's** assertion of confidentiality. If a request for release of documents or information is received by the **Client**, the **Client** will notify **Tyler** of the request and ask **Tyler** for a position on whether the documents can be released or should be withheld. **Tyler** will provide **Client** its position on whether the requested documents can be released and if **Tyler** objects to release, the basis for such objections. The **Client**, through its legal counsel shall review the position of Tyler concerning release of the requested documents. If **Client** legal counsel thereafter decides the documents are subject to release under the North Carolina Public Records Act or other applicable law, Tyler still retains the right to prevent such disclosure if and as permitted under applicable law. Client shall notify Tyler of the Client's determination that the requested documents are subject to release and shall afford Tyler thirty (30) calendar days from the date of the notice to take any action Tyler determines is appropriate. If Tyler does not act or fails to provide an order from a court of competent jurisdiction within the stated period, the Client shall be deemed authorized to release the requested documents without penalty or claims of damage by Tyler.

Client agrees to implement all reasonable measures to safeguard **Tyler's** confidential information, including proprietary rights in the Licensed Products, including without limitation the following measures:

(i) **Client** shall only permit access to the Licensed Products to those employees who require access and only to the extent necessary to perform **Client's** internal processing needs.

(ii) With respect to agents or third parties, **Client** shall permit access to the Licensed Products only after **Tyler** has received, approved and returned a fully executed Non-Disclosure Agreement to **Client**. **Tyler** reserves the right to reasonably refuse access to a third party after it has evaluated the request. **Client** agrees to provide information reasonably requested by **Tyler** to assist **Tyler** in evaluating **Client's** request to permit third party access to the Licensed Products. In addition to any other remedies,

(iii) **Client** shall cooperate with **Tyler** in the enforcement of the conditions **Tyler** may specify in writing in order to permit access as to third parties;

(iv) **Client** shall not permit removal of copyright or confidentiality labels or notifications from its proprietary materials; and

(v) **Client** shall not attempt to disassemble, decompile or reverse engineer the Licensed Software.

If either party violates the confidentiality and nondisclosure provisions, the other party shall be able to enforce such violations under this Agreement or as may be available in law and equity to the non-violating party; however, the **Client** shall not be responsible for any unknown disclosure by a third party nor shall it be grounds for breach if the **Client** was not aware of such third party disclosure.

22.1. Care of Information: **Tyler** agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the **City** during performance of any contractual obligation from loss, destruction or erasure.

22.2. **Tyler** certifies that all its employees and any approved third party independent contractors or subcontractors, either through execution of a non-disclosure agreement or as a condition of employment, will maintain the confidentiality of all client information, and shall hold all information received during performance of this Agreement in the strictest confidence and shall not disclose the same to any third party without the express written approval of the **Client**. If any **Tyler** employee, agent, contractor, independent contractor, manager without express written authorization from the **Client** releases any confidential information protected by statute or law, **Tyler** may be brought into to any action involving the **Client** concerning such release and may be held liable or responsible for any such damages awarded as a result of such unauthorized release. **Tyler will comply with requests by Client to produce documentation supporting Tyler's employees and any approved 3rd party contractor's obligation to maintain the confidentiality of Client confidential information.** The **City** may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

22.3. **Tyler** shall employ security measures and standards, including encryption technologies, as may be necessary or proper, and as mutually agreed by the **Client** and **Tyler**, during performance of this Agreement. **Tyler** and its agents, if any, shall not have access to any information except as required to perform **Tyler's** obligations under this Agreement.

22.4. **Tyler** and the **Client** agree and understand that information, processes, data, code, prices, and other materials designated by either party, are confidential information and may not be disclosed without the permission of the other party. Subject to the requirements of the Freedom of Information Act (federal) and the Public Records Law (North Carolina), requests for disclosure of records may be made of either party. Neither

Tyler nor the **Client** will release any documents requested without prior discussion and consultation. If either party objects to the release and the documents are not released, then, that the objecting party shall be responsible for the defense of any claim arising out a denial and any awarded damages or reasonable litigation costs associated with such defense.

22.5. **Tyler** further agrees and covenants with the **Client** that it will not provide, release disseminate data or any conversion thereof to any third (3rd) party without written permission or approval of the **Client** except as required by applicable law. **Tyler** shall return all data and the media transmitted to **Tyler** by the **Client** and must certify to the **Client** that no copies of confidential data provided or used during the conversion were maintained by **Tyler**, its directors, managers, employees, agents, subcontractors or third party contractors, unless and except to the extent required by applicable law. Such certification will include a release and indemnification of the **Client** in the event of an unauthorized release or claim of release by **Tyler**, its directors, managers, employees, agents, subcontractors or third party contractors.

23. Nondiscrimination. Tyler shall not discriminate against any person employed or applying for employment concerning the performance of Tyler's responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation.

24. Subcontractors. Tyler shall not subcontract any services under this Agreement without Client's prior written permission, not to be unreasonably withheld.

25. Shipping. Delivery will be F.O.B. shipping point. For products that Tyler provides electronically to Client by FTP site, Tyler shall be responsible for uploading all such content to the Tyler FTP site and providing Client sufficient information and access to the same. Client shall be responsible for downloading content from the Tyler FTP site.

26. Business License. In the event a local business license is required for Tyler to perform services hereunder, Client will notify Tyler prior to the Effective Date and will provide Tyler with the necessary paperwork and/or contact information.

27. Tyler Forms Processing. The Tyler Software Product "Tyler Forms Processing" must be used in conjunction with a Hewlett Packard or any other model of printer supported by Tyler, for printing checks.

28. Payment Terms.

(a) Tyler shall invoice Client \$118,800 upon the Effective Date. Such amount equals 25% of the Tyler software license fees.

(b) Tyler shall invoice Client \$141,800 when Tyler has made the Tyler Software Products available to Client for downloading. Such availability shall not occur prior to formal written notice by Tyler to Client that the Tyler Software Products are available for downloading. Such sum equals:

(i) 25% of the Tyler software license fees (\$118,800)

(ii) 100% of the Tyler Unlimited Client Access license fees (\$23,000)

(c) Tyler shall invoice Client respective Hardware fees upon delivery of such Hardware.

(d) Tyler shall invoice Client \$4,600 upon installation of the Tyler Unlimited Client Access; such sum equals 100% of the year 1 maintenance fee for Tyler Unlimited Client Access (\$4,600).

(e) Tyler shall invoice the Project Planning Services fee of \$9,000 upon delivery and acceptance of the Implementation Planning document.

(f) Tyler shall invoice Client the remaining Tyler Software license fees based upon the following schedule:

(i) Tyler shall invoice Client \$70,340 upon the earlier of 3/1/14 or commencement of Phase 1 of the

implementation;

(ii) Tyler shall invoice Client \$70,340 upon the earlier of completion of Phase 1 of the implementation or 4/1/15;

(iii) Tyler shall invoice Client \$11,960 upon the earlier of 4/1/15 or commencement of Phase 2 of the implementation;

(iv) Tyler shall invoice Client \$11,960 upon the earlier of completion of Phase 2 of the implementation or 1/1/16;

(v) Tyler shall invoice Client \$17,450 upon the earlier of 4/1/15 or commencement of Phase 3 of the implementation;

(vi) Tyler shall invoice Client \$17,450 upon the earlier of completion of Phase 3 of the implementation or 1/1/16;

(vii) Tyler shall invoice Client \$13,000 upon the earlier of 1/1/16 or commencement of Phase 4 of the implementation;

(viii) Tyler shall invoice Client \$13,000 upon the earlier of completion of Phase 4 of the implementation or 7/1/16;

(ix) Tyler shall invoice Client \$6,050 upon the earlier of 1/1/16 or commencement of Phase 5 of the implementation; and

(x) Tyler shall invoice Client \$6,050 upon the earlier of completion of Phase 5 of the implementation or 7/1/16.

(g) Tyler shall invoice the Tyler Forms Library Fees upon delivery of the respective library.

(h) Tyler shall invoice the respective Conversion Fees upon delivery of the respective converted data.

(i) Prices do not include travel expenses incurred in accordance with Tyler's then-current Business Travel Policy. Tyler's current Business Travel Policy is attached hereto as Exhibit 6. Estimated travel expenses based on current scope are listed in the Investment Summary.

(j) Unless otherwise indicated, Tyler shall invoice Client fees for the services fees set forth in the Investment Summary, if and as provided, upon the occurrence of each Milestone set forth in the Statement of Work, subject to the following retainage:

(i) Client will retain the first 10% of the Implementation and Consulting days (as determined by the total number of such days listed in the Investment Summary upon the Effective Date) provided to Client with such retainage to be payable upon sixty (60) days following the earlier of:

(1) the date set forth in the Statement of Work for the first productive use of the Tyler Software Products in the final phase (as designated in the Statement of Work upon the Effective Date) using actual Client data ("Live Production"), unless Live Production is postponed solely by Tyler's failure to perform in accordance with the Agreement, in which event the date for Live Production will be postponed the corresponding number of days, or

(2) the first day of Live Production.

(ii) In no event shall such retainage payment be made more than two (2) years later than the Effective Date.

(k) Tyler shall invoice Client fees for all other services identified in the Investment Summary, plus all expenses, if and as provided/incurred, unless otherwise indicated in this Paragraph 28.

(l) Payment is due within forty-five (45) days of the invoice date.

(m) The year 1 Tyler software maintenance fees of \$109,263 for the one (1) year period commencing upon installation of the Tyler Software Products are hereby waived. Subsequent annual Maintenance fees will be due on the anniversary of the installation date of the Tyler Software Products.

(n) The year 1 Payroll Tax Table Update fee of \$1,000 for the one (1) year period commencing upon installation of the Tyler Software Products is hereby waived. Subsequent annual Payroll Tax Table Update fees will be due on the anniversary of the installation date of the Tyler Software Products.

(o) Tyler shall invoice Client a 50% deposit for modifications and interfaces ("Modification"), upon delivery of specifications and 50% ninety (90) days after delivery of Modification. Tyler will perform a Modification upon receipt of written notice to proceed from Client. Client will have ninety (90) days from delivery of a Modification to test such Modification. In the event Client does not report an issue with such Modification to Tyler within such ninety (90) day period, the Modification will be deemed in compliance with the specifications

and Tyler shall be entitled to payment. In the event the Client reports issues with such Modification, Tyler shall correct the errors or defects and the Client shall have thirty (30) days from delivery of the correction to re-perform testing of the Modification. This procedure shall continue until either Client approves the Modification or does not report an issue during the applicable testing period. In the event Tyler disagrees with Client's determination that a Modification is not in compliance with the specifications, Tyler will invoke the Dispute Resolution process set forth in the Agreement.

(p) Upon execution of this Agreement, Client is hereby issue a credit of \$2,550. Such credit may be applied to fees for services payable pursuant this Agreement.

(q) Upon completion of the implementation, if the GSA rates varied during the implementation such that the invoiced expenses differed from the amount determined in the initial credit calculation, the parties will determine the difference and either (1) Tyler will issue an additional credit to the Client if the change resulted in higher expense incurrence by the Client or (2) the Client shall pay to Tyler an amount equal to the reduction in expenses if the change resulted in lower expense incurrence by the Client.

(r) Fees for Business Process Consulting are payable 50% upon delivery of Best Business Practices write up and 50% upon delivery of desktop procedure documents, by module as listed in the Investment Summary.

29. Optional Items. Pricing for optional products and services shall be valid for twenty-four (24) months from the Effective Date.

30. Tyler Products and Services. Client may purchase additional Tyler products and services at then current pricing but also subject to the terms of this Agreement, including the pricing hold for Optional Products, by executing a mutually agreed addendum.

31. Signing Authority. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Agreement and bind the Party to the terms and conditions of this Agreement.

32. Annual Payroll Tax Table Update. Annual Payroll Tax Table Update service will renew automatically for additional one (1) year terms at Tyler's then-current Annual Payroll Tax Table Update service fee unless terminated in writing by either party at least fifteen (15) days prior to the end of the then-current term.

33. Compliance with Laws. Tyler shall, at all times, observe and comply with all federal, state, and local laws, ordinances and regulations.

34. Survival. All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this Agreement.

35. Publicity. **Tyler** absolutely shall not publicly disseminate any information concerning the Agreement without prior written approval from the City, which such approval shall not be unreasonably withheld.

36. Performance. Both parties agree and understand that timely performance of the milestones, deadlines, payment schedules, and/or timelines is critical to the performance of this Agreement and to that end, the parties agree they will perform with all due diligence in the completion of these critical performance items.

37. Conflict of Interest. Tyler shall not knowingly employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of the Client or any member of his/her immediate family.

38. Support Call Response. Tyler will apply timely and continuous efforts to resolve the Client's Priority 1 issue even if the efforts to resolve the issue extend outside the standard hours of support.

39. Intentionally omitted.

40. Limitation of Liability. Except for Tyler's indemnification obligations under this Agreement, the parties liability to each other for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall not in any event exceed the total fees paid to Tyler by Client pursuant to this Agreement. Neither party shall be liable for any special, indirect, incidental, punitive, exemplary, or consequential damages, including loss of data or programming, loss of revenue or profits, failure to realize savings or other benefits, damage to equipment or costs of cover, arising from or related to a breach of this Agreement. If it is determined that a limitation of liability or a remedy contained herein fails of its essential purpose, then the parties agree that the exclusion of incidental, consequential, special, indirect, punitive, and/or exemplary damages is still effective.

41. Breach, Default and Termination.

A. Breach. If either party fails to perform any of the material conditions and terms of this Agreement, they are in breach of the Agreement. The non-breaching party shall identify in writing to the party in breach the items not performed in accordance with this Agreement. Notice of such breach will be sent to the person identified in this Agreement and in the manner prescribed by this Agreement. The breaching party shall be afforded sixty (60) business days from the date of the notification to cure the breach. **Client** and **Tyler** agree that they will use sound management practices and cooperate where practical. **Client** shall provide **Tyler** access to **Client's** facilities, equipment, and licensed software provided by **Tyler** or documentation as appropriate so that Tyler can cure the breach. **Tyler** will provide competent, professional and skilled personnel to cure any breach.

B. Default. If the breaching party fails to correct the identified deficiencies within the cure times permitted or any extension granted by the non-breaching party, the breaching party shall be in default. Once the party has been determined to be in default by the failure to cure the breach, the now defaulting party shall be afforded thirty (30) calendar days to cure the default. Failure to cure the default within the time prescribed shall grounds for termination of this Agreement. Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Agreement, unless so stated in a writing and signed by authorized representatives of the **City** and **Tyler**, and made as an amendment to this Agreement.

C. Termination. Any notice or termination made under this Agreement shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

(1) The parties may mutually terminate this Agreement by written agreement at any time.

(2) The City may terminate this Agreement, in whole or in part, or for any of the following:

(a) Termination for Cause: If the defaulting party fails to cure the default within the time prescribed, the Agreement shall be terminated without further action or notice. Conditions relating to warranties, non-recruitment of personnel, confidentiality and non-disclosure shall survive termination of the Agreement unless waived in writing by the parties but subject to all other conditions of this Agreement. Voluntary or involuntary bankruptcy or receivership by **Tyler** shall be grounds for immediate termination of this Agreement. Upon termination, **Client** shall return to **Tyler** all Licensed Products, including any copies provided to or created by **Client** under this Agreement. Nothing in this paragraph on termination is intended to infer that either party has or does not have a claim for damages. The rights and remedies of the City provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Agreement. **Tyler** shall not be relieved of liability to the City for damages sustained by the City arising from **Tyler's** breach of this Agreement.

(b) Termination For Convenience Without Cause: The City may terminate this Agreement, in whole or in part by giving thirty (30) calendar days prior notice in writing to Tyler. Tyler shall be entitled to sums due as compensation for expenses incurred, services performed and products delivered in conformance with the Agreement to the date of the notice of termination for convenience.

(3) In the event of a Termination for Convenience by the City, the City agrees to pay Tyler for services received under this Agreement and accepted by the City prior to the date of notice of termination. Payment for services,

expenses in dispute and defective products will be determined in accordance with a mutually agreed dispute resolution process.

42. E-Verify Compliance. Tyler shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Tyler furnishes services, programs or goods to the City utilizing a subcontractor, Tyler shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Tyler represents that Tyler and its subcontractors are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

43. This Agreement shall become effective upon acceptance of the Agreement by the City, evidenced by execution by the authorized official of the Agreement first signed by Tyler.



City of Greenville, North Carolina

Meeting Date: 04/05/2021

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

Explanation: 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.

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

Payee	Adjustment Refunds	Amount
Anali Hernandez	Individual Property Taxes	161.57
Cody Swartz	Registered Motor Vehicle	283.38
Connie Glast	Registered Motor Vehicle	279.71
Dealer Tire LLC	Registered Motor Vehicle	247.48
Diane Strathy	Individual Property Taxes	165.79
Douglas Gomes	Registered Motor Vehicle	1,059.19
John Biroshik	Registered Motor Vehicle	204.61
John Maxon	Individual Property Taxes	794.76
Joshua Creel	Registered Motor Vehicle	115.90
Laura Hostelley	Registered Motor Vehicle	191.68
McKee & Friends Inc	Registered Motor Vehicle	819.42
Michael C. McKee & Associates	Registered Motor Vehicle	123.82
Michael V. Joyner & Co PA	Registered Motor Vehicle	246.02
Peggie Bullock	Individual Property Taxes	464.26
Rahul Thapar	Registered Motor Vehicle	305.37
Samuel Hylton	Registered Motor Vehicle	444.64
Sydney Cunningham	Registered Motor Vehicle	131.25

Fiscal Note: The total refunded is \$6,038.85.

Recommendation: Approval of taxes refunded by City Council





City of Greenville,
North Carolina

Meeting Date: 04/05/2021

Title of Item: Boards & Commissions Annual Presentations

a. Pitt-Greenville Airport Authority

Explanation: Boards and commissions are annually scheduled to make brief presentations to the City Council.

Fiscal Note: No direct fiscal impact.

Recommendation: Hear presentations from the Pitt-Greenville Airport Authority.



City of Greenville, North Carolina

Meeting Date: 04/05/2021

Title of Item: Budget Ordinance Amendment #8 to the 2020-2021 City of Greenville Budget (Ordinance #20-025), Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Funds (Ordinance #17-024)

Explanation: Attached for consideration at the April 5, 2021 City Council meeting is an ordinance amending the 2020-21 City of Greenville Budget (Ordinance #20-025), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (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	Recognize revenue received by CVA for the African American Cultural Trail.	CVA	10,000
B	Increase CVA budget to recognize a Paycheck Protection Program Loan.	CVA	106,700
C	Move funding from the Facilities Improvement Plan fund to Sheppard Memorial Library for HVAC replacements.	FIP	-
D	Recognize funding received for an Environmental Enhancement Grant.	Special Revenue	88,275
E	Reclassify funding within the Fire/Rescue Capital Project Fund related to Fire Station #7 construction and Fire Station #1 Bay Extension.	Fire/Rescue Capital	-

Fiscal Note: The Budget Ordinance Amendment affects the following funds:

<u>Fund</u>	<u>2020-21 Revised Budget</u>	<u>Amendment #8</u>	<u>2020-21 Budget per Amendment #8</u>
General	\$92,945,559	\$-	\$92,945,559

Debt Service	5,943,531	-	5,943,531
Public Transportation (Transit)	3,243,918	-	3,243,918
Fleet Maintenance	4,964,629	-	4,964,629
Sanitation	7,865,966	-	7,865,966
Stormwater	8,472,676	-	8,472,676
Housing	3,031,725	-	3,031,725
Health Insurance	13,757,908	-	13,757,908
Vehicle Replacement	4,889,656	-	4,889,656
Facilities Improvement	3,833,269	-	3,833,269
Convention & Visitor's Authority	1,405,029	116,700	1,521,729
Sheppard Memorial Library	2,772,931	-	2,772,931
Street Improvement Bond	16,852,567	-	16,852,567
Red Light Camera Program	1,600,000	-	1,600,000
Capital Reserve	5,823,220	-	5,823,220
Recreation & Parks Capital Projects	10,535,437	-	10,535,437
Special Revenue Grants	10,787,973	88,275	10,876,248
Community Development Capital	18,954,227	-	18,954,227
Public Works Capital Projects	55,659,778	-	55,659,778
Fire/Rescue Capital Projects	7,080,000	-	7,080,000

Recommendation: Approve Budget Ordinance Amendment #8 to the 2020-2021 City of Greenville Budget (Ordinance #20-025), Special Revenue Grant Fund (Ordinance #11-003), and Capital Projects Funds (Ordinance #17-024).

ATTACHMENTS

 [Bud_Amend_8_2021.xlsx](#)

ORDINANCE NO. 21-
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#8) Amending the 2020-21 Budget (Ordinance #20-025),
Special Revenue Grant Fund (Ordinance #11-003), and the Capital Projects Funds (Ordinance #17-024)

Section I: Estimated Revenues and Appropriations. Facilities Improvement Fund, of Ordinance #20-025 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2020-21 Revised Budget	C.	Total Amend #8	2020-21 Budget per Amend #8
ESTIMATED REVENUES				
Transfer from General Fund	\$ 1,050,000	\$ -	\$ -	\$ 1,050,000
Transfer from Public Works Capital Projects Fund	50,000	-	-	50,000
Appropriated Fund Balance	2,733,269	-	-	2,733,269
Total Revenues	\$ 3,833,269	\$ -	\$ -	\$ 3,833,269
APPROPRIATIONS				
Capital Improvements	\$ 3,833,269	\$ (140,000)	\$ (140,000)	\$ 3,693,269
Transfer to Other Funds	-	140,000	140,000	140,000
Total Appropriations	\$ 3,833,269	\$ -	\$ -	\$ 3,833,269

Section II: Estimated Revenues and Appropriations. Pitt-Greenville Convention and Visitors Authority Fund, of Ordinance #20-025 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2020-21 Revised Budget	A.	B.	Total Amend #8	2020-21 Budget per Amend #8
ESTIMATED REVENUES					
Coccupancy Tax (2%)	\$ 623,259	\$ -	\$ -	\$ -	\$ 623,259
Coccupancy Tax (1%)	311,630	-	-	-	311,630
Spec Fed/State/Loc Grant	1,000	-	-	-	1,000
Miscellaneous Revenue	275,000	10,000	-	10,000	285,000
PPP Loan	-	-	106,700	106,700	106,700
Investment Earnings	482	-	-	-	482
Appropriated Fund Balance	193,658	-	-	-	193,658
Total Revenues	\$ 1,405,029	\$ 10,000	\$ 106,700	\$ 116,700	\$ 1,521,729
APPROPRIATIONS					
Pitt-Greenville Convention and Visitors Authority	\$ 1,405,029	\$ 10,000	\$ 106,700	\$ 116,700	\$ 1,521,729
Total Appropriations	\$ 1,405,029	\$ 10,000	\$ 106,700	\$ 116,700	\$ 1,521,729

Section III: 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:

	2020-21 Revised Budget	E.	Total Amend #8	2020-21 Budget per Amend #8
ESTIMATED REVENUES				
Debt Proceeds	\$ 6,600,000	\$ -	\$ -	\$ 6,600,000
Sale of Property	480,000	-	-	480,000
Total Revenues	<u>\$ 7,080,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 7,080,000</u>
APPROPRIATIONS				
Fire Station #7	\$ 6,475,500	\$ (12,000)	\$ (12,000)	\$ 6,463,500
Fire Station #1 Bay Extension	604,500	12,000	12,000	616,500
Total Appropriations	<u>\$ 7,080,000</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 7,080,000</u>

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

	2020-21 Revised Budget	D.	Total Amend #8	2020-21 Budget per Amend #8
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 7,913,058	\$ 88,275	\$ 88,275	\$ 8,001,333
CARES Act Funding	1,560,518	-	-	1,560,518
Transfer From General Fund	1,241,743	-	-	1,241,743
Transfer From Pre-1994 Entitlement	27,419	-	-	27,419
Transfer from Other Funds	45,235	-	-	45,235
Total Revenues	<u>\$ 10,787,973</u>	<u>\$ 88,275</u>	<u>\$ 88,275</u>	<u>\$ 10,876,248</u>
APPROPRIATIONS				
Personnel	\$ 2,253,228	\$ -	\$ -	\$ 2,253,228
Operating	4,590,423	-	-	4,590,423
Capital Outlay	2,006,385	-	-	2,006,385
Transfers	27,419	-	-	27,419
COVID-19	1,560,518	-	-	1,560,518
Rural Housing Recovery Grant	350,000	-	-	350,000
Environmental Enhancement Grant	-	88,275	88,275	88,275
Total Appropriations	<u>\$ 10,787,973</u>	<u>\$ 88,275</u>	<u>\$ 88,275</u>	<u>\$ 10,876,248</u>

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

Adopted this 5th day of April, 2021

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk



City of Greenville,
North Carolina

Meeting Date: 04/05/2021

-
- Title of Item:** Fiscal Year 2021 Third Quarter General Fund Financial Update
- Explanation:** With the third quarter of Fiscal Year 2020-21 complete, staff will present a third quarter financial update for the City of Greenville. This update will include a projection of General Fund revenues and expenses for Fiscal Year 2020-21 year end and a projection of fund balance that will be available for appropriation after the completion of the fiscal year audit.
- Fiscal Note:** Staff will present a summary of projected General Fund revenues and expenses for Fiscal Year 2020-21 and projected fund balance that will be available for appropriation per the completion of the annual audit.
- Recommendation:** Receive the General Fund Financial Update for the nine months ending March 31, 2021.
-