



Agenda

Greenville City Council

August 7, 2023

6:00 PM

City Hall Council Chambers, 200 West 5th Street

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 Rick 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. Amendment of the 2023 City Council Meeting Schedule

2. Ordinance Revising the City Code Provisions Regulating Service, Sales and Consumption of Alcoholic Beverages on City Property
3. Landlord Waiver from Carolina Small Business Development Fund for Meg's Boutique NC, LLC
4. Resolution Authorizing the Conveyance of Real Property Located at 1200 Davenport Street, Parcel Number 89469, and 1204 Davenport Street, Parcel Number 89468, to Habitat for Humanity of Pitt County
5. Authorization to Accept Assistance to Firefighters Grant from the U.S. Department of Homeland Security to Replace 30 Self Contained Breathing Apparatus Units
6. Budget Ordinance Amendment and Reimbursement Resolution for Greenville Utilities Commission's Electric Capital Project Budget for the 120 MVA Point of Delivery Substation Transformer
7. Request by Police Department to Utilize Asset Forfeiture Funds
8. Service Agreement with SoundThinking, Inc., Parent Company for ShotSpotter
9. Resolution approving the execution of a municipal agreement with the North Carolina Department of Transportation for Fiscal Year 2024 Section 5303 Planning Grant Funds
10. Resolution approving an Interlocal Agreement with Pitt County (Pitt Area Transit System) relating to providing paratransit transportation services within the territorial jurisdiction of the City of Greenville, NC
11. Contract with Tarheel Billing Services, Inc. dba Colleton Billing for EMS Billing and Collection Services
12. Change Order #1 for the 2023 Stormwater Repairs Project
13. Resolution Declaring a Special Emergency for the Temporary Repair of the Existing Metal Pipe Culvert System from Skinner Street Through the Public Works Facility at Beatty Street
14. Various tax refunds greater than \$100

VIII. New Business

15. Annual Board & Commission Presentations - Pitt-Greenville Airport Authority, Planning & Zoning Commission
16. Budget Ordinance Amendment #1 to the 2023-2024 City of Greenville Budget (Ordinance #23-046), Special Revenue Grant Fund (Ordinance #11-003), Capital Projects Funds

(Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-019), the Donations Fund (Ordinance #18-062), and the Occupancy Tax Fund (Ordinance #11-003).

- IX. Review of August 10, 2023 City Council Agenda**
- X. City Manager's Report**
- XI. Comments from Mayor and City Council**
- XII. Adjournment**



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Amendment of the 2023 City Council Meeting Schedule

Explanation: Staff is proposing that the 2023 City Council Meeting Schedule be amended to account for conflicting initiatives and community events. Proposed changes include:

- The change of the meeting time of the Monday, August 21, meeting to 4:00 p.m.
- The addition of a Joint City Council - GUC meeting on Thursday, September 14, at 5:00 p.m.
- The removal of the Monday, September 25, Joint City Council - GUC 6:00 p.m. meeting
- The removal of the Thursday, October 12, 6:00 p.m. meeting
- The addition of a meeting on Thursday, October 19, at 6:00 p.m.
- The removal of the Monday, November 6, 4:00 p.m. workshop
- The removal of the Monday, November 6, 6:00 p.m. meeting

Fiscal Note: No direct fiscal impact

Recommendation: Approve the amended 2023 City Council Meeting Schedule.

ATTACHMENTS

- [COG-#1124507-v21-Schedule_of_City_Council_Meetings.doc](#)



CITY OF GREENVILLE

2023 SCHEDULE OF CITY COUNCIL MEETINGS

Meetings are held in the Council Chambers, located in City Hall, 200 W. Fifth St., Greenville NC 27834, unless otherwise noted.

January 9 – 4:00 PM (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 January 9 – 6:00 PM
 January 12 – 6:00 PM
 *January 23 – 6:00 PM
 January 27 – 12:00 PM (Planning Session)

February 6 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 February 6– 6:00 PM
 February 9 – 6:00 PM
 *February 20 – 6:00 PM - Cancelled

March 6 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 March 6 – 6:00 PM
 March 9 – 6:00 PM
 *March 20 – 6:00 PM - Cancelled

April 13 – 6:00 PM
 April 24 – 6:00 PM – (Joint City Council –GUC Meeting)
 April 24 – 6:30 PM

May 8 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 May 8 – 6:00 PM – (Budget Presentation for City of Greenville)
 May 11 – 6:00 PM – (Budget Presentation for Convention & Visitors, Sheppard Memorial Library, and GUC)
 *May 22 – 6:00 PM - Cancelled

June 5 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 June 5 – 6:00 PM – (Budget Public Hearing)
 June 8 – 6:00 PM – (Budget Adoption)
 *June 26 – 6:00 PM - Cancelled

August 7 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 August 7 – 6:00 PM
 August 10 – 6:00 PM
 *August 21 – 4:00 PM (Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)

September 11 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 September 11 – 6:00 PM
 September 14 – 5:00 PM – (Joint City Council – GUC Meeting)
 September 14 – 6:00 PM
~~September 25 – 6:00 PM – (Joint City Council –GUC meeting)~~

October 9 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)
 October 9 – 6:00 PM
~~October 12 – 6:00 PM~~
 October 19 – 6:00 PM
 *October 23 – 6:00 PM

~~November 6 – 4:00 PM – (Workshop, Conference Room 337, City Hall, 200 W. Fifth St., Greenville, NC 27834)~~
~~November 6 – 6:00 PM~~
 November 9– 6:00 PM
 *November 20 – 6:00 PM

December 11– 6:00 PM – (Organizational Meeting)
 December 14 – 6:00 PM

*Meetings scheduled per the meeting policy outlined in the City Code. The City Council may elect to hold or cancel these meetings as needed each month.



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Ordinance Revising the City Code Provisions Regulating Service, Sales and Consumption of Alcoholic Beverages on City Property

Explanation: The City Council at its June 8, 2023, meeting directed staff to bring back a plan to allow a third party to sell mixed beverages at the Town Common. The City's current applicable policy and City Code provisions and state law (ABC laws) allow a nonprofit organization to sell mixed beverages at the Town Common. The nonprofit organization desiring to sell mixed beverages must comply with the applicable City rules, which include entering a lease and obtaining the required ABC permit. However, after reviewing the applicable City Code provisions and City policy regulating alcohol sales and consumption on certain City property, the City Manager's Office recommends the following revisions to the City Code:

- Clarify City property where alcohol is allowed to be sold and consumed to include Five Points Plaza and Guy Smith Stadium; expand definition of the Town Common to include adjoining portions of First Street when a street closure permit is obtained; and limit definition of other public streets for alcohol sales and consumption to City streets located in "downtown area." Downtown area is a defined term in the City Manager's procedure.
- Identify which City properties allow malt beverages and unfortified wine sales and consumption and which ones allow liquor sales and consumption (mixed beverage and spirituous liquor) upon compliance with all City rules.
- Repeal City Council policy on alcohol sales at the Town Common and Wildwood Park adopted on August 9, 2021.
- Authorize City Manager to adopt policy implementing this revised City Code section on alcohol sales and consumption on certain City property.

Five Points Plaza is included in the proposal because Five Points Plaza is sometimes leased by nonprofit organizations who hold events there and alcoholic beverages are sold and consumed on the premises. Guy Smith Stadium is included because the City entered into a lease agreement with Capitol Broadcasting Inc. (tenant) which owns Coastal Plain Baseball League, and tenant will hold summer college baseball games at Guy Smith Stadium beginning in the spring of 2024. The lease allows the tenant to obtain an ABC permit to sell alcohol.

Fiscal Note: No additional financial impact

Recommendation:

1. Approve the attached ordinance to make revisions to Section 12-1-2(D) of the City Code.
 2. Repeal the "Policy and Procedure for the Conditional Service, Sale and Consumption of Alcoholic Beverages at Town Common and Wildwood Park" approved by Council on August 9, 2021.
-

ATTACHMENTS

- [Revision of City Code-12-1-2 Subsection D.pdf](#)

ORDINANCE NO. 23-

AN ORDINANCE TO MAKE REVISIONS TO PORTIONS OF PART II, TITLE 12,
CHAPTER 1, SECTION 2 OF THE CODE OF ORDINANCES, CITY OF GREENVILLE

WHEREAS, the City Council of the City of Greenville desires to revise certain provisions of the Code of Ordinances, City of Greenville, North Carolina regarding City Property where the sale, service, possession, and consumption of alcoholic beverages may take place after an ABC permit is obtained;

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

SECTION 1. That Part II, Title 12, Chapter 1, Section 2, subsection D of the Code of Ordinances, City of Greenville (entitled, "Exceptions regarding alcoholic beverages") is hereby repealed and replaced as amended to now read as follows:

(D) *Exceptions.*

- (1) *Malt beverages and unfortified wine.* Notwithstanding any other provision of this section and as otherwise allowed by State law, upon obtaining all ABC permits as required by law; obtaining all city permits as may be required; paying all fees as may be required by the *Manual of Fees*; entering into any lease with the city as may be required; obtaining the written approval of the City Manager and subject to any conditions identified by the City Manager in the written approval; and complying with the procedure regarding the sale, service, possession, or consumption of alcoholic beverages on city property as adopted by the City Manager, the sale, service, possession, and consumption of malt beverages and unfortified wine is allowed upon designated portions of:
 - (a) A golf course owned, occupied, or controlled by the city.
 - (b) A convention center owned, occupied, or controlled by the city.
 - (c) The Walter L. Stasavich Science and Nature Center and River Park North.
 - (d) The building owned by the City at the Perkins Complex.
 - (e) The C.M. Eppes Recreation Center.
 - (f) A building owned by the city and leased to a person for a continuous term of greater than two years.
 - (g) The Town Common, which may include the parking lot and foot bridge, and those portions of First Street and sidewalks that adjoin the Town Common if those portions are temporarily closed to

vehicular traffic pursuant to a permit issued by the City Manager pursuant to City Code Section 10-2-150 entitled “TEMPORARY CLOSING OF STREETS FOR SPECIAL EVENTS” as may be amended from time to time.

- (h) Wildwood Park.
- (i) Five Points Plaza.
- (j) Guy Smith Stadium if the ABC permit holder has entered a lease with the city of Guy Smith Stadium for a continuous period of at least 10 years.
- (k) Any public streets, sidewalks, alleys, or parking lots in the “downtown area” which are temporarily closed to vehicular traffic for special events. “Downtown area” is a term that is defined in the procedure adopted by the City Manager.

Factors which the City Manager shall consider when permitting the sale, service, possession, or consumption of malt beverages and unfortified wine as may be allowed by State law and the ABC Commission pursuant to this subsection include but are not limited to:

1. That an applicable ABC permit for the special event has been issued by the ABC Commission.
 2. The city’s previous experience with the special event organizer and/or the special event.
 3. That the location and time for the special event is appropriate.
 4. That the special event organizer’s plans regarding crowd control, cleanup, and other public safety and welfare matters are adequate.
- (l) Social districts in accordance with this section.
- (2) *Fortified wine, spirituous liquor, and mixed beverages.* Notwithstanding any other provision of this section and as otherwise allowed by State law, upon obtaining all ABC permits as required by law; obtaining all city permits as may be required; paying all fees as may be required by the *Manual of Fees*; entering into any lease with the city as may be required; obtaining the written approval of the City Manager and subject to any conditions identified by the City Manager in the written approval; and complying with the procedure regarding the sale, service, possession, or consumption of alcoholic beverages on city property as adopted by the City Manager, the sale, service, possession, and consumption of fortified wine,

spirituous liquor, and mixed beverages is allowed upon designated portions of:

- (a) A golf course owned, occupied, or controlled by the city.
- (b) A convention center owned, occupied, or controlled by the city.
- (c) The Town Common, which may include the parking lot and foot bridge, and those portions of First Street and sidewalks that adjoin the Town Common if those portions are temporarily closed pursuant to a permit issued by the City Manager pursuant to City Code Section 10-2-150 entitled “TEMPORARY CLOSING OF STREETS FOR SPECIAL EVENTS” as may be amended from time to time.
- (d) Wildwood Park.
- (e) Five Points Plaza.
- (f) Guy Smith Stadium if the ABC permit holder has entered a lease with the city of Guy Smith Stadium for a continuous period of at least 10 years.
- (g) Any public streets, sidewalks, alleys, or parking lots in the “downtown area” which are temporarily closed to vehicular traffic for special events. “Downtown area” is a term that is defined in the procedure adopted by the City Manager.

Factors which the City Manager shall consider when permitting the sale, service, possession, or consumption of fortified wine, spirituous liquor, and mixed beverages as may be allowed by State law and the ABC Commission pursuant to this subsection include but are not limited to:

1. That an applicable ABC permit for the special event has been issued by the ABC Commission.
 2. The city’s previous experience with the special event organizer and/or the special event.
 3. That the location and time for the special event is appropriate.
 4. That the special event organizer’s plans regarding crowd control, cleanup, and other public safety and welfare matters are adequate.
- (h) Social districts in accordance with this section.

SECTION 2. The Policy entitled “Policy and Procedure for the Conditional Service, Sale, and Consumption of Alcoholic Beverages at Town Common and Wildwood Park” approved by Council on August 9, 2021, is hereby repealed.

SECTION 3. All ordinances or parts of ordinances or Council policies in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. Any part or provision of this ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the ordinance.

SECTION 5. The ordinance is in effect upon adoption.

This the _____ day of _____, 2023.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Landlord Waiver from Carolina Small Business Development Fund for Meg's Boutique NC, LLC

Explanation: The City entered into an agreement with Corbitt-Smith Properties, LLC on July 1, 2022 for the lease of property located at 415 Evans Street as part of the City's MWBE Incubate to Accelerate program. The Incubate to Accelerate program was designed to provide resources to small and micro businesses in the Greenville area that would allow them to get off the ground and/or expand. The program includes the likes of rental support, shared space, and revolving loan funding to provide small businesses the resources they need to succeed.

On December 1, 2022, the City entered into a separate sublease of the property located at 415 Evans Street with Megan Hall, owner of Meg's Boutique, as the storefront for her startup business. The City is subleasing the space to Meg's Boutique at a discounted market rate of \$200 per month. The term of the sublease ends on December 1, 2023, but will renew monthly until July 1, 2024, when the lease with Corbitt-Smith Properties expires.

In order to furnish and equip her business, Ms. Hall has applied for a loan through the Carolina Small Business Development Fund (CSBDF) to assist with buying business startup equipment and inventory. As part of the lending process, the CSBDF is requiring that the attached Landlord Waiver be signed by the City. The waiver basically states that the City will be subordinate to the CSBDF loan for payment of any back rental payments in the instance that the Boutique defaults. Given the short time frame remaining on the lease and the discounted lease rate per month, City staff recommends City Council approve the Landlord Waiver so as to assist Meg's Boutique in its business startup efforts.

Fiscal Note: No direct cost

Recommendation: Approve Landlord Waiver for Meg's Boutique NC, LLC

ATTACHMENTS

[Land Lord Waiver from CSBDF Meg's Boutique NC LLC.pdf](#)

LANDLORD WAIVER

THIS LANDLORD WAIVER ("**Agreement**") is made and entered into as of this date _____, by and among The City of Greenville, having a mailing address of PO Box 7207 Greenville, NC 27835 ("**Landlord**"); Meg's Boutique NC, LLC, a North Carolina limited liability company, having an address of 503 2ND Street, Apt D, Greenville, NC 27858 ("**Tenant**"); and Carolina Small Business Development Fund, a North Carolina nonprofit corporation, having an address at 3128 Highwoods Blvd., Suite 170, Raleigh, North Carolina 27604 ("**Lender**").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to a sublease dated the 1st day of December, 2022 and set to terminate on December 1, 2023 (the "**Lease**"), unless extended or terminated, without cure, prior to this date based on provisions outlined in the Primary Lease or Lease, for the property as described therein and commonly known as 415 Evans Street, Greenville, NC 27858, Parcel Number 20475 (the "**Leased Premises**").

WHEREAS, Landlord is party to a lease ("**Primary Lease**") with Corbitt-Smith Properties LLC for the Leased Premises, dated July 1, 2022 and set to terminate on July 1, 2024, unless extended or terminated.

WHEREAS, Tenant has requested that the Lender make and extend to Tenant certain loans (the "**Loan**") pursuant to the terms of a loan agreement and certain related loan documents (as amended, extended or renewed from time to time, collectively the "**Loan Documents**").

WHEREAS, As security for the obligations of the Tenant under the Loan Documents, the Tenant and the Lender will enter into a Continuing Security Agreement (the "**Security Agreement**") pursuant to which the Tenant will grant a lien and security interest to the Lender in all of Tenant's tangible personal and business property, solely owned by the Tenant and not to be surrendered to the Landlord based on the Primary Lease or Lease, or otherwise, including machinery, equipment and other tangible personal and business property, which is from time to time located on the Leased Premises (collectively the "**Collateral**"), as described in Exhibit "A".

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which are expressly acknowledged, the parties, with the intent to be legally bound hereby, agree as follows:

1. Landlord's Waiver.

(a) Any and all security interests, liens, claims, demands, interests or rights, including but not limited to the right to levy or distraint for unpaid rent or failure to perform, which the Landlord now has or may hereafter acquire in the Collateral by statute, agreement or otherwise, shall be subordinate and inferior to the lien or security interest of the Lender's therein, and the Landlord waives and relinquishes all rights of levy, distraint or execution with respect to the Collateral as to the Lender's interest.

(b) The Tenant is granting a continuing lien and security interest in the Collateral as described on Exhibit "A", it being agreed, however, that the term "Collateral" shall in all events exclude any and all property, as determined by the Landlord, Primary Lease or Lease, or otherwise, that is integral or essential to the efficiency and working order of any building or operating system as the Leased Premises, and shall

only include the tangible personal and business property solely owned by the Tenant, and not to be surrendered to the Landlord based on the Primary Lease or Lease, or otherwise, and as described on Exhibit "A" located on the Leased Premises, so long as any monies are owing to the Lender by the Tenant.

(c) The Lender may, in the exercise of its rights against Tenant, enter upon the Leased Premises and take immediate possession of the Collateral and sell or otherwise dispose of the Collateral from the Leased Premises, or remove the Collateral from the Leased Premises and agrees to give written notice to Landlord and coordinate retrieval, in each case within ten (10) days prior to the date Lender decides to exercise its rights against Tenant. Landlord agrees that at the Lender's option and with written notice, in each case within ten (10) days, the Collateral may remain upon the Leased Premises for a reasonable period of time, in any event not to exceed thirty (30) days, in order for the Lender to prepare for disposition or removal of, or to remove, dispose of, or otherwise deal with, the Collateral. . Any damage caused as a result of such removal will be immediately repaired by Lender at Lender's expense in a professional and workmanlike manner.

(d) Except as specifically provided herein, no rights or benefits of Landlord under the Primary Lease or Lease shall be affected by this Agreement, including, without limitation, (i) Landlord's rights and benefits arising from or related to any insurance required by the Lease, (ii) Landlord's rights to indemnification as set forth in the Lease; and (iii) Landlord's right to quiet possession of the Leased Premises.

2. Notice of Default Under Lease. Landlord hereby agrees to give the Lender written notice (i) of any default under the Lease, (ii) of any default under any lease or agreement, if any (herein a "Primary Lease"), pursuant to which Lessor's leasehold interest in the Leased Premises is created or exists, and/or (iii) as to any event on the basis of which Landlord intends to declare a default under the Lease, specifying the details thereof; in each case within ten (10) days after Landlord learns of any such default or event.
3. Lender's Right to Cure. In the event of a default by Tenant under the Lease Landlord agrees to provide written notice, of such an event of default, pursuant to the terms stated herein, to allow Lender, without obligation, to cure such default within thirty (30) days after receipt of such written notification from the Landlord of such default. Lender shall provide written notice, to Landlord, of intent to cure within five (5) days of notification of default from Landlord. Landlord agrees that the Lease shall remain in full force and effect, unrevoked and unmodified, during such thirty (30) day period so long as the Lender, its agents or representatives, endeavor to cure the default with due diligence and dispatch and thereafter (absent any subsequent default) so long as said cure is effected.
4. Representations, Warranties and Covenants. Landlord and Tenant jointly and severally represent, warrant and covenant to and with the Lender that the Lease is in full force and effect, and constitutes the entire understanding of Landlord and Tenant with respect to the Leased Premises. There exists no current default or breach under the Lease by either party, and, to the best knowledge of each of them, no event has occurred at this time which could constitute an event of default or breach thereunder, with the giving of notice, the passage of time, or both.
5. Miscellaneous.

(a) This Agreement shall inure to the benefit of the Lender, and its successors and assigns, and

shall be binding upon the heirs, executors, personal representatives, successors and assigns of Landlord.

- (b) **Notice.** All notices, elections, requests, demands and other communications hereunder shall be in writing and shall be deemed given upon the actual receipt thereof if personally delivered or deposited in the United States Mail, by certified or registered mail, postage prepaid, at the address set forth below for each party. Either party may change the address to which notices must be sent by giving notice to the other party in accordance with this paragraph. The initial notice address for each party is as follows

Landlord:

The City of Greenville
PO Box 7207
Greenville, NC 27835
Attn: City Manager

Lender:

Carolina Small Business Development Fund
3128 Highwoods Blvd., Suite 170
Raleigh, North Carolina 27604

With Copy to: City Attorney

- (c) **Governing Law and Venue.** This Agreement shall be governed in all respects by the laws of the State of North Carolina. The exclusive forum and venue for all actions, suits or proceedings arising out of or related to this Agreement shall be the North Carolina General Courts of Justice, in Pitt County, or if in federal court, in the Eastern District of North Carolina.
- (d) **Title VI of the Civil Rights Act of 1964.** Lender, its assignees and successors in interest, agrees that in the performance of these services that it shall comply with the requirements of Title VI of the Civil Rights Act of 1964 and other pertinent Nondiscrimination Authorities, and will not discriminate in its hiring, employment, and contracting practices with reference to political affiliation, genetic information, sexual orientation, age, sex, race, color, religion, national origin, handicap or disability.
- (e) **Dispute Resolution.** In the event of any dispute arising out of or relating to this agreement, the affected part shall notify the other party, and the parties shall attempt in good faith to resolve the matter within thirty (30) days after the date such notice is received by the other party (the "Notice Date") prior to exercising their rights under law.
- (f) **Counterparts.** This agreement may be executed in counterparts, and the counterparts, taken together, shall constitute the original.
- (g) **No Third Party Rights Created.** This contract is intended for the benefit of the Landlord, Lender and Tenant and not any other person.
- (h) **Entire Agreement.** This Agreement, including any Exhibits hereto, contains all the terms and conditions agreed upon by the parties. No promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract shall be deemed to exist or to bind either party hereto.
- (i) **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Landlord from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

- (j) **E-Signature.** The parties hereto consent and agree that this agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand written signature. The parties further consent and agree that (1) to the extent a party signs this document using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated for purposes of validity, enforceability and admissibility, the same as hand-written signatures.
- (k) **City' Manager's Authority.** To the extent, if any, the City has the power to suspend or terminate this Agreement or the, that power may be exercised by the City Manager or their designee.
- (l) **Automatic Termination.** Upon termination of the Primary Lease or Lease, whether for convenience, cause or expiration, this Agreement shall immediately be become null and void and of no effect. The City shall provide at least a written (ten) 10-day notice of termination of the Primary Lease or Lease to the Lender.
- (m) Notwithstanding anything in this Agreement, under no circumstances shall Landlord be responsible to any party, Lender or otherwise, for the obligation(s) of Tenant under the Loan, Loan Documents, and/or Security Agreement, whether an amendment, extension or renewal, for which this Agreement is necessary.

6. **Indemnification and Hold Harmless.**

- a. To the maximum extent allowed by law, the Lender shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Lender or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Lender shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.
- b. Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Lender.
- c. Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provision that may be in this contract.
- d. Survival. This section shall remain in force despite termination of this Agreement (whether by expiration of the term or otherwise).

- e. Limitations of the Lender's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Lender to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.
 - f. It is understood and agreed by the parties that the City will assume no liability for damages, injury, or other loss to the Lender, its employees or property, tools or equipment, or to other persons or properties located on City facilities resulting from the Lender's activities and operations while performing under this contract. The Lender shall assume full and complete liability for any and all damages to City or private properties caused by or from its activities, operations, and that of its employees, agents, and officers.
 - g. Lender will promptly notify the City of any Civil or Criminal Actions filed against the Lender or of any notice of violation from any Federal or State Agency or of any claim as soon as practical as relates to this Agreement. The City, upon receipt of such notice, shall have the right, at its election, to defend any and all actions or suits or join in defense.
7. Additional Requirements. In the event of Lender taking possession of the Collateral to which it retains a secured interest, as listed in Exhibit A, Lender agrees to remove such property within thirty (30) days after Lender's thirty (30) day cure period, provided in Section 3 of this Agreement, and in the event removal does not occur within such time, Lender shall pay Landlord a storage fee equal to the rental rate required under the Lease. Any damage caused as a result of such removal will be immediately repaired by Lender at Lender's expense in a professional and workmanlike manner.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates written below and the undersigned hereby warrants and certifies that they have read the Agreement in its entirety, understand it and agree to be bound by all the terms and conditions stated herein. Further, they warrant and certify they are authorized to enter into this Agreement and to execute same on behalf of the parties as the act of the said parties.

SIGNATURE OF CITY

CITY OF GREENVILLE:

BY: _____

SIGNATURE

TITLE

DATE

APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **DATE:** _____
Byron Hayes, Director of Financial Services

ACCOUNT NUMBER:

PROJECT CODE (IF APPLICABLE)' N/A

[Additional Signature Page Follows]

SIGNATURE OF ADDITIONAL PARTIES TO THE AGREEMENT

LENDER

CAROLINA SMALL BUSINESS DEVELOPMENT FUND

BY: _____

Name: Mark Royster, Jr.

Title: VP, Chief Credit Officer

TENANT

MEG'S BOUTIQUE NC, LLC

BY: _____

Name: _____

Title: _____

Exhibit A

All tangible and personal and business property solely owned by the Tenant and not to be surrendered to the Landlord based on the Primary Lease or Lease, or otherwise, including trade fixtures, furniture, machinery, equipment, and inventory, wherever located, now owned, or to be acquired, together with all increases to and replacements thereof.



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Resolution Authorizing the Conveyance of Real Property Located at 1200 Davenport Street, Parcel Number 89469, and 1204 Davenport Street, Parcel Number 89468, to Habitat for Humanity of Pitt County

Explanation: Habitat for Humanity of Pitt County has requested donation of the City-owned lots at 1200 Davenport Street, Tax Parcel #89469, and 1204 Davenport Street, Tax Parcel #89468. If acquired, Habitat for Humanity would use these lots for development of affordable housing for low-income families. Habitat for Humanity has built and deeded 82 homes in Pitt County to low-income families.

The City of Greenville recognizes the importance of affordable housing for low-moderate income families and continues to develop programs to help with reducing the shortage of decent, safe, and sanitary housing for that population. Therefore, City staff recommends conveyance of the requested properties as authorized pursuant to North Carolina General Statute 160A-279. A resolution authorizing conveyance of the properties is attached.

Fiscal Note: The tax value of each lot is \$4,000 for a total value of \$8,000.

Recommendation: Approve the resolution authorizing the conveyance of City-owned real property located at 1200 and 1204 Davenport Street to Habitat for Humanity of Pitt County and authorize the mayor, or designee, to sign all required documents towards the conveyance.

ATTACHMENTS

- [COG-#1183857-v1-Aug_7__2023_HFH_RESOLUTION.pdf](#)
- [Habitat from Humanity Letter.pdf](#)
- [1200 Davenport St-OPIS print.pdf](#)
- [1204 Davenport St-OPIS print.pdf](#)

RESOLUTION NO. 0__-23
RESOLUTION AUTHORIZING THE CONVEYANCE OF REAL PROPERTY
LOCATED AT 1200 DAVENPORT STREET AND 1204 DAVENPORT STREET TO
HABITAT FOR HUMANITY OF PITT COUNTY

WHEREAS, the City of Greenville (“City”) recognizes the importance of affordable housing for low-moderate income families and has developed programs to assist with helping to reduce the shortage of decent, safe and sanitary housing for low-moderate income families;

WHEREAS, Habitat for Humanity of Pitt County, Inc. (“Habitat”), a non-profit organized and existing under the laws of the State of North Carolina, has requested that the City convey to it certain parcels owned by the City to be developed as affordable housing for persons of low moderate income in the City;

WHEREAS, the City is authorized pursuant to G.S. § 160A-279 to convey property to a non-profit entity for a public purpose, including affordable housing to be provided by Habitat, as also permitted by North Carolina Statutes Chapter 160D;

WHEREAS, conveyances pursuant to G.S. § 160A-279 must follow the procedural provisions of G.S. § 160A-267, which requires a notice summarizing the contents of the resolution or order to be published once after its adoption, and no sale shall be consummated thereunder until 10 days after its publication;

WHEREAS, the City Council of the City of Greenville, during its August ____, 2023 meeting, heard a request to convey the properties consisting of tax parcel #89469 located at 1200 Davenport Street, comprised of .18 acres and tax parcel #89468 located at 1204 Davenport Street, comprised of .18 acres, to Habitat for the purpose of building two affordable single-family homes for low-moderate income families; and

WHEREAS, a condition of the conveyance will be that the homes must be leased or sold to low-moderate income families, and Habitat shall obtain building permits to construct the single family homes within twelve (12) months from the date hereof and shall complete construction within twenty-four (24) months of the date hereof, otherwise the parcels conveyed will automatically revert back to the City’s ownership, free and clear of all liens and encumbrances, unless otherwise agreed upon between the City and Habitat.

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

1. It does hereby authorize the conveyance of properties consisting of tax parcel #89469 located at 1200 Davenport Street, comprised of .18 acres, and tax parcel #89468 located at 1204 Davenport Street, comprised of .18 acres, to Habitat with the condition that the use of the properties be limited to affordable housing for low-moderate income families.
2. The request by Habitat to have property located at 1200 Davenport Street and 1204 Davenport Street be conveyed for the use of the property consistent with the aforementioned conditions is to be accomplished by a quitclaim deed executed by the Mayor and the Clerk after 10 days’ publication of a notice summarizing the contents of this resolution after its adoption.
3. If Habitat should cease to use the parcels conveyed for the intended purpose and meet the requirements as outlined herein, the property shall automatically revert back to the City’s ownership, free and clear of all liens and encumbrances, unless otherwise agreed upon between the City and Habitat.

4. The Mayor and the Clerk are authorized to execute any other documents necessary to effectuate the conveyance contemplated herein on behalf of the City.

This the _____ day of August, 2023

P. J. Connelly, Mayor

ATTEST: (Seal)

Valerie Shiuwegar, City Clerk



May 9, 2023

Ann Wall, City Manager
 City of Greenville
 City Manager's Office
 P.O. Box 7207
 Greenville, NC 27835-7207

COPY

Dear Ann:

First and foremost, thank you for partnering with Habitat for Humanity to help build affordable homes for low income families in Greenville. The donations of building lots over the past few years has helped to make dreams turn into reality for families they never thought they would have a home of their own.

As you know, Habitat for Humanity is a non-profit organization that works in partnership with low income families currently living in substandard housing conditions. Habitat builds homes for these families, selling the structure at appraised value while providing modest, affordable mortgage payments with a zero interest loan. Partnering Habitat families work alongside volunteers in the actual homebuilding process, and complete in excess of 300 hours of "sweat equity". Budget counseling and home buyer education courses are required before receiving the keys to their Habitat home.

In order for our organization to continue to provide affordable homes with zero interest mortgage loans to low income families it is necessary to control costs and receive support from a variety of entities and partners. We rely heavily on monetary donations from individuals and foundations, building material donations from corporations, and land donations from either the public or private sector.

Currently, Habitat for Humanity has built and deeded 82 homes in Pitt County to low income families. This has allowed the opportunity for partnering families to move out of substandard living environments and into safe, decent, affordable energy efficient homes. Habitat for Humanity has built many homes in the Greenville area in efforts to better the community and help in the West Greenville Revitalization Project.

With this in mind, Habitat for Humanity would like to request a donation of 2 lots on Davenport Street for our next 2 homes to be in the 45 Block Revitalization area. The parcel numbers are 89468 and 89469. We would plan to build houses on these lots at the same time; therefore, timing is of the essence as we would like to start the process of approvals for this deed to be transferred to our organization. We have been awarded CDBG funds for one house and are in the early process stages of the same for the second house.

Habitat for Humanity greatly appreciates the donations the City of Greenville has provided in the past, and looks forward to future partnering opportunities. Together our efforts can provide deserving low income families a better place to live for many years to come.

Thank you for your kind consideration.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "J. Scott Johnson".

J. Scott Johnson
 Executive Director

Cc: Thomas Barnett, Director of Planning and Development Services
 Tianna Berryman, Senior Planner
 PJ Connelly, Mayor



Pitt County Government

Greenville, North Carolina



www.pittcountync.gov



Parcel: 89469
 More Info: 89469
 Physical Address: 1200 DAVENPORT ST
 Owner Name: GREENVILLE CITY OF
 OwnerAddress1: PO BOX 7207
 OwnerAddress2:
 OwnerAddress3:
 City / State / Zip: GREENVILLE NC 27835
 NC PIN: 4678900498
 Subdivision / Section / Phase:
 Prior Legal Description: EPPES PARK
 Block / Lot: C 41
 Tract:
 Building Number / Unit:
 Acres: 0.18
 Current Owner Deed/Document: 003785 00117
 Map Book: 78-177
 Deed / Document Date: 05/2019
 Deed / Document Sales Price: \$0
 Building Type / Use:
 Number of Buildings: 0
 Year Built:
 Total Living Area: 0
 Building Value:
 Extra Features Value:
 Land Value:
 Total Current Market Value:
 Total 2019 Market Value: \$0
 Municipality: GREENVILLE
 Township: GREENVILLE
 Fire Service District: INSIDE MUNICIPALITY
 Census Tract: 701
 Neighborhood: 004232
 Elementary School: South Greenville ES
 Middle School: C M Eppes MS
 High School: J H Rose HS



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

Copyright © 2017, Pitt County, North Carolina.

PLEASE NOTE:

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

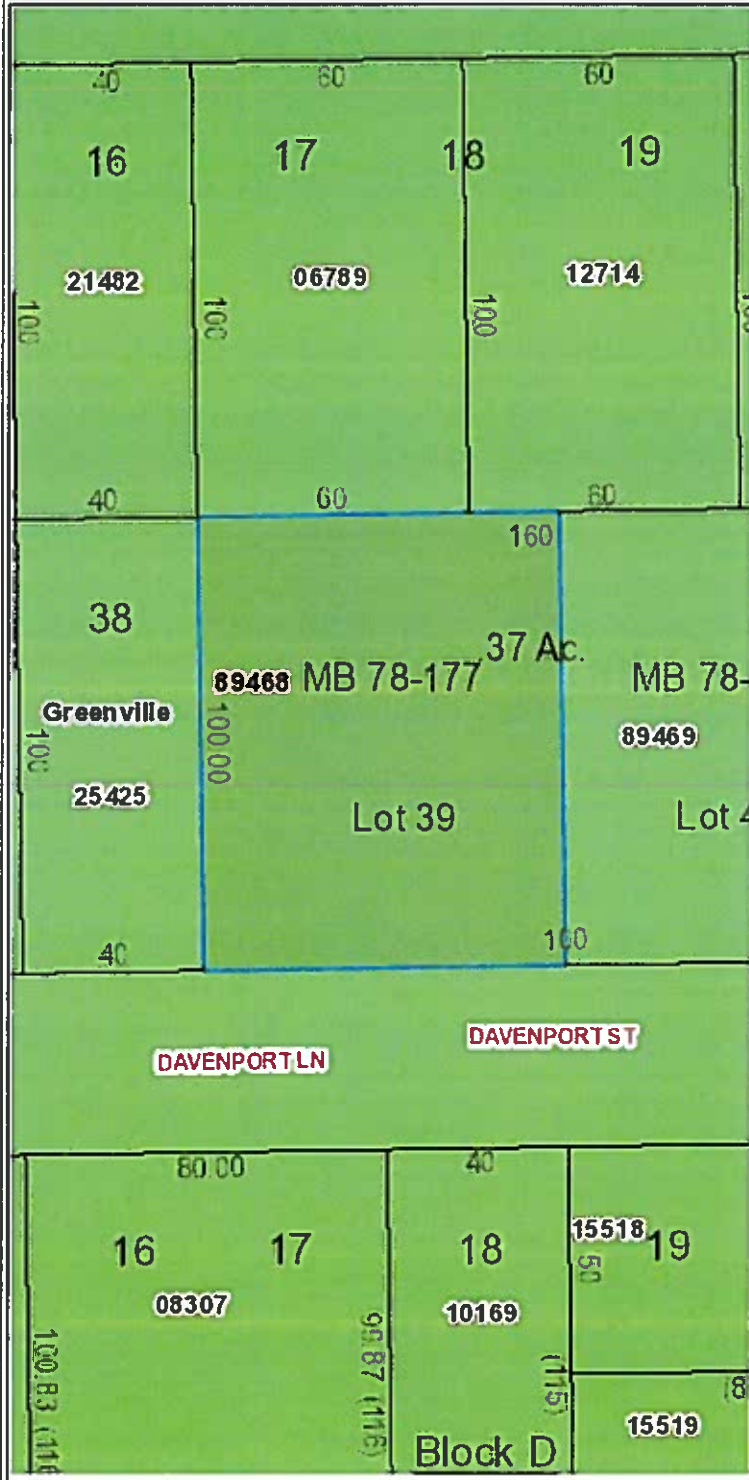
Printed: 7/25/2023 10:16:59 AM



Pitt County Government
Greenville, North Carolina
www.pittcountync.gov







Parcel:	89468
More Info:	89468
Physical Address:	1204 DAVENPORT ST
Owner Name:	GREENVILLE CITY OF
OwnerAddress1:	PO BOX 7207
OwnerAddress2:	
OwnerAddress3:	
City / State / Zip:	GREENVILLE NC 27835
NC PIN:	4678900418
Subdivision / Section / Phase:	
Prior Legal Description:	EPPES PARK
Block / Lot:	C 39
Tract:	
Building Number / Unit:	
Acres:	0.18
Current Owner Deed/Document:	003785 00117
Map Book:	78-177
Deed / Document Date:	05/2019
Deed / Document Sales Price:	\$0
Building Type / Use:	
Number of Buildings:	0
Year Built:	
Total Living Area:	0
Building Value:	
Extra Features Value:	
Land Value:	
Total Current Market Value:	
Total 2019 Market Value:	\$0
Municipality:	GREENVILLE
Township:	GREENVILLE
Fire Service District:	INSIDE MUNICIPALITY
Census Tract:	701
Neighborhood:	004232
Elementary School:	South Greenville ES
Middle School:	C M Eppes MS
High School:	J H Rose HS

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

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PLEASE NOTE:

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

Printed: 7/25/2023 10:20:28 AM



City of Greenville,
North Carolina

Meeting Date: 08/07/2023

Title of Item: Authorization to Accept Assistance to Firefighters Grant from the U.S. Department of Homeland Security to Replace 30 Self Contained Breathing Apparatus Units

Explanation: The Federal Emergency Management Agency (FEMA) provides Federal funding opportunities each year to fire departments across the country to purchase firefighting equipment. With the approval of City Council, Greenville Fire/Rescue applied for an Assistance to Firefighters Grant (AFG) to replace 30 obsolete firefighting Self-Contained Breathing Apparatus (SCBA) units that are older than 10 years of age and non-repairable. The grant was awarded to Greenville Fire/Rescue on July 21, 2023.

Fiscal Note: The proposed grant total is estimated to be \$329,828 pending a competitive purchasing process. The Federal AFG award is \$270,515.45. The City of Greenville will be responsible for funding expenses above the \$270,515,45 Federal award.

Recommendation: Staff recommends City Council authorize acceptance of the Assistance to Firefighters Grant for SCBA in the amount of \$270,515.45.

ATTACHMENTS

- [EMW-2022-FG-00728 - Award Package.pdf](#)

Award Letter

U.S. Department of Homeland Security
Washington, D.C. 20472

Effective date: 07/13/2023

Jesse Harris
GREENVILLE CITY FINANCIAL SERVICE
200 WEST FIFTH STREET
GREENVILLE, NC 27858

EMW-2022-FG-00728



Dear Jesse Harris,

Congratulations on behalf of the Department of Homeland Security. Your application submitted for the Fiscal Year (FY) 2022 Assistance to Firefighters Grant (AFG) Grant funding opportunity has been approved in the amount of \$270,515.45 in Federal funding. As a condition of this grant, you are required to contribute non-Federal funds equal to or greater than 10.0% of the Federal funds awarded, or \$27,051.55 for a total approved budget of \$297,567.00. Please see the FY 2022 AFG Notice of Funding Opportunity for information on how to meet this cost share requirement.

Before you request and receive any of the Federal funds awarded to you, you must establish acceptance of the award through the FEMA Grants Outcomes (FEMA GO) system. By accepting this award, you acknowledge that the terms of the following documents are incorporated into the terms of your award:

- Summary Award Memo - included in this document
- Agreement Articles - included in this document
- Obligating Document - included in this document
- 2022 AFG Notice of Funding Opportunity (NOFO) - incorporated by reference

Please make sure you read, understand, and maintain a copy of these documents in your official file for this award.

Sincerely,

A handwritten signature in blue ink that reads "P. Williams". The signature is cursive and appears to be written on a white background.

PAMELA WILLIAMS
Assistant Administrator, Grant Programs

Summary Award Memo

Program: Fiscal Year 2022 Assistance to Firefighters Grant

Recipient: GREENVILLE CITY FINANCIAL SERVICE

UEI-EFT: NR7SMYSKWKM3

DUNS number: 072013451

Award number: EMW-2022-FG-00728

Summary description of award

The purpose of the Assistance to Firefighters Grant program is to protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. After careful consideration, FEMA has determined that the recipient's project or projects submitted as part of the recipient's application and detailed in the project narrative as well as the request details section of the application - including budget information - was consistent with the Assistance to Firefighters Grant Program's purpose and was worthy of award.

Except as otherwise approved as noted in this award, the information you provided in your application for Fiscal Year (FY) 2022 Assistance to Firefighters Grants funding is incorporated into the terms and conditions of this award. This includes any documents submitted as part of the application.

Amount awarded table

The amount of the award is detailed in the attached Obligating Document for Award.

The following are the budgeted estimates for object classes for this award (including Federal share plus your cost share, if applicable):

Object Class	Total
Personnel	\$0.00
Fringe benefits	\$0.00
Travel	\$0.00
Equipment	\$278,100.00
Supplies	\$0.00
Contractual	\$0.00
Construction	\$0.00
Other	\$19,467.00
Indirect charges	\$0.00
Federal	\$270,515.45
Non-federal	\$27,051.55
Total	\$297,567.00
Program Income	\$0.00

Approved scope of work

After review of your application, FEMA has approved the below scope of work. Justifications are provided for any differences between the scope of work in the original application and the approved scope of work under this award. You must submit scope or budget revision requests for FEMA's prior approval, via an amendment request, as appropriate per 2 C.F.R. § 200.308 and the FY2022 AFG NOFO.

Approved request details:

Personal Protective Equipment (PPE)

SCBA: SCBA Unit includes: Harness/Backpack, Face Piece and 2 cylinders

DESCRIPTION

SCBA unit consisting of 2018 NFPA compliant 4500 psi SCBA with harness, CGA threaded connection, regulator, universal EBSS hose, integrated pass and accountability, two 30-minute composite cylinders, face piece with communications.

	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	30	\$9,270.00	\$278,100.00	Equipment

CHANGE FROM APPLICATION

Description changed
Unit price from **\$11,818.15** to **\$9,270.00**

JUSTIFICATION

This reduction is because the cost requested for SCBA exceeds the average price range calculated from market research and prior awards for the same item. The award reflects a change from the amount requested in the application. Items were originally grouped together in one-line item. Each item requested is now listed as a separate line item.

Additional funding

DESCRIPTION

North Carolina sales tax of 7%.

	QUANTITY	UNIT PRICE	TOTAL	BUDGET CLASS
Cost 1	30	\$648.90	\$19,467.00	Other

CHANGE FROM APPLICATION

Item created

JUSTIFICATION

The award reflects a change from the amount requested in the application. Items were originally grouped together in one-line item. Each item requested is now listed as a separate line item.

Agreement Articles

Program: Fiscal Year 2022 Assistance to Firefighters Grant

Recipient: GREENVILLE CITY FINANCIAL SERVICE

UEI-EFT: NR7SMYSKWKM3

DUNS number: 072013451

Award number: EMW-2022-FG-00728

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Article 1**Assurances, Administrative Requirements, Cost Principles, Representations and Certifications**

I. DHS financial assistance recipients must complete either the Office of Management and Budget (OMB) Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs, as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office (DHS FAO) may require applicants to certify additional assurances. Applicants are required to fill out the assurances as instructed by the awarding agency. II. DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at Title 2, Code of Federal Regulations (C.F.R.) Part 200 and adopted by DHS at 2 C.F.R. Part 3002. III. By accepting this agreement, recipients, and their executives, as defined in 2 C.F.R. § 170.315, certify that their policies are in accordance with OMB’s guidance located at 2 C.F.R. Part 200, all applicable federal laws, and relevant Executive guidance.

Article 2**General Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff. I. Recipients must cooperate with any DHS compliance reviews or compliance investigations conducted by DHS. II. Recipients must give DHS access to examine and copy records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities or personnel. III. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports. IV. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law, or detailed in program guidance. V. Recipients (as defined in 2 C.F.R. Part 200 and including recipients acting as pass-through entities) of federal financial assistance from DHS or one of its awarding component agencies must complete the DHS Civil Rights Evaluation Tool within thirty (30) days of receipt of the Notice of Award for the first award under which this term applies. Recipients of multiple awards of DHS financial assistance should only submit one completed tool for their organization, not per award. After the initial submission, recipients are required to complete the tool once every two (2) years if they have an active award, not every time an award is made. Recipients should submit the completed tool, including supporting materials, to CivilRightsEvaluation@hq.dhs.gov. This tool clarifies the civil rights obligations and related reporting requirements contained in the DHS Standard Terms and Conditions. Subrecipients are not required to complete and submit this tool to DHS. The evaluation tool can be found at <https://www.dhs.gov/publication/dhs-civil-rights-evaluation-tool>. DHS Civil Rights Evaluation Tool | Homeland Security. The DHS Office for Civil Rights and Civil Liberties will consider, in its discretion, granting an extension if the recipient identifies steps and a timeline for completing the tool. Recipients should request extensions by emailing the request to CivilRightsEvaluation@hq.dhs.gov prior to expiration of the 30-day deadline.

Article 3**Acknowledgement of Federal Funding from DHS**

Recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposal, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

Article 4**Activities Conducted Abroad**

Recipients must ensure that project activities performed outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

<p>Article 5</p>	<p>Age Discrimination Act of 1975 Recipients must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94-135 (1975) (codified as amended at Title 42, U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.</p>
<p>Article 6</p>	<p>Americans with Disabilities Act of 1990 Recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. 101-336 (1990) (codified as amended at 42 U.S.C. §§ 12101– 12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.</p>
<p>Article 7</p>	<p>Best Practices for Collection and Use of Personally Identifiable Information Recipients who collect personally identifiable information (PII) are required to have a publicly available privacy policy that describes standards on the usage and maintenance of the PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy Template as useful resources respectively.</p>
<p>Article 8</p>	<p>Civil Rights Act of 1964 – Title VI Recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.</p>
<p>Article 9</p>	<p>Civil Rights Act of 1968 Recipients must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. 90-284, as amended through Pub. L. 113-4, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. § 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features. (See 24 C.F.R. Part 100, Subpart D.)</p>

<p>Article 10</p>	<p>Copyright Recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.</p>
<p>Article 11</p>	<p>Debarment and Suspension Recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders (E.O.) 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3002. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.</p>
<p>Article 12</p>	<p>Drug-Free Workplace Regulations Recipients must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101-8106).</p>
<p>Article 13</p>	<p>Duplication of Benefits Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions may not be charged to other federal financial assistance awards to overcome fund deficiencies; to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions; or for other reasons.</p>
<p>Article 14</p>	<p>Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX Recipients must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. 92-318 (1972) (codified as amended at 20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.</p>

<p>Article 15</p>	<p>E.O. 14074 – Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety Recipient State, Tribal, local, or territorial law enforcement agencies must comply with the requirements of section 12(c) of E.O. 14074. Recipient State, Tribal, local, or territorial law enforcement agencies are also encouraged to adopt and enforce policies consistent with E.O. 14074 to support safe and effective policing.</p>
<p>Article 16</p>	<p>Energy Policy and Conservation Act Recipients must comply with the requirements of the Energy Policy and Conservation Act, Pub. L. 94- 163 (1975) (codified as amended at 42 U.S.C. § 6201 et seq.), which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
<p>Article 17</p>	<p>False Claims Act and Program Fraud Civil Remedies Recipients must comply with the requirements of the False Claims Act, 31 U.S.C. §§3729- 3733, which prohibit the submission of false or fraudulent claims for payment to the Federal Government. (See 31 U.S.C. §§ 3801-3812, which details the administrative remedies for false claims and statements made.)</p>
<p>Article 18</p>	<p>Federal Debt Status All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129.)</p>
<p>Article 19</p>	<p>Federal Leadership on Reducing Text Messaging while Driving Recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the Federal Government.</p>
<p>Article 20</p>	<p>Fly America Act of 1974 Recipients must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C.) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. § 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.</p>

<p>Article 21</p>	<p>Hotel and Motel Fire Safety Act of 1990 Recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a</p>
<p>Article 22</p>	<p>John S. McCain National Defense Authorization Act of Fiscal Year 2019 Recipients, subrecipients, and their contractors and subcontractors are subject to the prohibitions described in section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (2018) and 2 C.F.R. §§ 200.216, 200.327, 200.471, and Appendix II to 2 C.F.R. Part 200. Beginning August 13, 2020, the statute – as it applies to DHS recipients, subrecipients, and their contractors and subcontractors – prohibits obligating or expending federal award funds on certain telecommunications and video surveillance products and contracting with certain entities for national security reasons</p>
<p>Article 23</p>	<p>Limited English Proficiency (Civil Rights Act of 1964, Title VI) Recipients must comply with Title VI of the Civil Rights Act of 1964, (42 U.S.C. § 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance: https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited and additional resources on http://www.lep.gov.</p>
<p>Article 24</p>	<p>Lobbying Prohibitions Recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.</p>
<p>Article 25</p>	<p>National Environmental Policy Act Recipients must comply with the requirements of the National Environmental Policy Act of 1969, (NEPA) Pub. L. 91-190 (1970) (codified as amended at 42 U.S.C. § 4321 et seq. and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which require recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans</p>

<p>Article 26</p>	<p>Nondiscrimination in Matters Pertaining to Faith-Based Organizations It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.</p>
<p>Article 27</p>	<p>Non-Supplanting Requirement Recipients receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.</p>
<p>Article 28</p>	<p>Notice of Funding Opportunity Requirements All the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions. All recipients must comply with any such requirements set forth in the program NOFO.</p>
<p>Article 29</p>	<p>Patents and Intellectual Property Rights Recipients are subject to the Bayh-Dole Act, 35 U.S.C. § 200 et seq, unless otherwise provided by law. Recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.</p>
<p>Article 30</p>	<p>Procurement of Recovered Materials States, political subdivisions of states, and their contractors must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. 89-272 (1965), (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962.) The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.</p>
<p>Article 31</p>	<p>Rehabilitation Act of 1973 Recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (1973), (codified as amended at 29 U.S.C. § 794,) which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.</p>

Article 32 Reporting of Matters Related to Recipient Integrity and Performance
General Reporting Requirements: If the total value of any currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this federal award, then the recipients must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

Article 33 Reporting Subawards and Executive Compensation
Reporting of first tier subawards. Recipients are required to comply with the requirements set forth in the government-wide award term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the award terms and conditions.

Article 34 Required Use of American Iron, Steel, Manufactured Products, and Construction Materials
Recipients must comply with the “Build America, Buy America” provisions of the Infrastructure Investment and Jobs Act and E.O. 14005. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Waivers When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. Information on the process for requesting a waiver from these requirements is on the website below. (a) When the federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the

application of the domestic content procurement preference in any case in which the agency determines that: (1) applying the domestic content procurement preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the domestic content procurement preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at “Buy America” Preference in FEMA Financial Assistance Programs for Infrastructure | FEMA.gov. The awarding Component may provide specific instructions to Recipients of awards from infrastructure programs that are subject to the “Build America, Buy America” provisions. Recipients should refer to the Notice of Funding Opportunity for further information on the Buy America preference and waiver process.

Article 35 SAFECOM

Recipients receiving federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article 36 Terrorist Financing

Recipients must comply with E.O. 13224 and U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

Article 37 Trafficking Victims Protection Act of 2000 (TVPA)

Trafficking in Persons. Recipients must comply with the requirements of the government-wide financial assistance award term which implements Section 106 (g) of the Trafficking Victims Protection Act of 2000 (TVPA), codified as amended at 22 U.S.C. § 7104. The award term is located at 2 C.F.R. § 175.15, the full text of which is incorporated here by reference.

Article 38 Universal Identifier and System of Award Management

Requirements for System for Award Management and Unique Entity Identifier Recipients are required to comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference.

Article 39 USA PATRIOT Act of 2001

Recipients must comply with requirements of Section 817 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

Article 40 Use of DHS Seal, Logo and Flags

Recipients must obtain permission from their DHS FAO prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article 41 Whistleblower Protection Act

Recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. §§ 4304 and 4310.

Article 42 Environmental Planning and Historic Preservation (EHP) Review

DHS/FEMA funded activities that may require an Environmental Planning and Historic Preservation (EHP) review are subject to the FEMA EHP review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires the recipient to comply with all federal, state and local laws. DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP review process, as mandated by: the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and any other applicable laws and executive orders. General guidance for FEMA's EHP process is available on the DHS/FEMA Website. Specific applicant guidance on how to submit information for EHP review depends on the individual grant program and applicants should contact their grant Program Officer to be put into contact with EHP staff responsible for assisting their specific grant program. The EHP review process must be completed before funds are released to carry out the proposed project; otherwise, DHS/FEMA may not be able to fund the project due to noncompliance with EHP laws, executive orders, regulations, and policies. If ground disturbing activities occur during construction, applicant will monitor ground disturbance, and if any potential archaeological resources are discovered the applicant will immediately cease work in that area and notify the pass-through entity, if applicable, and DHS/FEMA.

Article 43**Applicability of DHS Standard Terms and Conditions to Tribes**

The DHS Standard Terms and Conditions are a restatement of general requirements imposed upon recipients and flow down to sub-recipients as a matter of law, regulation, or executive order. If the requirement does not apply to Indian tribes or there is a federal law or regulation exempting its application to Indian tribes, then the acceptance by Tribes of, or acquiescence to, DHS Standard Terms and Conditions does not change or alter its inapplicability to an Indian tribe. The execution of grant documents is not intended to change, alter, amend, or impose additional liability or responsibility upon the Tribe where it does not already exist.

Article 44**Acceptance of Post Award Changes**

In the event FEMA determines that changes are necessary to the award document after an award has been made, including changes to period of performance or terms and conditions, recipients will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate recipient acceptance of the changes to the award. Please call the FEMA/ GMD Call Center at (866) 927-5646 or via e-mail to: ASK-GMD@fema.dhs.gov if you have any questions.

Article 45**Disposition of Equipment Acquired Under the Federal Award**

For purposes of original or replacement equipment acquired under this award by a non-state recipient or non-state sub-recipients, when that equipment is no longer needed for the original project or program or for other activities currently or previously supported by a federal awarding agency, you must request instructions from FEMA to make proper disposition of the equipment pursuant to 2 C.F.R. section 200.313. State recipients and state sub-recipients must follow the disposition requirements in accordance with state laws and procedures.

Article 46**Prior Approval for Modification of Approved Budget**

Before making any change to the FEMA approved budget for this award, you must request prior written approval from FEMA where required by 2 C.F.R. section 200.308. For purposes of non-construction projects, FEMA is utilizing its discretion to impose an additional restriction under 2 C.F.R. section 200.308(f) regarding the transfer of funds among direct cost categories, programs, functions, or activities. Therefore, for awards with an approved budget where the federal share is greater than the simplified acquisition threshold (currently \$250,000), you may not transfer funds among direct cost categories, programs, functions, or activities without prior written approval from FEMA where the cumulative amount of such transfers exceeds or is expected to exceed ten percent (10%) of the total budget FEMA last approved. For purposes of awards that support both construction and non-construction work, FEMA is utilizing its discretion under 2 C.F.R. section 200.308(h)(5) to require the recipient to obtain prior written approval from FEMA before making any fund or budget transfers between the two types of work. You must report any deviations from your FEMA approved budget in the first Federal Financial Report (SF-425) you submit following any budget deviation, regardless of whether the budget deviation requires prior written approval.

Article 47**Indirect Cost Rate**

2 C.F.R. section 200.211(b)(15) requires the terms of the award to include the indirect cost rate for the federal award. If applicable, the indirect cost rate for this award is stated in the budget documents or other materials approved by FEMA and included in the award file.

Article 48**Award Performance Goals**

FEMA will measure the recipient's performance of the grant by comparing the number of items requested in its application, the numbers acquired (ordered, paid, and received) within the period of performance. In order to measure performance, FEMA may request information throughout the period of performance. In its final performance report submitted at closeout, the recipient is required to report on the recipients compliance with the applicable industry, local, state and national standards described in the NOFO.

Obligating document

1. Agreement No. EMW-2022-FG-00728	2. Amendment No. N/A	3. Recipient No. 566000229	4. Type of Action AWARD	5. Control No. WX01191N2023T		
6. Recipient Name and Address GREENVILLE CITY FINANCIAL SERVICE 200 W 5TH ST GREENVILLE, NC 27858		7. Issuing FEMA Office and Address Grant Programs Directorate 500 C Street, S.W. Washington DC, 20528-7000 1-866-927-5646		8. Payment Office and Address FEMA, Financial Services Branch 500 C Street, S.W., Room 723 Washington DC, 20742		
9. Name of Recipient Project Officer Jesse Harris		9a. Phone No. 2529332200	10. Name of FEMA Project Coordinator Assistance to Firefighters Grant Program		10a. Phone No. 1-866-274-0960	
11. Effective Date of This Action 07/13/2023	12. Method of Payment OTHER - FEMA GO	13. Assistance Arrangement COST SHARING		14. Performance Period 07/20/2023 to 07/19/2025 Budget Period 07/20/2023 to 07/19/2025		
15. Description of Action a. (Indicate funding data for awards or financial changes)						
Program Name Abbreviation	Assistance Listings No.	Accounting Data(ACCS Code)	Prior Total Award	Amount Awarded This Action + or (-)	Current Total Award	Cumulative Non-Federal Commitment
AFG	97.044	2023-F2-GB01 - P410-xxxx-4101-D	\$0.00	\$270,515.45	\$270,515.45	\$27,051.55
Totals			\$0.00	\$270,515.45	\$270,515.45	\$27,051.55
b. To describe changes other than funding data or financial changes, attach schedule and check here: N/A						
16. FOR NON-DISASTER PROGRAMS: RECIPIENT IS REQUIRED TO SIGN AND RETURN THREE (3) COPIES OF THIS DOCUMENT TO FEMA (See Block 7 for address) This field is not applicable for digitally signed grant agreements						

17. RECIPIENT SIGNATORY OFFICIAL (Name and Title)	DATE
18. FEMA SIGNATORY OFFICIAL (Name and Title)	DATE
PAMELA WILLIAMS, Assistant Administrator, Grant Programs	07/13/2023



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Budget Ordinance Amendment and Reimbursement Resolution for Greenville Utilities Commission's Electric Capital Project Budget for the 120 MVA Point of Delivery Substation Transformer

Explanation: This Electric Capital Project was established with the fiscal year 2023-24 budget and funded at \$4,250,000. The purpose of the project is to maintain and enhance the resiliency of the system by replacing 120 MVA point of delivery substation transformers reaching the end of their useful life. This procurement will replace one of the transformers located at the Greenville 230 Substation on Holly Street. This transformer was selected for replacement due to age and likelihood of flood damage. Bids were received and reviewed, and staff recommends Siemens Energy be awarded the contract to manufacture and deliver the flood hardened 120 MVA substation transformer at a cost of \$4,683,400 and a lead time of three (3) years. To move forward, staff is proposing the project budget be amended from \$4,250,000 to \$5,000,000 for a total budget amendment of \$750,000.

At its regular Board Meeting on July 20, 2023, the GUC Board of Commissioners adopted the capital project budget amendment and associated reimbursement resolution in the amount of \$750,000 and recommends similar action by City Council.

Fiscal Note: No costs to the City.

Recommendation: Adopt the attached ordinance and reimbursement resolution

ATTACHMENTS

- [Ordinance Amending 23-047 ECP10248.pdf](#)
- [Reimbursement Resolution for ECP10248 Amendment.pdf](#)

ORDINANCE NO. 23- _____
 CITY OF GREENVILLE, NORTH CAROLINA
 TO AMEND A CAPITAL PROJECT BUDGET (ORDINANCE NO. 23-047)
 POD Transformer Replacement

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

Section I. The Capital Projects Budget is amended, so that as amended it shall read as follows:

<u>Revenues</u>	Current Budget	Change	Proposed Budget
Long-Term Debt	\$4,250,000	\$750,000	\$5,000,000
	\$4,250,000	\$750,000	\$5,000,000
 <u>Expenditures</u>			
Project Costs	\$4,250,000	\$750,000	\$5,000,000
	\$4,250,000	\$750,000	\$5,000,000

Section II. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section III. This ordinance shall become effective upon its adoption.

Adopted this the _____ day of _____, 2023.

 P. J. Connelly, Mayor

Attest:

 Valerie Shiuwegar, City Clerk

RESOLUTION NO. 23-__
RESOLUTION DECLARING THE INTENTION OF THE
CITY COUNCIL OF THE CITY OF GREENVILLE TO REIMBURSE THE
GREENVILLE UTILITIES COMMISSION, OF THE CITY OF GREENVILLE, NORTH
CAROLINA, A BODY POLITIC DULY CHARTERED BY THE STATE OF NORTH
CAROLINA, FROM THE PROCEEDS OF ONE OR MORE FINANCING(S) FOR
CERTAIN EXPENDITURES MADE AND TO BE MADE IN CONNECTION WITH THE
ACQUISITION AND CONSTRUCTION OF CERTAIN IMPROVEMENTS

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 of Greenville, North Carolina (the "City"), 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") with responsibility for the entire supervision and control of the management, operation, maintenance, improvement and extension of the Combined Enterprise System; and

WHEREAS, Section 1.150-2 of the Treasury Regulations (the "Regulations") prescribes specific procedures which will be applicable to certain bonds, notes or other indebtedness ("Debt") issued by or on behalf of the Commission and the City including, without limitation, a requirement that the City declare official intent to reimburse certain expenditures with proceeds of Debt to be incurred prior to, or within sixty (60) days of, payment of the expenditures to be reimbursed;

WHEREAS, the Commission has determined to pay certain expenditures (the "Expenditures") incurred no more than 60 days prior to the date hereof and thereafter relating to the acquisition and construction of certain improvements (collectively, the "Additional Improvements") more fully described below;

WHEREAS, the Additional Improvements consist of a POD transformer replacement;
and

WHEREAS, the City Council of the City has determined that those moneys previously advanced by the Commission no more than 60 days prior to the date hereof to pay such Expenditures are available only on a temporary period and that it is necessary to reimburse the Commission for the Expenditures from the proceeds of one or more issues of Debt;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL as follows:

Section 1. The City hereby declares concurrence with the Commission's intent to reimburse the Commission from the proceeds of the Debt for the Expenditures made with respect to the Additional Improvements no more than 60 days prior to the date hereof and thereafter.

Section 2. Each Expenditure was or will be either (a) of a type chargeable to capital account under general federal income tax principles (determined as of the date of the Expenditures), (b) the cost of issuance with respect to the Debt, (c) a non-recurring item that is not customarily payable from current revenues of the Combined Enterprise System, or (d) a grant to a party that is not related to or an agent of the Commission or City so long as such grant does not

impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the Commission or City.

Section 3. The principal amount of the Debt estimated to be issued to reimburse the Commission for Expenditures for the Additional Improvements is estimated to be not more than \$5,000,000.

Section 4. The Commission and the City will make a reimbursement allocation, which is a written allocation by the Commission and the City that evidences the Commission's use of proceeds of the Debt to reimburse an Expenditure no later than 18 months after the later of the date on which such Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on which the Expenditure is paid. The City recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, (expenditures by "small issuers" based on the year of issuance and not the year of expenditure), and expenditures for construction projects of at least 5 years.

Section 5. This declaration of official intent is made pursuant to Section 1.150-2 of the Treasury Regulations.

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

Adopted this the _____ day of August, 2023.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar

City Clerk

Upon motion of Council member _____, seconded by Council member _____, the foregoing resolution 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 such much of the proceedings of the City Council of said City at a regular meeting held on August ____, 2023 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.

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 August, 2023.

City Clerk

[SEAL]



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Request by Police Department to Utilize Asset Forfeiture Funds

Explanation: The City of Greenville Police Department has routinely utilized Federal Asset Forfeiture funding to support community-based organizations. The Police Department would like to make a donation to the Max Factor Leadership Institute, through the local Max Factor Young Men of Excellence Program. The program is organized and facilitated through Koinonia Church, serving 6th through 8th grade male students at C.M. Eppes and South Greenville Schools. It provides sessions and activities that are designed to position these youth toward making exemplary life choices and standing out positively among their peers.

The Max Factor Institute is a 501(c)(3) nonprofit organization and meets the guidelines for equitable sharing from asset forfeiture funds. As such, GPD is requesting to make a donation of \$2,500 to the local Max Factor Young Men of Excellence organization.

Fiscal Note: The total anticipated expenditure from the Asset Forfeiture account is \$2,500. This is not budgeted within the current fiscal year allocation. Sufficient funding is available from the Forfeiture account for this expense.

Recommendation: Staff recommends approval to use Asset Forfeiture funds for a donation to the local Max Factor Young Men of Excellence program.



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Service Agreement with SoundThinking, Inc., Parent Company for ShotSpotter

Explanation: In October 2018, the City entered into an agreement with ShotSpotter for use by the Greenville Police Department (GPD). ShotSpotter is a gunshot detection program that utilizes advanced technology to alert law enforcement to areas where gunshot activity has been identified. Since 2018, ShotSpotter has been a very effective tool utilized by GPD to improve response times to areas where gunshot activity has occurred, thereby enhancing the safety and security of our neighborhoods and communities. The ShotSpotter program coverage area includes West Greenville, the University Neighborhood, and other areas of the City that have historically seen a heightened level of detection activity.

In February 2023, staff engaged in additional discussions with ShotSpotter for the renewal of the current agreement, to review the existing coverage areas, and explore options for additional coverage. Presented to City Council is the proposed renewal of the ShotSpotter agreement for a three-year term that will be effective July 1, 2023 through June 30, 2026. The agreement is attached for City Council review.

Fiscal Note: The proposed contract is for a three-year term at a cost of approximately \$243,750 per year. Funding for the program is included in the City's operating budget.

Recommendation: Staff recommends authorization for the City Manager to enter into an agreement with SoundThinking, Inc.

ATTACHMENTS

[COG-#1184097-v1-COG-SoundThinking--Master_Services_Agreement--ShotSpotter_Addendum_2023--FINAL.pdf](#)

SOUNDTHINKING™ MASTER SERVICES AGREEMENT



SoundThinking, Inc.
39300 Civic Center Dr., Ste. 300
Fremont, CA 94538
+1.888.274.6877
info@soundthinking.com
www.soundthinking.com

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This Master Services Agreement (this “Agreement”) is entered into by and between SoundThinking™, Inc., a Delaware corporation duly authorized to transact business in the State of North Carolina, with offices located at 39300 Civic Center Dr., Suite 300, Fremont, CA 94538 (“SoundThinking”), and the City of Greenville, a municipal corporation in the State of North Carolina, which is also identified in the signature block below (“Customer”),¹ with offices located at 200 West Fifth Street, Greenville, NC 27858, effective as of the last date of signature herein. SoundThinking and Customer may also be referred to in this Agreement individually as a “Party” or collectively as the “Parties”.

WHEREAS, Customer entered into an agreement with SoundThinking (formerly ShotSpotter) to provide ShotSpotter gunshot detection and location services to help Customer identify, analyze, and respond to gun crime which was executed on October 16, 2018 and expired on February 14, 2023.

WHEREAS, Customer desires to expand the existing ShotSpotter coverage area by one half of one (0.5) square mile.

WHEREAS, the Parties wish to enter into this new Agreement effective February 15, 2023.

NOW THEREFORE, the Parties agree as follows:

This Agreement and its exhibits define the deliverables, implementation, and support services for the SoundThinking Subscription Services to be provided under this Agreement and identified in SoundThinking’s quotations attached hereto as Exhibit A and Exhibit B.

In consideration of the Parties’ mutual covenants and promises set forth in this Agreement, the Parties agree as follows:

1. EXHIBITS

The following documents are attached to, and incorporated in this Agreement, and when the term Agreement is used includes all said documents:

- A. Exhibit A – SoundThinking Quotation # GRNVLPDNC060723r (one page)(“Exhibit A”).
- B. Exhibit B – SoundThinking Expansion Quotation # GREENNC062623r (one page) (“Exhibit B”)
- C. Addendum One – ShotSpotter® Supplemental Terms (9 pages) (“Addendum One”).

2. DEFINITIONS

All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below:

- A. Insight means the internet portal to which Customer will have access to Reviewed Alerts with respect to the ShotSpotter® Gunshot Detection, Location, and Forensics System.
- B. CaseBuilder™, CaseBuilder™ Subscription Services, CaseBuilder™ Software, or CaseBuilder™ System means the SoundThinking case management software.

¹ Customer includes its police department, the Greenville Police Department.

- C. CaseBuilder™|Crime Gun, CaseBuilder™|Crime Gun Subscription Services, CaseBuilder™|Crime Gun Software, or CaseBuilder™|Crime Gun System means SoundThinking's gun crime tracking and analysis case management tool.
- D. Confidential Information means that information designated by either Party as confidential or proprietary as further defined in Section 6 of this Agreement.
- E. CrimeTracer™, CrimeTracer™ Subscription Services, CrimeTracer™ Software, or CrimeTracer™ System means the law enforcement search engine and information platform which enables customers to search data from agencies across the U.S.
- F. Coverage Area means the area in square miles covered by the ShotSpotter® Subscription Services as set forth in Exhibit A and Exhibit B and any increase to the Coverage Area as agreed to in writing between the Parties.
- G. ResourceRouter™, ResourceRouter™ Subscription Services, ResourceRouter™ Software, or ResourceRouter™ System means the SoundThinking crime forecasting and patrol/task force management system.
- H. ShotSpotter®, ShotSpotter® System, ShotSpotter® Software, or ShotSpotter® Subscription Services means the ShotSpotter® Gunshot Detection, Location, and Forensic Analysis Service.
- I. ShotSpotter Data means the data, information, and electronic files created, generated, modified, compiled, displayed, stored, or kept in the course of providing the ShotSpotter Subscription Services, including, without limitation, information in Reviewed Alerts accessible through the ShotSpotter Subscription Services and/or Software.
- J. Software or SoundThinking Software means collectively the SoundThinking applications identified in this Agreement to which Customer will have access under this Agreement on a subscription basis. The term Software shall also mean any new applications supplemental to the Subscription Services provided by SoundThinking to Customer subsequent to the execution date of this Agreement, and if purchased by Customer, the SoundThinking API Subscription License.
- K. Subscription Services or SoundThinking Subscription Services means collectively the services provided to Customer on a subscription basis under this Agreement to access, and SoundThinking's maintenance of, the Software.
- L. System means collectively the Software and Subscription Services provided under this Agreement.

3. SUBSCRIPTION SERVICES

- A. SoundThinking has previously, or will implement the applicable Subscription Services set forth in Exhibit A, Exhibit B and Addendum One.

4. INITIAL TERM AND RENEWAL

As a current end user of the ShotSpotter Subscription Services, the initial term of the Subscription Services for the existing ShotSpotter Coverage Area (“Phase I”) shall be for a period of forty and one-half (40.5) months commencing on February 15, 2023, and ending June 30, 2026. Subscription Services for the period February 15, 2023 through June 30, 2023 will be at no charge, as further shown in Exhibit A. The annual subscription fee for the 0.5 square mile expansion (“Phase II”), as further shown in Exhibit B, will be prorated as applicable, based on the actual date of service activation in order to provide a coterminous subscription period for both Phase I and Phase II.

The Subscription Services may be renewed for successive periods of one year each (or multiple years as mutually agreed upon in writing by the Parties), in accordance with the following procedure. SoundThinking shall provide Customer with a renewal notice stating the renewal fees, terms, and conditions for the next successive renewal term approximately ninety (90) days prior to the expiration date of the then current term. Customer acknowledges that the Subscription Services fees, terms and conditions, and service levels hereunder are subject to change and that such fees, terms and conditions, and service levels may vary from those applicable to this Agreement in successive renewal terms. Annual Subscription fees are subject to increase at a rate of 5% for customers whose annual subscription fee is less than the current SoundThinking list price.

If Customer fails to renew prior to expiration of the then current subscription term, the Subscription Services will terminate in accordance with Section 5.C and the Customer’s access to the Subscription Services will be disabled. With respect to ShotSpotter, at its discretion, SoundThinking may remove the ShotSpotter Service and any components from the Coverage Area at that time. If SoundThinking does not remove the ShotSpotter Service from the Coverage Area, Customer may reinstate the ShotSpotter Subscription Services at a later date by renewing this Agreement and payment of the applicable reactivation and ShotSpotter Subscription Services renewal fees; however, Customer will not have access to any Reviewed Alerts that they would have had access to during the lapsed period.

5. LICENSE AND OWNERSHIP

In consideration for and subject to the payment of the annual Subscription Services fees as set forth in Exhibit A and Exhibit B, Customer is granted a non-transferrable, non-exclusive, and terminable license (“License”) to use the applicable SoundThinking Subscription Services, and ShotSpotter® Data for the Customer’s own internal purposes and, if applicable, permitting citizens to access the public facing components of the relevant Subscription Services as set forth in this Section 5 and Addendum One of this Agreement. Please read the terms and conditions of this Agreement carefully. By using any SoundThinking Subscription Services, you agree to be bound by the terms and conditions of this Agreement. If you do not agree to these terms, you must notify SoundThinking and discontinue any use of the SoundThinking Subscription Services.

A. License and Restrictions.

Software and Subscription Services. The Software is the proprietary product of SoundThinking, licensed to Customer on an annual subscription basis. The SoundThinking Software may incorporate components supplied to SoundThinking under license by third-party suppliers, and may be protected by United States patent, trade secret, copyright law, and international treaty provisions. All such rights in and to the Software and Subscription Services and any part thereof

is the property of SoundThinking or, if applicable, its suppliers. All right and title to the SoundThinking computer programs, including, but not limited to related documentation, technology, know-how, and processes embodied in or made available to Customer in connection with the Subscription Services, patent rights, copyrights, trade secret rights, trademarks, and services marks remain with SoundThinking. Unless required to do so by court order or operation of law, Customer may not make any copies of the written materials or documentation that accompany any component of the Software, or use them, or any other information concerning the Subscription Services that SoundThinking has designated as confidential, for any purpose other than bona fide use of the Subscription Services or Software for in accordance with the terms of this Agreement, nor allow anyone else to do so. Customer shall not: (i) modify, adapt, alter, translate, copy, perform, or display (publicly or otherwise) or create compilations, derivative, new, or other works based, in whole or in part, on the Software, or on the Subscription Services; (ii) merge, combine, integrate, or bundle the Software, in whole or in part, with other software, hardware, data, devices, systems, technologies, products, services, functions, or capabilities; (iii) transfer, distribute, make available the Subscription Services, or Software to any person other than Customer; or (iv) sell, resell, sublicense, lease, rent, or loan the Subscription Services or Software, in whole or in part. No component of the Subscription Services, or Software may be used to operate a service bureau, rental or time-sharing arrangement.

Nothing in this Agreement shall be construed as granting any right or title to any SoundThinking Software, the ShotSpotter Data, or any component thereof, or any other intellectual property of SoundThinking or its suppliers to Customer.

Customer shall not alter, remove, or obscure any copyright, patent, trademarks, confidential, proprietary, or restrictive notices or markings on any component of the Subscription Services, Software or any documentation.

Use, duplication, or disclosure by applicable U.S. government agencies is subject to restrictions as set forth in in the provisions of DFARS 48 CFR §§ 252.227-7013 or FAR 48 CFR §§ 52.227-14, as applicable.

B. Export.

Customer acknowledges that the ShotSpotter System has been determined by the United States Department of State to be a controlled commodity, software, and/or technology subject to the United States Export Administration Regulations of the U.S. Department of Commerce. Customer is specifically prohibited from the export, or re-export, transfer, consignment, shipment, delivery, downloading, uploading, or transmitting in any form, any ShotSpotter Software, ShotSpotter Subscription Services, ShotSpotter Data, documentation, or any component thereof or underlying information or technology related thereto, to any third party, government, or country for any end uses except in strict compliance with applicable U.S. export controls laws, and only with the express prior written agreement of SoundThinking. In the event that such written agreement is provided, Customer shall be responsible for complying with all applicable export laws and regulations of the United States and destination country, including, but not limited to the United States Export Administration Regulations of the U.S. Department of Commerce, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of Customer's country. In this respect, no

resale, transfer, or re-export of the ShotSpotter System or any ShotSpotter System component exported to Customer pursuant to a license from the U.S. Department of Commerce may be resold, transferred, or reported without prior authorization by the U.S. Government. Customer agrees not to export, re-export, or engage in any “deemed export,” or to transfer or deliver, or to disclose or furnish, to any foreign (non-U.S.) government, foreign (non-U.S.) person or third party, or to any U.S. person or entity, any of the ShotSpotter System, or ShotSpotter System components, ShotSpotter Data, Software, Services, or any technical data or output data or direct data product thereof, or any service related thereto, in violation of any such restrictions, laws or regulations, or without all necessary registrations, licenses and or approvals. Customer shall bear all expenses relating to any necessary registrations, licenses or approvals.

In addition to the restrictions and requirements set forth above, the Customer shall not export, or re-export, transfer, consign, ship, deliver, download, upload, or transmit in any form, the CaseBuilder, CaseBuilder|Crime Gun, CrimeTracer, or ResourceRouter Subscription Services, Software, documentation, or any component thereof or underlying information or technology related thereto to any third party, government, or country for any end uses except in strict compliance with applicable U.S. export controls laws, and only with the express prior written agreement of SoundThinking. In the event that such written agreement is provided, Customer shall be responsible for complying with all applicable export laws and regulations of the United States and destination country, including, but not limited to the United States Export Administration Regulations of the U.S. Department of Commerce, including the sanctions laws administered by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC), the U.S. Anti-Boycott regulations, and any applicable laws of the import country.

In addition to the foregoing, Customer shall not disclose, discuss, download, ship, transfer, deliver, furnish, or otherwise export or re-export any such item(s) to or through: (a) any person or entity on the U.S. Department of Commerce Bureau of Industry and Security’s List of Denied Persons or Bureau of Export Administration’s anti-proliferation Entity List; (b) any person on the U.S. Department of State’s List of Debarred Parties; (c) any person or entity on the U.S. Treasury Department Office of Foreign Asset Control’s List of Specially Designated Nationals and Blocked Persons; or (d) any third party or for any end-use prohibited by law or regulation, as any and all of the same may be amended from time to time, or any successor thereto.

C. Suspension or Termination.

Either Party may suspend or terminate this Agreement at any time upon any of the following grounds:

- 1) Suspension. The following may result in notice of suspension by either Party:
 - a) Failure by Customer pay any amounts when due;
 - b) Failure by SoundThinking to meet the service level requirements in Addendum One.

Any such suspension notice shall clearly state the reason for the suspension and timeframe, not to exceed 30 days from the date of notice. Failure by a Party to remedy the

cause for suspension within the 30 day timeframe, or begin action with due diligence to remedy the cause for suspension, may result in a notice to terminate.

- 2) **Termination For Cause.** Either Party may seek to terminate this Agreement upon 30 days written notice if the other Party (“Offending Party”) is in material breach of any term or provision of this Agreement, or fails to remedy the cause for a suspension with 30 days as set forth above. Under this provision only, the Party seeking to terminate this Agreement shall provide written notice to the Offending Party identifying the condition(s) or reason(s) for such suspension or grounds for termination and the Offending Party shall have 30 calendar days to rectify the condition(s) or grounds for termination. In the event the Offending Party is unable to cure the alleged breach to the satisfaction of the Party seeking termination thereof, the Party seeking termination thereof will give the Offending Party written notice of termination, which will be effective as of the date of notice unless otherwise stated in the notice of termination. In the event of a breach of SoundThinking’s intellectual property rights, SoundThinking may immediately terminate this Agreement upon written notice to Customer.
- 3) **Termination For Convenience.** Without limiting either Party’s right to terminate for breach, the Parties agree that either Party may terminate this Agreement, for convenience, without cause, and in its sole discretion, by giving the other Party 60 calendar days’ written notice. In the event of termination for convenience by SoundThinking, SoundThinking will refund a pro-rated portion of the annual subscription fee paid for the annual term in which the Agreement is terminated. In the event of termination for convenience by the Customer, the Customer shall not be liable to SoundThinking for any additional compensation, or for any consequential or incidental damages, including but not limited to overhead, profit, damages, other economic loss, or otherwise, and all obligations under the Agreement shall be discharged except that any right based on prior breach or performance survives and any other provisions expressly cited to survive termination.
- 4) **Automatic Termination for Non-Appropriation of Funds.** This Agreement shall automatically terminate upon notice to SoundThinking should funding cease to be available. SoundThinking acknowledges that funding for this Agreement is conditioned upon appropriation and allocation by the governing body of sufficient funds to support the activities described in this Agreement. By written notice to SoundThinking at the earliest possible date, the Customer may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction, or limitation in any way of the Customer’s budget, funding, or financial resources. Such termination is in addition to the Customer’s rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: The Customer will be liable only for payment in accordance with the terms of this Agreement for work completed and expenses incurred up to the effective date of termination. SoundThinking will not be compensated for any other costs in connection with a termination for non-appropriation. SoundThinking will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits. SoundThinking shall be released from any further obligation to provide work affected by such termination; and termination shall not prejudice

any other right or remedy available to the Customer. Funding for this Agreement is subject to annual appropriation.

- 5) Termination at Expiration Unless Extended. Upon expiration of this Agreement, this Agreement is terminated, if not extended, in accordance with the terms and conditions of this Agreement.

D. Modification to, or Discontinuation of the Subscription Services.

Upon reasonable notice to Customer, SoundThinking reserves the right at its discretion to modify, temporarily or permanently, the Subscription Services (or any part thereof). In the event that SoundThinking modifies the Subscription Services in a manner which removes or disables a feature or functionality on which Customer materially relies, SoundThinking, at Customer's request, shall use commercially reasonable efforts to restore such functionality to Customer. In the event that SoundThinking is unable to substantially restore such functionality, Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the annual Subscription Services fees paid under the Agreement for the subscription term in which this Agreement is terminated. Customer acknowledges that SoundThinking reserves the right to discontinue offering the Subscription Services at the conclusion of Customer's then current term. Customer agrees that SoundThinking shall not be liable to Customer or to any third party for any modification of the Subscription Services as described in this section.

E. New Applications.

From time to time, at SoundThinking's discretion, SoundThinking may release to its customer base, new applications supplemental to the Subscription Services. Customer's use of such new applications shall be subject to the license, warranty, intellectual property, and support terms of this Agreement. Prior to general release, SoundThinking may request Customer to act as a pre-release test site for new applications, or major upgrades. Provided that Customer agrees in writing to such request, SoundThinking will provide a pre-release package explaining the details and requirements for Customer's participation.

F. No Use by Third Parties.

Except as otherwise expressly set forth in this Agreement, use by anyone other than Customer of the Subscription Services, Software, documentation, or ShotSpotter Data is prohibited, unless pursuant to a valid assignment of this Agreement as set forth in Section 20 of this Agreement.

6. CONFIDENTIALITY AND PROPRIETARY RIGHTS

A. SoundThinking Confidential Information.

Unless prohibited or otherwise specified by applicable law, the source code, technology, and internal structure of the SoundThinking Software, ShotSpotter Data, and SoundThinking Subscription Services, as well as documentation, operations manual(s) and training material(s), are the confidential information and proprietary trade secrets of SoundThinking, the value of which would be destroyed by disclosure to the public. Except as otherwise provided in this Agreement, use by anyone other than Customer of the Subscription Services, documentation, and ShotSpotter Data is prohibited, unless pursuant to a valid assignment under this Agreement. Unless prohibited

or otherwise specified by applicable law, the terms and conditions of this Agreement, including pricing and payment terms shall also be treated as SoundThinking's confidential information. Customer shall not disassemble, decompile, or otherwise reverse engineer or attempt to reconstruct, derive, or discover any source code, underlying ideas, algorithms, formulae, routines, file formats, data structures, programming, routines, interoperability interfaces, drawings, or plans from the Software, or any data or information created, compiled, displayed, or accessible through the Subscription Services, in whole or in part. Customer agrees during the term of this Agreement, and thereafter, to hold the confidential information and proprietary trade secrets of SoundThinking in strict confidence and to not permit any person or entity to obtain access to it except as required for the Customer's exercise of the license rights granted under this Agreement. Nothing in this Agreement is intended to or shall limit any rights or remedies under applicable law relating to trade secrets, including the Uniform Trade Secrets Act as enacted in applicable jurisdictions.

B. Customer Confidential Information.

During the term of this Agreement or any subsequent renewals, SoundThinking agrees to maintain Customer information designated by the Customer as confidential to which SoundThinking gains access in the performance of its obligations under this Agreement, and not disclose such Customer Confidential Information to any third parties except as may be required by law. SoundThinking agrees that Customer's Confidential Information shall be used solely for the purpose of performing SoundThinking's obligations under this Agreement.

C. Obligations of the Parties.

The receiving Party's ("Recipient") obligations under this section shall not apply to any of the disclosing Party's ("Discloser") Confidential Information that Recipient can document: (a) was in the public domain at or subsequent to the time such Confidential Information was communicated to Recipient by Discloser through no fault of Recipient; (b) was rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time such Confidential Information was communicated to Recipient by such Discloser; (c) was developed by employees or agents of Recipient independently of and without reference to any of Discloser's Confidential Information; or (d) was communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any Discloser Confidential Information (a) in response to a valid order by a court or other governmental body; (b) as otherwise required by law; or (c) necessary to establish the rights of either party under this Agreement shall not be considered to be a breach of this Agreement by the Recipient; provided, however, that Recipient shall provide prompt prior written notice thereof to the Discloser to enable Discloser to seek a protective order or otherwise prevent such disclosure. The Recipient shall use reasonable controls to protect the confidentiality of and restrict access to all Confidential Information of the Discloser to those persons having a specific need to know for the purpose of performing the Recipient's obligations under this Agreement. The Recipient shall use controls no less protective than Recipient uses to secure and protect its own confidential, but not "Classified" or otherwise Government-legended, information. Upon termination of this Agreement the Recipient, as directed by the Discloser, shall either return the Discloser's Confidential Information, or destroy all copies thereof and verify such destruction in writing to the Discloser.

Unless the Recipient obtains prior written consent from the Discloser, and unless required by court order or other operation of law, the Recipient agrees that it will not reproduce, use for purposes other than those expressly permitted in this Agreement, disclose, sell, license, afford access to, distribute, or disseminate any information designated by the Discloser as confidential.

7. LIMITED WARRANTIES

- A. SoundThinking warrants that the Software will function in substantial conformity with the SoundThinking documentation accompanying the Software and Subscription Services. The Software covered under this warranty consists exclusively of ShotSpotter Dispatch, ShotSpotter Respond, and ShotSpotter Insight applications and user interface; CaseBuilder; CaseBuilder|Crime Gun; CrimeTracer; and ResourceRouter Software and Subscription Services that are made available to the Customer under this Agreement as identified in Exhibit A and Exhibit B, or any subsequent amendment to this Agreement.
- B. SoundThinking further warrants that the Subscription Services and Software shall be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.
- C. SoundThinking does not warrant or represent, expressly or implicitly, that any of its Subscription Services or Software will be uninterrupted or error free; or that any SoundThinking-supplied network will remain in operation at all times or under all conditions.
- D. Any and all warranties, express or implied, of fitness for high-risk purposes requiring fail-safe performance are hereby expressly disclaimed.
- E. The Parties acknowledge and agree that the Subscription Services are not consumer goods, and are not intended for sale to or use by or for personal, family, or household use.

EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 7 AND ADDENDUM ONE, SOUNDTHINKING MAKES AND CUSTOMER RECEIVES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT, QUALITY, SUITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

8. CUSTOMER OBLIGATIONS.

Customer acknowledges and agrees that SoundThinking's duties, including warranty obligations, and ability to perform its obligations to Customer under this Agreement shall be predicated and conditioned upon Customer's timely performance of and compliance with Customer's obligations hereunder, including, but not limited to:

- A. Unless a good faith basis exists to challenge any billing by or sums due to SoundThinking by Customer, including but not limited to an overcharge, double bill, or erroneous charge, Customer agrees to pay all undisputed sums due under this Agreement when they are due pursuant to the payment terms in Exhibit A and Exhibit B.

Customer's address for invoicing:
City of Greenville
Accounts Payable

200 West Fifth Street
Greenville, NC 27858
AccountsPayable@greenvillenc.gov

- B. Customer agrees to use reasonable efforts to timely perform and comply with all of Customer's obligations allocated to Customer under this Agreement.
- C. Customer shall not permit any alteration, modification, substitution, or supplementation of any SoundThinking Subscription Services or web portal, or the combining, connection, merging, bundling, or integration of the SoundThinking Subscription Services or web portal into or with any other system, equipment, hardware, software, technology, function, or capability, without SoundThinking's express prior written consent.
- D. Unless otherwise expressly agreed in advance in writing by SoundThinking, Customer shall not authorize or appoint any contractors, subcontractors, original equipment manufacturers, value added integrators, systems integrators, or other third parties to operate, or have access to any part of the Subscription Services or Software.
- E. In order to use the Subscription Services, the Parties each must have and maintain access to the World Wide Web to enable a secure https connection from the Customer's workstation(s) to SoundThinking's hosted services, either directly or through devices that access Web-based content. Customer must also provide all equipment necessary for Customer's access and use of the services herein to make such (and maintain such) connection.
- F. Should criminal background checks or fingerprinting for SoundThinking employees performing any Services under this Agreement hereto be required by Customer, or Federal or State regulations, such background checks or fingerprinting will be conducted by Customer.
- G. Customer shall be responsible for the accuracy, quality, appropriateness, and legality of all Customer Data, any other Customer business information used in any Subscription Services.
- H. SoundThinking will assist the Customer in initially setting up passwords and user names for Customer's employees, agents, or representatives to whom Customer designates access to the applicable Subscription Services ("Authorized Users"). Thereafter, Customer shall be responsible for assigning passwords and user names for each of its Authorized Users. Customer shall be responsible for maintaining the confidentiality and use of Customer's password and user names and shall not allow passwords and/or user names to be shared by Authorized Users; nor shall Customer permit any unauthorized users to access the Subscription Services. The maximum number of Authorized Users, *if applicable*, for the applicable Subscription Services is set forth in Exhibit A and/or Exhibit B. Each Authorized User identification may only be used to access the applicable Subscription Services during one (1) concurrent login session.
- I. The Parties shall comply with all applicable laws, rules, and regulations relating to the goods and services provided hereunder.

9. INTELLECTUAL PROPERTY INFRINGEMENT

SoundThinking will, at its expense, defend and indemnify Customer from and against losses, suits, damages, liability, and expenses (including reasonable attorney fees) arising out of a claim asserted in a lawsuit or action against the Customer by a third party unrelated to the Customer, in which such third party asserts a claim that the Subscription Services and/or Software, when used in accordance with SoundThinking's user documentation, infringes any United States patent which was issued by the U.S. Patent and Trademark Office, or United States copyright which was registered by the U.S. Copyright Office, as of the effective date of Customer's agreement to license the applicable SoundThinking Subscription Services and Software (collectively "Action"), provided that Customer provides SoundThinking with reasonably prompt notice of any such Action, or circumstances of which Customer becomes aware that could reasonably be expected to lead to such Action including but not limited to any cease and desist demands or warnings, and further provided that Customer cooperates with SoundThinking and its defense counsel in the investigation and defense of such Action.

SoundThinking shall have the right to choose counsel to defend such suit and/or action, and to control the settlement (including determining the terms and conditions of settlement) and the defense thereof. Customer may participate in the defense of such action at its own expense.

This Section 9 shall not apply and SoundThinking shall have no obligation to defend and indemnify Customer in the event the Customer or a third party modifies, alters, substitutes, or supplements any of the Subscription Services, or Software, or to the extent that the claim of infringement arises from or relates to the integration, bundling, merger, or combination of any of the same with other hardware, software, systems, technologies, or components, functions, capabilities, or applications not licensed by SoundThinking as part of the Subscription Services, nor shall it apply to the extent that the claim of infringement arises from or relates to meeting or conforming to any instruction, design, direction, or specification furnished by the Customer, nor to the extent that the Subscription Services or Software are used for or in connection with any purpose, application, or function other than in accordance with the SoundThinking documentation accompanying the Subscription Services or Software.

If, in SoundThinking's opinion, any of the Subscription Services, or Software may, or are likely to become, the subject of such a suit or action, does become the subject of a claim asserted against Customer in a lawsuit which SoundThinking is or may be obliged to defend under this section, or is determined to infringe the foregoing patents or copyrights of another in a final, non-appealable judgment subject to SoundThinking's obligations under this section, then SoundThinking may in full and final satisfaction of any and all of its obligations under this section, at its option: (1) procure for Customer the right to continue using the affected Subscription Services or Software, (2) modify or replace such Subscription Services or Software to make it or them non-infringing, or (3) refund to Customer a pro-rata portion of the annual Subscription Services fees paid for the affected Subscription Services for the term in which the Agreement is terminated.

This Section 9 states the entire liability of SoundThinking and is Customer's exclusive remedy for or relating to infringement or claims or allegations of infringement of any patent, copyright, or other intellectual property rights in or to any SoundThinking Subscription Services, SoundThinking Software or any component thereof. This section is in lieu of and replaces any other expressed, implied, or statutory warranty against infringement of any and all intellectual property rights.

10. INDEMNIFICATION AND LIMITATION OF LIABILITY

SoundThinking shall, at its expense, indemnify, defend, save, and hold Customer harmless from any and all claims, lawsuits, or liability, including attorneys' fees and costs, arising out of, in connection with, any loss, damage, or injury to persons or property to the extent of the gross negligence, or wrongful act, error, or omission of SoundThinking, its employees, agents, or subcontractors as a result of SoundThinking's or any of its employees, agents, or subcontractor's performance pursuant to this Agreement. SoundThinking shall not be required to indemnify Customer for any claims or actions caused to the extent of the negligence or wrongful act of Customer, its employees, agents, or contractors. Notwithstanding the foregoing, if a claim, lawsuit, or liability results from or is contributed to by the actions or omissions of Customer, or its employees, agents, or contractors, SoundThinking's obligations under this provision shall be reduced to the extent of such actions or omissions based upon controlling North Carolina law.

In no event shall either Party, or any of its affiliates or any of its/their respective directors, officers, members, attorneys, employees, or agents, be liable to the other Party under any legal or equitable theory or claim, for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, indirect, incidental, or consequential damages, each of which is hereby excluded by agreement of the Parties, regardless of whether such damages were foreseeable or whether any Party or any entity has been advised of the possibility of such damages.

Except for its Intellectual Property infringement indemnity obligations under Section 9 of this Agreement, SoundThinking's cumulative liability for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever arising out of or related to this Agreement, whether in contract, tort, by way of indemnification or under statute, and regardless of the form of action or legal theory shall not exceed (i) two (2) times the amount of the annual subscription fee(s) for the twelve (12) month period in which the claim arises, or (ii) the amount of insurance maintained by SoundThinking available to cover the loss, whichever is greater. The foregoing limitations shall apply without regard to any failure of essential purpose of any remedies given herein.

11. DEFAULT AND TERMINATION; REMEDIES

Either Party may terminate this Agreement in the event of a material breach of the terms and conditions of this Agreement upon thirty (30) days' prior written notice to the other Party; provided that the Party alleged to be in breach has not cured such breach within said thirty (30) day period.

In addition to the termination provisions in Section 5.C for failure to pay annual Subscription Services fees, upon the occurrence of a material breach of Customer's obligations under this Agreement not susceptible to cure as provided in the preceding paragraph, SoundThinking may at its option, effective immediately upon written notice to Customer, either: (i) terminate SoundThinking's future obligations under this Agreement or (ii) terminate Customer's License to use the Subscription Services and Software.

12. TAXES

Unless otherwise included as a line item in Exhibit A or Exhibit B, the fees due under this Agreement exclude any sales, use, value added, or similar taxes that may be imposed in connection with this Agreement. Customer agrees that it shall be solely responsible for payment, or reimbursement to SoundThinking as applicable, of all sales, use, value added or similar taxes imposed upon this Agreement by any level of government, whether due at the time of sale or asserted later as a result of audit of the financial records of

either Customer or SoundThinking. If exempt from such taxes, Customer shall provide to SoundThinking written evidence of such exemption. Customer shall also pay any personal property taxes levied by government agencies based upon Customer's use or possession of the items acquired or licensed in this Agreement.

13. NOTICES

Except as otherwise specified herein, all notices, requests, demands, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given upon delivery (i) if delivered in person, (ii) if delivered through the United States mail, postage prepaid, certified, return receipt requested, (iii) if delivered by Federal Express or similar recognized overnight courier service to the parties at the addresses below, or (iv) if delivered by electronic mail at the addresses below and also by regular U.S. Mail. Notices may also be given in any other manner permitted by law, effective upon actual receipt. Either party may change the address to which notices, requests, demands or other communications to such party shall be delivered or mailed by giving notice thereof to the other party hereto in the manner provided herein.

Notices to Customer:

Greenville Police Department
Attn: Chief Ted Sauls
500 South Greene Street
Greenville, NC 27834
tsauls@greenvillenc.gov

Notices to SoundThinking:

SoundThinking, Inc.
Attn: CFO
39300 Civic Center Dr., Ste. 300
Fremont, CA 94538
accounting@soundthinking.com

and to:

City of Greenville
Attn: IT Department
City Hall
200 West Fifth Street (27858)
P.O. Box 7207
Greenville, NC 27835-7207
Telephone: (252) 329-4827
Facsimile: (252) 329-4125
Email: jhoggard@greenvillenc.gov (Jon Hoggard, Systems Analyst IV)

14. FORCE MAJEURE

In no event shall SoundThinking be liable for any delay or default in its performance of any obligation under this Agreement caused directly or indirectly by an act or omission of Customer, or persons acting under its direction and/or control, fire, flood, act of God, an act or omission of civil or military authority of a state or nation, strike, lockout, or other labor disputes, inability to secure, delay in securing, or shortage of labor, materials, supplies, transportation, or energy, failures, outages or denial of services of wireless, power, telecommunications, or computer networks, acts of terrorism, sabotage, vandalism, hacking, natural disaster or emergency, war, riot, embargo, or civil disturbance, breakdown or destruction of plant or equipment, or arising from any cause whatsoever beyond SoundThinking's reasonable control. At SoundThinking's option and following notice to Customer, any of the foregoing causes shall be deemed to suspend such obligations of SoundThinking so long as any such cause shall prevent or delay performance,

and SoundThinking agrees to make, and Customer agrees to accept performance of such obligations whenever such cause has been remedied.

15. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding of the Parties and a final expression of their agreements with respect to the subject matter of this Agreement and supersedes all prior written or oral agreements, representations, understandings, or negotiations with respect to the matters covered by this Agreement.

16. GOVERNING LAW AND VENUE

Regarding jurisdiction and governing Law: (A) This Agreement and all Purchase Documents shall be deemed made in Pitt County, North Carolina and the validity, performance, and construction of this Agreement and all Purchase Documents shall be governed by and construed in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement and/or any Purchase Documents shall be the North Carolina General Court of Justice, in Pitt County, North Carolina. Such actions shall neither be commenced in nor removed to federal court. The Parties further agree that in any action arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees (including, if applicable, charges for in-house counsel), and court costs from the other party. This subsection shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (B) "Agent for Service of Process" means every person now or hereafter appointed by SoundThinking to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, SoundThinking agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. SoundThinking will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to SoundThinking. This subsection (B) does not apply while SoundThinking maintains a registered agent in North Carolina with the office of the North Carolina Secretary of State and such registered agent can be found with due diligence at the registered office.

17. NO WAIVER

No term or provision of this Agreement shall be deemed waived, and no breach excused unless such waiver or consent is in writing and signed by both Parties. Any consent by either Party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other, different, prior, or subsequent breach.

The failure of either Party to enforce at any time any of the provisions of this Agreement shall not constitute a present or future waiver of any such provisions or the right of either Party to enforce each and every provision.

18. SEVERABILITY

If any term, clause, sentence, paragraph, article, subsection, section, provision, condition, or covenant of this Agreement is held to be invalid or unenforceable, for any reason, it shall not affect, impair, invalidate or nullify the remainder of this Agreement, but the effect thereof shall be confined to the term, clause,

sentence, paragraph, article, subsection, section, provision, condition or covenant of this Agreement so adjudged to be invalid or unenforceable.

19. DISPUTE RESOLUTION

If the Parties disagree as to any matter arising under this Agreement or the relationship and dealings of the Parties hereto, then at the request of either Party, SoundThinking and Customer shall promptly consult with one another and make diligent, good faith efforts to resolve the disagreement by negotiation prior to either Party taking legal action. If such negotiations do not resolve the dispute within sixty (60) days of the initial request, either Party may take appropriate legal action.

20. ASSIGNMENT

This Agreement may not be assigned or transferred by either Party, nor any of the rights granted herein, in whole or in part, by operation of law or otherwise, without the other Party's express prior written consent, which shall not be unreasonably withheld. Provided, however, that SoundThinking may assign or transfer this Agreement and/or SoundThinking's rights and obligations hereunder, in whole or in part, in the event of a merger or acquisition of all or substantially all of SoundThinking's assets. No assignee for the benefit of Customer's creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff, or any other officer of a court, or other person charged with taking custody of Customer's assets or business, shall have any right to continue or to assume or to assign these without SoundThinking's express consent.

21. COMPLIANCE WITH LAWS

During the term of this Agreement SoundThinking will comply with all applicable local, state, and federal laws, statutes and regulations.

22. EQUAL EMPLOYMENT OPPORTUNITY

SoundThinking is committed to equal-employment principles, and the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, (41 CFR 60- 1.4), section 503 of the Rehabilitation Act of 1973, (41 CFR 60-741.5(a)), section 402 of the Vietnam Era Veterans Readjustment Act of 1974, (41 CFR 60-250.5(a)), and, the Jobs for Veterans Act of 2003, (41 CFR 60-300.5(a)) as well as any other regulations pertaining to these orders. SoundThinking's decisions and criteria governing its hiring and employment practices are made in a non-discriminatory manner, without regard to age, race, color, national origin, citizenship status, gender (including pregnancy, childbirth or medical condition related to pregnancy or childbirth), gender identity or expression, sex, religion, creed, physical or mental disability, medical condition, legally protected genetic information, marital status, veteran status, military status, sexual orientation, or any other factor determined to be an unlawful basis for such decisions by federal, state, or local statutes.

23. GENERAL PROVISIONS

- A. Permits, Licenses, and Certificates. SoundThinking is to procure all permits, licenses, and certificates, as required by any such laws, ordinances, rules and regulations, for proper execution and completion of any work obligated to be performed by SoundThinking under this Agreement.

- B. **Survivability.** The covenants, warranties, conditions, and agreements of the Parties set forth in this Agreement and the indemnification obligations of the Parties hereunder shall survive indefinitely except as expressly provided herein.
- C. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the Parties and any permitted successors and assigns; however, nothing in this paragraph shall be construed as a consent to any assignment by either Party except as provided in Section 20 of this Agreement.
- D. **Authorized Representative.** This Agreement shall not become a binding contract until signed by an authorized representative of each Party, effective as of the date of signature.
- E. **City Manager's Authority.** To the extent, if any, the City has the power to suspend or terminate this contract or SoundThinking's services under this Agreement, that power may be exercised by the City Manager or his or her designee.
- F. **Arm's Length Negotiation.** The provisions of this Agreement shall not be construed in favor of or against either Party because that Party or its legal counsel drafted this Agreement, but shall be construed as if all Parties prepared this Agreement.
- G. **Counterparts.** This Agreement may be executed in any number of identical counterparts, each of which shall be deemed a duplicate original. The exchange of copies of this Agreement and of signature pages by facsimile transmission and by electronic mail in PDF format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile and by electronic mail in PDF format shall be deemed to be their original signatures for all purposes.
- H. **E-Signature Authority and Effect.** As it is applicable to this Agreement, the Parties agree to and adopt the terms and conditions of the Uniform Electronic Transactions Act (the "Act"), as adopted in North Carolina General Statutes Chapter 66, including but not limited to the provisions governing electronic signatures. As such, this Agreement is "signed" if it includes a digital signature, symbol, and/or action that is adopted or performed by either party or party's Electronic Agent (as defined in the Act) with the present intent to authenticate or manifest assent to the Agreement. Accordingly, the parties hereto consent and agree that this Agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document, or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The Parties further consent and agree that (1) to the extent a party signs this document using electronic signature technology, by clicking "sign," such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated for purposes of validity, enforceability, and admissibility, the same as handwritten signatures. An electronic signature copy of this Agreement, notices and documents prepared under this Agreement shall be considered an original. The Parties agree that any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability, and shall meet any requirement to provide an original or hard copy.
- I. **No Third-Party Benefits.** This Agreement is made for the benefit of the Parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the Parties to terminate,

rescind, or agree to any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

- J. Iran Divestment Act Certification. SoundThinking 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.
- K. E-Verify Compliance. The Parties to this Agreement shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Furthermore, if either Party utilizes a subcontractor, that Party shall require each said subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Both Parties represent that they and their subcontractors that may exist are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

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(Signature Page Follows)

EACH PARTY’S ACCEPTANCE HEREOF IS EXPRESSLY LIMITED TO THE TERMS OF THIS AGREEMENT, INCLUDING EXHIBIT A, EXHIBIT B AND ADDENDUM ONE, AND NO DIFFERENT OR ADDITIONAL TERMS CONTAINED IN ANY CONFIRMATION, PURCHASE ORDER, AMENDMENT, OR OTHER BUSINESS FORM, WRITING OR MATERIAL SHALL HAVE ANY FORCE OR EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY THE PARTIES.

CITY OF GREENVILLE

SOUNDTHINKING, INC.

Accepted By (Signature)

Accepted By (Signature)

Printed Name

Printed Name

Title

Title

Date

Date

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.

Byron Hayes, Director of Financial Services

Date: _____

Account Number _____

Project Code (if applicable) _____

(Exhibit A, Exhibit B, and Addendum One Follow)

EXHIBIT A – SOUNDTHINKING QUOTATION




		<h1 style="margin: 0;">Quote</h1> <p style="margin: 0;">DATE 6/7/23 Quote # GRNVLPDNC060723r Customer ID Greenville PD</p>			
SoundThinking, Inc. 39300 Civic Center Drive, Suite 300 Fremont, CA 94538 Phone: 888.274.6877 Fax: 650.887.2106		Quote valid until: 8/31/23 Prepared by: K Isotalo			
<p>Quote For: Chief Ted Sauls Greenville Police Department 500 South Greene Street Greenville NC 27835</p>					
<p>Comments or Special Instructions: Renewal of Annual ShotSpotter (formerly Respond) Subscription Services for an additional 40.5-month term (February 15, 2023 through June 30, 2026) for the 3.0 mi² coverage area. The services for the period of February 15, 2023 through June 30, 2023 will be delivered at no charge. Annual fees for July 1, 2023 through June 30, 2026 are set forth below. The services will be delivered according to the terms and conditions contained in the SoundThinking Master Services Agreement to which this quote will be attached as Exhibit A.</p>					
SALES DIRECTOR:		Jack Pontious		TERMS:	Net 30
QUANTITY (mi ²)	DESCRIPTION	UNIT PRICE (per mi ²)	TAXABLE?	AMOUNT	
3.0	ShotSpotter Subscription Services for 2/15/2023 through 6/30/2023.	\$0		\$0	
3.0	Year One: Annual ShotSpotter Subscription Services for 7/1/2023 through 6/30/2024.	\$70,000		\$210,000	
3.0	Year Two: Annual ShotSpotter Subscription Services for 7/1/2024 through 6/30/2025.	\$70,000		\$210,000	
3.0	Year Three: Annual ShotSpotter Subscription Services for 7/1/2025 through 6/30/2026.	\$70,000		\$210,000	
SUBTOTAL				\$630,000	
TAX RATE					
SALES TAX				-	
OTHER				-	
TOTAL				\$630,000	
Please indicate your acceptance of this quote by issuing a Purchase Order referencing the Quote # above. SoundThinking will issue an invoice once we receive the PO.					
If you have any questions concerning this quote, please contact Karen Isotalo - Vice President, Sales Operations at 510.298.8668 or kisotalo@soundthinking.com					
					

EXHIBIT B – EXPANSION QUOTE


Quote

SoundThinking, Inc.
 39300 Civic Center Dr., Suite 300
 Fremont, CA 94538-2337
 Phone: 888.274.6877 Fax: 650.887.2106

DATE 6/26/23
Quote # GREENNC062623r
Customer ID Greenville, NC

Quote For:
 Chief Ted Sauls
 Greenville Police Department
 500 S. Greene Street
 Greenville, NC 27835
mmontanve@greenvillenc.gov

Quote valid until: 8/31/23
 Prepared by: S Beisner

Comments or Special Instructions:

0.5 mi² ShotSpotter expansion, contiguous with current ShotSpotter coverage area. Prorated subscription assuming an estimated activation date of September 30, 2023 and ending on June 30, 2026 (33 months). The proposed services will be delivered according to the terms and conditions contained in the SoundThinking Master Services Agreement to which this quote will be attached as an exhibit. Upon acceptance of this price quote, SoundThinking will develop a formal proposal. Prorated subscription amount will be adjusted upon actual activation date.

SALES DIRECTOR:		Jack Pontious	TERMS:	Net 30
QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT	
0.5 mi ²	One-time ShotSpotter Service Initiation fee	\$10,000 per mi ²	\$5,000	
0.5 mi ²	Prorated ShotSpotter Subscription Services for 9/30/2023 through 6/30/2026.	\$70,000 per mi ² per year	\$96,250	
SUBTOTAL			\$96,250	
TAX RATE				
SALES TAX			-	
OTHER				
TOTAL			\$101,250	

For any questions or to accept this quote and request a formal proposal, please contact Jack Pontious at 202.258.0141 or jpontious@soundthinking.com

ADDENDUM ONE - SHOTSPOTTER® SUPPLEMENTAL TERMS

This herein defined Addendum One is effective as of the last date of signature herein.

The following provisions are expressly added to and made a part of the Agreement for the purposes of further defining the ShotSpotter® Subscription Services and terms of use. All terms and conditions of the Agreement shall remain in full force and effect. In the event of a conflict between this Addendum One and the Master Services Agreement, this Addendum One shall control:

In consideration of the Parties' mutual covenants and promises set forth in this Addendum One, the Parties Agree as follows:

Section 2² DEFINITIONS

ShotSpotter

Insight means the internet portal to which Customer will have access to Reviewed Alerts with respect to the ShotSpotter® Gunshot Detection, Location, and Forensics System.

Coverage Area means the area in square miles covered by the ShotSpotter Services as set forth in Exhibit A and increase to the Coverage Area as agreed to in writing between the Parties.

Reviewed Alerts means the data reviewed by SoundThinking's incident review staff related to gunfire incidents detected by the ShotSpotter Gunshot Detection, Location, and Forensic Analysis Service.

Section 3 SUBSCRIPTION SERVICES

ShotSpotter

- B. SoundThinking will install the ShotSpotter System in the Coverage Area specified in Exhibit A and Exhibit B attached to the Agreement. SoundThinking will host the Subscription Services and may update the functionality and Software of the Subscription Services from time to time at its sole discretion and in accordance with the Agreement and this Addendum One.
- C. SoundThinking will be responsible for determining the location(s) for installation of acoustic sensor(s) (the "Sensors") that detect gunshot-like sounds, and obtaining permission from the premises owner/property manager/lessee. SoundThinking owns, and is responsible for maintenance of the Sensors.

² Please note: The Sections identified in this Addendum One correspond and are supplemental to the same Sections identified in the Master Services Agreement.

- D. The ShotSpotter System acoustic Sensor may use wired, wireless, or cellular wireless communications which necessitates the existence of a real-time data communications channel from each Sensor to the SoundThinking hosted servers via a commercial carrier. The unavailability or deterioration of the quality of such wired, wireless, or wireless cellular communications may impact the ability of SoundThinking to provide the Subscription Services. In such circumstances SoundThinking will use commercially reasonable efforts to obtain alternate wired or wireless cellular communications or adjust the coverage area as necessary. In the event SoundThinking is unable to do so, SoundThinking will terminate the ShotSpotter Subscription Services and refund a pro-rata portion of the annual Subscription Services fee to Customer.
- E. SoundThinking will provide Customer with user documentation, online help, written or recorded video training material, and other applicable documentation (as available).
- F. SoundThinking will provide reasonable efforts to respond via email to requests for support relating to incident classification as defined in the Support Level Matrix provided in Attachment A to this Addendum One.
- G. During the term of the Agreement, SoundThinking will provide real-time gunfire analysis and alert services. After an explosive (or impulsive) sound triggers enough Sensors that an incident is detected and located, audio from the incident is sent to SoundThinking's Incident Review Center (IRC) via secure, high-speed network connections for real-time qualification. Within seconds, a SoundThinking professional reviewer analyzes audio data and recordings to confirm gunfire or explosions. The qualified alert is then sent directly to the Customer's dispatch center, PSAP, mobile/patrol officers, and any other relevant safety or security personnel, as determined by the Customer. The SoundThinking IRC will review gunfire incidents as further defined in Attachment A to this Addendum One.
- H. The ShotSpotter Subscription Services shall consist of (i) providing access to the Customer of Reviewed Alerts delivered via the Insight password-protected internet portal and user interface supplied by SoundThinking; (ii) providing Customer access to historical Reviewed Alerts and incident information via the ShotSpotter Software; and (iii) other services as specified in the Agreement and its Exhibits or this Addendum One.
- I. SoundThinking will use commercially reasonable efforts to respond to support requests as set forth in the Support Level Matrix provided at Attachment A to this Addendum One. These requests may be made to SoundThinking through one of the following methods: 1) email to support@soundthinking.com; 2) Live Chat through the ShotSpotter Subscription Services applications; 3) A phone call to SoundThinking's Customer Support organization at 888.274.6877, option 4. These are the only methods SoundThinking will receive and respond to support requests.

Tier 1 (as defined in the Support Matrix included at Attachment A). A SoundThinking Customer Support specialist will be responsible for receiving Customer reports of missed incidents, or errors in the Subscription Services, and, to the extent practicable over email or telephone, making commercially reasonable efforts to assist the Customer in resolving

the Customer's reported problems. In the event the problem cannot be resolved within 24 hours, requiring further research and troubleshooting, SoundThinking will use commercially reasonable efforts to resolve the issue within 72 hours of receipt of the report. In the event that the ShotSpotter Subscription Service is fully nonfunctional, and it is not due to power outage or other reasons that are outside of SoundThinking's control, SoundThinking will work continuously to restore functionality of the Subscription Services in accordance with the standard ShotSpotter user documentation provided with the Subscription Services as soon as reasonably possible, and no later than 72 hours of receipt of the report.

J. FORENSIC REPORTS.

- i. Investigative Lead Summary ("ILS"). SoundThinking provides an on-demand report available through the ShotSpotter Respond Application. The Investigative Lead Summary (ILS) provides useful details about the approximate location, timing, and sequence of each shot fired during an incident. The ILS is very valuable on scene, helping law enforcement find shell casings, confirm witness accounts, and identify suspects. ILS reports are available immediately after an incident occurs via the mobile, web, or desktop ShotSpotter Respond application (machine-generated). The ILS is not a court-admissible document.
- ii. Detailed Forensic Report ("DFR"). If requested by Customer, SoundThinking will provide a DFR for any ShotSpotter-detected incidents, including Reviewed Alerts. The DFR is intended to be a court-admissible document used by attorneys as part of a court case for the exact, verified timing, sequence and location of each shot fired. Secondly, the DFR is available for use by law enforcement to obtain a search warrant or to investigate an Officer Involved Shooting.

DFRs must be requested in writing and addressed to the SoundThinking Customer Support Department. Requests may be submitted via the Forensics Services page under the Law Enforcement tab on SoundThinking's website (www.soundthinking.com). SoundThinking will use commercially reasonable efforts to provide a DFR within 10 business days of receipt of the request.

K. EXPERT WITNESS SERVICES.

SoundThinking offers reasonable expert witness services, including Reviewed Alerts, for an hourly fee of \$350.00 per hour, as well as reimbursement of all reasonable travel and per diem reimbursement according to applicable GSA rates if such rates are available to SoundThinking staff. If requested to provide such services, SoundThinking will invoice the Customer for the number of hours expended to prepare for and provide expert witness testimony, and actual travel expenses, upon completion of the services. Customer understands that SoundThinking undertakes to provide individuals whose qualifications are sufficient for such services, but does not warrant that any person or his or her opinion will be accepted by every court. SoundThinking requires at least 14 days prior notice of such a requirement in writing from the Customer. Customer must include dates, times, specific locations, and a point of contact for

SoundThinking personnel. Due to the nature of legal proceedings, SoundThinking cannot guarantee that its services described in this section shall produce the outcome, legal or otherwise, which Customer desires. Payment for expert witness services described shall be due and payable when services are rendered regardless of the outcome of the proceedings.

Section 5 LICENSE AND OWNERSHIP

ShotSpotter Data

A. Rights in Data.

SoundThinking shall own and have the unrestricted right to use the ShotSpotter Data, as that term is defined in the Agreement, for internal purposes such as research or product development. SoundThinking may provide, license, or sell the ShotSpotter Data on an aggregated basis to third parties (excluding press or media) to be used for research or analytical purposes, or for law enforcement and/or security purposes.

SoundThinking will not release or disseminate to any person or entity ShotSpotter Data related to or consisting of specific forensic or law enforcement sensitive incident information pertaining to any active inquiry, investigation, or prosecution, unless in response to a valid court order issued by a court or other governmental body, or as otherwise required by law. SoundThinking will not release, sell, license, or otherwise distribute the gunfire alert ShotSpotter Data to the press or media without the prior express written consent of an authorized representative of the Customer.

Customer shall have the unrestricted right to download, make copies of, distribute, and use the ShotSpotter Data within its own organization, exclusively for its own internal purposes, and for purposes of detecting and locating gunfire, routine archival recordkeeping, evidence preservation, and investigative, or evidentiary, and prosecutorial purposes, and for community engagement and community services initiatives. Customer shall not provide to, license the use of, or sell the ShotSpotter Data to any third parties, which restriction will not pertain to the collaboration with other law enforcement agencies for the purposes of investigating and prosecuting crimes detected by the ShotSpotter Subscription Service; (ii) government or non-governmental entities focused on the support of victims of gun crime in the local community; or (iii) entities focused on local community outreach and/or violence intervention.

Section 6 CONFIDENTIALITY AND PROPRIETARY RIGHTS

SoundThinking Privacy Policy

A. SoundThinking Privacy Policy.

With respect to the ShotSpotter Subscription Services, SoundThinking has structured its technology, processes and policies in such a way as to minimize the risk of privacy

infringements from audio surveillance while still delivering important public safety benefits to its customers. These efforts to maintain privacy include the following:

- 1) SoundThinking will not provide extended audio to customers beyond the audio snippet (1 second of ambient noise prior to a gunshot, the gunshot audio itself, and 1 second after the incident). SoundThinking will vigorously resist any subpoena or court order for extended audio that goes beyond an audio snippet.
- 2) SoundThinking will not provide a list or database of the precise location of Sensors to police or the public if requested and will challenge any public records requests and subpoenas for this location data.

Section 7 LIMITED WARRANTIES

ShotSpotter Subscription Services and Software Additional Limited Warranties and Disclaimers

- A. The ShotSpotter Subscription Services are not designed, sold, or intended to be used to detect, intercept, transmit, or record oral or other communications of any kind. SoundThinking cannot control how the ShotSpotter Subscription Services are used, and, accordingly, SoundThinking does not warrant or represent, expressly or implicitly, that use of the ShotSpotter Subscription Services will comply or conform to the requirements of federal, state, or local statutes, ordinances, and laws, or that use of the ShotSpotter Subscription Services will not violate the privacy rights of third parties. Customer shall be solely responsible for using the ShotSpotter Subscription Services in full compliance with applicable law and the rights of third persons.
- B. SoundThinking does not warrant or represent, expressly or implicitly, that the ShotSpotter System or its use will: result in the prediction or prevention of crime, apprehension or conviction of any perpetrator of any crime, or detection of any criminal; prevent any loss, death, injury, or damage to property due to any reason including the discharge of a firearm or other weapon; or in all cases result in a Reviewed Alert for all firearm discharges within the designated coverage area; or that the ShotSpotter-supplied network will remain in operation at all times or under all conditions.
- C. SoundThinking expressly disclaims, and does not undertake or assume any duty, obligation, or responsibility for any decisions, actions, reactions, responses, failure to act, or inaction, by Customer as a result of or in reliance on, in whole or in part, the ShotSpotter Subscription Services, or Reviewed Alerts provided by SoundThinking, or for any consequences or outcomes, including any death, injury, or loss or damage to any property, arising from or caused by any such decisions, actions, reactions, responses, failure to act, or inaction. It shall be the sole and exclusive responsibility of the Customer to determine appropriate decisions, actions, reactions, or responses, including whether or not to dispatch emergency responder resources. The Customer hereby expressly assumes all risks and liability associated with any and all action, reaction, response, and dispatch

decisions, and for all consequences and outcomes arising from or caused by any decisions made or not made by the Customer in reliance, in whole or in part, on the ShotSpotter Subscription Services provided by SoundThinking, including any death, injury, or loss or damage to any property.

ATTACHMENT A – SERVICE LEVEL AGREEMENT

ShotSpotter® Gunshot Detection, Location System

Reviewed Alert Service Levels

Summary

Under the terms and conditions of this Agreement, SoundThinking commits to meet or exceed the following Service Level Agreement (“SLA”) standards as it provides its ShotSpotter Gunshot Location Services³:

Service	SLA and Measurement
Gunshot Detection & Location	90% of unsuppressed, outdoor gunfire incidents, using standard, commercially available rounds greater than .25 caliber, inside the Coverage Area will be detected and located within 25 meters of the actual gunshot location.
Reviewed Alerts	90% of gunshot incidents will be reviewed and published in less than 60 seconds.
Service Availability	The ShotSpotter Gunshot Location System service will be available to the Customer 99.9% of the time with online access to ShotSpotter data, excluding scheduled maintenance windows.

Gunshot Detection & Location Performance

The ShotSpotter System will detect and accurately locate to within 25 meters of the actual gunshot location 90% of unsuppressed, outdoor gunshots fired inside the contracted coverage area using standard, commercially available rounds greater than .25 caliber.

Reviewed Alerts Service

SoundThinking’s real-time Incident Review Center (IRC) will review at least 90% of all gunfire incidents within 60 seconds. This human review is intended to confirm or change the machine classification of the incident type, and, depending on the reviewer’s confidence level that the incident is or may be gunfire, will result in an alert (“Reviewed Alert”) sent to the Customer’s dispatch center, patrol car mobile data terminals (MDT), and officer smartphones (via the ShotSpotter App), based on the following criteria:

Incident Type	Action
High confidence incident is gunfire	Reviewed Gunfire Alert, (Single Gunshot “SG” or Multiple Gunshots “MG”) sent to Customer’s dispatch center, patrol car mobile data terminals (MDT), and officer smartphones (via the ShotSpotter Respond App)
Uncertain if incident is gunfire or not	Reviewed Probable Gunfire (“PG”) Alert sent to Customer’s dispatch center, patrol car MDTs, and officer smartphones

³ See attached “ShotSpotter – Definition of Key Terms” for a complete definition of terms associated with this SLA and further details in the expanded definitions listed below the Summary. The basis for this SLA and performance measurement will be total gunshot incidents as defined by the Definition of Key Terms.

Low confidence incident is gunfire	No alert will be sent; incident available for Customer review in the incident history available through Insight
------------------------------------	--

Reviewed Alerts are sent to the Customer’s dispatch center, patrol car MDTs, and officers’ smartphones. Information in a Reviewed Alert will include the following:

- “Dot on the map” with latitude and longitude indicating the location of the incident.
- Parcel address closest to location of the incident.
- When available, additional situational awareness data points may be included, such as:
 - Qualitative data on the type/severity of incident: Fully automatic, High Capacity
 - Other comments (if any)

The ShotSpotter Respond App, and Insight provide the Customer with full and immediate access to incident history including information SoundThinking uses in its internal review process. This information includes, among other things, the initial incident classification and any reclassifications of an incident, incident audio wave forms, and incident audio files. This data access is available as long as the Customer is under active subscription.

Service Availability

The ShotSpotter System⁴ will be able to detect gunfire and available to users with online access to ShotSpotter data 99.9% of the time, on a 24x7 by 365 day per year basis, excluding: a) scheduled maintenance periods which will be announced to Customer in advance; b) select holidays; and c) third party network outages beyond SoundThinking’s control.

Customer SLA Credits

Each Service Level measurement shall be determined quarterly, the results of which will be reviewed during the periodic account review meetings with Customer. For each calendar quarter that SoundThinking does not meet at least two of the three above standards, a fee reduction representing one free week of service (for the affected Coverage Area) for each missed quarter shall be included during a future Customer renewal.

Service Level Exclusions and Modifications

SoundThinking takes commercially reasonable efforts to maintain Service Levels at all times. However, Service Level performance during New Year’s Eve and Independence Day and the 48-hour periods before and after these holidays, are specifically excluded from Service Level standards. During these excluded periods, because of the large amount of fireworks activity, SoundThinking uses fireworks suppression techniques⁵.

⁴ ShotSpotter Subscription Service includes all database, applications, and communications services hosted by SoundThinking, Inc. at our data center and specifically exclude Customer’s internal network or systems or third party communications networks, e.g. Verizon, AT&T, Sprint/T-Mobile, or Customer’s Internet Service Provider.

⁵ SoundThinking will put the ShotSpotter System into “fireworks suppression mode” during this period in order to reduce the non-gunfire incidents required for human classification. SoundThinking will formally inform the Customer prior to the System being placed in fireworks suppression mode and when the mode is disabled. While in fireworks suppression mode, the incident alerts determined to be fireworks are not sent to the reviewer nor the Customer dispatch center,

The SoundThinking sensors send incident information to the SoundThinking cloud via third party cellular, wireless, or wired networks. SoundThinking is not responsible for outages on the third-party networks.

Service Failure Notification

Should SoundThinking identify any condition (disruption, degradation, or failure of network, cloud, servers, sensors, etc.) that impacts SoundThinking's ability to meet the Gunshot Detection & Location standard (above), SoundThinking will proactively notify the Customer with: a) a brief explanation of the condition; b) how the Customer's service is affected; and c) the approximate timeframe for resolution. SoundThinking will also notify the Customer once any such condition is resolved.

Customer Responsibilities

The purpose of the Reviewed Alert service is to provide incident data to the Customer, reviewed, analyzed, and classified in the manner described above. However, it is the sole responsibility of the Customer to interpret the data provided, and to determine any appropriate follow-up reaction or response, including whether or not to dispatch emergency responder resources based on a Reviewed Alert. SoundThinking does not assume any obligation, duty, or responsibility for reaction, response, or dispatch decisions, which are solely and exclusively the responsibility of Customer, or for the consequences or outcomes of any decisions made or not made by the Customer in reliance, in whole or in part, on any services provided by SoundThinking.

Customer must inform SoundThinking when Verified Incidents of gunfire are missed by the ShotSpotter System in order to properly calculate Performance Rate, as defined below.

Customer is responsible for providing any required workstations, mobile devices, and internet access for the Customer's dispatch center, patrol car MDTs, and officers' smartphones, or Insight.

Support Level Matrix

Support Level	Tier 1 Support (IRC)	Tier 2 Support (Customer Support)
Features	<ul style="list-style-type: none"> • Login support • Report a misclassification • Report a missed incident • Report a mislocated incident • Basic audio request • General/application questions • Request for ILS 	Normal Support: <ul style="list-style-type: none"> • Analysis of missed gunshots • Detailed audio search • Performance analysis • Integration issues Critical Support: <ul style="list-style-type: none"> • System outage
Hours of Operation	24x7x365	Normal Support: 5 am – 11 pm Pacific Time Zone Escalation: 24x7x365

patrol car MDTs, and officers' smartphones; however, these non-gunfire incidents will continue to be stored in the database for use if required at a later time.

ShotSpotter – Definition of Key Terms

The ShotSpotter System will provide data for correct detection and accurate location for ninety percent (90%) of detectable (outdoor, unsuppressed) community gunfire which occurs within a coverage area, the “Coverage Area”, provided the measurement is Statistically Significant, as defined below. This performance rate shall be calculated as a percentage as follows:

$$\text{Performance Rate} = \frac{\text{NumberAccuratelyLocated}}{(\text{NumberAccuratelyLocated} + \text{NumberNotDetected} + \text{NumberMislocated})}$$

where the “Performance Rate” is a number expressed as a percentage, “NumberAccuratelyLocated” is the number of “Gunfire Incidents” occurring within the Coverage Area during the specified period for which the ShotSpotter System produced an Accurate Location, *NumberMislocated* is the number of Verified Incidents (a “Verified Incident” is an incident where Customer has physical or other credible evidence that gunfire took place) for which the ShotSpotter System produced an inaccurate location (i.e., a Mislocated Incident), and *NumberNotDetected* is the number of Verified Incidents for which the ShotSpotter System failed to report a location at all (i.e., Missed Incidents).

An “Accurate Location” shall mean an incident located by the ShotSpotter System to a latitude/longitude coordinate that lies within a 25-meter radius of the confirmed shooter’s location (25 meters = approximately 82 feet). “Detectable Gunfire” incidents are unsuppressed discharges of ballistic firearms which occur fully outdoors in free space (i.e. not in doorways, vestibules, windows, vehicles, etc.) using standard commercially available rounds of caliber greater than .25.

ShotSpotter Review Period is measured as the period commencing when the Incident Review Center (IRC) receives the alert and the first audio download to the time it is published to the customer.

ShotSpotter System performance is guaranteed after a “Statistically Significant” set of incidents has been detected in accordance with timeframes set forth herein and following DQV and commercial system acceptance. The ShotSpotter System is designed to detect gunfire which is typically well distributed throughout the Coverage Area; however, performance should not be construed to mean that 90% of gunfire fired at any given location within the Coverage Area will be detected and located within the guaranteed accuracy.

The ShotSpotter System is not a “point protection” system and is therefore not designed to consistently detect gunfire at every single location within the Coverage Area, but rather to Accurately Locate 90% of the Detectable Incidents in aggregate throughout the entire Coverage Area. There may be certain locations within the Coverage Area where obstacles and ambient noise impede and/or overshadow the propagation of acoustic energy such that locating the origin at those positions is inconsistent or impossible. The Performance Rate calculation is thus specifically tied to the Community Gunfire across the entire Coverage Area.

Statistically Significant shall be defined as measurements and calculations which shall be performed as follows: (a) Across an entire Coverage Area; (b) Aggregating over a period of at least 30 days under weather conditions seasonally normal for the area; and (c) Provided that the total number of gunfire incidents being counted is equal to or greater than: (i) thirty (30) incidents for systems of up to three (3) square miles of Coverage Area, or (ii) ten (10) incidents multiplied by the number of square miles of Coverage Area for systems where one or more Coverage Areas are three (3) square miles or larger.



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Resolution approving the execution of a municipal agreement with the North Carolina Department of Transportation for Fiscal Year 2024 Section 5303 Planning Grant Funds

Explanation: Each year, the City receives Section 5303 grant funding to help support the planning needs of the Greenville Area Transit (GREAT) system. Obtaining this funding requires the execution of a municipal agreement with the North Carolina Department of Transportation (NCDOT).

The City of Greenville is annually awarded a planning grant to assist in conducting short-term and long-range planning for the City's bus service. The City's request for planning funds is submitted as part of the Greenville Urban Area Metropolitan Planning Organization's annual Planning Work Program. This agreement provides the City's Transit Division of Public Works - GREAT planning funds for FY 2024. The Federal Transit Administration and NCDOT are the approving agencies for this grant. The Federal portion of the grant funds 80% of the cost of the program while the State funds 10%. These funds are used to provide planning assistance as well as support the salaries of the Transit Manager and the Transit Coordinator.

Fiscal Note:

Federal Share	\$48,064
State Share	\$6,008
Local Share	<u>\$6,008</u>
TOTAL	\$60,080

Recommendation: Approve the resolution authorizing the municipal agreement for the Section 5303 Planning Grant Funds and authorize the City Manager to execute the agreement between the City of Greenville and NCDOT

ATTACHMENTS

- [RESOLUTION FY24 5303 GRANT -DOC #1183848.pdf](#)
- [COG-#1182344-v1-FY24_5303_Grant_Agreement_with_PreAudit_Cert.pdf](#)

RESOLUTION NO. _____
RESOLUTION AUTHORIZING THE FY 2024 PLANNING WORK PROGRAM
OF THE GREENVILLE URBAN AREA
5303 GRANT PROGRAM

A motion was made by Council Member _____
and seconded by Council Member _____
for the adoption of the following resolution, and upon being put to a vote, was duly adopted.

WHEREAS, a comprehensive and continuing transportation planning program must be carried out cooperatively in order to ensure that funds for transportation projects are effectively allocated to the Greenville Urban Area;

WHEREAS, the City of Greenville has been designated as the recipient of Federal Transit Administration Metropolitan Planning Program funds;

WHEREAS, the City of Greenville will comply with all requirements as set forth in the 5303 Planning Grant Program and appropriate applicable regulations or guidance;

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

1. That the City Manager is authorized to execute this Agreement for Transit funding under the 5303 Planning Grant Program.
2. That the Mayor and/or City Manager are authorized to submit any additional information as the Federal Transit Administration or the North Carolina Department of Transportation may require in connection with this project.

ADOPTED this the ____ day of _____, 2023.

P. J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

NORTH CAROLINA

PITT COUNTY

I, _____, a Notary Public for said County and State, certify that Valerie Shiuwegar, personally came before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its Mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and official seal this ____ day of _____, 2023.

Notary Public

My Commission Expires: _____

INSTRUCTIONS FOR EXECUTING GRANT AGREEMENTS PUBLIC BODY GRANTEES

Included in this correspondence is an electronic file in a PDF format of the grant agreement(s) to be executed between the local grant recipient and the North Carolina Department of Transportation.

1. The person officially authorized by resolution of the governing body to accept the department's offer of financial assistance should electronically sign each agreement where indicated. The signature must be witnessed. Stamped signatures are not acceptable.
2. Enter your agency's **Federal Tax ID Number** and Fiscal Year-End on the signature page. Complete the section on the table for **Contract Administrators:** **For the Contractor: "If Delivered by US Postal Service" and "If Delivered by Any Other Means"**.
3. ***Do not date the agreements.*** This will be done upon execution by the department.
4. ***Return 1 copy within thirty (30) days*** via DocuSign.

A fully executed agreement will be returned to you via email and will be available for review in EBS upon the approval of your Agreement.

In the event the contract cannot be returned within thirty (30) days, please call me immediately at (919) 707-4672.

Please note that the department cannot reimburse the grant recipient for any eligible project expenses until the agreements are fully executed.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

May 30, 2023

Ms. Ann Wall, City Manager
City of Greenville
Post Office Box 7207
Greenville, North Carolina 27835-7207

RE: FY24 Metropolitan Planning Grant Program (Section 5303)
Project No.: 24-08-121
WBS Element No.: 36230.17.22.6
Period of Performance: 07/01/2023 – 06/30/2024

Dear Ms. Wall:

On May 4, 2023, the Board of Transportation approved your organization’s request for an FY24 Metropolitan Planning Grant in the amount of \$60,080. The agreement to be executed between City of Greenville and NCDOT is enclosed. The individual authorized to enter into this agreement for financial assistance on behalf of your agency will sign the agreement. Please provide a copy of the agreement to all parties that will be involved in the administration of the grant, and request that the agreement be reviewed carefully. Instructions for completion of the grant agreement process are enclosed.

Please refer to Section 6b of the grant agreement that requires sub-recipients to submit monthly or quarterly requests for reimbursement.

If you have any questions related to the grant agreement, please contact Myra Freeman, Financial Manager at 919-707-4672 or your assigned Accounting Specialist. In any correspondence, please reference your assigned project number, WBS element, Agreement number and period of performance referenced in this letter.

Sincerely,

Ryan Brumfield
Director

RB\mf
CC: Elizabeth Stalls, Transit Manager

Attachments

Mailing Address:
NC DEPARTMENT OF TRANSPORTATION
INTEGRATED MOBILITY DIVISION
1550 MAIL SERVICE CENTER
RALEIGH, NC 27699-1550

Telephone: (919) 707-4670
Fax: (919) 733-1391
Customer Service: 1-877-368-4968

Website: ncdot.gov

Location:
1 SOUTH WILMINGTON STREET 2
RALEIGH, NC 27601

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

and

CITY OF GREENVILLE

on behalf of Greenville Urban Area Metropolitan Planning Organization

**PUBLIC TRANSPORTATION GRANT AGREEMENT FOR
METROPOLITAN PLANNING GRANT PROGRAM**

Federal Award Identification

Application Number: **1000017703**
Agreement Number:
NCDOT Project Number(s): **24-08-121**
Federal Awarding Agency: **FTA**
Federal Award Identification
Number(s) (FAIN) Number(s):
CFDA Number: **20.505**
Unique Entity Identifier (UEI)
Number: **JMSKDYVBAFJ4**
Total Amount of this Award(s): **\$60,080**
Federal Funds Awarded: **\$48,064**
State Funds: **\$6,008**
Local Funds: **\$6,008**
Federal Award Date:
*(date signed by authorized
official of USDOT)*

Award Period of Performance
Start Date: **JULY 1, 2023**
End Date: **JUNE 30, 2024**
Budget Period
Start Date: **JULY 1, 2023**
End Date: **JUNE 30, 2024**
*End date is date that
subrecipient if authorized to
expend funds awarded
including any carry-over*

Approved Indirect Cost Rate: **N/A**

Award is for R&D: yes/no **NO**

.....
Federal Funded Programs:

- 5303 Metropolitan Planning Grant**
- 5307 Urbanized Area Formula Grant**
- 5310 Enhanced Mobility of Seniors & Individuals with Disabilities Grant**
- 5311 Community Transportation Rural Formula Grant**
- 5311 Appalachian Development Transit Assistance Grant**
- 5311f Intercity Bus Grant**
- 5317 New Freedom Grant**
- 5339 Bus and Bus Facility Grant**
- FTA American Rescue Plan Act (ARPA) Grant**

THIS AGREEMENT made this the _____ day of _____, 20____, (hereinafter referred to as AGREEMENT) by and between the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as "Department", an agency of the State of North Carolina) and **CITY OF GREENVILLE on behalf of Greenville Urban Area Metropolitan Planning Organization**, (acting in its capacity as the grant recipient hereinafter referred to as the "Subrecipient" and together with Department as "Parties").

1. Purpose of Agreement

The purpose of this Agreement is to provide for the undertaking of nonurbanized and small urban public transportation services as described in the project application (hereinafter referred to as "Project") and to state the terms and conditions as to the manner in which the Project will be undertaken and completed. This Agreement contains the entire agreement between the parties and there are no understandings or agreements, verbal or otherwise, regarding this Agreement except as expressly set forth herein. This Agreement is solely for the benefit of the identified parties to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

2. Availability of Funds

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation and appropriation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

3. Period of Performance

This Agreement shall commence upon the date of execution with a period of performance for all expenditures that extends from **July 1, 2023 to June 30, 2024**. Any requests to change the Period of Performance must be made in accordance with the policies and procedures established by the Department or FTA. The Subrecipient shall commence, carry on, and complete the approved Project in a sound, economical, and efficient manner.

4. Project Implementation

- a. **Scope of Project.** **City of Greenville operating as the Greenville Urban Area MPO, will use funds for transit planning in the MPO area.** Federal award project description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)
- b. The Subrecipient shall undertake and complete the project in accordance with the procedures, terms, and conditions herein and as included in the related grant application for financial assistance, the terms of which are incorporated by reference.

- c. Amendment. Any amendment to this Agreement shall be done in writing and in accordance with established policies and procedures and only by mutual consent of the Parties.

5. Cost of Project/Project Budget

The total cost of the Project approved by the Department is **SIXTY THOUSAND EIGHTY DOLLARS (\$60,080)** as set forth in the Project Description and Budget, incorporated into this Agreement as **Attachment A**. The Department shall provide, from Federal and State funds, the percentages of the actual net cost of the Project as indicated below, not in excess of the identified amounts for eligible Administrative, Operating, and Capital expenses. The Subrecipient hereby agrees that it will provide the percentages of the actual net cost of the Project, as indicated below, and any amounts in excess of the Department’s maximum (Federal plus State shares) contribution. The net cost is the price paid minus any refunds, rebates, or other items of value received by the Subrecipient which have the effect of reducing the actual cost.

Planning WBS	Planning Total	Planning Federal (80%)	Planning State (10%)	Planning Local (10%)
36230.17.22.6	\$60,080	\$48,064	\$6,008	\$6,008
Agreement #				
Project Total	Project Total	Project Total Federal	Project Total State	Project Total Local
	\$60,080	\$48,064	\$6,008	\$6,008

6. Project Expenditures, Payments, and Reimbursement

- a. General. The Department, utilizing available state and federal funds, shall reimburse the Subrecipient for allowable costs for work performed under the terms of this Agreement.
- b. Reimbursement Procedures. The Subrecipient shall submit for reimbursement all eligible costs incurred within the agreement Period of Performance.
 - i. Claims for reimbursement shall be made no more than monthly or less than quarterly, using the State’s grant system, Enterprise Business Services (EBS) Partner Application.

- ii. All requests for reimbursement must be submitted within (30) days following the end of the project's reporting period. Any Subrecipient that fails to submit a request for reimbursement for the first two quarters of agreement fiscal year by January 31 or the last two quarters by July 31 will forfeit its ability to receive reimbursement for those periods.
 - iii. All payments issued by the Department will be on a reimbursable basis unless the Subrecipient requests and the Department approves an advance payment.
 - iv. Supporting documentation for proof of payment shall be provided upon request.
- c. Subrecipient Funds. Prior to reimbursement, the Subrecipient shall provide the Department with proof that the Subrecipient has met its proportionate share of project costs from sources other than FTA or the Department. Any costs for work not eligible for Federal and State participation shall be financed one hundred percent (100%) by the Subrecipient.
- d. Operating Expenditures. In order to assist in financing the operating costs of the project, the Department shall reimburse the Subrecipient for the lesser of the following when providing operating assistance:
 - i. The balance of unrecovered operating expenditures after deducting all operating revenue, or
 - ii. The percentage specified in the Approved Project Budget of the allowable total operating expenditures which shall be determined by available funding.
- e. Travel Expenditures. The Subrecipient shall limit reimbursement for meals, lodging and travel to rates established by the State of North Carolina Travel Policy. Costs incurred by the Subrecipient in excess of these rates shall be borne by the Subrecipient.
- f. Allowable Costs. Expenditures made by the Subrecipient shall be reimbursed as allowable costs to the extent they meet all of the requirements set forth below. They must be:
 - i. Consistent with the Project Description, plans, specifications, and Project Budget and all other provisions of this Agreement

- ii. Necessary in order to accomplish the Project
 - iii. Reasonable in amount for the goods or services purchased
 - iv. Actual net costs to the Subrecipient, i.e., the price paid minus any refunds (e.g., refundable sales and use taxes pursuant to NCGS 105-164.14), rebates, or other items of value received by the Subrecipient that have the effect of reducing the cost actually incurred
 - v. Incurred (and be for work performed) within the period of performance and period covered of this Agreement unless specific authorization from the Department to the contrary is received
 - vi. Satisfactorily documented
 - vii. Treated uniformly and consistently under accounting principles and procedures approved or prescribed by the Department
- g. Excluded Costs.** The Subrecipient understands and agrees that, except to the extent the Department determines otherwise in writing, the Department will exclude:
- i. Any Project cost incurred by the Subrecipient before the period of performance of the agreement,
 - ii. Any cost that is not included in the latest Approved Project Budget,
 - iii. Any cost for Project property or services received in connection with a third-party contract, sub-agreement, lease, or other arrangement that is required to be, but has not been, concurred in or approved in writing by the Department, and
 - iv. Any cost ineligible for FTA participation as provided by applicable Federal or State laws, regulations, or directives.

- h. Final Allowability Determination.** The subrecipient understands and agrees that payment to the subrecipient on any Project cost does not constitute the Federal or State Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the subrecipient of the terms of this Agreement. The subrecipient acknowledges that the Federal or State Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal or State Government determines that the subrecipient is not entitled to receive any portion of the Federal or State assistance the subrecipient has requested or provided, the Department will notify the Subrecipient in writing, stating its reasons. The Subrecipient agrees that Project closeout will not alter the Subrecipient's responsibility to return any funds due the Federal or State Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal or State Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal or State law or regulation, the Federal or State Government may recover any Federal or State assistance funds made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal or State Government may have against the Subrecipient.
- i. Federal or State Claims, Excess Payments, Disallowed Costs, Including Interest.**
- i. Subrecipient's Responsibility to Pay.** Upon notification to the Subrecipient that specific amounts are owed to the Federal or State Government, whether for excess payments of Federal or State assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Subrecipient agrees to remit to the Department promptly the amounts owed, including applicable interest and any penalties and administrative charges within 60 days of notification.
 - ii. Interest Paid to the Department.** The Subrecipient agrees to remit to the Department interest owed as determined in accordance with NCGS § 147-86.23.
 - iii. Interest and Fees Paid on Federal Funds.** For amounts owed by the Subrecipient to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Subrecipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges as established by the Federal Transit Authority Master Agreement with NCDOT.

- j. De-obligation of Funds. The Subrecipient agrees that the Department may de-obligate unexpended Federal and State funds for grants that are inactive for six months or more.
- k. Project Closeout. Project closeout occurs when the Department issues the final project payment or acknowledges that the Subrecipient has remitted the proper refund. The Subrecipient agrees that Project closeout by the Department does not invalidate any continuing requirements imposed by this Agreement.

7. Accounting Records

- a. Establishment and Maintenance of Accounting Records. The Subrecipient shall establish and maintain separate accounts for the public transportation program, either independently or within the existing accounting system. All costs charged to the program shall be in accordance with most current approved Project Budget and shall be reported to the Department in accordance with NCDOT Uniform Public Transportation Accounting System (UPTAS) guide.
- b. Documentation of Project Costs. All costs charged to the Project, including any approved services performed by the Subrecipient or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and propriety of the charges.

8. Reporting, Record Retention, and Access

- a. Progress Reports. The Subrecipient shall advise the Department, through EBS, regarding the progress of the Project at a minimum quarterly, and at such time and in such a manner as the Department may require. Such reporting and documentation may include, but not be limited to: operating statistics, equipment usage, meetings, progress reports, and monthly performance reports. The Subrecipient shall collect and submit to the Department such financial statements, data, records, contracts, and other documents related to the Project as may be deemed necessary by the Department. Reports shall include narrative and financial statements of sufficient substance to be in conformance with the reporting requirements of the Department. Progress reports throughout the useful life of the project equipment shall be used, in part, to document utilization of the project equipment. Failure to fully utilize the project equipment in the manner directed by the Department shall constitute a breach of contract, and after written notification by the Department, may result in termination of the Agreement or any such remedy as the Department deems appropriate.
- b. Failure to comply with grant reporting and compliance guidelines set forth in the NCDOT PTD State Management Plan could result in financial penalties up to and including loss of current and future grant funding.

- c. Record Retention. The Subrecipient and its third party subrecipients shall retain all records pertaining to this Project for a period of five (5) years from the date of final payment to the Subrecipient, or until all audit exceptions have been resolved, whichever is longer.
- d. Project Closeout. The Subrecipient agrees that Project closeout does not alter the reporting and record retention requirements of this Agreement.
- e. Auditor Oversight. The Subrecipient agrees to audit oversight by the Office of the State Auditor, the Department, and the Department's Office of Inspector General, to provide the Office of the State Auditor, the Department, and the Department's Office of Inspector General with access to accounting records, and to make available any audit work papers in the possession of any auditor of the Subrecipient.
- f. Financial Reporting and Audit Requirements. In accordance with 09 NCAC 03M.0205, all reports shall be filed with the Department in the format and method specified by the agency no later than three (3) months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting. Audit Reports must be provided to the funding agency no later than nine (9) months after the end of the recipient's fiscal year.
- g. Parts Inventory. Financial audits must address parts inventory management.
- h. Third Party Loans. Within 30 days of receipt, the Subrecipient shall disclose to the Department any loans received from a local government entity or other entity not party to this agreement.
- i. Audit Costs. Unless prohibited by law, the costs of audits made in accordance with Title 2 CFR 200, Subpart F "Audit Requirements" are allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in Title 2 CFR 200, Subpart E "Cost Principles." The cost of any audit not conducted in accordance with Title 2 CFR 200 and NCGS§ 159-34 is unallowable and shall not be charged to State or Federal grants.

9. Compliance with Laws and Regulations

- a. No terms herein shall be construed in a manner that conflicts with the rules and regulations of the Department or with state or federal law.

- b. The Subrecipient agrees to comply with all applicable state and federal laws and regulations, including titles 09 NCAC 3M and 19A NCAC 5B, as amended.

10. Conflicts of Interest Policy

The subrecipient agrees to file with the Department a copy of the subrecipient's policy addressing conflicts of interest that may arise involving the subrecipient's management employees and the members of its board of directors or other governing body. The subrecipient's policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the subrecipient's employees or members of its board or other governing body, from the subrecipient's disbursing of State funds, and shall include actions to be taken by the subrecipient or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The conflicts of interest policy shall be filed with the Department prior to the Department disbursing funds to the subrecipient.

Prohibition on Bonus or Commission Payments

The Subrecipient affirms that it has not paid and will not pay any bonus or commission to any party to obtain approval of its Federal or State assistance application for the Project.

11. Tax Compliance Certification

The Subrecipient shall complete and submit to the Department a sworn written statement pursuant to NCGS 143C-6-23(c), stating that the Subrecipient does not have any overdue tax debts, as defined by GS 105-243.1, at the Federal, State, or local level. The Subrecipient acknowledges that the written statement must be submitted to the Department prior to execution of this Agreement and disbursement of funds. The certification will be incorporated into this Agreement as Attachment B.

12. Assignment

- a. Unless otherwise authorized in writing by the Department, the Subrecipient shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment, or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written concurrence of the Department. Neither Grantee nor any subrecipient is relieved of any of the duties and responsibilities of this Agreement as a result of assignment.

- b. The Subrecipient agrees to incorporate the terms of this agreement and any applicable State or Federal requirements into written third-party contracts, sub-

agreements, and leases, and to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal and State laws, regulations, and directives affecting their performance, except to the extent the Department determines otherwise in writing. Any subrecipient/subgrantee agrees to abide by, among other things the standards contained in 09 NCAC Subchapter 03M and to provide information in its possession that is needed by the Grantee to comply with these standards.

13. Hold Harmless.

Except as prohibited or otherwise limited by law, the Subrecipient agrees to indemnify, save, and hold harmless the Department, the State of North Carolina and the United States of America and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Subrecipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project.

14. Real Property, Equipment, and Supplies.

Federal or State Interest. The Subrecipient understands and agrees that the Federal or State Government retains an interest in any real property, equipment, and supplies financed with Federal or State assistance (Project property) until, and to the extent, that the Federal or State Government relinquishes its Federal or State interest in that Project property. NCDOT shall be informed and included in all ribbon cuttings / dedications / groundbreaking. With respect to any Project property financed with Federal or State assistance under this Agreement, the Subrecipient agrees to comply with the following provisions, except to the extent FTA or the Department determines otherwise in writing:

- a. Use of Project Property. The Subrecipient agrees to maintain continuing control of the use of Project property. The Subrecipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA or the Department. Should the Subrecipient unreasonably delay or fail to use Project property during the useful life of that property, the Subrecipient agrees that it may be required to return the entire amount of the Federal and State assistance expended on that property. The Subrecipient further agrees to notify the Department immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Subrecipient has made in its Application or in the Project Description for this Agreement for the Project. In turn, the Department shall be responsible for notifying FTA.

- b. Maintenance and Inspection of Vehicles. The Subrecipient shall maintain vehicles at a high level of cleanliness, safety, and mechanical soundness in accordance with the minimum maintenance requirements recommended by the manufacturer and comply with the Department's State Management Plan ("SMP"). The Subrecipient shall register all vehicle maintenance activities into the Department's Asset Management System (AssetWorks) or an electronic version of same. The Department shall conduct frequent inspections to confirm proper maintenance pursuant to this subsection and the SMP. The Subrecipient shall collect and submit to the Department at such time and in such manner as it may require information for the purpose of the Department's Asset Management System (AssetWorks) and the Transit Asset Maintenance ("TAM") Plan.
- c. Maintenance and Inspection of Facilities and Equipment. The Subrecipient shall maintain any Project facility, including any and all equipment installed into or added on to the facility as part of the Project, in good operating order and at a high level of cleanliness, safety and mechanical soundness in accordance with good facility maintenance and upkeep practices and in accordance with the minimum maintenance requirements recommended by the manufacturer for all equipment installed in or added to the facility as part of the Project. Such maintenance shall be in compliance with applicable Federal and state regulations or directives that may be issued, except to the extent that the Department determines otherwise in writing. The Subrecipient shall document its maintenance program in a written plan. The Department shall conduct inspections as it deems necessary to confirm proper maintenance on the part of the Subrecipient pursuant to this subsection and SMP. Such inspections may or may not be scheduled ahead of time but will be conducted such that they shall not significantly interfere with the ongoing and necessary functions for which the Project was designed. The Subrecipient shall make every effort to accommodate such inspections by the Department in accordance with the Department's desired schedule for such inspections.
- d. The Subrecipient shall collect and submit to the Department at such time and in such manner as the Department may require information for the purpose of updating the TAM Plan Inventory and any and all other reports the Department deems necessary. The Subrecipient shall also maintain and make available to the Department upon its demand all documents, policies, procedures, purchase orders, bills of sale, internal work orders and similar items that demonstrate the Subrecipient's maintenance of the facility in good operating order and at a high level of cleanliness, safety and mechanical soundness.
- e. Incidental Use. The Subrecipient agrees that any incidental use of Project property will not exceed that permitted under applicable laws, regulations, and directives.
- f. Title to Vehicles. The Certificate of Title to all vehicles purchased under the Approved Budget for this Project shall be in the name of the Subrecipient. The Department's Public Transportation Division shall be recorded on the Certificate of Title as first lien-holder. In the event of project termination or breach of contract provisions, the Subrecipient shall, upon written notification by the Department,

surrender Project equipment and/or transfer the Certificate(s) of Title for Project equipment to the Department or the Department's designee within 30 days of request.

- g. Encumbrance of Project Property. The Subrecipient agrees to maintain satisfactory continuing control of Project property as follows:
 - (1) Written Transactions. The Subrecipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal and State interest in that Project property.
 - (2) Oral Transactions. The Subrecipient agrees that it will not obligate itself in any manner to any third party with respect to Project property.
 - (3) Other Actions. The Subrecipient agrees that it will not take any action adversely affecting the Federal and State interest in or impair the Subrecipient's continuing control of the use of Project property.
- h. Alternative Use, Transfer, and Disposition of Project Property. The Subrecipient understands and agrees any alternative uses, transfers, or disposition of project property must be approved by the Department and done in accordance with Departmental procedures.
- :
 - i. Insurance Proceeds. If the Subrecipient receives insurance proceeds as a result of damage or destruction to the Project property that has not met its useful life, the Subrecipient agrees to:
 - (1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or
 - (2) Return to the Department an amount equal to the remaining Federal and State interest in the damaged or destroyed Project property.
 - j. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Subrecipient's knowledge and consent, the Subrecipient agrees to restore the Project property to its original condition or refund the value of the Federal and State interest in that property, as the Department may require.
 - k. Responsibilities after Project Closeout. The Subrecipient agrees that Project closeout by the Department will not change the Subrecipient's Project property management responsibilities, and as may be set forth in subsequent Federal and

State laws, regulations, and directives, except to the extent the Department determines otherwise in writing.

15. Insurance

The Subrecipient shall be responsible for protecting the state and/or federal financial interest in the facility construction/renovation and equipment purchased under this Agreement throughout the useful life. The Subrecipient shall provide, as frequently and in such manner as the Department may require, written documentation that the facility and equipment are insured against loss in an amount equal to or greater than the state and/or federal share of the real value of the facility or equipment. Failure of the Subrecipient to provide adequate insurance shall be considered a breach of contract and, after notification may result in termination of this Agreement. In addition, other insurance requirements may apply. The Subrecipient agrees to comply with the insurance requirements normally imposed by North Carolina State and local laws, regulations, and ordinances, except to the extent that the Department determines otherwise in writing.

16. Termination

- a. Either party may terminate the Agreement by providing 60 days written notice to the other party, or as otherwise permitted by law. Any unexpended financial assistance shall revert to the Department upon termination of this Agreement.
- b. Should the Subrecipient terminate the Agreement without the concurrence of the Department, the Subrecipient shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the work.

17. Additional Repayment Requirements and Remedies

- a. The repayment requirements and remedies addressed in this Paragraph are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay unspent funds. No remedy conferred or reserved by or to the Department is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- b. If there is a breach of any of the requirements, covenants or agreements in this Agreement (including, without limitation, any reporting requirements), or if there are any representations or warranties which are untrue as to a material fact in this Agreement or in relation to the Project (including the performance thereof), the Subrecipient agrees that the Department may require repayment from the Subrecipient of an amount of funds to be determined in the Department's sole

discretion but not to exceed the amount of funds the Subrecipient has already received under this Agreement.

18. Civil Rights and Equal Opportunity

Under this Agreement, the Subrecipient shall at all times comply with the requirements included as part of this agreement in the Federal Terms and Conditions that are included in the current FTA Master Agreement.

19. Choice of Law and Venue

This agreement is to be interpreted according to the laws of the State of North Carolina. The Parties hereby agree that the proper venue for any claims filed as a result of this Agreement shall be the Superior Court of Wake County, North Carolina.

20. Severability

If any provision of the FTA Master Agreement or this Agreement for the Project is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal or State laws or regulations.

21. Incorporated Terms and Conditions

In addition to the Terms and Conditions contained in this agreement and the terms, conditions, certifications, and assurances included in the grant application, which are hereby incorporated by reference, additional terms and conditions incorporated by reference into this agreement are checked below.



Federal Terms and Conditions, Attached

22. Federal Terms and Conditions

State Management Plan. The State Management Plan for Federal and State Transportation Programs and any subsequent amendments or revisions thereto, are herewith incorporated by reference, and are on file with and approved by the Department. Nothing shall be construed under the terms of this Agreement by the Department or the Subrecipient that shall cause any conflict with Department, State, or Federal statutes, rules, or regulations.

Allowable Costs. Eligible costs are those costs attributable to and allowed under the FTA program and the provisions of 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

No Federal Government Obligations to Third Parties. The Subrecipient acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Subrecipient or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Agreement.

The Subrecipient agrees to include the above clause in each contract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

Program Fraud and False or Fraudulent Statements or Related Acts. The Subrecipient acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31, apply to its actions pertaining to this project. Upon execution of the underlying Agreement, the Subrecipient certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the FTA assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Subrecipient further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Subrecipient to the extent the Federal Government deems appropriate.

The Subrecipient also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 USC chapter 53, the Government reserves the right to impose the penalties of 18 USC § 1001 and 49 USC § 5323(l) on the Subrecipient, to the extent the Federal Government deems appropriate.

The Subrecipient agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Access to Records and Reports.

a. Record Retention. The Subrecipient will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.

c. Access to Records. The Subrecipient agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Agreement as reasonably may be required.

d. Access to the Sites of Performance. The Subrecipient agrees to permit FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

Federal Changes. The Subrecipient agrees to comply with all applicable federal requirements and federal guidance. All the standards or limits included in this agreement are minimum requirements. The federal requirements and guidance that applied at the time of the award this Agreement may be modified from time to time, and the modifications will apply to the Subrecipient.

Civil Rights and Equal Opportunity. Under this Agreement, the Subrecipient shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

1. Nondiscrimination. In accordance with Federal transit law at 49 USC § 5332, the Subrecipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Subrecipient agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2. Race, Color, Religion, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e et seq., and Federal transit laws at 49 USC § 5332, the Subrecipient agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 USC § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 USC § 2000e note. The Subrecipient agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such

action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

3. Age. In accordance with the Age Discrimination in Employment Act, 29 USC §§ 621634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 CFR part 1625, the Age Discrimination Act of 1975, as amended, 42 USC § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 CFR part 90, and Federal transit law at 49 USC § 5332, the Subrecipient agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

4. Disabilities. In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, the Americans with Disabilities Act of 1990, as amended, 42 USC § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 USC § 4151 et seq., and Federal transit law at 49 USC § 5332, the Subrecipient agrees that it will not discriminate against individuals on the basis of disability. In addition, the Subrecipient agrees to comply with any implementing requirements FTA may issue.

Disadvantaged Business Enterprises. It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds. The Subrecipient is also encouraged to give every opportunity to allow DBE participation in Supplemental Agreements. The Subrecipient, subconsultant, and subcontractor shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Subrecipient shall comply with applicable requirements of 49 CFR Part 26 in the award and administration of federally assisted contracts. Failure by the Subrecipient to comply with these requirements is a material breach of this contract, which will result in the termination of this contract or such other remedy, as the Department deems necessary.

When payments are made to Disadvantaged Business Enterprise (DBE) Subrecipients, including material suppliers, Subrecipients at all levels (Subrecipient, Subconsultant or Subrecipient) shall provide the Contract Administrator with an accounting of said payments. The accounting shall be listed on the Department’s Subrecipient Payment Information Form (Form DBE-IS). In the event the Subrecipient has no DBE participation, the Subrecipient shall indicate this on the Form DBE-IS by entering the word ‘None’ or the number ‘zero’ and the form shall be signed. Form DBE-IS may be accessed on the website at: <https://apps.dot.state.nc.us/quickfind/forms/Default.aspx>.

A responsible fiscal officer of the payee Subrecipient, subconsultant or Subrecipient who can attest to the date and amounts of the payments shall certify that the accounting is

correct. A copy of an acceptable report may be obtained from the Department of Transportation. This information shall be submitted as part of the requests for payments made to the Department.

Prompt payment provisions. When a subcontractor has performed in accordance with the provisions of his contract, the contractor shall pay to his subcontractor and each subcontractor shall pay to his subcontractor, within seven days of receipt by the contractor or subcontractor of each periodic or final payment, the full amount received for such subcontractor's work and materials based on work completed or service provided under the subcontract NCGS §22C-1.

Incorporation of FTA Terms. Provisions of this Agreement include, in part, certain standard terms and conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1, as amended, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subrecipient shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current FTA Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration.

Energy Conservation. The Subrecipient agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subrecipient shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 CFR part 180. As such, the Subrecipient shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded Agreement and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting this Agreement, Subrecipient certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined by the Department that the Subrecipient knowingly rendered an erroneous certification, in addition to remedies available to the Department, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Subrecipient agrees to comply with the requirements of 2 CFR part 180, subpart C, as supplemented by 2 CFR part 1200, throughout the period of this Agreement. The Subrecipient further agrees to include a provision requiring such compliance in its lower tier covered transactions. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount.

Lobbying Restrictions. The Subrecipient agrees that neither it nor any third-party participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve this agreement, including any extension or modification, according to the following:

(1) Laws, Regulations, Requirements, and Guidance. This includes:

(a) The Byrd Anti-Lobbying Amendment, 31 USC § 1352, as amended,

(b) U.S. DOT regulations, “New Restrictions on Lobbying,” 49 CFR part 20, to the extent consistent with 31 USC § 1352, as amended, and (c) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature, and

(2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the subrecipient’s proper official channels.

The Subrecipient agrees to submit a signed and dated Certification on Lobbying that appears in the attachment.

Clean Air Act and Federal Water Pollution Control Act. The Subrecipient agrees:

1) It will not use any violating facilities;

2) It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”

3) It will report violations of use of prohibited facilities to FTA; and

4) It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 USC §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 USC §§ 1251-1387).

Public Transportation Employee Protective Arrangements. The Subrecipient agrees to comply with the following employee protective arrangements of 49 USC § 5333(b):

1. Sections 5307 and 5339. Under this Agreement or any Amendments thereto that involve public transportation operations that are supported with 49 USC § 5307 or 49 USC § 5339 federal assistance, a certification issued by U.S. DOL is a condition of the Contract.
2. Section 5311. When the Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 USC § 5311, U.S. DOL will provide a Special Warranty for its Award. The U.S. DOL Special Warranty is a condition of the Agreement.
3. Section 5310. The conditions of 49 USC § 5333(b) do not apply to Subrecipients providing public transportation operations pursuant to 49 USC § 5310. FTA reserves the right to make case-by-case determinations of the applicability of 49 USC § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate, and, in those instances, any special arrangements required by FTA will be incorporated herein as required.

Charter Service. The Subrecipient agrees to comply with 49 USC 5323(d), 5323(r), and 49 CFR part 604, which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(d);
2. FTA regulations, "Charter Service," 49 CFR part 604;
3. Any other federal Charter Service regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

The Subrecipient agrees that if it engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures or impose remedies on it. These corrective measures and remedies may include:

1. Barring it or any subcontractor operating public transportation under its Award that has provided prohibited charter service from receiving federal assistance from FTA;
2. Withholding an amount of federal assistance as provided by Appendix D to part 604 of FTA's Charter Service regulations; or
3. Any other appropriate remedy that may apply. The Subrecipient should also include the substance of this clause in each subcontract that may involve operating public transit services.

School Bus Operations. The Subrecipient agrees to comply with 49 USC 5323(f), and 49 CFR part 605, and not engage in school bus operations using federally funded equipment or facilities in competition with private operators of school buses, except as permitted under:

1. Federal transit laws, specifically 49 USC § 5323(f);
2. FTA regulations, "School Bus Operations," 49 CFR part 605;
3. Any other Federal School Bus regulations; or
4. Federal guidance, except as FTA determines otherwise in writing.

If Subrecipient violates this School Bus Agreement, FTA may:

1. Bar the Subrecipient from receiving Federal assistance for public transportation; or
2. Require the Subrecipient to take such remedial measures as FTA considers appropriate.

When operating exclusive school bus service under an allowable exemption, the contractor may not use federally funded equipment, vehicles, or facilities.

The Subrecipient shall include the substance of this clause in each subcontract or purchase under this contract that may operate public transportation services.

Substance Abuse Requirements (Recipients of Sections 5307, 5311, and 5339 funds only). The Subrecipient agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR parts 40 and 655, as amended, and produce any documentation necessary to establish its compliance with part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations or the Department to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR part 655 and review the testing process. The Subrecipient agrees further to submit the Drug and Alcohol Management Information System (DAMIS) reports before February 15 to NCDOT Public Transportation Compliance Office or its designee.

23. Contract Administrators.

All notices permitted or required to be given by one Party to the other and all questions about this Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, postal address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, postal address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Department:

Name: Myra Freeman
Title: Financial Manager
Agency: NCDOT/PTD
Email: Msfreeman1@ncdot.gov
MSC: 1550 Mail Service Center – Raleigh, NC 27699-1550
Physical Address: 1 S. Wilmington St, Rm 542, Transportation Building, Raleigh, NC 27601
Phone: 919-707-4672 Fax: 919-733-2304

For the Subrecipient:

Name: Elizabeth Stalls
Title: Transit Manager
Agency: City of Greenville, Greenville Area Transit
Address: 1500 Beatty Street, Greenville, NC 27834
Email: estalls@greenvillenc.gov
Phone: 252-329-4047

IN WITNESS WHEREOF, this Agreement has been executed by the Department, an agency of the State of North Carolina, and the Subrecipient by and through a duly authorized representative and is effective the date and year first above written.

CITY OF GREENVILLE
on behalf of Greenville Urban Area
Metropolitan Planning Organization

SUBRECIPIENT'S FEDERAL TAX ID
NUMBER:

SUBRECIPIENT'S FISCAL YEAR END:

JUNE 30, 2024

BY:

TITLE:

CITY MANAGER

ATTEST:

TITLE:

DEPARTMENT OF
TRANSPORTATION

BY:

TITLE:

DEPUTY SECRETARY FOR
MULTI-MODAL TRANSPORTATION

**Attachment 1
Certification Regarding Lobbying**

The Subrecipient certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Subrecipient shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Subrecipient's Authorized Representative: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **DATE:** _____
Byron Hayes, Director of Financial Services

ACCOUNT NUMBER _____

PROJECT CODE (IF APPLICABLE) _____

**RESOLUTION NO. 2023-02-GUAMPO
CERTIFYING THE GREENVILLE URBAN AREA METROPOLITAN PLANNING
ORGANIZATION’S TRANSPORTATION PLANNING PROCESS FOR FY 2024**

WHEREAS, the City of Greenville Urban Area Metropolitan Planning Organization has been designated by the Governor of the State of North Carolina as the Metropolitan Planning Organization (MPO) responsible, together with the State, for the comprehensive, continuing, and cooperative transportation planning process for the MPO’s metropolitan planning area; and

WHEREAS, the Transportation Advisory Committee is the governing body of the Greenville Urban Area MPO; and

WHEREAS, the Transportation Advisory Committee has found that the Greenville Urban Area Metropolitan Planning Organization is conducting transportation planning in a continuous, cooperative, and comprehensive manner in accordance with 23 U.S.C. 134 and 49 U.S.C. 1607; and

WHEREAS, the Transportation Advisory Committee has found the Transportation Planning Process to be in full compliance with Title VI of the Civil Rights Act of 1964 and the Title VI Assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794; and

WHEREAS, the Transportation Advisory Committee has considered how the Transportation Planning Process will affect the involvement of Disadvantaged Business Enterprises in the FHWA and the FTA funded planning projects (Sec. 105 (f), Pub. L. 97-424, 96 Stat. 2100, 49 CFR part 23); and

WHEREAS, the Transportation Advisory Committee has considered how the Transportation Planning Process will affect the elderly and the disabled per the provision of the Americans with Disabilities Act of 1990 (Pub. L. 101-336, 104 Stat. 327, as amended) and the U.S.D.O.T. implementing regulations; and

WHEREAS, the Transportation Plan has a planning horizon of at least 20 years and meets all the requirements for an adequate Transportation Plan;

NOW THEREFORE, be it resolved that the Transportation Advisory Committee for the Greenville Urban Area hereby self certifies the transportation planning process for the Greenville Urban Area Metropolitan Planning Organization for Fiscal Year 2024.

Today, March 8, 2023.

DocuSigned by:
P.J. Connelly
EBD239F6CE7D4B1...

Chairperson
Transportation Advisory Committee
Greenville Urban Area MPO

DocuSigned by:
Rachel Manning
6B021FE03683443

Secretary

**RESOLUTION NO. 2023-03-GUAMPO
ADOPTING THE FISCAL YEAR 2024 (2023-2024) UNIFIED PLANNING WORK
PROGRAM (UPWP) OF THE GREENVILLE URBAN AREA METROPOLITAN
PLANNING ORGANIZATION**

WHEREAS, the City of Greenville Urban Area Metropolitan Planning Organization has been designated by the Governor of the State of North Carolina as the Metropolitan Planning Organization (MPO) responsible, together with the State, for the comprehensive, continuing, and cooperative transportation planning process for the MPO's metropolitan planning area; and

WHEREAS, the Transportation Advisory Committee is the governing body of the Greenville Urban Area MPO; and

WHEREAS, the Transportation Advisory Committee has found that the Metropolitan Planning Organization is conducting a continuing, cooperative, and comprehensive transportation planning program in order to ensure that funds for transportation projects are effectively allocated to the Greenville Urban Area; and

WHEREAS, the City of Greenville has been designated as the recipient of Federal Transit Administration Metropolitan Planning Program Funds; and

WHEREAS, members of the Transportation Advisory Committee for the Greenville Urban Area agree that the Planning Work Program will effectively advance transportation planning for Fiscal Year (FY) 2024; and

WHEREAS, the MPO's adopted Long Range Transportation Plan, the Metropolitan Transportation Plan (MTP), has a more than 20-year planning horizon and meets all applicable requirements for an adequate Long Range Transportation Plan; and

WHEREAS, the Transportation Advisory Committee for the Greenville Urban Area has self-certified that the transportation planning processes of the Greenville Urban Area MPO meet all applicable Federal and State regulations for FY 2024 (2023-2024);

NOW THEREFORE, be it resolved that the Transportation Advisory Committee for the Greenville Urban Area hereby approves, endorses, and adopts the Unified Planning Work Program for FY 2024 (2023-2024) for the Greenville Urban Area Metropolitan Planning Organization.

Today, March 8, 2023.

DocuSigned by:
Rachel Manning
6B021EF03693443
Secretary

DocuSigned by:
P.J. Connelly
EBD238F6CE7D4B1
Chairperson
Transportation Advisory Committee
Greenville Urban Area MPO

PROGRAM SUMMARY SHEET REQUIREMENTS



NORTH CAROLINA
Department of Transportation

5303 Metropolitan Transportation Planning
FEDERAL

Planning

PRINCIPLE	This guidance is for all subrecipients receiving planning assistance to support multimodal transportation planning projects in metropolitan areas and states that is cooperative, continuous, and comprehensive, resulting in long-range plans and short-range programs of transportation investment priorities. The planning programs are jointly administered by the Federal Transportation Administration (FTA) and the Federal Highway Administration (FHWA), which provides additional planning funding.
ELIGIBLE SUBRECIPIENTS and ACTIVITIES	PTD is the Designated Recipient (DR) and is the only entity eligible to apply for and receive this program assistance directly from FTA. PTD is required by law to distribute these funds to each UZA, or portion of a UZA, within North Carolina (NC), according to a formula developed by the State of NC in cooperation with the MPO and approved by FTA. Eligible activities are: develop transportation plans and programs; plan, design and evaluate a public transportation projects; and conduct technical studies related to public transportation.
FINANCIAL CAPACITY and MANAGEMENT	Subrecipients must have sufficient funds to match FTA funds. Subrecipients must have fiscal control and accounting procedures sufficient to permit tracking and reporting of grant funds. Any funds borrowed from a parent organization or governmental organization must be reported to NCDOT within 15 days.
AUDIT REPORTS and FINANCIAL STATEMENTS	Subrecipients that expend more than \$750,000 in federal funds from all sources per 09 NCAC 03M .0205 Minimum Reporting Requirements for Recipients and Subrecipients (including federal funds provided through NCDOT) in a year must submit the annual single audit required and evidence of resolution of findings related to the transit program to NCDOT.
PROGRAM REPORTING	Subrecipients are required to report monthly or quarterly when claims are submitted and at the end of the year with the final claim. Penalties will be imposed when reports have not been submitted by the published reporting deadlines.
OVERSIGHT	Oversight is performed through desk reviews of financial and grant project reporting, correspondence, and phone calls, as needed.
REFERENCES	Section 5303 Circular - C 8100.1C Award Management Requirements 5010.1E OMB's Uniform Administrative Requirements 2 CFR 200 NC Public Transportation Business Guide 09 NCAC 03M .0205 Minimum Reporting Requirements for Recipients and Subrecipients State Management Plan
UPDATES/REVISIONS	Original Date: April 20, 2018 Last Amended Date: December 16, 2022

PROGRAM SUMMARY SHEET REQUIREMENTS

APPENDIX A

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION DIVISION

PROJECT NUMBER: 24-08-121

APPROVED BUDGET SUMMARY

EFFECTIVE DATE JULY 1, 2023

PROJECT SPONSOR: CITY OF GREENVILLE

PROJECT DESCRIPTION: FY24 METROPOLITAN PLANNING GRANT PROGRAM (SECTION 5303)

I. TOTAL PROJECT EXPENDITURES

DEPARTMENT - 4526 PLANNING I -	36230.17.22.6	\$60,080
PERIOD OF PERFORMANCE JULY 01, 2023 - JUNE 30, 2024		

II. TOTAL PROJECT FUNDING

	<u>TOTAL</u>	<u>FEDERAL</u>	<u>STATE</u>	<u>LOCAL</u>
PLANNING - 36230.17.22.6	100%	80%	10%	10%
AGREEMENT #	\$60,080	\$48,064	\$6,008	\$6,008

TOTAL	\$60,080	\$48,064	\$6,008	\$6,008
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NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
 PUBLIC TRANSPORTATION DIVISION
 APPROVED PROJECT BUDGET

PROJECT: 24-08-121
 SPONSOR: CITY OF GREENVILLE
 WBS: 36230.17.22.6

<u>DEPARTMENT 4526 - PLANNING I</u>		<u>APPROVED</u>
<u>OBJECT</u>	<u>TITLE</u>	<u>BUDGET</u>
M304	442301-L-RNG TRN PLN SYS	\$ 13,080
M307	442500-TRANSP IMPROV PRG	\$ 10,000
M313	442700-OTHER ACTIVITIES	\$ 37,000
TOTAL PLANNING		\$ 60,080



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Resolution approving an Interlocal Agreement with Pitt County (Pitt Area Transit System) relating to providing paratransit transportation services within the territorial jurisdiction of the City of Greenville, NC

Explanation: Greenville Area Transit (GREAT) provides safe and reliable fixed-route bus service to residents and visitors of Greenville. The City of Greenville's Transit Service (GREAT) contracts with Pitt County's Pitt Area Transit System (PATS) to provide complementary transportation services for passengers living inside the City limits who are unable to access and ride GREAT buses due to a disability. An Interlocal Agreement with Pitt Area Transit will provide ADA passengers with door-to-door services to assist them in getting to their destination safely. PATS provides ADA services, at a minimum, during the same hours that GREAT operates fixed-route bus service. GREAT has partnered with PATS for over 20 years, with the last contract being executed in 2019 with three annual renewals. This contract is for one year and will expire on June 30, 2024.

Fiscal Note: The allocation for the FY 24 contract with PATS is \$319,110 and funds are provided within the Public Works Transit budget. This contract is reimbursed by the Federal Transportation Administration's (FTA) 5307 fund, with a federal reimbursement of 80% of the total costs of this contract. Based on the contract rate above the City's contribution will be \$63,822.

The City will pay PATS on a reimbursement basis for rides that begin and end within the city limits. The reimbursement shall be based on the following: GREAT shall pay PATS eighteen dollars (\$18.00) per ride rendered under the Agreement. The City's client will be responsible for the supplemental two dollars (\$2.00) fare unless the City is fare-free, at which the City shall pay the full twenty dollars (\$20.00) flat rate per ride rendered under the Agreement.

Recommendation: Approve the resolution authorizing the Interlocal Agreement with Pitt County (Pitt Area Transit System) relating to providing paratransit transportation services within the territorial jurisdiction of the City of Greenville, NC

ATTACHMENTS

- [RESOLUTION INTERLOCAL AGREEMENT PITT COUNTY - PARATRANSIT #1183450V1.pdf](#)
- [GREAT AND PATS CONTRACT FOR PARATRANSIT SERVICE - #1182137V3.pdf](#)

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GREENVILLE
APPROVING AN INTERLOCAL AGREEMENT WITH PITT COUNTY RELATING TO
PROVIDING PARATRANSIT TRANSPORTATION SERVICES WITHIN THE
TERRITORIAL JURISDICTION OF THE CITY OF GREENVILLE, NC

WHEREAS, Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes empowers the City of Greenville and County of Pitt to enter into an interlocal agreement in order to execute an undertaking whereby a unit of local government exercises any power, function, public enterprise, right, privilege, or immunity either jointly with or on behalf of another unit of local government;

WHEREAS, the City desires assistance with paratransit transportation services in a defined geographic region;

WHEREAS, the County possesses the expertise, equipment, commercial vehicles and experience to assist the City in such capacity; and

WHEREAS, North Carolina General Statute § 160A-461 provides that an interlocal agreement shall be ratified by resolution of the governing body of each unit spread upon its minutes.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that the Interlocal Agreement by and between the City of Greenville and Pitt County be and is hereby approved, said Agreement relating to Pitt County providing paratransit transportation services within the territorial jurisdiction of the City of Greenville, NC.

BE IT FURTHER RESOLVED by the City Council of the City of Greenville that the City Manager be and is hereby authorized to execute the aforementioned Interlocal Agreement for and on behalf of the City of Greenville.

This the _____ day of August, 2023.

PJ Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

**INTERLOCAL AGREEMENT
BETWEEN PITT COUNTY
PITT COUNTY AREA TRANSIT SYSTEM (PATS)
AND
CITY OF GREENVILLE, NC
GREENVILLE AREA TRANSIT (GREAT) BUS SYSTEM**

THIS AGREEMENT is made and entered into this date, _____, by and between Pitt County, a political subdivision of the State of North Carolina, (hereinafter referred to as the “County”) and City of Greenville, NC, a municipal corporation of the State of North Carolina, (hereinafter referred to as the “City”).

WITNESSETH:

WHEREAS, Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes empowers the City of Greenville and Pitt County to enter into an interlocal agreement in order to execute an undertaking whereby a unit of local government exercises any power, function, public enterprise, right, privilege, or immunity either jointly with or on behalf of another unit of local government;

WHEREAS, the City desires assistance with paratransit transportation services in a defined geographic region; and

WHEREAS, the County possesses the expertise, equipment, commercial vehicles and experience to assist the City in such capacity; and

WHEREAS, North Carolina General Statute § 160A-461 provides that an interlocal agreement shall be ratified by resolution of the governing body of each unit spread upon its minutes.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals and Purpose. The Recitals are incorporated into this Agreement, and the purpose of this Agreement is to establish the terms and conditions under which the County will provide paratransit transportation services for the City. This will allow, among other things, for the City to rely on the expertise and experience of the County to provide transportation assistance.
2. Responsibilities of the Parties.
 - a. Pitt County agrees to:

- i. Provide paratransit transportation as a fixed-route service for eligible clients, as further described in Exhibit A attached hereto and incorporated by reference.
 - ii. Promptly invoice the City for transportation services provided pursuant to this Agreement. Such an invoice shall include reports and data, as required in Exhibit A.
 - iii. County shall take all steps and actions necessary to achieve the purposes of this Agreement.
- b. City of Greenville, NC agrees to:
 - i. Review client applications for services for eligibility and approval.
 - ii. Provide County with the identified service area
 - iii. Pay County monthly, at a flat rate of eighteen dollars and zero cents (\$18.00) per ride rendered under this Agreement. The City's client will be responsible for the supplemental two dollars and zero cents (\$2.00) fare unless the City is fare free, at which City shall pay the full twenty dollars and zero cents (\$20.00) flat rate per ride rendered under this Agreement.
 - iv. Remit payment for undisputed amounts to the County within 45 days upon receipt and review of an invoice and report for services rendered during the invoice period.
 - v. City shall take all steps and actions necessary to achieve the purposes of this Agreement.

3. Termination for Convenience. The County or the City may terminate this Agreement without cause at any time by providing thirty (30) days written notice from the terminating party to the non-terminating party. If the Agreement is terminated as provided herein, the County will be paid for all services performed upon receipt and review by the City of an invoice and reports, as required herein.

4. Termination for Cause. The County or the City may immediately terminate this Agreement with cause in the event of a breach of the terms of this Agreement by providing written notice from the terminating party to the non-terminating party. In that event, County and the City reserve all rights and remedies available to it under the applicable laws and regulations with respect to this Agreement.

5. Term. This Agreement shall commence on the date written above and shall continue through June 30, 2024.

6. Entire Agreement and Amendments. This Agreement contains the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous written or oral negotiations and agreements between them regarding the subject matter hereof. This Agreement may be amended only in writing, which writing must be signed by both of the parties. Each of the statements set forth in the recitals to this Agreement are hereby incorporated herein by reference as a valid representation of the party or parties to whom such statement relates.

7. Assignment. This Agreement is personal to each of the parties hereto, and neither party may assign nor delegate any of its rights or obligations without first obtaining the written consent of the other party. Any purported assignment without prior written consent from the other party shall be null and void. In the event of assignment, this Agreement shall be binding upon the successors or assigns of the parties hereto.

8. Independent Contractor. The relationship between the parties to this Agreement shall be that of independent contractors, and no party shall be construed to be the agent, partner, employee, or joint venturer of the other party to the Agreement. The parties shall not exercise control or direct the manner in which other parties perform their duties hereunder except to assure compliance with this Agreement. The parties further agree that the City is not eligible for any County employee benefits whatsoever and does not possess any rights or privileges as generally established for the County's employees.

9. Third Party Beneficiary. The parties do not intend to confer any rights, privileges or benefits upon any other individual(s) or entity(ies), not signatories to this Agreement, arising out of this Agreement. The parties agree that nothing in this Agreement shall be construed or interpreted to confer any such rights, privileges or benefits upon any individual or entity not a signatory to this Agreement.

10. Costs and Taxes. Except as otherwise specifically provided herein, each party shall bear its own costs and expenses incurred in connection with the performance of its obligations hereunder. Each party shall be responsible for payment of any and all federal, state, local or other taxes which may arise or be imposed as the result of its performance under this Agreement or as the result of the receipt of any compensation or other funds under this Agreement or in connection with the transactions contemplated hereby, if any. This Section shall survive termination of this Agreement.

11. Notice: Any notice required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when personally delivered or three (3) days after being mailed by certified mail, return receipt requested, postage prepaid, to the following addresses, or at such other address as either party may designate in a manner in compliance with this Section:

Pitt County

Attn: County Manager
1717 West 5th Street
Greenville, NC 27834

City of Greenville, NC:

Attn: City Manager
City of Greenville
200 W. 5th Street
Greenville, NC 27834

Each party shall keep the other party informed of its current address at all times.

12. Applicable Law, Venue, and Service of Process. This Agreement has been entered into in the State of North Carolina, County of Pitt, and all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be governed by the laws of the State of North Carolina. The parties agree that exclusive venue for the bringing of any action concerning

this Agreement shall be in the state or federal courts having jurisdiction in Pitt County, North Carolina and that service of process may be made upon either party by certified mail, return receipt requested, postage prepaid to the party's address as set forth herein or such other address as the party may designate in writing received by the other party. The City agrees that it will comply with all applicable federal, state and local laws, rules, regulations, and ordinances in addition to those specifically noted herein.

13. Modification. This Agreement may only be modified in writing and executed by both parties.

14. Indemnification. Each party shall indemnify and hold the other harmless from and against any and all loss, damage, cost or expense caused by the negligent or wrong act or omission of any employee of the indemnifying party. Except as permitted by law, neither party shall be liable to the other for any indirect, special, incidental, consequential, or punitive damages.

15. Representations and Warranties. The Parties each represent, covenant and warrant for the other's benefit as follows:

- a. Each Party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been authorized by Resolution spread upon the minutes of each Party's governing body. This Agreement is a valid and binding obligation of each Party.
- b. Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either Party is now a party or by which either is bound, or constitutes a default under any of the foregoing.
- c. To the knowledge of each Party, there is no litigation or other court or administrative proceeding pending or threatened against such Party (or against any other person) affecting such Party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. The Party's execution and delivery of this Agreement, and its compliance with its obligations under this Agreement, does not require the approval of any regulatory body or any other entity the approval of which has not been obtained.

16. Force Majeure. The parties understand and acknowledge that neither shall be liable for any loss, damage, detention, delay or failure to perform in whole or part resulting in causes beyond their control including, but not limited to fire, strikes, insurrections, riots, pandemics, embargoes, shortages of motor vehicles, delays in transportation, and inability to obtain supplies of raw materials or requirements or regulations of the United States government or any other civil or military authority.

17. Severability. If any provision, or portion thereof, of this Agreement shall for any reason be adjudged by any court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such judgment shall not affect, impair or invalidate the remainder of this Agreement but shall be limited in its operation to the provision of this Agreement directly involved and only the illegal, invalid or unenforceable provision shall be deemed struck.

18. Dispute Resolution. In the event of a conflict or default that might arise for matters associated with this Agreement, the parties agree to informally communicate to resolve the conflict. If any such dispute cannot be informally resolved, then such dispute, or any other matter arising under this Agreement, shall be subject to resolution in a court of competent jurisdiction. Such disputes, or any other claims, disputes or other controversies arising out of, and between the Parties shall be subject to and decided exclusively by the appropriate general court of justice of Pitt County, North Carolina.

19. Waiver. The failure by the party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at a later time nor shall the waiver by either party of a breach of any provision hereof be taken or be held to be a waiver of such provision.

20. Regulatory Authority. Nothing in this Agreement shall restrict or inhibit a Party's police powers or regulatory authority.

21. Nondiscrimination. County, its assignees and successors in interest, further agrees that in the performance of these services that it shall comply with the requirements of Title VI of the Civil Rights Act of 1964 and other pertinent Nondiscrimination Authorities and will not discriminate in its hiring, employment, and contracting practices with reference to political affiliation, genetic information, sexual orientation, age, sex, race, color, religion, national origin, handicap or disability

22. Further Actions. The Parties agree to cooperate fully and execute any and all further documents and to take all further actions that may be necessary to give full force and effect to the intent of this Agreement.

23. Counterparts and Facsimiles. This Agreement may be executed in one or more counterparts each of which may be deemed an original, but all of which constitute one and the same. An executed Agreement transmitted by facsimile to the other party may be relied upon as an original and if there is any inconsistency between such facsimile and an executed Agreement subsequently received by "hard-copy," the terms contained in the facsimile shall prevail.

24. Headings. The headings and numbers of sections and paragraphs contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

25. E-Signature Authority. The parties hereto consent and agree that this agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand written signature. The parties further consent and agree that (1) to the extent a party signs this document using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall

be treated for purposes of validity, enforceability and admissibility, the same as hand-written signatures.

26. E-verify. Pursuant to North Carolina General Statute 143-133.3 and related state and federal laws, the undersigned hereby certifies that the City named herein, and the City's subcontractors, comply with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system.

[Signatures on following page]

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the date set forth above.

Pitt County:

By: _____

City of Greenville, NC:

By: _____

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

Approved as to form

County Attorney

Finance Officer

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

Approved as to form

City Attorney

Finance Officer

EXHIBIT A

County shall provide the following services:

1. Paratransit transportation services to clients approved for eligibility by the City within the identified service area and hours of operation provided by the City.
2. Submit monthly invoices for services rendered during the invoice period.
3. Collect data and maintain reports of detailed information regarding each service rendered, including, but not limited to, data identified in the chart below, for inclusion with each invoice submitted for payment.

DATE	TRIP	RIDER	FROM (Address)	TO (Address)	TIME of Pick- Up	TIME of Drop- off	Miles	Hours	Fare Total

4. Reports shall, at minimum, include the following:
 - a. GREAT Fare Free No Show Report
 - b. GREAT Fare Free Ride Detail Report
 - c. GREAT Fare Free Draft Detail Brief



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Contract with Tarheel Billing Services, Inc. dba Colleton Billing for EMS Billing and Collection Services

Explanation: The City is entering into a contract with Tarheel Billing Services, Inc. dba Colleton Billing for EMS Billing and Collection Services. Colleton Billing will replace our internal billing function and allow Financial Services to improve efficiency and increase rescue transport fee revenue. Colleton Billing will provide the same service level as current City of Greenville employees, including the billing and collection of rescue transport fees, in addition to handling the collection of any accounts that become delinquent after the agreement. By outsourcing the services, the collection process is expected to be more accurate and efficient, increasing cash flow and improving accounts receivable turnover. The contract will last for three years, effective August 1, 2023 through July 31, 2026, with a two-year renewal option.

Fiscal Note: Colleton Billing will charge a rate of 3.85% of payments made on accounts. The cost of collections will be offset by reducing the Collections Division by 1 full-time position and utilizing the personnel savings to fund the annual contract cost. A net increase in EMS Rescue Transport revenue of \$30,000 annually is expected, based on the number of rescue calls billed in the previous fiscal years.

Recommendation: Approve the contract.

ATTACHMENTS

- [1182151_-CITY_OF_GREENVILLE_NC_BAA_FOR_MEDICAL_BILLING_-07102023_FINAL_ACCEPTED_CHANGES.docx](#)
- [COG-#1184222-v1-City_of_Greenville_-_Tarheel_Medical_Billing_Agreement_-07102023_FINAL_ACCEPTED_CHANGES.docx](#)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made effective the _1st_ day of AUGUST 2023, by and between _

The City of Greenville Rescue and Emergency Medical Services –a department of the City of Greenville, a body politic of the State of North Carolina (the “Client”).

organized and existing under the laws of the State of ___NORTH CAROLINA_____ hereinafter referred to as “Covered Entity,” and

Tarheel Medical Billing, Inc. dba as Colleton Billing, a corporation organized and existing under the laws of the State of North Carolina, hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

PURPOSE

The purpose of this agreement is to spell out the obligations of the Covered Entity has in all respects to HITECH Act, HIPAA Privacy and Security Rules, Red Flag Rules, any other act governing medical information and the transfer thereof, and all applicable State and federal laws, rules, and regulations, and that Business Associate assumes by virtue of this agreement.

WITNESSETH:

WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”) (45 C.F.R. Parts 160 and 164) and the “Red Flag Rules” as found at 16 C.F.R. § 681.1 and applicable to creditors subject to the administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. § 1681s(a)(1); and

WHEREAS, the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, modified the HIPAA Privacy and Security Rules (hereinafter, all references to the “HIPAA Privacy and Security Rules” include all amendments thereto set forth in the HITECH Act and any accompanying regulations); and

WHEREAS, the Parties have entered into a written arrangement or arrangements (the “Agreements”) whereby Business Associate will provide certain services to Covered Entity and, pursuant to such Agreements, Business Associate may be considered a “business associate” of Covered Entity as defined in the HIPAA Privacy and Security Rules; and

WHEREAS, Business Associate may have access to Protected Health Information or Electronic Protected Health Information (as defined below) in fulfilling its responsibilities under the Agreements; [and

WHEREAS, prior to enactment of the HITECH Act, Covered Entity and Business Associate previously entered into a Business Associate Agreement and now intend this Agreement to supersede the prior agreement with the requirements of the HITECH Act;] and

WHEREAS, Covered Entity wishes to comply with the HIPAA Privacy and Security Rules, and Business Associate wishes to honor its obligations as a Business Associate to Covered Entity; and

WHEREAS, in the event that Business Associate is engaged to perform any activity in connection with any “covered account” of Covered Entity as defined in 16 C.F.R. § 681.1 (commonly referred to as the “Red Flag Rules” and applicable to any “creditor” or any “service provider” providing any service to such creditor with regard to a covered account), Business Associate agrees to fully adopt and comply with the Red Flag Rules as are currently in effect and as may be promulgated in the future, including but not limited to the adoption of a Red Flag program that is compliant with applicable federal regulations, and to take all necessary and appropriate steps to ensure that its activities are conducted in accordance with the Red Flag Rules designed to detect, prevent and mitigate the risk of identity theft.

THEREFORE, in consideration of the Parties’ obligations and terms under the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, or the Red Flag Rules, the HIPAA Privacy and Security Rules and the Red Flag Rules in effect at the time shall control. Where provisions of this Agreement are different than those mandated by the HIPAA Privacy and Security Rules or the Red Flag Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules or the Red Flag Rules, the provisions of this Agreement shall control.

The term “Breach” means the unauthorized acquisition, access, use, or disclosure of protected health information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. The term “Breach” does **not** include: (1) any unintentional acquisition, access, or use of protected health information by any employee or individual acting under the authority of a covered entity or business associate if (a) such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship of such employee or individual, respectively, with the covered entity or business associate, and (b) such information is not further acquired, accessed, used, or disclosed by any person; or (2) any inadvertent disclosure from an individual who is otherwise authorized to access protected health information at a facility operated by a covered entity or business associate to another similarly situated individual at same facility; and (3) any such information received as a result of such disclosure is not further acquired, accessed, used, or disclosed without authorization by any person.

The term “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. All Electronic transfers shall be through encrypted or approved HIPAA means.

The term “HIPAA Privacy and Security Rules” refers to 45 C.F.R. Parts 160 and 164 as currently in effect or hereafter amended.

The term “Protected Health Information” means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is reasonable basis to believe the information can be used to

identify the individual. “Protected Health Information” includes, without limitation, “Electronic Protected Health Information,” as defined below.

The term “Electronic Protected Health Information” means Protected Health Information which is transmitted by or maintained in Electronic Media (as now or hereafter defined in the HIPAA Privacy and Security Rules).

The term “Red Flag Rules” refers to the provisions found at 16 C.F.R. § 681.1 as applicable to financial institutions and creditors subject to the administrative enforcement of the FCRA by the Federal Trade Commission pursuant to 15 U.S.C. § 1681s(a)(1).

The term “Red Flag” has the same meaning as provided within 16 C.F.R. § 681.1(b)(9) and means a pattern, practice, or specific activity that indicates the possible existence of identity theft.

The term “Secretary” means the Secretary of the Department of Health and Human Services.

The term “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in guidance published in the Federal Register at 74 Fed. Reg. 19006 on April 27, 2009 and in annual guidance published thereafter.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

a. Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreements, provided that such use or disclosure would not violate the HIPAA Privacy and Security Rules if done by Covered Entity. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, disclose only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless the person or entity to whom Business Associate is making the disclosure requires certain direct identifiers in order to accomplish the intended purpose of the disclosure, in which event Business Associate may disclose only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the disclosure.

b. Business Associate may use Protected Health Information in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate, provided that such uses are permitted under state and federal confidentiality laws.

c. Business Associate may disclose Protected Health Information in its possession to third parties for the purposes of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that:

1. The disclosures are required by law; or

2. Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that the information will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which they are aware in which the confidentiality of the information has been breached.

d. Until such time as the Secretary issues regulations pursuant to the HITECH Act specifying what constitutes “minimum necessary” for purposes of the HIPAA Privacy and Security Rules, Business Associate shall, to the extent practicable, access, use, and request only Protected Health Information that is contained in a limited data set (as defined in Section 164.514(e)(2) of the HIPAA Privacy and Security Rules), unless Business Associate requires certain direct identifiers in order to accomplish the intended purpose of the access, use, or request, in which event Business Associate may access, use, or request only the minimum necessary amount of Protected Health Information to accomplish the intended purpose of the access, use, or request. Covered Entity shall determine what quantum of information constitutes the “minimum necessary” amount for Business Associate to accomplish its intended purposes.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

a. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

b. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.

c. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Specifically, Business Associate will:

1. Implement the administrative, physical, and technical safeguards set forth in Sections 164.308, 164.310, and 164.312 of the HIPAA Privacy and Security Rules that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, and, in accordance with Section 164.316 of the HIPAA Privacy and Security Rules, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in Sections 164.308, 164.310, and 164.312; and

2. Report to Covered Entity any use or disclosure of Protected Health Information not provided for by this Agreement of which Business Associate becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. For purposes of this Agreement, “Security Incident” means the successful unauthorized access, use, disclosure, modification, or destruction of Protected Health Information or interference with system operations in an information system, of which Business Associate has knowledge or should, with the exercise of reasonable diligence, have knowledge, excluding (i) “pings” on an information system firewall; (ii) port scans; (iii) attempts to log on to an information system or enter a database with an invalid password or user name; (iv) denial-of-service attacks that do not result in a server being taken offline; or (v) malware (*e.g.*, a worms or a virus) that does not result in unauthorized access, use, disclosure, modification or destruction of Protected Health Information.

d. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

e. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules and of which Business Associate has been notified by Covered Entity. In addition, and notwithstanding the provisions of Section 164.522 (a)(1)(ii), Business Associate agrees to comply with an individual's request to restrict

disclosure of Protected Health Information to a health plan for purposes of carrying out payment or health care operations if the Protected Health Information pertains solely to a health care item or service for which Covered Entity has been paid by in full by the individual or the individual's representative.

f. At the request of The Covered Entity and in a reasonable time and manner, not to extend three (3) business days, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual's request for access to his or her Protected Health Information in accordance with Section 164.524 of the HIPAA Privacy and Security Rules. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information available electronically to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.

g. At the request of Covered Entity and within three (3) business days, Business Associate agrees to make available Protected Health Information required for amendment by Covered Entity in accordance with the requirements of Section 164.526 of the HIPAA Privacy and Security Rules.

h. Business Associate agrees to document any disclosures of and make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy and Security Rules.

i. Business Associate agrees that it will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Privacy and Security Rules, in a time and manner designated by the Secretary.

j. Business Associate agrees that, while present at any Covered Entity facility and/or when accessing Covered Entity's computer network(s), it and all of its employees, agents, representatives and subcontractors will at all times comply with any network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules and the Red Flag Rules.

k. Business Associate agrees that it will not directly or indirectly receive remuneration in exchange for any Protected Health Information of an individual without the written authorization of the individual or the individual's representative, except where the purpose of the exchange is:

1. for public health activities as described in Section 164.512(b) of the Privacy and Security Rules;

2. for research as described in Sections 164.501 and 164.512(i) of the Privacy and Security Rules, and the price charged reflects the costs of preparation and transmittal of the data for such purpose;

3. for treatment of the individual, subject to any further regulation promulgated by the Secretary to prevent inappropriate access, use, or disclosure of Protected Health Information;

4. for the sale, transfer, merger, or consolidation of all or part of Business Associate and due diligence related to that activity;

5. for an activity that Business Associate undertakes on behalf of and at the specific request of Covered Entity;

6. to provide an individual with a copy of the individual's Protected Health Information pursuant to Section 164.524 of the Privacy and Security Rules; or

7. other exchanges that the Secretary determines in regulations to be similarly necessary and appropriate as those described in this Section III.k.

l. Business Associate agrees that it will not directly or indirectly receive remuneration for any written communication that encourages an individual to purchase or use a product or service without first obtaining the written authorization of the individual or the individual's representative, unless:

1. such payment is for a communication regarding a drug or biologic currently prescribed for the individual and is reasonable in amount (as defined by the Secretary); or

2. the communication is made on behalf of Covered Entity and is consistent with the terms of this Agreement.

m. Business Associate agrees that if it uses or discloses patients' Protected Health Information for marketing purposes, it will obtain such patients' authorization before making any such use or disclosure.

n. Business Associate agrees to implement a reasonable system for discovery of breaches and method of risk analysis of breaches to meet the requirements of HIPAA, The HITECH Act, and the HIPAA Regulations, and shall be solely responsible for the methodology, policies, and procedures implemented by Business Associate.

o. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary, in a reasonable time and manner as designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

p. Business Associate agrees to mitigate, to the extent reasonably practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

q. State Privacy Laws. Business Associate shall understand and comply with state privacy laws to the extent that state privacy laws are not preempted by HIPAA or The HITECH Act.

r. Business Associate acknowledges that in the event Business Associate violates subsections (k), (l) or (m) hereof, the provisions of section 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner as such provisions apply to Covered Entity.

IV. BUSINESS ASSOCIATE'S MITIGATION AND BREACH NOTIFICATION OBLIGATIONS

a. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

b. Following the discovery of a Breach of Unsecured Protected Health Information, Business Associate shall notify Covered Entity of such Breach without unreasonable delay and in no case later than three (3) business days after discovery of the Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate.

c. Notwithstanding the provisions of Section IV.b., above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than three (3) business days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

d. The Breach notification provided shall include, to the extent possible:

1. the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;

2. a brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;

3. a description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

4. any steps individuals should take to protect themselves from potential harm resulting from the Breach;

5. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and

6. contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

7. provide a draft letter for the Covered Entity to utilize to notify the individuals that their Unsecured PHI has been, or is reasonably believed to have been, subject of a breach. The draft letter shall include, to the extent possible, those items listed in sections d. 1-6 immediately preceding.

e. Business Associate shall provide the information specified in Section IV.d., above, to Covered Entity at the time of the Breach notification if possible or promptly thereafter as information becomes available. Business Associate shall not delay notification to Covered Entity that a Breach has occurred in order to collect the information described in Section IV.d. and shall provide such information to Covered Entity even if the information becomes available after the three (3) day period provided for initial Breach notification.

V. WARRANTIES OF BUSINESS ASSOCIATE

Business Associate warrants:

a. That its internal practices, policies, and records relating to the use and disclosure of Protected Health Information will comply with the HIPAA Privacy and Security Rules; and

b. That it will train all of its employees, agents, representatives, and subcontractors on the network access and other security practices, procedures and/or policies established by Covered Entity including, without limitation, those established pursuant to the HIPAA Privacy and Security Rules and the Red Flag Rules prior to permitting such employees, agents, representatives, and subcontractors to be present at any Covered Entity facility and/or to access Covered Entity's computer network(s).

VI. OBLIGATIONS OF COVERED ENTITY

a. Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520 of the HIPAA Privacy and Security Rules.

b. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with Section 164.522 of the HIPAA Privacy and Security Rules, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

VII. REQUIRED COMPLIANCE WITH RED FLAG RULES

In the event that Business Associate is engaged to perform an activity in connection with any "covered account" as defined in 16 C.F.R. § 681.1 (as applicable to Covered Entity as a "creditor" and therefore to Business Associate as a "service provider" providing any service to Covered Entity), Business Associate agrees to: (i) fully adopt and comply with the Red Flag Rules currently in effect and as may be promulgated in the future; (ii) adopt a Red Flag program that is compliant with federal regulations as promulgated in 16 C.F.R. § 681.1; and (iii) take all necessary and appropriate steps to ensure that its activities undertaken as a part of this Agreement are conducted in accordance with the Red Flag Rules and its Red Flag program, including, without limitation, ensuring the adoption of and continued compliance with reasonable policies and procedures designed to detect, prevent, and mitigate

the risk of identity theft, detecting any Red Flag that may arise during the term of this Agreement, reporting any such Red Flag to Covered Entity, and taking any such further steps as may be necessary to prevent or mitigate identity theft.

VIII. TERM AND TERMINATION

a. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section VIII.d., when all of the Protected Health Information provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Agreements.

b. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement and the Agreements. If termination is not feasible, Covered Entity shall report such violation to the Secretary.

c. Termination for Convenience. Without limiting Covered Entity's right to terminate for breach, either Party may terminate this Agreement without cause and in its discretion with thirty (30) days written notice.

d. Effect of Termination.

1. Except as provided in paragraph 2. of this subsection, upon termination of this Agreement, the Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) calendar days return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Neither Business Associate nor its subcontractors or agents shall retain copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide within ten (10) calendar days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

IX. MISCELLANEOUS

a. Indemnification. Business Associate shall indemnify, defend and hold harmless Covered Entity, its directors, officers, employees, contractors and agents, against, and in respect of, any and all claims, losses, expenses, costs, damages, obligations, penalties, judgments, fines, assessments, awards, liabilities, or other expenses of any kind and nature whatsoever, including, without limitation, attorneys' fees, expert witness fees, and costs of investigation, litigation, or dispute resolutions, relating to or arising out of any breach or alleged breach of this Agreement, or any Breach, by Business Associate or subcontractors or agents of Business Associate which Covered Entity may incur by reason of Business Associate's breach of or failure to perform any of its obligations pursuant to this Agreement and/or incurred by or on behalf of Business Associate in connection with the defense thereof.

b. No Rights in Third Parties. Except as expressly stated herein, in the HIPAA Privacy and Security Rules, or in the Red Flag Rules, the Parties to this Agreement do not intend to create any rights in any third parties.

c. Survival. The obligations of Business Associate under Section VIII(c) of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Agreements, and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

d. Amendment. This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in the HIPAA Privacy and Security Rules or Red Flag Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Privacy and Security Rules, the Health Insurance Portability and Accountability Act, and the Red Flag Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy and Security Rules or any other applicable legislation including, but not limited to, the Red Flag Rules, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty (30)-day period, the Agreement fails to comply with the HIPAA Privacy and Security Rules, the Red Flag Rules or any other applicable legislation, then either Party has the right to terminate this Agreement and the underlying arrangement upon written notice to the other party.

e. Assignment. Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

f. Independent Contractor. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

g. Governing Law. To the extent this Agreement is not governed exclusively by the HIPAA Privacy and Security Rules, the Red Flag Rules, or other provisions of federal statutory or regulatory law, it will be governed by and construed in accordance with the laws of the State of North Carolina, venue in PITT County.

h. No Waiver. No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

i. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Privacy and Security Rules and the Red Flag Rules.

j. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

k. Notice. Any notification required in this Agreement shall be made in writing to the representative of the other Party who signed this Agreement or the person currently serving in that representative's position with the other Party.

l. Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive any Electronic Protected Health Information from or on behalf of Covered Entity.

m. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, The HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purpose. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI and compliance with these rules.

n. Ownership of Information. Covered Entity holds all right, title, and interest in and to the PHI and Business Associate does not hold and will not acquire by virtue of this Agreement or by virtue of providing goods or services to Covered Entity, any right, title, or interest in or to the PHI or any portion thereof.

o. Right to Injunctive Relief. Business Associate expressly acknowledges and agrees that the breach, threatened breach, by it of any provision of this Agreement may cause Covered Entity to be irreparably harmed and that Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Covered Entity will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to Covered Entity at law or in equity.

The parties signing below are attesting they are acting within the scope of their duties as Officers of the Corporations listed below, and that they have specific authorization to enter into this agreement on behalf of the said Corporations and bind the Corporations to its terms.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Business Associate:

Covered Entity:

Tarheel Medical Billing, Inc.

City of Greenville, North Carolina

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Vendor Number: _____



**AGREEMENT FOR MEDICAL BILLING SERVICES
FINANCIAL SERVICES DEPARTMENT**

THIS AGREEMENT FOR MEDICAL BILLING SERVICES (the “Agreement”) is made and entered into this date, AUGUST 1st 2023 (the “Effective Date”), by and between Tarheel Medical Billing, Inc. dba as Colleton Software, a corporation organized and existing under the laws of the State of North Carolina hereinafter referred to in this document as (“TMB”), and the City of Greenville, North Carolina - a body politic of the State of North Carolina, hereinafter referred to in this document as (“Client”). In the remainder of this Agreement, TMB and Client shall be referred to individually as a “Party” and collectively as the “Parties.”

WITNESSETH

WHEREAS, TMB is in the business of providing medical billing and collection services to the healthcare industry; and

WHEREAS, Client desires to obtain billing and collection services for ambulance service charges from TMB to assist in the collection of accounts receivable; and

WHEREAS, TMB wishes to provide billing and collection services for Client upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree to the following terms and conditions:

The Parties hereby acknowledge and agree that, except as expressly stated otherwise in this Agreement, during the term of the Agreement, TMB will be Client’s sole and exclusive provider of ambulance services billing and collection services (collectively, the “Services”).

For the purpose of this Agreement, a collectible is defined as the receipt of all information required in order to properly submit the claim to the appropriate payment source.

I. CLIENT WARRANTS

TMB will be the exclusive provider of the Services. (See Section 8). Client, to best of its knowledge and information available, represents and warrants to TMB as follows:

1. That all accounts referred to TMB for collection pursuant to this Agreement:
 - A. have been timely referred to TMB,
 - B. have not been charged off or otherwise reduced to a zero balance,

- C. were generated in the ordinary course of business,
 - D. have been properly coded,
 - E. are collectible, revenue-generating accounts, and
 - F. have not been sent to TMB for account processing or any other type of administrative-type service, with the exception of administrative-type services that are incidental to performing collection Services on revenue-generating accounts;
2. By entering into this Agreement and/or performing its obligations hereunder, Client will not be in breach of any obligation to or covenant not to compete or restrictive covenant with any third party; and
 3. All amounts (including without limitation fees, costs and charges) included in all accounts referred to TMB for collection pursuant to this Agreement (i) are permitted and are collectible under all federal, state and local laws, rules and regulations applicable to Client and Client's business and (ii) will be either (a) expressly authorized by the agreement creating the debt or (b) permitted by law.

Client further warrants that all information turned over to TMB to meet TMB's obligations under this Agreement will be done in strict compliance with all applicable Federal and State laws. TMB similarly warrants that all actions that it takes pursuant to this Agreement will be done in strict compliance with all applicable Federal and State laws.

II. TERM OF AGREEMENT

4. The initial term of this Agreement shall be for a period of 3 years, commencing on the 1st day of AUGUST , 2023, and terminating at 11:59 p.m. on the 30th day of JULY , 2026, unless terminated earlier in accordance with other provisions of the Agreement (the "Initial Term").

5. Upon the expiration of the Initial Term, this Agreement will automatically renew for up to TWO (2) year period (the "Renewal Term"; the Initial Term and the Renewal Term, if exercised, are hereinafter collectively referred to as the "Term"), on the same terms and conditions set forth herein, unless Client delivers to TMB written notice

- A. of termination or
- B. of Client's desire to renegotiate the terms of this Agreement, at least ninety (90) days prior to the expiration of the then current Term.

6. FEES FOR SERVICES RENDERED.

A. Administration Fee. The client will not be charged an administrative fee for the establishment of this account with TMB.

B. Fee. For all Services provided, TMB will charge, and Client hereby agrees to pay, a contingent collection fee equal to **3.85** % of payments made on accounts assigned, regardless of whether the payment is made to TMB or to Client. All fees paid by Client to TMB are payable in U.S. dollars only.

The Client will be charged a flat rate on all PHP Medicaid Calls at a rate of \$11.00 per call. No percentage or commission will be charged on PHP Medicaid calls beyond the flat fee charge. TMB will provide The City of Greenville all information related to trip volume and resulting revenue to accurately complete the North Carolina Medicaid Cost Reimbursement Program. TMB will provide the data in a format that can easily be used in the completion of the required paperwork. In the event the form requirements change, TMB will provide the information as requested by the client. TMB will not charge the client a fee for this information. TMB will not invoice the client for a percentage of the revenue collected under this program. TMB will provide the information and any other requirements to complete the form at no charge.

- C. TMB will manage and submit all requirements of the North Carolina Debt Set-Off Program for the client. These services include conducting all the following. TMB assumes all costs associated with these services
- i. Creating letters and other correspondence that will be sent to accounts that are eligible under debt set off
 - ii. Managing accounts that wish to set up a payment program with the client and TMB. Send all monthly statements to payment accounts.
 - iii. Sending required notifications to accounts Creating files and paperwork, and submitting the information in electronic format to the state. This will allow The City of Greenville to adhere to Debt Set Off requirements.
 - iv. Handling all inquiries from accounts that need information on options available to the patient under debt set off.
 - v. Electronic submission to the state of all account balances
 - vi. Posting of all payments from debt set off to the patient accounts.
 - vii. Reports to the city on all submissions and collections processed by TMB for The City of Greenville

D. Payment Terms: TMB will submit an invoice on or around the 10th day of the month for the commission due on monies collected by TMB during the preceding calendar month. The invoiced amount is due upon receipt. Payment for undisputed amounts will be made to TMB within thirty (30) days from the Client's receipt of the invoice. Client agrees to report to TMB, within thirty (30) days of Client's receipt of a payment, any and all payments received directly by Client or its agent on accounts that are in the possession of TMB and agrees that TMB will be entitled to receive regular agreed collection fees on said payments.

E. Right to Offset. In addition to all other remedies available to TMB, in the event Client fails in its obligation to pay TMB in a timely manner in accordance with the terms of this Agreement for Services, or any other amounts owed, and Client fails to cure said obligation within a ten (10) day period following notification from TMB, TMB shall be entitled to offset any such unpaid amounts against any and all amounts received by TMB as payment on accounts referred to TMB pursuant to this Agreement, provided nothing herein shall be construed as to provide TMB with any right of offset or access to any funds already deposited into Client's bank accounts pursuant to this Agreement.

F. Right to Terminate. In the event any invoice remains unpaid more than thirty (30) days after the invoice date, TMB shall have the right to temporarily discontinue the performance of the Services and its other obligations under this Agreement and/or to terminate this Agreement, and TMB shall have no further liability or obligation to Client. In the event TMB terminates this Agreement pursuant to this Section 6(F), Client shall immediately pay to TMB all amounts then due and outstanding, and TMB shall immediately return to Client all client's information and materials including but not limited to financial records, statistical information, files and patient medical records and accounts.

III. TMB'S RIGHTS, DUTIES & OBLIGATIONS

7. It is hereby acknowledged and agreed by the Parties that, during the term of this Agreement, TMB will provide the Services for Client, subject to the following conditions:
- A. Accounts Receivable Management Services. TMB will provide Client the following insurance filing and additional patient billing services:
 - B. Insurance Filing. TMB will submit claims for reimbursement or payment for the ambulance services provided by Client to Client's patients' insurance carriers (or such other third-party payors) promptly after TMB receives the necessary data to file the claim via the Electronic Patient Care Reporting Software ("ePCR"), which software TMB will provide to Client at no additional cost to Client. If the insurance claim remains unpaid for more than forty-five (45) days or TMB does not receive notification from the insurance company as to payment or refusal of the claim thereof, TMB will institute reasonable, necessary procedures to continue collection of the account as TMB reasonably deems necessary. Accounts with outstanding balances remaining after the insurance company and/or third-party payor determines benefits payable will be billed directly to the patient/guarantor by TMB or as dictated by the Client. Medicare and Medicaid claims will be filed to the appropriate state and or federal agency within 48 hours' receipt via Gateway EDI interchange and will be processed by TMB until all revenue resources are collected or eligibility and payment options are exhausted.
 - C. Direct Patient Billing. TMB will mail an initial statement of account to all patients/guarantors without insurance and to patient/guarantor after receipt of denial or partial payment from the insurance company or third-party payor. Billing will only occur after TMB receives the necessary billing data via ePCR. After the initial statement, the account will be entered into a thirty (30) day billing cycle. After an account reaches ninety (90) days without activity, that account balance will be cleared and TMB will no longer bill the account with the following exceptions:
 - i. Patients are billed by TMB as follows
After the call is received via ePCR from the company, TMB will send the patient a letter of fact stating that TMB is billing the primary payer source (when available) for the patient and the call conducted by the company.
 - ii. Patient Pay Accounts
For patients without any additional secondary source of payment, TMB will send the patient a bill and statement at 30-day, 60-day, and 90-day intervals. TMB will continue to provide information to the patients and collect the bills beyond 90 days so long as the patient at issue is paying toward the bill or otherwise communicating with TMB about the bill.

Any patient that requests to pay the balance of their account over a specific time frame will continue to receive monthly statements to reflect payments made on their account balance.

- iii. Estates
For accounts wherein the patient is or becomes deceased prior to or during the billing of the account, TMB will file a proper claim for the account on behalf of Client in the estate file of the decedent, and shall promptly notify Client of any and all denials or rejections made by or on behalf of the estate, and shall promptly file a satisfaction of the claim upon receipt of payment.
 - iv. Commercial Insurance and Medicare
After receipt of payment from a primary payor source, TMB will then bill the patient any balance that exists on the account. TMB will bill the patient at 30-day, 60-day, and 90-day intervals or until the account balance is settled. Patients that request a payment plan will be reasonably accommodated on a case-by-case basis. Statements will be sent monthly to patients paying balances over time.
 - v. Medicaid
Since Medicaid, under the applicable governing state law, requires the biller to accept payments made under the Medicaid program as payment in full, TMB will not legally bill the balance of the account if any Medicaid payment is made on the account. TMB will bill for all other noncovered services directly to the patient.
- D. Provided Materials. TMB will furnish and provide all material needed for billing accounts, including but not limited to insurance claim forms, patient mailers, paper supplies and postage.
- E. Deposits. TMB will direct deposit all payments received by TMB on behalf of the Client in a bank account established by Client. Deposits will be made into the Client's account on a daily basis. TMB's access will be limited to the Client's account for the sole purpose of depositing monies into the Client's account. TMB will have no authority over any accounts maintained by the Client. In the event the Client's bank does not accept direct deposits, TMB will send a check directly to the Client or entity authorized by the client to receive and make deposits.
- F. Accounts Receivable Management Reports. TMB will provide the Client with accounts receivable management reports on a monthly basis or more frequently as the Client may reasonably request. The monthly reports will be submitted to the Client no later than the 10th day of the following month via email to the address from which TMB receives the ePCR data and such other email addresses as NGMT may reasonably request from time to time. The reports shall include the following information:
- i. Monthly financial report reflecting the month-to-month and year-to-date transaction summaries, including but not limited to amounts billed, paid and adjustments;

- ii. Check registry reports reflecting a list of revenues received and totals; and
 - iii. Deposit tickets for all deposits made into the Client's account.
- G. Return of Non-Collectable Accounts TMB will provide the Client with a monthly list of all accounts that TMB will no longer bill pursuant to the terms of this Agreement and will return all documentation regarding such accounts to the Client simultaneously with the corresponding accounts receivable management report.
- H. Sub-Contract TMB may, in its sole discretion, subcontract any work that it deems appropriate or necessary to third parties. TMB agrees to assume all responsibilities for the work of the subcontractor and the fees charged by the subcontractor. TMB will not subcontract any portion of the billing operations and will continue to conduct all billing operations in house.
- I. Disclaimer of Warranties With the exception of the express representations and warranties set forth in this Agreement, TMB disclaims without limitation any and all promises, representations and warranties (express, implied, and/or statutory) pertaining to any billing/collection services furnished hereunder. Additionally, TMB makes no representation or warranty as to the amount of collections to be realized as a result of the Services and does not guarantee a specific collection percentage. TMB does not guarantee the timing of any payments that may be received as a result of the Services, but warrants and represents that it will diligently pursue the collection of such amounts as required under this Agreement.
- J. PTAN and NPI Numbers TMB will process all Medicare, Medicaid and commercial insurance paperwork required to receive the Client's PTAN and NPI numbers and connect those numbers to any and all electronic submission requirements that TMB uses to submit Client's claims. The Medicare PTAN numbers and change of address requests for new billing services may take up to 60-90 days to be processed by the appropriate Medicare sources. After the PTAN numbers or change of address is received TMB will process the paperwork to connect Client's PTAN number to TMB's submitter ID in order to submit all claims electronically and this process may take up to an additional 15 days. Medicare payments are received via direct deposit to Client's account approximately 14 days after the call and all supporting paperwork are submitted to TMB.

IV. CLIENT'S RIGHTS, DUTIES & OBLIGATIONS

8. During the term of this Agreement, Client agrees that TMB will be the sole and exclusive provider of the Services to Client and Client will not enter into any other agreements or arrangements concerning the billing or collection of such accounts subject only to Paragraph 8(K) below. Failure to comply with this provision will constitute a breach of the Agreement and will be grounds for immediate termination of this agreement. This Agreement is subject to the following conditions:

- A. Provide Information. Client agrees to provide all necessary documentation for billing and claims processing including, but not limited to, the following:
- i. All information as required from time to time by TMB to process accounts for services rendered by the Client including name, address, date of birth, and insurance information;
 - ii. Client will install and operate ePCR, which will be made available to Client at no cost by TMB, and will submit all requested information to TMB via ePCR;
 - iii. Client agrees to keep all necessary information to support third party claims, Medicare waivers, and medical authorization releases on file in accordance with state and federal regulations. The Client also will notify TMB in the event required signatures are not obtained with each data file submission;
 - iv. Client shall retain and be responsible for clarifying or obtaining any additional information reasonably or legally necessary for billing claims/patients, including but not limited to hospital records, insurance documents, patient instruments, and such other information required by ePCR or applicable law;
 - v. Client shall promptly notify TMB of any change in Client's ownership or officers;
 - vi. Client shall promptly notify TMB of any changes to Client's inventory of vehicles, either through the addition of new vehicles or through the disposition of vehicles;
 - vii. Client shall promptly notify TMB of any change of address for Client; and
 - viii. Any additional information reasonably requested by TMB to process/support a claim. To the extent possible, any such information will be submitted by Client to TMB within ten (10) days of written request by TMB for the same.
 - ix. Client acknowledges and agrees that TMB shall have no obligation to commence collection activities on an account until Client has provided to TMB all of the information required pursuant to this Section 8(A). TMB may, in its sole discretion, elect to commence collection activities on an account prior to receiving all of the information required under this Section 8(A), provided that any such effort comports with all applicable law.
- B. Transmission of Data. Client agrees to email all data collected by ePCR within seventy-two (72) hours of receipt. The Client shall immediately notify TMB should the transmission of the data be delayed for reasons beyond the Client's control together with the projected time in which the data will be transmitted.
- C. Limited Power of Attorney. (See Addendum A) Client hereby authorizes TMB to sign on its behalf all forms and documents necessary for reimbursement to the Client. TMB is appointed as the agent of Client under this Agreement solely for the express purposes

of this Agreement relating to billing and receiving payments and related mail, receiving and storing documents, and communicating with hospitals and other entities to facilitate its duties. TMB shall have no authority to pledge credit, contract, or otherwise act on behalf of Client except as expressly set forth herein or approved in writing hereafter by Client.

- D. Address Changes. Client agrees to make or allow TMB to make necessary address changes in order that payments and correspondence relative to billing activities may be sent directly to TMB's mailing address.
- E. Signing of Forms. Within the context of paperwork required by a payor source and meeting all applicable laws, Client agrees to sign all forms that are required by Medicare, Medicaid, Champus and any other insurance carriers or payers necessary for TMB to perform the Services. In addition, Client agrees to sign any forms related to electronic payment.
- F. Copyrighted Materials. Client agrees and understands that TMB retains all ownership interest and all rights to the all software owned by TMB. In the event of termination, expiration or breach of this Agreement, Client agrees to immediately return any software provided under the terms of this Agreement to TMB, within thirty (30) days. Client shall not make any copies of software provided by TMB. TMB shall, however, provide Client with the means to view, copy, save, and print all records created by TMB during the term that relate to Client and will continue to provide such means after the termination of the Agreement.
- G. Performance. Both parties understand and agree that the obligation of the other party to perform under this Agreement is conditioned upon their own timely compliance with its terms and conditions. In the event either party breaches any such term or condition, or causes any such term or condition to be breached, and the same has not been remedied after the written notice and time has passed pursuant to Section IV has been provided to the breaching party by the non-breaching party, the obligations of the non-breaching party to perform under this Agreement shall automatically terminate, and that party shall have no further liability or obligation to the breaching party.
- H. Reimbursement. Client shall reimburse TMB for reasonable third-party costs and third-party expenses that TMB incurs to search, restore, compile, photocopy, or otherwise reproduce and deliver information, data or documents pertaining to Services provided under this Agreement whether requested by the Client or its agents and representatives, provided that, before incurring such third-party costs or expenses, TMB must obtain Client's advanced approval of the same. All reimbursements required to be made under this paragraph shall be made within thirty (30) days of Client's receipt of invoice for the same from TMB. TMB shall exercise its best efforts to limit the costs associated with any activities under this paragraph for which TMB may seek reimbursement from Client.
- I. Direct billing – Ambulance Services for Stand-By events
During the term of this Agreement, the Client may bill directly to the source for stand-by services provided to a customer at a flat-fee rate. These services may include but is not limited to events, festivals, sporting events, local racing facilities, or any other activity where Client provides a stand-by service. These services may be billed by

Client without informing TMB, and TMB will not be owed any compensation for these services, either directly or indirectly.

- J. TMB Discretion - Following all applicable local, state and federal law, TMB will make final determination on the legality of submitting all transports for reimbursement. Client understands, acknowledges and agrees that there may be accounts assigned to TMB pursuant to this Agreement for which TMB determines, in its sole discretion, that collection services are not warranted. In the event that TMB makes such a determination about an account, TMB will return the account to the Client, so advise Client in writing. TMB will provide a written explanation for their refusal if requested by the Client within one week of their request. TMB will have no obligation to perform any collection services with regard to the returned account and Client will be free to use any other means and services to collect said account. Any additional services requested by Client of TMB not explicitly defined within this Agreement will be considered to be separate and apart from this Agreement and subject to negotiation and additional fees for services rendered, provided no such additional fees shall be charged to or incurred by Client without Client's additional written consent.

V. MUTUAL RIGHTS, DUTIES & OBLIGATIONS OF THE PARTIES

9. The following rights, duties and obligations apply to the Parties:
- A. Compliance with local, state and federal regulations. The Parties agree to comply with all applicable local, state and federal laws, rules and regulations.
- B. [Reserved.]
- C. Record Retention. The Parties agree that TMB shall retain, for such period(s) of time as required by applicable law and in no circumstance less than seven (7) years, all documents and records related to this Agreement and the Services provided hereunder. TMB shall have the right to disclose such documents and records to governmental authorities as required by law. This section shall survive the expiration or termination of this Agreement. In addition to any other provision of this Agreement providing that such documents or records shall be returned to Client following any termination hereof, TMB shall exercise good faith efforts to offer to deliver all such documents and records to Client before it finally disposes of the same. Client will pay the actual, reasonable costs incurred by TMB in connection with the copying or delivery of such documents and records in the event that Client chooses to accept them.
- D. Patient Confidentiality (HIPAA). The Parties agree that TMB may be considered a "business associate" of Client under the Health Insurance Portability and Accountability Act of 1996 and its accompanying regulations (HIPAA) and therefore agree to execute the Business Associate Agreement (the "BAA") in the form attached hereto as Exhibit "1". This Agreement is contingent on the Parties executing the BAA. The Parties agree to abide by the terms as set forth in the BAA.
- E. Confidential Information. The Parties acknowledge that the Confidential Information (as hereinafter defined) of each Party is of substantial value and that its value may be destroyed by the disclosure thereof to a third party not contemplated under this Agreement. Accordingly, the Parties, for themselves and their respective employees and agents, covenant and agree only to the extent permitted by law, that they will treat

and hold as private all Confidential Information of the other Party and that they will not, without the express written consent of a duly authorized officer of the other Party, divulge, furnish or make accessible to anyone, or otherwise disclose, directly or indirectly, any Confidential Information. Additionally, the Parties, for themselves and their respective employees and agents, covenant and agree only to the extent permitted by law, that they will refrain from using any of the Confidential Information except in connection with the performance of their respective obligations under this Agreement, and deliver promptly to the other Party or destroy, at the request and option of such Party, all tangible embodiments (and all copies) of Confidential Information in its possession. To the extent allowed by law, the term "Confidential Information" as used herein may include, but is not limited to, Trade Secrets (as hereinafter defined), any and all proprietary information, information not made available to the public about sales, costs, pricing, marketing, ideas, problems, developments, research records, technical data, computer programs, processes, plans for product or service improvement and development, business and strategic plans and methods, lists of patients, customers or clients, expirations, financial information, forecasts, patient, customer or client records, and any other information concerning the Parties, their businesses, affairs, shareholders, officers and employees that is not already generally available to the public and regardless of its form of medium and is labeled as confidential information when provided by TMB to Client.

The term "Confidential Information" does not include: (i) information which is or becomes publicly available other than as a result of acts by the receiving Party in breach of this Agreement, (ii) information which is disclosed to the receiving Party by a third party on a non-confidential basis without violation of this Agreement or similar confidentiality agreement, or (iii) information which is deemed within the sole discretion and opinion of applicable legal counsel to either party to be required to be disclosed in compliance with applicable laws or regulations, or by order of a court or other regulatory body of competent jurisdiction.

In the event that either Party, its employees or agents, are requested or required (by oral question or request for information or documents in any legal proceeding, deposition, interrogatory, subpoena, or similar process) to disclose any Confidential Information, such Party, its employees or agents, will notify the other Party promptly in writing of the request or requirement so that such Party may seek an appropriate protective order or waiver in compliance with the provisions of this Section 5(E). If, in the absence of a protective order or the receipt of a waiver hereunder, a Party, its employees or agents are, on advice of counsel, compelled to disclose any Confidential Information to any legal tribunal or other third-party or else stand liable for contempt, such Party, its employees or agents, may disclose the Confidential Information to the tribunal or such other third-party; provided, however, that such Party, its employees or agents, shall, at the request of the other Party, attempt in good faith to obtain an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as the other Party shall designate. Such Party's good-faith efforts will not, however, require in any event that that Party file a motion for protective order with the tribunal, attempt to quash a subpoena, object to a deposition or interrogatory, or otherwise incur any material expense in connection with its attempt to protect the confidentiality of the other Party's Confidential Information.

The provisions of this section labeled Confidential Information shall survive the expiration or other termination of this Agreement. The complete terms and conditions of this Agreement shall not be deemed or considered to be confidential information.

- F. Cooperation. TMB and Client covenant and agree that they will cooperate and work in good faith with each other and will not commit any acts or omit any acts that might tend to obstruct either Party in performing its duties under this Agreement.

- G. Within 72 hours of Client's receipt of a payment made directly to Client on an account that is covered by this Agreement, Client will report such payment (a "Direct Payment"), in writing, to TMB. For clarity, the foregoing sentence does not apply to any payment included as part of any deposit initiated by TMB under Paragraph 7(E) above. Client agrees that TMB will be entitled to receive from Client its standard collection fee with respect to any Direct Payment.

VI. TERMINATION OF AGREEMENT

- 10. This Agreement may be terminated as follows:
 - A. Without limiting either Party's right to terminate for breach, either Party may terminate this Agreement without cause and in its discretion with thirty (30) days written notice. Compensation for work performed will be paid using the methods included herein.
 - B. By written notice by either Party in the event that the other Party has defaulted under the terms of this Agreement and shall have failed to remedy such default within thirty (30) days (ten (10) days for a payment default) after written notice thereof from the non-defaulting Party unless such cure shall reasonably take a longer period and the defaulting Party provides assurance that it is attempting to timely cure;
 - C. Funding. In accordance with paragraph 37, this Agreement shall automatically terminate should funding cease to be available.
 - D. By Client in accordance with Paragraph 5 above; or
 - E. Notwithstanding any provisions contained herein to the contrary, this Agreement may be immediately terminated by either party, with no further obligation (except as to those provisions which expressly state that they survive the termination of the Agreement), if the other party is charged by any governmental regulatory body or law enforcement agency with engaging in any illegal conduct or committing any act which may be classified as a felony or a misdemeanor under state or federal law.
 - F. In the event that this Agreement is terminated, the Parties agree that TMB will return to the Client all of Client's property including financial records, statistical information, files and patient medical records and accounts in a reasonable time period and without charge therefore.

VII. INDEMNIFICATION

- 11. TMB and Client each agree to and do hereby assume responsibility for their respective acts or omissions which may give rise to any claim arising out of this Agreement. TMB and Client, to

the fullest extent allowed by North Carolina law, shall indemnify and hold harmless the other Party and the other Party's affiliate, subsidiary and parent corporations, partnerships and limited liability companies, and its and their officers, directors, shareholders, partners, members, attorneys, predecessors, successors, representatives, insurers, assignees, agents, employees, executors, administrators and heirs, from and against all claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees with respect thereto) arising out of or attributable to (i) such Party's acts or omissions and (ii) any misrepresentation or breach of any agreement, representation, warranty or covenant made herein by such Party.

12. Additionally, each party shall indemnify and hold harmless the other party and its affiliate, subsidiary and parent corporations, partnerships and limited liability companies, and its and their officers, directors, shareholders, partners, members, attorneys, predecessors, successors, representatives, insurers, assignees, agents, employees, executors, administrators and heirs, from and against all claims, liabilities, losses, costs, penalties and expenses (including reasonable attorneys' fees with respect thereto) arising out of or attributable to any breach or violation of any Medicare rules or regulations by such party or its affiliate, subsidiary and parent corporations, partnerships and limited liability companies, and its and their officers, directors, shareholders, partners, members, employees and/or agents.
13. The Party to be indemnified hereunder (the "Indemnified Party") shall notify the other Party (the "Indemnifying Party") in writing concerning the nature of any claim for indemnification made hereunder within thirty (30) days after receipt of knowledge of the facts upon which such claim is based, time being of the essence, setting forth specifically the facts giving rise to the alleged claim, the basis for the claim and the amount of liability asserted to the extent known.
14. The Indemnifying Party shall have the right to conduct the defense of any claim or action commenced by a third party against the Indemnified Party with respect to which Indemnified Party has asserted a claim to receive indemnification and in which Indemnifying Party has an indemnification obligation, provided that the Indemnifying Party must so elect by notice to Indemnified Party within thirty (30) days after receipt of written notice thereof from the Indemnified Party. In defending, compromising or settling any such claim or action, the Indemnifying Party shall exercise due regard for the continuing business interests of the Indemnified Party and shall not settle any claim without the prior written consent of the Indemnified Party if the Indemnified Party would be adversely affected thereby. In the event that the Indemnifying Party shall not elect to defend any such third-party claim or action, the Indemnified Party shall use commercially reasonable business judgment in defending, settling or compromising such claim or action and shall notify the Indemnifying Party prior to settling or compromising any such claim or action. The Indemnified Party shall cooperate fully with the Indemnifying Party in defense of all such claims or actions which the Indemnifying Party elects to defend, and the Indemnified Party shall have the right, at its own cost and expense, to employ counsel to assist in such defense, which counsel may consult or confer with and advise counsel or other representatives of the Indemnifying Party with respect thereto. The cooperation of the Indemnified Party is a condition to the Indemnifying Party's continuing indemnification obligation hereunder and the Indemnified Party's cooperation shall include making available to the Indemnifying Party the time and assistance of its officers, directors, owners and employees, and providing access to and the right to make copies of and excerpts from all pertinent documents, books and records to the extent they are in the Indemnified Party's possession or within its control.
15. The Indemnified Party shall use commercially reasonable business judgment in defending and minimizing total costs and damages with respect to any claim for which the Indemnifying Party

may become responsible hereunder prior to making a claim against the Indemnifying Party hereunder.

16. The provisions of the Indemnification Section of this Agreement shall survive the expiration or other termination of this Agreement.

VIII. MISCELLANEOUS

17. Entire Agreement. Except as otherwise expressly stated herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all other agreements, whether oral or written, regarding the same. The terms of this Agreement are contractual, not merely recital, and are the result of negotiation among the Parties. This Agreement has been carefully read by the Parties. The contents of this Agreement are known and understood by all, and it is freely and voluntarily executed by each Party. Each person executing this Agreement in a representative capacity has the authority to execute the Agreement and bind the Party it represents to such Agreement. No Party relies or has relied on any statement, representation, omission, inducement, or promise of any other Party in executing this Agreement, except as expressly stated in this Agreement
18. Modifications. This Agreement can only be modified by a written agreement duly signed by authorized representatives of TMB and Client, and variances from or addition to the terms and conditions of this Agreement in any order or other writing will be of no effect. Moreover, in order to avoid uncertainty, ambiguity and misunderstandings in their relationships, the Parties covenant and agree not to enter into any oral agreement or understanding inconsistent or in conflict with this Agreement; and the Parties further covenant and agree that any oral communication allegedly or purportedly constituting such an agreement or understanding shall be absolutely null, void and without effect.
19. Headings. All headings are inserted for convenience of the Parties and do not define or reflect the contents of the specific terms and conditions, nor shall any headings be used in construing the meaning of same within this Agreement.
20. Force Majeure. The failure by either party to any extent to perform under this Agreement, in whole or in part resulting from causes beyond the reasonable control of such party shall not render such party liable in any respect, nor be construed as a termination of this Agreement, nor work an abatement of compensation due hereunder, nor relieve the other party from the obligation to fulfill any term or condition herein.
21. Assignability. Neither Party may assign this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld.
22. Waiver. Any waiver by any Party of any breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or of any other provision of this Agreement. Failure by any Party to enforce any of the terms, covenants or conditions of this Agreement for any length of time or from time to time shall not be deemed to waive or decrease the rights of such Party to insist thereafter upon strict performance by the other Party.
23. Severability. The Parties intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent jurisdiction determine that the scope of any provision is too broad to be enforced as written, the Parties intend that the

court should reform the provision to such narrower scope as it determines to be enforceable. If, however, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future law, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance, except to the extent such remaining provisions constitute obligations of another Party to this Agreement corresponding to the unenforceable provision.

24. Governing Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with North Carolina law. Any claim or dispute hereunder shall be made or brought only in the Superior Court of Pitt County, North Carolina, or the United States District Court for the Eastern District of North Carolina. Each party irrevocably submits to the personal and subject-matter jurisdiction of such courts and agree that venue in either court would be proper and convenient.
25. Independent Contractor. In performing the Services under this Agreement, TMB's relationship with Client shall be that of an independent contractor. No partnership, joint venture, agency or employer-employee relationship is intended or shall be created between the Parties. TMB and its employees shall be free to dispose of such portion of their entire time, energy and skill during times in which they are not required to provide Services hereunder to Client, in such manner and in pursuit of such activities or business ventures as TMB and its employees shall choose. TMB shall not be entitled to participate in any plans, arrangements or distributions of Client pertaining to or in connection with any pension, stock, bonus, profit sharing or other fringe benefit plan. Client shall have no right to control the specific method or manner in which TMB performs the Services hereunder.
26. Presumptions. Neither this Agreement nor any provision contained herein shall be construed against any Party due to the fact that this Agreement or any provision contained herein was drafted by said Party.
27. Advice of Counsel. Each Party represents and warrants to the other Party as follows: (i) such Party has been advised to obtain the advice of independent legal counsel in connection with this Agreement, (ii) such Party has had the opportunity for representation in the negotiation of this Agreement by counsel of its choice, (iii) such Party has read this Agreement and understands the same, and (iv) such Party has, to the extent its desires, had the terms of this Agreement fully explained by its counsel and that it is fully aware of the contents of this Agreement.
28. Notices. Any notice provided for or permitted to be given under this Agreement by any Party to any other Party must be in writing, and may be delivered by depositing same in the United States mail, addressed as provided for below, postage prepaid, registered or certified mail, return receipt requested, or by delivering the same in person to such Party, or by overnight courier or other commercial delivery service. Notice personally delivered shall be deemed received when actually received by the addressee; notice deposited in the mail in the manner described above shall be deemed received three (3) days after mailing; and notice delivered by courier or other delivery service shall be deemed received on the day and time guaranteed by the delivery service. For purposes of notice, the addresses of the Parties shall be as set forth opposite their respective names below or at such other addresses as designated in a written notice, given as provided herein, to all other Parties.

TMB:
Colleton Software
108 East H Street
Erwin, NC 28335
Attention: Daniel Brian Gurkin, President

Client:
City of Greenville, North Carolina
City Manager
PO Box 7207
Greenville, NC 27835

With a copy to: City Attorney

29. Cumulative Remedies. All rights and remedies of a Party hereunder shall be cumulative and in addition to such rights and remedies as may be available to a Party at law or in equity.
30. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
31. Survival. Any provision of this Agreement which by its terms may not be fully executed prior to the expiration or other termination of this Agreement will survive the expiration or other termination of this Agreement.
32. City Manager's Authority. To the extent, if any, the Buyer has the power to suspend or terminate this contractor the Consultant/Contractor's services under this Agreement, that power may be exercised by the City Manager or their designee.
33. Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the Buyer from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
34. E-Signature. The parties hereto consent and agree that this agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand written signature. The parties further consent and agree that (1) to the extent a party signs this document using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated for purposes of validity, enforceability and admissibility, the same as hand-written signatures.
35. Non-Appropriation of Funds. TMB acknowledges that funding for this Agreement is conditioned upon appropriation and allocation by the governing body of sufficient funds to support the activities described in this Agreement. By written notice to TMB at the earliest possible date, Buyer may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the Buyer's budget, funding or financial resources. Such termination is in addition to the Buyer's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: The Buyer will be liable only for payment in accordance with the terms of this

Agreement for Work completed and expenses incurred prior to the effective date of termination. The TMB will not be compensated for any other costs in connection with a termination for non-appropriation. The TMB will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits. TMB shall be released from any further obligation to provide Work affected by such termination; and Termination shall not prejudice any other right or remedy available to the Buyer.

36. Dispute Resolution. In the event of any dispute arising out of or relating to this agreement, the affected Party shall notify the other Party, and the parties shall attempt in good faith to resolve the matter within thirty (30) days after the date such notice is received by the other Party (the "Notice Date") prior to exercising their rights under law.
37. Insurance. TMB shall keep in force during the duration of this Agreement all customary forms of insurance, including comprehensive general liability (with a limit to be no less than one million dollars \$1,000,000.00), or any additional amount agreed upon by the City, and shall ensure that all TMB employees are protected by workers compensation as required by law. Certificates of such insurance containing a non-cancellation without notice clause and naming the City as an additional insured will be furnished to the City prior to the start of services as contemplated herein.
38. Minority/Women Owned Business Enterprise. The City has adopted an Affirmative Action and Minority and Women Business Enterprise Plan (M/WBE) Program. The TMB attests that it also shall take affirmative action to insure equality of opportunity in all aspects of employment and to utilize MWBE suppliers of materials and labor when available. TMB further agrees that in the performance of these services that it will not discriminate in its hiring, employment, and contracting practices with reference to political affiliation, genetic information, sexual orientation, age, sex, race, color, religion, national origin, handicap or disability.
39. Dispute Resolution. In the event of any dispute arising out of or relating to this agreement, the affected party shall notify the other party, and the parties shall attempt in good faith to resolve the matter within thirty (30) days after the date such notice is received by the other party (the "Notice Date") prior to exercising their rights under law.
40. Title VI Nondiscrimination. During the performance of this contract, the TMB, for itself, its assignees, and successors in interest shall comply with the requirements of Title VI of the Civil Rights Act of 1964 and other pertinent Nondiscrimination Authorities, as cited in Attachment A to this Agreement.
41. Conflicts of Interest.
 - a. TMB is aware of the conflict of interest laws of the City of Greenville, of the State of North Carolina (as set forth in North Carolina General Statutes), and agrees that it will fully comply in all respects with the terms thereof and any future amendments.
 - b. TMB covenants that no person or entity under its employ, presently exercising any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with the City. Consultant/Contractor further covenants that, in the performance of this Agreement, no person or entity having such conflicting interest shall be utilized in respect to the Scope of Work or services provided

hereunder. Any such conflict of interest(s) on the part of Consultant/Contractor, its employees or associated persons or entities shall be disclosed to the City.

- c. TMB shall disclose any possible conflicts of interest or apparent improprieties of any party under or in connection with the Legal Requirements, including the standards for procurement.
 - d. TMB shall make any such disclosure to the City in writing and immediately upon the Consultant/Contractor's discovery of such possible conflict. The City's determination regarding the possible conflict of interest shall be binding on all parties.
 - e. No employee, agent, TMB, elected official or appointed official of the City, exercising any functions or responsibilities in connection with this Agreement, or who is in a position to participate in the decision-making process or gain inside information regarding activities, has any personal financial interest, direct or indirect, in this Agreement, the proceeds hereunder, the Project or TMB, either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.
42. Iran Divestment List. TMB does hereby certify that it is not a person identified on the Iran Divestment List as defined in North Carolina General Statutes 147-86.58.
43. E-Verify. TMB shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall sign the Owner's Affidavit certifying compliance therewith as requested.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates written below and the undersigned hereby warrants and certifies that they have read the Agreement in its entirety, understand it and agree to be bound by all the terms and conditions stated herein. Further, they warrant and certify they are authorized to enter into this Agreement and to execute same on behalf of the parties as the act of the said parties.

SIGNATURE OF CITY

CITY OF GREENVILLE:

BY:

SIGNATURE

TITLE

DATE

APPROVED AS TO FORM:

BY:

City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY:

Byron Hayes, Director of Financial Services

DATE:

ACCOUNT NUMBER:

PROJECT CODE (IF APPLICABLE):

[Vendor Signature Page Follows]

SIGNATURE OF VENDOR

FULL NAME OF VENDOR

(e.g., Limited Liability Company, Organization, Individual Doing Business Under a Firm Name)

**TARHELL MEDICAL BILLING, INC. D/B/A COLLETON
SOFTWARE:**

BY: _____
SIGNATURE

TITLE

DATE

Attachment A

Title VI of the Civil Rights Act of 1964 Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's

obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including

sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based

on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure

compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Change Order #1 for the 2023 Stormwater Repairs Project

Explanation: The Contract for the 2023 Stormwater Repairs Project and approval of Task Order #3 for Construction Engineering and Inspection (CEI) and Construction Materials Testing (CMT) On-Call Contract was awarded by City Council on June 5, 2023. The contract provides for repairs and replacement of stormwater pipes, as well as cast in place lining and maintenance of underground existing stormwater pipe systems in Greenville.

As allowed by State statute, staff negotiated with Trader Construction Company of New Bern, NC, to bring the project within budget prior to City Council award. City Council awarded the contract in the amount of \$953,392.13 with an additional 15% contingency for the total amount of \$1,096,400.95. The approval of Task Order #3 for CEI services was in the amount of \$430,140.00.

Due to a recent slowdown in private development inspection workload, the Engineering Department has internal staff available to perform inspection of the project, which also provides an opportunity for cross training. This eliminates costs associated with the awarded CEI task order. Additional funds have also been identified from the recent closure of the 2022 Stormwater Repairs On-Call Contract and associated CEI task order. The combined available funds will allow staff to add locations that were negotiated out due to budget constraints back into the contract. The additional project locations and a copy of the change order are included as attachments 1 and 2, respectively. The cost to re-incorporate this scope of work is \$626,574.87.

Fiscal Note: The proposed budget for Change Order #1, including a 15% contingency, is \$720,561.10. The additional funds will be provided from funds remaining after closure of the 2022 Stormwater Repairs On-Call Contract and associated CEI task order, and the termination of Task Order #3 for CEI for the 2023 Stormwater Repairs Project.

Recommendation: City Council approve Change Order #1 for the 2023 Stormwater Repairs Project with Trader Construction Company of New Bern, NC, for the additional scope of work plus contingency in the amount of \$720,561.10.

ATTACHMENTS

- Attachment #1 - Additional Locations for 2023 Stormwater_Repairs.pdf**
- Attachment #2 - 2023 Stormwater Repairs Project CO #1.pdf**

Attachment 1

Change Order #1 - Additional Locations for 2023 Stormwater Repairs Project

- Hidden Branches Cir.
- Lawrence St.
- Cromwell Dr.
- Gooden Pl.
- Rondo Dr.
- Greenfield Blvd.
- N. Longmeadow Rd.
- Jarvis St.

Change Order

**City of Greenville
Engineering Department**

Owner [X]
Architect []
Engineer []
Contractor []
Field []

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

PROJECT:
2023 Stormwater Repairs Project

CHANGE ORDER NUMBER: 1
DATE: _____
PROJECT NUMBER: _____
CONTRACT DATE: July 11, 2023
NOTICE TO PROCEED DATE: TBD

TO CONTRACTOR:
**Trader Construction Company
P.O. Drawer 1578, 2500 HWY 70 East
New Bern, NC 28563**

CONTRACT FOR:
**City of Greenville
1500 Beatty Street
Greenville, NC 27858**

This Contract is changed as follows:

#Description and line items/quantities	Amount
This change order will add the following locations to the contract: Hidden Branches Cir., Lawrence St., Cromwell Dr., Gooden Pl., Rondo Dr., Greenfield Blvd., N. Longmeadow Rd., and Jarvis St. The additional quantities and costs for this change are included in Attachment A. These locations were included in the original bid, but negotiated out due to lack of funding. Additional funds have now been identified from closed contracts, allowing these locations to be re-incorporated into the scope of work.	
Total Cost of This Change Order	\$ 626,574.87

The Original Contract Sum was	\$ 953,392.13
Net Change by Previously Authorized Change Orders	\$ -
The Contract Sum Prior to this Change Order was	\$ 953,392.13
The Contract Sum will be increased by THIS CHANGE ORDER in the amount of	\$ 626,574.87
The New Contract Sum including this Change Order will be	\$ 1,579,967.00

Original Contract Completion Date is..... **150 Days from the NTP**

The Contract Time will be increased by (#Number) calendar days **Through June 30, 2024**

The Contract Completion Date, as of the date of this Change Order, is therefore **June 30, 2024**

ARCHITECT/ENGINEER

CONTRACTOR

OWNER

Trader Construction Company

City of Greenville

Address

Address

P.O. Drawer 1578, 2500 HWY 70 East
New Bern, NC 28563

1500 Beatty Street
Greenville, NC 27834

BY: N/A

BY: _____

BY: _____

DATE: N/A

DATE: _____

DATE: _____

Attachment A

Item	Item	Scheduled	Unit	Unit Price	Amount
No.	Description	Quantities			
1	MOBILIZATION (5% max)	1	LS	\$ 33,575.37	\$ 33,575.37
2	15" RCP CLASS III - LESS THAN 40'	24	LF	\$ 575.00	\$ 13,800.00
3	18" RCP CLASS III - GREATER THAN 40'	0	LF	\$ 580.00	\$ -
4	24" RCP CLASS III - GREATER THAN 40'	0	LF	\$ 625.00	\$ -
5	12" RCP CLASS V - LESS THAN 40'	30	LF	\$ 625.00	\$ 18,750.00
6	12" RCP CLASS V - GREATER THAN 40'	0	LF	\$ 625.00	\$ -
7	15" RCP CLASS V - LESS THAN 40'	37	LF	\$ 625.00	\$ 23,125.00
8	18" RCP CLASS V - LESS THAN 40'	0	LF	\$ 900.00	\$ -
9	18" RCP CLASS V - GREATER THAN 40'	0	LF	\$ 625.00	\$ -
10	24" RCP CLASS V - LESS THAN 40'	15	LF	\$ 1,100.00	\$ 16,500.00
11	30" RCP CLASS V - GREATER THAN 40'	0	LF	\$ 1,100.00	\$ -
12	15" HP STORM DUAL WALL PIPE	150	LF	\$ 425.00	\$ 63,750.00
13	30" HP STORM DUAL WALL PIPE	0	LF	\$ 450.00	\$ -
14	18" ALUMINUM CMP - AASHTO M196, M197	30	LF	\$ 480.00	\$ 14,400.00
15	TRENCH BOX	0	DAY	\$ 1,000.00	\$ -
16	CATCH BASIN - FRAME-GRT-HOOD (EXCL. STR)	0	EA	\$ 1,750.00	\$ -
17	CATCH BASIN (0-4')	0	EA	\$ 15,000.00	\$ -
18	BASIN WITH MANHOLE COVER (0-4')	1	EA	\$ 15,000.00	\$ 15,000.00
19	BASIN WITH MANHOLE COVER (4-10')	0	EA	\$ 22,500.00	\$ -
20	DROP INLET (4-10')	0	EA	\$ 15,000.00	\$ -
21	CONCRETE DRIVEWAY APRON	11	SY	\$ 210.00	\$ 2,310.00
22	36" VALLEY CURB & GUTTER	30	LF	\$ 105.00	\$ 3,150.00
23	CONCRETE PIPE COLLAR - NCDOT STD. DWG. 840.72	1	EA	\$ 3,500.00	\$ 3,500.00
24	24" STANDARD CURB & GUTTER	30	LF	\$ 65.00	\$ 1,950.00
25	ABC STONE	30	TN	\$ 100.00	\$ 3,000.00
26	CLASS B RIP-RAP	15	TN	\$ 175.00	\$ 2,625.00
27	#57 STONE	39	TN	\$ 55.00	\$ 2,145.00
28	SEDIMENT CONTROL STONE - #57 STONE	4	TN	\$ 85.00	\$ 340.00
29	SELECT FILL	165	CY	\$ 35.00	\$ 5,775.00
30	3" TYPE S9.5B ASPHALT SURFACE COURSE	16	TN	\$ 930.00	\$ 14,880.00
31	12" CIPP LINER GREATER THAN 50FT	372	LF	\$ 85.00	\$ 31,620.00
32	15" CIPP LINER GREATER THAN 50 LF	343	LF	\$ 135.00	\$ 46,305.00
33	18" CIPP LINER LESS THAN 50 FT	33	LF	\$ 335.00	\$ 11,055.00
34	24" CIPP LINER GREATER THAN 50 LF	281	LF	\$ 175.00	\$ 49,175.00
35	36" CIPP LINER GREATER THAN 50 LF	223	LF	\$ 350.00	\$ 78,050.00
36	CCTV PRE INSPECTION	1252	LF	\$ 10.50	\$ 13,146.00
37	CCTV POST INSPECTION	1252	LF	\$ 10.50	\$ 13,146.00
38	HEAVY PIPE CLEANING	16	HR	\$ 300.00	\$ 4,800.00
39	PROBE GROUTING/SOIL STABILIZATION	310	GAL	\$ 135.00	\$ 41,850.00
40	ROOT CUTTING	7	HR	\$ 325.00	\$ 2,275.00
41	TEMPORARY SILT FENCE	50	LF	\$ 4.25	\$ 212.50
42	GEOTEXTILE FABRIC FOR DRAINAGE - TYPE 2	20	SY	\$ 12.00	\$ 240.00
43	INLET PROTECTION	8	EA	\$ 400.00	\$ 3,200.00
44	SEEDING AND MULCHING	0.55	AC	\$ 3,500.00	\$ 1,925.00
45	SODDING	250	SY	\$ 15.00	\$ 3,750.00
46	EXCAVATION FOR GREENVILLE UTILITIES COMMISSION	23	HR	\$ 400.00	\$ 9,200.00
47	TRAFFIC CONTROL (RESIDENTIAL)	67	DAY	\$ 950.00	\$ 63,650.00
48	TRAFFIC CONTROL (COLLECTOR)	8	DAY	\$ 1,800.00	\$ 14,400.00

Change Order Amount \$ 626,574.87

APPROVED AS TO FORM:

BY: _____
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: _____ **DATE:** _____
Byron Hayes, Director of Financial Services

ACCOUNT NUMBER _____

PROJECT CODE (IF APPLICABLE) _____



City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Resolution Declaring a Special Emergency for the Temporary Repair of the Existing Metal Pipe Culvert System from Skinner Street Through the Public Works Facility at Beatty Street

Explanation: Approximately 15 years ago, the City of Greenville installed the corrugated metal storm water pipe that conveys water from Skinner Street through the Public Works facility to Beatty Street. Due to corrosive soil conditions, the pipe has deteriorated. The accelerated corrosion of the bottom of the pipe has led to the formation of sinkholes at various locations within the Public Works facility.

City staff along with W.K. Dickson (Engineering Consultant for the project) recommend a polymer injection grouting that would fill any voids that are currently present in the pipe system. Staff met with the recommended vendor, CJ Geo, on June 13, 2023 to discuss the process of the injection grouting and was assured that this would temporarily address current issues with the pipe until the replacement project is completed later next year. This would be considered an emergency situation since the pipe is deteriorating at a rapid pace and could result in pipe failure before the replacement project is complete. CJ Geo comes highly recommended by other contractors along the east coast.

CJ Geo provided a proposal on June 16, 2023 for \$257,671.43. CJ Geo was authorized to proceed and began the emergency repair on July 11 and completed the repair on July 20. The project was completed within the budget and schedule.

Fiscal Note: CJ Geo provided a proposal on June 16 for \$257,671.43. CJ Geo was authorized to proceed and began the emergency repair on July 11 and completed the repair on July 20 within the budget and on schedule.

Recommendation: Council to ratify this purchase and approve an emergency resolution for this contract

ATTACHMENTS

- [RESOLUTION - SPECIAL EMERGENCY TEMP REPAIR EXISTING METAL PIPE SKINNER THRU PW FACILITY.pdf](#)
- [WK DICKSON LETTER - SPECIAL EMERGENCY REPAIR PW SW PIPE.pdf](#)
- [SIGNED CJCEO CONTRACT - SW PIPE REPLACEMENT PROJECT.pdf](#)

A RESOLUTION DECLARING A SPECIAL EMERGENCY FOR THE TEMPORARY REPAIR OF THE EXISTING METAL PIPE CULVERT SYSTEM FROM SKINNER STREET THROUGH PUBLIC WORKS FACILITY AT BEATTY STREET

WHEREAS, the City of Greenville, NC owns and maintains a corrugated metal pipe culvert system that conveys flow from Skinner Street through the Public Works Facility located at 1500 Beatty Street; and

WHEREAS, City staff and Terracon Consultants, Inc. have completed multiple inspections of the corrugated metal pipe within the last year documenting conditions that appear to be worsening with each assessment and discovered the need to replace the existing corrugated metal pipe culvert; and

WHEREAS, since this discovery, City staff has worked closely with W.K. Dickson & Co., Inc. to develop a plan of action and design for ultimate replacement of the pipe; and

WHEREAS, on June 2, 2023, W.K. Dickson, & Co., Inc. discovered accelerated deterioration of the pipes due to water exposure and high acidity soil and identified indicators of potential failure types and provided consequences of failure conveying flow from Skinner Street through the Public Works facility to Beatty Street; and

WHEREAS, the rusting and corrosion of the bottom of the pipe ranges from severe to completely disintegrated and missing which results in flow across the sandy soil beneath the pipe, and a loss of foundation can cause the pipe to shift, deform or become misaligned; and

WHEREAS, failure to replace the corrugated metal pipe culvert system will result in catastrophic consequences, such as development of sink holes, complete collapse or a partial failure that restricts flow and causes localized flooding or parking lot damage resulting in temporary loss of use of portions of the facility and significant additional costs to the City; and

WHEREAS, the pipe will continue to rapidly deteriorate and affect the structural integrity, and W.K. Dickson, & Co., Inc. has opined to temporarily repair the deteriorated pipe system to mitigate impacts to the health and safety of the people and property; and

WHEREAS, the memorandum of findings of W.K. Dickson & Co., Inc. is attached to this resolution as Exhibit A; and

WHEREAS, City staff has continued to mitigate impacts to the health and safety of the people and property to the greatest extent possible by blocking sections of the interior roadway and parking areas at the Public Works Facility in the vicinity of the pipe; authorizing W.K. Dickson

to accelerate the completion of the design and bid documents to begin replacement of the pipe as soon as possible; and exploring temporary repairs to prevent damage and flooding; and

WHEREAS, North Carolina General Statute § 143-129(e)(2) allows for exceptions to the general statutory requirement for competitive solicitations in “cases of special emergency involved the health and safety of the people or their property; and

WHEREAS, this situation constitutes a special emergency which involves the health and safety of people and property; and

WHEREAS, the City Council finds that it is not practicable to engage in the formal procurement process due to the exigent nature and unforeseen rapid progression of the pipe’s poor condition, and an emergency repair to temporarily mitigate the pipe’s condition until replacement can occur is necessary and is in the best interest of the City; and

WHEREAS, the City is aware of the availability of a company that is qualified and reputable for these repair services, and recommends that the completion of the services should be procured on an emergency basis.

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

1. There exists a special emergency with regard to the corrugated metal pipe culvert conveying flow from Skinner Street through the Public Works facility at Beatty Street such that procurement of repair services under the emergency exception to the public bidding laws, G.S. 143-129(e)(2), for the temporary mitigation of the corrugated metal pipe culvert’s condition is necessary and in the best interest of the City. In addition, the memorandum of findings of W.K. Dickson & Co., Inc. attached to this resolution as Exhibit A, is incorporated by reference and supports the finding that there exists a special emergency with regard to the corrugated metal pipe.

2. The City Manager or their designee are authorized, empowered and directed to do any and all acts and to execute any and all documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by this Resolution, except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of the specific provisions of this Resolution.

3. That all actions and doings of officers, employees and agents of the City, whether taken prior to, on, or after the date of this Resolution, that are in conformity with and in the furtherance of the purposes and intents of this Resolution as described, including the temporary mitigation of the corrugated metal pipe culvert conveying flow from Skinner Street through the Public Works facility at Beatty Street were and are necessary to address this special emergency and therefore are excepted from the provisions of Article 8 of Chapter 143, are in all aspects ratified, approved and confirmed.

4. Any prior resolutions or parts thereof of the Council in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

5. This resolution shall take effect immediately upon its adoption.

This the _____ day of August, 2023.

City of Greenville, NC

P.J. Connelly, Mayor

ATTEST:

Valerie Shiuwegar, City Clerk

Attachment A



June 8, 2023

Mr. Kevin Mulligan, PE
Director of Public Works
1500 Beatty Street 27834
City of Greenville, NC

**RE: Public Works Facility Pipe Evaluation and Recommendations for Accelerated Schedule
20220983.00.RA**

Dear Mr. Mulligan:

As requested, WK Dickson has completed an internal walk-through of the pipe system at 1500 Beatty Street to evaluate the deteriorated pipe and describe observations, review common pipe failure types, and validate if the public works yard pipe system exhibited any issues that we could categorize as urgent or an emergency.

The enclosed memorandum provides a brief background, findings, fast-track path options, and recommendations for an accelerated schedule to complete repairs and replacement of this public works facility pipe system. WK Dickson recommends a phased approach to complete the design of a subcomponent of the overall project for a public bid phase in mid-July to begin replacement five months earlier than our current schedule. The second recommendation is to determine the optimum solution for temporary repairs to help extend the remaining function of the existing pipe system.

We appreciate the opportunity to continue advocating for the City and help provide client-centered solutions.

Sincerely,

W.K. Dickson & Co., Inc.

Scott Sigmon

Scott Sigmon, PE
Vice President & Raleigh Regional Manager

Enclosure with Attachments

720 Corporate Center Drive
Raleigh, NC 27607
Tel. 919.782.0495
www.wkdickson.com

Aviation • Water Resources • Land Development • Energy

M E M O R A N D U M



720 Corporate Center Drive Raleigh, North Carolina 27607 919.782.0495 tel.

TO: Kevin Mulligan, PE
FROM: Scott Sigmon, PE
DATE: June 8, 2023
RE: Public Works Facility Pipe Evaluation
Recommendations For Accelerated Schedule
20220983.00.RA



Background

The City has identified the need to replace the existing corrugated metal pipe culvert conveying flow from Skinner Street through the public works facility to Beatty Street. City staff and Terracon Consultants, Inc. have performed multiple inspections within the last year, documenting conditions that appear to be worsening with each assessment. Reference Terracon report number 72231040.0001 completed on March 21, 2023, and report number 72221139.0001 completed July 29, 2022, for details of the existing conditions. Public works staff monitors the condition of the pipe following each rain event.

WK Dickson completed a walkthrough of the culvert system on June 2, 2023, to confirm accelerated deterioration, investigate and identify indicators of potential failure types and provide a qualitative discussion on the likelihood and consequences of failure. The current schedule follows a standard Design, Bid, Build approach with contractor selection in October 2023, approximately five months to acquire construction materials, and construction start by the end of March 2024. This letter provides findings from the walkthrough and recommends options for a path forward to accelerate the repair or replacement of the pipe system.

Findings

Corrugated metal pipe systems usually experience several types of degradation that ultimately lead to the pipe's compromised structural integrity and failure. The following types were noted in the walkthrough:

- ***Corrosion and Deteriorated Inverts:*** Corrugated metal pipes are susceptible to corrosion. Water quality samples from the area adjacent to the pipe show high soil acidity levels, which may have contributed to the accelerated decline observed by all parties. Exposure to water and the surrounding soil has led to rusting and corrosion of the bottom of the pipe (invert) that range from severe to completely disintegrated and completely missing. We observed many locations where water flows through disintegrated inverts in the pipe, disappears through a corroded area, and reappears a few feet further down. Deterioration of the overall culvert system is greatly accelerated once the invert is gone. Reference Photos 1 and 2 for examples of corrosion and deteriorated inverts.

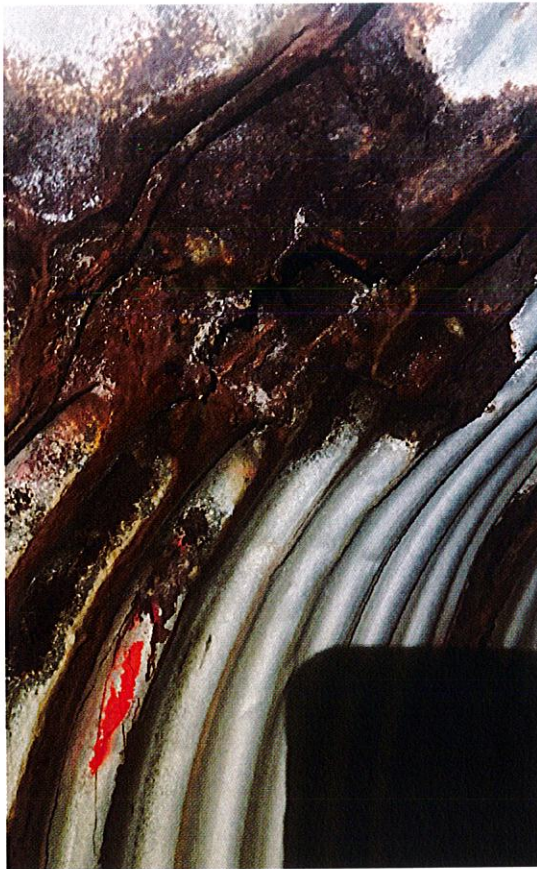


Photo 1

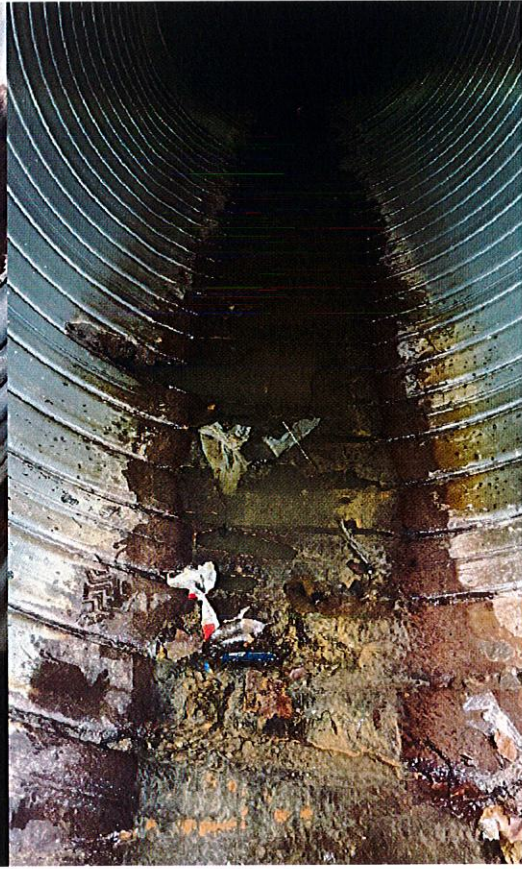


Photo 2

- **Voids:** As noted above, the active base flow of the pipe system flows through areas severely corroded or areas with missing inverts resulting in flow across the sandy soil beneath the pipe. Higher velocity flow from rain events will cause soil to erode and migrate through the culvert system resulting in scoured holes beneath the pipe. We observed several locations (Photo 3) with notable voids under the pipe system from the soil migration. This loss of foundation support can cause the pipe to shift, deform, or become misaligned.

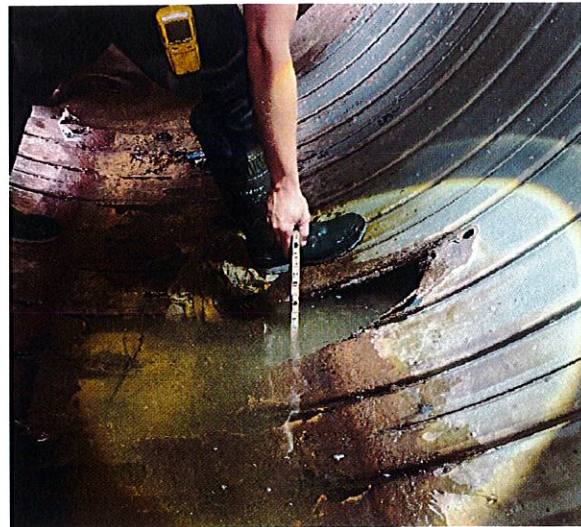


Photo 3

- **Gradual Structural Deterioration:** As the pipe ages, the combined effects of environmental factors and corrosion affect its structural integrity. The lower portions of the pipe were noticeably flexible with typical foot traffic, indicating that corrosion along pipe may be compromising its ability to withstand external forces and hydraulic pressures. Observations can include separation at pipe joints (Photos 4 and 5).

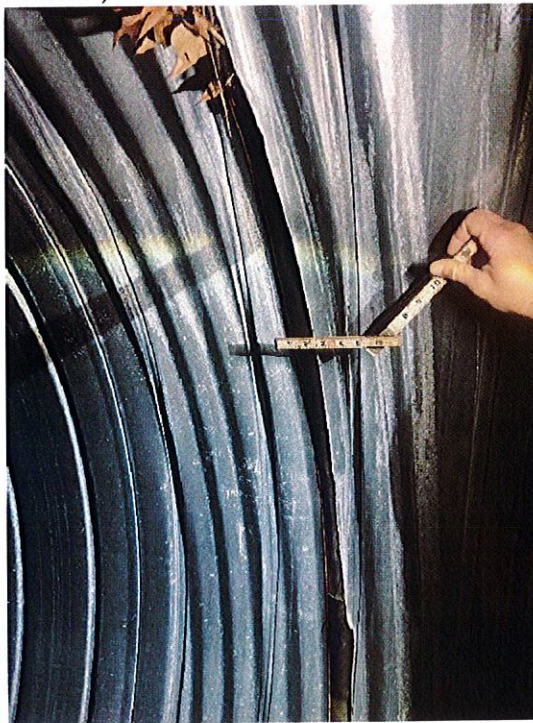


Photo 4



Photo 5

- **Structural Deformation:** With time, the weakened metal and lack of support can result in the culvert experiencing significant structural deformation. This can be observed by deformations within the pipe in several locations. An example of a pipe deformation is shown as Photo 6 for illustrative purposes; however, the exact cause for this location is undetermined. The corrugated material has already buckled and separated at the access structure in front of the fleet building. Public works staff have recently completed the needed repairs at this location (Photo 7).



Photo 6



Photo 7

Eventually, the corrosion and deterioration will reach a critical point where the pipe can no longer sustain its intended function. It may experience a catastrophic failure, such as a complete collapse or a partial failure that restricts flow and causes localized flooding or parking lot damage. Most likely, this will occur during an intense rain event or a multi-day rain event such as a tropical storm common during hurricane season. It is important to note a failure's specific sequence and timing cannot be predicted; however, field observations indicate a high likelihood of failure.

Culvert failures range from what some would consider a minor inconvenience to severe consequences, such as sinkholes and critical infrastructure flooding. Public works staff can manage small sinkholes with sheet piles and pipe repair, but sinkholes that form during the early part of a multi-day rain event could expand during the storm. This pipe system is adjacent to multiple public works facility buildings, including the central administrative office of public works and city engineering. A significant sinkhole could affect the foundation of existing buildings exposing the City to risk and significant disruption of services. The other primary consequence of failure would be a collapsed pipe blocking flow through the culvert. The result of a severely restricted flow on a conveyance system would

cause flooding to multiple buildings (See Attachment 1 for a flooding simulation for a blocked culvert scenario). This too would result in risk to public safety and services in addition to significant financial impact from damage to structures.

Fast Track Paths

The following fast-track options were considered with the resultant timeline and time savings as compared to the current schedule:

- Emergency Procurement: Sole-Source Replacement to a Contractor
 - *Begin work September 2023 – save seven months*
- Fast Track Phase 1 (1300 linear feet only)
 - *Begin work November 2023 – save five months*
- Emergency Materials Procurement with Fast Track Phase 1 (1300 linear feet only)
 - *Begin work September 2023 – save seven months*
- Emergency Procurement of Contracted Pipe Repair (1300 linear feet only)
 - *Begin work July 2023 – save nine months*

The section below provides a detailed description of each Fast Track option.

Emergency Procurement: Sole-Source Replacement to a Contractor – Not Recommended

The City plans to use federal funds from the American Rescue Plan Act (ARPA) to pay for the culvert replacement. Federal procurement laws include a clause that provides a framework for defining and executing emergency projects, allowing a municipality to sole-source all or a portion of the work to the contractor bypassing standard requirements for public bidding. The compelling argument was that the project was urgent to safeguard property and critical infrastructure. There was a clear rationale for the urgency, demonstrating the impact of inaction. However, during a team discussion with the City on Monday, June 5, 2023, there was consensus that the replacement of the project was critical and urgent but perhaps didn't reach the bar of "an emergency" and it could be challenging to ensure a process free from potential favoritism or unfair practices. Given the risk to the federal funding applicability, this approach is not recommended.

Fast Track Phase 1 (1300 linear feet only) – Recommended

The piped system spans from Skinner Street to Beatty Street. Although the entire system needs replacement, the sections critical to the function of the public works facility originate from the engineering building parking lot and extend past the transportation maintenance building for approximately 1,300 linear feet. WK Dickson is proceeding with a schedule to accelerate and complete the design for public bidding by mid-July. This fast-track schedule will improve the timeline for mobilization of a contractor and materials acquisition by five months. This recommendation for a phased approach to the project will result in a more manageable scope of work to accelerate and will minimize or eliminate the permitting phase.

Emergency Materials Procurement – Not Recommended

This option would fast-track the overall schedule by addressing an identified critical path: acquiring the necessary materials to begin construction. Since COVID, the industry has been experiencing unusually high lead times for construction materials, especially custom items such as 8'x8' precast concrete box pipe. Selecting a contractor through a public bid process is time-consuming. Following selection, a chosen contractor would need another eight to twelve weeks of lead time to order and receive the shipment of the box pipe and other long lead-time items. By purchasing the materials directly, the City could lessen the lead time for materials. We evaluated this option and did not recommend it for the following reasons:

- The team must accurately predict and order all products with a long lead time. Current lead times have high variability, so specific items with no lead time now may have an eight-week lead time in the future. Varying lead times would introduce risk to the City as any item unavailable would result in contractor delays. This could negate the anticipated gain in the schedule.
- Most contractors would have the necessary equipment to begin construction; however, the contractor selected with the public bidding phase (generally required to accept the lowest responsible bid) may need time to acquire specialty equipment, such as sheet piles or material for oversized trench protection. Not knowing which contracting company would win the lowest responsible bid introduces risk since we cannot predict their means, methods, or specialty equipment availability.
- Directly procuring materials through an emergency procurement would be very costly. From the previous logic, it may not reach the bar of "an emergency," and it would be difficult to ensure this emergency procurement would be free from scrutiny, favoritism, or unfair practices.

Emergency Procurement of Specialty Contractor only for Pipe Repairs – Recommended

The design team has evaluated full repair options, and most would reduce the pipe capacity and be very cost prohibitive. Partial pipe repairs should include filling voids and protecting the deteriorated inverts to prevent further soil loss under the pipe. These repairs should focus on cost-effective methods, point repairs where applicable, and be completed by specialty experts. Although these repairs wouldn't guarantee prevention of culvert failure, they would reduce the likelihood of failure and would buy time for completion of total system replacement.

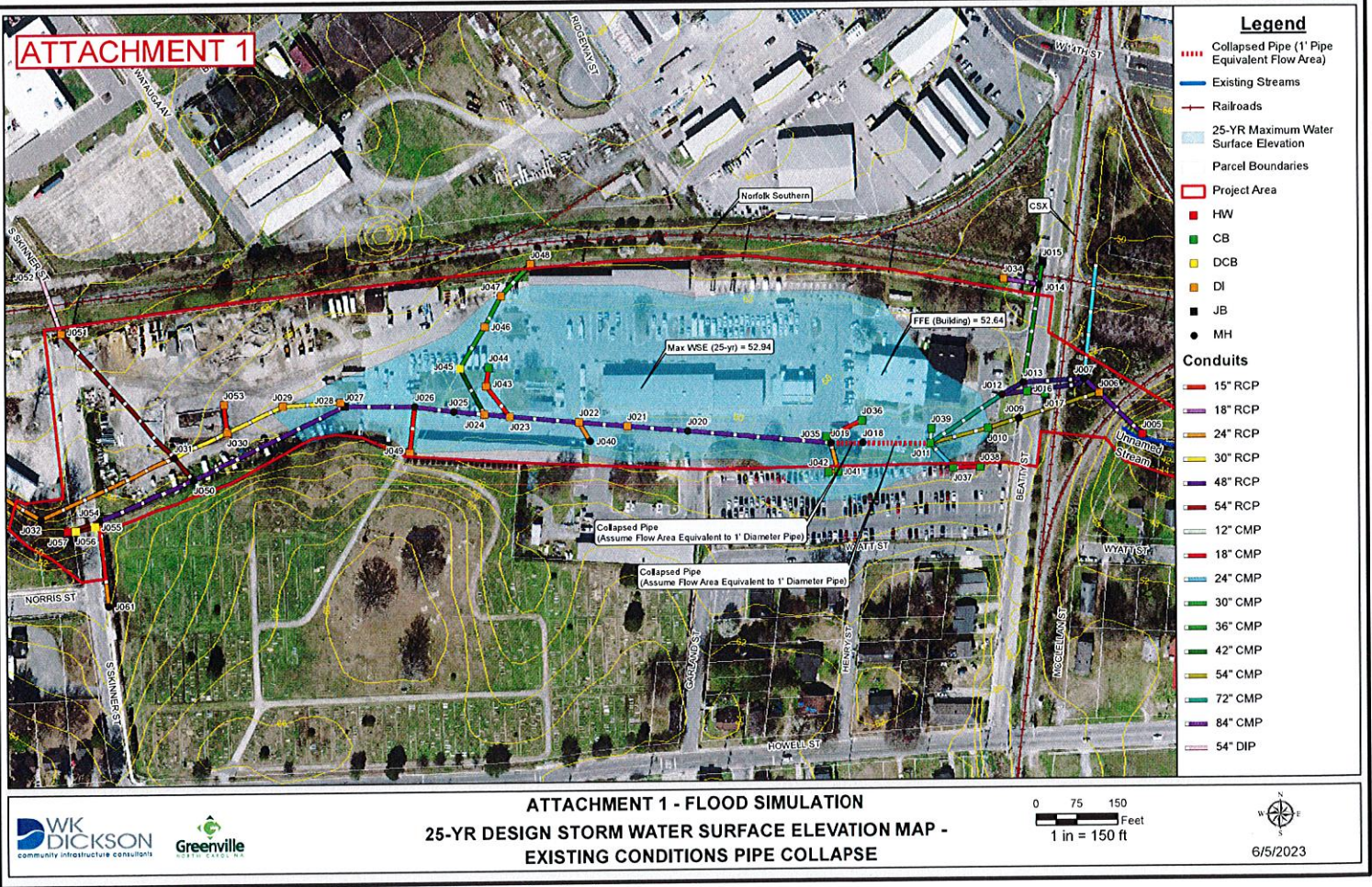
Fast-tracking a specialty contractor to begin pipe replacement is a priority. However, even if a contractor can begin work in November 2023, completing the 1,300 linear feet replacement will take seven to nine months of construction. The consequences of sinkholes or flooding in the interim could still result in temporary loss of use of portions of the facility and significant additional costs to the City. Due to the critical nature and importance of the public works facility, it would be prudent to also consider pipe repair options for the prioritized 1,300 linear feet. From the previous discussion above, pipe replacement may not

reach the bar of an emergency; however, we believe City officials should consider the risk of imminent failure and deem the existing pipe point and section failures an emergency and proceed with these repairs as such.

Recommendations

WK Dickson recommends completing a phased approach for the 1,300 linear feet for a public bid phase in mid-July. The City will ultimately need to determine if defining the repair of the pipe system is an emergency. If deemed an emergency, WK Dickson recommends an immediate search for a specialty contractor with pipe repair experience and negotiating a scope and contract to begin repairs as the next step.

ATTACHMENT 1



**ATTACHMENT 1 - FLOOD SIMULATION
25-YR DESIGN STORM WATER SURFACE ELEVATION MAP -
EXISTING CONDITIONS PIPE COLLAPSE**



Z:\Projects\Greenville\2022098300RA - Public Works Stormwater Pipe Improvement\GIS Working\MXD\ExistingConditionsPipe Collapse_25yr.mxd

Proposal



CJGEO

To: City of Greenville
 Project: 1500 Beatty St.
 Scope: CMP Repairs

CJGeo WO#: SF4269

Revision #: 1

Date: 06/16/2023

Item	Units	Unit Cost	Total
Mobilize to site, furnish and place CJGrout 35NHV61 geotechnical polyurethane grout for 1,062 linear feet of 84" CMP base grouting, as detailed below.	1	\$210,348.09	\$210,348.09
Furnish and place CJGrout 35NHV61 geotechnical polyurethane grout for an additional 493 linear feet of 84" CMP base grouting, as detailed below.	1	\$31,530.67	\$31,530.67
Furnish and place CJGrout 35NHV61 geotechnical polyurethane grout for 156 linear feet of 72" CMP base grouting, as detailed below.	1	\$8,707.38	\$8,707.38
Furnish and place CJGrout 35NHV61 geotechnical polyurethane grout for 154 linear feet of 54" CMP base grouting, as detailed below.	1	\$7,085.29	\$7,085.29
Additional CJGrout geotechnical polyurethane grout, per pound, quantity TBD	0	\$5.34	\$0.00
Deduct for material not placed, per pound below material limit TBD	0	\$1.73	\$0.00
Compounding maximum annual price escalator effective every January 1st, starting January 1, 2024. Escalator is effective for all billing occurring during the covered period, regardless of start date.		10%	\$0.00
Total			\$257,671.43

CJGeo

3402 Acorn St #202
 Williamsburg, VA 23188
 office: (800) 428-5690
 fax: (757) 566-3025

Division of Preston H. Roberts, Inc
 Virginia (H/H, RBC, CBC, LSC) #2705-106435A
 West Virginia Contractor WV048953
 Maryland MHIC 104379
 District of Columbia GC 410512000255
 North Carolina GC HWY 73978
 South Carolina GC121002
 Delaware 2013101276
 New Jersey PWC 709106

initial: _____ page 1 of 5

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KRW

This Proposal is provided by Preston H. Roberts, Inc. dba CJGeo ("CJGeo"). This Proposal is the agreement for our services, and is subject to the following Terms and Conditions and Contractor shall be subject to the City's Terms and Conditions that are incorporated by reference as if they are fully set out below, attached as Exhibit A. If there is a conflict, City's terms and conditions shall prevail.

General Terms:

Proposal Amount:

The quoted price on page 1 of the Proposal is based on customer providing CJGeo at least 14 hours of consecutive work time per calendar day. ~~A short shift charge of \$350/hour will be charged if less than 14 hours of work time provided per day.~~ Pricing is based on the stated quantities and/or scope documented in this Proposal. Any work required in addition to the quantities listed will be paid by customer at the stated unit rates. Changes of more than 10% in volume, or greater than 100CY, whichever is lower threshold, between theoretical and/or quoted volumes and actual placed volumes may result in unit price adjustments once actual quantities are determined.

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Payment:

Net 30 from invoice date regardless of whether the customer has been paid by the project owner or not. ~~Interest will accrue and be charged if payment is not received per above at the following rate: 2% per month.~~

Supply Chain Disruptions and Delays:

The parties realize and acknowledge the currently existing supply-chain conditions. CJGeo will use its best efforts to perform its work in accordance with the project schedule. The parties agree that if CJGeo is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the customer; (2) by changes ordered in the work; (3) by pandemics or communicable diseases, government orders, labor disputes, fire, unusual delay in deliveries, supply chain disruptions, unavoidable casualties, adverse weather conditions, or other causes beyond CJGeo's control; then CJGeo's time for performance shall be extended accordingly.

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Insurance & Bonding: See City's T&CS Re. Insurance, Exhibit A.

~~Quoted price is based on insurance coverage detailed in bidding COI available at www.cjgeo.com/COI. No bond is included in quoted price. If a bond is requested, it will be billed at cost, on All forms.~~

Taxes:

Quoted prices reflect CJGeo paying sales tax on project-specific materials. Quoted prices do not include capital improvement or other sales taxes on services; these will be billed separately, as required by municipality and/or state.

Customer Responsibilities:

1. Provide a safe, hazard free work environment.
2. Provide and maintain construction entrance, sanitary facilities & all erosion/sediment control.
3. Provide access for CJGeo's equipment onsite, with onsite storage/laydown area for equipment and materials.
4. Provide utility locating for all private utilities within work area/zone of influence
5. Auto & pedestrian traffic control

Safety & Compliance:

Quoted price includes up to 1 hour of attendance per CJGeo employee in site-specific safety training. No additional safety training is included in quoted price; there will be a \$55/hour charge per employee in attendance beyond 1 hour. Any fees associated with customer-mandated compliance or training programs not acknowledged in writing prior to quote date will be billed to customer. Customer shall notify CJGeo of OSHA 10 or 30 hour trained employee requirements at least 2 weeks prior to mobilization.

Permitting:

No permitting is included. To the extent permitting may be necessary CJGeo will obtain all permits, licenses and certifications prior to performance of services outlined herein. If permitting is required, any costs associated with this task will be included on final billing to the customer.

Inspections & Engineering:

CJGeo will coordinate with customer's testing agency, third party engineers, municipal inspectors, etc. to facilitate testing and inspections, but costs associated with those parties are not covered by CJGeo, unless explicitly stated in writing. If customer is providing testing, the customer must arrange a pre-mobilization call between CJGeo & testing agency at least two weeks prior to mobilization to ensure that customer's lab is prepared to properly sample & test material.

Labor & Prevailing Wages:

CJGeo is open shop. CJGeo will pay prevailing wages and provide certified payroll if required, but furnishing one-to-ones or providing any required onsite union representation are both the the customer's responsibility.

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Information Provided By Others:

Customer waives, releases and discharges CJGeo from and against any claim for damage, injury, or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to CJGeo by customer or customer's agents, contractors, or consultants, including such information that becomes incorporated into CJGeo documents.

Standard Of Care:

In fulfilling its contracting obligations enumerated in the Proposal, CJGeo shall perform its work in a good and workmanlike manner. Nothing contained in the Proposal, any attachments, or any CJGeo report, opinion, plan or other document prepared by CJGeo shall constitute a warranty or guaranty of any nature whatsoever, and any implied warranties are expressly disclaimed. Any potential provision of evaluation, suggestions, or input into the design of others shall not be construed as the provision of engineering or other professional services by CJGeo.

Consequential Damages:

Customer shall not be liable to CJGeo and CJGeo shall not be liable to customer for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

Indemnity:

CJGeo shall indemnify customer from and against any claims, damages, losses and expenses arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), in proportion to the amount of fault attributable to the negligent acts or omissions of CJGeo, compared to the proportional amount of fault, if any, attributable to other parties.

Limitation Of Liability:

~~Customer agrees to allocate certain risks associated with the project by limiting CJGeo's total liability to customer arising from CJGeo's contracting work, professional services, breach of contract, or injuries, damages, claims, losses, expenses, or claim expenses (including reasonable attorney's fees) relating to services provided under this agreement to the fullest extent permitted by law. The allocation is as follows: notwithstanding anything else in this Proposal, CJGeo's total aggregate liability to customer shall not exceed \$50,000, or the total fee received for the services rendered, whichever is greater.~~

Dispute Resolution:

~~In the event of any claims, disputes, or other matters in question arising out of or relating to this Proposal (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Any Disputes not resolved by such executive negotiation shall be subject to arbitration, which shall be conducted in accordance with the American Arbitration Association's Construction Industry Arbitration Rules in effect on the date of this Proposal, but the arbitration shall not be administered by the American Arbitration Association. The venue for the arbitration shall be the Commonwealth of Virginia. Parties shall attempt in good faith to resolve any disputes within thirty (30) days after notice prior to exercising their rights under law.~~

~~Unless prohibited by law, and notwithstanding any statute that may provide additional protection, customer and CJGeo agree that a lawsuit by either party alleging a breach of this agreement, violation of the standard of care, nonpayment of invoices, or arising out of the services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of CJGeo's work.~~

~~This Proposal shall be governed by and construed in accordance with the laws of the North Carolina Commonwealth of Virginia, excluding its choice of law rules. If either party breaches this Proposal, the breaching party shall be responsible for the other party's reasonable attorney's fees incurred in order to enforce this Proposal.~~

Acceptance of Proposal:

~~Customer's signature on this Proposal, execution of a work authorization, the submission of a start work order (oral or written), or issuance of a purchase order constitutes customer's acceptance of this Proposal and its agreement to be fully bound by the foregoing terms. If customer fails to provide CJGeo with a signed copy of this Proposal, customer agrees that by authorizing and accepting the services of CJGeo, it will be fully bound by these Terms as if they had been signed by customer.~~

Initial here: _____ page 3 of 5

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Scope-Based Conditions:

This following Conditions apply to the stated scopes of work:

Polyurethane Grouting:

Method:

CJGeo proposes to furnish & install geotechnical polyurethane grout immediately into voids adjacent to the base CMP structures. Grouting will be performed at 4 o'clock to 8 o'clock circumferential portion of the CMP structures. Quoted price includes up to 28,467 pounds of polyurethane (8,134 cubic feet). Quoted quantity is based on 6 inches of void for lower 1/2 of the circumference from 4 o'clock to 8 o'clock along 1,865 linear feet of structures. Calculations are based on 1,062 linear feet of 84 inch CMP, an additional 493 linear feet of 84" CMP, 154 linear feet of 72" CMP, and 156 linear feet of 54 inch CMP.

Material Limit:

Additional material, if required, is as quoted on first page. Deduction for material not placed, if required, is as quoted on first page. No additional material will be placed without written approval of the owner or representative.

Testing:

No independent testing, engineering or other incidentals are included.

Customer Responsibilities:

The customer shall locate all private utilities within the work area prior to arrival of CJGeo. Any non-enterable, non-pressurized pipes such as storm drains, sanitary sewers, etc., adjacent to the work area should be video inspected prior to the arrival of CJGeo. Utility markings should be capable of tolerating normal foot and vehicle traffic for the duration of repair. Repair of utilities, including those fouled by polyurethane grout, are the responsibility of the customer.

Surface Restoration:

CJGeo will patch injection holes in paved surfaces using non-shrink grout. No further surface restoration is included. CJGeo will leave the work area broom finish clean, and break off any bulk extrusions of grout off flush with surface and dispose of offsite.

When Grouting Will Be Stopped:

For active leak sealing, grouting will be stopped when leak has slowed to no more than weeper as defined by NASSCO. Surface dry condition is not guaranteed unless explicitly stated in writing. For non-active leaks/joint sealing, grouting will be stopped at extrusion of grout through the entire visually-apparent leak source (crack, joint, hole, etc.) or cross-leak communication of grout between holes through structure.

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Period of Performance:

CJGeo will commence work on or about July 10, 2023. The project duration is expected to be 2 to 3 weeks with the understanding there may be weather-related delays. CJGeo will be responsible for implementing and monitoring the schedule. Work should be completed on or before August 1, 2023 unless otherwise agreed upon.

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Reporting:

CJGeo will provide daily reports to the City, including previous day quantities on linear feet of pipe covered as well as corresponding pounds of product utilized.

Initial here: _____ page 4 of 5

For all questions regarding this Proposal, please contact:

Martha Moore
(804) 444-4215
martha@cjgeo.com

Proposal expires 30 days from 06/15/2023

Proposal Acceptance

PRESTON H. ROBERTS, INC DBA CJGEO

Acceptance of Proposal:

Please initial all pages, sign below and return to office@cjgeo.com to indicate acceptance of this Proposal and to initiate work on the project. Your signature indicates acknowledgement and acceptance of this Proposal and its attachment(s) in their entirety and agreement to be bound by their terms.

Customer's signature on this Proposal, execution of a work authorization, the submission of a start work order (oral or written), or issuance of a purchase order constitutes customer's acceptance of this Proposal and its agreement to be fully bound by the foregoing terms. If customer fails to provide CJGeo with a signed copy of this Proposal, customer agrees that by authorizing and accepting the services of CJGeo, it will be fully bound by the terms as if they had been signed by customer.

Sign: _____

Print & Title: _____

Date: _____

Please provide contact info below for your organization for this project.

Name: _____

Title: _____

Phone: _____

Email: _____

() scheduling () billing () project manager () superintendent () contracts () other: _____

Name: _____

Title: _____

Phone: _____

Email: _____

() scheduling () billing () project manager () superintendent () contracts () other: _____

Name: _____

Title: _____

Phone: _____

Email: _____

() scheduling () billing () project manager () superintendent () contracts () other: _____

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Exhibit A

**City of Greenville, North Carolina
Terms and Conditions**

By agreeing to provide services, the vendor or contractor, (referred to as the Seller or Contractor), declares that the supplies, materials, equipment, apparatus, or services will be furnished according to the following terms and conditions included below. To the extent these terms and conditions are in conflict with language or other general terms and conditions included by the Contractor in its proposal and/or quote accepted by the City, these terms and conditions below shall prevail and shall be incorporated by reference to the contractor's proposal dated June 16, 2023 and identified as CJGeo WO# SF4269 as if they are fully set out.

1. **PAYMENT AND PAYMENT TERMS:** The City agrees to compensate the Contractor for services as proposed in the Contractor's proposal dated June 16, 2023 and identified as CJGeo WO# SF4269. This amount totals \$257,671.43 (Two Hundred, Fifty-Seven Thousand, Six Hundred, Seventy-One Dollars and Forty-Three Cents). The City agrees to pay all approved invoices Net Thirty (30) days from the date received and approved. The City does not agree to the payment of late charges or finance charges assessed by the seller for any reason. Invoices are payable in U.S. funds.
2. **NON-APPROPRIATION OF FUNDS:** Contractor acknowledges that funding for this Agreement is conditioned upon appropriation and allocation by the governing body of sufficient funds to support the activities described in this Agreement. By written notice to Contractor at the earliest possible date, City may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the City's budget, funding or financial resources. Such termination is in addition to the City's rights to terminate for convenience or cause. If this Agreement is terminated for non-appropriation: The City will be liable only for payment in accordance with the terms of this Agreement for Work completed and expenses incurred prior to the effective date of termination. The Contractor will not be compensated for any other costs in connection with a termination for non-appropriation. The Contractor will not be entitled to recover any damages in connection with a termination for non-appropriation, including, but not limited to, lost profits. Contractor shall be released from any further obligation to provide Work affected by such termination; and Termination shall not prejudice any other right or remedy available to the City.
3. **TAXES:** The City of Greenville is not Tax-Exempt. Prices shown on the City's purchase orders do not include tax; however, all applicable taxes shall be paid by the City. Seller shall itemize taxes on the seller's invoice. It should be noted that the City is exempt from Federal Excise Tax except as required to be paid by law.
4. **QUANTITY:** If applicable, the specific quantity ordered must be delivered in full and will not be changed without the Purchasing Manager's consent. Any unauthorized quantity is subject to rejection and return at seller's expense.
5. **FREIGHT AND PACKAGING:** If applicable, price quotations shall include freight, transportation, shipping, handling and similar charges. Collect freight shipments will be refused. The seller shall absorb any increase in rates becoming effective after the date hereof. The seller agrees to assume and pay all extra expense occurring on account of improper packaging.
6. **SERVICES PERFORMED:** All services rendered under this agreement will be performed at the Contractor's own risk and the Contractor expressly agrees to indemnify and hold harmless The City of Greenville, its officers, agents, and employees from any and all liability, loss or damage that they may suffer as a result of claims, demands, actions, damages or injuries of any kind or nature whatsoever by or to any and all persons or property.
7. **INSURANCE:** Contractor shall maintain at its own expense (a) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence for bodily injury or property damage; City of Greenville, 200 W. Fifth St. Greenville, NC 27834 shall be named as additional insured. (b) Professional Liability insurance in an amount not less than \$1,000,000 per occurrence – if providing professional services; (c) Workers Compensation Insurance as required by the general statutes of the State of North Carolina and Employer's Liability Insurance not less than \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and \$500,000 policy limit; (d) Commercial Automobile Insurance applicable to bodily injury and property damage, covering all owned, non-owned, and hired vehicles, in an amount not less than \$1,000,000 per occurrence as applicable. Cybersecurity insurance may be required, as determined by the City, based on services to be provided by the Contractor. Certificates of Insurance shall be furnished prior to the commencement of Services.
8. **APPLICABLE LAWS:** By the acceptance of this order, seller represents that the goods covered by this order are in full compliance with all applicable local, state or federal laws and regulations and agrees to indemnify and defend the City of Greenville against any loss, cost, liability or damage by reason of seller's violation of any laws.
9. **AMENDMENTS AND WAIVER:** No waiver, alterations, consent or modification of any of the provisions of this purchase order shall be binding unless in writing and signed by the City or its designee.
10. **CANCELLATION:** The City of Greenville reserves the right to cancel this order, or any part thereof, at any time without penalty. Such cancellation may be based upon failure of the seller to comply with the terms and conditions of this transaction, failure to perform the work with promptness and diligence, failure to make shipment within the time specified or for any other reason which causes the seller not to perform as agreed.
11. **ACCEPTANCE AND INSPECTION:** All goods shall be subject to the City's right of inspection and rejection. Risk of loss and title to all goods shall remain with the seller until acceptance has been made by the City. If goods are rejected, they will be returned at seller's risk for credit or replacement at the City's option and all handling and transportation expenses both ways shall be assumed by the seller. When goods have been rejected, the City shall have the right to cancel any unshipped portion of this order. Payment for supplies shall not constitute acceptance and is without prejudice to claims that the City may have against the seller.
12. **NOTICE:** Any notice or communication required or permitted by this Agreement shall be deemed sufficiently given if in writing and when delivered personally or three (3) days after deposit with a receipted commercial courier service or the U.S. Postal Service as registered or certified mail, postage prepaid, and addressed as follows:

City: City of Greenville, Public Works Department
1500 Beatty Street
Greenville, NC 27834

Attn: Kevin Mulligan

Contractor: Preston H. Roberts, Inc. dba CJGeo
3402 Acorn Street, #202
Williamsburg, VA 23188

13. **WARRANTY:** If applicable, the seller expressly warrants that goods, covered by this order will conform to the specifications, drawings, or samples furnished by the City and shall be free from defects in material and/or workmanship and shall be merchantable. This warranty shall survive any inspection, delivery acceptance or payment by the City. The seller also warrants that the goods do not infringe any patent, registered trademark or copyright and agrees to hold the City of Greenville harmless in the event of any infringement or claim thereof. Additionally, seller warrants that the goods are free and clear of all liens and encumbrances and that seller has a good and marketable title to the same.
14. **DISCHARGE OF MECHANICS AND MATERIALMEN'S LIEN:** If applicable, Contractor shall use its best efforts to prevent any liens that arise from the performance of the Work from being filed against the City or Property. If any liens are filed, the Contractor's shall prevent any liens from becoming delinquent. Upon completion of the Work and prior to payment by the City, the Contractor's shall execute and provide to the City a Release of Liens and Waiver of Claims form.
15. **HAZARDOUS CHEMICALS:** The seller shall ensure that each container of a hazardous chemical is labeled, tagged or marked with information required by OSHA's Hazard Communication Standard, Department of Transportation requirements, and any applicable EPA requirements.
16. **MATERIAL SAFETY DATA SHEETS (MSDS):** The seller shall ensure that the City of Greenville is provided an appropriate current MSDS with or prior to the initial shipment of a hazardous chemical, and with or prior to the first shipment after the MSDS is updated.
17. **NON-DISCRIMINATION POLICY:** The City of Greenville does not discriminate on the basis of race, color, sex, national origin, religion, age or disability. Any contractors or vendors who provide services, programs or goods to the City are expected to fully comply with the City's non-discrimination policy.
- Further, in the performance of these services, Contractor shall comply with the requirements of Title VI of the Civil Rights Act of 1964 and other pertinent Nondiscrimination Authorities, as cited in Attachment A to this Agreement, and will not discriminate in its hiring, employment, and contracting practices with reference to political affiliation, genetic information, sexual orientation, age, sex, race, color, religion, national origin, handicap or disability
18. **VERBAL AGREEMENT:** The City will not be bound by any verbal agreements.
19. **TIME IS OF THE ESSENCE:** The parties agree that time is of the essence in the completion of the services to be performed pursuant to this purchase order. The Contractor agrees that all services shall be executed regularly, diligently, and uninterrupted at such a rate of progress as will ensure full completion thereof within the time specified.
20. **PERMITS, LICENSES AND CERTIFICATES:** The Contractor is to procure all permits, licenses, and certificates, as required by any such laws, ordinances, rules and regulations, for proper execution and completion of the Work under this Agreement.
21. **CONFIDENTIALITY:** Proprietary or confidential information ("confidential information") developed or disclosed by either party under this agreement shall be clearly labeled and identified as confidential information by the disclosing party at the time of disclosure. Confidential Information shall not be disclosed to the extent allowable by law by the receiving party to any other person except to those

individuals who need access to such Confidential Information as needed to ensure proper performance of the Services.

Neither party shall be liable for disclosure or use of Confidential Information which: (1) is or was known by the receiving party at the time of disclosure due to circumstances unrelated to this agreement; (2) is generally available to the public without breach of this agreement; (3) is disclosed with the prior written approval of the disclosing party; or (4) is required to be released by applicable law or court order.

Each party shall return all Confidential Information relating to this agreement to the disclosing party upon request of the disclosing party or upon termination of this agreement, whichever occurs first. Each party shall have the right to retain a copy of the Confidential Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Section. This Section shall survive termination of this agreement

22. **SEVERABILITY:** No waiver of any breach of this agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this agreement. If any provision of this agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this agreement and to the extent possible, this agreement shall continue without affecting the remaining provisions.
23. **CONFLICT OF INTEREST:** Contractor is aware of the conflict of interest laws of the City of Greenville, of the State of North Carolina (as set forth in North Carolina General Statutes), and agrees that it will fully comply in all respects with the terms thereof and any future amendments.
- a. Contractor covenants that no person or entity under its employ, presently exercising any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect, with the City. Contractor further covenants that, in the performance of this Agreement, no person or entity having such conflicting interest shall be utilized in respect to the Scope of Work or services provided hereunder. Any such conflict of interest(s) on the part of Contractor, its employees or associated persons or entities shall be disclosed to the City.
- b. Contractor shall disclose any possible conflicts of interest or apparent improprieties of any party under or in connection with the Legal Requirements, including the standards for procurement.
- c. Contractor shall make any such disclosure to the City in writing and immediately upon the Contractor's discovery of such possible conflict. The City's determination regarding the possible conflict of interest shall be binding on all parties.
- d. No employee, agent, contractor, elected official or appointed official of the City, exercising any functions or responsibilities in connection with this Agreement, or who is in a position to participate in the decision-making process or gain inside information regarding activities, has any personal financial interest, direct or indirect, in this Agreement, the proceeds hereunder, the Project or Contractor, either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.
24. **INDEPENDENT CONTRACTOR:** It is mutually understood and agreed the seller is an independent contractor and not an agent of the City of Greenville, and as such, seller, his or her agents and employees shall not be entitled to any City employment benefits, such as but not limited to vacation, sick leave, insurance, worker's compensation, pension or retirement benefits.
25. **TERMINATION:** The City may terminate the Contractor's services at any time upon any of the following grounds
- a. **DEFAULT.** The Contractor fails to perform, provides unacceptable performance, fails to comply with the provisions of the contract, or fails to follow safety regulations as required in this

- Agreement. Under this provision only, the City shall provide written notice to the Contractor regarding the condition(s) and the Contractor shall have ten (10) calendar days to rectify. In the event the condition(s) identified are not rectified to the satisfaction of the City, the City will give the Contractor written notice of termination, which will be effective as of the date of notice unless otherwise stated in the notice of termination. Upon receipt, the Contractor is expected to remove all employees and equipment from the premises immediately.
- b. **CONVENIENCE.** Without limiting either party's right to terminate for breach, the parties agree the City may terminate this agreement, without cause and in its discretion, by giving (thirty) 30 calendar days written notice. Contractor shall be paid for services provided up to the date of termination except to the extent previously paid for under the Agreement. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages, including but not limited to overhead, profit, damages, other economic loss or otherwise, and all obligations under the Agreement shall be discharged except that any right based on prior breach or performance survives and any other provisions expressly cited to survive termination. At the time of termination under this provision or as soon afterwards as is practical, Contractor shall give the City all Work, including partly completed Work.
- c. **FUNDING.** In accordance with paragraph 2 of this agreement shall automatically terminate should funding cease to be available.
- d. **FORCE MAJEURE.** This includes but is not limited to any acts of God; acts of the public enemy; insurrections; riots; embargoes; labor disputes, including strikes, lockouts, job actions, or boycotts; shortages of materials or energy; fires; explosions; floods; any curtailment, order, regulation, or restriction imposed by governmental, military or lawfully established civilian authorities, including, without limitation any of the foregoing which occur as a result of epidemic or pandemic; changes in laws governing this type of Work of facility; or other unforeseeable causes beyond the reasonable control and without the fault or negligence of the City. Reasonable extension of time for unforeseen delays may be made by mutual written consent of all parties involved.
- e. **EXPIRATION.** Upon expiration of this Agreement, this Agreement is terminated, if not extended, in accordance with the terms and conditions of this Agreement.
26. **DISPUTE RESOLUTION:** In the event of any dispute arising out of or relating to this agreement, the affected party shall notify the other party, and the parties shall attempt in good faith to resolve the matter within thirty (30) days after the date such notice is received by the other party (the "Notice Date") prior to exercising their rights under law.
27. **THIRD PARTY RIGHTS:** This contract is intended for the benefit of the City and the Contractor and not any other person.
28. **ASSIGNMENT:** There shall be no assignment, subletting or transfer of the interest (including payments) of the Contractor in any of the work covered by the Agreement without the written consent of the City. Unless the City agrees otherwise in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.
29. **GOVERNING LAW & VENUE:** All terms and conditions shall be interpreted in accordance with the laws of the State of North Carolina. The exclusive forum and venue for all actions, suits or proceedings arising out of or related to this Agreement shall be the North Carolina General Courts of Justice, in Pitt County, or if in federal court, in the Eastern District of North Carolina.
30. **E-VERIFY REQUIREMENTS:** Vendor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, and shall require each of its subcontractors to do so as well.
31. **IRAN DIVESTMENT ACT.** Vendor certifies that: (i) it is not on the Iran Final Divestment List created by the NC State treasurer pursuant to N.C.G.S. 147-86.58; (ii) it will not take any actions causing it to appear on said list during the term of any contract with the City, and (iii) it will not utilize any subcontractor to provide goods and services hereunder that is identified on said list.
32. **E-SIGNATURE:** The parties hereto consent and agree that this agreement may be signed and/or transmitted by facsimile, e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), and that such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's hand written signature. The parties further consent and agree that (1) to the extent a party signs this document using electronic signature technology, by clicking "sign", such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated for purposes of validity, enforceability and admissibility, the same as hand-written signatures.
33. **CITY MANAGER'S AUTHORITY:** To the extent, if any, the City has the power to suspend or terminate this purchase order or the Contractor's services under this purchase, that power may be exercised by the City Manager or their designee.
34. **PERFORMANCE OF GOVERNMENT FUNCTIONS:** Nothing contained in this purchase order shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.
35. **CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS:** The services to be provided by the Contractor are funded in whole or in part with American Rescue Plan Act funding via the Coronavirus State Fiscal Recovery Fund and/or Coronavirus Local Fiscal Recovery Fund, and Contractor shall comply and accept the terms and conditions in the CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM incorporated by reference and attached hereto as Attachment B.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the dates written below and the undersigned hereby warrants and certifies that they have read the terms and conditions in its entirety, understand it and agree to be bound by all the terms and conditions stated herein. Further, they warrant and certify they are authorized to enter into and to execute same on behalf of the parties as the act of the said parties.

SIGNATURE OF CITY

CITY OF GREENVILLE:

DocuSigned by:
BY: Ann E. Wall
SIGNATURE
City Manager
TITLE
June 28, 2023
DATE

APPROVED AS TO FORM:

BY: Emanuel D. McGirt
City Attorney or Designee (Designee means Assistant City Attorney)

PRE-AUDIT CERTIFICATION:

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

BY: Byron Hayes DATE: June 28, 2023
Byron Hayes, Director of Financial Services

ACCOUNT NUMBER: 113-00-55-00-000-000-534006-ARPOZ
PROJECT CODE (IF APPLICABLE): ARP SLRF

[Vendor Signature Page Follows]

SIGNATURE OF VENDOR

Preston H. Roberts, Inc. d.b.a. CJGeo

FULL NAME OF VENDOR

(e.g., Limited Liability Company, Organization, Individual Doing Business Under a Firm Name)

VENDOR:

BY:


SIGNATURE

Alan Kates - Project Manager

TITLE

6/26/2023

DATE

Note: Alan Kates' signature and willingness to enter into this subcontract agreement are contingent on The City of Greenville accepting the following items:

1. Addition to "Permitting" section on page 2.

Attachment ATitle VI of the Civil Rights Act of 1964 Nondiscrimination Provisions, Appendices A & E.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1) Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation (USDOT), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, creed (religion), low-income, limited English proficiency, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

(3) Solicitations for Subcontractors, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the USDOT to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the USDOT, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the USDOT may determine to be appropriate, including, but not limited to:

- (a) withholding payments to the contractor under the contract until the contractor complies; and/or
- (b) cancelling, terminating, or suspending a contract, in whole or in part.

(6) Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the USDOT may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the

contractor may request the United States to enter into the litigation to protect the interests of the United States.

- I. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following nondiscrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
 - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
 - Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
 - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
 - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
 - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color national origin, or sex);
 - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
 - Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
 - The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
 - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures Nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
 - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
 - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.);
- Federal transit laws, specifically 49 U.S.C. § 5332 (prohibiting discrimination based on race, color, religion, national origin, sex (including gender identity), disability, age, employment, or business opportunity).

Attachment B

CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM

This **CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM** (this "Addendum") is entered into by and between Preston H. Roberts, Inc. DBA CJGEO/Concrete Jack ("Contractor"), and City of Greenville ("Unit"), and forms an integral part of the Contract (as defined in Section I hereof).

RECITALS

WHEREAS, Unit has received, either as a Recipient or Subrecipient (as each such term is defined in Section I hereof) a payment from the Coronavirus State Fiscal Recovery Fund ("State Fiscal Recovery Fund") or Coronavirus Local Fiscal Recovery Fund ("Local Fiscal Recovery Fund" and, together with the State Fiscal Recovery Fund, the "Fiscal Recovery Funds") established pursuant to Sections 602 and 603, respectively, of the Social Security Act, as added by Section 9901 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 ("ARPA"); and

WHEREAS, Unit intends to pay, in part or in whole, for the cost of the Contract (as defined in Section I hereof) using monies received from the Fiscal Recovery Funds; and

WHEREAS, in using such funds, Unit must comply with the terms of ARPA, regulations issued by the U.S. Department of the Treasury ("Treasury") governing the expenditure of monies distributed from the Fiscal Recovery Funds (including, without limitation, the Interim Final Rule (86 Fed. Reg. 26,786 (May 17, 2021) and Final Rule (87 Fed. Reg. 4,338 (Jan. 27, 2022))), the Award Terms and Conditions applicable to the Fiscal Recovery Funds, and such other guidance as Treasury has issued or may issue governing the expenditure of monies distributed from the Fiscal Recovery Funds (collectively, the "Regulatory Requirements"); and

WHEREAS, pursuant to the Regulatory Requirements, Unit must comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, other than such provisions as Treasury has determined or may determine are inapplicable to the Fiscal Recovery Funds; and

WHEREAS, pursuant to 2 C.F.R. § 200.327, Unit must include within the Contract applicable provisions described in Appendix II to 2 C.F.R. Part 200, each of which is contained in this Addendum; and

WHEREAS, Unit shall not enter into the Contract or make any distributions of funds to Contractor using monies from the Fiscal Recovery Funds absent Contractor's agreement and adherence to each term and condition contained herein.

NOW THEREFORE, Contractor and Unit do mutually agree as follows:

AGREEMENTS

Definitions

- A. Unless otherwise defined in this Addendum, capitalized terms used in this Addendum shall have the meanings ascribed thereto in this Section I.
1. "ARPA" shall mean the American Rescue Plan Act of 2021, Pub. L. No. 117-2, as amended.
 2. "Administering Agency" shall have the meaning specified in 41 C.F.R. § 60-1.3.
 3. "Applicant" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("An applicant for Federal assistance involving a construction contract, or other participant in a program involving a construction contract as determined by regulation of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.").
 4. "Construction Work" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.").
 5. "Contract" shall mean the legal instrument by which Unit, as a Recipient or Subrecipient, shall purchase from Contractor property or services needed to carry out a project or program under a federal award, and of which this Addendum shall constitute an integral part.
 6. "Contractor" shall mean the entity named as "Contractor" in this Addendum that has received a Contract from Unit.
 7. "Federally Assisted Construction Contract" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[A]ny agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the government of the United States of America for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.").
 8. "Government" shall have the meaning specified in 41 C.F.R. § 60-1.3, which is provided here for ease of reference: ("[T]he government of the United States of America.").
 9. "Laborer" or "Mechanic" shall have the meaning specified in 29 C.F.R. § 5.2(m), which is provided here for ease of reference: ("The term *laborer* or *mechanic* includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The

term *laborer* or *mechanic* includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of [Title 40 of the United States Code] are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of [Title 40 of the United States Code], are laborers and mechanics for the time so spent.”).

10. “Recipient” shall mean an entity that receives a federal award directly from a federal awarding agency. The term does not include subrecipients or individuals that are beneficiaries of an award.
11. “Subcontract” shall mean any agreement entered into by a Subcontractor to furnish supplies or services for the performance of this Contract or a Subcontract. It includes, but is not limited to, purchase orders and changes and modifications to purchase orders.
12. “Subcontractor” shall mean an entity that receives a Subcontract.
13. “Subrecipient” shall mean an entity that receives a subaward from a pass-through entity to carry out part of a federal award; but it does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
14. “Tier” shall have the meaning indicated in 2 C.F.R. Part 180 and illustrated in 2 C.F.R. Part 180, Appendix II.
15. “Unit” shall have the meaning indicated in the preamble to this Addendum.

Equal Employment Opportunity

- A. If this contract is a Federally Assisted Construction Contract exceeding \$10,000, during the performance of this Contract, Contractor agrees as follows:
 1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.
4. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. Contractor will furnish to the Administering Agency and the Secretary of Labor all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Administering Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and Contractor may be declared ineligible for further Government contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965. Such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. Contractor will include the portion of the sentence immediately preceding paragraph A.1. of this Section II and the provisions of paragraphs A.1. through A.7. in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any Subcontract or purchase order as the Administering Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Contractor becomes involved in, or is threatened with,

litigation with a Subcontractor or vendor as a result of such direction by the Administering Agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unit further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if Unit so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the Contract.

9. Unit agrees that it will assist and cooperate actively with the Administering Agency and the Secretary of Labor in obtaining the compliance of Contractor and any Subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Administering Agency and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Administering Agency in the discharge of the agency's primary responsibility for securing compliance.
 10. Unit further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally Assisted Construction Contracts pursuant to the Executive Order and that it will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Contractor and any Subcontractors by the Administering Agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Unit agrees that if it fails or refuses to comply with these undertakings, the Administering Agency may take any or all of the following actions: Cancel, terminate, or suspend, in whole or in part, this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
- B. If this Contract is not a Federally Assisted Construction Contract exceeding \$10,000, the provisions of Section I.A. of this Addendum shall not apply.

Copeland "Anti-Kickback" Act

- A. Contractor and any Subcontractors performing work under the Contract shall comply with 18 U.S.C. § 874. Unit shall report all suspected or reported violations to Treasury.

Contract Work Hours and Safety Standards Act

- A. *Overtime Requirements.* No Contractor or Subcontractor contracting for any part of the Contract work which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such

work to work in excess of forty hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- B. *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the clause set forth in Section IV.A. (Overtime Requirements), above, Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual Laborer or Mechanic, including watchmen and guards, employed in violation of the clause set forth in Section IV.A. (Overtime Requirements), above, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in Section IV.A. (Overtime Requirements), above.
- C. *Withholding for Unpaid Wages and Liquidated Damages.* Unit shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold, or cause to be withheld, from any moneys payable on account of work performed by Contractor or Subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of Contractor or Subcontractor for unpaid wages and liquidated damages as provided in Section IV.B. (Violation; Liability for Unpaid Wages; Liquidated Damages) of this section.
- D. *Subcontracts.* Contractor or Subcontractor shall insert in any Subcontract the clauses set forth in Sections IV.A. through IV.D. and also a clause requiring Subcontractors to include these clauses in any lower-Tier Subcontracts. Contractor shall be responsible for compliance by any first-Tier Subcontractor or lower-Tier Subcontractor with the clauses set forth in Sections IV.A. through IV.D.
- E. *Payroll and Records.* Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all Laborers and Mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Records to be maintained under this provision shall be made available by Contractor or Subcontractor for inspection, copying, or transcription by authorized representatives of the Department of the Treasury and the Department of Labor, and Contractor or Subcontractor will permit such representatives to interview employees during working hours on the job.
- F. *Exceptions.* None of the requirements of Section IV of this Addendum shall apply if this Contract is a Contract (1) for transportation by land, air, or water; (2) for the transmission of intelligence;

(3) for the purchase of supplies, materials, or articles ordinarily available in the open market; or (4) in an amount that is equal to or less than \$100,000.

Rights to Inventions Made Under a Contract or Agreement

- A. The Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for "Government purposes," any subject data or copyright described below.¹ "Government purposes" means use only for the direct purposes of the Government. Without the copyright owner's consent, the Government may not extend its federal license to any other party.
 - 1. Any subject data developed under the Contract, whether or not a copyright has been obtained, and
 - 2. Any rights of copyright purchased by Contractor using federal assistance funded in whole or in part by the Department of the Treasury.
- B. Unless Treasury determines otherwise, a Contractor performing experimental, developmental, or research work required as part of this Contract agrees to permit Treasury to make available to the public either (1) Treasury's license in the copyright to any subject data developed in the course of the Contract or (2) a copy of the subject data first produced under the Contract for which a copyright has not been obtained. If the experimental, developmental, or research work which is the subject of this Contract is not completed for any reason whatsoever, all data developed under the Contract shall become subject data as defined herein and shall be delivered as the Government may direct.
- C. Unless prohibited by North Carolina law, upon request by the Government, Contractor agrees to indemnify, save, and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by Contractor of proprietary rights, copyrights, or right of privacy arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Contract. Contractor shall be required to indemnify the Government for any such liability arising out of the wrongful act of any employee, official, or agent of the Contractor.
- D. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.
- E. Data developed by Contractor and financed entirely without using federal assistance provided by the Government that has been incorporated into work required by the underlying Contract is exempt from the requirements herein, provided that Contractor identifies those data in writing at the time of delivery of the Contract work. Contractor agrees to include these requirements in each

Subcontract for experimental, developmental, or research work financed in whole or in part with federal assistance.

- F. For the purposes of this Section V, "subject data" means "recorded information, whether or not copyrighted, that is delivered or specified to be delivered as required by the Contract." Examples of "subject data" include, but are not limited to, "computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses or other similar information used for performance or administration of the Contract."

Clean Air Act and Federal Water Pollution Control Act

- A. *Clean Air Act*. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to Treasury and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.
- B. *Federal Water Pollution Control Act*. Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* Contractor agrees to report each violation to Unit and understands and agrees that Unit will, in turn, report each violation as required to assure notification to Treasury and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each Subcontract exceeding \$150,000 financed, in whole or in part, with federal assistance provided by Treasury.

Debarment and Suspension

- A. Due to its receipt of Fiscal Recovery Funds, Unit is a participant in a nonprocurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Contract is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if (1) the amount of this Contract is greater than or equal to \$25,000 (2 C.F.R. § 180.220(b)(1); 31 C.F.R. § 19.220(b)(1)); (2) the Contract requires the consent of an official of the Department of the Treasury (2 C.F.R. § 180.220(b)(2); 31 C.F.R. § 19.220(b)(2)); or (3) this Contract is for federally required audit services (2 C.F.R. § 180.220(b)(3); 31 C.F.R. § 19.220(b)(3)).
- B. If this Contract is a covered transaction as set forth in Section VII.A, above, Contractor hereby certifies as of the date hereof that Contractor, Contractor's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both Contractor and Contractor's principals are not excluded (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935). If any of the foregoing persons are excluded or disqualified and the Secretary of the Treasury has not granted an exception pursuant to 31 C.F.R. § 19.120(a), (1) this Contract

shall be void, (2) Unit shall not make any payments of federal financial assistance to Contractor, and (3) Unit shall have no obligations to Contractor under this Contract.

- C. Contractor must comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters.² This certification is a material representation of fact relied upon by Unit, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- D. If it is later determined that Contractor did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to Unit, the Government may pursue available remedies, including but not limited to suspension and/or debarment.

Byrd Anti-Lobbying Amendment

- A. Contractor certifies to Unit, and Contractor shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Contractor shall, and shall cause each Tier below it, to disclose any lobbying with non-federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to the Unit, which will, in turn, forward the certification(s) to Treasury. Contractor shall cause the language of this Section VIII.A. to be included in all Subcontracts. This certification is a material representation of fact upon which Unit has relied when entering into this Contract, and all liability arising from an erroneous representation shall be borne solely by Contractor.
- B. Contractors that bid or apply for a contract exceeding \$100,000 (including this Contract, if applicable) also must file with Unit the certification in Attachment I to this Addendum, which is attached hereto and incorporated herein.
- C. Contractor also shall cause any Subcontractor with a Subcontract (at any Tier) exceeding \$100,000 to file with the Tier above it the certification in Attachment 1 to this Addendum, which is attached hereto and incorporated herein.

Procurement of Recovered Materials

- A. Section IX.B. shall apply if (1) this Contract involves the purchase of an item designated by the Environmental Protection Agency ("EPA") in 40 C.F.R. Part 247 that exceeds \$10,000 or (2) the total value of such designated items acquired during Unit's preceding fiscal year exceeded \$10,000.
 - B. In the performance of the Contract, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items, unless the product cannot (1) be acquired
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competitively within a timeframe providing for compliance with the Contract performance schedule, (2) meet Contract performance requirements, or (3) be acquired at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available on EPA's website.³ Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Prohibition on Contracting for Covered Telecommunications Equipment or Services

A. *Definitions.* Unless otherwise defined in this Contract, capitalized terms used in this Section X shall have the meanings ascribed thereto in this Section X.A.

1. "Backhaul" means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).
2. "Covered Foreign Country" means the People's Republic of China.
3. "Covered Telecommunications Equipment or Services" means (a) telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); (b) for the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities); (c) telecommunications or video surveillance services provided by such entities or using such equipment; or (d) telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a Covered Foreign Country.
4. "Critical Technology"⁴ means (1) defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations; (2) items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations and controlled (a) pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology, or (b) for reasons relating to regional stability or surreptitious listening; (3) specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities); (4) nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of

nuclear equipment and material); (5) select agents and toxins covered by part 331 of title 7, Code of Federal Regulations; part 121 of title 9 of such Code; or part 73 of title 42 of such Code; or (6) emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. § 4817).

5. "Interconnection Arrangements" means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.
6. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.
7. "Substantial or Essential Component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.
8. "Telecommunications Equipment or Services" means telecommunications or video surveillance equipment or services, such as, but not limited to, mobile phones, land lines, internet, video surveillance, and cloud services.

B. Prohibitions.

1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after August 13, 2020, from obtaining or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
2. Unless an exception in Section X.C. applies, Contractor and any Subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds (including, without limitation, Fiscal Recovery Funds) received from a federal government to:
 - a. Procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use Covered Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system; or
 - d. Provide, as part of its performance of this Contract, any Subcontract, any other contractual instrument; or any equipment, system, or service that uses Covered

Telecommunications Equipment or Services as a Substantial or Essential Component of any system or as Critical Technology as part of any system.

C. Exceptions.

1. This clause does not prohibit Contractor or Subcontractors from providing:
 - a. A service that connects to the facilities of a third party, such as Backhaul, Roaming, or Interconnection Agreements, or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment that:
 - i. Is not used as a Substantial or Essential Component of any system and
 - ii. Is not used as Critical Technology of any system.
 - b. Other telecommunications equipment or services that are not considered Covered Telecommunications Equipment or Services.

D. Reporting Requirement

1. In the event Contractor identifies, during contract performance, covered Telecommunications Equipment or Services used as a Substantial or Essential Component of any system or as Critical Technology as part of any system, or if Contractor is notified of such by a Subcontractor at any Tier or by any other source, Contractor shall report the information in paragraph D.2 (d)(2) of this Section X to Unit, unless procedures for reporting the information are established elsewhere in this Contract.
2. Contractor shall report the following information to Unit pursuant to paragraph D.1 of this Section X:
 - a. Within one business day from the date of such identification or notification: contract number; order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - b. Within ten business days of submitting the information in paragraph D.2.a. of this Section: any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe (i) the efforts it undertook to prevent use or submission of Covered Telecommunications Equipment or Services and (ii) any

additional efforts that will be incorporated to prevent future use or submission of Covered Telecommunications Equipment or Services.

- E. *Subcontractor*. Contractor shall cause to be inserted into all Subcontracts and other contractual instruments relating to the performance of this Contract the substance of this Section X, including this paragraph E.

Domestic Preferences for Procurements

- A. For purposes of this Section XI, the terms below are defined as follows:
1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coating, occurred in the United States.
 2. "Manufactured Products" means items and construction materials composed, in whole or in part, of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- B. As applicable, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products or materials Produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other Manufactured Products. Contractor shall cause any Subcontractors to include the requirements of this Section XI in any Subcontracts.

Solicitation of Minority and Women-Owned Business Enterprises

- A. If Contractor intends to let any Subcontracts, Contractor shall (1) place qualified small and minority businesses and women's business enterprises on its solicitation lists; (2) assure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; (3) divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; (4) establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses and women's business enterprises; (5) use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the North Carolina Office for Historically Underutilized Businesses.
- B. For the purposes of Section XII.A., an entity shall qualify (1) as a "minority business" or "women's business enterprise" if it is currently certified as a North Carolina "historically underutilized business" under Chapter 143, Section 128.4(a) of the N.C. General Statutes (hereinafter G.S.), and (2) as a "small business" if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

Access to Records

- A. Contractor agrees to provide Unit, the Department of the Treasury, the Treasury Office of Inspector General, the Government Accountability Office, and the Comptroller General of the United States, or any authorized representatives of these entities, access to any records (electronic and otherwise) of Contractor which are directly pertinent to this Contract to conduct audits or any other investigations. Contractor agrees to permit any of the foregoing parties to reproduce such records by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- B. Contractor agrees to retain all records covered by this Section XIII through December 31, 2031, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving the Contract.

Conflicts of Interest; Gifts and Favors

- A. Contractor understands that (1) Unit will use Fiscal Recovery Funds to pay for the cost of this Contract and (2) the expenditure of Fiscal Recovery Funds is governed by the [*Conflict of Interest Policy*] of the Unit, the Regulatory Requirements (including, without limitation, 2 C.F.R. § 200.318(c) (1)), and North Carolina law (including, without limitation, G.S. 14-234(a)(1) and -234.3(a)).
- B. Contractor certifies to Unit that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of Unit involved in the selection, award, or administration of this Contract (each a "Covered Individual"); no member of a Covered Individual's immediate family; no partner of a Covered Individual; and no organization (including Contractor) which employs or is about to employ a Covered Individual has a financial or other interest in, or has received a tangible personal benefit from, Contractor. Should Contractor obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.
- C. Contractor certifies to Unit that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of Unit. Should Contractor obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, Contractor shall promptly disclose the same to Unit in writing.

Assurances of Compliance with Title VI of the Civil Rights Act of 1964

- A. Contractor and any Subcontractor, or the successor, transferee, or assignee of Contractor or any Subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d *et seq.*), as implemented by the Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Contract. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d *et seq.*, as

implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Contract.⁵

Other Non-Discrimination Statutes

- A. Contractor acknowledges that Unit is bound by and agrees, to the extent applicable to Contractor, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of Fiscal Recovery Funds:
1. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability;
 2. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance;
 3. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and Treasury's implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance; and
 4. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 *et seq.*), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.

Miscellaneous

- A. *Increasing Seat Belt Use in the United States.* Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), Unit encourages Contractor to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- B. *Reducing Text Messaging While Driving.* Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), Unit encourages Contractor to adopt and enforce policies that ban text messaging while driving.

Conflicts and Interpretation

- A. To the extent that any portion of this Addendum conflicts with any term or condition of this Contract expressed outside of this Addendum, the terms of this Addendum shall govern.
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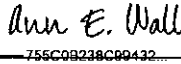
CONTRACTOR:

By:  _____

Name: Alan Kates

Title: Project Manager

UNIT: DocuSigned by:

By:  _____
755C09238C09432

Name: Ann E. wall

Title: City Manager

[Signature Page to Coronavirus State and Local Fiscal Recovery Funds Addendum]

ATTACHMENT 1
TO
CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS ADDENDUM
APPENDIX A, 31 C.F.R. PART 21 – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of the undersigned’s knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Preston H. Roberts, Inc. d.b.a. CJGeo

The Contractor, _____, certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor’s Authorized Official

Alan Kates - Project Manager

Name and Title of Contractor’s Authorized Official

6/26/2023

Date



City of Greenville, North Carolina

Meeting Date: 08/07/2023

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 the 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:

Anderson, Brayom Eugene	Registered Motor Vehicle	567.06
Best, Frances Waddell	Registered Motor Vehicle	160.08
Braswell, Ledenrick Quindell	Registered Motor Vehicle	117.71
Brooks, Patricia Evans	Registered Motor Vehicle	193.24
Dixie Dirt Inc.	Registered Motor Vehicle	197.16
Environment 1 Inc.	Registered Motor Vehicle	940.87
Gardner, James Harold	Registered Motor Vehicle	462.92
Harper, James Bennett	Registered Motor Vehicle	140.09
Hoffner, Amzie Harding Jr.	Registered Motor Vehicle	632.05
Irmen, John Nicholas III	Registered Motor Vehicle	518.23
Joyner, John Machael	Registered Motor Vehicle	517.78
Moore, Lisa Diane	Registered Motor Vehicle	140.95
Phillips, Marquelvous Dashawn	Registered Motor Vehicle	110.17
Pinner Properties LLC	Registered Motor Vehicle	130.83
Pullen, Norman Dwight	Registered Motor Vehicle	271.75
Razor Sharp Russ LLC	Registered Motor Vehicle	139.94
Sanyal, Saswata	Registered Motor Vehicle	179.02
The Estate of Jane Weaver Laughman	Registered Motor Vehicle	196.99
Tyer, Victoria Boyd	Registered Motor Vehicle	251.10
Wilson, Donnie Elbert	Registered Motor Vehicle	218.45
Jenkins, Ralph	Real Estate Taxes	184.24

Fiscal Note: The total refunded is \$6,270.63

Recommendation: Approval of taxes refunded by City Council



City of Greenville,
North Carolina

Meeting Date: 08/07/2023

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- Title of Item:** Annual Board & Commission Presentations - Pitt-Greenville Airport Authority, Planning & Zoning Commission
- Explanation:** Boards and commissions are annually scheduled to make brief presentations to the City Council. The Pitt-Greenville Airport Authority and Planning & Zoning Commission are scheduled to make presentations to the City Council in August 2023.
- Fiscal Note:** No direct fiscal impact.
- Recommendation:** Hear the presentations from the Pitt-Greenville Airport Authority and Planning & Zoning Commission.
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City of Greenville, North Carolina

Meeting Date: 08/07/2023

Title of Item: Budget Ordinance Amendment #1 to the 2023-2024 City of Greenville Budget (Ordinance #23-046), Special Revenue Grant Fund (Ordinance #11-003), Capital Projects Funds (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-019), the Donations Fund (Ordinance #18-062), and the Occupancy Tax Fund (Ordinance #11-003).

Explanation: Attached for consideration at the August 07, 2023 City Council meeting is an ordinance amending the 2023-2024 City of Greenville Budget (Ordinance #23-046), Special Revenue Grant Fund (Ordinance #11-003), Capital Projects Funds (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-019), the Donations Fund (Ordinance #18-062), and the Occupancy Tax Fund (Ordinance #11-003).

For ease of reference, a footnote has been added to each line item of the Budget Ordinance Amendment, which corresponds to the explanation below:

<u>Item</u>	<u>Justification</u>	<u>Funds Amended</u>	<u>Net Adjustment</u>
A	To recognize prior fiscal year 2022-23 encumbrances and carryovers in the City's Operating Funds.	General VRF Transit Health Fleet Maintenance Sanitation FIP Stormwater	\$9,396,986
B	To recognize transfers budgeted in General Fund for the Pavement Management Program and Street Lights & Cameras and appropriate fund balance for additional Traffic Safety projects	General Engineering Capital Fund PW Capital Fund	3,250,000
C	To recognize funding received from GUC for the Energy Assistance Program.	Planning & Development Capital Fund	150,000
D	To recognize funding received within the donations line for PD	Donations	16,714

E	To recognize grant funds received within the Public Transportation (Transit) for the expansion of the Fleet Services storage bays	Transit	1,086,573
F	To recognize grant funds received within the Public Transportation (Transit) for the purchase of additional bus shelters	Transit	662,800
G	To recognize funds received within the Special Revenue Grant Fund for the Love a Sea Turtle Program at River Park North	Special Revenue Grants	116,927
H	To appropriate Occupancy Tax reserves within the Occupancy Tax fund for a Sports Complex feasibility study	General Occupancy Tax	58,200
I	To appropriate Federal Forfeiture funds as presented to Council during the June 5, 2023 and August 7, 2023 meetings	General	5,000

Fiscal Note:

The Budget Ordinance Amendment affects the following funds:

<u>Fund</u>	<u>2023-24 Original Budget</u>	<u>Amendment #1</u>	<u>2023-24 Budget per Amendment #1</u>
General	\$101,539,765	\$2,744,000	\$104,283,765
Debt Service	6,863,408	-	6,863,408
Public Transportation (Transit)	3,703,887	1,868,829	5,572,716
Fleet Maintenance	6,279,940	77,647	6,357,587
Sanitation	9,248,904	167,346	9,416,250
Stormwater	11,833,273	784,898	12,618,171
Housing	1,975,598	-	1,975,598
Health Insurance	14,258,648	117,738	14,376,386
Vehicle Replacement	3,601,408	4,744,762	8,346,170
Facilities Improvement	1,200,000	801,139	2,001,139
Special Revenue Grants	14,059,903	116,927	14,176,830
Public Works Capital Projects	58,993,491	350,000	59,343,491
Recreation & Parks Capital Projects	15,957,018	58,200	16,015,218
Community Development Capital Projects	19,404,227	150,000	19,554,227
Engineering Capital Projects	57,089,786	2,900,000	59,989,786
Donations	432,687	16,714	449,401
Occupancy Tax	4,096,128	58,200	4,154,328

Recommendation: Approve Budget Ordinance Amendment #1 to the 2023-2024 City of Greenville Budget (Ordinance #23-046), Special Revenue Grant Fund (Ordinance #11-003), Capital Projects Funds (Ordinance #17-024), Engineering Capital Projects Fund (Ordinance #20-019), the Donations Fund (Ordinance #18-062), and the Occupancy Tax Fund (Ordinance #11-003).

ATTACHMENTS

[BA #1 Final.xlsx](#)

ORDINANCE NO. 23-
CITY OF GREENVILLE, NORTH CAROLINA
Ordinance (#1) Amending the 2023-24 Budget (Ordinance #23-046),
Special Revenue Grant Fund (Ordinance #11-003), Capital Projects Funds (Ordinance #17-024),
Engineering Capital Projects Fund (Ordinance #20-019), the Donations Fund (Ordinance #18-062),
and the Occupancy Tax Fund (Ordinance #11-003)

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

Section I: Estimated Revenues and Appropriations. General Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	Budget Amendment #1					2023-24 Budget per Amend #1
	2023-24 Original Budget	A.	B.	I.	Total Amend #1	
ESTIMATED REVENUES						
Property Tax	\$ 39,689,205	\$ -	\$ -	\$ -	\$ -	\$ 39,689,205
Sales Tax	30,616,976	-	-	-	-	30,616,976
Video Prog. & Telecom. Service Tax	738,769	-	-	-	-	738,769
Rental Vehicle Gross Receipts	176,125	-	-	-	-	176,125
Utilities Franchise Tax	6,896,611	-	-	-	-	6,896,611
Motor Vehicle Tax	1,705,845	-	-	-	-	1,705,845
Other Unrestricted Intergov't	871,145	-	-	-	-	871,145
Powell Bill	2,390,610	-	-	-	-	2,390,610
Restricted Intergov't Revenues	598,603	-	-	-	-	598,603
Licenses, Permits and Fees	4,728,426	-	-	-	-	4,728,426
Rescue Service Transport	3,200,000	-	-	-	-	3,200,000
Parking Violation Penalties, Leases,	300,000	-	-	-	-	300,000
Other Revenues	1,236,918	-	-	-	-	1,236,918
Interest on Investments	750,000	-	-	-	-	750,000
Transfers In GUC	7,140,532	-	-	-	-	7,140,532
Appropriated Fund Balance	500,000	2,639,000	100,000	5,000	2,744,000	3,244,000
Total Revenues	\$ 101,539,765	\$ 2,639,000	\$ 100,000	\$ 5,000	\$ 2,744,000	\$ 104,283,765
APPROPRIATIONS						
Mayor/City Council	\$ 606,254	\$ 35,534	\$ -	\$ -	\$ 35,534	\$ 641,788
City Manager	3,268,730	330,032	-	-	330,032	3,598,762
City Clerk	385,555	6,491	-	-	6,491	392,046
City Attorney	730,320	2,233	-	-	2,233	732,553
Human Resources	3,491,983	20,659	-	-	20,659	3,512,642
Information Technology	4,207,039	44,713	-	-	44,713	4,251,752
Engineering	5,615,199	418,674	-	-	418,674	6,033,873
Fire/Rescue	18,059,779	85,551	-	-	85,551	18,145,330
Financial Services	3,132,994	1,646	-	-	1,646	3,134,640
Recreation & Parks	8,925,004	378,536	-	-	378,536	9,303,540
Police	29,561,371	583,025	-	5,000	588,025	30,149,396
Public Works	7,033,927	549,443	-	-	549,443	7,583,370
Planning & Development	2,701,160	73,825	-	-	73,825	2,774,985
Neighborhood & Business Services	1,211,340	53,638	-	-	53,638	1,264,978
OPEB	700,000	-	-	-	-	700,000
Contingency	40,000	-	-	-	-	40,000
Indirect Cost Reimbursement	(1,950,887)	-	-	-	-	(1,950,887)
Total Appropriations	\$ 87,719,768	\$ 2,584,000	\$ -	\$ 5,000	\$ 2,589,000	\$ 90,308,768
OTHER FINANCING SOURCES						
Transfers to Other Funds	\$ 13,819,997	\$ 55,000	\$ 100,000	\$ -	\$ 155,000	\$ 13,974,997
Total Other Financing Sources	\$ 13,819,997	\$ 55,000	\$ 100,000	\$ -	\$ 155,000	\$ 13,974,997
Total Approp & Other Fin Sources	\$ 101,539,765	\$ 2,639,000	\$ 100,000	\$ 5,000	\$ 2,744,000	\$ 104,283,765

Section II: Estimated Revenues and Appropriations. Vehicle Replacement Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Transfer from Sanitation Fund	\$ 1,107,608	\$ -	\$ -	\$ 1,107,608
Transfer from Other Funds	710,509	-	-	710,509
Transfer from General Fund	1,783,291	-	-	1,783,291
Appropriated Fund Balance	-	4,744,762	4,744,762	4,744,762
Total Revenues	\$ 3,601,408	\$ 4,744,762	\$ 4,744,762	\$ 8,346,170
APPROPRIATIONS				
Vehicle Replacement Fund	\$ 3,601,408	\$ 4,744,762	\$ 4,744,762	\$ 8,346,170
Total Appropriations	\$ 3,601,408	\$ 4,744,762	\$ 4,744,762	\$ 8,346,170

Section III: Estimated Revenues and Appropriations. Health Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
City Employer Contribution	\$ 9,397,836	\$ -	\$ -	\$ 9,397,836
City Employee Contribution	1,646,123	-	-	1,646,123
Other Agencies	1,103,731	-	-	1,103,731
Retiree Contributions	1,327,544	-	-	1,327,544
Other Revenues	4,246	-	-	4,246
Insurance Company Refund/Reimbursement	240,000	-	-	240,000
Appropriated Fund Balance	539,168	117,738	117,738	656,906
Total Revenues	\$ 14,258,648	\$ -	\$ -	\$ 14,376,386
APPROPRIATIONS				
City Claims	\$ 12,128,284	\$ -	\$ -	\$ 12,128,284
Library Claims	230,602	-	-	230,602
CVA Claims	58,218	-	-	58,218
Housing Authority Claims	896,878	-	-	896,878
Airport Claims	195,338	-	-	195,338
Retiree Claims	653,383	-	-	653,383
Other Expenses	95,945	117,738	117,738	213,683
Total Appropriations	\$ 14,258,648	\$ -	\$ -	\$ 14,376,386

Section IV: Estimated Revenues and Appropriations. Fleet Maintenance Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Fuel Markup	\$ 2,097,350	\$ -	\$ -	\$ 2,097,350
Labor Fees	1,716,890	-	-	1,716,890
Parts Markup	1,622,650	-	-	1,622,650
Commercial Labor Markup	799,670	-	-	799,670
Other Revenues	43,380	-	-	43,380
Appropriated Fund Balance	-	77,647	77,647	77,647
Total Revenues	\$ 6,279,940	\$ -	\$ -	\$ 6,357,587
APPROPRIATIONS				
Fleet Maintenance	\$ 6,279,940	\$ 77,647	\$ 77,647	\$ 6,357,587
Total Appropriations	\$ 6,279,940	\$ 77,647	\$ 77,647	\$ 6,357,587

Section V: Estimated Revenues and Appropriations. Community Development Capital Projects Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	C.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Transfers In / CD Small Business	\$ 4,997,546	\$ -	\$ -	\$ 4,997,546
Transfers / Ctr City Rev Project	160,500	-	-	160,500
Transfers / Trans from Energy Eff	275,000	-	-	275,000
Transfers from General Fund	1,190,000	-	-	1,190,000
Rstrc Intgv / Spec ST Fed Grant	1,150,000	150,000	150,000	1,300,000
Rstrc Intgv / Grant Proceeds	7,500	-	-	7,500
Investment Earnings	399,640	-	-	399,640
Bond Proceeds	10,048,747	-	-	10,048,747
Comm Dev / Sale of Property	422,088	-	-	422,088
Rental Income	316,117	-	-	316,117
Other Revenues	437,089	-	-	437,089
Total Revenues	\$ 19,404,227	\$ 150,000	\$ 150,000	\$ 19,554,227
APPROPRIATIONS				
GUC Energy Improvement Program	\$ 100,000	\$ -	\$ -	\$ 100,000
West Greenville Revitalization Proj	6,270,918	-	-	6,270,918
Center City Revitalization Project	5,349,156	-	-	5,349,156
Energy Efficient Revolving Loan Prog	1,300,000	150,000	150,000	1,450,000
4th Street Parking Garage Project	5,194,153	-	-	5,194,153
Imperial Site Purchase	957,035	-	-	957,035
Zoning Ordinance Update	150,000	-	-	150,000
Transfer to R&P Capital Project	82,965	-	-	82,965
Total Appropriations	\$ 19,404,227	\$ 150,000	\$ 150,000	\$ 19,554,227

Section VI: Estimated Revenues and Appropriations. Sanitation Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Refuse Fees	\$ 8,448,000	\$ -	\$ -	\$ 8,448,000
Cart and Dumpster	229,200	-	-	229,200
Other Revenues	100,700	-	-	100,700
Appropriated Fund Balance	471,004	167,346	167,346	638,350
Total Revenues	\$ 9,248,904	\$ -	\$ -	\$ 9,416,250
APPROPRIATIONS				
Sanitation Service	\$ 9,248,904	\$ 167,346	\$ 167,346	\$ 9,416,250
Total Appropriations	\$ 9,248,904	\$ 167,346	\$ 167,346	\$ 9,416,250

Section VII: Estimated Revenues and Appropriations. Engineering Capital Projects Fund, of Ordinance #20-019 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	B.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 18,400,000	\$ -	\$ -	\$ 18,400,000
Restricted Intergovernmental - NCDOT	190,000	-	-	190,000
Transfer from ARPA Fund	9,813,000	-	-	9,813,000
Transfer from Capital Reserve	3,266,882	-	-	3,266,882
Transfer from Street Improvement Bond Fund	2,555,921	-	-	2,555,921
Transfer from Other Funds	2,605,022	-	-	2,605,022
Other In-kind Contributions	1,150,000	-	-	1,150,000
Transfer from General Fund	5,033,868	2,900,000	2,900,000	7,933,868
Transfer from Stormwater Utility	4,000,000	-	-	4,000,000
Sale of Property	1,433,040	-	-	1,433,040
Long Term Financing	8,642,053	-	-	8,642,053
Total Revenues	\$ 57,089,786	\$ 2,900,000	\$ 2,900,000	\$ 59,989,786
APPROPRIATIONS				
BUILD	\$ 48,574,006	\$ -	\$ -	\$ 48,574,006
Pavement Management Program	3,668,269	2,900,000	2,900,000	6,568,269
Employee Parking Lot	1,482,511	-	-	1,482,511
Ficklen Street Improvements	2,115,000	-	-	2,115,000
Dickinson Avenue Improvements	1,250,000	-	-	1,250,000
Total Appropriations	\$ 57,089,786	\$ 2,900,000	\$ 2,900,000	\$ 59,989,786

Section VIII: Estimated Revenues and Appropriations. Facilities Improvement Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Transfer from General Fund	\$ 1,200,000	\$ 55,000	\$ 55,000	\$ 1,255,000
Appropriated Fund Balance	-	746,139	746,139	746,139
Total Revenues	\$ 1,200,000	\$ 801,139	\$ 801,139	\$ 2,001,139
APPROPRIATIONS				
Facilities Improvement Fund	\$ 1,200,000	\$ 801,139	\$ 801,139	\$ 2,001,139
Total Appropriations	\$ 1,200,000	\$ 801,139	\$ 801,139	\$ 2,001,139

Section IX: Estimated Revenues and Appropriations. Stormwater Management Utility Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Utility Fee	\$ 9,652,814	\$ -	\$ -	\$ 9,652,814
Appropriated Fund Balance	2,180,459	784,898	784,898	2,965,357
Total Revenues	<u>\$ 11,833,273</u>	<u>\$ 784,898</u>	<u>\$ 784,898</u>	<u>\$ 12,618,171</u>
APPROPRIATIONS				
Stormwater Management	\$ 11,833,273	\$ 784,898	\$ 784,898	\$ 12,618,171
Total Appropriations	<u>\$ 11,833,273</u>	<u>\$ 784,898</u>	<u>\$ 784,898</u>	<u>\$ 12,618,171</u>

Section X: Estimated Revenues and Appropriations. Public Works Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	B.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Occupancy Tax	\$ 422,610	\$ -	\$ -	\$ 422,610
Transfers from Other Funds	22,798,836	350,000	350,000	23,148,836
Other Income	2,731,245	-	-	2,731,245
Spec Fed/State/Loc Grant	24,698,934	-	-	24,698,934
Bond Proceeds	6,200,000	-	-	6,200,000
Appropriated Fund Balance	2,141,866	-	-	2,141,866
Total Revenues	<u>\$ 58,993,491</u>	<u>\$ 350,000</u>	<u>\$ 350,000</u>	<u>\$ 59,343,491</u>
APPROPRIATIONS				
Stantonsburg Rd./10th St Con Project	\$ 7,191,050	\$ -	\$ -	\$ 7,191,050
Computerized Traffic Signal System	8,883,151	-	-	8,883,151
Sidewalk Development Project	791,287	-	-	791,287
GTAC Project	9,336,917	-	-	9,336,917
Energy Efficiency Project	777,600	-	-	777,600
King George Bridge Project	1,341,089	-	-	1,341,089
Energy Savings Equipment Project	2,591,373	-	-	2,591,373
Convention Center Expansion Project	4,718,000	-	-	4,718,000
Pedestrian Improvement Project	210,761	-	-	210,761
Street Lights & Cameras	2,001,225	350,000	350,000	2,351,225
F/R Station 3 Parking Lot	139,551	-	-	139,551
F/R Station 2 Bay Expansion	244,655	-	-	244,655
Parking Lot Enhancements	4,866	-	-	4,866
Street Improvements Project	13,414,536	-	-	13,414,536
Safe Routes to School	1,409,463	-	-	1,409,463
Imperial Demolition	238,464	-	-	238,464
Parking Deck Safety Improvements	180,000	-	-	180,000
Salt/Sand Storage Facility	185,000	-	-	185,000
Emerald Loop Lighting Upgrades	200,000	-	-	200,000
CVA - Pedestrian Mall Renovation	40,000	-	-	40,000
Transfer to Other Funds	2,875,135	-	-	2,875,135
Transfer to General Fund	636,801	-	-	636,801
Transfer to Street Improvement	1,002,567	-	-	1,002,567
Transfer to Recreation & Parks Capital	30,000	-	-	30,000
Transfer to Facilities Improvement	300,000	-	-	300,000
Transfer to IT Capital Projects Fund	250,000	-	-	250,000
Total Appropriations	<u>\$ 58,993,491</u>	<u>\$ 350,000</u>	<u>\$ 350,000</u>	<u>\$ 59,343,491</u>

Section XI: 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:

	2023-24 Revised Budget	G.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Special Fed/State/Loc Grant	\$ 10,807,930	\$ 116,927	\$ 116,927	\$ 10,924,857
CARES Act Funding	1,561,332	-	-	1,561,332
Transfer From General Fund	1,555,327	-	-	1,555,327
Transfer From Pre-1994 Entitlement	27,419	-	-	27,419
Transfer from Other Funds	107,895	-	-	107,895
Total Revenues	\$ 14,059,903	\$ 116,927	\$ 116,927	\$ 14,176,830
APPROPRIATIONS				
Personnel	\$ 2,295,650	\$ -	\$ -	\$ 2,295,650
Operating	5,927,674	116,927	116,927	6,044,601
Capital Outlay	2,006,385	-	-	2,006,385
Transfers	27,419	-	-	27,419
COVID-19	1,526,923	-	-	1,526,923
Rural Housing Recovery Grant	350,000	-	-	350,000
Environmental Enhancement Grant	150,935	-	-	150,935
STAR Grant	330,000	-	-	330,000
Governor's Crime Commission Grant 22	24,500	-	-	24,500
Governor's Crime Commission Grant 23	22,900	-	-	22,900
COPS Community Policing Development	175,000	-	-	175,000
Justice Assistance Grant 2022	55,135	-	-	55,135
Project Lucky - Job Creation Grant	100,000	-	-	100,000
Opioid Settlement Trust	45,532	-	-	45,532
Energy Efficient Conservation Block Grant	146,850	-	-	146,850
Transfer to Other Funds	875,000	-	-	875,000
Total Appropriations	\$ 14,059,903	\$ 116,927	\$ 116,927	\$ 14,176,830

Section XII: Estimated Revenues and Appropriations. Donations Fund, of Ordinance #18-062 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	D.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Restricted Intergov/Donations	\$ 229,399	\$ 16,714	\$ 16,714	\$ 246,113
Transfer From General Fund	203,288	-	-	203,288
Total Revenues	\$ 432,687	\$ 16,714	\$ 16,714	\$ 449,401
APPROPRIATIONS				
Mayor & City Council	\$ 550	\$ -	\$ -	\$ 550
Financial Services	1,336	-	-	1,336
Police	25,523	16,714	16,714	42,237
Fire / Rescue	20,202	-	-	20,202
Community Development	3,270	-	-	3,270
Recreation & Parks	381,806	-	-	381,806
Total Appropriations	\$ 432,687	\$ 16,714	\$ 16,714	\$ 449,401

Section XIII: Estimated Revenues and Appropriations. Occupancy Tax Fund, of Ordinance #11-003 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	H.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Occupancy Tax	\$ 1,066,538	\$ -	\$ -	\$ 1,066,538
Transfer from Public Works Capital Projects	1,866,866	-	-	1,866,866
Transfer from Debt Service	1,162,724	-	-	1,162,724
Appropriated Fund Balance	-	58,200	58,200	58,200
Total Revenues	\$ 4,096,128	\$ 58,200	\$ 58,200	\$ 4,154,328
APPROPRIATIONS				
Occupancy Tax Reserves	\$ 3,148,128	\$ -	\$ -	\$ 3,148,128
Service Charge/Collection Fee	58,000	-	-	58,000
Payments to CVB	750,000	-	-	750,000
Transfer to Facilities Improvement	100,000	-	-	100,000
Transfer to Other Funds	40,000	58,200	58,200	98,200
Total Appropriations	\$ 4,096,128	\$ 58,200	\$ 58,200	\$ 4,154,328

Section XIV: Estimated Revenues and Appropriations. Recreation & Parks Capital Project Fund, of Ordinance #17-024 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Revised Budget	H.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES				
Restricted Intergovernmental	\$ 1,122,457	\$ -	\$ -	\$ 1,122,457
Transfer from General Fund	2,671,308	-	-	2,671,308
Transfer from Capital Reserve	128,822	-	-	128,822
Transfer from CD Cap Proj Fund	82,965	-	-	82,965
Transfer from FIP	44,818	-	-	44,818
Transfer from FEMA-Hurricane	117,340	-	-	117,340
Transfer from PW Cap Proj Fund	30,000	-	-	30,000
Transfer from Occupancy Tax Reserve	-	58,200	58,200	58,200
Special Donations	1,491,352	-	-	1,491,352
Miscellaneous Revenue	567,148	-	-	567,148
Appropriated Fund Balance	971,573	-	-	971,573
Long Term Financing	8,729,235	-	-	8,729,235
Total Revenues	\$ 15,957,018	\$ 58,200	\$ 58,200	\$ 16,015,218
APPROPRIATIONS				
Water Sports Facility Project	\$ 306,325	\$ -	\$ -	\$ 306,325
Wildwood Park	10,541,321	-	-	10,541,321
Transfer to General Fund	9,000	-	-	9,000
Parks Improvements	45,000	-	-	45,000
Pool Replacement	4,310,290	-	-	4,310,290
Off-Lease Dog Park	100,000	-	-	100,000
Parks Comprehensive Master Plan	147,000	-	-	147,000
Pickleball Conversion	75,000	-	-	75,000
Sports Complex Feasibility Study	-	58,200	58,200	58,200
Transfer to Other Funds	423,082	-	-	423,082
Total Appropriations	\$ 306,325	\$ 58,200	\$ 58,200	\$ 16,015,218

Section XV: Estimated Revenues and Appropriations. Transit Fund, of Ordinance #23-046 is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	2023-24 Original Budget	A.	E.	F.	Total Amend #1	2023-24 Budget per Amend #1
ESTIMATED REVENUES						
Grant Income	\$ 2,584,993	\$ -	\$ 1,086,573	\$ 662,800	\$ 1,749,373	\$ 4,334,366
Bus Fare Ticket Sales	289,500	-	-	-	-	289,500
Other Revenues	57,500	-	-	-	-	57,500
Transfer from General Fund	771,894	-	-	-	-	771,894
Appropriated Fund Balance	-	119,456	-	-	119,456	119,456
Total Revenues	\$ 3,703,887	\$ 119,456	\$ 1,086,573	\$ 662,800	\$ 1,868,829	\$ 5,572,716
APPROPRIATIONS						
Public Transportation	\$ 3,703,887	\$ 119,456	\$ -	\$ -	\$ 119,456	\$ 3,823,343
Fleet Bay Expansion	-	-	1,086,573	-	1,086,573	1,086,573
Bus Shelter Additions	-	-	-	662,800	662,800	662,800
Total Appropriations	\$ 3,703,887	\$ 119,456	\$ 1,086,573	\$ 662,800	\$ 1,868,829	\$ 5,572,716

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

Adopted this 7th day of August, 2023

P. J. Connelly, Mayor

ATTEST:

Valerie P. Shiuwegar, City Clerk