



# Agenda

## Greenville City Council

May 5, 2014  
6:00 PM  
City Council Chambers  
200 West Fifth Street

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### I. Call Meeting To Order

### II. Invocation - Council Member Glover

### III. Pledge of Allegiance

### IV. Roll Call

### V. Approval of Agenda

- **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.

### VI. Consent Agenda

1. Minutes from the October 7, 2013, November 7, 2013, December 12, 2013, January 16, 2014, February 13, 2014, and February 24, 2014 City Council meetings
2. Resolution amending Article VII, Section 2.0 Holidays of the Personnel Policies
3. Approval of changes to the Housing Division Policy and Procedure Manual
4. Resolution of support to the North Carolina Department of Transportation for funding the intersection improvements at the intersection of West 5th Street and Memorial Drive

5. Supplemental Design Agreement for additional services on the South Tar River Greenway Phase 3 Project
6. Contract award for the Municipal Building Roof Replacement and Exterior Waterproofing
7. Various tax refunds greater than \$100
8. Report on Bids Awarded

**VII. New Business**

9. Presentations by Boards and Commissions
  - a. Planning and Zoning Commission
  - b. Redevelopment Commission
  - c. Community Appearance Commission
10. Resolution accepting a gift of property from Greenville Prime Investors, LLC
11. Resolution approving an amendment to the Operational Management Agreement for the Greenville Convention Center
12. Contract award for Design-Build Services for the Greenville Convention Center renovation and expansion
13. Bond Order, Bond Purchase Agreement, and Secondary Trust Agreement for the issuance of the City of Greenville's Special Obligation Revenue Bonds, Series 2014, for financing the Convention Center renovation and expansion
14. Guaranteed Maximum Price (GMP) amendment to Construction Manager at Risk Contract for Uptown Parking Deck
15. Contract awards for the Watershed Master Plans
16. Presentation on the status of private streets within the City of Greenville
17. Presentation of the City's proposed fiscal year 2014-2015 operating budget and fiscal year 2015-2016 financial plan
18. Budget ordinance amendment #7 to the 2013-2014 City of Greenville budget (Ordinance #13-026), budget ordinance amendment to the Uptown Parking Deck Capital Project Fund (Ordinance #13-025), and ordinances to establish the capital project funds for the Watershed Master Plans and the Convention Center Expansion (Phase III)

**VIII. Review of May 8, 2014, City Council Agenda**

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

**X. City Manager's Report**

**XI. Closed Session**

- To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body
- To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said law rendering the information as privileged or confidential being the Open Meetings Law

**XII. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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**Title of Item:** Minutes from the October 7, 2013, November 7, 2013, December 12, 2013, January 16, 2014, February 13, 2014, and February 24, 2014 City Council meetings

**Explanation:** Proposed minutes from City Council meetings held on October 7, November 7, and December 12, 2013, and January 16, February 13, and February 24, 2014, are presented for review and approval.

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

**Recommendation:** Review and approve minutes from City Council meetings held on October 7, November 7, and December 12, 2013, and January 16, February 13, and February 24, 2014.

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

**Attachments / click to download**

- [Proposed Minutes of October 7 2013 City Council Meeting 974571](#)
- [Proposed Minutes November 7 2013 City Council Meeting 976114](#)
- [Proposed Minutes of the City Council Meeting held December 12 2013 970956](#)
- [Proposed Minutes Thursday January 16 2014 City Council Meeting 976949](#)
- [Proposed Minutes February 13 2014 City Council Meeting 977190](#)
- [Proposed Minutes of the February 24 2014 City Council Meeting 977746](#)

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, OCTOBER 7, 2013



The Greenville City Council met in a regular meeting on the above date at 6:00 p.m. in the Council Chambers, third floor of City Hall, with Mayor Allen M. Thomas presiding. The meeting was called to order, followed by the invocation by Mayor Thomas and the Pledge of Allegiance to the flag.

Those Present:

Mayor Allen M. Thomas; Mayor Pro-Tem Rose H. Glover (Mayor Pro-Tem Glover arrived at the meeting at 6:21 p.m.); Council Member Kandie D. Smith; Council Member Marion Blackburn; Council Member Calvin R. Mercer; Council Member Max R. Joyner, Jr.; and Council Member Dennis J. Mitchell

Those Absent:

None

Also Present:

Barbara Lipscomb, City Manager; David A. Holec, City Attorney; Carol L. Barwick, City Clerk and Polly Jones, Deputy City Clerk

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**APPROVAL OF THE AGENDA**

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Motion was made by Council Member Blackburn and seconded by Council Member Joyner to pull the amendment to the authorized position allocations within the Recreation and Parks Department's Parks Division and the recommendation to install a Solar Panel System at River Park North from the Consent Agenda, to place those items at the beginning of the agenda for discussion, and to continue the discussion of the resolution adopting the City of Greenville Local Preference Policy until November 2013. Motion carried unanimously.

Motion was made by Council Member Blackburn and seconded by Council Member Joyner to approve the agenda with the requested changes. Motion carried unanimously.

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**PUBLIC COMMENT PERIOD**

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Raymond Sobel – 110 Kimberly Drive

Mr. Sobel stated that he has questions and comments about the salaries that were recently passed in the City's budget. He asked how can Council Members vote on their own salary increase without it being publicly aired on the Greenville's Access Channel (GTV-9) and without receiving approval from those paying them, and why was the salary increase put in



the City's budget minutes before the vote on the entire budget, when over the weeks of discussion, there was ample opportunity to do so. Mr. Sobel stated that it is difficult to believe that the last minute motion was not given thought weeks before on such a delicate subject. He could not in good conscious give himself a pay raise without giving those who have to pay it some input. He believes he is a responsible person and will accept reasonable explanations as to why he should do this or that. Salaries of course being one, but were there any sensible thoughts put forth before the City Council's salary increase was included in the overall budget. Most are well aware of the difficult economic circumstances that are being endured, and when the issue of raising salaries is put forth, this issue has to be a consideration for many. Unfortunately, the taxpayers were unable to express their views on the elected officials' salary increase before the entire budget was acted upon. To him, that appears to be profoundly undemocratic, insensitive and regressive.

#### Michael Overton - 3044 Rolston Road

Mr. Overton introduced himself to the public and the Mayor and City Council as a lifetime resident of Greenville who is seeking to become the next District #5 Council Member. Mr. Overton stated that his family has been in business since his grandfather moved to Greenville in 1940 and opened Overton's Supermarket, and his father opened Overton's Watersports during the 1970s. He has had an incredible opportunity to learn from those two gentlemen what it takes to operate a business. At Overton's, he was Vice-President of operations responsible for 500 employees, several other departments under his supervision, a \$70 million budget, and challenges and opportunities to grow his family's company in good and bad times. He knows what it takes to create jobs and to build things from nothing. Currently, he is a realtor in Greenville who has had the opportunity to build his company from scratch and is involved with other entities. Hopefully, on November 5, 2013, he will be elected as the Council Member for District #5 on the Greenville City Council.

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### CONSENT AGENDA

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City Manager Barbara Lipscomb introduced the following items on the revised Consent Agenda:

- Amendment to minutes of the June 11, 2012, City Council meeting
- Minutes from the December 13, 2012, City Council Work Session on Sanitation Services
- Resolution accepting dedication of rights-of-way and easements for Langston West, Section 4 (Resolution No. 053-13)
- Acceptance of EPA Brownfield Clean-up Grant



- Funding for Economic Development Project
- Purchase of TASERs by the Police Department
- Purchase of 72 rifles for the Police Department
- Requested use of federal asset forfeiture funds to contract with the University of North Carolina at Greensboro for crime data analysis for the Focused Deterrence Initiative
- Contract to purchase 6,000 recycling carts
- Contract to purchase five refuse trucks
- Contract award for study and preliminary design services (Task Order 1) for the Town Creek Culvert Drainage Project
- Various tax refunds greater than \$100
- Budget ordinance amendment #3 to the 2013-2014 City of Greenville budget (Ordinance #13-026), amendment to the Special Revenue Grant Fund (Ordinance #11-003), and a budget ordinance to establish the Town Creek Culvert Capital Project Fund (Ordinance Nos. 13-47 and 13-048)

Council Member Joyner asked if the City has a TASER policy. Chief of Police Hassan Aden responded that the Greenville Police Department (GPD) has a restrictive policy for its use of TASERs.

Council Member Joyner asked whether all police officers have TASERs, whether special training is offered to them and during what situations are TASERs used. Chief of Police Aden responded that not all of GPD's police officers have them, but most of the operational officers do, and those officers are required to participate in a 40-hour TASERs course and being tasered themselves is part of the training. One of GPD's policies has been adopted by some of the most forward thinking police departments in the country. That is in addition to the requirement of the TASER training, 40 hours of crisis intervention training is also required in order to carry a TASER within GPD. During his service with a previous police department, they keyed off of the Philadelphia Police Department, which started other police departments looking at the data. Most people that end up getting tasered are in some form of crises, and GPD wants to give its officers who are carrying TASERs the best possible opportunity to interact and de-escalate the situations. GPD is way ahead in policy and people are looking at GPD as a model.

Council Member Joyner asked if staff feels that GPD needs 30 new TASERs. Chief of Police Aden responded yes, and he explained that most accidental deaths occur because of multiple cycles being applied either due to the operational officers' stress or TASERs



malfunction. GPD's TASERS are getting old and the likelihood of repeating cycles is high. The cycle of the new TASERS that are coming out is disruptive after five seconds so officers would have to reapply a charge, which majorly decreases the opportunity for accidentally death.

Council Member Smith asked how current is GPD's TASER Policy. Chief of Police Aden responded that GPD's Policy was implemented about seven months ago.

Council Member Smith asked when will the next 40-hour TASER training be offered. Chief of Police Aden responded that the next TASER training is scheduled for the fall in 2014.

Council Member Smith requested staff to keep the City Council abreast of that upcoming training.

Mayor Pro-Tem Glover stated that GPD will be trading in 27 TASERS to obtain 30 TASERS and federal asset forfeiture money will be used to purchase them, and not any monies out of GPD's budget are being used to buy these devices. That money is seized from drug deals, etc. and the federal government gives the money back to GPD, which is a way to put that money to good use and to handle more crime problems. She appreciates that Chief of Police Aden realizes the fact that most people who are tasered do have problems and training is required to handle them. That is one of the problems that the City was having and one of the issues that City Manager Lipscomb and Chief of Police Aden looked at when both first started to work in Greenville.

Motion was made by Council Member Blackburn and seconded by Council Member Smith to approve all items on the revised Consent Agenda. Motion carried unanimously.

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**NEW BUSINESS**

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AMENDMENT TO THE AUTHORIZED POSITION ALLOCATIONS WITHIN THE PARKS DIVISION OF THE RECREATION AND PARKS DEPARTMENT

Assistant City Manager Chris Padgett stated that this item is related to a recent retirement of one of the two full-time Park Rangers. Park Rangers patrol the parks and recreation facilities and shelters to ensure that all of the rules are being obeyed and they meet with people who rent those sites to ensure that everything is being done properly. Also, Park Rangers provide a lot of event support for the Recreation and Parks Department (Department). Leading up to the Park Ranger's retirement, Director of Recreation and Parks Gary Fenton, City Manager Lipscomb and he had conversations regarding some difficulty that the Department has been having with coverage for the Parks Division. Staff feels that the services provided by the positions are of great value to the Department and three full-time positions, 20 hours per week per Park Ranger, will give the Park Division an additional 20 hours a week of coverage. All of the parks open early in the morning and





some of them close at dusk. A lot of facility rentals occur at different times and in recent years, the City has increased special events. The number of events that the City is trying to support with staffing with 80 hours and when factoring in vacation and other things, can be difficult to get the coverage that is needed. With this retirement, staff saw an opportunity to try to become more cost effective and flexible in how the City provides services. The proposal before the City Council is to replace that one vacant full-time Park Ranger position with three part-time positions, which would provide coverage of 20 hours each plus 40 hours provided by the remaining full-time Park Ranger, effectively increasing coverage 50 percent and doing so with \$11,000 of cost savings realized in the Department.

Director of Recreation and Parks Fenton stated that with the size of the City and as many events occurring across the City, there are times that two Park Rangers are required to work at the same time. An extra 20 hours could mean a great deal to the Department and like any other department, staff hesitates to lose a full-time position, but staff feels this savings and the increase in time will offset that.

Council Member Blackburn stated that her concern is that the City will lose this Park Ranger position. The reason that she asked for this item to be pulled from the Consent Agenda is because she wanted to hear more about the kind of message that the City wants to send and why this decision was made. The approach of eliminating a full-time employee and replacing an employee with a part-time one is widely criticized. If the City cuts out benefits it is more cost effective, but she wonders if that is a good message for the City to send when the City Council is trying to work on economic development. She supports the additional hours, but increasing more hours of coverage and doing it cheaper by cutting benefits and eliminating full-time positions and making them part-time are reasons that are used nationally and have not always been met with the warmest response. She does not feel the City does business that way.

Assistant City Manager Padgett stated that staff's focus is not necessarily on any particular position, but staff's focus is on serving the customers. In this case, staff feels that given the resources allotted, this is more of an effective way of providing service to customers who are using the City's parks and recreation facilities. It is not intended to send any message, but is a decision based on the realities that the City faces with limited resources and a lot of needs.

Upon being asked whether this Park Ranger position that has been split into part-time positions will be replaced with a full-time Park Ranger position at any point in the future, Assistant City Manager Padgett responded certainly, as the City or system grows, there may be additional needs in this area. It would not be the immediate plan to replace that position, but rather to reclassify it from a full-time position down to multi part-time positions to meet the needs and they would be designated part-time employees.

Upon being asked about how staff will maneuver one vehicle with three part-time Park Rangers, Director of Recreation and Parks Fenton responded that there are other City vehicles available without the emblem of the Park Ranger on them. Parks are opened



during the weekends, evenings and holidays and 8:00 a.m. - 5:00 p.m. week days, so there will be a lot of times that the Park Rangers will not have a vehicle to themselves. There is also a situation once in a while that necessitates two Park Rangers to be together for larger events and they would share a vehicle as they have done in the past.

Upon being asked if the City Council and staff are going to do more thinking out of the box like this because of the increased costs of health insurance or to put the burden on the taxpayers, Assistant City Manager Padgett responded that health care costs are certainly up and 10.9 percent is the City's proposed health care increase for next year. The City has been evaluating opportunities for a while. Sometimes, it has been shifting existing resources from one point to another. In this specific case, this is a full-time employee position being changed to multi part-time positions, but the opposite has been done as well on occasions where it was better for the City's needs. For example, two part-time employees in the Public Relations Office were combined to make a full-time position because a full-time position would be more effective.

Upon being asked whether any of the Sanitation Division employees who will not have a job and are not at the retirement stage will be eligible for the part-time Park Ranger positions, City Manager Lipscomb responded that a few of the Sanitation Division workers have looked at and have moved to other positions and others have chosen to take an early buyout. If any Sanitation workers are interested in those part-time Park Ranger positions, they can consider them as an option as well. The City will continue to advertise positions for Sanitation workers around preference as part of the City moving forward with the changes in the Sanitation Division. In this particular case though, staff looked at the efficiency of the Recreation and Parks Department and considered the need to have more coverage as opposed to having an additional full-time employee in the Parks Division. A decision was made to change a full-time Park Ranger position to part-time positions to get the better coverage. Staff will be looking at how all of the different departments basically serve the public. She is not looking at the old ways and is looking at some new ways, strategies and concepts in order to better provide service, and she is looking at having a holistic process for doing that.

Upon being asked if there is any specific training taken by Park Rangers, Recreation and Parks Director Fenton responded yes and all three will go through that training. It is a challenge sometimes to keep people in part-time positions, but recently the part-time General Manager position at the Bradford Creek Public Golf Course was filled. As people retire, there are quite a few applicants who want part-time employment rather than full-time employment.

Upon being asked about how the continuity with the current Park Ranger work, Recreation and Parks Director Fenton responded when there were two full-time Park Ranger positions, one Park Ranger worked the weekends. The current Park Ranger will probably still work every other weekend because the other Park Rangers can fill in and it may allow the full-time one to work less than two weekends a month or may be every third or fourth



weekend. Those decisions have not been made, but obviously the current Park Ranger already has the expertise and that employee is way ahead of the newcomers. Council Member Joyner moved to approve the amendment to the authorized position allocations within the Parks Division of the Recreation and Parks Department, however, the motion died due to the lack of a second.

City Attorney David Holec explained that without any change, the position stays the way that it currently is and the plan is not being amended.

Later at this City Council meeting, after the presentation by the Investment Advisory Commission, a motion was made by Council Member Mitchell and seconded by Council Member Mercer to reconsider the amendment to the authorized position allocations within the Parks Division of the Recreation and Parks Department. The motion passed with a 4:2 vote. Council Members Mitchell, Mercer, Smith and Joyner voted in favor of the motion and Mayor Pro-Tem Glover and Council Member Blackburn voted in opposition.

Council Member Mitchell stated that it is often said that it is the City Council's job to set up the policy and it is staff's job to give the operations or how it will be handled. The present City Council has been giving staff a clear message to be more efficient. Because the Park Ranger position involved a retiree (a vacant position) and not the elimination of an employee, this was an opportunity for staff to reallocate those resources. Even though that is not something that the City Council asked for, staff looked at and came back with a more efficient way of handling it. Therefore, he feels that staff is entitled to an up or down vote from the City Council on whether to accept this recommendation that came from staff and not from the City Council.

Council Member Blackburn stated that she appreciates staff's response and recommendation. Her concern now is a process one because the City Council has already had a discussion about this item and is now being asked in the middle of the agenda to revisit it. If the City Council is going to have the entire discussion again, her concerns about staff's recommendation are the same as she stated previously.

Council Member Mitchell stated that none of the Council Members operate or are aware of what is required to manage the Recreation and Parks Department on a daily basis. A way is being presented to reduce cost, which never normally happens in city government, and about how the Parks Division can operate more efficiently. He has been contemplating staff's request and feels the need is prudent for reconsideration. He is supportive of Recreation and Parks Director Fenton's recommendation.

There being no further discussion, motion was made by Council Member Joyner and seconded by Council Member Mitchell to approve the amendment to the authorized position allocations within the Parks Division of the Recreation and Parks Department passed with a 4:2 vote. Council Members Joyner, Mitchell, Blackburn and Mercer voted in favor of the motion and Mayor Pro-Tem Glover and Council Member Smith voted in opposition.



## REPORT ON PROPOSED SOLAR PANEL SYSTEM FOR CITY HALL AND RECOMMENDATION TO MOVE PANELS TO RIVER PARK NORTH

Public Works Director Kevin Mulligan stated that one of the City Council's goals in 2012 included the direction for the Public Works Department to evaluate the implementation and to prepare a report on the installing of solar panels on City Hall. In conjunction with Schneider Electric Buildings Americas, Inc. (Schneider Electric), the City's energy savings consultant, staff made a determination that River Park North Science and Nature Center (River Park North) would be a better location for a solar panel system. River Park North is preferred instead of City Hall because the solar panels would be visible to the public and more closely aligning with the educational piece of this site. The panels are not visible on the roof at City Hall, but a monitor will be downstairs at City Hall showing the amount of energy produced during sunlight when they are collecting energy. A monitor will be located at River Park North as well. Because of the overall cost, the City is not making money off of the energy that is produced by the solar panels.

Upon being asked if there were other facilities or buildings that staff looked at as an option for the installation of a solar panel system, Public Works Director Mulligan responded that staff looked at essentially City Hall, River Park North and the Aquatics and Fitness Center. There are two installations of solar panels. One is photovoltaic, which means that the panels produce electricity that can be sent to the grid or the electricity can be used to power parking lot lights or other entities. It is a small amount of energy that is being produced because there are only 20 panels. The other way of collecting solar energy is to heat hot water to supplement a water heater, and that is actually in place currently at the Police and Fire/Rescue Headquarters. Using the water heater at the Aquatics and Fitness Center did not match well because of a lot of structural requirements for implementation there.

Upon being asked about the benefit of solar panels on City Hall, Public Works Director Mulligan responded that the City would look at the return on investment. If the cost is \$33,000 to install the solar panel system where \$500-\$600 worth of electricity could be produced annually, the breakeven on it would be about 58-60 years.

Upon being asked about the current number of visitors at River Park North to determine what the increased visits might be because of the solar panels being there, Recreation and Parks Director Fenton stated that there is no clear count of the current visitors because a lot of people do not necessarily visit the Administrative Building, but hundreds of people do visit River Park North. However, the solar panels on the roof of the Administrative Building would be visible to those who drive into River Park North to go there. The monitor would be an additional exhibit of what solar energy does for the City, and it would educate people about what they might be able to do at their homes. River Park North is the focal point for the City's environmental education efforts such as composting, recycling, litter prevention, water quality, and protection of water quality.



Upon being asked what ways will the City market the solar panels to encourage people to visit River Park North, Public Works Director Mulligan responded that staff has reached out to a vendor who is doing some research on potential partners so that the solar panel system can be brought in as an education piece to reduce the City's overall cost and to bring more people to River Park North.

Upon being asked whether the panels were for educational purposes or energy cost savings when the City Council first voted on having the solar panels at City Hall, City Manager Lipscomb responded when she started to work in Greenville, she was given goals that the City Council had already voted on and this was one of them. Somewhere along the way the concept was incorporated into the consulting study that Schneider Electric is doing for the City on energy savings. When the City received the results, she looked at them with the Public Works Director and staff was concerned about the return on investment and that the return on the actual savings was minimal. If it was the City Council's objective for Greenville to become and to promote more green, this lends itself to more of an educational project as opposed to something that would be really saving money at City Hall. That is why the decision was made to look at other options. Because she is from Florida and is aware that a lot of solar hot water systems have a better return on investment, she directed Public Works Director Mulligan to look at the Aquatics & Fitness Center. However, because of the roof and structural issues at that facility, and using the hot water heater could not be done there. Public Works Director Mulligan and Recreation and Parks Director Fenton feel that River Park North would be a good educational fit for the proposed Solar Photovoltaic (PV) System.

Upon being asked if the breakeven is 58-60 years for both City Hall and River Park North in order to have a return on investment, will that be the same if the City considers installing the panels on the uptown parking deck, City Manager Lipscomb responded that the investment in that is about \$400,000 and that is a different type of situation. The return on investment is unknown at this time.

Council Member Smith stated that the City must be sure that this is benefiting the citizens as well because this is taxpayers' money and the City should remain transparent about how it is spent.

Upon being asked about the sponsorship possibilities that would impact the City to breakeven, Public Works Director Mulligan stated that sponsorship opportunities will be looked at over the next three to five months with various entities, which may include a solar power distributor or a solar panel distributor or a utility. He has directly reached out to a marketing company that has expressed an interest in it, and there may be a Company X or Y that may want to put some money behind this project as well.

Upon being asked if it makes sense for the City to spend \$33,000 to get back \$45-\$50 a month, Public Works Director Mulligan explained that this is a part of a multi-faceted project where Schneider Electric is looking at the energy and efficiency components (lights, windows, plumbing, HVAC, etc.) of buildings. The solar panel system is one piece of that



project, which does not have the best return on investment. The project as a whole and overall return on investment makes sense.

Upon being asked if Schneider Electric actually pays for the projects and then the City pays them back with the savings, Public Works Director Mulligan responded that the City pays for the project and then Schneider Electric pays the City with the savings.

Motion was made by Council Member Joyner and seconded by Council Member Mitchell to deny the installation of a solar panel system at River Park North.

Council Member Blackburn stated that her concern is that the City Council did not pull out other items of the Schneider Electric contract and every single item was approved. The idea behind the Schneider Electric contract is there is a package of energy savings that when taken together allows the City to benefit and at the same time to make steps that are going to move the City in a more progressive direction. We are trying to market Greenville as a place to come to do business and looking for economic development and this is one of those ways to do that. The City will have a cost savings with the solar panel installation at River Park North and children from all over the region can come and see a demonstration in action there and on the monitor at City Hall. There is no better way to send that excellent message that Greenville is a place that is progressive, open to new ideas and a great place to come with your family and do business. She strongly advocates for the installation of this project at River Park North. In addition to all of the clear advantages that the City gets, there is also the possibility of sponsorships that will allow the City to breakeven on this and that is a win-win.

Council Member Joyner stated that the citizens of Greenville will be taxed at a higher rate and only visitors will be able to enjoy Greenville, if the City does not control its spending. He supports green energy, but it should make economic sense and the City cannot spend \$1 million to save \$1 thousand. His understanding of the Schneider Electric project that he voted on was that each project was supposed to stand on its own. Why would the City do a project that does not pay for itself or save the citizens some money? That was not the purpose of the City's energy savings project at all, and he hopes that he did not vote on something that was misrepresented. The City Council is supposed to be the steward of the taxpayers' dollars. Next year, the City Council will discuss the City's budget and the citizens' tax rate. The City is trying to save dollars for better roads, more public safety, etc. and not to throw \$33,000 out the window for it to be said that the City is green. He will not support the installation of the solar panel system at River Park North because anything that the City does has to make business and economic sense.

Upon being asked, what is the lifespan of a solar panel, Public Works Director Mulligan responded it is not 60 years and it would have to be replaced in about 30 years.

Council Member Mitchell stated that it will take the City 60 years to pay back something that only lasts for 30 years.



Public Works Director Mulligan stated that is a fair point, and technology is changing and certainly the panels that were in place 10 years ago are not the panels that are in place now.

Council Member Mercer stated that he is not hearing anything urgent about this project and there is not enough information. He would like to know if there is enough sponsorship for the City to breakeven now or in a year.

Motion was made Council Member Mercer and seconded by Council Member Smith to table this item until staff provides the City Council with more information about the sponsorship for the City to breakeven.

Council Member Joyner stated that if the motion is to lay this item on the table until information is provided so that this project will pay for itself, it is not spread out enough for him to support it.

The motion was restated and made by Council Member Mercer and seconded by Council Member Smith to direct staff to determine how much sponsorship the City has and what the dollar figure is on those sponsorships and to table this item until that information is provided to the City Council.

Upon being asked if staff has looked at other places where the City can have the panels that would not cost so much, but can still have an educational environment, Public Works Director Mulligan responded that Schneider Electric's contract expires the end of December. There is a lead time to order these panels and the City can give them an answer in November, which would probably be the deadline for the City to make a decision and to give them the authority to do this. If the City looked at another facility, it would be more expensive and would be the third or fourth facility for consideration. Schneider Electric would look to pass on the design costs of that to the City. There are a couple of things working against the City on selecting a different facility other than River Park North or City Hall.

Upon being asked if the Solar Photovoltaic (PV) System is pulled out of the current project before November would that project fail entirely or will the project continue without that one component, Public Works Director Mulligan responded there is a contractual amount so staff would evaluate an alternative to the solar panels in an existing facility.

There being no further discussion, the restated motion to direct staff to determine how much sponsorship that the City has and what the dollar figure is on those sponsorships and to table this item until that information is provided to the City Council passed unanimously.



## PRESENTATIONS BY BOARDS AND COMMISSIONS

### Greenville Bicycle and Pedestrian Commission

Chairperson Harry Stubbs announced that there is a vacancy to fill on the Greenville Bicycle and Pedestrian Commission (GBAPC). He urged citizens to apply for this available slot and other City board/commission vacancies.

Chairperson Stubbs summarized GBAPC's 2013 projects, stating that Greenville/Pitt County Bike Maps were distributed at many local organizations and businesses. This is the first comprehensive Bike Map that Greenville and Pitt County have ever had. One side displays the City of Greenville area with an insert for downtown and all of the Pitt County townships and incorporated areas are on the reverse side of this map. GBAPC obtained information from a wide variety of people, i.e. running clubs and other groups in the County, and tried to color code how available and safe various bike paths are. Also, an interactive map is available for smartphones and iPhones, which are hooked up with the Google street map application identifying the street that people are on and showing what houses that they are biking by. The company out of Durham, North Carolina, Altos, informed the members that in five years they would probably revisit this and create a new map. GBAPC would like to have the new greenways, bikeways, and advertisements included on this map, and GBAPC is already getting interest from new merchants and vendors who want people to know that they are biker and pedestrian friendly. Base-line information is now available for the Recreation and Parks and Public Works Departments as GBAPC is beginning to do some of their own budgeting and planning.

In September 2013, GBAPC organized and carried out Greenville's second annual Manual Bicycle and Pedestrian Count. This is a national wide census that is reported to the North Carolina Department of Transportation (NCDOT), and Greenville was up 30 percent over last year's numbers. The engineers who build greenways are obviously trying to lobby for additional greenway support. In support of National Bicycle Month, GBAPC took part in the Pamlico-Tar River Foundation's Annual River Jam with a public-outreach table and bike games for children. Bicycle helmets were donated at that event by Jennifer Smith of the Vidant Medical Center. At the request of some citizens, GBAPC researched the bicycle policies at some of the local businesses' outdoor service windows, and local banks are welcoming customers who arrive by bicycles to do business. GBAPC's next project is to begin the process towards application for Walk-Friendly Community Designation by the Pedestrian and Bicycle Information Center. This is a chartered institution that will probably expect some kind of payment from the City in order to apply.

Chairperson Stubbs stated that GBAPC's advisory accomplishments for 2013 included the following:

1. Advised City staff on the First Street road diet and parking plan.
2. Began discussions on an amendment to Greenville's sidewalk construction ordinance.





3. Advised NCDOT on the Evans St. /Old Tar Rd. widening project (south of Greenville Blvd.).
4. Began discussions with NCDOT on long-term possibilities for bicycle facilities in the Evans St. corridor north of Greenville Blvd.

GBAPC advised the City and NCDOT staff on many smaller projects including greenway intersection improvement and ongoing street, sidewalk, and greenway maintenance needs. Also, through Uptown Greenville, a vendor donated a bicycle parking rack, which will be installed by the City in the new alley streetscape between Winslow's and the Starlight Grill. Also, the members are working on additional strategic partnerships to put more bike racks at other locations.

One of their members served on the Greenville Transportation and Activities Center Stakeholders Steering Committee. There are considerations being given for bike and pedestrians facilities at the Greenville Transportation and Activities Center. GBAPC welcomes public input and some comments were received from people, particularly the handicapped people, about having difficulty getting across the streets near the hospital. Specifically, there is a need for safety improvements to the crosswalk on West Fifth Street at Darden Street.

Many retirement and other quality of life publications and surveys look at bike ability, walk ability and basically getting around in a non-carbon based vehicle as measures of the City's commitment to the citizenry. GBAPC is looking forward to working with the City Council in the future.

Upon being asked what is being done about people riding bikes on the sidewalks, Chairperson Stubbs responded that GBAPC will probably revisit bikers not being able to use sidewalks with the Police Department. As the City begins to do more road work, painted lines on the streets will let drivers of vehicles know that bikers have the right to be within those lines.

Upon being asked about people feeling that it is more prudent to ride their bikes against traffic, Chairperson Stubbs responded that the State law is that bikers should behave the same as drivers of motor vehicles, i.e. bikers should be in the right lane like those who are driving in a vehicle.

Upon being asked is there anything the City can do that it is not doing to educate citizens about the best way to ride their bicycles, Chairperson Stubbs responded that part of that is in the Greenville/Pitt County Bike Map and GBAPC can get more strident in the Map. There is specific information about being in the right lane and how to do hand signals, etc. GBAPC has thousands of maps and have been rather restrictive in the first year of distributing them. They are looking for sponsors and support for that so that they do not have to ask the City for any funds.



### Investment Advisory Commission

Chairperson David Damm gave the purpose of the Investment Advisory Commission (IAC) and stated the following during his presentation:

There are very restrictive requirements for the City's funds and the primary focus is safety, liquidity and yield in the consideration of what can be invested for the City and for its community members. IAC tries to use a prudent investment process in selecting investments for the City using a systematic approach in doing that and avoids any of the speculations that are out in the investment environment. However, IAC wants to maximize earnings within the restrictive environment using a prudent investment process so that the City can earn more money. For the last seven years, IAC has been monitoring the performance using benchmarks and criteria. City staff has done a great job in developing some spreadsheets so that IAC can have some performance evaluations available at its meetings.

The City's cash balance has been consistent for the last five years. Most of the City's portfolio is allocated to cash and cash equivalents. IAC made a decision this year to invest in a North Carolina Cash Management Trust Account, which was yielding a higher return in some of the City's cash equivalents to about 15 percent. The other funds are federal government backed investments and a very small investment in CDs (1.94 percent). The portfolio by maturity indicates that most of it is cash and cash equivalents with less than one year, which are very safe and short term investments. There are some investments stretched out to 1-3 years and actually to 3-5 years and that is the extent that IAC will go with a five-year time horizon. During the upcoming years, IAC will probably rebalance the 3-5 year investments and go to more shorter considerations as they look to where the interest rates are going in the future which probably will go higher more so than lower. That will have an impact on the longer term maturity. The investment portfolio update shows the cash balance from last fiscal year to this fiscal year, and the market for June 30, 2013 is valued at \$52,584,834 and was valued at \$55,378,573 last year. The returns have diminished in the portfolio by a real severe spike in the treasury yield in May and June particularly. The City's benchmark returns in a 3-5 year are up over just  $\frac{3}{4}$  percent, treasuries have gone up short term and are at 1.2 percent. The only performance to the federal T-Bill in the benchmark there as we shorten the time horizon and the 1-3 year and 90 Day benchmarks is the City's money has outperformed the treasury benchmarks consistently.

This year, IAC has continued to diversify in a restrictive and difficult environment when it comes to cash equivalents, short term bonds and CDs and that type of investment arena. An account was opened with North Carolina Cash Management Trust in order to obtain higher yield and that is an accrual management account that municipalities can use. IAC took advantage of that to get that higher yield within the constraints and that was a very good decision for the City. As the bond proceeds mature, IAC is taking those investments out and trying to find direction of where that money can best be going forward. That will be the considerations going forward in 2014.



A very challenging decision for the IAC going forward in the next couple of years will be applying where that money should be going in the best areas. IAC will be looking for more short term durations, waiting for an environment of when interest rates are going to start going up and then capitalizing on that higher interest rate environment. That is going to be a little while down the road. There will be continued attention to yield while maintaining liquidity and safety, and then IAC always update their investment policy statement each year for what they are trying to do for the community.

Upon being asked how is the City hedged against some of debt ceiling and the volatile environment that is going on, Chairperson Damm responded that this is a conservative portfolio and fortunately that will not be much affected as most individual 401(k)s. The direction is going to be more into rebalancing to the shorter term investments and cash and cash equivalents as the City gets into a more of a volatile environment with the fixed income and with the potential fact that interests rates may continue to rise at some point. That will be the fear until they start building and expanding upon a higher interest rate environment and that will be the challenge for IAC going forward.

#### FINANCIAL AUDIT FOR THE FISCAL YEAR ENDED JUNE 30, 2013

Paula Hodges, an Audit Partner with the City's auditors, Martin Starnes & Associates, provided information regarding the City's June 30, 2013 Audit Results. She stated that the City received an unmodified opinion, which is the highest level of audit opinion that can be received. It is a clean opinion and means that there were no instances in which Martin Starnes & Associates and the City's members of management could not reach an agreement as it relates to the information that is in the City's audited financial statements. The City ended up the year with a fund balance of \$31,067,209.

As part of the audit process, the auditors visited City Hall and tested the City's compliance with federal and state award programs and the City's internal control systems. There are no audit findings as it relates to how the City spent the federal and state award funds, but Martin Starnes & Associates do have two audit findings on internal control which were discussed with the City's Audit Committee. The City's audit financial statements look a bit different than last year because the City implemented two new reporting standards, Governmental Accounting Standards Board (GASB) #63 and #65. Some of the terminology and presentation within the statements were changed. The major programs that Martin Starnes & Associates tested were the City's CDBG Entitlement grants, HOME Investment partnership, Federal Transit grants and Public Safety COPS Grant. Martin Starnes & Associates begins very early in the year with their audit process of assessing risk, planning their audit and designing procedures to address those risks. In addition, the auditors go on site before year end to do interim procedures, which consist mainly of internal control testing and compliance testing. Also, the auditors go on site again after year end to continue to test internal controls and compliance and to test the City's final year end balances. It is an ongoing process and continues throughout the year. The remainder of the information comes straight from the City's audited financial statements.



Ms. Hodges stated that regarding the General Fund Revenues and Expenditures for 2013 as they compare to 2012, the City's revenues decreased about \$2.5 million while expenditures decreased \$438,000. When looking at the operating health of the General Fund, it is important to calculate the City's available fund balance. An available fund balance is calculated by taking the total fund balance, less non spendable amounts (items that are not in cash form, i.e. prepaid items, inventory, and others that cannot be spent), less stabilization by State statute (which is the amounts the State of North Carolina does not allow cities to include in available fund balance because they are not available financial resources and that is made up mainly of the City's accounts receivable). The City's available fund balance for 2013 was \$23,914,028, an increase of \$186,745 over 2012.

### Fund Balance Position – General Fund

<input type="checkbox"/>	Total Fund Balance	\$ 31,067,209
<input type="checkbox"/>	Non spendable	- 75,560
<input type="checkbox"/>	Stabilization by State Statute	- <u>7,077,621</u>
<input type="checkbox"/>	Available Fund Balance	\$ 23,914,028
<input type="checkbox"/>	Available Fund Balance 2012	\$ 23,727,283
<input type="checkbox"/>	Increase in Available FB	\$ 186,745

By taking that available fund balance as a percentage of the City's General Fund expenditures, the number of months of operations that the City has in reserve is determined. The City's fund balance percentage was 33 percent and that is a little over four months. The Local Government Commission (LGC) has a peer group where they consider cities of like sizes. The LGC considers the City of Greenville to be within the peer group of the Electric System cities with a greater population than 50,000. While the City may not consider those cities to be its peer group, the LGC does for statistical reporting. The average fund balance percentage for that peer group is 31 percent with the high being 69 percent and the low being 21 percent, which is above average.

Director of Financial Services Demery provided information regarding the City of Greenville's General Fund Summary, Current Year Debt Activity and Position and Enterprise Funds. She stated that the City's total revenues decreased 5 percent last year. There was a property tax decrease of 4 percent, the sales tax remained unchanged and the property tax and sales tax make up 64 percent of the City's budget. Expenses increased only 1 percent and in this environment that is very good. No department exceeded their budget and that is something that staff has paid attention to over the last year. The operations increase was less than 1 percent and capital improvements increased 4 percent.

The City's fund balance position decreased \$900,000 or 3 percent. The difference in fund balance is close to \$1.3 million, but the City had a prior period adjustment that impacted that. The City remained within the 14 percent fiscal policy, revenues were down and



expenses were slightly up. The following is a summary of the 5 percent decrease in revenues and the 1 percent increase in expenses:

CITY OF GREENVILLE, NC  
CITY COUNCIL MEETING

### General Fund Summary

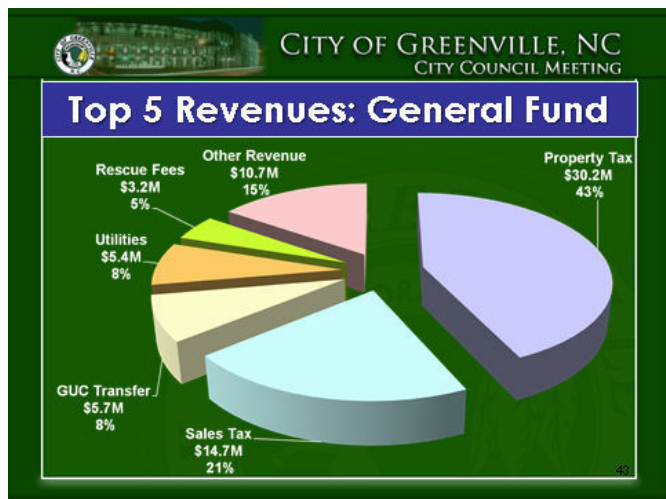
Revenues:	FY 2013	FY 2012	% Change
Property Taxes	\$ 30,275,886	\$ 31,567,341	-4%
Other Taxes	15,710,307	15,769,420	-1%
Intergovernmental	9,438,053	10,144,784	-7%
Licenses, Fees, Sales & Services	7,941,278	7,749,631	2%
Other Revenues	6,766,352	8,563,488	-21%
<b>Total Revenues</b>	<b>\$ 70,131,876</b>	<b>\$ 73,794,664</b>	<b>-5%</b>

CITY OF GREENVILLE, NC  
CITY COUNCIL MEETING

### General Fund Summary

Expenses:	FY 2013	FY 2012	% Change
General Government	\$ 9,134,933	\$ 9,099,952	1%
Public Safety	34,745,321	34,441,277	1%
Public Works	8,360,722	8,562,137	-2%
Economic Development	1,633,906	1,668,323	-2%
Cultural & Recreational	7,111,553	6,572,708	8%
Capital Outlay	3,785,652	3,626,076	4%
Other	6,635,262	7,013,435	-5%
<b>Total Expenses</b>	<b>\$ 71,407,349</b>	<b>\$70,983,908</b>	<b>1%</b>

The largest one would be the change in adding the Bradford Creek Public Golf Course (Bradford Creek) and that is the 8 percent, but most of those are under the 10 percent radar. The following are the top five revenues of the General Fund and property taxes and sales taxes makes up 6 percent of that. The Fund Balance Position reflects that staff changed the category of assigned and the category of unassigned and some of that was in the City Council's deliberations when using some of that money that was more flexible in fund balance for capital projects was discussed.



CITY OF GREENVILLE, NC  
CITY COUNCIL MEETING

### Fund Balance Position

Fund Balances:	FY 2013	FY 2012	% Change
Nonspendable	\$ 75,560	\$ 150,759	-50%
Restricted	10,266,851	11,581,637	-11%
Committed	2,276,781	3,059,640	-26%
Assigned	7,047,025	2,489,798	>100%
Unassigned	11,400,992	14,683,133	-22%
<b>Total Fund Balance</b>	<b>31,067,209</b>	<b>31,964,967</b>	<b>-3%</b>

When comparing Greenville's fund balance versus cities (Concord – 69.69 percent; Asheville – 17.18 percent; Gastonia - 21.70 percent; High Point – 23.21 percent; and Jacksonville – 21.47 percent) that were selected by the City Council, Greenville is almost in the middle at 33.43 percent, and that is a fund balance as a percentage of General Fund expenses. The spending by departments shows that the Police and Recreation and Parks Departments were up because Bradford Creek came into the General Fund and Fire/Rescue



and Public Works were down. A concerted effort was made to use some of the fund balance with public transportation, which has decreased over three years, but it still has a healthy fund balance of \$1.6 million. In 2012, there was a deficit of \$844,383, but the City increased the sanitation fees and worked on that five-year plan and that would be the results of operation for this fiscal year. The City still has the \$844,383 to make up, which is a great start.



Council Member Mitchell stated that this is an important slide to point out because the City is projecting a \$15 million deficit in 2020 and by just making those changes, the City has started to turn around a deficit in under a year.

Director of Financial Services Demery continued her presentation stating that a decision was made to put some of those capital projects in fiscal year 2014. Some of the capital improvement projects were put back into the normal fund and that is the reason for the spike in the stormwater money planning for the projects that the City would be doing in 2014. The year-end summary basically for Fiscal Year 2013 is that revenues decreased 5 percent, expenses increased 1 percent, the fund balance decreased 3 percent, and the auditors presented the City with an unmodified opinion.

Upon being asked from the auditor's perspective, where does Greenville stand as a city with a 14 percent fund balance, Ms. Hodges responded that the City had projected a decrease in fund balance in its budget. The available fund balance that the Local Government Commission calculates is above average compared to the peer group so the City is still fine with that, but the City would not want to continue a decrease in fund balance in budgets throughout the years. At this point, the City still has a healthy fund balance.

Motion was made by Council Member Joyner and seconded by Council Blackburn to accept the audit report as presented by Martin Starnes & Associates. Motion carried unanimously.



## PRESENTATION OF RESULTS OF BRANDING INITIATIVE

Communications Manager Steve Hawley stated that the City of Greenville has been waiting for this branding initiative for seven years. If the branding was only about a logo and a tagline, this could have been done within a month or seven years ago, but it is important to get it right. We know the importance of building the brand and value proposition for Greenville and telling the City's story as it relates to economic development, visitors, and neighborhoods and to everything. The City's Economic Development Office is the City's branding team member and the City has a partnership with the Convention and Visitors Authority with Sierra Jones, Andrew Schmidt and Debbie Vargas, who has been a part of this team from the beginning. The City Council approved a contract almost a year ago to start this process, and staff is very pleased that the City has built a very strong brand with a tremendous amount of input from the community. Vice-President Ed Barlow of North Star Strategies will present the results of the branding initiative.

Mr. Barlow explained how the brand was uncovered in Greenville, stating that North Star started with research and moved to strategy, to creativity and then to action and recommendations. All of North Star's research is narrowed into insights and some conclusions were reached based on that. North Star heard the Hub of the East a lot during its research. Growth, a health care center, educational assets, arts and culture, etc. are expected from the leading community in a region. A long list of things was confirmed through the research that Greenville is rightfully the Hub of the East. It is an earned distinction, but it is not quite owned perhaps as it should be. North Star narrowed all of that research to the insights and identified a strategic brand platform, which was presented and approved by the City Council last spring. The point of difference is that competitive advantage or nugget where Greenville can stand in the market place and the benefit is why that matters to the people that Greenville is most appealing.

<b>Greenville, NC Brand Platform</b>	
<i>Target Audience:</i>	<b>For those who value the sincerity and commitment in a firm handshake,</b>
<i>Frame-of-Reference:</i>	<b>Greenville, home to East Carolina University and Vidant Health,</b>
<i>Point-of-Difference:</i>	<b>serves as the capital of Eastern North Carolina</b>
<i>Benefit:</i>	<b>where your pursuit of health, wealth, and wisdom keep good company.</b>



For those who value this sincerity and commitment and a firm handshake, Greenville, home of East Carolina University (ECU) and Vidant Medical Center, serves as the capital of Eastern North Carolina where your pursuit of health, wealth and wisdom keep good company. North Star urges that Greenville uses that platform and operate from that for all of its decisions when communicating about Greenville and all of its assets.

A brand narrative was also created for the community and that is where inspirational language is added to that strategy. A few words may come from that strategy, but the brand narrative is meant to get people excited about the brand. Some of phrases from Greenville's different audiences may be used in the brand narrative. It will be used to get City employees and residents in the community informed about the brand. The narrative for Greenville is as follows:

**"COPY"**

*Some places have what it takes to help write the story of your life, to help you create and live your life to the fullest: opportunities, people and experiences that open minds and doors; activities that enrich and entertain. Places so welcoming that you feel you're in the presence of family and friends, and that everywhere you turn, you find yourself in good company.*

*As the capital of East Carolina, Greenville is that place.*

*Here, life's a graceful balance of front-porch friendly and business-world sharp, a balance lit up and alive with all the amenities of a metro, University town. Where we enjoy the company of our neighbors on summer nights, talking on the porch about the day's news and sports scores from the latest Pirate's game, until someone flips a coin to see who'll run out for BBQ.*

*Walking through the streets of Greenville, you see it has its share of art galleries, museums and festivals that delight; or, close by, the campus of East Carolina University calls to art and culture lovers with its worldly offering of musical concerts, theatrical and dance productions, travel films and lectures. For students with the fire of the future shining in their eyes, ready to turn their dreams loose, the campus calls to them in another voice.*

*Yes, you'll find what you're looking for here. But in many cases (and maybe this is just as important) what you didn't even know you were looking for. That's the way it is in Greenville. What makes it tick is how it makes people tick. As the cultural, educational and economic hub of the region, it's expansive; it rewards the curious imagination, the entrepreneurial mind.*

*If you're a person with big ideas and big ambitions, Greenville is good company. The smart thinking, hard work and optimism that once made Greenville a leading marketer of tobacco are still prevalent, though now guiding the area's technology focus with its many bioscience and robotics breakthroughs. No surprise, these victories are trumpeted with as much enthusiasm as the local sports team's trophy season.*

*Located just inland off the North Carolina coast, East of I-95, over 20 parks grace the landscape of Greenville and Pitt County. So if you're an outdoor enthusiast, you'll find enough adventure and scenic beauty here to fill up the canvas of your days, and plenty of like-minded people who share your respect for the grandeur of nature, the intoxicating fragrance of our Magnolia trees, picnicking under the shade of oaks, fishing at sundown, or hiking down a path that leads you not to the trail's end, but to the conclusion that this is where you belong.*





*True, in some parts of the world, when you say the word "Capital" people think "crowded", "faceless", "too noisy to hear myself think". But we're different.*

*There are crowds ... parades down Main Street. An Annual Halloween street party. Students streaming to classes. Participants at major meeting or conferences. Or onlookers gathered down at Extreme Park to watch BMX bike pros practicing for an event.*

*But they're not faceless crowds.*

*There is noise ... live music rising from the campus nightlife scene, the hub-bub around the Convention Center, or when the Pirates rally to make the winning score, nothing short of pandemonium.*

*But our noise makes your spirits soar.*

*In fact, you could say that the hustle and bustle of life in Greenville is conducive to a higher level of thinking and inspiration. One thing's for sure, the first thought on your mind will be how glad you are to be in Greenville, North Carolina, smack dab in the middle of such good company.*

#### "COPY"

Mr. Barlow stated that North Star finds that the strategy and narrative can be used together as a filter when considering a message, an event or any communication material. If it does not honor what makes Greenville special, then a step back will be taken. Everything does not have to be redone necessarily, but the City's strategy, key differentiator and competitive advantage must be making it through when communicating about Greenville.

North Star's next step is creative execution and full page ads are accessible ways to present an idea conceptually. The City may or may not want to place full page ads in publications, but it demonstrates the visual idea of celebrating details to promote Greenville's advantages. Photographs should be taken of different settings in Greenville that communicate the City's exact advantages and reflect the community, etc. a student finding himself in good company or a business finding itself in good company with growth and good business. The City should not want to make it about a logo and line when introducing its brand because nobody moves or visits or takes business anywhere based on a logo and line. However, it is the work that is done behind it and the emotional connection that people can make it about when introducing the City's brand.

The logo and strapline or tagline, "Find yourself in good company", are two important tools, but the City should not limit its brand to this:





North Star paid attention to some of Greenville's existing assets and wayfinding signage and developed elements that are complementary to that so that the logo and strapline, can work well together. The rationale for the logo is the two-toned green is meant to reflect a compass, the capital "G" for the capital of the region and a nod at the top both identifies the position of Greenville in North Carolina with that accent and the less green canopy that can be found in Greenville. North Star identified a color palette that is both vibrant and to reflect the natural tones to the area. The strapline invites people to the neighborly culture of Greenville offering the amenities of larger cities and the small town congeniality. There is a lot of opportunities to use "Find yourself in good company" not only for business, but also for tourism. It is complementary of the great people and cultures that can be experienced in the City and targets the audience of the firm handshake. These are not final recommendations that the City Council necessarily have to accept.

Over the next six months to two years, there are 15 top things that Greenville should do:

- *Assign a brand leader* - Brands cannot grow and thrive if no one takes responsibility for them. Successful implementation of the Greenville brand will require accountability, passion, understanding, and respect for the branding effort. It will also require cooperation and partnership with other organizations, businesses, and individuals. The most important contribution the City can make to the ongoing success of its brand is appointing or hiring a brand leader to champion the process, and North Star's final report will have a job description for that person. The City should avoid brand management by a committee because the brand will fall through the cracks.
- *Create a brand PowerPoint or video* - The City wants to be able to tell its story to civic groups, business communities, tourism partners, and educational assets and many other different audiences. In order for those involved in the branding to make a presentation and to speak on behalf of the Greenville community brand, an organized presentation (PowerPoint or video) should be created to get people onboard and informed. Some slides were developed through this presentation to help the City get started with that.
- *Develop branded stationery and business supplies* - Every letterhead, envelope, business card, etc. that is issued on behalf of the brand are important and should reflect the brand's graphic identity. North Star has provided some samples of business supplies for the City of Greenville and its partners, i.e. the Greenville Convention and Visitors Bureau, or organizations.
- *Identify easiest consumer touch points and brand them* - Every time someone from the City interacts with the public, it is an opportunity to build the brand and that may be how an employee answers the telephone or using the boilerplate information taken from the brand narrative in press releases. Some of these are quick and easy and others may take more time and effort and money, i.e. the City's Government Access Channel (GTV-9), name tags, tradeshow booths. Hopefully,



there will be a lot of both high impact and low effort things. North Star wants to focus on doing those first and in its final report to the City, there will be a long list of touch points recommended for the City Council's consideration and prioritizing.

- *Brand your digital and social media* - Use GTV-9 as well as the City's website, which are the most cost effective ways to get the City's message across. As the capital of Eastern Carolina and the hub of the region, North Star recommends that the City has a portal site, which would be separate from the City's website. A central portal is an ideal online organizational tool that will link to all community-related sites as well as City-driven organizations and initiatives. It is another way to navigate and position Greenville as a place where people can find the good company of weekend Pirates, caregivers, or neighbors.
- *Develop branded merchandise* - Let people take the City's message with them by wearing it and using it. Branded merchandise is a tangible, memorable way to keep the brand top-of-mind with residents, businesses, and visitors. North Star recommends having items that people use regularly such as a coffee mug, T-shirt, or hat.
- *Motivate city employees to become brand ambassadors* - City employees interact with the community on a daily basis and having them onboard early is imperative to the success of the City's brand. Some things may be introduced to City employees first and then extended to the community. The City Council should get with the department heads and brainstorm on how they can bring the brand to life in their daily operations and how they engage with the community. Being in good company is giving great customer service and by continuing training in those terms, Greenville should be known for its customer service. When explaining the brand, employees could have some merchandise available to distribute at a city wide event. The City would want to have its PowerPoint presentation to share the goals and how this brand benefits each part of the community, particularly the City employees, and how a department can use the brand on their materials.

In addition, a Friends with Greenville (FWG) Ambassadors Program is needed because the brand barometers suggested that Greenville needs to have a little more pride and to get people excited about the community. FWG will focus on enabling and encouraging community improvement efforts, general enthusiasm and word-of-mouth promotion among Greenville residents. The City could have teams of ambassadors to go out and do phantom cleanups and be involved in mentoring programs. Perks can be offered to this membership such as a FWG Were Here sign and people may not know exactly about it and would be curious about what it means, but their cleaning up an area will create some buzz that way.

- *Build community pride and enthusiasm with the brand* - This was revealed in the research as something that needed to be focused on. North Star learned through the research that many in Greenville have pride in their community, but it is often not



very demonstrative. To garner attention within and beyond the community, efforts at building and exhibiting community pride outside the conventions of marketing should become a priority. The City wants to be sure to award people's participation such as having an award for the good one, which is the ambassador of the year or delivering the good could be the most charitable partner with schools and develop some pride that way. What better way to extend the brand in good company with schools and educating children on how to make smart choices on their friends or to extend it to an anti-bullying program. The City should always stay in touch with the community by having a good company newsletter to share information about FWG's upcoming events and ways and news about how people can get involved and about the community. The more information people have the more pride they are likely to show visitors, friends, and business associates.

- *Cultivate public and private sector partnerships* – The resources and manpower to accomplish the goals of the Greenville brand will be increased exponentially by marshalling the power of its private sector along with municipal and public sector entities. Another important point that came out of the research is that Greenville has great assets and anchors, both large and small, in the community. However, there is some concern that there is not enough cooperation or there are missing opportunities with some collaboration between the large assets in the community. Public and private partnerships should be brought together regularly. Communities that get their private sector involved the earliest are the most successful the fastest. This is the brand for Greenville and not just the City as a governmental entity, but for the community of Greenville. With ECU and Pitt Community College (PCC) in the City, he cannot think of any better way to extend the brand through a practice. The City should have the signature internship program around not just in the region, but anywhere in the broader area or at the career center at those institutions. It is an easy way to put the brand to work.

The alumni network is a huge opportunity in Greenville to develop content for them from the capital "G" or some branded message in those terms. North Star has worked with communities where the brand has been applied to the curricula at different institutions. For example, North Star worked for Providence, Rhode Island and the Rhode Island School of Design applied the brand to part of their curriculum. The City has the only Master program in sustainable tourism, which is a natural partnership with the Convention and Visitors Bureau. One key to getting the private sector involved is that anybody that participates in the brand giving time and/or money can also be a funding mechanism for different initiatives, if it is larger than a City-driven initiative. Gainesville, Florida made an event of signing on their partners in a public-private partnership. Greenville can look to some of its companies and develop partnerships and cobranding opportunities with them, i.e. a Grady-White Boats branded key chain or a Hatteras Hammock pillow.

- *Show local businesses how to play* - There is a direct relationship between the success of the City's community brand and the businesses that call Greenville home.



The City would want local businesses to participate and to use the brand to advance their interest and the City should be supportive of them. If they sign on to be partners in the brand, good company gathers here coasters and decals can be used at bars. Realtors might get involved and add live here in good company on their business signs, restaurants can use the diamond "G" as an icon for many of their specials that have local ingredients in them, and hotels could use local products in their mini bars. He would love to see find yourself in the company of good news, a column about Greenville or a regular sort of feature in the local official newspaper.

- *Infiltrate your infrastructure and brand cost-effective, relevant signage* - The infrastructure throughout Greenville represents a unique, three-dimensional medium for displaying the new brand. Options include adding some element of the brand to infrastructure that already exist as well as developing new infrastructure in places where demand and opportunity are high. Signage is a critical branding component for communities. The City should consider buses, pole banners, vehicles, park benches, crosswalks, or community signage. A complete redesign of signage is not politically or financially cost effective so the City might focus on one entry point as a goal or when resources become available. Effective signage can positively impact a visitor's experience and also advance general awareness. North Star developed this logo and elements to work with other signage that the City has so there is not an overhaul that is necessarily required. Applying the new brand to existing signs can be considered rather than redoing them.
- *Attract attention to Greenville as a place for good companies* - Economic development data and statistics can be dry and uninteresting. Information graphics or infographics are graphic visual representations of information and knowledge presented in an engaging format that tells the story. North Star's sample of the Economic Development Office's website adopted with some language, color palette and the logo would not be a huge investment and is not a redesign. North Star paid attention to the website's navigation and there were no structural changes made with the exception of some text and different wording and titling some things a little differently. The City can take its existing pieces and with creativity and color palette put it with the new brand. The City wants to communicate with its prospects and site selectors with a cohesive image and staying with that color theme of the logo using the two-toned blue, the City will see a future of a Gatorade logo, which is only meant to show the flexibility of this piece.
- *Feature uptown as a centerpiece for the brand* - Uptown is how many first experience Greenville and should be awash in the brand carefully applied elements, i.e. the crosswalk and having pole banners on another side creates a nice sense of place. The shape of these elements can inspire the City to great ideas and if the City focused on the shape, some great ideas will come forth such as using cards or coasters as conversation starters at cafes downtown and the opening of a business or gallery, or a special event at a restaurant or other places. Some of the many ideas in this report that are applicable to uptown are about signage, infrastructure,



beautification, business participation, and community pride. The “G” does not have to be on the items, but stencil on the sidewalks some temporary directional signage that is obviously a compass arrow for people to follow somewhere and find themselves in good company.

- *Draw visitors to Greenville with the brand* - North Star wants to meet with event organizers on how the brand can be applied to great events held in Greenville. Certainly, the visitors guide should be branded as a regional hub. The new brand can be used as a signal for new markets such as meetings. A lot of companies out of Raleigh or the Triangle need to get out of their spaces and think more clearly, and Greenville can be creatively giving them the opportunity and removing them from their space to find themselves in good company. Good ideas are certainly an opportunity in Greenville. Reunions, conferences, and regional speed dating are obviously markets as well. Greenville could have messaging at its airport and, if feasible, even at the Raleigh/Durham airport. If a music or food event becomes popular, Greenville might add the component about entrepreneurial ideas or sustainable tourism since the City has some strength in that area. During their first year, South by Southwest hoped that they would get 150 people.
- *Be good company to your neighbors across East Carolina* – North Star shared a lot of ideas that have served Greenville as the capital of the region, but they wanted to offer some specifics about going out into the region not only for Greenville products, but for the region made in good company in East Carolina, i.e. some packaging opportunities across the region. For economic development, the City should make sure that all its sites and buildings are part of a database and serving as the capital extending that across the region is important as well. Greenville can take its message of “Find yourself in good company” and the Greenville brand on the road and through the region talking about its internship programs, arts, and healthcare, and even FWG, which can also travel.

Mr. Barlow congratulated the branding team and the entire community for their engagement in this process and the research and for doing a great work on the City Council’s behalf. He stated that this has been a very busy couple of years, North Star is very excited to see this brand come to life, and North Star believes this brand can do great things for the City of Greenville.

Upon being asked how the City seal and the new logo play together, Mr. Barlow responded that this project was not about replacing a city seal. A city seal is often used for official city business and this is a marketing brand. When trying to reach audiences and inform them about Greenville, that is separate from official City policies or procedures and the City would use its marketing brand. It is not inconsistent to have both a marketing logo and a city seal.

Upon being asked about the strategy of using Greenville as the capital of Eastern North Carolina and the regional leader, Mr. Barlow responded that in the strategy, North Star



used the term, Eastern, but in the language, by having a strong anchor in ECU and referring to Greenville's region as East Carolina, it elevates the region and brings ECU along with Greenville and vice-versa. North Star sees that as an interesting way for Greenville to position itself.

Upon being asked about how does the City balance having a brand leader for others to buy-in and having control over the brand as well, Mr. Barlow responded that it does take the City's management of the brand use. The City does want to have a brand leader, but the City is providing some tools to those partners and they need to maintain their individual identity. North Star feels that partners can do that by sharing this sort of mark, but having a particular sort of color designation. The City and its partners are stronger together as a region. By including different entities, North Star is showing what it could be and is not recommending that the Chamber of Commerce does this even though an example was shown, but North Star only meant to show how it could be used. That relationship would have to be built and dealt with, if the Chamber of Commerce chooses to do something like this.. The City needs a brand leader and if the City is going to allow partners to use the brand, they have to have the freedom to do so, but the City does want to maintain some control, if the City is going to let it be a bit of a regional brand. North Star will be recommending graphic standards, which will be a part of the final report and a tool at the use of the brand manager.

Upon being asked whether to have the public to provide their comments about the adoption of the City's new brand as presented to the City Council this evening, Mr. Barlow responded that public input is great on a process like this. The City would want to be careful with branding elements, particularly logos and creative elements, because they are very subjective. The more input that the City has on them, there is an inverse relationship on the quality of the output. One of the ways that the City can derail its brand is that the City makes a contest out of its logo or line. The branding team has done some great work and made some great choices. North Star feels that this is a strong brand for Greenville and the community will be looking to the City Council for its leadership in adopting that. Of course, he is not telling the City Council how to vote on the new brand by any means. In their experience, if the City Council does open it up for a lot of public input or vote, the City Council will prolong the process quite extensively.

Council Member Mercer stated that he understands that how successful this is going to be is much dependent on the execution from here on out as it was delivered by North Star. It is not like it is a strikeout right now.

Mr. Barlow stated that these are North Star's recommendations, and North Star has some strong expertise and experience in doing this with 170 communities across North America. The community had great input on and helped shaped this brand, and without the community of Greenville, the City would not have that tagline of "Find yourself in good company". The community is reflected in this brand, helped build this brand and is this brand, and he feels that the community will be very happy with it.



Upon being asked if North Star had an opportunity to review a lot of uses of the letter “G” in the City when they came up with the font for the letter “G”, Mr. Barlow responded yes and stated that the City cannot make everything look exactly alike, but North Star paid attention to a lot of Greenville’s existing materials and developed this to complement that.

Upon being asked about what the results would be like of how Greenville compares in contrast to those 170 communities across the country as far as the economic component, Mr. Barlow responded that there are some research elements that the City Council will have access to, and North Star covered them briefly back in the spring. North Star has compared tapestry data, which is segmentation data on the footprint of Greenville, but also a broader sort of region. North Star also studied some top business prospects and industries, and communities similar to Greenville with a similar tapestry footprint have had success in attracting those types of companies, both high growth and high wage companies. That will be part of the City’s final report. This is just an excerpt of the ideas for implementation, but the final report will contain the full amount of research, all of the strategies, insights, creative development and implementation recommendations.

Upon being asked how many of the 170 communities have rejected what North Star recommended as a logo or branding, Mr. Barlow stated that some communities do not use them because they do not have the resources to put them to work or may have chosen to make some changes. Some communities have made some slight or significant edits, changed the color palette, or taken the spirit of North Star’s logos and branding and made some changes, but he does not know of any absolute rejection. Some communities have used them exactly as provided and North Star does provide the logo as finished art and so it is ready for use. North Star will be sharing that with the team and the City of Greenville can actually start tomorrow, if the City Council approves the new brand.

Council Member Mercer stated that in the execution and implementation of this, he feels that the City will do this anyway, he wants to underscore that the City should cooperate and utilize ECU’s or PCC’s various programs. As this thing moves through different variations and so on, there may be opportunities for that at a cost savings to the City.

Upon being asked when will the new brand be implemented, Communications Manager Hawley responded that the City is going to work on an implementation plan and some elements will be changed more quicker than others. There are restrictions on time with building partnerships with the other entities in the City. The businesses, University and hospital have been working behind the scene with the City with building all of this, so the City’s foot is already kind of in the door with them. The City has buses that are coming in soon and the brand striping for those will be developed. Sanitation trucks will be coming in a couple of months and new vehicles will be coming in so there is the need to start building and replacing the logo for them as well.

Upon being asked if ECU is familiar with the terminology that is being used in this branding initiative, Communications Manager Hawley responded that staff has had contact with Clint Bailey in the Marketing Department at ECU. While East Carolina itself is a trademark, they





will be open to discussions for the City being able to use it, but they are going to be able to use the City's brand as well. When it comes to speaking with the University's marketing people, professors, and neighborhood or getting new people to come in, staff will be talking about how the City will apply this brand to show that there is a great interaction between the faculty and students.

Upon being asked whether any changes that staff will make will be approved by the City Council, Communications Manager Hawley responded that what is being asked this evening is the City Council's approval of this brand. The brand is not set in stone and it has to be exactly this same way, but a narrative has been laid out for the City Council for what the brand should be as a city. Every decision that is made going forward and those partnerships go back to the brand. There are funds available for stationery, business cards, etc. and the City departments have been encouraged to keep using the supplies entirely. City departments will be provided with the templates for new letterhead, business cards, etc.

Motion was made by Council Member Blackburn and seconded by Council Member Mitchell to accept the report and adopt the City's new brand as presented. Motion carried unanimously.

#### CONSIDERATION OF CONCEPTUAL DESIGN AND M/WBE PLAN FOR THE UPTOWN PARKING DECK

Economic Development Manager Carl Rees stated that the items for the City Council's consideration this evening relating to the uptown parking deck are the acceptance of the conceptual design, discussion of solar opportunities and approval of the Minority and/or Women-owned Business Enterprise (M/WBE) Plan.

##### *Conceptual Design for the Uptown Parking Deck*

Joey Rowland, an Engineer with Walker Parking Consultants (Walker Parking), gave a briefing on the status of the conceptual design for the uptown parking deck. Mr. Rowland stated that Walker Parking has considered the materials to be used for the construction of the parking deck and the design is a basic look. Walker Parking has decided upon and settled the footprint, knowing how the structure will sit on the site and that it will be a 4-tier structure, which is about equivalent to a 3-story building, with 250 spaces that includes accessible spaces as well. Also, there will be provisions for bike racks. Parking decks tend to be rather massive so it becomes an architectural exercise to try to blend that type of mass into an urban area.

Mr. Robert Griffin, Line Chair of the architectural design of the parking deck, reminded the City Council that Walker Parking was challenged to create a parking structure using the parcel of land given as well as their budget. On September 9, 2013, a public forum was held at Sheppard Memorial Library and tables dealing with urban planning, architectural design, landscaping, safety and security were available. There was a great outpouring of people and several sessions were held with City staff. The input heard from the public forum was



that the parking deck should relate to the history of Greenville and to the future, not necessarily building something that was built in the 1800s and 1900s but rather to see how that transitions into the future. It should be safe, secure and visible both inside and out as well as easy to identify and to use having in and out accessibility for all including the physically challenged and those who have trouble driving. Also, Walker Parking heard that the deck should not look utilitarian and it needs to integrate with the uptown area.

Also, input was received from the uptown stakeholders and adjacent property owners and having local business participation in this project has been addressed. Walker Parking is the best parking deck consultant in the United States and RGG, The East Group, Rivers and Associates, and Barnhill Construction Company is a good local team working on this project.

The Mosley Parking Lot is at a universal location to create an urban design solution. The lot is on a corner bordered by Fourth and Cotanche Streets and there is an opportunity to access Fifth and Evans Streets. When the public forum was held, Walker Parking heard about the businesses, the John Flanagan Buggy Company then a Ford car dealership, that were formerly located at this site. In addition, Greenville's uptown in the 1950s and 1960s was researched. Walker Parking has transitioned some older buildings into future current bay use and renovated other buildings into successful solutions and created a more vibrant uptown. There is an opportunity to create some great spaces at one of the pedestrian alley ways behind what was the Pirates Den. Surrounding the general location for the parking deck, there is an urban opportunity to create public plazas or access to Evans Street to Fifth Street to Cotanche Street and to Fourth Street so that a parking deck is not only created, but an extension possibility of Five Points and an integration off of the entire uptown will be created.

Mr. Griffin provided a conceptual image of the parking deck and stated that the idea is to identify where the parking deck is located and that is done with a clock tower. He summarized the 4-tier plan of the parking deck and stated that there is a proposed main entrance off of Fourth Street, which has an elevator and stair tower and then the parking grade fits perfectly to a secondary entrance at the intersection of Fourth and Cotanche Streets. The majority of the foot travel is going to come in on the plaza side, and the elevation is going down on Cotanche Street onto Fourth Street. It is a double ramp system all the way up to the roof where there are about 25 parking spaces.

The Redevelopment Commission is looking at the vacant lot and how the City will provide temporary access to that until further development comes along for direct access to Evans Street. Walker Parking is also looking at how the City will provide access in the pedestrian walkway that is now behind the Scullery that ties into the parking deck. Hopefully, there will be access from all points.

Walker Parking was asked about the context of the structure as it relates to its surrounding buildings. If one is on Evans Street, one would be unable to see the parking deck because of the heights of the buildings and would see it peeking in. The view from Fifth Street over



what is presently Pirates Den is the peeking of the clock tower. Elevation wise the clock tower is on the right and as one stair step down on Cotanche Street, there is a grade of about 6 or 7 feet differential. Walker Parking hopes to continue the cornice down until one gets to the entrance of the parking deck, which will be delineated with different materials, and the same thing carries from the Fourth Street elevation. There is the reminiscence elevation of the John Flanagan Buggy Company and then more high-tech screening into the entrance way.

As it relates to the back of those buildings that fronts onto Evans Street, Walker Parking does not want to create a front and back, and Walker Parking does want an opportunity that the areas that people are sitting in and the creation of public spaces are for stakeholders who own the buildings. Walker Parking met with most of the stakeholders that own property and that is of interest to them and how the City can expand their service area to their customers and not create a backdoor parking lot. At this point, if one would come out of the rear of the Pirates Den and look at the rear of the building that is generally what one will see.

Walker Parking is trying to break up the façade with a blend between old architecture and contemporary. Opportunities are being looked at to expand the deck with wire mesh screening or different type of fenestration on the exterior off of Fourth Street and having balconies looking down in performance areas, exposed stairs for security and the opportunity for glass into the elevators. Walker Parking is trying to consider not just hardscape, but how to integrate landscape and soft space in the parking deck. Landscaping will be surrounding the structure on all four sides according to the City's guidelines. Walker precast uptown Greenville brick as the primary material for the parking deck and the introduction of metal screening and lighting wherever possible.

Upon being asked about the setback off of the streets, Mr. Griffin responded that the setback is approximately 8 feet on Fourth Street, 6-8 feet on the exact corner where the clock tower will be located, and then 8-10 feet on the Cotanche Street side. There will be sidewalks all around the building with trees.

Upon being asked about how those dimensions would affect the businesses between Evans and Fourth Streets, Mr. Griffin responded if one is coming off of Fourth Street, the setback line is going to run 15 feet all the way down to the Fourth Street Tavern. Walker Parking has met with the stakeholders about the remaining area that sits on their property and the stakeholders are in cooperation generally with what is being done as an entire plaza. On the Fifth Street side, with what backs up to the Pirates Den, there is approximately 20 feet and that property is owned by one individual group and they are cooperating with Walker Parking as well.

Council Joyner stated that is the key to this site because one can get out to Fourth Street to Cotanche Street to Fifth and Evans Streets, and there is nothing like it anywhere else in downtown Greenville to place this proposed parking deck.



Mr. Griffin stated that Walker Parking thought about an urban planning solution around the parking deck and he emphasized that is what kept coming up in the public forum. How can a parking deck be secured has been part of the plan by using lighting and cameras, keeping it opened and making it inviting for people. If the City has events, there is an opportunity for them to spill over into another area, i.e. have an event that might spill over to Five Points and informing people that the City has started to integrate its uptown area, and by the way there is a parking deck around those buildings. That was the intent of the urban planning solution with the parking structure.

Upon being asked about how the City will make sure that the older buildings are not compromised as far as the pounding in the ground, etc., Mr. Griffin responded that Walkers Parking is looking at alternative foundation systems and all of the power-driven foundations and will be using that as it relates to their budget. We know what our budget is to get the parking deck done. Walker Parking is taking in consideration if there will be any consequences, if driven power is done to the neighbors of the site.

Upon being asked if the adjacent property owners are being kept in the loop, Mr. Griffin responded yes and Walker Parking had multiple meetings with almost every landowner, who is on the tax records as being around the Mosley Parking Lot.

Council Member Joyner stated that he is impressed by the drawings, concept and that the parking deck connects out to each of the four major streets.

Mayor Thomas stated that this design is very impressive, and the tower is a nice skyline touch and visual that will draw to that whole area plus it is pulling into the history of this site.

Council Member Blackburn stated that she has been reluctant to sort of endorse this project, and one of her primary concerns was the structure would be ugly, but this conceptual design is lovely. She especially likes the way Walker Parking has not thought about what is sometimes done with houses where the pretty part is in the front and the back is thrown together. Walkers Parking really had a lot of integrity in their way of approaching this design. She likes the back and stairs of the parking deck and the use of plazas, which keep the parking deck from looking like the lowest common denominator place to warehouse cars.

Upon being asked with the windows and all will there be any retail space or is it strictly façade, Mr. Griffin stated that is façade. Walker Parking is asking the City Council to approve the concept of this design and currently it is bare open on the inside of the parking deck. Walker Parking is planning how to treat the façade within their budget and the materials that will be used and will be refining this design and looking at how to treat the openness.

Upon being asked about using the four panels or somewhere else on the parking deck for displaying the City's logo, Mr. Griffin responded the possibility exists. Walker Parking has



to keep within their budget, but there is opportunity within budgets to look at items like the shimmer wall at the Raleigh Civic Center. We may not be able to go there and may be only to go with a piece of it, but what has been done, in their belief, is that their design is structured to what they think should be there. As Walker Parking works with their building partners, they are looking at how that refines their budget to what is affordable for them to build and that is what Walker Parking is working on.

Motion was made by Council Member Joyner and seconded by Council Member Blackburn to adopt the recommended conceptual plans for the parking deck. Motion carried unanimously.

### *Solar Opportunities*

Economic Development Manager Rees stated that staff asked Barnhill Contracting Company (Barnhill Contracting), the Construction Manager at Risk, to do some research on adding solar to the parking deck project. Some other members of the team and staff have done some research reaching out to companies across the region and country to learn as much as possible. Compared to parking deck structures where solar is installed, the City's parking deck is small. The amount of money that can be made off a solar is linked to the size of a project and what can be generated from a solar. A small system might cost \$375,000, and that is only a rough idea for something that would probably generate less than 100 kilowatts. Barnhill Contracting was concerned that if the City wanted to have solar, there were significant additional design and engineering considerations that would need to be taken into account as they design the parking deck and that additional request would drive up the costs, but one of the positive things learned is that is not the case. There are parking decks that have been built across the country over the last decade that are being retrofit. There are few things that the City can do prospectively such as make sure that the parking deck has areas to run cabling and additional space in a mechanical room for some of the equipment associated with solar. If the City does decide to install a solar system, there are no major changes to the foundation or other structural changes.

Staff has done some checking with the Greenville Utilities Commission (GUC). For a small system that the City has presently, GUC would provide credits to an existing customer for any power that is generated through the solar system. Also, there are a number of tax credits and grants that have been available. The City of Concord received some funds from the Department of Energy and paid for a small solar project on the top of its deck through grants received during the stimulus that the Federal government had. There are also significant tax credits as much as \$.65 on a dollar that are currently available both through State and Federal government. Unless the budgets change, those credits that are set to sunset in the next couple of years – the State credits are no more than a year and the Federal credits are available until the end of 2016, but they are currently available for projects which are to be constructed. Staff spoke to some very passionate and creative companies that do have an interest in Greenville. While there is no answer or a solar project to present to the City Council this evening, staff feels that there are opportunities. Staff is recommending putting this onto the private sector and letting them use their creativity and ingenuity to present proposals to the City Council and see if any of them



makes business sense for the City of Greenville. The key piece is that the City can do that and not delay the construction of the parking deck for one second. Whether the City receives a grant down the road or a great business proposal, this project can be done at any time.

Upon being asked whether solar is not cost effective unless the City uses the tax credits that the State and Federal government are giving, GUC General Manager Tony Cannon responded that to be correct. General Manager Cannon stated that what the City staff wants to do now is to prepare the structure so that in the future if an opportunity comes along or the technology develops that it is cost effective, the City will have the solar opportunity. The City Council is not closing that door and at a very minimum cost, the City can prepare that structure so that if it is available in the future, it works.

Council Member Blackburn stated there has been discussion about cost effective, but it is also time to start looking at cost benefit. When talking about Sanitation, the City tries to provide an efficient service and it was mentioned that the City subsidizes what it does. That is how to make a city, to subsidize and get a culvert or infrastructure of any kind. The conversation has been shifted. She feels that what has been heard is if the solar system does become a cost benefit, but there is cost effectiveness to this project, the City can do it, and the City would let the private market have a go at it, and that is great. Additionally, the flexibility is if the technology changes, the City is not locked in and has that ability to add this project to the future.

#### *M/WBE Plan for the Uptown Parking*

Economic Development Director Rees stated that this parking deck is being constructed and essentially delivered to the City of Greenville through the Construction Manager at Risk method of delivery. That is Barnhill Contracting some months from now will deliver the price for the parking deck and then the risk is on them. Anything that happens after that, Barnhill Contracting will have to deliver for that under contract no matter what. Under the General Statutes in the State of North Carolina, there are a number of great features about this method of delivery. One being there is public bidding of the subcomponents of the parking deck. The City hired Barnhill Contracting based on qualifications, but all of their subcontractors' work for the parking deck would actually be bid out. The General Statutes require that the City accepts an M/WBE participation plan. Mr. Jason Wells of Barnhill Contracting will present the plan, which has been reviewed and approved by the City of Greenville M/WBE Officer Denisha Harris.

Mr. Wells stated that it is the policy of Barnhill Contracting that small, minority, disadvantaged and women businesses will have the maximum opportunity to participate in the performance of contracts undertaken by Barnhill Contracting Company. Their policy has been successful in projects in the East and across the state. At ECU, Barnhill Contracting had project bids in the last couple of years with a goal of 10 percent and reached 50.5 percent in M/WBE participation for the ECU Tyler Hall project. Their policy has worked across the State with other projects as well:



Project	Value	Goal	Actual
ECU Tyler Hall	\$10,017,820	10%	50.5%
UNC 440 West Franklin	\$7,349,198	10%	49.9%
UNCW Student Union	\$40,753,974	10%	46.4%
ACT Center at ECC	\$9,487,864	10%	36.2%
ECU Belk Early Site	\$980,287	10%	33.09%
Eastern Guilford High	\$47,036,458	12.46%	28%

Barnhill Contracting provides adequate public notification regarding the bidding opportunities toward their targeted firms. To reach these firms they undertake direct solicitation from these firms, advertise with minority owned publications and provide professional assistance to all firms bidding at the Barnhill Contracting office, at the firms' office and how ever Barnhill Contracting needs to do that. In addition, their company conducts pre-bid meetings and outreach sessions to inform M/WBE firms about the project. Barnhill Contracting follows up with these firms and find out exactly who is going to bid for the projects and creates a log of the participants so that there are no surprises on bid day. Most importantly, MWBE firms are treated with respect and integrity. These are some highlights and there is a full plan that has been made for the City Council's review. Mr. Wells thanked the City Council for its consideration of the plan.

Upon being asked when Barnhill Contracting is looking at M/WBE contracts, is there a certain or any portion of the parking deck that these groups will be helping with throughout the project, Mr. Wells responded that the M/WBE groups will be helping out on any portion for the job. It is not always just from first tier subcontractors; Barnhill can get participation from the second and third tier suppliers. There are a lot opportunities, it is just not just their first tier bidders that are better at helping Barnhill Contracting to reach its goals.

Upon being asked what Barnhill Contracting does to encourage using local vendors, Mr. Wells responded that the company has been very successful with finding and using local contractors because there are thousands of contractors in their database, which is broken down by area code, zip code, city, state, etc. Also, because they have done so much work in Eastern North Carolina, Barnhill Contracting has a network with contractors that have done work with them on these similar types of jobs.

Upon being asked with Barnhill Contracting's past projects with ECU, what percent would be local firms, Mr. Wells responded that Barnhill Contracting will obtain and give that information to Economic Development Manager Rees to pass on to the City Council.

Economic Development Manager Rees stated that staff will follow up with the City Council accordingly.

Motion was made by Council Member Blackburn and seconded by Council Member Mitchell to accept the recommended conceptual plans for the parking deck and to approve the M/WBE participation plan. In addition, a public solicitation will be initiated to run parallel



with the parking deck construction to seek out solar energy companies with an interest in installing solar energy arrays on the top floor of the uptown parking deck. Motion carried unanimously.

#### APPROVAL OF THE FIRST TEE CURRICULUM PROVIDER AGREEMENT

Recreation and Parks Director Gary Fenton stated that The First Tee (TFT) is a program that provides young people with character building and life skilled lessons through using the game of golf. Staff has been working with representatives from TFT to bring the program to the Bradford Creek Public Golf Course (Bradford Creek). Through this program, young people learn how many of the skills that are essential to the success in golf are also essential to success in life. Ultimately, the City's goal will be to establish Bradford Creek as the official TFT golf course in Eastern North Carolina.

Recreation and Parks Director Fenton stated that he is familiar with this program from a previous Recreation and Parks position, but Council Members Joyner and Mitchell introduced staff to Macon Moye who has been associated with the program in Mecklenburg County. Staff began discussions with Mr. Moye regarding how the City might bring the program to Bradford Creek. Eventually, TFT would establish a chapter at Bradford Creek and grow that chapter into an Eastern North Carolina regional hub TFT Program. Establishing a chapter is a complex process involving the creation of a non-profit. That non-profit would be called The First Tee of Pitt County. Establishing a board, doing a lot of fundraising, identifying a lot of dedicated volunteers and addressing other chapter requirements may take a year or two years to complete. To get the program started, TFT staff identified a means for the City to begin offering TFT Curriculum and promoting the City's affiliation with TFT prior to the establishment of this formal chapter. This would involve the City entering into a curriculum provider agreement, which would allow the Recreation and Parks Department's Program Director, Mike Cato, to attend training and then transition some of our existing youth outreach programs into TFT Curriculum. There will be no cost to the City for entering into the provider agreement or providing the services outlined in the agreement except for some staff time and minor travel expenses associated with Program Director Cato's training for the program. With the recent hiring of the part-time General Manager at Bradford Creek, Program Director Cato should be able to devote additional time to expanding our youth program. The Recreation and Parks Department hopes to see the youth program grow even further. It is TFT's intention to manage the program at Bradford Creek and to grow it into a much larger one once a formal chapter is established. The term of the curriculum provider agreement would be from its approval to December 31, 2016. Of course, there is an escape clause where either party can terminate the agreement with a 30-day notice. At the September 11, 2013 meeting of the Recreation and Parks Commission, members voted unanimously to recommend the City Council's approval of TFT Curriculum Provider Agreement thereby allowing TFT Curriculum to be provided at Bradford Creek.

Upon being asked about how the City is getting around TFT's franchise fee or participation fee and using TFT Curriculum without actually having to become an official member of the





program, Director of Recreation and Parks Fenton responded that the people, Macon Moye and some of his co-workers, who are interested in pulling the chapter together ultimately have to raise a lot of money. At this point, there is no fee associated with this special agreement that TFT has given the City. Later on, there will be a fee, but Mr. Moye and his co-workers will raise the money in order to provide that fee. Mr. Moye's real idea is if the City can get started, staff has an example of where the City is going and they can point to that as he and others go out to raise money for TFT Program. Ultimately, it may even involve building a larger facility at Bradford Creek specifically for youth golf opportunities. The City pays nothing to use their Curriculum because TFT is trying to get their program off the ground.

Council Member Joyner stated that Macon Moye grew up in Greenville, and his father served as the Superintendent of the Greene County Schools. Macon is one of the greatest athletes ever who graduated from J. H. Rose High School, and he played baseball for the East Carolina Baseball Team and professional golf on the Asian Tour. He is still an avid golfer. Macon contacted him six months ago, and they discussed his interest in putting TFT in Eastern North Carolina, and the Greenville Country Club and other country clubs came to mind. After his discussion with Macon, he contacted Council Member Mitchell who suggested Bradford Creek for TFT Program. Also, he contacted City Manager Lipscomb and turned the suggestion over to staff. This program does not cost the City anything and monies will be raised from private funds. Macon has contacts all over the United States, and he will bring nationally known people who will do golf clinics and people will pay to have a golf lesson from them. Macon will do auctions and have other fundraising events and that is where the money is going to come from for TFT Program to be offered at Bradford Creek. Macon lives in Pinehurst presently, but he loves Greenville and giving back to North Carolina. This program will not be serving only Greenville because other chapters will be established around Greenville once the program is started. This is a great opportunity and there have been discussions about Bradford Creek and the amount of money that the City is spending there in excess. TFT Program ensures that Bradford Creek will be successful and that it will help the youth of Greenville and Eastern North Carolina as well as TFT and some of the things that they advocate. This is great news and he appreciates staff's efforts of pursuing this and for making it happen.

Motion was made by Council Member Mitchell and seconded by Council Member Blackburn to approve the City's participation in the First Tee Program and to authorize the City Manager to execute The First Tee Curriculum Provider Agreement. Motion carried unanimously.

#### ADOPTION OF RECREATION AND PARKS FACILITY RATING INDEX

Recreation and Parks Director Gary Fenton stated that the City Council directed staff to establish a Recreation and Parks facility condition rating index to aid in the prioritization of recreational and parks facility improvements. Staff has been working extensively on this index trying to develop a fair and effective points system that would help to rank needed improvements at these facilities and to compare the different types of needs. That was the



challenge, and the index will only serve as one way and not the only way of prioritizing the Recreation and Parks Department (Department) capital projects. The professional judgment of staff, the Recreation and Parks Commission (Commission) and the City Council will always be part of the prioritization process. The goal of the system is to try to create a capital outlay priority decision tool that will make things cleaner and less subjective and emotional. He feels this proposed system will accomplish that.

Recreation and Parks Director Fenton provided primary core ranking criteria from 0 to 10 points and secondary core ranking criteria from 0 to 5 points. He stated that the primary criteria includes such issues as health and safety, compliance with the Americans with Disabilities Act, unaddressed deteriorated infrastructure problems that will cause additional problems, existing conditions that are very poor and service to the public is substandard, and whether the need has been previously identified in the Comprehensive Master Plan (CMP) and/or the Capital Needs Assessment (CNA). The secondary criteria include whether the facility is a good candidate for outside funding; the facility's distance from other City facilities that provide similar recreational opportunities; whether the facility's is one of a kind or could provide an activity that is unavailable; whether the facility is within a census tract that is at or below the poverty index; whether improvements will make the facility more equity with similar facilities across the City; whether the facility will be low cost, but high impact; and whether the facility will reduce operational costs.

None of those criteria by themselves would place a project at the top. For example, a project may be a candidate for outside funding, but nothing else. That within itself is not going to make the City go after the outside funding because it is not an important enough project. If there are two projects that are fairly equal in importance, that outside funding may be the one that determines which project the City will go after. Because a project is placed at the top does not mean that it will always be funded before a lower ranking project is funded. There may be other factors to not consider a project at the top such as emergency situations may spring up or there may be enough funds to do a lower ranking project, but not a higher ranking and more expensive project. The Commission agreed that this is a good tool in helping the Department in rating its capital needs. At the Commission's September 11, 2013 meeting, the members voted unanimously to recommend this proposed facility ranking index for the City Council's adoption.

Council Member Blackburn stated that her concern is that if the City allows its old recreation and parks facilities to deteriorate that is terrible. There are people who are suffering now because of conditions at some of those places, and if the City neglects the new, the City will continue to fall behind. The City has the CMP and if the City gets the index, that allows for improvements to existing facilities, but what about the new needs.

Upon being asked whether it is incumbent upon the City Council, as part of the City Council's ongoing budget discussions, to decide how capital dollars are spent and is there a formula or is one needed, City Manager Lipscomb responded that the City Council should have some discussion about how it wants the City to fund all of the infrastructure needs of the City. That could probably be done at the City Council's upcoming planning session.



Staff could give some methodologies including increasing taxes (a penny each for parks, transportation, streets, bonding, etc.). Some decisions could be made based on the available tools and funds and how far the City Council wants to go with the new facilities as well as continuing to upgrade old facilities.

Council Member Mitchell stated that going through a process has made everybody get a better understanding of what this entails. Overall, the importance of this index was to help staff get the politics out of the process. When he began his service on the City Council, the City was neglecting older facilities so much and the squeaky wheels were getting oiled. Some people would get organized and excited about their neighborhoods' needs, and those neighborhoods were getting more of the attention causing the City to neglect some of its older facilities. He feels that was not anybody's fault, but that is the way that it happened and over the last two years, the City has made tremendous strides. He feels more comfortable now because of the work that has been done at the Eppes Recreation Center and the Dream Park and what is about to be started at the South Greenville Recreation Center. If something rates on a scale where something looks so dire, hopefully, the policy makers can see that is something important from a health and safety issue versus funding going towards a new park. If a building does not get fixed, it is going to fall apart, i.e. Teen Center, but at least with this index, staff will have the information to make a recommendation and the City Council will have a snapshot in order to make a decision, i.e., the Magnolia Arts Center leasing the Teen Center. Council Member Mitchell thanked the Department for its hard work, and he stated that the proposed Recreation and Parks Facility Index is something positive.

Motion was made by Council Member Mitchell and seconded by Council Member Joyner to approve the adoption of the Recreation and Parks Facility Rating Index to serve as a tool to assist in the prioritization of the existing Recreation and Parks facility improvements. Motion carried unanimously.

#### RESOLUTION ADOPTING THE CITY OF GREENVILLE LOCAL PREFERENCE POLICY

This item was continued until November 2013.

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#### **REVIEW OF OCTOBER 10, 2013 CITY COUNCIL AGENDA**

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The Mayor and Council reviewed the agenda for the October 10, 2013 City Council meeting.

Council Member Joyner stated that he would like to address Mr. Sorbel's comments as heard during the Public Comment Period of this meeting. For six years, which is also the number of years that he has served as a Council Member, City Councils have discussed their own pay increase and, prior to June 2013, the last time a City Council received a pay increase was in 1998. Those on the City Council do not serve to make a lot of money and personally during his six years of service, it has cost him out-of-pocket expenses (telephone



and gas expenses), time, and effort. He recalls when he initiated the conversations about a pay increase and the response received from all of the members of the present City Council was the same, which was if the approval of the pay increase would be unanimous, it would be supported by them, and staff has heard the same. The City Council approves the City budget every year and cannot approve the budget for an incoming City Council. If this City Council receives a pay raise or a pay cut, this City Council will vote on that. The total amount of the pay raise for the present City Council is \$10,200 annually. He appreciates Mr. Sorbel's comments, but he feels that this has been made a campaign issue and citizens have been misinformed.

Mayor Pro-Tem Glover agreed with the above comments about the Mayor and City Council's pay increase, and stated that she recalls when the discussion(s) occurred.

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**COMMENTS BY MAYOR AND CITY COUNCIL**

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The Mayor and City Council made comments about past and future events.

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**CITY MANAGER'S REPORT**

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City Manager Lipscomb stated that both the Greenville Police and Fire/Rescue Departments participated in and had display booths at the Pitt County Fair.

City Manager Lipscomb made comments about the effects of the federal shutdown on the City of Greenville, stating that the federal government did not begin its fiscal year with an approved budget. Therefore, the City has some implications affecting some of the City departments' grant funding including the Community Development Department's Housing Division, Fire/Rescue Department, Police Department and the Public Works Department's Transit Division and Metropolitan Planning Organization. The City will not have any actions related to any employees at this point, and staff will continue to monitor this situation. There are some concerns about continuing to make certain capital purchases until after the annual Federal budget has been approved. She will be discussing those capital items further with the City departments to see what type of decisions should be made.



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**ADJOURNMENT**

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Motion was made by Council Member Joyner and seconded by Council Member Mitchell to adjourn the meeting. Motion carried unanimously. Mayor Thomas declared the meeting adjourned at 10:06 p.m.

Respectfully Submitted

A handwritten signature in cursive script that reads "Polly Jones".

Polly Jones  
Deputy City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, NOVEMBER 7, 2013



A regular meeting of the Greenville City Council was held on Thursday, November 7, 2013, in the Council Chambers, located on the third floor at City Hall, with Mayor Allen M. Thomas presiding. Mayor Thomas called the meeting to order at 7:00 p.m. Council Member Calvin Mercer gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Allen M. Thomas, Mayor Pro-Tem Rose H. Glover, Council Member Kandie Smith, Council Member Marion Blackburn, Council Member Calvin R. Mercer, Council Member Max R. Joyner, Jr. and Council Member Dennis J. Mitchell

Those Absent:

None

Also Present:

City Manager Barbara Lipscomb, City Attorney David A. Holec, City Clerk Carol L. Barwick and Deputy City Clerk Polly W. Jones

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**APPROVAL OF THE AGENDA**

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Council Member Blackburn stated that the closed session item would be best conducted by the new sitting City Council membership, and made a motion to conduct staff evaluations at a later date. Council Member Mercer seconded the motion.

Council Member Joyner said that the closed session has been on the agenda for some time without any mention of holding it at a later date. He added that he is ready to take action at the current meeting.

Council Member Blackburn said that the closed session item will set the tone for the coming year, because it addresses issues that occurred in the past, and policies that will shape the future of the City Council.

Mayor Pro-Tem Glover pointed out that the new Council Members are not familiar with the staff's work. Therefore, it would be unfair and unethical to expect the new membership to complete staff evaluations immediately. She suggested that it would be best if staff was evaluated by the current Council Members. Mayor Pro-Tem Glover said that the City Council normally sets its rules during the Planning Session, which will include new members. However, staff evaluations are independent of setting future agendas.

Council Member Blackburn said that she was included in evaluations when she first served on the City Council in 2009. She pointed out that the City Council not only evaluates <sup>Item # 1</sup>



leadership performance, but also provides guidance for the future. She said that it is imperative for new members to be involved in setting that guidance. In addition, Council Member Blackburn recommended conducting the evaluations in February to expose new members to performance and the opportunity for input into future direction. Council Member Blackburn stressed that this Closed Session is important, and therefore, new membership should participate.

Council Member Smith said that the new City Council has not interacted with staff, and therefore has not had the opportunity to evaluate the work that staff has done. She suggested having two closed sessions; one for current City Council members and a second in February for new Council Members.

Council Member Joyner mentioned that he conducted an evaluation at a meeting when he initially served on City Council, but was not prepared to do so. He said that the City Council has had the opportunity to make changes to the closed session. Additionally, he said he did not want to surrender his authority to evaluate staff to anyone, and therefore will vote against Council Member Blackburn's motion.

Council Member Smith offered a friendly amendment to Council Member Blackburn's motion to meet this evening for evaluations and set a date in February for staff direction. Council Member Blackburn and Council Member Mercer accepted the amendment.

There being no further discussion, the motion as amended failed by a 3 to 4 vote with Mayor Thomas casting a "no" vote to break the initial tie. Mayor Pro-Tem Glover and Council Members Joyner and Mitchell also voted against the amended motion.

Council Member Mercer requested that the item on the 2013-2014 Capital Reserve Fund Calculation and Designations be pulled from the consent agenda for separate discussion.

Council Member Mitchell made a motion requesting the addition of the "Ban the Box" initiative to the agenda. He explained that the "Ban the Box" initiative would allow job applicants to be considered for interviews with the City of Greenville based solely on their merits and work history, without having to disclose their criminal backgrounds on job applications. He pointed out that many human resources offices have policies that require job applicants to disclose any criminal history by checking a box on the applications. As a result, these individuals are often denied job interviews in favor of applicants with no criminal history. Council Member Mitchell said that the "Ban the Box" initiative will remove the criminal history box from City of Greenville job applications in order to allow individuals with a criminal background the chance to gain interviews based on their qualifications and have the opportunity to explain their criminal background at that time. He said that "Ban the Box" has taken off nationwide, and has been adopted by several counties in North Carolina. Council Member Mercer seconded the motion.



Council Member Blackburn said that she is interested in discussing the initiative, but was not made aware that the item would be added to the agenda. As a result, she said that did not have the opportunity to prepare to make a decision.

Council Member Mercer withdrew his second to Council Member Mitchell's motion to add the "Ban the Box" initiative to the agenda. He said that he originally seconded the motion because he thought all Council Members knew about the addition of the item to the agenda and had ample time to prepare.

Council Member Joyner seconded the motion to add the item to the agenda upon the withdrawal of the second by Council Member Mercer.

Council Member Blackburn said that "Ban the Box" would be a positive step for the City, but stated further that the lack of in-depth information about the initiative will make it difficult for her to adopt it at this time. She suggested that the City Council discuss "Ban the Box" at the current meeting, but take action on the initiative at a later date.

There being no further discussion, the motion to add discussion of the "Ban the Box" initiative to the agenda passed by a 4 to 2 vote. Council Members Blackburn and Mercer cast the dissenting votes.

Council Member Mitchell made a motion requesting the addition of the Benevolence Corps Stop the Violence Campaign to the agenda. He said that the item is a resolution on crime, which states that that the City Council supports the efforts of The Benevolence Corps to tackle all violence throughout the City, particularly black-on-black violence. Council Member Joyner seconded the motion, which passed by unanimous vote.

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## APPOINTMENTS

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

#### Greenville Bicycle & Pedestrian Commission

Council Member Mercer continued the appointment of Liz Brown-Pickren's seat, who had resigned, and Titus Yancey's seat, who was no longer eligible to serve.

#### Historic Preservation Commission

Council Member Blackburn continued the appointment of Maury York's seat, who had resigned.

#### Human Relations Council

Mayor Pro-Tem Glover chose to continue the appointment of Corey Rhodes' seat, who had resigned, and the East Carolina University seat.





Investment Advisory Committee

Mayor Thomas continued the recommendation for David Damm's seat, who was no longer eligible to serve.

Pitt-Greenville Convention & Visitors Authority

Mayor Pro-Tem Glover made a motion to appoint Dede Carney to fill an unexpired term that will expire July 2014, in replacement of Terry Shank, who had resigned. Council Member Joyner seconded the motion and it carried unanimously.

Planning & Zoning Commission

Council Member Smith chose to continue the appointment of Kevin Burton's seat who had resigned.

Police Community Relations Committee

Council Member Joyner continued the appointment of Tom McCullough's seat.

Council Member Mercer continued the appointment of Wayne Whipple's seat.

Recreation & Parks Commission

Council Member Joyner made a motion to appoint Thorbjorn Gylfason to an unexpired term that will expire May 31, 2015, in replacement of Terry Boardman, who had resigned. Council Member Blackburn seconded the motion and it carried unanimously.

Redevelopment Commission

Council Member Blackburn continued the appointment of Chris Mansfield's seat, who was no longer eligible to serve.

Youth Council

Council Member Blackburn made a motion to appoint Mrunal Shaw, Taylor Clark, and Lily Huo to a first term that will expire September 30, 2014.

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**CONSENT AGENDA**

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City Manager Barbara Lipscomb introduced the following items on the consent agenda, reading out the title of each as follows and noting that the item on the Capital Reserve Fund Calculation and Designations was removed for separate discussion:

1. Schedule Special City Council meeting to be held on November 18, 2013, at 6:00 p.m. in the Council Chambers at City Hall
2. Minutes from the April 11, 2013, and May 6, 2013, City Council meetings
3. Report on Contracts Awarded



4. Memorandum of Agreement with the N.C. State Historic Preservation Office for 901 Douglas Avenue
5. Contract with Cardno for EPA Brownfield Project Management
6. Establishment of Criteria for a Design-Build Delivery Method for Construction Contracts and Approval of Using the Design-Build Delivery Method for the Convention Center Renovation and Addition Project
7. Purchase of Rescue/Pumper for the Fire/Rescue Department
8. Contract award for Right of Way Asset and Pavement Condition Survey
9. Supplemental agreement with the North Carolina Department of Transportation for the Green Mill Run Greenway Phase 2 Extension to accommodate for right-of-way acquisition
10. Electric Capital Projects Budget Ordinance for Greenville Utilities Commission's Frog Level and MacGregor Downs Substations Feeder Expansions
11. [REMOVED FOR SEPARATE DISCUSSION] 2013-2014 Capital Reserve Fund Calculation and Designations
12. Budget ordinance amendment #4 to the 2013-2014 City of Greenville budget (Ordinance #13-026), and amendments to the Pre-1994 Entitlement Fund (Ordinance #96-52), the Special Revenue Grant Fund (Ordinance #11-003), the Drew Steele Center Capital Project Fund (Ordinance #09-42), the Dream Park Capital Project Fund (Ordinance #12-030), and the Insurance Loss Reserve Fund (Ordinance #94-140)

Council Member Joyner moved to approve all items on the Consent Agenda. Council Member Smith seconded the motion, which passed by unanimous vote.

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**NEW BUSINESS**

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**PUBLIC HEARINGS**

**ORDINANCE TO ANNEX GATEWAY WEST, PORTION OF LOT 4, INVOLVING 0.34 ACRES LOCATED AT THE NORTHERN RIGHT-OF-WAY OF GATEWAY DRIVE AND BEING ABOUT 320 FEET WEST OF STANTONSBURG ROAD - (Ordinance No. 13-057)**



Community Development Director Merrill Flood presented the proposed ordinance, which involves the annexation of approximately one-third of an acre of land to construct a communications tower. He stated that due to the lease of the communications tower, the developer is required to annex the parcel. The property is located in the western part of the City in Voting District 1 and is located in Vision Area F. The present tax value is \$35,545.00 and the total estimated tax value at full development is \$70,847.00. Mr. Flood stated that the property is currently vacant; therefore, the annexation does not involve any population.

Mayor Thomas declared the public hearing open at 7:32 p.m. and invited anyone wishing to speak in favor of the annexation to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:33 p.m.

Council Member Joyner made a motion to approve the annexation ordinance. Mayor Pro-Tem Glover seconded the motion, which passed by unanimous vote.

**ORDINANCE TO ANNEX KITTRELL FARMS, LOT 9, INVOLVING 1.3216 ACRES LOCATED ON THE SOUTHERN SIDE OF CHARLES BOULEVARD AND BEING ABOUT 270 FEET WEST OF SIGNATURE DRIVE - (Ordinance No. 13-058)**

Community Development Director Flood said that the property proposed for annexation is located in the southeast portion of the City, and lies in Voting District 5. He said that the proposed development would be for 12,650 feet of retail space, and therefore would not involve population. The property is currently vacant, and is in Vision Area D. The present tax value of the property is \$237,600.00, and the total estimated tax value at full development is \$1,502,600.00.

Mayor Thomas declared the public hearing open at 7:34 p.m. and invited anyone wishing to speak in favor of the annexation to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:34 p.m.

Council Member Joyner made a motion to approve the annexation ordinance. Mayor Pro-Tem Glover seconded the motion, which passed by unanimous vote.

**ORDINANCE TO AMEND THE FUTURE LAND USE PLAN MAP FROM AN INDUSTRY (I) CATEGORY TO A COMMERCIAL (C) CATEGORY FOR THE PROPERTY LOCATED BETWEEN MARTIN LUTHER KING, JR. HIGHWAY AND STATON HOUSE ROAD AND WEST OF MEMORIAL DRIVE - (Ordinance No. 13-059)**

Planner Chantae Gooby presented the request to amend the current Future Land Use Plan Map. She stated that the property is located in the northern section of the City between Martin Luther King, Jr. Highway and Staton House Road in Vision Area A. The property is currently located in the recognized industrial area with a portion of industrial (I) and item # 1



commercial (C) zoning, but the request is to change the entire designation of the map. Ms. Gooby said that although the I and C districts contain similar uses, the C district allows for retail uses. In addition, both I and C districts would allow 345,000 square feet of building space. The property is part of an approved preliminary plat for the North Greene Commercial Park, and is comprised of 18 lots. Ms. Gooby said that the existing land use consists of a Sheetz Convenience Store, the Staton House Volunteer Fire Department, and vacant lots. Ms. Gooby said that within the subject area, a small portion is zoned as residential (RA20), while the remainder of the property is zoned unoffensive industry (IU), and would produce approximately 10,500 trips for over 36 acres. Ms. Gooby said that, in staff's opinion, this request is in compliance with the criteria listed in the 2010 update regarding requests to amend the Future Land Use Plan Map. She outlined the criteria as follows:

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

Mayor Thomas declared the public hearing open at 7:39 p.m. and invited anyone wishing to speak in favor of the proposed change to the Future Land Use Plan Map to come forward.

Jim Hopf –No Address Given

Mr. Hopf, who said that he is representing the applicant, stated that the proposed changes to the Future Land Use Plan Map are consistent with existing uses. In addition, Mr. Hopf said that the request is market driven, and encourages retail development north of the river. Mr. Hopf mentioned that the subject property did not flood during Hurricane Floyd, which is an advantage for commercial development.

Hearing no one else who wished to speak in favor of the proposed amendment, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:41 p.m.

Council Member Joyner made a motion to approve the ordinance amending the Future Land Use Plan Map. Council Member Smith seconded the motion, which passed by unanimous vote.



**ORDINANCE AMENDING HORIZONS: GREENVILLE'S COMMUNITY PLAN TO INCORPORATE BY REFERENCE THE OAK GROVE ESTATES SUBDIVISION NEIGHBORHOOD REPORT AND PLAN - (Ordinance No. 13-060)**

Planner Gooby stated that, as part of the goals of City Council and ongoing work to improve Greenville's older neighborhoods, the Community Development Department's Planning Division developed a neighborhood plan for the Oak Grove Estates community with assistance from City departments and the Greenville Utilities Commission (GUC). She said that surveys were mailed to property owners and renters asking them to provide information about the neighborhood. Additionally, she said that two neighborhood meetings were held in July and September with the residents of Oak Grove. Ms. Gooby said that members from every City department were in attendance to answer individual questions and provide information to the residents. Ms. Gooby stated that Oak Grove is in the northern section of the City and is 68% owner occupied, indicating the health of the neighborhood. She mentioned that, at the time of the meetings, Oak Grove did not have an official community watch program. Additionally, she said that the fire department studied several safety aspects of the neighborhood, including the entrance routes, emergency response times and fire hydrants. Ms. Gooby pointed out that 911 addresses were not properly displayed on a majority of the homes in the neighborhood, so information was passed out to residents about proper 911 address display. Ms. Gooby said staff also looked at the neighborhood's proximity to Recreation and Parks facilities. She mentioned that the closest facility to the neighborhood is the Greenfield Terrace Park, which Oak Grove's residents must access via Highway 33 and Memorial Drive. However, the Greenfield Terrace Park master plan includes a connection from the Oak Grove neighborhood to the park. Ms. Gooby said that if the City Council approves the proposed ordinance, it will be included in HORIZONS: Greenville's Community Plan. Ms. Gooby outlined the strategies for the Oak Grove neighborhood below:

- Provide grants, in accordance with current program/policy, to a City-recognized neighborhood association for neighborhood improvement activities such as, improvement of existing entrance signs and/or installation/construction of street identifiers.
- Install appropriate GREAT system bus stop improvements at locations as determined necessary and appropriate by the Public Works Department as recommended by the Thoroughfare Plan.
- Continue to work on the installation of a bus shelter at the GREAT bus stop at Oak Grove Avenue and Glenda Street, if an acceptable right-of-way location can be found, as determined necessary by the City Engineer.
- Serve the Oak Grove Estates Subdivision on every trip of the GREAT bus instead of every other trip which is anticipated to occur early 2014.



- Assess street lighting levels throughout the neighborhood and cause the installation of additional lamps and/or trimming of mature tree growth as determined necessary by the City Engineer.
- Notify property owners of address number display requirements.
- Continue to monitor the drainage conditions in the neighborhood.
- Assist the neighborhood and area residents in the establishment of a Neighborhood Association and a Community Watch Program.
- Continue to fund the adopted Greenfield Terrace Master Plan.

Council Member Smith asked how the residents of Oak Grove were notified of the 911 address requirements. Ms. Gooby said that, in addition to advertisements run by G-TV, staff will send post cards containing the address requirements to the residents.

Council Member Smith pointed out that Oak Grove has previously been affected by flooding. She asked if the City Council would continue to receive updates from Public Works about improvements to the drainage system. She also inquired about the tree trimming schedule in the neighborhood to improve lighting. Public Works Director Kevin Mulligan said that Public Works is continuing to monitor flooding in Oak Grove, as well as creating better flow for stormwater. With respect to tree trimming, he said that he was unsure of the exact schedule for the neighborhood, but told Council Member Smith that he would update the City Council once he was aware of it.

Mayor Thomas declared the public hearing open at 7:52 p.m. and invited anyone wishing to speak in favor of the amendment to HORIZONS: Greenville's Community Plan to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:52 p.m.

Council Member Smith made a motion to approve the ordinance amending Horizons: Greenville's Community Plan. Mayor Pro-Tem Glover seconded the motion, which passed by unanimous vote.

**RESOLUTION AUTHORIZING THE CONVEYANCE OF CITY-OWNED PROPERTY  
LOCATED AT 801 FLEMING STREET AND 605 SHEPPARD STREET - (Resolution No.  
055-13)**

Senior Planner Niki Jones stated that staff is requesting authorization to convey two City-owned vacant parcels to the Greenville Housing and Development Corporation (GHDC). He said that the GHDC is the non-profit arm of the Greenville Housing Authority (GHA). Mr. Jones mentioned that the City has partnered with the GHA and GHDC on several projects, including four lease-purchase single-family homes, housing counseling workshops, and the Crystal Springs Apartments senior community. Mr. Jones said that the Crystal Springs



Apartments project was the catalyst for the City's partnership with the GHDC in West Greenville on constructing affordable single-family homes. He stated that the GHDC has pledged to reinvest \$350,000 into West Greenville. Mr. Jones said that staff would like to help facilitate this process by conveying two City-owned parcels, located at 801 Fleming Street and 605 Sheppard Street. The parcel at 801 Fleming Street is approximately 12,750 square feet, and is located east of Sadie Saulter School and south of Douglas Street. The parcel located at 605 Sheppard Street is approximately 7,216 square feet, and is located south of West Fifth Street and east of Carver Library. Both parcels are zoned as residential (R6S).

Council Member Blackburn asked if the lots had previously been occupied by homes that were demolished. Mr. Jones said that the homes that were on the lots were demolished, but they were not demolished recently. He said that the goal is to build homes on these vacant lots and get them back on the City's tax rolls.

Mr. Wayman Williams, Director of the GHA, said that the conveyance of these properties would provide a tremendous development opportunity for the West Greenville area. He said that the programs and services provided by the GHA prepare potential homeowners to purchase homes within a reasonable time. Mr. Williams said that the GHA wishes to continue a collaborative relationship with the City and will continue to invest in the West Greenville 45-block area.

Council Member Smith asked Mr. Williams how soon construction will take place once the properties are conveyed. Mr. Williams said that the GHDC would like to develop as soon as possible, but would prefer to prepare potential buyers so that they become invested in the process and can participate in making selections. He stated that once a buyer is committed, construction will begin, which will prevent properties staying vacant for extended periods of time. Mr. Williams said that the ideal timeframe to complete the development of the properties is two years, but added that a shorter timeframe is possible.

Council Member Smith asked if the applicants must be from the GHA in order to be eligible for the program. Mr. Williams said that, although the program serves applicants through the GHA, eligibility is open to the community as well.

Mayor Thomas declared the public hearing open at 7:57 p.m. and invited anyone wishing to speak in favor of the resolution to come forward.

#### Mr. Wayman Williams - No Address Given

Mr. Williams stated that he is the director of the Greenville Housing Authority (GHA). He said that the Greenville Housing Development Corporation (GHDC) will be committing all of its available resources to this project, and would be appreciative of City Council approval. He said that GHDC will begin work on the project immediately, and is committed to pursuing development of other properties in the West Greenville 45-block area in the future.



Council Member Smith asked if there were additional classes available to new homeowners to teach them how to take care of their properties in addition to the pre-homeownership classes. Mr. Williams said that there is a comprehensive program for pre-homeownership, as well as post-homeownership, because many homeowners have problems following the purchase of a home.

Mayor Pro-Tem Glover pointed out that the City has collaborated with the GHA on similar projects, and said that the GHA does an excellent job of prequalifying buyers for the homes. She said that the partnership between the City and the GHA benefits the City because, as Community Development Block Grant (CDBG) monies decrease, working in concert with the GHA allows the City to continue to revitalize West Greenville and increase home ownership.

Hearing no one else who wished to speak in favor of the property conveyance, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas declared the public hearing closed at 8:03 p.m.

Council Member Smith made a motion to approve the authorization to convey City-owned property. Council Member Joyner seconded the motion, which passed by unanimous vote.

**ORDINANCE DIRECTING THE ENFORCEMENT OFFICER TO ABATE THE NONRESIDENTIAL BUILDING OR STRUCTURE CODE VIOLATION LOCATED AT 408 HUDSON STREET - (Ordinance No. 13-061)**

Chief Building Inspector Les Everett said that the nonresidential building located at 408 Hudson Street was found to be non-compliant with the Nonresidential Building or Structure Code for the City of Greenville. The violations result from roof structure deterioration. Mr. Everett stated that 408 Hudson Street has a total value of \$150,000, with the structure valued at \$145,432 and the land valued at \$4,600. He said that the structure has the following deficiencies:

- Obvious sagging of roof ridge lines.
- Brick veneer separating from structural components
- Elements of deterioration
- Code upgrades due to amount of damage

Mr. Everett stated that the owners of the property have told the Inspections Department that they are working with contractors to fix the structure. He reported that as of today, the owners submitted engineering plans and filled out a permit application. However, the owner has not taken any further measures needed to repair the structure within the time established by the enforcement officer. Mr. Everett said that other interested parties have spoken to City representatives about the property, but no other action has taken place. He stated that the estimated cost to repair the structure on the property is more than 50% of the tax value, and therefore, enforcement actions would call for abatement by demolition. Mr. Everett said that estimated demolition costs range from \$ 30,000 to \$40,000, excluding





asbestos inspections or abatement. The estimated cost for repairing the structural violations, however, could exceed \$150,000. Mr. Everett said that staff recommends that the City Council approve the ordinance allowing the City to abate the nonresidential structure violations at 408 Hudson Street by means of demolition due to structural issues that could cause hazards to adjacent right-of-ways and/or structures.

Mr. Everett said that staff is willing to work with the owner, but recommends that in order to avoid demolition action by the City, the owner must take remedial action within 60 days following the approval of the ordinance. He stated that he had originally planned to recommend a 30-day timeframe prior to receiving the engineering plans from the owner. Mr. Everett said that the project would take longer than 30 days but less than 45 days to complete due to the complexity of the demolition. Therefore, a 60-day time frame would allow the owner ample time to show substantial progress in improving the property. He clarified that completion is not required during that time; however the owner must show that measures toward improvement are being taken. Mr. Everett said that if the owner does not take further action within that timeframe, the City would then begin the abatement process.

Mayor Thomas declared the public hearing open at 8:21 p.m. and invited anyone wishing to speak in favor of the proposed ordinance to come forward.

Richard Moore–No Address Given

Mr. Moore stated that he is the pastor of the church located at 408 Hudson Street. He explained that when he initially purchased the church, he worked tirelessly to make improvements and to transform the church into a house of worship for all people. However, Mr. Moore stated that he became ill and was admitted to the hospital periodically over a three-year period. As a result, progress to the church building ceased and it fell into disrepair. Now that he is healthy again, Mr. Moore said that he is ready to continue rehabilitation to the church. He mentioned that he has a contractor and blue print plans for the project. Mr. Moore pointed out that the presence of the church has had a positive impact on the surrounding neighborhood, and stated that a police officer informed him that crime in the area has decreased since construction on the church began.

Mayor Thomas thanked Mr. Moore for his passion and vision for the church, and asked if he is prepared to make progress to the property within a 60-day window. Mr. Moore stated he is fully committed to the project, and mentioned that he will be meeting with the contractor and engineer within the next week to determine when to begin fixing the structural damage to the church.

Council Member Joyner asked Mr. Moore how the project would be funded. Mr. Moore said that several individuals have agreed to provide financial support. In addition, his wife came forward and provided contact information to which contributions can be made. She said that potential donors may call (203) 361-1702, or send money to either of the below addresses:



- 945 First Avenue  
Westhaven, CT 06516
- 160 Lismore Drive  
Winterville, NC 28590

Mr. Hemby – No Address Given

Mr. Hemby said that his heart is heavy on two fronts because he grew up at 605 Shepherd Street and his family built Hemby Chapel, located at 408 Hudson Street. He said that he and his family have been attempting to obtain historic designation for the church. Additionally, he said that he found the Moore family when they purchased the church and began reconstruction of the property. Mr. Hemby expressed his commitment to rebuilding the church, and he asked the City Council to cooperate to make this possible.

Mary Perkins Williams – No Address Given

Ms. Williams stated that she has lived in Pitt County for her entire life. She said that Mount Calvary Church, formerly Hemby Chapel, has a rich history in West Greenville. She mentioned that in 1929, a biography was written in The Daily Reflector about Mr. Freeman Hemby, who built the church. In addition, she said that his picture was featured on the front page. Ms. Williams noted that at that time in history, it was quite a gesture for an African-American man to be featured in that newspaper. She said that the destruction of history takes away the foundation of a group of people. She asked the City Council to allow the reconstruction of the church at 408 Hudson Street, as it is a key element of West Greenville's history and provides many positive opportunities for the neighborhood.

Keith Cooper – No Address Given

Mr. Cooper, who stated that he is from the Benevolence Corps, said that he shares the sentiments of Pastor Moore regarding the church at 408 Hudson Street. Mr. Cooper noted the church's rich history, and mentioned that it was built during a time of economic hardship. He said that many people turned to the church during that time for comfort and direction. Mr. Cooper pointed out that the Moore family has also experienced trials and tribulations, yet this church still remains a source of hope for them. Mr. Cooper expressed his support for any rehabilitation that could be done to restore the church, and also encouraged the City Council to ensure that this property is put on the historic registry.

Hearing no one else who wished to speak in favor of the proposed ordinance, Mayor Thomas invited comments in opposition. Hearing no one, Mayor Thomas declared the public hearing closed at 8:48 p.m.

Council Member Mitchell said that he performed a Google search on Hemby Chapel and found indications that the church is recognized as an historic structure. He expressed his concern about potentially demolishing historic structures without doing everything possible to preserve them. He suggested blocking off the sidewalk adjacent to the church until its official historic status is determined.



Council Member Joyner made a motion to accept Mr. Everett's recommendation with the 60-day window for the property owners to show substantial improvement on safety issues. Council Member Blackburn seconded the motion.

Council Member Blackburn asked Mr. Everett what quantifiable benchmarks must take place. Mr. Everett said that his first and foremost goal is to protect the safety of the public. Therefore, he stated that substantial commencement of work to the property must take place within 60 days. He said that as soon as the owners address the church's safety issues, the Inspections Department can work with them on the overall rebuilding process.

Council Member Blackburn asked if an historic landmark designation would impact the time to complete the project. Mr. Everett said that with regard to safety, an historic designation would not impact the completion time.

There being no further discussion, the motion was approved by 5 to 1 vote. Council Member Mitchell cast the dissenting vote.

### **2013-2014 CAPITAL RESERVE FUND CALCULATION AND DESIGNATIONS - (Ordinance No. 13-062)**

Assistant City Manager Chris Padgett stated that this item is to update the City Council on the potential transfer to the Capital Reserve Fund from the General Fund based on annual audited year-end results for the previous fiscal year. Mr. Padgett said that following the audit, staff became aware of how much money the City has above its 14% fund balance policy. He pointed out that the fiscal year-end results illustrate that the unassigned fund balance is within the 14% financial policy guidelines established by the City. Based on the June 30, 2013 audit results, the unassigned General Fund balance totals \$50,999. This money could be used for operating expenses or capital needs. However, Mr. Padgett said that because the amount above the 14% threshold is relatively minimal, staff recommends that the City Council forego making additional Capital Reserve designations at this time.

Council Member Mercer asked how much money is currently in the Capital Reserve Fund. Financial Services Director Bernita Demery said that the total is \$104,393, which includes interest and the 14% excess that would have been considered for transfer in the current year.

Council Member Blackburn expressed her concern that the fund balance is so close to 14%, and asked if the marginal difference is the result of the City Council's decision to spend down its cash reserves. Ms. Demery said that this is not a result of spending down, and pointed out that, while policy states that the City must maintain 14%, the City still has \$11 million in unassigned fund balance. She added that the amount is fairly close to what it was in the previous year, and explained that the budget increased in the current year due to the use of fund balance money for capital projects. Additionally, Ms. Demery pointed out that the fund balance requirement has increased from 8% to 14% in recent years.



Council Member Mitchell asked if the City transfers 14% every year for capital improvement. Ms. Demery said that, although that practice is done in most years, it is not done every year. She said that staff considers many factors, such as revenues and economic development, when determining whether or not to transfer additional capital.

Council Member Mercer made a motion to approve the Capital Reserve Fund calculation and designations. Council Member Smith seconded the motion.

Council Member Smith asked if the City Council could choose to raise or lower the 14% requirement. Ms. Demery said that City Council could do so; however the City is required to maintain 8% by the Local Government Commission (LGC).

There being no further discussion, the motion passed by unanimous vote.

### **PUBLIC COMMENT PERIOD**

#### Scott Senatore – 302 S. Greene Street

Mr. Senatore, who stated that he is the President of the Greenville-Pitt County Chamber of Commerce, provided comments on the local preference policy. He said that the Chamber commends the City for taking the initiative to craft the policy, which gives local businesses the chance to earn City contracts and keep money local. Mr. Senatore said that, in order for Greenville to become the strongest business climate in Eastern North Carolina, it is imperative for the community to adopt the mindset of conducting business locally as it seeks products and services. Mr. Senatore stated that by giving preference to businesses within Greenville and Pitt County that have proper experience and qualifications, the City extends its support to the businesses that contribute to its tax base. Additionally, he said that the local preference policy ensures that the City will receive the best overall value in the procurement of goods and services. Mr. Senatore said that the Chamber's recommendations are broad by design, as it must rely on the City's professional staff to handle the technicalities of the policy, in terms of meeting statutory requirements and maintaining efficient internal operations. Mr. Senatore closed by expressing the Chamber's appreciation for its partnership with the City.

#### Marsha Wyly – 111 Martinsborough Road

Ms. Wyly stated that she has been a registered landscape architect for the past 25 years and is the sole proprietor of her home-based landscape architecture business. She said that her experience includes work for counties and municipalities, hospitals, and out-of-state facilities. She stated that she has been a Greenville resident for the past five years, and during that time, has been attempting to do work in Greenville. However, she was told that a local landscape architect would not be accepted. Therefore, she said that she is appreciative of the City's local preference policy, and what it can do for sole proprietors like herself.



Austin W. Bunch – 3067 Dartmouth Drive

Mr. Bunch stated that he has lived in Greenville for 15 years in the Lynndale Towns neighborhood. He said that although the neighborhood is a desirable place to live, the developer did not designate the entire street on which the homeowners reside as a City street. As a result, the majority of the homeowners in Lynndale Towns are not recognized as residing on a City street, but are still required to pay City taxes. Mr. Bunch said that this problem affects 17 of the 25 homes in the neighborhood. He stated that the affected homeowners wish to receive the same accommodations as the homeowners who are recognized as residing on a City Street.

Andrew Gorman – No Address Given

Mr. Gorman said that crime and lack of well-paying jobs have been a theme in local elections. He stated that the time has come to solve the root of these problems, rather than bandage the effects of a bad economy. He suggested that the City implement land value taxation, which he said would alleviate poverty without sacrificing progress. Mr. Gorman pointed out that land value taxation is not a new idea, and was advocated by Thomas Payne to fund what was called a “citizens’ dividend.” He said that land value taxation would return surplus local government revenue to the citizens as a citizens’ dividend, or basic income guarantee. Mr. Gorman said that land value taxation would benefit the general population of Greenville, and would inhibit land speculators and others who buy land to sell at a much higher price. Mr. Gorman stated that land value taxation would encourage Greenville to grow upward rather than outward.

Keith W. Cooper – P.O. Box 30103

Mr. Cooper stated that the time has come for citizens of Greenville to collaborate with law enforcement in order to combat violence and homicides. He recalled his childhood in the 1970’s when families could enjoy quiet evenings on their front porches, and could sleep at night without having to lock their doors. He pointed out that times have changed, and stated that since Jan 1, 2012, there have been 19 homicides in Greenville and Pitt County. Mr. Cooper stated that Greenville’s citizens have a moral and civic obligation to take back their community, help dysfunctional families, engage youth and help others find employment. He said that Greenville can return to its glorious days if everyone works together, and closed with a quote from President John F. Kennedy, who stated that “God’s work is our work.”

Dave Pulver – 210 Louis Street

Mr. Pulver stated that he represents the Eastern Carolina Republican Liberty Caucus (ECRLC). He said that a recent Greenville news story reported that the City of Jacksonville will be purchasing a bearcat armored vehicle for their police department, and that the City of Greenville may purchase one, as well. Mr. Pulver stated that Police Chief Hassan Aden confirmed that the report is true, but he only envisioned using the vehicle with approval to protect police officers in limited circumstances. Mr. Pulver said that if the City purchases such a vehicle, the members of the ECRLC believe that the “limited circumstances” in which the vehicle is used should be documented, publicly discussed and agreed to by the City Council as a condition of purchase. Mr. Pulver clarified that the ECRLC is not concerned # 1



that Chief Aden will go back on his word, but does worry about the views of future Police Chiefs. He pointed out that the Police Chief of Jacksonville said that the vehicle is “perfect for urban warfare.” Mr. Pulver said that the Greenville City Council must take measures to prevent the urban warfare attitude from ruining the work that Chief Aden has done to improve relations between the citizens of the community and the police.

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### OTHER ITEMS OF BUSINESS

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### PRESENTATIONS BY BOARDS AND COMMISSIONS

Marsha Wyly, Chair of the Public Transportation and Parking Commission, presented its annual report. She said that the purpose of the Commission is to investigate, review and study public transit and public parking needs throughout the City.

Ms. Wyly reported that the Commission is currently developing a short range transit plan for the GREAT bus system, which will improve the current plan by maximizing its efficiency. She also shared with the City Council the improvements that have already been initiated for the GREAT bus system’s breakdown procedure. Under the new procedure, a maintenance crew and new bus are immediately dispatched to the breakdown area. The driver and passengers are transferred to the new bus, which completes the original route, while the maintenance team repairs the original bus. Ms. Wyly said that the new procedure will save time and will promote customer satisfaction. She passed out information to the City Council regarding ride times and bus fares. The GREAT bus system has six routes that run Monday through Friday from 6:25 a.m. to 7:00 p.m., and on Saturday from 9:25 a.m. to 6:00 p.m. The bus fare is \$1.00 for a one-way ticket or \$2.00 for the entire day. Ms. Wyly pointed out that all buses are handicap accessible, and have an automated announcement system. In addition, the GREAT bus system has a downloadable application that allows riders to track bus routes and times from their cell phones and tablets. Ms. Wyly reported that the GREAT system transported approximately 543,000 people in 2013, which is a 6.6% increase in ridership from 2012. She added that ridership has increased by 50% since 2011 upon the addition of a bus to the GREAT system. She also reported that the Commission has selected a preferred site and building concept for the Greenville Transportation Activity Center (GTAC).

Ms. Wyly said that AMTRAK has recently melded into the GREAT system, and transports passengers twice a day from the Reade Street transit point to the nearest AMTRAK stations in Rocky Mount and Wilson. She mentioned that passengers are able to purchase bus tickets when they purchase their train tickets. Ms. Wyly said that transportation is also provided in Greenville through Pitt Area Transit System (PATS), a demand responsive service. She said that PATS has five vans and routes within Greenville, which run at the same hours and areas of service as the fixed-route bus system. PATS has a one-way fare of \$2.00, and is available for individuals who are unable to use the fixed-route service.



In addition to the improvements to Greenville's transportation system, Ms. Wyly addressed the Commission's efforts to improve public parking throughout the City. She said that the two most challenging projects have been the controlled residential parking proposal in the UNRI district and the Uptown parking deck. She stated that the Commission spearheaded a way to obtain feedback from neighborhood residents about parking, and as a result, the Commission revised the parking design to include special parking at the Greenway and at ECU's engineering office. Ms. Wyly reported that the Commission reviewed and supported the proposed Uptown parking deck, as well as the First Street Conversion.

Mayor Thomas said that it is imperative for the City to continue to add covered pick up areas to the bus route. He expressed his concern for passengers waiting for the buses in adverse weather conditions. Ms. Wyly stated that the Commission has added 14 covered pick up areas and will continue to push for the addition of more in the future.

Council Member Mitchell suggested that the City add more bus stops to the area of the City that lies north of the Tar River. He said he has received feedback from citizens who live there who have requested the addition of more bus stops.

Council Member Blackburn asked about the length of time between stops on the current bus schedule. Ms. Wyly said that the bus currently stops every hour; however the Commission is working to decrease that amount of time to every 20 minutes.

### **CONTRACT WITH BRIAN WISHNEFF & ASSOCIATES FOR THE DICKINSON AVENUE MARKET AND PLANNING STUDY**

Economic Development Director Carl Rees stated that one of the City Council's economic development goals is to make transportation gateways and commercial corridors more attractive and accessible. In pursuance of that goal, he said that staff intends to complete a commercial corridor study that would include Dickinson Avenue. Mr. Rees reported that after a highly competitive procurement process, the Redevelopment Commission selected an experienced and creative team to complete a market-based revitalization study of the Dickenson Avenue corridor between Reade Circle and 14<sup>th</sup> Street, which bisects East Carolina University's (ECU) "Warehouse District." The area also includes privately held properties and the proposed ECU Millennial Campus. The University has been a partner in the recommendation of the consultant because University-owned properties are in the study area and there are possibilities for creating additional public-private project partnerships. Mr. Rees said that the proposed study will include the completion of a land use study, economic analysis, financial feasibility study and development of a marketing program for the entire study area. In addition, the study will provide guidelines for historically appropriate redevelopment and adaptive use of historic properties in a manner that preserves the character of the district and leverages private investment. He gave several examples of transformative projects in the southeast that are an inspiration for Greenville, including American Tobacco in Durham and the Winston-Salem Innovative Corridor. Mr. Rees said that the team selected by the Redevelopment Commission is headed by Brian Wishneff & Associates, a firm which conducted similar projects in ~~North~~ # 1



Mount, North Carolina. Mr. Rees said that some of the ideas suggested for the redevelopment are a technology transfer center in the former Haney Warehouse, as well as housing in the former E.B. Ficklen Warehouse. He stated that the project team has agreed to complete all services for the study for a fee not to exceed \$220,000. Additionally, Mr. Rees said that \$150,000 was allocated in the Fiscal Year 2013-2014 Budget for this project, with additional funding coming from the Redevelopment Commission and a Brownfield Assessment Grant.

Mr. Brian Wishneff, of Brian Wishneff & Associates, stated that in addition to his firm, the team he assembled for the project includes Ayers Saint Gross, Partners for Economic Solutions (PES), and Hanbury Evans Wright Vlattas & Company. He stated that his firm has an advantage because of the work it has done with many state and federal programs. He mentioned that many of the projects his firm has completed would not have been so without state and federal tax credits. In addition, Mr. Wishneff said his firm has begun partnering with local economic development authorities. He said that his team will work on several projects which have already been identified concurrently with the economic feasibility portion of the project.

Mr. Rees said that the scope of the planning study is to take project-oriented strategic action in order to have a short-term return on investment. Additionally, he expressed the importance that the project is transformative, yet fits within the context of the district. He stated that staff recommends that the City Council authorize a contract with Brian Wishneff & Associates for completion of the Dickenson Corridor Market and Planning Study in an amount not to exceed \$220,000.

Council Member Mercer asked if it would be appropriate for ECU to provide funding for a portion of the study. Mr. Rees said that staff has approached ECU and has requested the University's financial participation at any feasible level, but has not received word of ECU's participation as of yet.

Council Member Blackburn suggested that the City Council wait to approve funding for the study until staff and the City Council have further information about the status of ECU's financial contribution. Mr. Rees said that ECU owns the proposed technology transfer building, which will generate millions of dollars for the City when ECU releases it to the City's tax rolls and will be of greater value than if the University simply provided financial assistance for the project. Additionally, he said that the building will be a test space for the public-private partnership model. Mr. Rees pointed out that the University system is under budget constraints, so if ECU did contribute financially, the amount would not be large.

Council Member Mercer asked if there was currently a timeline for the project. Mr. Rees said that, if the City Council gives authorization, staff will enter into a contract with Mr. Wishneff and his team. He said the team would return in December for the first round of meetings with key stakeholders and the public. The team would then return in June with the final presentation. Mr. Rees said that the schedule is not currently set in stone, but





reassured Council Member Mercer that the public and stakeholders will have ample time to provide comments.

Council Member Joyner made a motion to approve staff's recommendation. Mayor Pro-Tem Glover seconded the motion.

Council Member Joyner expressed the importance of collaboration between the City and entities such as the hospital, ECU and Pitt Community College (PCC), rather than pulling in different directions. He pointed out that the City Council has the opportunity to take the City's development to the next level. He acknowledged that \$220,000 is a large amount of money, but said that it is a drop in the bucket when compared to the City's return on investment into the Dickinson Avenue area.

There being no further discussion, the motion passed by unanimous vote.

**RESOLUTION ADOPTING THE CITY OF GREENVILLE LOCAL PREFERENCE POLICY - (Resolution No. 056-13 and Resolution No. 057-13)**

City Attorney Dave Holec said that the City Council requested that a Local Preference Policy be prepared for its consideration. He stated that the purpose of the policy is to ensure the best overall value in the procurement of goods and services while supporting the City's economic development by supporting local businesses. He said that Council Member Mitchell made the request for a local preference policy with the direction to make it as strong as possible. Mr. Holec said that after reviewing a proposed policy at its September 12, 2013 meeting, City Council requested several changes to the policy followed by a presentation at the October City Council Meeting. In October, City Council continued the item until its November meeting. Mr. Holec said that the policy defines "local" as the area within the corporate limits of the City of Greenville. In addition, he said that the Chamber of Commerce recommended that the definition also include businesses within Pitt County. Mr. Holec mentioned the recommendation by Council Member Joyner to define "local" as the Greenville City limits and ETJ area. Mr. Holec stated that for a local business to be eligible for preference, it must be current on any privilege license fees and property taxes in the City of Greenville. Additionally, provisions were included to ensure that the local business has a substantial presence in the City. Mr. Holec presented the local preference policy and its amendments as stated below:

**Presence when bid involves price:**

- (a) Have an office or store from which all or a portion of its business is directed or managed and which is located within the corporate limits of the City of Greenville, consisting of at least 500 square feet of floor area within a building on property having a non-residential zoning classification; or



(b) Have an office or store located within the corporate limits of the City of Greenville and have at least three (3) employees who are based and working out of said office or store;  
or

(c) Have an office from which all or a portion of its business is directed or managed and which is located within a residence within the corporate limits of the City of Greenville as allowed by the Zoning Ordinance for a period of at least one (1) year.

Presence when bid does not involve price:

Includes (a) or (b) or (c) from the above requirements, plus a third alternative:

Have an arrangement with one or more firms or companies that qualify as an Eligible Local Bidder pursuant to (a) or (b) or (c) above to subcontract with said firms or companies to perform at least twenty five percent (25%) of the dollar value of the work to be performed pursuant to the service contract, if the bidder is awarded the contract.

Preference when bids involve price:

A local business may match the bid of the lowest responsible, responsive bidder who is non-local provided the local business' bid is within 5% or \$25,000, whichever is less, of the lowest bid.

Preference When Bid Does Not Involve Price (proposals involving qualifications for service contracts):

A local business receives 5% of the points to be awarded a bidder in an evaluation of the qualifications of bidders.

Amendment Made for Situations in which the Preference Policy Does Not Apply:

- (i) When bids or proposals are not sought due to an emergency situation, or
- (ii) In special cases when the required expertise or item is not available locally or in a timely manner, as determined by either the Purchasing Manager or Department Head, or
- (iii) When the purchase involves an expenditure of less than \$1,000, or
- (iv) When the purchase involves an expenditure equal to or greater than \$1,000 and less than \$10,000 when the purchase is from a business which qualifies as an Eligible Local Bidder.

Mr. Holec said that the amendment was made so that the Bidder's Certification for Local Preference form does not have to be submitted with each bid. The initial draft required that the form be submitted every time; however Mr. Holec said that there is not a need to submit multiple certification forms unless there is a change in information or a periodic update. He said that the advantage of this amendment is that it provides the City with



base of eligible local bidders to provide information on. Mr. Holec stated that based on comments at the September meeting of the City Council, a new section was added to provide direction on solicitation of bids or proposals. The new section includes the following:

- Posted on City website
- Notification will be provided to businesses offering the items or service located in City which have submitted the Bidders's Certification for Local Preference form
- Other potential bidders as appropriate for the item or service sought

Mr. Holec said that the new section provides that the policy will be effective for requests for bids or proposals issued on or after February 1, 2014. Next, Mr. Holec introduced the following changes that were requested by Council Member Joyner:

- 1) Local  
Define as local the area within the corporate limits and the extraterritorial jurisdictional (ETJ) area of the City of Greenville
- 2) Exceptions to Policy
  - Delete exception when required expertise or item is not available in a timely manner
  - Purchases less than \$1,000 are excepted only when the purchase is made from a business which qualifies as an Eligible Local Bidder
- 3) Notification of Request for Bids  
Eliminate the provision of notice to other potential bidders when deemed appropriate by the Purchasing Manager or Department Head
- 4) Adopt a separate policy for the retention of professional and other service contracts
  - City Council approval of contracts greater than \$100,000
  - City Manager approval of contracts up to \$100,000
  - Distribution of request for proposals to local area unless determination services not available locally

Council Member Blackburn pointed out that the fourth point of Council Member Joyner's request does not seem to be relevant to local preference. She asked why it was included in the proposed policy. Mr. Holec said that the point was added because there was discussion about Raleigh's preference policy. He stated that Raleigh does not have an official Local Preference Policy, but abides by the above points. Mr. Holec said that Council Member Joyner suggested modeling Greenville's local preference policy after that which is followed by Raleigh. With regard to the fourth point, Mr. Holec stated that Raleigh's original policy had \$100,000, but has since increased the amount to \$300,000.

Council Member Mitchell made a motion to approve the Local Vendor Preference Policy with Council Member Joyner's recommended changes. Mayor Pro-Tem Glover seconded the motion.



Council Member Mercer asked if it would be beneficial to businesses to include Pitt County in its entirety in the Local Preference Policy. Mr. Holec said that the benefit would be that potential employees could be from Greenville. But he also said that including Pitt County in the Local Preference Policy could negatively affect City taxpaying businesses because it would create competition in other areas.

Council Member Joyner said that if the City spent its tax dollars locally, the result would be an increase in jobs. He pointed out that Raleigh's Local Preference Policy, in which he Greenville's proposed policy is modeled after, extends to surrounding counties in the Triangle area. Additionally, he mentioned that many individuals who work in Greenville do not live within the City limits, but still spend a considerable amount of money there. He said that for Greenville to be the Hub of the East, the Local Preference Policy must include Pitt County. Council Member Joyner made a friendly amendment to include Pitt County in the definition of "local." Council Member Mitchell accepted the amendment, which was seconded by Mayor Pro-Tem Glover.

Council Member Blackburn offered a friendly amendment to delete the "timely" aspect of the policy. Council Member Mitchell declined to accept the amendment because it is covered by the emergency situation provision.

Council Member Blackburn said that including the entire county would take away the benefit to the businesses that contribute to the City's tax base, which defeats the purpose of giving preference to them. She added that, although the extraterritorial jurisdiction (ETJ) does not pay City taxes, it follows the City's regulations. Therefore, she said it would be appropriate to include the ETJ in the Local Preference Policy.

Council Member Blackburn offered a friendly amendment to limit the Local Preference Policy to Greenville City limits and the ETJ. Council Member Mitchell accepted the amendment, which was seconded by Mayor Pro-Tem Glover.

Council Member Mercer made a motion to add an amendment which would follow staff's recommendations on distribution and small purchases. Council Member Blackburn seconded the motion. Council Members Smith, Blackburn and Mercer voted in favor of the motion, while the other Council Members voted against it. Mayor Thomas cast the deciding vote against the motion. Therefore, the motion failed.

There being no further discussion, the motion to approve the Local Vendor Preference Policy with Council Member Joyner's recommended changes passed by a 5 to 1 vote. Council Member Blackburn cast the dissenting vote.

### **BAN THE BOX INITIATIVE**

Council Member Mitchell explained that the "Ban the Box" initiative will remove the criminal history box from City of Greenville job applications in order to allow individuals with a criminal history the chance to gain interviews based solely on their merits and ~~item #1~~



history. Council Member Mitchell said that he is currently a Human Resources Director at a healthcare firm, and applications from individuals with a criminal history are often overlooked in favor of applications from individuals who do not. Based on research he conducted, Council Member Mitchell said that the criminal history box particularly impedes African-Americans. According to his research, 76% of the individuals imprisoned in Pitt County are African-Americans. In addition, 69% of individuals on probation and 77% of individuals on parole in Pitt County are African-American. Council Member Mitchell said that based on feedback from individuals affected by the criminal history box, the main struggle is obtaining an interview for a position. He stressed the importance of adopting a policy that does not automatically disqualify someone who has a criminal record, with the exception of certain occupations, such as police and fire-rescue, which do not permit hiring employees with criminal records. Council Member Mitchell pointed out that “Ban the Box” will allow individuals the opportunity to explain their criminal history once they have been granted an interview. He clarified that the initiative does not require the Human Resources Director to hire someone with a criminal record, but it simply levels the playing field by allowing those individuals to be considered for interviews.

Council Member Joyner said that the box should still apply to certain individuals, such as sexual predators. Additionally, he stated that he does not have enough information on “Ban the Box” to vote in support of it.

Council Member Blackburn expressed her understanding of the sense of urgency felt by Council Member Mitchell. She said that, while this initiative may be a progressive step that the City should take, she would like to see more empirical evidence and information about it. She suggested that the City Council gather more information on the initiative while honoring Council Member Mitchell’s request to put the item on the agenda.

Council Member Mitchell said that currently, potential employees are tempted to lie about their criminal history in order to obtain a job, only to be fired later for lying. He mentioned several counties in North Carolina, such as Durham and Cumberland Counties, have already adopted “Ban the Box.” In response to Council Member Blackburn’s request for more empirical evidence, Council Member Mitchell said that it is not possible to measure the initiative’s success, since it simply involves removing a box from City job applications.

Mayor Thomas said that the Mayor of Spring Lake, North Carolina in Cumberland County supports “Ban the Box,” because doing so is in the City’s economic best interest. When citizens work, the economy becomes stronger.

Council Member Smith said that she strongly supports “Ban the Box” because people are sometimes charged with minute things that eventually hold them back from being employed. Many people are the best fit for a job; however they cannot obtain an interview because they had to check the criminal history box. She stated further that 70% of the African-American males that she has spoken with have been charged with a crime.



Council Member Smith made a motion to approve the Ban the Box Initiative. Council Member Mitchell seconded the motion.

Human Resources Director Leah Futrell said that she has not had the opportunity to review the information on “Ban the Box”. Ms. Futrell said that the stage in the selection process in which the Human Resources Department implemented the background checks would determine whether or not there would be a raise in the City’s cost. She pointed out that some City positions prohibit, by state law or policy, the hiring of individuals who have been charged with certain offenses, including Police, Fire-Rescue, and some Recreation and Parks positions. Ms. Futrell said that the Human Resources Department does not currently utilize the criminal history box on job applications as a filter for interviews, except for the positions that prohibit a criminal history.

There being no further discussion, the motion made by Council Member Smith and seconded by Council Member Mitchell passed by a 5 to 1 vote. Council Member Blackburn cast the dissenting vote.

**STOP THE VIOLENCE RESOLUTION - (Resolution No. 058-13)**

There being no discussion about the item, Council Member Joyner made a motion to approve the Benevolence Corps Resolution on Crime. Council Member Blackburn seconded the motion, which passed by unanimous vote.

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**COMMENTS FROM THE MAYOR AND CITY COUNCIL**

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The Mayor, Mayor Pro-Tem and Council Members made general comments about past and future events.

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**CLOSED SESSION**

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Council Member Joyner moved to enter closed session in accordance with G.S. §143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said laws rendering the information as privileged or confidential being the Personnel Privacy Statute and the Open Meetings Law and in accordance with G.S. §143-318.11(a)(6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee Mayor Pro-Tem Glover seconded the motion, which passed by unanimous vote.



Mayor Thomas declared the City Council in closed session at 12:29 a.m., calling a brief recess to allow the Council and staff to relocate to Conference Room 337. Upon conclusion of closed session discussion, motion was made by Council Member Blackburn to return to open session. Motion was approved unanimously, and Mayor Thomas returned the City Council to open session at 1:30 a.m.

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**ADJOURNMENT**

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Motion was made by Council Member Joyner and seconded by Council Member Blackburn to adjourn the meeting. Motion carried unanimously and Mayor Thomas declared the meeting adjourned at 1:31 a.m.

Prepared By:  
Sara Ward, Clerical Assistant  
City Clerk's Office

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk



PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, DECEMBER 12, 2013

A regular meeting of the Greenville City Council was held on Thursday, December 12, 2013 in the Council Chambers, located on the third floor at City Hall, with Mayor Allen M. Thomas presiding. Mayor Thomas called the meeting to order at 7:00 pm and gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Allen M. Thomas, Mayor Pro-Tem Calvin R. Mercer, Council Member Kandie Smith, Council Member Rose Glover, Council Member Marion Blackburn, Council Member Rick Smiley and Council Member Richard W. Croskery

Those Absent:

None

Also Present:

City Manager Barbara Lipscomb, City Attorney David A. Holec, City Clerk Carol L. Barwick and Deputy City Clerk Polly W. Jones

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**APPROVAL OF THE AGENDA**

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Council Member Blackburn moved to add consideration of a Letter of Support for a grant application, for which the deadline is time sensitive. Mayor Pro-Tem Mercer seconded the motion, which passed by unanimous vote.

Council Member Smith moved to hold discussion on the Parade and Event Permitting item immediately following the Public Comment period because many veterans were present with an interest in that item. Mayor Pro-Tem Mercer seconded the motion, which passed by unanimous vote.

There being no further changes to the agenda, Council Member Glover moved to approve the agenda as amended. Council Member Blackburn seconded the motion, which passed by unanimous vote.





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**SPECIAL RECOGNITIONS**

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City Manager Lipscomb, joined by Mayor Thomas, read and presented a plaque to Cpl. John Jenkins in honor of his 28 years and 10 months of service to the Greenville Police Department.

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**APPOINTMENTS**

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Upon motion by Council Member Croskery and second by Council Member Glover, consideration of all appointments to Boards and Commissions was continued to January 2014.

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**CONSENT AGENDA**

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

MINUTES FROM THE MARCH 7, 2013 AND NOVEMBER 18, 2013 CITY COUNCIL MEETINGS

RESOLUTION APPROVING THE EXECUTION OF A MUNICIPAL AGREEMENT WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION FOR SECTION 5303 PLANNING GRANT FUNDS – (RESOLUTION NO. 059-13)

CONTRACT WITH EAST COAST GRADING & UTILITIES, LLC FOR MOYEWOOD STORMWATER POND REPAIRS

CHANGE ORDER FOR THE CONSTRUCTION MANAGER AT RISK CONTRACT FOR PRE-CONSTRUCTION SERVICES ON THE UPTOWN PARKING DECK

CONTRACT WITH TRIPP BROTHERS, INC. FOR ON-CALL UTILITY CUT REPAIRS

AGREEMENT WITH FIRST SOUTHWEST COMPANY FOR FINANCIAL ADVISORY SERVICES

REPORT ON CONTRACTS AWARDED

VARIOUS TAX REFUNDS GREATER THAN \$100



RESOLUTION OF INTENT TO CLOSE A PORTION OF AN ALLEY ON THE NORTH SIDE OF 205 AND 207 EAST FIFTH STREET – (RESOLUTION NO. 060-13)

Upon motion by Council Member Blackburn and second by Council Member Smith, the City Council voted unanimously to approve all items on the Consent Agenda.

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

ORDINANCE REQUESTED BY BEACON INVESTMENTS, LLC TO REZONE 2.966 ACRES LOCATED ALONG THE NORTHERN RIGHT-OF-WAY OF OLD FIRE TOWER ROAD AND 670+ FEET EAST OF COUNTY HOME ROAD FROM RA20 (RESIDENTIAL-AGRICULTURAL) TO OR (OFFICE-RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) – (Ordinance No. 13-063)

Planner Chantae Gooby stated Beacon Investments, LLC has requested to rezone 2.966 acres located along the northern right-of-way of Old Fire Tower road and 670+ feet east of County Home Road from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-Family]). The subject area is located in Vision Area D.

According to Ms. Gooby, County Home Road is considered a connector corridor at its intersection with Fire Tower Road and transitions to a residential corridor at its intersection with Bells Chapel Road. Connector corridors are anticipated to contain a variety of higher intensity activities and uses, whereas residential corridors are preferred to accommodate lower intensity residential uses.

The Future Land Use Plan Map recommends C (Commercial) at the intersection of Arlington Boulevard and Fire Tower Road, transitioning to OIMF (Office/Institutional/Multi-Family) as a buffer to the residential-only areas extending from this intersection. There is a designated regional focus area at the intersection of Arlington Boulevard and Fire Tower Road. These areas are intended to contain 400,000+ square feet of conditioned floor space.

Based on possible uses permitted by the requested zoning, the proposed rezoning classification could generate 273 trips to and from the site via County Home Road, which is a net increase of 168 trips per day. During the review process, measures to mitigate traffic impacts will be determined.



In 1972, the subject property was incorporated into the City's extra-territorial jurisdiction and zoned RA20 (Residential-Agricultural). There are no known historical designations on the site, nor are there any known environmental conditions/constraints.

Surrounding land uses and zoning are as follows:

North: CH – Furniture Distributors; CG – Fire Tower Junction

South: RA20 – Three (3) Single-Family residences

East: RA20 - Vacant

West: RA20 – One (1) mobile home residence and vacant

Ms. Gooby stated under the current zoning (RA20), the site could yield no more than 11 single-family lots. Under the proposed zoning (OR), the site could yield 41 multi-family units having 1-3 bedrooms. The anticipated build-out time is within 1-2 years.

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

Ms. Gooby stated the Planning and Zoning Commission voted to recommend approval of the request at its November 19, 2013, meeting.

Mayor Thomas declared the public hearing for the proposed rezoning open at 7:17 pm and invited anyone wishing to speak in favor to come forward.

Mike Baldwin – No Address Given

Mr. Baldwin indicated he was present on behalf of the applicant and would be happy to answer any questions that might arise.

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

Willie Wilson – No Address Given

Mr. Wilson stated he wasn't exactly opposed to the rezoning, but he was concerned about the impact on traffic in the area.

Hearing no one else wishing to comment in opposition, Mayor Thomas closed the public hearing at 7:19 pm.



Council Member Blackburn asked what could be done to alleviate traffic concerns in the area.

Public Works Director Kevin Mulligan stated he does not feel a traffic signal is warranted at the intersection based on Department of Transportation guidelines, but they can pursue better timing of other traffic signals in the area to minimize traffic congestion at that intersection.

Mayor Pro-Tem Mercer moved to adopt the ordinance to rezone 2.966 acres located along the northern right-of-way of Old Fire Tower road and 670+ feet east of County Home Road from RA20 (Residential-Agricultural) to OR (Office-Residential [High Density Multi-Family]). Council Member Glover seconded the motion, which passed by unanimous vote.

ORDINANCE REQUESTED BY JEFFREY K. BAILEY TO REZONE 0.8214 ACRES LOCATED WEST OF CHARLES BOULEVARD AND 90+ FEET NORTH OF OLD FIRE TOWER ROAD FROM RA20 (RESIDENTIAL-AGRICULTURAL) AND OR (OFFICE-RESIDENTIAL [HIGH DENSITY MULTI-FAMILY]) TO CH (HEAVY COMMERCIAL) – (Ordinance No. 13-064)

Planner Chantae Gooby stated Jeffrey K. Bailey has requested to rezone two tracts totaling 0.8214 acres located west of Charles Boulevard and 90+ feet north of Old Fire Tower Road from RA20 (Residential-Agricultural) and OR (Office-Residential) to CH (Heavy Commercial). The subject areas are located in Vision Area D.

According to Ms. Gooby, Charles Boulevard is considered a gateway corridor beginning at the intersection of Fire Tower Road and continuing south. Gateway corridors serve as primary entranceways into the city and help define community character. Gateway corridors may accommodate a variety of intensive, large scale uses, in appropriately located focus areas with lower intensity office and/or high-density residential development in the adjacent transition areas.

The Future Land Use Plan Map recommends C (Commercial) along the southern right-of-way of Charles Boulevard (Highway 43 East) from its intersection with Fire Tower Road to just beyond Signature Drive. It further recommends OIMF (Office/Institutional/Multi-Family) and HDR (High-Density Residential) respectively for the interior areas south of Charles Boulevard. There is a designated regional focus area at the intersection of Arlington Boulevard and Fire Tower Road. These areas are intended to contain 400,000+ square feet of conditioned floor space. The subject property is considered part of this regional focus area.

Based on possible uses permitted by the requested zoning, the proposed rezoning classification could generate 3,870 trips to and from the site via Charles Boulevard, which



is a net increase of 3,799 trips per day. During the review process, measures to mitigate traffic impacts will be determined.

In 1989, the subject properties were incorporated into the City's extra-territorial jurisdiction and zoned RA20 (Residential-Agricultural). In 1994, Tract 2 was rezoned to OR (Office-Residential) There are no known historical designations on the site, nor are there any known environmental conditions/constraints.

Surrounding land uses and zoning for Tract 1 are as follows:

North: RA20 - Vacant

South: CH – Greenville Auto World (under common ownership of applicant)

East: RA20 - Vacant

West: RA20 – One (1) mobile home residence

Surrounding land uses and zoning for Tract 2 are as follows:

North: CH – Greenville Auto World (under common ownership of applicant)

South: RA20 - Vacant

East: CG - Vacant

West: RA20 – Vacant

Ms. Gooby stated under the current zoning (RA20), Tract 1 could yield no more than 2 single-family lots. Under the proposed zoning (CH), the site could yield 3,209± square feet of retail/fast food restaurant. The anticipated build-out time is within 1 year.

Ms. Gooby stated under the current zoning (OR), Tract 2 could yield 4,662± square feet of office space. Under the proposed zoning (CH), could yield 4,662± square feet of retail/fast food restaurant. The anticipated build-out time is within 1 year.

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

Ms. Gooby stated the Planning and Zoning Commission voted to recommend approval of the request at its November 19, 2013, meeting.

Mayor Thomas declared the public hearing for the proposed rezoning open at 7:28 pm and invited anyone wishing to speak in favor to come forward.



Ken Malpass – No Address Given

Mr. Malpass indicated he was present on behalf of the applicant, who wishes to expand Greenville Auto World. He stated he would be happy to answer any questions that might arise.

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

Hearing none, Mayor Thomas closed the public hearing at 7:29 pm.

Council Member Blackburn moved to adopt the ordinance to rezone two tracts totaling 0.8214 acres located west of Charles Boulevard and 90+ feet north of Old Fire Tower Road from RA20 (Residential-Agricultural) and OR (Office-Residential) to CH (Heavy Commercial). Council Member Glover seconded the motion, which passed by unanimous vote.

ORDINANCE REQUESTED BY TOBACCO WAREHOUSE DISTRICT, LLC TO REZONE 0.471 ACRES (20,509 SQUARE FEET) LOCATED ALONG THE SOUTHERN RIGHT-OF-WAY OF DICKINSON AVENUE AND 45+ FEET WEST OF WEST 8TH STREET FROM CDF (DOWNTOWN COMMERCIAL FRINGE) TO CD (DOWNTOWN COMMERCIAL) – (Ordinance No. 13-065)

Planner Chantae Gooby stated Tobacco Warehouse District, LLC has requested to rezone 0.471 (20,509 square feet) located along the southern right-of-way of Dickinson Avenue and 45\_ feet west of west 8<sup>th</sup> Street from CDF (Downtown Commercial Fringe) to CD (Downtown Commercial). The subject area is located in Vision Area G.

According to Ms. Gooby, the property is located in the designated regional focus area described as the central business district (Uptown area). These nodes typically contain 400,000+ square feet of conditioned floor space.

The Future Land Use Plan Map recommends C (Commercial) for the area bounded by Dickinson Avenue, Reade Circle, Evans Street and 10<sup>th</sup> Street.

Based on possible uses permitted by the requested zoning, the proposed rezoning classification could generate 909 trips to and from the site via Dickinson Avenue, which is a net increase of 643 trips per day. During the review process, measures to mitigate traffic impacts will be determined.

In 1969, the subject property was zoned CDF (Commercial Downtown Fringe). The property is located in the National Register Dickinson Avenue Historic District; however this honorary designation does not regulate the appearance of structures contained within



the district. There are no known historical effects on the site, nor are there any known environmental conditions/constraints.

Surrounding land uses and zoning are as follows:

North: CD/CDF – One (20 commercial building

South: CD - Vacant

East: CDF – Dickinson Avenue Antiques Market

West: CD - vacant

Ms. Gooby stated under the current zoning (CDF), the site could yield 6,060 square feet of manufacturing/warehouse uses. Under the proposed zoning (CD), the site could yield 20,509± square feet of retail/restaurant spce. There are no setbacks or on-site parking requirements for the CD district. The anticipated build-out time is within 1 year.

Ms. Gooby stated that, in staff's opinion, the request is in compliance with Horizons: Greenville's Community Plan, the Future Land Use Plan Map and the West Greenville 45-Block Revitalization Plan. "In compliance with the comprehensive plan" should be construed as meaning the requested zoning is (i) either specifically recommended in the text of the Horizons Plan (or addendum to the plan) or is predominantly or completely surrounded by the same or compatible and desirable zoning and (ii) promotes the desired urban form. The requested district is considered desirable and in the public interest, and staff recommends approval of the requested rezoning.

Ms. Gooby stated the Planning and Zoning Commission voted to recommend approval of the request at its November 19, 2013, meeting.

Mayor Thomas declared the public hearing for the proposed rezoning open at 7:34 pm and invited anyone wishing to speak in favor to come forward.

#### Scott Anderson – No Address Given

Mr. Anderson indicated he was present on behalf of the applicant and would be happy to answer any questions that might arise.

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

Hearing none, Mayor Thomas closed the public hearing at 7:35 pm.

Council Member Blackburn moved to adopt the ordinance to rezone 0.471 (20,509 square feet) located along the southern right-of-way of Dickinson Avenue and 45\_ feet west of west 8<sup>th</sup> Street from CDF (Downtown Commercial Fringe) to CD (Downtown Commercial). Council Member Croskery seconded the motion, which passed by unanimous vote.



ORDINANCE TO DESIGNATE THE PROPERTY KNOWN AS THE WILEY COBB HOUSE AND GROUNDS, LOCATED AT 300 SOUTH PITT STREET, AS AN HISTORIC LANDMARK –  
(Ordinance No. 13-066)

Planner Seth Laughlin presented a recommendation from the Historic Preservation Commission to designate the property known as the Wiley Cobb House and Grounds (300 South Pitt Street) as an historic landmark. Along with the College View Historic District, there are currently 19 Local Landmarks, which are individually designated because of their significance in terms of history, prehistory, cultural importance and architecture. Examples of Local Landmarks include the Greenville Municipal Building (201 West Fifth Street), the William H. Long House (200 East Fourth Street), King Simmons Lodge (505 West Fourteenth Street) and the Robert Lee Humber House (117 West Fifth Street).

Planning staff and the Historic Preservation Commission's Selection Committee members met in September 2012 to review the existing priority list of properties with potential for future designation. The Selection committee recommended that the Wiley Cobb House (300 South Pitt Street) be moved to the top of the priority list. Committee members noted that the owners, Stanton Blakeslee and Jason Crain, received the 2012 Architectural Award for Restoration Excellence for their significant rehabilitation and adaptive use of said house.

Mr. Laughlin stated staff has contacted Mr. Blakeslee and confirmed their continued interest in local designation.

Mayor Thomas declared the public hearing for the proposed designation open at 7:39 pm and invited anyone wishing to speak in favor to come forward.

Hearing no one wishing to speak in favor of the proposed designation, Mayor Thomas invited comment in opposition.

Hearing none, Mayor Thomas closed the public hearing at 7:40 pm.

Council Member Blackburn moved to adopt the ordinance to designate the property known as the Wiley Cobb House and Grounds located at 300 South Pitt Street as an historic landmark. Council Member Smiley seconded the motion, which passed by unanimous vote.

APPROVAL OF THE UPDATED ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

Senior Planner Niki Jones stated the City is required to administer community development programs in compliance with Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act), and certify that it will affirmatively further fair housing.





As a recipient of funds from the U. S. Department of Housing and Urban Development (HUD), the City is required to adopt a Fair Housing Plan. Moreover, the City is responsible for the analysis of the impediments to fair housing. There are several local impediments to fair housing. The analysis pinpoints those impediments and gives direction to City staff on how to mitigate these issues.

Mr. Jones stated the intent of the analysis is to help the City avoid policies, customs, practices or processes whose intent or purpose is to impede, infringe or deny the exercise of fair housing rights by persons protected under the Fair Housing Act.

In conjunction with TDA Consulting, staff has identified three (3) areas of focus to address impediments to fair housing choice. Identification of these needs are used to identify programs and policies that will address the noted concerns. These concerns should be mitigated over the course of several years.

Mr. Jones identified the following concerns:

1. Further education for the disabled and Hispanic populations on fair housing issues
2. Further investment of Housing and Urban Development Funds in the area north of the river
3. Increased partnerships with lending institutions

Mr. Jones recommended adoption of the plan, which he stated is a requirement for continued participation in the CDBG and HOME programs by the City.

Council Member Smith asked what determines where something is serious enough to be investigated by Fair Housing.

Mr. Jones stated Fair Housing would investigate if a matter could not be resolved locally.

Council Member Smith asked about the number of complaints received.

Mr. Jones stated 10 complaints were referred to Fair Housing and that all others were addressed locally.

Mayor Thomas declared the public hearing open at 7:47 pm and invited anyone wishing to speak in favor to come forward.

Hearing no one wishing to speak in favor, Mayor Thomas invited comment in opposition.

Hearing none, Mayor Thomas closed the public hearing at 7:48 pm.



Council Member Glover moved to adopt the updated analysis of impediments to fair housing choice. Council Member Smith seconded the motion, which passed by unanimous vote.

### **PUBLIC COMMENT PERIOD**

Mayor Thomas opened the public comment period at 7:52 pm and explained procedures to be followed by anyone who wished to speak.

#### Tony Khoury – 1942 Tara Court

Mr. Khoury stated that his firm, the East Group, is a sub designer in the Tar River Study to Roadside and Harwell, a nationally recognized design team. He said that his team toured Greenville, South Carolina and Durham, North Carolina to see what improvements other communities have made, and added that since Greenville is the hub of Eastern North Carolina, the time has come to take leadership and continue the momentum that it has built over the years. Mr. Khoury pointed out that the Tar River is seven miles of the City's greatest natural asset, but it is not used to its potential. He stated further that the purpose of the study is to examine the river and highlight opportunities for the City to develop and use it. He acknowledged that the City may not be able to make every improvement at once, but simply performing the study will add credibility that Greenville is serious about attracting retirees and retaining graduates of ECU.

#### Dennis Mitchell – 101 Kirkland Drive

Mr. Mitchell spoke as a concerned citizen in support of the Tar River Study, and stated that the Tar River should be an economic focus rather than an afterthought. Like Mr. Khoury, he attended the inter-city visit to Greenville, South Carolina, and was amazed at the impact a river can have on a community. Mr. Mitchell stated further that conducting the Tar River Study and implementing development projects, such as water taxis, will open up greater access for Greenville's citizens to enjoy the Tar River. In addition, the study offers the opportunity for environmental improvements. Mr. Mitchell encouraged the City Council to support the Tar River Study so that the river can be a focal point and financial catalyst for Greenville.

#### Vince Bellis – 1205 E. Wright Road

Mr. Bellis stated that he taught aquatic biology at ECU and is author of Pitt Paddle Trails. He said that he received a copy of the solicitation for the Tar River Study in July and decided that he should take a look at what development could be done along the river. Mr. Bellis broke the target area into river miles, and studied the width of flood plain on either side of the river, as well as its cultural and natural history. He also looked at it for potential development and made a list of possibilities. After conducting his own study of the river, Mr. Bellis said that he noticed several constraints to potential development in the portion of the Tar River area that runs through City. He pointed out that most of the north side of



the river is flood plain, and the portions that are not flood plain are currently in use. Based on that information, Mr. Bellis concluded that of the 16 miles of river shoreline, only 2.2 miles are suitable for development and are already developed.

Claridge "Al" Rice - 1908 Covington Way, #201

Mr. Rice stated that he is the Commander of Disabled American Veterans. He urged the City Council to pass an ordinance stating that all fees for veterans' organizations will be waived for community events held in their honor. He said that those fees were earned in battle, and taking this step is necessary for Greenville to become a more veteran-friendly city.

Gregory F. Bell - 2508 Cemetery Road

Mr. Bell stated that veterans should be exempt from costs associated with civic activities in Greenville. He said that by doing so, the City would honor and show support for its veterans.

Bryan Balow - No Address Given

Mr. Balow, who stated that he is the Pitt County Veterans Council President, said that the organization is concerned about veterans being required to pay fees for patriotic events. He said that 2013 was the first year in which a fee was assessed because fees have previously been waived. Mr. Balow stated that charging a fee for these events is not the appropriate direction for Greenville to take if it is to be known as veteran friendly. He pointed out that one of the members of the Pitt County Veterans Council called committees in surrounding communities and reported that none of those communities charge fees for patriotic events. Mr. Balow said that members of veterans' organizations have paid a unique fee to be part of that group, and in effect, have written a blank check to uphold their country.

Charles Beddard - 3286 Colony Court, Apt. 801

Mr. Beddard stated that he files claims reports for veterans, and has seen what war has done to them. He said that the community as a whole does not show that it is proud of veterans because they are frequently charged at patriotic parades and events. Mr. Beddard stressed the importance of providing a public way to show respect for veterans, who in many cases come out of war in lasting pain. By waiving veterans' fees for patriotic events, the community can give back to those who have given so much for the nation.

Jerry Weitz - 100 Churchside Drive

Mr. Weitz respectfully asked the City Council to table the Tar River Study for more deliberation and refinement. He said that \$250,000 is not consistent with any adopted plans or capital improvement programs. He suggested that the City could instead use the money for Town Common design and improvement or for other design services for capital improvements related to the river. Mr. Weitz said that by adjusting the scope of services, the City Council could act consistently with adopted plans. He also mentioned that the City



does not need a land and development study of the river frontage, and referenced Mr. Bellis' comments regarding the limitations of development there. Mr. Weitz also suggested using the money allocated for conducting the Tar River Study for actual improvements, such as a pedestrian bridge, a cable ferry and better canoe and kayak river entry points. He said that these projects will result in better recreational use of the river and will enhance economic development.

Willie Wilson – No Address Given

Mr. Wilson stated that the community is in perpetual debt to veterans because of the sacrifices they make, and therefore, they should not be charged fees at patriotic events. In addition to the veterans, he said that other individuals who provide public services should be considered in the same light. He cautioned the City Council about basing its decisions on dollars and cents, but encouraged consideration of the qualitative service provided by the veterans and other public servicemen and women who attend community events.

Don Williams – No Address Given

Mr. Williams stated that he served in the Navy, and is a Vietnam and Korean War veteran. He said that although not all groups can be exempted from event fees, veterans should be because of the service they have provided for the nation.

Marcus Waller – No Address Given

Mr. Waller stated that he is the president of Veterans of Modern Warfare. He said that the local veterans fund everything from motor cycle parades and other activities out of pocket through raising donations so that all proceeds go towards helping veterans in Pitt County.

There being no one else present who wished to address the City Council, Mayor Thomas declared the public comment period closed at 8:24 pm.

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**OTHER ITEMS OF BUSINESS**

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PARADE AND EVENT PERMITTING CONCERNS

Mayor Thomas stated he was proud to have added this item to the agenda and he could not have introduced it any better than those who spoke during the public comment period. He stated that many veterans have paid the ultimate sacrifice and if the City is, for some reason, doing things differently now than what has been done in the past, it warrants a close review.



Council Member Blackburn asked if this was a matter of a change in policy or if perhaps a policy was misapplied this year since veterans have not been charged in the past for Veterans' Day events.

Police Captain Robert Williams, speaking on behalf of Police Chief Hassan Aden who was unable to attend, stated the problem dates back to the early 1990's. Groups in the past have asked that fees be waived for their organizations and past Chiefs of Police have done so. Chief Aden has determined that there is no provision in City ordinances that gives him the authority to waive fees; however, he would be supportive of an ordinance amendment which would give him or the City Manager the authority to do so for registered 501(c)(3) organizations. Capt. Williams pointed out that change might not help the Disabled American Veterans because he thinks they may be a 501(c)(4) organization.

Council Member Glover stated she is the wife of a disabled Vietnam veteran and mother of a Gulf War veteran. She suggested perhaps City Attorney Holec could propose language which would waive fees associated with Memorial Day and Veterans' Day events. She stated she does not believe other cities charge veterans for these events.

City Attorney Holec stated although one gentleman who spoke during public comment had requested a decision tonight, he'd like more time to draft appropriate language and gather financial impact data.

Council Member Smith moved to direct the City Attorney to draft an amendment to address parade and permitting fees for veterans. Council Member Glover seconded the motion.

Council Member Croskery mentioned there were other worthwhile organizations that might be deserving of consideration as well. He added that a key point in the past may have been that the City was a co-sponsor of some of these events.

There being no further discussion, the motion to direct the City Attorney to draft an amendment to address parade and permitting fees for veterans passed by unanimous vote.

CONTRACT WITH RHODESIDE & HARWELL, INC. FOR PROFESSIONAL SERVICES  
ASSOCIATED WITH THE TAR RIVER UTILIZATION STUDY

Recreation and Parks Director Gary Fenton stated the City is about to embark on a thorough examination of how the Tar River can better benefit the Greenville community recreationally, environmentally and economically.

Mr. Fenton stated this initiative was discussed at this year's Planning Session, and the goal of the Tar River Utilization Study is to develop a vision and specific strategies to facilitate



the Tar River meeting its full potential as a local asset and regional attraction. The proposed river study will provide a road map to guide the programming of public spaces bordering the river, identify potential partnerships with private owners/developers, and recommend a phasing plan for development with cost estimates and potential funding sources.

As directed by City Council, a Request for Qualifications (RFQ) was developed to solicit Statements of Qualifications (SOQs) for professional services from qualified firms and was issued on July 15, 2013. During the solicitation period, the City assembled a five person selection committee comprised of representatives from the Recreation and Parks Department, Community Development Department, Financial Services Department and City Manager's Office to evaluate the SOQs and recommend a design consultant. Five SOQs were received by the August 29, 2013 submittal deadline and three of those were invited to participate in an interview/presentation process.

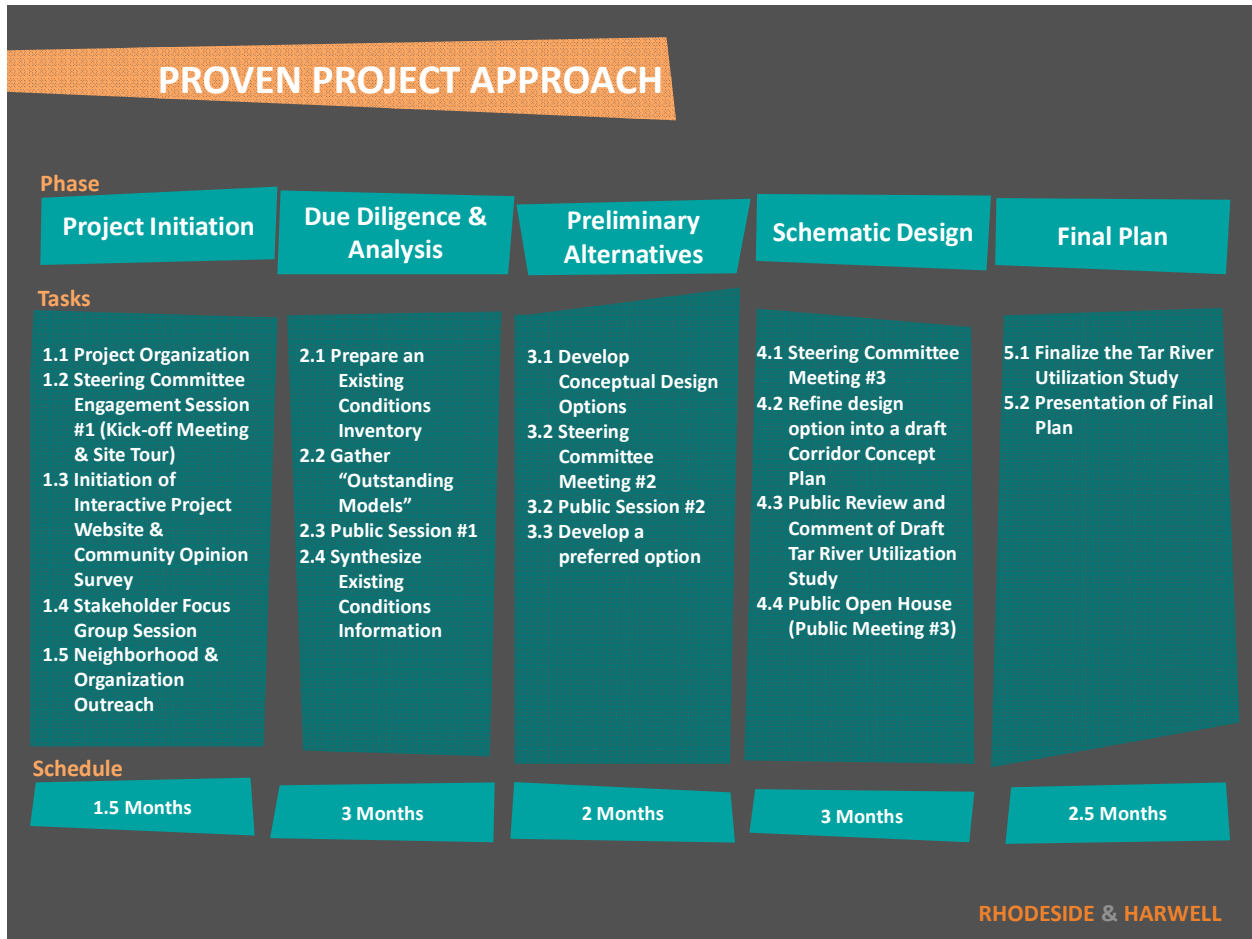
Mr. Fenton introduced Elliott Rhodeside, of Rhodeside & Harwell, Inc., an award winning and creative design firm with significant experience in riverfront improvement projects, as they were selected as the preferred firm for the project. Rhodeside & Harwell, Inc. will be the lead consultant responsible for overall project management while focusing specifically on landscape architecture, urban design, planning and public/stakeholder engagement project elements.

Mr. Rhodeside stated he has been practicing landscape architecture and planning for 45 years and is proud of his firm. They do work all around the country. When he learned about this project from a person he hired in June, who grew up in Greenville and got his degrees at ECU and UNC, he'd never been to Greenville, but the project seemed fascinating. He has learned that Greenville is a really special place.

Mr. Rhodeside stated his firm is partnering with several highly qualified and specialized subcontractors, which include the following:

- HR&A, an industry leader in real estate and economic development consulting, who will provide market and development program services
- Davenport, a North Carolina based transportation engineering and design firm, which will provide transportation engineering services
- The East Group, a dynamic and progressive Greenville based firm, which will provide architecture, engineering and sustainability support
- Mulkey Engineers and Consultants, who will provide civil engineering expertise

Mr. Rhodeside stated many things are important in this project and he discussed, in depth, Harwell's proven phased approach, including timeline and steps to be taken, which are outlined in the following graphic:



Mr. Rhodeside identified and discussed five key project goals:

- Create great destinations
- Connect neighborhoods to the River
- Make the riverfront a special place for Greenville
- Create linear multimodal access along the River
- Protect, enhance and interpret the River

Mr. Rhodeside showed a number of photographs and artist’s illustrations depicting how his firm had helped other communities achieve the types of goals identified as key to Greenville’s project. He discussed how these goals would address important issues such as community involvement, environmental and natural resources, protecting and enhancing local history, while utilizing sustainable approaches with respect to natural habitats and providing a return on investment.



Mr. Rhodeside concluded his presentation by exploring a variety of diverse funding scenarios which encompassed public funding, earned income and private investment.

Mayor Pro-Tem Mercer acknowledged that staff had said this was not a project about the Town Common, but asked what percentage of the work was likely to impact the Town Common. Mr. Rhodeside stated none of it would. His firm plays by the rules.

Council Member Smiley asked if the project scope includes design work. Mr. Rhodeside stated it will contain conceptual designs for the focal area. For example, if an area is suitable for boat or kayak access, his firm will provide a schematic design and related sketches to show what it could look like. Based on that work, the City could then hire them or other firms to do actual construction design documents.

Council Member Croskery stated the presentation was impressive and he feels Rhodeside and Hartwell is very sensitive to environmental concerns; however, the project team appears to be lacking professional biologists or hydrologists. Mr. Rhodeside stated The East Group has a branch that focuses on environmental issues. City Manager Lipscomb added that the Greenville Utilities Commission has done a tremendous amount of environmental work along the river and all of their information was provided as background.

Council Member Blackburn expressed concern about the project, clarifying her concern was not about the quality or caliber of work which Rhodeside and Harwell would provide, but rather with the fact that Greenville has many dreams that are not yet funded. She stated she feels a plan is needed for funding some of what is already proposed more than another study.

Council Member Smith stated she'd heard some very interesting ideas presented, but none that included West Greenville or north of the river, which is a significant concern to her.

Mayor Pro-Tem Mercer stated he has long supported better utilization of the river, but he has been concerned about the cost of this project since it was first suggested several months previously, then at a cost of \$250,000 and later reduced to \$200,000. He suggested the project could perhaps be broken down into smaller focus areas, or that it might be prudent to delay a decision until a more in-depth presentation on fiscal status is heard at the Planning Session.

Council Member Smiley stated he was in a unique position as his election process took longer than anyone else's, meaning that he experienced delays in how quickly he could begin attending orientation sessions. Finance Director Bernita Demery gave him several





hundred pages of financial documents for review the previous week, which he has been working through diligently, but has not finished. He moved that discussion on this item be tabled to the Planning Session, with no decision to award or not award prior to the first meeting in February. Council Member Blackburn seconded the motion, which resulted in a tie vote with Council Members Smiley and Blackburn, and Mayor Pro-Tem Mercer voting in favor. Mayor Thomas broke the tie by voting against the motion, which then failed by a vote of 3 to 4.

Upon motion by Council Member Smith and second by Council Member Glover, the City Council voted 4 to 2 to authorize the City Manager to negotiate and enter into contract with Rhodeside & Harwell, Inc. for professional services related to the Tar River Utilization Study in an amount not to exceed \$184,000.

#### 2014 SCHEDULE OF CITY COUNCIL MEETINGS

City Clerk Carol Barwick presented a proposed scheduled of meeting dates for 2014 which was based on Section 2-1-11 of the Greenville City Code and adjusted for City-observed holidays and other known conflicts.

Council Member Blackburn noted that the April 11<sup>th</sup> date was a Friday. City Clerk Barwick noted the error and made the appropriate change.

Following a general discussion, Mayor Pro-Tem Mercer moved to approve the proposed 2014 Schedule of City Council Meetings with the noted correction. Council Member Blackburn seconded the motion and the City Council voted unanimously to approve the following schedule:

**\*\*Schedule appears on following page\*\***



**CITY OF GREENVILLE**  
**2014 SCHEDULE OF CITY COUNCIL MEETINGS**  
(All meetings are held in the Council Chambers unless otherwise noted)

January 13 - 6:00 PM

January 16 - 7:00 PM

January 24 - 4:30 PM - (Planning Session, City Hall Gallery & Conference Room 337)

January 25 - 8:30 AM - (Planning Session, City Hall Gallery & Conference Room 337)

February 10 - 6:00 PM

February 13 - 7:00 PM

February 24 - 6:00 PM

March 17 - 6:00 PM

March 20 - 7:00 PM

March 24 - 6:00 PM

April 7 - 6:00 PM

April 10 - 7:00 PM

April 21 - 6:00 PM - (Joint Session with Greenville Utilities Commission - GUC Board Room)

May 5 - 6:00 PM

May 8 - 7:00 PM

May 19 - 6:00 PM

June 9 - 6:00 PM

June 12 - 7:00 PM

June 23 - 6:00 PM

August 11 - 6:00 PM

August 14 - 7:00 PM

August 25 - 6:00 PM

September 8 - 6:00 PM

September 11 - 7:00 PM

September 22 - 6:00 PM - (Joint Session with Greenville Utilities Commission - GUC Board Room)

October 6 - 6:00 PM

October 9 - 7:00 PM

October 20 - 6:00 PM

November 10 - 6:00 PM

November 13 - 7:00 PM

December 8 - 6:00 PM

December 11 - 7:00 PM



## BUDGET AND CAPITAL IMPROVEMENT PROGRAM SCHEDULE FOR FISCAL YEARS 2014-2015 AND 2015-2016

Financial Services Director proposed the following budget and capital improvement schedule for Fiscal Years 2015 and 2016:

### City of Greenville, North Carolina Budget and Capital Improvement Program (CIP) Schedule Fiscal Year(s) 2014-2015 and 2015-2016

Thursday	December 12, 2013	Budget and CIP schedule presented to City Council
Monday	March 17, 2014	Proposed CIP presented to City Council
Monday	April 7, 2014	City Council preview of proposed City Budget
Monday	May 5, 2014	Proposed City, GUC, SML, and CVA Budgets presented to City Council
Thursday	May 8, 2014	Further discussion of proposed Budgets by City Council (Optional)
Monday	May 19, 2014	Further discussion of proposed Budgets by City Council (Optional)
Monday	June 9, 2014	Public Hearing - Fiscal Year 2014-2015 Budget and 2015-2016 Plan
Thursday	June 12, 2014	Consideration of adoption of the Fiscal Year 2014-2015 Budget and 2015-2016 Plan

Council Member Croskery moved to approve the proposed budget and capital improvement schedule for Fiscal Years 2015 and 2016. Council Member Glover seconded the motion and the City Council voted unanimously to approve the foregoing schedule.

## REPORT ON TIRE STORAGE ACTIVITIES AND ALTERNATIVES FOR TEXT AMENDMENTS

Chief Planner Thomas Weitnauer stated that on October 10, 2013, the City Council heard discussion on tire dealerships and the storage and disposal of tires. At the conclusion of that discussion, they directed staff to investigate issues and develop recommendations for ordinance revisions if needed.



Out of approximately 26 known businesses that sell automobile tires within the City, the Planning Division staff has determined that six appear to violate current zoning ordinance standards and/or the State Fire Prevention Code. These six appear to hold onto more of their inventory than what would typically be expected, to the point that their outdoor tire storage activities are objectionable. The Planning Division, Code Enforcement Division and the Fire-Rescue Department have conducted research and inspections on three of the six, resulting in various stages of enforcement actions and will do likewise with the remaining three as staff resources allow.

Mr. Weitenauer stated staff recommends text amendments are in order to address omissions in the Zoning Ordinance. One approach is to continue to allow tires to be stored outside with the addition of criteria to lessen the visual impacts, while another approach is to prohibit outside tire storage entirely. The following suggestions are proposed for City Council consideration:

1. Allow tires to be stored outside while amending the Zoning Ordinance to add limits to the total area for tire storage and require screening of tires. These standards are intended to minimize the visual impact of outdoor tire storage and reduce the probability of such activity creating a public nuisance.
  - A. Limit the total area for outdoor tire storage:
    - i. Limit the area allowed for outdoor tire storage to a percentage of the property (such as 10% of the property)
    - ii. Limit the area allowed for outdoor tire storage to a percentage of the building from which the business operates (such as 25% of the building)
    - iii. Establish a “not to exceed” limit of outdoor tire storage, regardless of the size of the property and building.
  - B. Require screening the areas where tires are to be stored by either requiring that tires are stored behind buildings or through requiring the installation of opaque fencing and/or landscaping.
2. Prohibit tires from being stored outside of buildings.

Following a general discussion of the pros and cons of each suggested alternative, Council Member Croskery moved to initiate a text amendment based on option 1B and refer the matter to the Planning and Zoning Commission for review and recommendation, after which it would return to the City Council for public hearing and final action. Council Member Smiley seconded the motion, which passed by unanimous vote.



LETTER OF GRANT SUPPORT FOR APPLICATION FOR A REGENERATIVE STORMWATER CONVEYANCE DEMONSTRATION PROJECT ON AN ERODED DRAINAGE CHANNEL NEAR ST ANDREWS DRIVE

Council Member Blackburn stated she requested the addition of this item because the grant being applied for is to create a demonstration project for stormwater. She then invited Scott Anderson, Vice Chair of the Environmental Advisory Commission to further explain.

Mr. Anderson stated they are looking at a site on St. Andrews Drive behind El Azteca Restaurant where the channel is severely eroded. The project will look at stabilizing the channel and have water quality benefits. They are applying for funding from a number of water quality agencies and the first application is due January 17<sup>th</sup>.

Mayor Pro-Tem Mercer asked if the writing of a letter would impose any legal liability on the City. City Attorney Dave Holec replied that it would not.

Upon motion by Council Member Blackburn and second by Council Member Croskery, the City Council voted unanimously to issue the requested letter of grant support.

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**COMMENTS FROM MAYOR AND CITY COUNCIL**

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The Mayor and City Council made general comments about past and future events.

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**CITY MANAGER'S REPORT**

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City Manager Lipscomb announced that a Dickinson Avenue Marketing and Planning Workshop would be held on December 16, 2013 at 5:30 pm at the Greenville Museum of Art.

She also announced that City offices would be closed for Christmas on December 24 and 25, 2013 and for New Year's Day on January 1, 2014.



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**ADJOURNMENT**

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Council Member Croskery moved to adjourn the meeting, seconded by Mayor Pro-Tem Mercer. There being no discussion, the motion to adjourn passed by unanimous vote and Mayor Thomas adjourned the meeting at 10:57 pm.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carol L. Barwick".

Carol L. Barwick, CMC  
City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, JANUARY 16, 2014



A regular meeting of the Greenville City Council was held on Thursday, January 16, 2014 in the Council Chambers, located on the third floor at City Hall, with Mayor Allen M. Thomas presiding. Mayor Thomas called the meeting to order at 7:00 p.m. Mayor Pro-Tem Calvin Mercer gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Allen M. Thomas, Mayor Pro-Tem Calvin Mercer, Council Member Kandie Smith, Council Member Rose Glover, Council Member Marion Blackburn, Council Member Rick Smiley and Council Member Richard Croskery

Those Absent:

None

Also Present:

City Manager Barbara Lipscomb, City Attorney David A. Holec, City Clerk Carol L. Barwick and Deputy City Clerk Polly W. Jones

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**APPROVAL OF THE AGENDA**

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Upon motion by Council Member Blackburn and second by Council Member Glover, the agenda was approved as presented by unanimous vote.

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**SPECIAL RECOGNITION**

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Mayor Allen Thomas and City Manager Barbara Lipscomb recognized Stephen Johnston with the Public Works Department for his 29 years of service to the City of Greenville and its citizens and congratulated him on his retirement.

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**APPOINTMENTS**

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**APPOINTMENTS TO BOARDS AND COMMISSIONS**

Community Appearance Commission

Council Member Smiley continued the appointment of Mark Abboud's seat, who had resigned.



### Environmental Advisory Commission

Council Member Blackburn made a motion to appoint David Kimmel to fill an unexpired term that will expire April 2016, in replacement of Caroline Loop, who had resigned. Council Member Smith seconded the motion and it carried unanimously.

### Firefighters' Relief Fund Committee

Council Member Croskery made a motion to appoint George Powell to a third two-year term that will expire January 2016. Council Member Smith seconded the motion and it carried unanimously.

### Greenville Bicycle & Pedestrian Commission

Council Member Smiley continued the appointment of Liz Brown-Pickren's seat, who had resigned, and made a motion to:

- Reappoint Brian Glover to a second three-year term that will expire January 2017
- Appoint Karen Mizelle to a first three-year term that will expire January 2017
- Appoint Harry Stubbs to a first three-year term that will expire January 2017

Council Member Blackburn seconded the motion and it carried unanimously.

### Historic Preservation Commission

Council Member Blackburn continued the appointment of Jeremy Jordan, Allan Kearney, and Sara Larkin's seats, all of whom were eligible to serve, and continued the appointment of Maury York's seat, who had resigned.

### Human Relations Council

Council Member Glover continued the appointment of Corey Rhodes' seat, who had resigned, and the East Carolina University seat.

### Investment Advisory Committee

Mayor Thomas made the recommendation to appoint Cameron Evans' to a first three-year term that will expire October 31, 2016, in replacement of David Damm, who was no longer eligible to serve. Council Member Croskery made a motion to that effect, Council Member Smiley seconded the motion and it carried unanimously.

### Planning & Zoning Commission

Council Member Smith continued the appointment of Kevin Burton's seat who had resigned.

### Public Transportation and Parking Commission

Council Member Croskery continued the appointment of Warren Daniels and Dave Schwartz's seats, both of whom were eligible to serve, and continued the appointment of Rick Smiley's seat, who had resigned.





#### Police Community Relations Committee

Council Member Croskery continued the appointment of Tom McCullough's seat. Council Member Smiley appointed Richard Crisp to a first two-year term that will expire October 2015.

#### Redevelopment Commission

Council Member Blackburn made a motion to appoint Patricia Dunn to a first and final five-year term that will expire November 2018. Council Member Smiley seconded the motion and it carried unanimously.

#### Sheppard Memorial Library Board

Council Member Croskery made a motion to appoint Mark Sanders to fill an unexpired term that will expire October 2016, in replacement of Jan Lewis, who had resigned. Council Member Smiley seconded the motion and it carried unanimously.

#### Youth Council

Mayor Pro-Tem Mercer continued the appointments due to lack of applicants.

### **APPOINTMENTS OF CITY COUNCIL MEMBERS TO COMMITTEES**

#### Taxicab Appeal Board

Council Member Smiley made a motion to appoint Council Member Smith to the board. Mayor Pro-Tem Mercer seconded the motion and it carried unanimously.

#### Joint Pay & Benefits Committee

Council Member Croskery made a motion to appoint Council Member Smiley to the committee. Mayor Pro-Tem Mercer seconded the motion and it carried unanimously.

Council Member Smith made a motion to appoint Council Member Glover to the committee. Mayor Pro-Tem Mercer seconded the motion and it carried unanimously.

#### Other Post-Employment Benefits (OPEB) Trust

Council Member Blackburn made a motion to appoint Mayor Pro-Tem Mercer to the trust. Council Member Smith seconded the motion and it carried unanimously.

#### Audit Committee

Mayor Thomas appointed himself, Council Member Smiley, and Council Member Glover to the committee.

#### City Council Economic Development Committee

Mayor Thomas appointed himself, Council Member Smith, and Council Member Croskery to the committee.



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**NEW BUSINESS**

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**PUBLIC HEARINGS**

**ORDINANCE TO ANNEX LAKEVIEW INDUSTRIAL PARK, LOT 8, INVOLVING 2.1068 ACRES LOCATED WEST OF SAPPHIRE COURT AND 280+ FEET NORTH OF DIAMOND DRIVE - (Ordinance No. 14-005)**

Community Development Director Merrill Flood presented a proposed voluntary annexation to annex Lakeview Industrial Park, Lot 8, involving 2.1068 acres located on Diamond Drive near Sapphire Court. He said that the subject area is currently undeveloped and is anticipated to accommodate 8,500 square feet of industrial space. The site is located in the northeast portion of the City in Voting District 1, and is in Vision Area B. Mr. Flood said that this is a non-contiguous annexation. The present tax value is \$13,459.00 and the total estimated tax value at full development is \$863,459.00.

Mayor Thomas declared the Public Hearing open at 7:11p.m. and invited anyone wishing to speak on behalf of the proposed annexation to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:12 p.m.

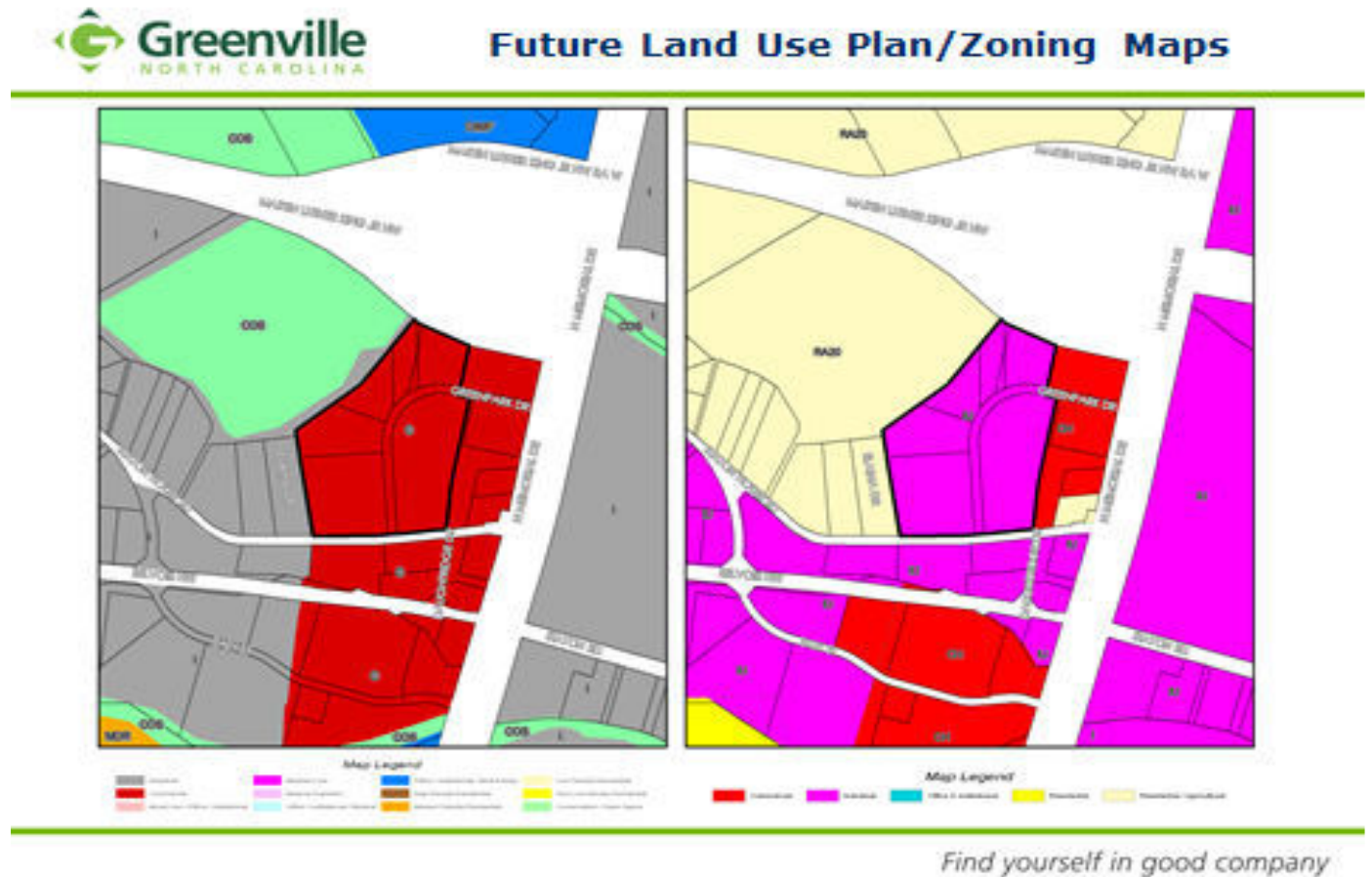
Council Member Blackburn made a motion to approve the proposed annexation. Council Member Glover seconded the motion, which passed by unanimous vote.

**ORDINANCE REQUESTED BY STOW MANAGEMENT, INCORPORATED AND STEPHEN M. HARRINGTON TO REZONE 25.876 ACRES LOCATED BETWEEN MARTIN LUTHER KING, JR. HIGHWAY AND STATON HOUSE ROAD AND 380+ FEET WEST OF NORTH MEMORIAL DRIVE FROM IU (UNOFFENSIVE INDUSTRY) TO CH (HEAVY COMMERCIAL) - (Ordinance No. 14-006)**

City Planner Chantae Gooby presented the follow-up to a Future Land Use Plan amendment by the City Council several months ago. She said that the area is located at the corner of Martin Luther King, Jr. Highway and Staton House Road. The subject property is located in the northern portion of the City in Vision Area A. Ms. Gooby said that the land is currently vacant, surrounded by CH (heavy commercial) uses to the east and south, as well as RA20 (residential) to the west. The Future Land Use Plan Map recommends CH at the southwest corner of the intersection of Martin Luther King, Jr. Highway and North Memorial Drive. She said that the rezoning could result in an increase of approximately 8,665 trips per day, and while that number is large, she pointed out that the rezoning is on a large scale and is based on a worst-case scenario. In addition, she mentioned that there is a stoplight at Staton House Road already in place. Ms. Gooby said that under the current zoning of IU (unoffensive industry) and under the proposed rezoning of CH, the site could accommodate the same square footage of approximately 247,974 square feet. She pointed out that the



difference is that retail would be allowed under the proposed rezoning, as opposed to the current zoning, which only permits warehouses, mini-storage and fast food restaurants. She showed the City Council the Future Land Use Plan Maps below, which depict the current and future zoning:



Ms. Gooby stated that staff is of the opinion that the requested rezoning is in compliance with Horizons: Greenville's Community Plan and the Future Land Use Plan Map.

Mayor Thomas declared the Public Hearing open at 7:16 p.m. and invited anyone wishing to speak on behalf of the rezoning ordinance to come forward.

Jim Hopf- No Address Given

Mr. Hopf stated that he represents Stow Management. He noted that the rezoning request is market driven, and the uses relate to the calls that the owner of the property has received in recent years. Mr. Hopf said that the request is consistent with the type of development and growth in the area, and will bring more commercial development to the area north of the Tar River.



Hearing no one else who wished to speak on behalf of the rezoning ordinance, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:17 p.m.

Council Member Smith made a motion to approve the rezoning ordinance. Mayor Pro-Tem Mercer seconded the motion, which passed by unanimous vote.

**RESOLUTION TO CLOSE A PORTION OF AN ALLEY BEING NORTH OF 205 AND 207 E. FIFTH STREET - (Resolution No. 001-14)**

City Engineer Scott Godefroy presented the request from Joyner Commercial Rentals, LLC, owner of the property at 205 E. Fifth Street, and Smith & Wiggins, LLC, owner of the property at 207 E. Fifth Street, to close a portion of the alley lying north of their properties. Mr. Godefroy stated that the petitioners are in the design phase of redeveloping their properties, which requires the construction of an elevator and stairwell. However, Mr. Godefroy said that a portion of the elevator and stairwell would encroach upon the alley. He pointed out that the City Council adopted a Resolution of Intent to Close a portion of the alley during its December 12, 2013, meeting and also set the date for the public hearing for the regularly scheduled City Council meeting on January 16, 2014. In addition, the request was heard by the Planning and Zoning Commission, which gave a favorable recommendation to the petition for closure during its December 17, 2013, meeting. Mr. Godefroy stated that staff recommends as a condition of the street closing that a recombination map be submitted in accordance with the Subdivision Regulations. Additionally, the Greenville Utilities Commission (GUC) has submitted estimates for the work required to relocate the gas main and overhead electrical lines in the area of the alley to be closed. A bond will be posted by the petitioners for the estimated cost to relocate all utilities.

Council Member Blackburn asked if the closure of the alley would impact the interconnectivity of Downtown. Mr. Godefroy said the alley currently has vehicular access; therefore the closure will make it difficult for vehicles to pass through. However, he mentioned that the alley will accommodate pedestrian access. Mayor Thomas declared the public hearing open at 7:22 p.m. and invited anyone wishing to speak in favor of the closure to come forward.

**Richard King-No Address Given**

Mr. King stated that he is from Dunn & Dalton Architects and represents the developer, No Quarter, LLC. He said the developer intends to create office space in the two buildings, and must provide elevator access in order to attract tenants. The proposed connector will house the elevator that will provide handicap access to both units. Mr. King said that the intent is for pedestrians to enter the connector through the alley, and then take the elevator to either the first floor of 207 Fifth Street, which is below ground, or the second floor of either building. He pointed out that incorporating various floor elevations and handicap accessibility requires more room. Therefore, four feet into the alley is proposed for actual



construction, as well as a few additional feet for the footings and foundations, all while maintaining clear access for the exit.

Holton Wilkerson - No Address Given

Mr. Wilkerson stated that he is the managing partner of CommunitySmith, who was contracted by No Quarter, LLC to develop the property. He thanked the City for its collaboration with the redevelopment project.

Bianca Shoneman - No Address Given

Ms. Shoneman, who stated that she represents Uptown Greenville, said that she is pleased to see the CommunitySmith redevelopment project taking place. She said that the resolution to close a portion of the alley will promote the longstanding goals of the City Council, the Office of Economic Development, and Uptown Greenville's revitalizations.

Hearing no one else who wished to speak in favor of the partial alley closure, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 7:28 p.m.

Council Member Blackburn made a motion to approve the resolution to close a portion of the alley north of 205 and 207 E. Fifth Street. Council Member Glover seconded the motion, which passed by unanimous vote.

**PUBLIC COMMENT PERIOD**

June Graves – 301 Granville Drive

Ms. Graves, who stated that she was speaking as both a citizen of Greenville and a representative of ReLeaf, reminded the City Council of the necessity to preserve green spaces as an integral part of the City's planning process. She explained that ReLeaf is a local organization run entirely by volunteers who are dedicated to planting trees around Greenville. Ms. Graves pointed out that so far, the organization has planted more than 1,700 trees in Greenville; 85 of which were planted on the Town Common. She said that ReLeaf wants to ensure that the City and potential developers include the trees on the Town Common in any future plans for the area, because the trees provide many benefits to Greenville's citizens and the environment.

Eric Brestel – 106 Christenbury Drive

Mr. Brestel reminded City Council Members that in 2009, the City of Greenville commissioned a panel of citizens, who provided opinions on ways to improve the Town Common. He said that the citizens suggested the addition of facilities such as restrooms, picnic sites, playgrounds, and improved parking. He pointed out, however, that housing complexes and business offices, which have been pursued recently by several City Council Members, were not among the improvements suggested by the citizens. Mr. Brestel expressed the importance to the citizens of Greenville to allow the Town Common to remain "common."



Eric Whaley – 223 Churchill Drive

Mr. Whaley stated that the Town Common is Greenville’s flagship park. He said that the park is dear to him because he and his children often spend time there and attend events, such as Sunday in the Park. Mr. Whaley said that although the plan to develop the Town Common has many positive qualities, he still has several concerns. For example, moving the amphitheater and adding permanent seating will take up the open space in front of the stage. Mr. Whaley said that the space must remain open so that children can play there and people are able to bring their pets to concerts. Additionally, Mr. Whaley pointed out that a “backless” stage is a major design flaw for acoustics, and said that the stage must have a shell to project the performer’s sound towards the audience. Mr. Whaley also expressed his concern about the intent for the area suggested for “educational space,” and suggested that the educational space would be a better investment elsewhere. Mr. Whaley said that the Town Common should be designed with the input of all of its users so that the park meets everyone’s needs.

Andrew Gorman – No Address Given

Mr. Gorman proposed that the City Council adopt a land value taxation policy to reduce the cost of living. He said that land value taxation is more market and development friendly than rent control and subsidization of housing. He explained that rather than taxing buildings, the City would only tax the land beneath them. This in turn would encourage the development of land and discourage leaving it vacant. As a result, Mr. Gorman said that the vast majority of Greenville’s citizens would see their taxes decrease, while renters would see a decrease in their rent. Mr. Gorman said that land value taxation is one of the most business-friendly taxes because it decreases the cost associated with renting space. Mr. Gorman said that a land value taxation policy would cause Greenville to have a smart growth effect, meaning that the City will grow upward rather than growing outward.

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**OTHER ITEMS OF BUSINESS**

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**ORDINANCE AMENDING SECTION 10-2-93 OF THE GREENVILLE CITY CODE RELATING TO ALLEYS IN THE UPTOWN AREA- (Ordinance No. 14-007)**

Economic Development Director Carl Rees stated that the ordinance is the sister item to the ordinance requesting the partial alley closure. Mr. Rees said that the proposed ordinance is an amendment to an ordinance adopted by the City Council in 2004, which limited access in many other downtown alleys to pedestrians, cyclists and service vehicles. He said that the proposed ordinance will expand the eastern boundary of the effective area to Reade Street thus including the above mentioned Cotanche to Reade Street alley. Mr. Rees said that staff is working with the Redevelopment Commission to make improvements to the Cotanche to Reade Street alley. Mr. Rees mentioned that as part of the proposed alley improvements, several locking bollards will be placed at each end of the alley to limit vehicular access. He added that City and utility service crews will be able to remove the bollards to access the alley whenever necessary.



Council Member Blackburn asked Mr. Rees to explain future plans for this alley, and how the improvements will lead to more business in Downtown Greenville. She pointed out that a small investment can increase activity and interest in an area, and mentioned that Merchant's Alley has been successful. Mr. Rees stated that the big picture is to bring in visitors, shoppers and diners into the Downtown area. Therefore, he said it is important for the area to be as pedestrian-friendly as possible. By closing this alley to vehicular traffic, he said that it will make Downtown safer for bikers and pedestrians.

Council Member Blackburn made a motion to approve the ordinance amending the Greenville City Code relating to alleys in the Uptown town area. Council Member Croskery seconded the motion, which passed by unanimous vote.

### **TOWN COMMON FORUM**

Council Member Blackburn requested that the City Council discuss updates to the Town Common Master Plan, and inform the public about attainable improvements that can be made. She said that she is excited about the level of interest in the Town Common, and mentioned that the level of interest may indicate that the time has come to begin moving forward. Council Member Blackburn pointed out that there was a Power Point presentation made to the Recreation and Parks Commission that was well done and succinct. She said that she was hopeful that it could be presented to the City Council at the current meeting or at a time in the near future.

Mayor Pro-Tem Mercer mentioned that he recalled hearing about the presentation made to the Recreation and Parks Commission, and added that it may be a useful way to speak to the growing interest of citizens. He said that he supported having the presentation at the next City Council meeting.

Council Member Smith said that the City Council should wait to discuss development plans for the Town Common until the Redevelopment Commission retreat in March, or until the City Council knows what funds are available.

Council Member Croskery said that he believed this item was put on the agenda as a way to share the memo from Redevelopment Commission's most recent discussion regarding the Town Common with the public. He mentioned that a plan was formed five years ago that received public support; however, nothing was done about it due to the economic downturn in 2009. Council Member Croskery stated that the memo made a set of three suggestions of the direction the City can take:

1. Status quo; the City could continue to seek \$13 million to complete the Town Common Master Plan to its full extent.
2. Incremental implementation of the Town Common Master Plan; the City could commit what it can over the next several years and adjust as fit.



3. Actively seek private development; many people have shown concern about this point.

Council Member Croskery stated that he personally favors the second option, which would allow the City to incrementally implement the Town Common Master Plan. He encouraged the City Council Members to discuss the plan over the next few weeks with the City's constituents.

Council Member Smiley said that he applauds the initiative that the Commissions have taken to begin collaboration on improvements for the Town Common. He stated that discussing the Town Common Master Plan at City Council Meetings can reassure Greenville's citizens that the City Council takes it seriously. Council Member Smiley said that he agrees with Mayor Pro-Tem Mercer that the City Council should listen to the updated presentation on this topic.

Mayor Thomas said that things seem to be coming together at the right time, and stated that everyone must be at the table with positive improvements for the center of the City. He said that prudent progress for the Town Common should be included in the City Council's discussions.

Council Member Smith moved to discuss the Town Common Master Plan following the Redevelopment Commission Planning Session in March. Council Member Glover seconded the motion.

Council Member Blackburn said that she disagreed with Council Member Smith's motion. She instead made a motion to have the City Council's briefing prior to the Redevelopment Commission Planning Session. The motion failed due to lack of a second.

Council Member Glover said that staff must be on the same page before presenting anything to the City Council. She pointed out that allowing staff the time to collaborate will prevent any potential misunderstandings.

Council Member Blackburn said that, although she would like to support Council Member Smith's motion, she feels that there is a sense of excluding the presentation from February. She said that there is currently much enthusiasm about the Town Common, and added that the presentation would provide hope, inspiration and vision. Therefore, she stated that she did not support Council Member Smith's motion, because there would be no discussion about the matter in February.

Mayor Pro-Tem Mercer said that he was going to support the motion because he wants a report after March, but if the motion effectively prohibits a City Council Member from requesting a Power Point from the Recreation and Parks Department, he would argue against that.





There being no further discussion, the motion made by Council Member Smith and seconded by Council Member Glover passed by a 4 to 3 vote. The vote was originally tied, and Mayor Thomas cast the deciding vote in favor of the motion. Mayor Pro-Tem Mercer, Council Member Blackburn and Council Member Smiley cast the dissenting votes.

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**COMMENTS FROM THE MAYOR AND CITY COUNCIL**

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The Mayor, Mayor Pro-Tem and Council Members made general comments about past and future events.

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**ADJOURNMENT**

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Council Member Smith moved to adjourn the meeting, seconded by Council Member Croskery. There being no further discussion, the motion passed by unanimous vote and Mayor Thomas adjourned the meeting at 8:20 p.m.

Prepared By:  
Sara Ward, Clerical Assistant  
City Clerk's Office

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk

PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
THURSDAY, FEBRUARY 13, 2014



A regular meeting of the Greenville City Council was held on Thursday, February 13, 2014, in the Council Chambers, located on the third floor at City Hall, with Mayor Allen M. Thomas presiding. Mayor Thomas called the meeting to order at 7:00 p.m. Council Member Rose Glover gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Allen M. Thomas, Mayor Pro-Tem Calvin R. Mercer, Council Member Kandie Smith, Council Member Rose H. Glover, Council Member Marion Blackburn, Council Member Rick Smiley, Jr. and Council Member Richard Croskery

Those Absent:

None

Also Present:

City Manager Barbara Lipscomb, City Attorney David A. Holec, City Clerk Carol L. Barwick and Deputy City Clerk Polly W. Jones

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**APPROVAL OF THE AGENDA**

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City Manager Barbara Lipscomb stated that Affordable Housing did not meet due to inclement weather, and requested that the item on Approval of HOME Investment Partnership Funds Commitment for a Multi-family Rental Housing Development be continued to next month.

City Manager Lipscomb requested that, consistent with action taken at the February 10, 2014 meeting, the following items be added to the agenda: Discussion of the Final Report of the University Neighborhood Revitalization Initiative (UNRI Committee with the addition of reconsideration of the UNRI Overlay Zoning Map and Text Amendments) and Exception to the Emergency and Adverse Weather Pay Policy.

Council Member Blackburn made a motion to approve the agenda with the recommended changes. Council Member Glover seconded the motion, which passed by unanimous vote.

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**APPOINTMENTS**

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**APPOINTMENTS TO BOARDS AND COMMISSIONS**



#### Affordable Housing Loan Committee

Council Member Blackburn continued the appointment of the seats for Alice Brewington, R.J. Hemby, and Lovella Perkins, all of whom were ineligible to serve another term.

#### Community Appearance Commission

Council Member Smiley made a motion to appoint Tyler Richardson to fill an unexpired term that will expire April 2016, in replacement of Mark Abboud, who had resigned. Council Member Blackburn seconded the motion and it carried unanimously.

#### Greenville Bicycle & Pedestrian Commission

Council Member Smiley continued the appointment of Liz Brown-Pickren's seat, who had resigned, and the appointment of Titus Yancey's seat, who had not met the attendance requirement.

#### Historic Preservation Commission

Council Member Smith continued the appointments for Sara Larkins' and Allan Kearney's seats, both of whom were eligible to serve, and she continued the appointment of Maury York's seat, who had resigned.

Council Member Smith made a motion to reappoint Jeremy Jordan to a second three-year term that will expire January 2017. Council Member Blackburn seconded the motion and it carried unanimously.

#### Housing Authority

Council Member Blackburn made a motion to accept the nomination of Jumail Blount by the Housing Authority to fill the Resident Commissioner seat for an unexpired term that will expire May 31, 2015. Council Member Croskery seconded the motion and it carried unanimously.

#### Human Relations Council

Council Member Glover continued the appointment of Corey Rhodes' seat, who had resigned, and the East Carolina University seat.

#### Planning & Zoning Commission

Council Member Smith continued the appointment of Kevin Burton's seat who had resigned.

#### Police Community Relations Committee

Council Member Croskery appointed Aaron Lucier to fill an unexpired term that will expire October 2015, in replacement of Tom McCullough, who did not wish to seek a second term.

#### Public Transportation and Parking Commission

Council Member Croskery continued the appointment of Dave Schwartz's seat, who was eligible to serve, and he continued the appointment of Rick Smiley's seat, who had resigned.



Council Member Croskery made a motion to appoint Brian Farkas to a first three-year term that will expire January 2017, in replacement of Warren Daniels, who did not wish to seek a second term. Council Member Blackburn seconded the motion and it carried unanimously.

Youth Council

Mayor Pro-Tem Mercer continued the appointments due to lack of applicants.

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**NEW BUSINESS**

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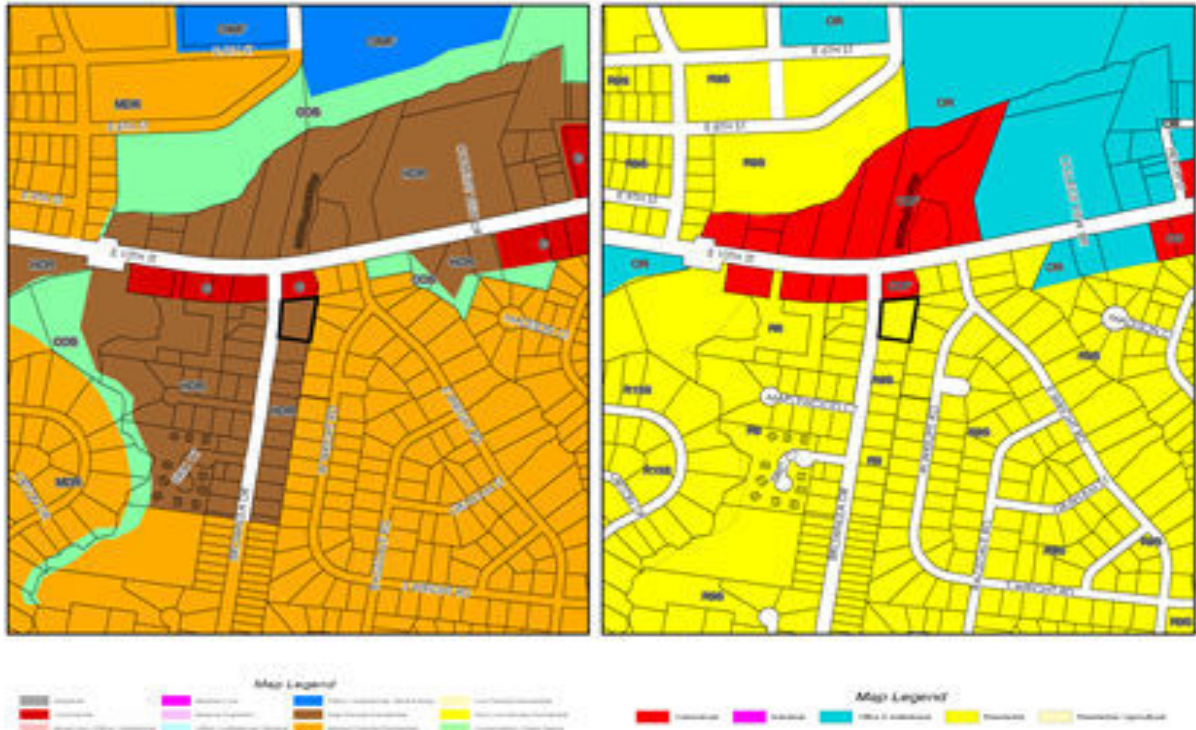
**PUBLIC HEARINGS**

**ORDINANCE REQUESTED BY EASTERN GROUP PROPERTIES, LLC TO REZONE 0.825 ACRES (35,949 SQUARE FEET) LOCATED ALONG THE EASTERN RIGHT-OF-WAY OF BROWNLEA DRIVE AND 130+ FEET SOUTH OF EAST 10<sup>TH</sup> STREET FROM R9 (RESIDENTIAL [MEDIUM DENSITY MULTI-FAMILY]) TO R6 (RESIDENTIAL [HIGH DENSITY MULTI-FAMILY])**

City Planner Chantae Gooby stated that the subject area is located in the central section of Greenville in Vision Area I, and is currently zoned as residential medium density multi-family (R9). The property, which was formerly occupied by a mobile home park, is currently vacant. Ms. Gooby pointed out a piece of commercial property lying next to the subject property, and mentioned that both are under common ownership. She said that the proposed rezoning could create a net increase of 39 trips, but due to the relatively small increase, a traffic report was not generated. Ms. Gooby said that under the current R9 zoning, the property can accommodate no more than three duplex lots with six units; however, the proposed residential high density multi-family (R6) zoning can accommodate 10 to 12 multi-family units. The anticipated build-out is within one year. Ms. Gooby pointed out that the Future Land Use Plan Map shows transition to high density residential to the south and medium density residential to the east. She showed City Council the slide below, which depicts the Future Land Use Plan and Zoning Maps:



## Future Land Use Plan/Zoning Maps



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According to Ms. Gooby, staff is of the opinion that this zoning request is in compliance with Horizons: Greenville's Community Plan and the Future Land Use Plan Map. Ms. Gooby said that two separate protest petitions were submitted. She explained that a statutory protest petitions can force a supermajority vote rather than a simple majority vote. Ms. Gooby pointed out that according to General Statutes, there is a 100-foot buffer radiating from the proposed rezoning area. This buffer does not include streets. Individuals who live within the buffer may sign a petition, and if the land area of whoever has signed is 5% or more, a supermajority vote is required. Between the two petitions, the land area totaled 12.25%. She mentioned that additional petitions were submitted; however the petitions were not formally signed because they were not notarized. Ms. Gooby clarified that the additional signatures do not factor into the protest petition that is currently before City Council.

Mayor Thomas inquired about the consensus of the Planning and Zoning Commission. Ms. Gooby stated that the Planning and Zoning Commission voted in favor of the rezoning, with one dissenting vote.

Council Member Blackburn asked if staff has revisited the Future Land Use Plan Map since the City decided not to extend Brownlea Drive. Ms. Gooby said that there have not been any changes to the Future Land Use Plan Map with regard to Brownlea Drive. She



speculated that that the reasoning behind the establishment of high density residential zoning in that area was to provide a transition between multi-family and single-family housing. Ms. Gooby stated further that the close proximity to ECU makes the area a reasonable place for high density zoning, regardless of any future plans for Brownlea Drive.

Mayor Thomas declared the public hearing open at 7:19 p.m. and invited anyone wishing to speak in favor of the rezoning request to come forward.

Brian Fagundus –No Address Given

Mr. Fagundus, a representative of Eastern Group Properties, presented an aerial view of the subject property just prior to acquisition in 2009. He pointed out the mobile home park and the commercial center, and identified the specific parcel in question. He mentioned that the mobile home park exhibited non-conforming use of the property, as it contained 20 trailers. Mr. Fagundus said that Eastern Group Properties removed the mobile home park in 2010 with the intent to redevelop the property, but due to the stagnant economy, those plans were put on hold. He confirmed that Eastern Group Properties is now ready to pursue redevelopment, and is considering the possibility of eight units. He stated further that high density makes sense for the area because it is on the ECU bus route and is in close proximity to the University. He said that the Planning and Zoning Commission has given its approval, and the plan complies with the Future Land Use Plan. Mr. Fagundus stated that although not all neighbors are in agreement with the proposed redevelopment, the project will be an excellent transition for the area.

John Day –No Address Given

Mr. Day stated that he owns a duplex located at 1012 Brownlea Drive and strongly favors the rezoning request. He said that the rezoning will positively affect the area because the construction of new units will encourage the owners of older units to perform regular renovations in an effort to compete for tenants.

Hearing no one else who wished to speak in favor of the requested rezoning ordinance, Mayor Thomas invited comment in opposition.

Melissa Tilley – No Address Given

Ms. Tilley stated that she is the property manager for the owners of 1005 Brownlea Drive. She pointed out that the removal of the mobile home park has had a positive impact on the area, and said that the owners are not necessarily opposed to redevelopment. However, Ms. Tilley mentioned that they are concerned about the number of units that will be constructed there, as well as what sort of buffer will be put in place. She stated that the owners wish to see their property value continue to increase.

Bill Shreve – Wilson

Mr. Shreve stated that he owns property at 1008 Brownlea Drive. He said that he is opposed to the redevelopment of the area because the density that will result from it could potentially decrease the value of his property.



Krage Gardner – 1010 W. Wright Road

Mr. Gardner stated that he has lived in his home since 1967, and was told when he purchased the home that the mobile home park would be removed shortly and that Brownlea Drive would be opened through. He recognized that the City Council must entertain this rezoning request, but pointed out that the City Council must also guard the interests of the neighborhood's residents. Mr. Gardner said that if the rezoning request is approved, the area will be downgraded. He suggested that if the developers wish to construct on the property, they should be required to comply with R9 zoning.

John Dixon – No Address Given

Mr. Dixon, who is an assistant professor at ECU, stated that he resides in a home just behind the proposed redevelopment. He mentioned that he has two small children who frequently play in their backyard, and expressed his concern that parties and less desirable activities will result from the increased density associated with the proposed redevelopment. Mr. Dixon requested that if the proposed redevelopment is approved, that the City Council would ensure measures to construct a buffer.

Hearing no one else who wished to speak, Mayor Thomas closed the public hearing at 7:36 p.m.

Council Member Smith asked Ms. Gooby if letters were sent to residents of the surrounding area directing them to contact information should they have any questions. Ms. Gooby said that, as a general practice, letters are sent to all property owners who live within 300 feet of a rezoning, or any neighborhood associations that may be affected. Ms. Gooby mentioned that Former Mayor Pat Dunn is President of College Court Neighborhood Association and intends to speak with the rezoning applicant.

Council Member Smiley said that 10 feet between a high density residential area and single family homes is not a compelling buffer. He urged the City Council to oppose the rezoning because it does not seem to be a positive contribution to the current pattern of zoning. He also pointed out that the majority of the surrounding residents have either opposed or attempted to oppose the rezoning.

Council Member Croskery stated that, although he wants to protect the surrounding neighborhoods, he believes the rezoning request is reasonable provided the developer does what it says it will. He further explained that higher density zoning is appropriate in the Brownlea Drive area due to its close proximity to ECU.

City Attorney Dave Holec reminded the City Council that due to the protest petitions, a  $\frac{3}{4}$  vote, or five affirmative votes, are required in order to approve the rezoning.

Council Member Glover made a motion to approve the requested rezoning of 0.825 acres located along the Eastern right-of-way of Brownlea Drive and 130+ feet south of East 10<sup>th</sup> Street from R9 to R6. Council Member Croskery seconded the motion, which failed due to



the requirement for 5 affirmative votes. The vote was 4 to 2, with Council Members Smiley and Blackburn casting the dissenting votes.

**ORDINANCE TO AMEND THE ZONING ORDINANCE BY ADDING OUTSIDE TIRE STORAGE AND DISPLAY STANDARDS - (Ordinance No. 14-010)**

Chief Planner Tom Weitnauer stated that the process began in September, when a City Council Member mentioned that tire storage practices outside several local tire stores had created unsightly conditions and a potential fire hazard. As a result, the City Council asked staff to review the City's regulations to determine their enforceability, and also to determine if the tire stores had violated any regulations. Mr. Weitnauer said that in response to a request by City Council, staff provided a presentation at the October 10, 2013 City Council meeting. At the conclusion of that presentation and related discussion, the City Council directed staff to investigate the issues and develop any recommendations for ordinance revisions if needed. On December 12, 2013, the Planning Division staff provided a report to the City Council on tire storage activities, and presented two alternatives:

- 1) Prepare a text amendment that continues to allow tires to be stored outside with the addition of criteria to lessen the visual impacts; or
- 2) Prepare a text amendment to prohibit outside tire storage entirely.

According to Mr. Weitnauer, the City Council selected the first alternative, and directed staff to proceed with preparing standards for outside tire storage that would lessen the visual impacts, as well as reduce their potential as a public nuisance and a fire hazard. He said that staff collaborated to prepare an ordinance that regulates the outside storage of tires through the following standards:

- (a) Maximum area of tire storage shall be limited to 10% of the lot or 25% of the building, whichever is less;
- (b) Maximum of 100 tires;
- (c) Tires must be stored behind required buffers;
- (d) Tires must be stored upright in racks and covered with plastic;
- (e) Minimum of 20 feet separation between racks and property lines, rights-of-way and buildings;
- (f) Minimum five feet between racks
- (g) Comply with North Carolina Fire Code; and
- (h) Comply within nine months of ordinance adoption.





In addition, Mr. Weitnauer stated that the ordinance regulates outside tire display through the following standards:

- (a) Displayed tires must be within 10 feet of building;
- (b) Displayed tires must be outside of buffer yards
- (c) Maximum of 24 tires on display; and
- (d) Comply within nine months of ordinance adoption.

Mr. Weitnauer mentioned that the Planning and Zoning Commission unanimously approved the ordinance at its January 21, 2014 meeting with the additional requirement to cover tires with plastic. He stated that staff recommends adoption of the Zoning Ordinance Text Amendment. Also, he said that staff is of the opinion that the ordinance is in compliance with Horizons: Greenville's Community Plan and Objective UF8: To enhance the appearance of highway and gateway corridors.

Council Member Blackburn asked to what extent the tire store owners had been made aware that this is happening and if they had opportunity to comment. Community Development Director Merrill Flood said that the ordinance mostly impacts tire businesses that recycle used tires, rather than mainstream tire stores. He said that staff could conduct a survey from the tire stores if the City Council wished to do so. However, he pointed out that the ordinance would only impact six tire businesses out of 26 in Greenville.

Council Member Blackburn asked if limiting the number of tires to 100 is a standard practice in other communities. Mr. Weitnauer mentioned that other places do not seem to have as large of a problem with tire storage as Greenville does. He said that although he is not a Fire Code expert, he believes that North Carolina law limits the amount to 500. Council Member Glover asked if simply placing plastic over the tires would be enough to improve the visual appearance of the tire businesses. Community Development Director Merrill Flood said that the ordinance did not initially include a requirement that the tires must be covered in plastic, but it was added at the request of the Planning and Zoning Commission. He said that staff proposed that the tires should be neatly stacked or in racks, but the Planning and Zoning Commission thought that the plastic would cut down on mosquitos because it would prohibit ponding of water. Mr. Flood said that the City Council is not required to include that in the ordinance.

Council Member Glover stated that the appearance of the tire storage is her main concern. She suggested using heavy-duty plastic that does not fray or blow away. Also, she asked City Attorney Dave Holec if she could request the addition of the wording "plastic or other substantial cover" in lieu of "plastic." Mr. Holec suggested instead that Council Member Glover request the wording to be "a manufactured cover."



Mr. Flood suggested that the ordinance would be easier to enforce if it did not require any covering at all. He said that having a covering made of plastic or another manufactured material could also give off a poor visual appearance, but the business owners would be protected under the ordinance if they had a cover. Instead, Mr. Flood suggested that the ordinance state that the tires must be stacked neatly or in racks.

Mayor Thomas declared the public hearing open at 8:05 p.m. and invited anyone wishing to speak in favor of the amendment to the zoning ordinance to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 8:05 p.m.

Council Member Croskery made a motion to approve the ordinance, with the exception of the addition of the plastic covering. Council Member Mercer seconded the motion, which passed by unanimous vote.

#### **FIRST PUBLIC HEARING FOR THE 2014-2015 ANNUAL ACTION PLAN (CDBG AND HOME PROGRAMS)**

Senior Planner Niki Jones stated that as a requirement to receive Community Development Block Grant (CDBG) and HOME Investment Partnerships funds, the City must prepare an Annual Action Plan every year of its 2013-2018 Consolidated Plan, which outlines planned activities and funding amounts. He said that the City is in its first year of the Consolidated Plan that was approved in 2013. Mr. Jones stated that the Annual Action Plan provides a detailed description of how the City intends to use the CDBG and the HOME Investment Partnership funds to address the City's goals and strategies. Mr. Jones said staff anticipates that the following activities will be the City's top priorities:

- Owner-Occupied Home Rehabilitation
- Lincoln Park Neighborhood Redevelopment
- Acquisition and Demolition of Substandard Structures
- West Greenville Commercial Center Development
- Homeownership
- Education and Non-profit Support
- Elimination of Environmental Hazards

Mr. Jones briefly reviewed staff's proposed activities and associated funding:



## Proposed Activities

Activity	HOME Investment Partnership	Community Development Block Grant
Planning & Administration	35,500	170,000
Housing Rehabilitation	161,250	250,000
Relocation	0	5,000
Acquisition	0	50,000
New Construction	75,000	0
Clearance/Demolition	0	15,000
Down Payment Assistance	30,000	

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## Proposed Activities

Activity	HOME Investment Partnership	Community Development Block Grant
Community Housing Development Organizations (CHDO)	53,250	0
Public Facilities Improvement	0	100,000
Public Service	0	100,000
Economic Development	0	160,000
Program Income	15,000	30,000
<b>Total</b>	<b>370,000</b>	<b>880,000</b>

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Council Member Smith asked about the average cost to demolish a home in the West Greenville neighborhood. Mr. Jones said demolition of a home usually costs about \$5,000, but the cost increases if the home has asbestos or lead paint.

Council Member Smith asked what requirements a person must meet in order to be eligible for Down Payment Assistance. Mr. Jones said that to qualify, candidates must earn 80% of Area Median Income (AMI), which is approximately \$30,950 for a single-person household. Additionally, he said that candidates must also take homeownership classes.

Council Member Smith pointed out that heir property is a major issue, because it prevents the City from being able to revitalize an entire block of homes. She asked if feeder information has been developed for individuals who are dealing with heir property. Mr. Jones agreed that something must be done, and suggested that staff could hold a seminar and invite Legal Aid to answer any questions.

Council Member Glover asked how demolitions are done with Code Enforcement and Planning. Mr. Jones stated that CDBG funds are not as flexible as bond funds because they are federally regulated; therefore, it is best to use as few of those funds as possible. He said that Code Enforcement also has money set aside for demolition. Mr. Jones said that staff is working towards revitalization as opposed to demolition.

Council Member Blackburn asked if the rehabilitation funds are grants to homeowners. Mr. Jones said that if the homeowner is at 50% or below of the AMI, the funds are a grant, but if the homeowner earns 51% to 80%, interest will accrue.

Council Member Smith asked if the homeowner is responsible for funding the demolition of a home. Mr. Jones said that the City does not demolish a home that it does not own outright, so any home that has been demolished is owned by the City. With regard to heir properties, Mr. Jones said that there is a provision in the HOME rules that will allow the City to rehabilitate an heir property, given that all heirs have agreed to the rehabilitation.

Mayor Thomas declared the public hearing open at 8:25 p.m. and invited anyone wishing to speak in favor of the annexation ordinance to come forward. Hearing no one, Mayor Thomas invited comment in opposition. Hearing no one, Mayor Thomas closed the public hearing at 8:25 p.m.

Mr. Holec said that since this is the first public hearing on the item, no motion is required.

### **PUBLIC COMMENT PERIOD**

Andrew Morehead – 409 S. Harding Street

Mr. Morehead stated that although the rental incentive program has been profitable over the past 40 years, rental properties in the Tar River University Neighborhood Association (TRUNA) have increased to 83% of the neighborhood. He said that the City Council decided to provide increased rental profits without any requirement for improvement for the item # 1



who owned in that area. As a result, single-family rental homes in the University Neighborhood Revitalization Initiative (UNRI) Overlay have become more valuable than anywhere else in the City. Mr. Morehead said that 43 homes have already been permitted for expanded occupancy, which means the neighborhood now has 43 less homes that will be available for home ownership. He pointed out that rental homes in the UNRI neighborhood will continue to seek permits for expanded occupancy, while owner-occupied homes will be targeted for rental conversion. Mr. Morehead acknowledged that the UNRI Overlay has responsible landlords and irresponsible homeowners, but mentioned that the average homeowner is more likely to invest in a home than someone who simply uses the home as a profit center and does not live in it. He also said that planning studies show a correlation between home ownership and lower crime rates and higher property values. Mr. Morehead expressed the importance of incentivizing home ownership and urged the City Council to repeal the UNRI Overlay.

Sandra Harrison – 1424 Greenville Boulevard

Ms. Harrison, who stated that she has been a property owner in the University neighborhood since 1986, said that she believes that the UNRI Overlay zoning has had a positive effect on the neighborhood. She said that she has witnessed a new willingness on the part of homeowners and investors to maintain and improve the appearance of the properties, while respecting their original historical and structural character. Ms. Harrison stated that she has worked for Pitt County Memorial Hospital, now Vidant Medical Center, for 33 years. She said the hospital's transition taught her that all stakeholders must embrace alternative remedies for the health of the patient, which may take time to produce desired results. Likewise, she said that the City must not stop the "treatment" before it produces a "cure" in the University neighborhood. She urged the City Council to embrace the UNRI Overlay, so that the University neighborhood can continue on its path to positive growth. Ms. Harrison pointed out that 65% of Greenville's residents are renters, as well as 85% of the residents in the UNRI Overlay. She stated that through true collaboration of homeowners and renters, the community can be strengthened and find common ground.

Jim Blount – 300 Crown Point

Mr. Blount stated that he is the owner of Blount Properties, which owns and operates apartments and duplexes in University area. He said that he began purchasing properties when he relocated back to Greenville 12 years ago, and at that time, the University neighborhood was in poor condition. In recent years, however, Mr. Blount said that he has seen a renewed interest in the neighborhood, and he credited the UNRI Overlay panel for the positive effect. During the past year, Mr. Blount stated that he has seen several measurable outcomes, such as better tenants, rental retention, decreased crime and confidence in the area. He cautioned the City Council about the negative impact that repealing the UNRI Overlay would have on the University neighborhood, and said that doing so would be a poor business decision. Mr. Blount urged the City Council to keep the UNRI Overlay in place for at least the next 12 months.



James Robbins – 1104 W. Rock Springs Road

Mr. Robbins addressed the comments and shared opinions about crime management in the UNRI Overlay. He showed the City Council Greenville Police Department (GPD) data and pointed out that since the implementation of UNRI Overlay policy, crime in the University neighborhood has dropped by 33%, which is at a rate not seen over the past 4 years. He added that the four-unrelated residents rule change, which is part of the UNRI Overlay policy, has contributed to the decline in crime.

Elizabeth Semple – 1107 N. Overlook

Ms. Semple stated that she represents the University Neighborhood Association. She said since the UNRI Overlay has been in place, local property owners have invested over \$5.5 million in the University neighborhood area through updates and renovations, as well as acquiring poor properties and turning them around. Ms. Semple said that the ability to house four-unrelated residents has directly afforded those investments, and is beneficial not only for the landlord, but for the entire community. She added that restricting the number of unrelated residents who are allowed to live together does not cause an overall decrease in rental properties, but actually slows progress in the neighborhood. Ms. Semple pointed out that the City Planning Department has already reviewed other thriving University neighborhoods, such as Chapel Hill, which allows four-unrelated residents to live together and still has a higher owner occupancy rating than Greenville. She said that a neighborhood must improve before it becomes affordable and desirable for owner occupants, which will take time. She added that rescinding the four-unrelated amendment would only take money away from the UNRI Overlay. In addition, Ms. Semple mentioned that the UNRI Overlay is not as unpopular as it may appear, and pointed out that the opposition represents about 100 people, most of whom are not even residents of the University Neighborhood. In addition, she presented the City Council with a petition that was circulated through the University neighborhood that received 1,000 signatures of individuals in favor of the UNRI Overlay.

Frank Cassiano – 1205 E. 5th Street

He stated that he has lived in the University neighborhood for 22 years, and has seen improvements to many properties there over the past year. He told the City Council that the residents who live in the University area do not need to be told how to run their neighborhood. Additionally, he said that the purpose of creating the University panel was to allow its members to negotiate, compromise, research and investigate recommendations for the neighborhood out of the political limelight. Mr. Cassiano said that crime statistics have improved, and stated further that the neighborhood is beginning to thrive again. However, if the City Council were to repeal the UNRI Overlay, Mr. Cassiano stated that it would undo the positive work that has taken place in the University neighborhood.

Todd Wilson – 2007 E. 5th Street

Mr. Wilson stated that 22 people are opposed to and wish to overturn the UNRI Overlay, which would undo the positive change that has taken place in the University neighborhood. He mentioned that, by contrast, a petition was signed by 1,000 supporters of the UNRI Overlay, who want things to continue as they are now. Mr. Wilson acknowledged that



investment of time and money that people have put into improving the University neighborhood, and urged the City Council to not regress.

Jordan Hall – 307 S. Library Street

Ms. Hall stated that she lives in a four-bedroom house, which has been extensively renovated by her landlord. She said that she feels safe in her neighborhood, and enjoys where she lives. Also, Ms. Hall mentioned that she and her roommates are active in the community, and consider Greenville their second home. She urged the City Council to allow the University neighborhood to stay the way it is.

Barney Kane – 1706 Canterbury Road

Mr. Kane stated that his neighborhood, which has very few rental properties, has not had a police response or crime against any owner-occupied property within the last 20 years. He mentioned that five blocks north of North Carolina State University, an 840-square-foot home that was built in 1941 has a tax value of \$250,000. He challenged the City Council to find him a home near ECU that is worth that much. Mr. Kane attributed the vast difference in property tax value to differences in code enforcement and definitions. He said that the City has let the University neighborhood slip by not keeping it single-family.

Melissa Tilley – No Address Given

Ms. Tilley said that it did not make sense that a family with 10 children or cousins could live in the same household in TRUNA, yet four-unrelated college students cannot. She pointed out that the neighborhood's proximity to the University will attract students to live there. Ms. Tilley said that maintaining the homes and providing ample parking will increase their property value and ultimately, improve the neighborhood.

Chris Mansfield – 408 S. Harding Street

Mr. Mansfield acknowledged claims that the UNRI Overlay has made a positive difference in the University neighborhood, but asked the City Council to be skeptical and seek strong evidence of the truth of these claims. He said that he has lived in the neighborhood for 35 to 40 years and has not seen the progress that these claims make. He asked the City Council to consider rescinding the four-unrelated amendment and the UNRI Overlay for five reasons:

- The UNRI Overlay's stated purposes have not and will not be achieved,
- The UNRI Overlay is not consistent, or likely to achieve goals and objectives in already established plans,
- The UNRI Overlay was and is contrary to preferences of a majority of citizens, recommendations of boards and commissions and the University,
- The UNRI Overlay arbitrarily supports the interests of a small number of investors while injuring homeowners.
- The premise on which it was based is false, because rather than incentivizing homeownership, the UNRI Overlay incentivizes rental properties.



He said that the UNRI Overlay is moving the City in the wrong direction. He stated that if the UNRI Overlay were good for the City, it should have been Citywide.

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**OTHER ITEMS OF BUSINESS**

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**ESTABLISHMENT OF FAIR MARKET VALUE FOR CITY-OWNED PARCELS LOCATED AT 611 VANDERBILT LANE AND 1007 DOUGLAS AVENUE**

Senior Planner Niki Jones stated that this recommendation is part of an area-wide housing strategy for the two target areas in the West Greenville area; Lincoln Park and Higgs Town. He said the first step of this process is to establish fair market value. Next, the City would solicit developers to bid on each lot. Then, the developers would create affordable single-family homes on the lots. Mr. Jones said that the homes could be available for homeownership, lease-purchase and rental. He noted that although Vanderbilt Lane and Douglas Avenue are not components of Lincoln Park, they are within close proximity to the project, and lie within the 45-Block Revitalization Area and the West Greenville Certified Redevelopment Area. Mr. Jones said the appraised value for 611 Vanderbilt Lane is \$11,200 for 13,139 square feet, and 1007 Douglas Avenue is \$9,300 for 8,449 square feet. He stated that staff recommends that the City Council set fair market value on Vanderbilt Lane and Douglas Avenue based on the appraisals.

Council Member Glover made a motion to approve staff's recommendation to set fair market value on the two properties. Council Member Blackburn seconded the motion, which passed by unanimous vote.

**RESOLUTION AUTHORIZING THE CONVEYANCE OF CITY-OWNED PROPERTY LOCATED AT 611 VANDERBILT LANE TO HABITAT FOR HUMANITY OF PITT COUNTY- (Resolution No. 010-14)**

Senior Planner Niki Jones stated that staff wishes to combine the two parcels of land located at 611 Vanderbilt Lane and convey them to Habitat for Humanity of Pitt County, a non-profit organization that builds affordable, single-family housing for eligible families at a 0% interest rate. The property will total approximately 13,139 square feet. Mr. Jones said that this would qualify as infill construction, and the style of the home will match that of the Lincoln Park neighborhood. He stated further that the appraised value is approximately \$11,200 for the 1,400 square-foot single-family home. He explained that for families to qualify for a home from Habitat for Humanity, they must agree to assist in the construction of the home, and must be 80% or below Area Median Income (AMI). Mr. Jones said that following the establishment of fair market value, Habitat for Humanity will serve as the developer for the project and will immediately begin construction after the property is conveyed. He said that Habitat for Humanity has already identified a qualified homebuyer to move into the home. Mr. Jones suggested that the City convey the property





to Habitat for Humanity in order to offset the cost of redevelopment Lincoln Park and make the homes more affordable.

Council Member Glover made a motion to approve the resolution authorizing the conveyance of the property. Council Member Blackburn seconded the motion, which passed by unanimous vote.

**CONTINUE DISCUSSION OF THE FINAL REPORT OF THE UNIVERSITY NEIGHBORHOOD REVITALIZATION INITIATIVE (UNRI) COMMITTEE WITH THE ADDITION OF RECONSIDERATION OF THE UNRI OVERLAY ZONING MAP AND TEXT AMENDMENTS**

City Attorney Dave Holec said that the City Council approved the UNRI Overlay zoning map and text amendments at its October 11, 2012 meeting. The City Council approved an ordinance which established the UNRI Overlay district on the zoning map as a zoning district for a specified area, and also which provided the text amendment for that district. That action was to establish the UNRI Overlay district as a zoning district, state its purpose and intent, establish a limitation on the area which may be designated as such a district, and provide for the permission of a group of four-unrelated persons to live together in a dwelling subject to specified standards. As a result of a recommendation of the UNRI Committee on September 12, 2013, the City Council approved another text amendment to the Zoning ordinance, which established parking standards specific to the UNRI Overlay area, including a limitation on the number of vehicles which may be parked or stored, screening requirements, and a parking area construction material requirement.

Council Member Blackburn said that in 2012, the sitting City Council approved an ordinance that allowed four-unrelated individuals to live together in homes in the University neighborhood. She said that the ordinance passed in spite of overwhelming opposition by the area's longtime residents and other members of the community. Council Member Blackburn said that, as a result of that ordinance, the University neighborhood has become a rental magnet. The ordinance also sparked a lawsuit against the City, which has cost the taxpayers more than \$20,000. Council Member Blackburn said that she has met separately with resident homeowners and landlords on numerous occasions over the past three months, and they have come to realize that they share many of the same goals, such as creating a safe neighborhood, maintaining home values, and providing a sense of community. Additionally, a panel has been meeting over the past year to develop recommendations to address the University neighborhood's most pressing problems. Council Member Blackburn made a motion to initiate a text amendment to restore the occupancy within the UNRI Overlay to three unrelated people by deleting the provision to allow four-unrelated people to occupy a dwelling. Council Member Smiley seconded the motion.

Council Member Smith asked if the City Council was in violation of the current pending lawsuit by discussing the four-unrelated amendment. Mr. Holec said that the City Council would not be violating the terms of the lawsuit because the discussion is a component of the legislative process that initially lead to the adoption of the amendment. Additionally, he



stated that the City Council always retains the ability to amend an ordinance as it deems appropriate.

Council Member Smith asked if the City would be accountable to reimburse those who filed the lawsuit if a majority of the City Council voted to repeal the four-unrelated amendment. Mr. Holec clarified that the lawsuit is separate from the legislative process; therefore, rescinding the amendment would not support any claim for reimbursement.

Mayor Pro-Tem Mercer said that he would support the motion because the four-unrelated amendment was passed against the recommendation of Planning and Zoning Commission, Historic Preservation Commission, Neighborhood Advisory Board, East Carolina University (ECU) and various neighborhood associations. Additionally, the policy was formed without any attempt to reach a consensus among all stakeholders. Mayor Pro-Tem Mercer said that undoing poor policy and being responsive to citizens is the first step to fixing the problem.

Council Member Croskery stated that the University neighborhood holds sentimental value to him because he lived there during his medical school residency. He said that his preferred course of action would be to place a moratorium on further increases in unrelated renters, but according to Mr. Holec, State statute does not allow the City Council to impose a moratorium on residential use. Therefore, he expressed his support of Council Member Blackburn's motion because repealing the four-unrelated amendment now would allow the City Council to take the time in the future to properly rewrite the policy. Mr. Croskery said that the current permitting for four-unrelated people lacks an appropriate level of enforceability because it does not define what constitutes a bedroom, nor does it provide for extra bathrooms. He said that the City Council should consider permit fees or special licenses for permitted properties because they require extra inspection and may also require additional code enforcement.

Council Member Smith asked if the UNRI Overlay would remain in place if the four-unrelated language were repealed. Mr. Holec said that the UNRI Overlay and the parking provision would remain in place unless a subsequent amendment is made.

Council Member Smith asked how the passing of this motion would affect the homes that were already approved to house four-unrelated individuals. Mr. Holec said that properties which have already been approved would typically be grandfathered, although there is a possibility of amortization.

Council Member Smith said that it would be unwise to repeal the four-unrelated amendment without first proposing a solution. She pointed out that since the implementation of the UNRI Overlay, she has seen a positive change in the University neighborhood regarding parking and trash. Additionally, there is evidence that crime has not increased in the University neighborhood due to the UNRI Overlay. She stated that she will not vote for the motion until someone has a solution to replace the current policy that is in place.



Mayor Thomas said that he used to live in the University neighborhood, and during that time, the majority of the neighborhood's residents were renters. He pointed out that the home he lived in eventually became single-family, because its owners took pride in it. Mayor Thomas said that the real threat is not how many residents live in a home, but is about how well code enforcement is applied.

Council Member Glover said that the UNRI Overlay was perhaps the best thing that was put in place because of its restrictive codes in the area. She pointed out that the City has done so much for the University neighborhood throughout the years. She said that a certain set of people will never be satisfied. Council Member Glover said that the City has gone above and beyond for the University neighborhood while other communities throughout the City have suffered.

Mayor Thomas said that the recommendation from the citizens to examine the UNRI Overlay over a 12-month period would be a logical step for the City Council to take. He said that a rush to change the policy will push the City farther away from neighborhood improvement.

Council Member Smith made a motion to table the matter and allow the four-unrelated amendment to remain in place for 12 months, after which, the City Council can review the policy and make any necessary changes. Council Member Glover seconded the motion.

Council Member Smiley stated that he is strongly opposed to delaying review of the policy. He expressed the importance of discussing the UNRI Overlay and the four-unrelated amendment in the immediate future, and said that change will never be able to take place if the City Council delays addressing the policy.

Council Member Smith pointed out that review of the policy has already been delayed, so the City Council should allow one more year to gauge its effectiveness. She said that repealing the UNRI Overlay and the four-unrelated amendment will halt progress in its tracks and undo the positive work that has taken place over the last few years.

There being no further discussion, the motion to table discussion about the policy for one year, followed by an evaluation of the results failed by a 2 to 4 vote. Council Members Smith and Glover cast votes in favor of the motion.

On the original motion to initiate a zoning text amendment which restores occupancy to three unrelated persons by deleting language that permits four unrelated persons to occupy a dwelling, the motion passed by a 4 to 2 vote. Council Members Smith and Glover cast the dissenting votes.

Council Member Blackburn made a motion to initiate a zoning text amendment which utilizes amortization to eliminate non-conforming uses resulting from permits issued which allow occupancy of four unrelated persons so that these permits expire on July 31, 2015. Mayor Pro-Tem Mercer seconded the motion.



Mayor Pro-Tem Mercer said that grandfathering is a valuable practice and is applicable in many situations, but he expressed his reluctance to apply it to the permitted homes in the University neighborhood because the four-unrelated amendment was passed based on poor policy. He stated further that since the City is unable to apply a moratorium to residential purposes, amortization is the best solution.

Mayor Thomas asked about the legal footing of amortization. Mr. Holec said that amortization is a legal method accepted by North Carolina courts to address non-conforming uses and is not considered as a taking. He stated further that amortization is valid as long as a reasonable period of time is allowed for the amortization and the owner is left with a property that has practical use and a reasonable value. Mr. Holec said that the economic impact on the owner and whether the non-conforming use is a threat to surrounding properties are balanced. He stated that allowing at least one full lease term seems to be reasonable, particularly if the owner is left with a practical use of the property.

Council Member Glover pointed out that the amortization could potentially cost the City more money because, in addition to the lawsuits filed against the City because of the UNRI Overlay, the landlords who would be affected by the amortization will be able to sue the City, as well. She said that amortization shows a lack of compassion for the landlords who have done their due diligence to abide by City guidelines and invest in their properties to allow accommodation for four-unrelated renters.

Mayor Thomas said that the amortization will create financial harm and will result in lawsuits. He stated further that 18 months is not sufficient time to recoup an investment, and pointed out that the landlords who have already invested in permitting have larger loans on their properties with what will become less income if the number of renters is lowered. Mayor Thomas stated that amortization would be a risky move that will not only cost the City financially, but will also cost its reputation for stability.

Council Member Smiley stated that the City must decide under what circumstances more than three unrelated people will be allowed to live together, because the standards that were chosen are flawed. He said that it is unfair to allow houses in certain areas to be more competitive than others. Mr. Smiley pointed out that amortization will stimulate conversation to work towards a better solution.

Council Member Croskery said that investors can still apply to be grandfathered in during the time that the City Council discusses changes to the standards. He expressed the importance of finding a solution before the next election.

Mayor Thomas asked if the approval of the motion bars the ability to apply for a permit. Mr. Holec said that the motion would not bar permit application, and those who wish to apply can apply up to the time in which City Council adopts an actual text amendment.

The motion to initiate a zoning text amendment which utilizes amortization to eliminate non-conforming uses resulting from permits issued which allow occupancy of four Item # 1



unrelated persons so that these permits expire on July 31, 2015 failed by a 3 to 4 vote. Council Members Blackburn, Smiley and Mercer cast the votes in favor of the motion, resulting in a 3 to 3 tie. Mayor Thomas cast the deciding vote in opposition to the motion.

Council Member Smith made a motion to initiate a zoning text amendment which rescinds both the zoning text and the zoning map amendments which created the University Neighborhood Revitalization Initiative Overlay District. Council Member Glover seconded the motion.

Mr. Holec clarified that the UNRI Overlay district is reflected both in text and a zoning map; therefore an amendment relating to it can be part of a text amendment, a zoning map amendment, or both. Council Member Smith stated that her motion refers to both in order to allow a clean slate for a new proposal.

Council Member Smiley offered a friendly amendment to retain the parking policy in the UNRI Overlay district. Council Member Smith declined to accept the friendly amendment. Mayor Pro-Tem Mercer asked what removing the UNRI Overlay will entail. Mr. Holec stated that if the UNRI Overlay is rescinded, the portions tied to it and contained in zoning text will be removed unless tied to another existing zoning district. He said that examples of these portions are the four-unrelated amendment and the improved parking area on private property. However, the parking regulation on the streets would remain intact because it is not attached to the zoning text.

Mayor Pro-Tem Mercer asked what options are available in order to maintain private parking standards if the UNRI Overlay is removed. Mr. Flood said that if City Council removed the UNRI Overlay district and zoning map, there would be nothing to tie the parking standards to. Therefore, City Council would need to establish a different district or attach the parking standards to a different existing district.

The motion to initiate a zoning text amendment which rescinds both the zoning text and the zoning map amendments which created the University Neighborhood Revitalization Initiative Overlay District passed by a 4 to 2 vote. Council Members Smiley and Croskery cast the dissenting votes.

Council Member Blackburn made a motion to accept the final report of the University Neighborhood Revitalization Committee and its recommendations in full. Council Member Croskery seconded the motion, which passed by unanimous vote.

### **EXCEPTION TO THE EMERGENCY AND ADVERSE WEATHER PAY POLICY**

City Manager Lipscomb stated that at the February 10, 2014, City Council meeting, City Council expressed a willingness to grant an exception to the Emergency and Adverse Weather Pay Policy. She mentioned that when the City offices closed down recently due to adverse weather, the employees were not informed that they must use four hours of accrued vacation leave for one of the days. As a result, City Manager Lipscomb requested # 1



that City Council approve an exception to the Emergency and Adverse Weather Pay Policy, rather than mandating that the employees use accrued vacation leave.

Council Member Smiley made a motion to approve the exception to the pay policy. Council Member Croskery seconded the motion, which passed by unanimous vote.

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**COMMENTS FROM THE MAYOR AND CITY COUNCIL**

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The Mayor, Mayor Pro-Tem and Council Members made general comments about past and future events.

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**CITY MANAGER'S REPORT**

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City Manager Lipscomb reminded the City Council about the discussion to invite a representative from ElectriCities to a City Council meeting to discuss the Duke Energy progress to purchase. She said that she spoke with the executive director of ElectriCities, Mr. Graham Edwards, who said that he would be able to attend the Monday, February 24, 2014 City Council meeting. Additionally, City Manager Lipscomb said that Mr. Edwards is available to make a presentation on February 27, 2014. She recommended that the City Council meet with Mr. Edwards on February 24<sup>th</sup> because it is a regular City Council meeting date. City Manager Lipscomb said that Mr. Edwards can discuss general items; however, he cannot discuss in a public session anything specific regarding the offer from Duke Power. She added that Mr. Graham could give a public briefing with general information, followed by an executive session to discuss the details of the deal with staff and the City Council.

City Manager Lipscomb mentioned that she was elected to serve on the Board of Directors for the City and County Managers Association.

Public Works Director Kevin Mulligan addressed the issue of recent snow and ice in Greenville. He commended the City's response to the snow storm, and said that he is proud of the customer service provided to the community by the Public Works Department.

Council Member Blackburn pointed out that reflectors and reflective paint on the roads in the River Hills subdivision have been damaged by the snow plows. She asked if that was simply an occupational hazard. Mr. Mulligan said that minor damage to reflectors is to be expected following a snow storm because the snow plows scrape the anything on the street as they remove ice and snow.

City Manager Lipscomb said that the total amount spent on overtime during the first snow storm for essential City employees totaled approximately \$78,000.



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**ADJOURNMENT**

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Council Member Croskery moved to adjourn the meeting, seconded by Council Member Smith. There being no further discussion, the motion passed by unanimous vote and Mayor Thomas adjourned the meeting at 11:41 p.m.

Prepared By:  
Sara Ward, Clerical Assistant  
City Clerk's Office

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk



PROPOSED MINUTES  
MEETING OF THE CITY COUNCIL  
CITY OF GREENVILLE, NORTH CAROLINA  
MONDAY, FEBRUARY 24, 2014

A regular meeting of the Greenville City Council was held on Monday, February 24, 2014, in the Council Chambers, located on the third floor at City Hall, with Mayor Allen M. Thomas presiding. Mayor Thomas called the meeting to order at 6:00 pm. Council Member Blackburn gave the invocation, followed by the Pledge of Allegiance.

Those Present:

Mayor Allen M. Thomas, Mayor Pro-Tem Calvin Mercer, Council Member Kandie Smith, Council Member Rose Glover, Council Member Marion Blackburn, Council Member Rick Smiley, and Council Member Richard Croskery

Those Absent:

None

Also Present:

City Manager Barbara Lipscomb, City Attorney David A. Holec, and City Clerk Carol L. Barwick

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**APPROVAL OF THE AGENDA**

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Motion was made by Council Member Croskery to approve the agenda, Council Member Smith seconded and it carried unanimously.

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**PUBLIC COMMENT PERIOD**

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Mayor Thomas opened the Public Comment Period at 6:10 p.m. and explained procedures to be followed by anyone who wished to speak. There being no one present who wished to address the City Council, Mayor Thomas declared the Public Comment Period closed at 6:11 p.m.

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**NEW BUSINESS**

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## Presentation on Electricities

Graham Edwards, Chief Executive Officer for Electricities, gave a brief history on the formation of Electricities. The North Carolina Eastern Municipal Power Agency was established in the late 1970's with the original intent of buying into nuclear power plants. Regulations brought on by the Three Mile Island incident resulted in the construction of 1 nuclear unit for \$4 billion, rather than the originally anticipated 4 nuclear units at \$1 billion. Currently, there is an outstanding debt of \$1.9 billion. Duke Progress has approached the Power Agency regarding the potential sale of generation assets. Mr. Edwards advised the City Council that the details could not be disclosed in a public meeting and would have to be shared in a closed session.

Mayor Thomas asked if there are similar power agencies in other communities.

Mr. Edwards said that there are other similar agencies across the country with the majority having been formed in the late 1970's - early 1980's.

Council Member Smiley asked what type of action would be necessary from municipalities to approve transactions regarding the Power Agency.

Mr. Edwards said that in order to divest of the assets, all the cities would have to be in unanimous agreement.

Council Member Blackburn asked what the original intent had been for entering into this partnership.

Mr. Edwards said that the original purpose was twofold: to ensure a reliable power supply and to control costs.

Council Member Smiley asked who operates the plants.

Mr. Edwards said that the Power Agency owns between 16-18% in Brunswick Nuclear Station, Shearon Harris Nuclear Station, and two coal-fire facilities, the Roxboro Steam Plant and the Mayo Plant. They are all operated by Duke Progress, with the Power Agency paying for its share of the cost and receiving its share of the energy out of those units.

Council Member Smiley asked if there would be a change in the operation of the plants if Duke Progress were to take full ownership.

Mr. Edwards said that Duke Progress would continue to be responsible for the operations of the nuclear plants and coal-fire facilities.



Council Member Smith asked if this potential transaction would impact the staffing at Electricities.

Mr. Edwards stated that the point would have to be examined after the transaction.

Council Member Smith expressed her concern about the rates and stated that the City Council would be examining the best options for all 32 cities.

Mr. Edwards reminded the City Council that the possible transaction is only for the generation assets.

Mayor Thomas stated that this is a proposal that will require approval from all 32 municipalities.

Mr. Edwards said that Electricities intends to meet with all 32 cities to deliver presentations similar to the one that will be presented to the City of Greenville's City Council.

Council Member Blackburn asked if the negotiations are to sell only Shearon Harris, or all of the plants and facilities.

Mr. Edwards said that the deal would apply to all of the generation assets.

Council Member Blackburn asked if there would be any changes to Electricities as far as its role as a power advocacy organization for the small communities of eastern North Carolina.

Mr. Edwards said that there would not be any changes in that regard.

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**CLOSED SESSION**

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Council Member Smith moved to enter closed session in accordance with G.S. §143-318.11(a)(1) to prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, said law rendering the information as privileged or confidential being G.S. §159B-38. Council Member Blackburn seconded the motion, which passed by unanimous vote.

Mayor Thomas declared the City Council in closed session at 6:26 pm and called a brief recess to allow Council Members time to relocate to Conference Room 337.



Upon conclusion of closed session discussion, motion was made by Council Member Blackburn and seconded by Council Member Croskery to return to open session. Motion was approved unanimously, and Mayor Thomas returned the City Council to open session at 7:40 pm.

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**ADJOURNMENT**

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Motion was made by Council Member Croskery and seconded by Council Member Blackburn to adjourn the meeting. Motion carried unanimously and Mayor Thomas declared the meeting adjourned at 7:41 p.m.

Prepared By:  
Valerie Paul, Administrative Assistant  
City Clerk's Office

Respectfully submitted,

Carol L. Barwick, CMC  
City Clerk



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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**Title of Item:** Resolution amending Article VII, Section 2.0 Holidays of the Personnel Policies

**Explanation:** **Abstract:** Upon adoption of the attached resolution, the Personnel Policies will be amended to reflect the addition of a twelfth paid employee holiday, beginning in 2014, which will be scheduled at the City Manager's discretion.

**Explanation:** Currently, the City provides eleven paid holidays to employees. This used to be in line with the State of North Carolina and other local governments. However, beginning in 2012, the State of North Carolina added a twelfth holiday, a third day at Christmas, and many local governments have done the same. This includes Pitt County, Rocky Mount, Wilson, Wilmington, Roanoke Rapids, and Tarboro.

**Fiscal Note:** No direct costs.

**Recommendation:** Approve the resolution which adopts the proposed amendment to the Personnel Policies.

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Attachments / click to download

[2014\\_Resolution\\_amending\\_paid\\_holidays\\_978099](#)

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

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

Section 1. That Article VII, Section 2.0 Holidays of the Personnel Policies is hereby amended by rewriting said section so that it will read as follows:

The following and such other days as the City Council may designate are holidays with pay for all regular, full-time employees of the City:

New Year's Day  
Martin Luther King, Jr. Day  
Good Friday  
Memorial Day  
Independence Day  
Labor Day  
Veterans Day  
Thanksgiving Day  
Friday after Thanksgiving Day  
Christmas Eve  
Christmas Day  
One (1) "Floating Holiday" as designated by the City Manager

When a holiday falls on a Saturday, the preceding Friday will be observed as the holiday and when a holiday falls on a Sunday, the following Monday will be observed as the holiday, except that the City Manager may designate that the holiday will be observed on another day in order to have uniformity with other governmental units for the day of holiday observance. An employee must work or be on paid leave the day before and the day after a holiday to be entitled to pay for that holiday.

The City Manager will issue an annual memo designating the specific dates that holidays will be observed.

Section 2. All inconsistent provisions of former resolutions, ordinances, or policies are hereby appealed.

Section 3. This resolution shall be effective upon adoption.

ADOPTED this the 5th day of May, 2014.

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Allen M. Thomas, Mayor

ATTEST:

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Carol L. Barwick, City Clerk



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Approval of changes to the Housing Division Policy and Procedure Manual

**Explanation:** **Abstract:** Staff has identified several necessary updates to the Housing Division's Policy and Procedure Manual. Many of these policies and procedures have changed or they are outdated and need to be revised.

**Explanation:** The Housing Division operates under the guidelines of its Policy and Procedure Manual. The Manual serves as a road map for all of the programs, activities, and processes that the Housing Division implements throughout the year. Staff has identified several necessary updates. They are as follows:

1. Add West Greenville to the University Area Down Payment Assistance Program.
2. Increase the Urgent Repair Program funding cap to \$8,000.00 so that it will mirror the North Carolina Housing Finance Agency.
3. Increase the Emergency Repair Program cap to \$25,000.00.
4. Increase the Elderly Rehabilitation Program Area Median Income (AMI) percentage to 120% so that it will mirror our Down Payment Program.
5. Add a section which describes the Small Business Plan Competition and provides the guidelines for the program.
6. Add a section which describes the West Greenville Façade Improvement Grant and provides the guidelines for the program.

**Fiscal Note:** No direct cost to make changes to the Policy and Procedure Manual.

**Recommendation:** Staff recommends that the City Council approve the recommended changes to the Housing Division's Policy and Procedure Manual.

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 [Updated Housing Division Policy and Procedure Manual 978085](#)

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# City of Greenville

Community Development Department,  
Housing Division

## Policy and Procedure Manual



**Greenville**  
NORTH CAROLINA

COMMUNITY DEVELOPMENT

*Find yourself in good company*

Revised April 22, 2014  
Doc # 978085

Item # 3



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## ***Introduction:***

The City of Greenville Housing Division administers and monitors all projects funded by the Department of Housing and Urban Development using Community Development Block Grant (CDBG) and the Home Investment Partnership (HOME) Program. The Division also administers and monitors projects funded by the City developed to assist low-moderate income citizens. All programs offered have specific guidelines for their implementation as defined by the funding source. The purpose of this document is to discuss the guidelines of the programs as related to the funding source(s). A glossary is provided to better explain certain terms and abbreviations.

## ***Funding Sources:***

The City of Greenville Housing Division receives funding from several sources to conduct the various programs offered. These sources include the U.S. Department of Housing and Urban Development through the CDBG and HOME programs, City of Greenville special bonds and General Fund, the North Carolina Housing Finance Agency, and public/private institutions.

## ***General Program Policy:***

The general program policy is intended to set objectives for City sponsored housing and economic development programs that meet the national guidelines for eligible activities. The programs include:

1. Improving the current housing stock through owner occupied housing rehabilitation. The rehabilitation brings the home up to the minimum housing and building code standards, makes homes handicapped accessible where needed, and corrects health and safety issues associated with the property. The secondary purpose of the rehabilitation program is to improve the overall appearance of the property, thus increasing neighborhood pride.
2. Removal of slum and blighted conditions to preserve neighborhoods.
3. Assist first time homebuyers by providing downpayment and closing costs assistance or principal deduction assistance in the form of no interest loans or deferred loans.
4. Provide affordable housing opportunities in the form of new construction or rehabilitation of existing homes that are sold to first time homebuyers.

5. Assistance to area nonprofit agencies engaged in the production of affordable housing opportunities, assisting special needs populations, at risk youth, homebuyer education and job training programs.
6. Provide program administration to ensure compliance with federal, state, and local regulations.

The Housing Division staff has developed the procedures necessary to carry out these objectives. In all cases, the information requested is the minimum needed and required under federal, state, and local guidelines to conduct the programs.

## **Chapter I. Entitlement Responsibilities**

As an entitlement community (as defined under 24 CFR 570 Subpart D), the City of Greenville is required to comply with and submit specific plans to ensure citizen involvement and compliance with program guidelines. Such responsibilities include:

1. **Citizen Participation Plan** - A grantee is required to develop and follow a detailed citizen participation plan which: 1) provides for and encourages citizen participation, with particular emphasis on participation by persons of low-moderate income, 2) provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed and actual use of funds, 3) provides for technical assistance to groups representing persons of low-moderate income that request such assistance in developing proposals, 4) provides for public hearings to obtain citizens views and to respond to proposals and questions at all stages of the community development process, including at least the development of needs, their review of proposed activities, and review of program performance, 5) provide timely written answers to written complaints and grievances, and if applicable, identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate (see City of Greenville Citizen Participation Plan).
2. **Consolidated Plan/Action Plan** - As an entitlement, the City of Greenville is required to submit both a five-year Consolidated Plan and an annual Action Plan. The Consolidated Plan is a five-year plan that requires the identification of the jurisdiction's housing and community development needs and a devised long-term strategy for meeting those needs. A tool to ensure that the needs identified within the Consolidated Plan are being addressed is the Action Plan. Each year an annual plan is developed with input from the community and identifies projects that are carried out with the CDBG funds received for that fiscal year. Projects and activities in the Annual Plan should address the needs noted in the Consolidated Plan.
3. **Consolidated Annual Performance and Evaluation Report (CAPER)** - The CAPER is an end of year report that gives a detailed description of the activities funded during that program year. The report identifies how much money was budgeted for each project, how much money was actually spent, the locations of the activities, how much was accomplished, and the number of persons that benefited from the activities, including the Minority/Women Business Enterprise report.
4. **Assurances and Compliances** - Along with general requirements, the City of Greenville must also meet regulatory requirements from other federal and state agencies such as:

- The Fair Housing Act
- Section 109
- Davis-Bacon Labor Standards (Department of Labor)
- Environmental Review Standards (EPA, Fish and Wildlife Service, NC-DENR, State Historic Preservation Office)
- National Flood Insurance Program (FEMA)
- Real Estate Settlement Procedures Act (RESPA)
- Acquisition, demolition and replacement of housing
- Anti-displacement and relocation
- Federal and State Regulations for Procurement Services
- Standards for Lead Paint Abatement (EPA)
- Use of disbarred, suspended or ineligible contractor or Subrecipients
- Uniform administrative requirements and cost principles
- Executive Order 12372
- Eligibility restrictions for certain resident aliens
- Architectural Barriers Act and the Americans with Disabilities Act
- Historic Preservation Act (US Department of Interior)

## **Chapter II. Community Development Block Grant (CDBG)**

### **A. Housing Rehabilitation Assistance**

#### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the CDBG Housing Rehabilitation Program offered by the City of Greenville.

The City of Greenville provides housing rehabilitation assistance to homeowners located in designated target areas within the corporate limits that meet the eligibility requirements set forth in this policy and in accordance with the Community Development Block Grant (CDBG) program regulations. Assistance with CDBG funds is a combination of a deferred payment loan (grant), a no interest loan, or a low interest loan. All loans are amortized for fifteen (15) years for the rehabilitation costs. The household income will determine the type of loan or grant/loan combination. A financial plan detailing the amount of assistance available, terms, income requirements etc., is covered later in the policy. The Housing Division maintains a waiting list of persons requesting assistance. Length of time on the waiting list will not necessarily be the only factor determining when assistance will be provided. Each structure is evaluated and prioritized based on condition. Individuals on the waiting list are assisted as funds are available and priority is given to the elderly and to structures in the most severe condition. Being placed on the waiting list does not determine eligibility for the program.

After the rehabilitation is completed, the property must be maintained as the principal residence of the household and they must retain title to the property. The property owner must also complete an annual survey, as supplied by the Housing Division, maintain homeowner's insurance, keep the property taxes current, and maintain the property. Failure to honor these provisions is a violation of the program agreement.

#### **Eligibility:**

There are a number of criteria governing eligibility for rehabilitation assistance by the City of Greenville. In general these criteria pertain to the applicant and the property to be improved. The Housing Division will not process an application for rehabilitation assistance until a preliminary determination is made that all applicable eligibility requirements have been met. It should be noted that eligibility does not necessarily ensure the receipt of financial assistance.

#### **Eligible Applicants:**

To be eligible for housing rehabilitation assistance:



1. An applicant must hold **clear title** to the property. If the property is heir property, all heirs must be identified and contacted. Life Estates are **not** eligible.
2. An applicant must occupy the property as a primary residence.
3. An applicant must have no credit issues that will encumber the property.
4. An applicant must be low-moderate income\* based on the area median family income provided by HUD; see appendix for current income chart.

*\*Income as defined by HUD CDBG Regulations, Subpart A 570.3: Annual income as reported under the US Census long form for the most recent available decennial.*

5. Property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigations involving the applicant.
6. Applicant/Property must not have received any rehabilitation assistance from the City of Greenville within the past fifteen (15) years.

### **Eligible Properties:**

To be eligible for assistance, the property must meet the following conditions:

1. The property must be located within areas identified in the Consolidated Plan.
2. The property must be inspected and found to be in substandard condition such that repair is necessary to meet the City's minimum housing code as determined by a City of Greenville Housing Rehabilitation Specialist.
3. The structure must be suitable for rehabilitation as determined by the Housing Rehabilitation Specialist and not have received rehabilitation assistance from the City of Greenville within the past fifteen (15) years.
4. The sum of the City of Greenville loan for rehabilitation and any existing liens must not exceed 90% of the estimated appraised value of the property after rehabilitation.
5. The property must not be located within the right-of-way of any future street or highway, or other public improvements anticipated within the foreseeable future, as determined by the Department of Public Works.

6. The property must not be located within a flood hazard area as determined by the City Engineering Division.
7. The property must not be in violation of the adopted standards for land use and building density, as determined by the City of Greenville Zoning Administrator.
8. The property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigations involving the structure.
9. A maximum of one current lien attached to the property. The City will not take a position less than second.

**Application Requirements:**

1. Identification of all household members.
  - Picture identification
  - Copy of Social Security Cards
  - If student, verification of attendance
2. Verification of income/assets - all household income must be verified. Submission of one or more of the following will be required for all members of the household:
  - IRS 1040 tax forms from previous three years for self employed
  - W-2 from previous year
  - Income statement from retirement, pension and social security
  - Income verification form from employer or copies of last three pay stubs
3. Credit Report - by signing homeowner's requirement form, the property owner(s) has/have given the City of Greenville the right to request a credit report from the Credit Bureau.
4. Verification of ownership to include the following:
  - Copy of deed or deed of trust
  - Verification of current city/county tax payment
  - Verification of mortgage being current
5. Copy of current homeowner's insurance policy.
6. Name and address of all heirs if heir property. All heirs must be notified in writing and agree to the terms of the rehabilitation. Life Estates are not eligible.

**Rehabilitation Loan:**

The amount of assistance available for the rehabilitation of an owner occupied home varies from each circumstance. Changes in assistance amounts also vary from year to year. In some situations, the amount of the contract may increase due to unforeseen situations requiring additional rehabilitation work. These situations, which are referred to as change orders, are avoided unless absolutely essential to the completion of the rehabilitation.

**A. Assistance Amount**

Deferred payment loans (grants) are available for homeowners with incomes up to 50% of the area median income as adjusted by family size in an amount up to \$60,000.00. This amount does not include the cost for lead-based paint abatement and the rehabilitation of the home. For families with incomes from 51% to 80% of the median area income, the combination of a deferred payment loan and a no interest loan is available. The amount of payback is determined as follows:

<u>% of Median Income</u>	<u>Amount of Payback</u>
51% - 55%	15%
56% - 60%	20%
61% - 65%	25%
66% - 70%	30%
71% - 75%	35%
76% - 80%	40%

The amount of assistance in some instances may exceed \$60,000.00 and will be reviewed on a case-by-case basis.

**B. Lien Type**

In all cases, the loan amounts will be amortized over a fifteen (15) year period.

**C. Loan Conditions**

1. If home is sold, transferred, or conveyed during the life of the Deed of Trust, the outstanding balance becomes due and payable based on the date of transfer.
2. If the owner dies during the life of the Deed of Trust, the heir(s) may pay the balance of the Deed of Trust or occupy the home as their principal residence (heir must be sole owner of the home) and assume the loan obligation, if their household income is less than

80% of median income, as well as the attached requirements that lie within these policies and procedures.

The occupant is required to provide the Community Development Department Housing Division with a copy of their current homeowner's insurance policy and complete an annual survey throughout the life of the Deed of Trust. Failure to do so will result in the default and repayment of the outstanding balance of loan.

3. City/County taxes are to remain current during the life of the rehabilitation loan.
4. The owner's mortgage must remain current throughout the life of the rehabilitation loan.
5. All applicants with pending legal action as a result of faulty or default repair work by a non-Housing Division approved contractor must reimburse the City from any proceeds received for the amount of housing rehabilitation cost.
6. Should a taking from a government entity arise prior to the expiration of the lien period, the Owner(s) is/are responsible for finding another home to purchase. The new home must be in compliance with the North Carolina Building Codes, and must be within the city limits of Greenville, NC. The remaining period of time on the lien will then be transferred to the new home until the fifteen (15) year period has expired.

Failure to comply with any of the above conditions may result in the default and repayment of your loan. Failure to pay as agreed will result in foreclosure, and notification of the default will be sent to the Credit Bureau.

### **Rehabilitation Procedures:**

The purpose of the rehabilitation procedures is to establish the steps necessary to assist the Community Development staff in completing rehabilitation projects in an efficient, economical, and timely manner.

### **Application Process:**

The applicant is referred to the Housing Administrator or designated staff person who conducts the following activities.

1. Provides program information to the applicant and discusses processing.
2. Prescreens applicant to determine eligibility including:
  - a. Location of property – is it within the city limits and target area

- b. Determination that household income does not exceed program limits
  - c. Screens for ownership, outstanding judgments, liens, current taxes, current mortgage, and sign a deed of trust, rehabilitation agreement, and promissory note
3. Complete program application.
  4. Request supporting documentation from the applicant:
    - a. Third-party verification of household income for all adult members (household members over 18 years of age and emancipated minors)
    - b. Credit information including the request of a credit report. As part of the application process applicant agrees to a credit check and to attend credit counseling if necessary. Services for credit counseling are provided free of charge and will be arranged after acceptance into the program.
    - c. Copy of deed or deed of trust to the property
    - d. Copy of a current city/county tax statement
    - e. Copy of current property/hazard insurance
    - f. Information on mortgage or other liens against the property
    - g. Copy of picture ID and Social Security card for all household members
  5. Community Development Planner will authorize the conduction of a title search on the property by an attorney that has been procured by the Housing Division.
  6. Staff will arrange for the Housing Rehabilitation Specialist(s) to conduct a complete detailed write-up, cost estimate for repairs and lead paint testing.

The work write-up will specify the various items of work needed to ensure that the home complies with property rehabilitation standards and the City's minimum housing code. The work write-up will also be the basis for the scope of work to be performed for lead paint abatement. All work write-ups and inspection reports are to be dated and should include the project name and all pertinent data. The work write-up shall constitute the basis for cost estimates, bids, and the determination of completion of the rehabilitation. The Rehabilitation Specialist, prior to accepting bids, will prepare a cost estimate. The work write-up may be revised prior to bids by mutual consent of the property owner and the Housing Administrator or designated staff or after the solicitation of bids by mutual consent of the property owner, contractor and the Housing Administrator or designated staff.

Contractors who have picked up a bid packet, which includes a copy of the detailed work write-up, or any contractor that is interested in bidding must be eligible and must attend the scheduled pre-bid meeting. No bids will be accepted from ineligible contractors or

contractors not in attendance at the pre-bid. A project checklist will cover the following topics:

- a. Work write-up
- b. Access to the project site
- c. Special conditions or needs of the owner or contractor
- d. Contractor and owner responsibilities
- e. Community development rehabilitation handbook, a copy of which will be given to each eligible contractor

**Bid Procedures:**

The cost estimate shall be used in determining whether the bids received are fair and reasonable. The acceptable bid must be within 15% (high or low) of the Housing Rehabilitation Specialist's cost estimate. The Community Development staff and the homeowner must approve the bid. All bidders will be notified of the bid award.

Bids will be obtained only through a formal, competitive process with awards going to the lowest, most responsible and available bidder. However, if the lowest qualified bidder has the maximum number of jobs allowed, which is two (2), then the next lowest bidder may be considered and awarded the job(s) in order to facilitate timeliness in the program. The City of Greenville reserves the right to limit the number of contracts awarded to any one contractor based on past performance. A \$1,500.00 bond will be held for contractors participating in Community Development housing rehabilitation programs. Liquidated damages in the amount of \$100.00 per day will be assessed on jobs that exceed the permitted time as specified within the contract and change orders.

**Construction:**

All rehabilitation work shall be performed in accordance with the City of Greenville's General Specifications for Rehabilitation, the work write-up, duly authorized change orders, and State and Local building codes as applicable.

During construction, the Rehabilitation Specialist will make daily visits to the project site to monitor the progress of the project and make inspections to ensure compliance with contract work specifications. The City Inspections Division, and/or the Community Development Housing Rehabilitation Specialist, will inspect periodically to ensure compliance with the State and City Building Codes. The contractor is required to ensure that all permits (building, electrical, plumbing, and mechanical) are acquired prior to construction. The Housing Rehabilitation Specialist shall ensure that the contractor acquires all necessary permits and copies are maintained in the files.

Changes to the contracted work may become necessary during construction and will be negotiated by the Housing Division and approved in accordance with program policies. Owners will be consulted concerning the changes and approve all change orders. The contractor shall make no changes in the work, nor seek payment for changed or additional work, without prior issuance of an approved written change order.

The rehabilitation work shall be performed within an established time frame acceptable to both the owner and the Housing Division.

Upon completion of the work, the Rehabilitation Specialist and/or the City Inspections Division will perform a final inspection to insure that all work complies with contract documents and the Building Codes. The owner should be present during the inspection and/or be consulted prior to contract closeout.

The contractor guarantees all work for a period of **one (1) year** from completion of the contract. During this warranty period, complaints concerning the work shall be referred, in writing, to the City of Greenville, Housing Division, P.O. Box 7207, Greenville, North Carolina 27835-7207. The complaint will be filed and a Housing Rehabilitation Specialist will inspect the concerns. If the Housing Rehabilitation Specialist determines the concerns to be the responsibility of the contractor, the contractor will be informed, in writing, of the need to correct the deficiencies. The warranty does not include normal wear, alterations or problems caused directly or indirectly by the homeowner.

It shall be the responsibility of the owner to maintain the property according to the Rehabilitation Standards and the Minimum Housing Code upon completion of rehabilitation. Failure to comply may result in the default and repayment of the loan.

**Invoicing:**

When portions of work are completed in accordance with the payment schedule identified in the Rehabilitation Specifications Manual, the contractor shall submit an invoice to Housing Division staff. The Rehabilitation Specialist will inspect the project to insure that the work is completed and acceptable. Before processing, the invoice will be signed by the Contractor, Owner, Rehabilitation Specialist, Planner, and the Housing Administrator. The invoice will be submitted to the Loan Administrator for Purchase Order payment. Before the release of the final check, the contractor shall submit any required lien waivers, pest control certificates or other warranties covered by the payment. The preferred payment schedule for the Rehabilitation Program is listed below:

	Payment Amount
1/3 of work completed	33%
2/3 completed	33%
100% complete	34%

Note: Because of HUD's requirement to use Program Income first, the payment percentage may vary.

**Reference Documents:**

The following documents are hereby incorporated by reference and made a part hereof:

1. General Specifications for Rehabilitation
2. City of Greenville Zoning Ordinance
3. City Code of the City of Greenville
4. Minimum Housing Code for the City of Greenville
5. Housing Choice Housing Quality Standards
6. North Carolina Residential Code of the North Carolina State Building Code Residential One and Two-family Dwelling
7. Energy Standards for the Energy Conservation and Housing Rehabilitation Incentive Program issued by the North Carolina Housing Finance Agency
8. The Community Development Block Grant Regulations at CFR, Part 70 issued by the Department of Housing and Urban Development

**Eligible Contractors:**

Only contractors approved by the Community Development Department shall perform work under this Program.

The Community Development Department shall maintain a listing of contractors for rehabilitation work. They also have the authority to remove any contractor from the listing who fails to comply with the following:



1. Liability and Workmen's Compensation (based on size of staff) insurance
2. Sufficient skill and experience (based on prior work)
3. Established credit with supply vendors or capable of establishing credit with supply vendors
4. Acceptable references as to satisfactory performance on similar projects

## ***B. Subrecipient Funding***

### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for Subrecipient Funding offered by the City of Greenville.

The City of Greenville can allocate up to 15% of the CDBG Entitlement Allocation to fund eligible nonprofit organizations to meet national objectives identified by HUD. The National Objectives are the removal of slum/blight conditions; services that benefit low-moderate income households, homeless or special needs populations and disadvantaged youth. The grant applications are reviewed once a year and go through a three-tier approval process. The Affordable Housing Loan Committee first reviews the request and makes a funding recommendation to City Council. City Council reviews the Committee's recommendation and may adopt or change the funding allocation. The Council's funding decision is then sent to HUD for their approval or denial. Nonprofits that receive CDBG funds must follow all applicable rules and regulations and will be monitored by the City of Greenville for compliance.

The funds are not given to the nonprofit as a lump sum payment. The funds are distributed on a reimbursement basis. It should be noted that these funds are for use as "gap funding". For projects that may require multiple funding sources, it is advised that all other means of support must have either been awarded or have pending applications prior to applying for CDBG funds. These funds must be spent or obligated within a twelve month window and cannot be used as seed money for a project.

For all grants involving repair or construction, City staff will supervise all work performed. Federal law covers these projects under the Davis-Bacon Act. The Davis-Bacon Act requires that prevailing wages be paid to contractors receiving Federal Funds. The City must monitor payrolls for compliance with the Department of Labor Employment Standards Administration, and other Federal and State standards as required.

**Eligible Applicants:**

For a nonprofit to be eligible for consideration for funding, they must meet the following guidelines:

1. Must be an IRS Certified 501(c)(3) in good standing
2. Must be certified by the State of North Carolina to raise funds in North Carolina and be a corporation in good standing
3. Must be in good standing with HUD
4. Must perform their services within the project area of the CDBG program or within the corporate limits of Greenville
5. Must perform services meeting National Objectives
6. Capacity to carry out the proposed project
7. Must have successfully passed their City of Greenville performance audit
8. Must have a current acceptable audit

**Eligible Projects:**

The projects of the nonprofit may be one or a combination of the following HUD defined eligible projects. **(Please note that this is not an all-inclusive list).**

1. Repairs to an Organizations Building including:
  - Lead Paint Testing and Abatement
  - Testing and Removal of Asbestos
  - A long-term lease required
2. Urgent Repair for Low to Moderate Income Households
3. Acquisition of Real Property for Affordable Housing
4. Rehabilitation of Real Property for Affordable Housing
5. Installation of Infrastructure for Affordable Housing

6. Demolition of Dilapidated Structures for Affordable Housing
7. Acquisition of Real Property for Facility
  - Location must provide services to Low/Moderate Income Households
8. Homeownership Counseling Low/Moderate Income Households (Greenville Residents)
9. Homeownership/Financial Education for Low/Moderate Income Households (Greenville Residents)
10. Employment Training for Low/Moderation Income Households (Greenville Residents)
11. After School Programs for “At Risk” Children from Low/Moderate Income Households

**Ineligible Projects:**

There are certain expenses or projects that nonprofits will seek funding for which are ineligible expenses for CDBG funds. *(Please note that this is not an all-inclusive list).*

1. Organization’s Administrative Cost
  - Salaries and Benefits
  - Rent, Utilities, Telephone
2. Political Activities
3. Income Payments to clients (i.e. food, clothing, rent, mortgage)
4. Acquisition of Property outside City of Greenville limits
5. Acquisition of Real Property for a Religious Facility or improvement to a religious facility or other projects that are for a religious nature or purpose
6. Any Organization or Service not benefiting Low/Moderate income households
7. Activities outside the City of Greenville corporate limits

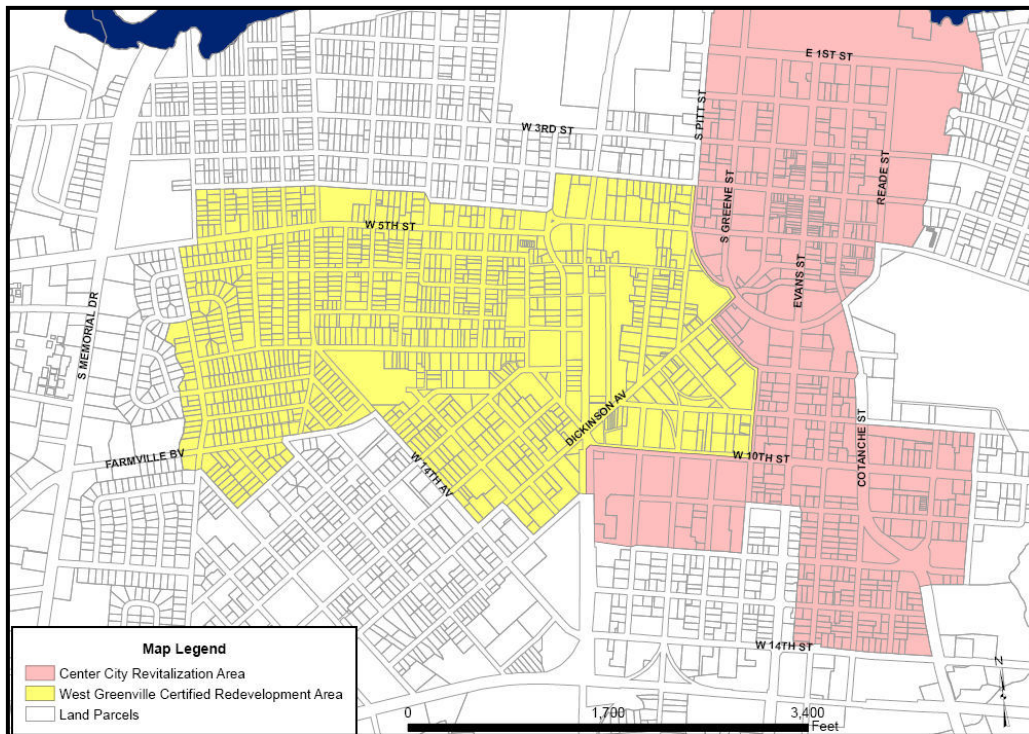
## C. Small Business Plan Competition

### 1.0 INTRODUCTION:

The priority placed on re-seeding Greenville’s redevelopment areas with home grown, prosperous commercial enterprises is made clear by the adopted Center City/West Greenville Revitalization Plan which includes broad goals of:

***“Increasing the economic competitiveness of the revitalization area” and “Repositioning the downtown as a vibrant activity center for the city and region”***

As such, the Greenville Redevelopment Commission has authorized the Business Plan Competition in order to provide an incentive to small business owners and other entrepreneurs to create or expand businesses within the Center City - West Greenville Redevelopment Areas (See map below). These guidelines will be used by the Greenville Redevelopment Commission and associated staff in evaluating submissions for the competition.



Map 1

Submissions will be accepted twice a year with due dates of July 1 and December 1. Awards will typically be made within ninety (90) days of submission. (See table in Section 6.1 for a typical grant timeline.) The availability of grant funds from year to year is based on continued

authorization of the program by the Redevelopment Commission and funding from the Greenville City Council.

## **2.0 PURPOSE**

The purpose of the Business Plan Competition is to provide an economic incentive to small business owners and other entrepreneurs both from within and without the redevelopment areas to create or expand small business enterprises within the bounds of the Center City - West Greenville Redevelopment Areas.

## **3.0 ELIGIBILITY**

3.1 Business plan submissions are limited to existing or start-up small businesses that are primarily located, or intend to locate within the boundaries of the Center City - West Greenville Redevelopment Areas.

3.2 Submitting entities must be a for-profit business whose tangible net worth is not in excess of \$7.5 million, and whose average net income after Federal income taxes (excluding any carry-over losses) for the preceding two (2) completed fiscal years is not in excess of \$2.5 million. Businesses must be registered with the North Carolina Secretary of State's Office.

**3.3 All proposals must meet State building code requirements as well as City of Greenville code requirements and must be in conformance with the future zoning requirements specified in the Center City – West Greenville Revitalization Plan.**

3.4 City/County taxes for any business or individual requesting grant funds cannot be delinquent. In cases where there are delinquent city/county taxes, the applicant(s) must attach a receipt to show ad valorem taxes are current or must attach a copy of the work-out agreement with the Pitt County Tax Collector's Office.

3.5 Examples of eligible uses of grant funding include:

- ✓ Working capital or operating funds
- ✓ Purchase of equipment, commercial use vehicles or machinery
- ✓ Improvements to owner occupied property
- ✓ Leasehold improvements
- ✓ Expansion of business services or products
- ✓ Other uses considered according to business plan

#### **4.0 FUNDING**

Provided that funding is available, up to four awards of \$15,000.00, or 10% of the total business investment with a cap of \$30,000.00 (whichever is greater) may be made at the sole discretion of the Redevelopment Commission in each grant cycle. In addition, applicants who propose creation of full-time jobs as part of their business plan may be eligible for additional funding in the amount of \$5,000.00 per full time job. To qualify for award, each full time job must be in the private, for-profit sector and must be filled with an employee working at least 35 hours a week and paid at least minimum wage. Verification of continued position employment will be required over the three-year compliance period for the grant. The maximum grant award remains at \$30,000.00 and may be attained through either a match of owner investment or the creation of jobs.

Typically, grant awards will be distributed equally between the Center City and West Greenville revitalization areas with as many as two (2) awards made to businesses in each area. Business Plan Competition Grant funds are distributed as a zero interest loan forgivable over a three (3) year period at one third of the award per year for each year the business operates primarily within the Center City - West Greenville Redevelopment Area and meets all other program criteria. Failure to comply with the program guidelines will result in efforts to recapture grant funding on a pro-rata basis.

#### **5.0 APPLICATION AND SELECTION**

- 5.1 It is mandatory that those considering entering a submission in the competition enroll in the three-session small business seminars provided free of charge by the Greenville office of the North Carolina Small Business and Technology Development Center (SBTDC) or similar business seminars offered by the Pitt Community College Small Business Center, SCORE, and Exceed prior to the submission deadline. Applicants should note that the Redevelopment Commission will take into consideration attendance at business seminars such as those described above as part of the “applicant experience” in the scoring criteria listed in section seven. A listing of organizations approved to provide free business counseling assistance is included in this application package as attachment “**D**”.
- 5.2 Business plan submissions must be completed in accordance with the business plan outline provided in this package and listed as attachment “**B**”.
- 5.3 Business plan submissions must be accompanied by the application, security documents and employment forms included in this package listed as attachment “**A**”. Each individual owner of 20% or more of the business must sign the application and associated documents.

- 5.4 Submitting entities will be required to provide profit/loss statements, federal income tax statements and other financial documents as necessary to demonstrate compliance with small business and other eligibility requirements.
- 5.5 Fully completed submissions turned in by the applicable deadline will receive an initial review by a selection subcommittee made up of City staff and Redevelopment Commission members. A voluntary informal interview with the selection committee is also offered at the submission stage. During this interview, selection committee members will share general comments about the application with the applicant. Following the initial application review, applicants will have additional time to make revisions before the Redevelopment Commission considers the applications and makes grant awards.
- 5.6 All submitting entities will receive notification via U.S. Mail as to their status. Applicants that are not selected for funding are required to wait a minimum of twelve (12) months from the date of the original submission before resubmitting the same or substantially similar business plan. (Applicants are eligible to submit business plan proposals for substantially different projects at any time.)

**6.0 DISBURSEMENT OF GRANT FUNDS**

- 6.1 Those submitting a winning business plan will be required to accept the grant award via the signing of a promissory note within thirty (30) days of award notification. Funds must start to be utilized for the purpose described in the business plan within six (6) months of grant acceptance. The three-year compliance period for this program begins with the date on which the funds are accepted.

**TYPICAL GRANT TIMELINE**

TIME	ACTIVITY	NOTES
July 1	Due Date	Complete business plan and application due
July 15	Informal Interviews	Comments returned to applicant
August 15	Final draft of business plan due	No late submissions accepted
September 7	Redevelopment Commission Meeting	Commission makes awards
October 7	Promissory note, Deed of Trust, and/or Unified Commercial Code signed	Applicant has 6 months from this date to request disbursement of funds and 3 years from this date to comply with terms of the program

- 6.2 Following the disbursement of funds, recipients will be required to certify each year on or near the anniversary of grant acceptance that they have attended quarterly post-award business counseling facilitated by an individual or organization that has been previously

approved by the Redevelopment Commission of Greenville and that the granted funds continue to be used in accordance with their business plan proposal. Those applicants who have received funding through the job creation category will also be required to certify that full time positions remain on the company's payroll in the created positions. The Redevelopment Commission will verify the required employment information via review of the business's NCUI-101 forms that are submitted quarterly to the North Carolina Employment Security Commission. This requirement remains in effect during the entire three-year compliance period.

- 6.3 Each year, on or about the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> anniversaries of grant award, grantees or their representative will be required to present a report to the Redevelopment Commission in which the grantee provides updated information regarding the use of grant funds, the status of the business enterprise, along with any other information that will help the Redevelopment Commission to establish that the grant funds are being used for the purpose that they were awarded. This report shall be made in person by the grantee or his/her representative at a regular meeting of the Redevelopment Commission.
- 6.4 The Redevelopment Commission of Greenville will not make awards to the same business enterprise within a thirty-six (36) month period.

## 7.0 SCORING

- 7.1 All business plans will be scored in accordance with the Business Plan Evaluation Criteria included in this package as attachment "C".
- 7.2 Other scoring factors that will be taken into consideration by the Redevelopment Commission include:
- ✧ **Cash flow** – Evidence that the business venture is or will bring in more revenue than expenditures at the end of an accounting period.
  - ✧ **Credit History** – Applicant/s should have demonstrated the responsible use of credit either as individuals or for their business ventures. Applicant/s should not have any active liens or judgments on their credit.
  - ✧ **Employees** - The number of full or part time, low and moderate income employees that the proposed business intends to hire. The income test for this purpose will include any employees whose total annual income in the previous tax year did not exceed 80% of the area median income.



- ✧ **Equity** - Level of equity brought by applicant/s to the project. Equity may include cash, real estate, equipment or inventory.
- ✧ **Experience** - Applicant's level of experience with the specific business type as well as other general employment, educational and management experience. Attendance at small business seminars such as those described in section 5.1 may be cited in place of or in addition to other formal education or business related experience.

## ***D. Facade Improvement Grant***

### **INTRODUCTION:**

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

Uptown Greenville, Inc. and the City of Greenville have developed the following guidelines to provide this coordinated approach. These guidelines should be followed by property owners, tenants, architects, and contractors involved in exterior improvements or rehabilitations to buildings in the downtown area. These guidelines will be used by the Facade Improvement grant Program Review committee in evaluating applications for grants. By following these guidelines, applicants can ensure that their projects can utilize available downtown rehabilitation incentives and will enhance the image of downtown as a special place to work, shop, and socialize.

### **PURPOSE**

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

- 1) renovate building facades in the Downtown Greenville Revitalization Program Area ("facade" is defined as "the face of a building; that is, the front, side or rear elevation of a building"; first priority should be given to the fronts of buildings);
- 2) encourage good design projects that capitalize on rehabilitation of the original fabric or design of existing properties; and
- 3) preserve the unique character of downtown Greenville.

## ELIGIBILITY

- 1) Any owner or tenant of a building within the described downtown Greenville Revitalization Program Area is eligible for the facade grant. Buildings that are solely used as a private dwelling are not eligible unless originally functioning as a commercial building and later converted to residential use.
- 2) Owners and tenants may request incentive grants separately; however, any tenant must have the owner's written permission attached to the application, and only one application per building is eligible for approval (subdivided buildings will be reviewed according to building code specifications).
- 3) All rehabilitation design proposals will: meet code requirements of the city of Greenville; meet design guidelines established by the Facade Improvement Design Committee (representatives of Uptown Greenville, the Greenville Historic Preservation Commission, and Greenville Area Preservation Association); and adhere to the U.S. Secretary of the Interior's Standards for Rehabilitation (see below for eligible and ineligible activities; the design guidelines and standards can be found at the end of this program description).
- 4) Any exterior renovation proposal - from entire facade rehabilitation to maintenance items, such as repainting or the replacement of building parts - is eligible for funding, but top priority will be given to projects that would make a highly visible contribution to the enhancement of downtown Greenville. Simple sign changes are not eligible.

Examples of projects eligible for funding include:

- a) cleaning of brick store fronts (chemical stripping, water wash, scraping);
- b) painting (the committee shall not issue decisions regarding the color of paint for buildings);
- c) repair/replacement of non-historic doors and/or windows;
- d) installation of approved awnings;
- e) repointing of brick;
- f) structural repairs;
- g) installation of appropriate signs as part of an overall project;
- h) authentic reconstruction and replacement of original architectural details; and
- i) removal of false fronts.

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

- a) sandblasting of exterior bricks, which causes them to deteriorate;
- b) removal of historic features; and

- c) roof repairs.

## **FUNDING**

Grants are given on a basis of reimbursement for each dollar total owner/tenant expenditure with a maximum participation on the part of the City of Greenville of \$2,500.00 per facade project.

## **PROCESS FOR RECEIVING GRANT**

- 1) Conference with coordinator of the grant program, who will give out application form if project is thought to be within project guidelines.
- 2) Owner/tenant completes application, including design plans or sketches (owner's permission necessary) and returns to program coordinator. The services of the State Historic Preservation Office (SHPO), including restoration consultations, are available and the applicant is encouraged to seek these services before an application is completed and designs are formulated. The office is located at 117 West Fifth Street, Greenville, North Carolina.
- 3) Applications are reviewed by the Design Committee in consultation with the SHPO staff as needed. The improvements must adhere to the Design Guidelines noted above and the standards of the Secretary of Interior. The committee will submit its recommendations to the City of Greenville for consideration.
- 4) A notification letter will be sent to applicants concerning the approval or denial of the application.
- 5) An agreement must be signed BEFORE any work begins. Parties to the agreement will be the applicant and the City of Greenville.
- 6) Upon project completion, copies of paid statements and canceled checks must be submitted to the City of Greenville to claim reimbursement.
- 7) The coordinator and SHPO staff (upon request) will inspect work completed and request checks to be issued for the amount of the grant or one-half the actual cost, whichever is less, provided the work is accomplished in accordance with the agreement.
- 8) The project must be completed within one year after the applicant has signed the grant agreement. Exemptions from this condition may be arranged with the project

coordinator BEFORE this deadline and work must be underway. A maximum of thirty days extension will be provided. No exceptions will be made.

## **DESIGN GUIDELINES**

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

- 1) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purposes.
- 2) The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.
- 3) All buildings, structures, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier appearance shall be discouraged.
- 4) Changes which may have taken place in the courses of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
- 5) Distinctive stylistic features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.
- 6) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplication of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures.
- 7) The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building material shall not be undertaken.
- 8) Every reasonable effort shall be made to protect and preserve archaeological resources affected by, or adjacent to, any project.

- 9) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, neighborhood or environment.
- 10) Whenever possible, new additions or alterations to structures shall be done in such a manner that if such additions were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

## **CONSTRUCTION METHODS AND MATERIALS**

- 1) New construction, additions, and remodeling of existing buildings should maintain established proportion and spacing of window openings.
- 2) The quality of building materials varies widely, and it is the quality of the finish materials and their application that determines compatibility. Use the highest quality facing materials possible. Materials that are compatible in quality, color, texture, finish, and dimension to those existing in the project area are encouraged.
- 3) Color should coordinate with neighboring buildings. The more intense hues of a color are discouraged. The use of more than one vivid color per building is discouraged. The use of colors that are disharmonious with other colors used on the building or found on the adjacent buildings is discouraged. Contrasting colors that accent architectural details and entrances are encouraged.
- 4) The retention and repair of existing cornices is strongly encouraged whenever possible. The re-creation of missing cornices should be done with care, using historic photographs as a guide.
- 5) Sign guidelines for the central business district have been developed to prevent visual clutter and to improve general visual quality. Within these guidelines, individuality and creativity are encouraged. Signs should relate to each other through quality, not necessarily through the use of uniform materials, lettering, or size. All signs are controlled by the City of Greenville's sign ordinance. Good signs have the following characteristics: legibility, clarity, attractiveness, durability, and good placement. Most buildings are designed with a defined sign space. The location of signs of appropriate size in these spaces is strongly encouraged. Plastic, illuminated signs are strongly discouraged. Consider attached, flat, or hanging signs lit with outside direct lighting. All signs should meet code requirements for materials, size, projection, etc. Hanging or projecting signs or hand-painted window signs of good quality are encouraged.

- 6) Awnings should be related to the shape and color of the building. First floor awnings should terminate no higher than one (1) foot below the second floor windows. Metal canopies are strongly discouraged, and their removal and replacement with fabric awnings are strongly encouraged. If installed or retained, they should be designed or treated in a manner that adds to the visual quality of the building. All awnings must meet code requirements for size, materials, projection, etc.

## **Chapter III. HOME Investment Partnership (HOME)**

### **A. Housing Rehabilitation Assistance**

#### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the CDBG Housing Rehabilitation Program offered by the City of Greenville.

The City of Greenville provides housing rehabilitation assistance to homeowners located in designated target areas within the corporate limits that meet the eligibility requirements set forth in this policy and in accordance with the Community Development Block Grant (CDBG) program regulations. Assistance with CDBG funds is a combination of a deferred payment loan (grant), a no interest loan, or a low interest loan. All loans are amortized for fifteen (15) years for the rehabilitation costs. The household income will determine the type of loan or grant/loan combination. A financial plan detailing the amount of assistance available, terms, income requirements etc., is covered later in the policy. The Housing Division maintains a waiting list of persons requesting assistance. Length of time on the waiting list will not necessarily be the only factor determining when assistance will be provided. Each structure is evaluated and prioritized based on condition. Individuals on the waiting list are assisted as funds are available and priority is given to the elderly and to structures in the most severe condition. Being placed on the waiting list does not determine eligibility for the program.

After the rehabilitation is completed, the property must be maintained as the principal residence of the household and they must retain title to the property. The property owner must also complete an annual survey, as supplied by the Housing Division, maintain homeowner's insurance, keep the property taxes current, and maintain the property. Failure to honor these provisions is a violation of the program agreement.

#### **Eligibility:**

There are a number of criteria governing eligibility for rehabilitation assistance by the City of Greenville. In general these criteria pertain to the applicant and the property to be improved. The Housing Division will not process an application for rehabilitation assistance until a preliminary determination is made that all applicable eligibility requirements have been met. It should be noted that eligibility does not necessarily ensure the receipt of financial assistance.

#### **Eligible Applicants:**

To be eligible for housing rehabilitation assistance:

1. An applicant must hold **clear title** to the property. If the property is heir property, all heirs must be identified and contacted. Life Estates are **not** eligible.
2. An applicant must occupy the property as a primary residence.
3. An applicant must have no credit issues that will encumber the property.
4. An applicant must be low-moderate income\* based on the area median family income provided by HUD; see appendix for current income chart.

*\*Income as defined by HUD CDBG Regulations, Subpart A 570.3: Annual income as reported under the US Census long form for the most recent available decennial.*

5. The property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigation's involving the applicant.
6. Applicant/Property must not have received any rehabilitation assistance from the City of Greenville within the past fifteen (15) years.

### **Eligible Properties:**

To be eligible for assistance, the property must meet the following conditions:

1. The property must be located within areas identified in the Consolidated Plan.
2. The property must be inspected and found to be in substandard condition such that repair is necessary to meet the City's minimum housing code as determined by a City of Greenville Housing Rehabilitation Specialist.
3. The structure must be suitable for rehabilitation as determined by the Housing Rehabilitation Specialist and not have received rehabilitation assistance from the City of Greenville within the past fifteen (15) years.
4. The sum of the City of Greenville loan for rehabilitation and any existing liens must not exceed 90% of the estimated appraised value of the property after rehabilitation.
5. The property must not be located within the right-of-way of any future street or highway, or other public improvements anticipated within the foreseeable future, as determined by the Department of Public Works.



6. The property must not be located within a flood hazard area as determined by the City Engineering Division.
7. The property must not be in violation of the adopted standards for land use and building density, as determined by the City of Greenville Zoning Administrator.
8. The property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigations involving the structure.
9. A maximum of one current lien attached to the property. The City will not take a position less than second.

**Application Requirements:**

1. Identification of all household members.
  - Picture identification
  - Copy of Social Security Cards
  - If student, verification of attendance
2. Verification of income/assets- all household income must be verified. Submission of one or more of the following will be required for all members of the household:
  - IRS 1040 tax forms from previous three years for self employed
  - W-2 from previous year
  - Income statement from retirement, pension and social security
  - Income verification form from employer or copies of last three pay stubs
3. Credit Report - by signing homeowners requirement form, the property owner(s) has/have given the City of Greenville the right to request a credit report from the Credit Bureau.
4. Verification of ownership to include the following:
  - Copy of deed or deed of trust
  - Verification of current city/county tax payment
  - Verification of mortgage being current
5. Copy of current homeowner's insurance policy.
6. Name and address of all heirs if heir property. All heirs must be notified in writing and agree to the terms of the rehabilitation. Life Estates are **not** eligible.

**Rehabilitation Loan:**

The amount of assistance available for the rehabilitation of an owner occupied home varies from each circumstance. Changes in assistance amounts also vary from year to year. In some situations, the amount of the contract may increase due to unforeseen situations requiring additional rehabilitation work. These situations, which are referred to as change orders, are avoided unless absolutely essential to the completion of the rehabilitation.

**A. Assistance Amount**

Deferred payment loans (grants) are available for homeowners with incomes up to 50% of the area median income as adjusted by family size in an amount up to \$60,000.00. This amount does not include the cost for lead-based paint abatement and the rehabilitation of the home. For families with incomes from 51% to 80% of the median area income, the combination of a deferred payment loan and a no interest loan is available. The amount of payback is determined as follows:

<u>% of Median Income</u>	<u>Amount of Payback</u>
51% - 55%	15%
56% - 60%	20%
61% - 65%	25%
66% - 70%	30%
71% - 75%	35%
76% - 80%	40%

The amount of assistance in some instances may exceed \$60,000.00 and will be reviewed on a case-by-case basis.

**B. Lien Type**

In all cases, the loan amounts will be amortized over a fifteen (15) year period.

**C. Loan Conditions**

1. If home is sold, transferred, or conveyed during the life of the Deed of Trust, the outstanding balance becomes due and payable based on the date of transfer.
2. If the owner dies during the life of the Deed of Trust, the heir(s) may pay the balance of the Deed of Trust or occupy the home as their principal residence (heir must be sole owner of the home) and assume the loan obligation, if their household income is less than

80% of median income, as well as the attached requirements that lie within these policies and procedures.

3. The occupant is required to provide the Community Development Department Housing Division with a copy of their current homeowner's insurance policy and complete an annual survey throughout the life of the Deed of Trust. Failure to do so will result in the default and repayment of the outstanding balance of loan.
4. City/County taxes are to remain current during the life of the rehabilitation loan.
5. The owner's mortgage must remain current throughout the life of the rehabilitation loan.
6. All applicants with pending legal action as a result of faulty or default repair work by a non-Housing Division approved contractor must reimburse the City from any proceeds received for the amount of housing rehabilitation cost.
7. Should a taking from a government entity arise prior to the expiration of the lien period, the Owner(s) is/are responsible for finding another home to purchase. The new home must be in compliance with the North Carolina Building Codes, and must be within the city limits of Greenville, NC. The remaining period of time on the lien will then be transferred to the new home until the fifteen (15) year period has expired.

Failure to comply with any of the above conditions may result in the default and repayment of your loan. Failure to pay as agreed will result in foreclosure, and notification of the default will be sent to the Credit Bureau.

### **Rehabilitation Procedures:**

The purpose of the rehabilitation procedures is to establish the steps necessary to assist the Community Development staff in completing rehabilitation projects in an efficient, economical, and timely manner.

### **Application Process:**

The applicant is referred to the Housing Administrator or designated staff person who conducts the following activities:

1. Provides program information to the applicant and discusses processing.
2. Prescreens applicant to determine eligibility including:
  - a. Location of property – is it within the city limits and target area

- b. Determination that household income does not exceed program limits
  - c. Screens for ownership, outstanding judgments, liens, current taxes, current mortgage, and sign a deed of trust, rehabilitation agreement, and promissory note
3. Complete program application
4. Request supporting documentation from the applicant:
  - a. Third party verification of household income for all adult members (household members over 18 years of age and emancipated minors)
  - b. Credit information including the request of a credit report. As part of the application process applicant agrees to a credit check and to attend credit counseling if necessary. Services for credit counseling are provided free of charge and will be arranged after acceptance into the program
  - c. Copy of deed or deed of trust to the property
  - d. Copy of a current city/county tax statement
  - e. Copy of current property/hazard insurance
  - f. Information on mortgage or other liens against the property
  - g. Copy of picture ID and SS card for all household members
5. Community Development Planner will authorize the conduction of a title search on the property by an attorney that has been procured by the Housing Division.
6. Staff will arrange for the Housing Rehabilitation Specialist(s) to conduct a complete detailed write-up, cost estimate for repairs and lead paint testing.
7. The work write-up will specify the various items of work needed to ensure that the home complies with property rehabilitation standards and the City's minimum housing code. The work write-up will also be the basis for the scope of work to be performed for lead paint abatement. All work write-ups and inspection reports are to be dated and should include the project name and all pertinent data. The work write-up shall constitute the basis for cost estimates, bids, and the determination of completion of the rehabilitation. The Rehabilitation Specialist, prior to accepting bids, will prepare a cost estimate. The work write-up may be revised prior to bids by mutual consent of the property owner and the Housing Administrator or designated staff or after the solicitation of bids by mutual consent of the property owner, contractor and the Housing Administrator or designated staff.
8. Contractors who have picked up a bid packet, which includes a copy of the detailed work write-up, or any contractor that is interested in bidding must be eligible and must attend the scheduled pre-bid. No bids will be accepted from ineligible contractors or contractors

not in attendance at the pre-bid meeting. A project checklist will cover the following topics:

- a. Work write-up
- b. Access to the project site
- c. Special conditions or needs of the owner or contractor
- d. Contractor and owner responsibilities
- e. Community development rehabilitation handbook, a copy of which will be given to each eligible contractor

**Bid Procedures:**

The cost estimate shall be used in determining whether the bids received are fair and reasonable. The acceptable bid must be within 15% (high or low) of the Housing Rehabilitation Specialist's cost estimate. The Community Development staff and the homeowner must approve the bid. All bidders will be notified of the bid award.

Bids will be obtained only through a formal, competitive process with awards going to the lowest, most responsible and available bidder. However, if the lowest qualified bidder has the maximum number of jobs allowed, which is two (2), then the next lowest bidder may be considered and awarded the job(s) in order to facilitate timeliness in the program. The City of Greenville reserves the right to limit the number of contracts awarded to any one contractor based on past performance. A \$1,500.00 bond will be held for contractors participating in Community Development housing rehabilitation programs. Liquidated damages in the amount of \$100.00 per day will be assessed on jobs that exceed the permitted time as specified within the contract and change orders.

**Construction:**

All rehabilitation work shall be performed in accordance with the City of Greenville's General Specifications for Rehabilitation, the work write-up, duly authorized change orders, and State and Local building codes as applicable.

During construction, the Rehabilitation Specialist will make daily visits to the project site to monitor the progress of the project and make inspections to ensure compliance with contract work specifications. The City Inspections Division, and/or the Community Development Housing Rehabilitation Specialist, will inspect periodically to ensure compliance with the State and City Building Codes. The contractor is required to ensure that all permits (building, electrical, plumbing, and mechanical) are acquired prior to construction. The Housing Rehabilitation Specialist shall ensure that the contractor acquires all necessary permits and copies are maintained in the files.

Changes to the contracted work may become necessary during construction and will be negotiated by the Housing Division and approved in accordance with program policies. Owners will be consulted concerning the changes and approve all change orders. The contractor shall make no changes in the work, nor seek payment for changed or additional work, without prior issuance of an approved written change order.

The rehabilitation work shall be performed within an established time frame acceptable to both the owner and the Housing Division.

Upon completion of the work, the Rehabilitation Specialist and/or the City Inspections Division will perform a final inspection to insure that all work complies with contract documents and the Building Codes. The owner should be present during the inspection and/or be consulted prior to contract closeout.

The contractor guarantees all work for a period of **one (1) year** from completion of the contract. During this warranty period, complaints concerning the work shall be referred, in writing, to the City of Greenville, Housing Division, P.O. Box 7207, Greenville, North Carolina 27835-7207. The complaint will be filed and a Housing Rehabilitation Specialist will inspect the concerns. If the Housing Rehabilitation Specialist determines the concerns to be the responsibility of the contractor, the contractor will be informed, in writing, of the need to correct the deficiencies. The warranty does not include normal wear, alterations or problems caused directly or indirectly by the homeowner.

It shall be the responsibility of the owner to maintain the property according to the Rehabilitation Standards and the Minimum Housing Code upon completion of rehabilitation. Failure to comply may result in the default and repayment of the loan.

**Invoicing:**

When portions of work are completed in accordance with the payment schedule identified in the Rehabilitation Specifications Manual, the contractor shall submit an invoice to Housing Division staff. The Rehabilitation Specialist will inspect the project to insure that the work is completed and acceptable. Before processing, the invoice will be signed by the Contractor, Owner, Rehabilitation Specialist, Planner, and the Housing Administrator. The invoice will be submitted to the Loan Administrator for Purchase Order payment. Before the release of the final check, the contractor shall submit any required lien waivers, pest control certificates or other warranties covered by the payment. The preferred payment schedule for the Rehabilitation Program is listed below:

	Payment Amount
1/3 of work completed	33%
2/3 completed	33%
100% complete	34%

Note: Because of HUD's requirement to use Program Income first, the payment percentage may vary.

**Reference Documents:**

The following documents are hereby incorporated by reference and made a part hereof:

1. General Specifications for Rehabilitation
2. City of Greenville Zoning Ordinance
3. City Code of the City of Greenville
4. Minimum Housing Code for the City of Greenville
5. Housing Choice Housing Quality Standards
6. North Carolina Residential Code of the North Carolina State Building Code - Residential One and Two-family Dwelling
7. Energy Standards for the Energy Conservation and Housing Rehabilitation Incentive Program issued by the North Carolina Housing Finance Agency
8. The Community Development Block Grant Regulations at CFR, Part 70 issued by the Department of Housing and Urban Development

**Eligible Contractors:**

Only contractors approved by the Community Development Department shall perform work under this Program.

The Community Development Department shall maintain a listing of contractors for rehabilitation work. They also have the authority to remove any contractor from the listing who fails to comply with the following:

1. Liability and Workmen's Compensation (based on size of staff) insurance.
2. Sufficient skill and experience (based on prior work).
3. Established credit with supply vendors or capable of establishing credit with supply vendors.
4. Acceptable references as to satisfactory performance on similar projects.

## ***B. Subrecipient Funding***

### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for Subrecipient Funding Assistance offered by the City of Greenville.

The City of Greenville can allocate up to 15% of the CDBG Entitlement and HOME Allocation to fund eligible nonprofit organizations to meet national objectives identified by HUD. The National Objectives are the removal of slum/blight conditions; services that benefit low-moderate income households, homeless or special needs populations and disadvantaged youth. The grant applications are reviewed once a year and go through a three-tier approval process. The Affordable Housing Loan Committee first reviews the request and makes a funding recommendation to City Council. City Council reviews the Committee's recommendation and may adopt or change the funding allocation. The Council's funding decision is then sent to HUD for their approval or denial. Nonprofits that receive CDBG and HOME funds must follow all applicable rules and regulations and will be monitored by the City of Greenville for compliance.

The funds are not given to the nonprofit as a lump-sum payment. The funds are distributed on a reimbursement basis. It should be noted that these funds are for use as "gap funding". For projects that may require multiple funding sources, it is advised that all other means of support must have either been awarded or have pending applications prior to applying for funds. These funds must be spent or obligated within a twelve-month window and cannot be used as seed money for a project.

For all grants involving repair or construction, City staff supervises all work performed. Federal law covers these projects under the Davis-Bacon Act. The Davis-Bacon Act requires that prevailing wages be paid to contractors receiving Federal Funds. The Housing Division must monitor payrolls for compliance with the Department of Labor Employment Standards Administration, and other Federal and State standards as required.



## **C. HOME Downpayment Assistance Program**

### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the HOME Downpayment Assistance Program offered by the City of Greenville.

The HOME Downpayment Assistance Program is designed to assist potential low to moderate income, first-time homebuyers with downpayment assistance to purchase a home located within designated target areas. A No Interest Forgivable Loan of up to \$20,000.00 may be available to qualified borrowers meeting program guidelines. Assistance will be in the form of a secured no interest loan, forgiven by 1/15 of the original principal balance on an annual basis for the 15-year recapture. The City of Greenville's Affordable Housing Loan Committee reviews all qualified downpayment assistance applications for final approval prior to funding.

### **Eligibility:**

Qualified first-time low to moderate-income (80% or less of area median) applicants must meet all requirements as established by the City of Greenville. Applicants must also pre-qualify with a lending institution before applying to the City for assistance. The following requirements have been established for qualification:

1. Must be a first-time homebuyer
2. Home must be located within the designated target areas and not exceed a sales price of \$150,000.00
3. Buyer is to meet credit, employment, loan to value and income debt standards established by the City of Greenville and the mortgage lender
4. Buyer must complete a homeownership-counseling program
5. Buyer must occupy dwelling as principal residence
6. Buyer must meet the minimum investment requirement of \$1,000.00
7. Total family income must not exceed 80% of area median
8. The funds can be used for the purchase of a single-family dwelling, condominium, or townhouse located within designated target areas or in the City's subdivisions. Funds cannot be used for the purchase of a mobile home

9. Loan is determined by need and sales price of the home. For homes priced under \$50,000.00, the maximum grant is up to \$5,000.00. For homes priced \$50,000.00 and up, the maximum grant is up to \$20,000.00

**Lien Type:**

A Deed of Trust in the amount received will be recorded taking a second position (no less than a third position if using other City funds).

**Application Requirements:**

1. Applicant must pre-qualify with lending institution before applying for downpayment assistance with the City of Greenville. Applicant must provide a signed copy of the Lender's Good Faith Estimate (GFE) with all fees disclosed, the interest rate and terms of loan. Mortgage lenders used for financing on the first mortgage must include escrows as part of their package.
2. Applicant will provide a copy of the signed Contract or Offer to Purchase.
3. Applicant will complete a City of Greenville Application with required documentation.

**Unacceptable First Mortgage Products:**

- Loans with owner financing as part of the structure are not acceptable.
- All loans to borrower must be cost effective. Interest rates should be at market rate or less with no loan discount points, loan origination fee should be 1% or less and all loan fees should be normal and not excessive.
- First mortgage loan products that balloon prior to thirty (30) years, adjustable rate mortgages, buy-down or step mortgages, loans with less than twenty (20) year terms and loans with call options should not be considered as acceptable programs for borrowers requesting City of Greenville Downpayment/Closing Cost Assistance Programs.

***D. American Dream Downpayment Initiative (ADDI)  
(Program has been discontinued)***

**Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the American Dream Downpayment Initiative through the HOME program.

The American Dream Downpayment Initiative was signed into law December 16, 2003, and is designed to operate as a homebuyer assistance program within the existing HOME program. Funds are to be used to offer downpayment assistance to low-income families who are first-time homebuyers for the purchase of single-family housing that will serve as the family's principal residence.

As of the fiscal year 2004 funding cycle, up to 20% of allotted funds may be used to assist with rehabilitation that is completed in conjunction with a home purchase. City of Greenville's Affordable Housing Loan Committee reviews all qualified downpayment assistance applications for final approval prior to funding.

**Eligibility:**

Qualified first-time low to moderate-income (80% or less of area median) homebuyers must meet all requirements as established by the City of Greenville. Applicants must also pre-qualify with a lending institution before applying to the City for assistance. The following requirements have been established for qualification:

1. Be a first-time homebuyer (Under ADDI, a first-time homebuyer is an individual and his or her spouse that have not owned a home during the three-year period prior to purchase of a home with assistance under ADDI. The term first-time homebuyer includes displaced homemakers and single parents).
2. Home must be located within the designated target areas and not exceed \$150,000.00 sales price.
3. Buyer is to meet credit, employment, loan to value and income debt standards established by the City of Greenville and the mortgage lender.
4. Buyer must complete a homeownership counseling program.
5. Buyer must occupy dwelling as principal residence.
6. Buyer must meet the minimum investment requirement of \$500.00 plus closing cost if a \$5,000.00 grant, \$1,000.00 plus closing cost if a \$20,000.00 grant (closing cost may be paid by buyer, seller, or through other available city funds)
7. Total family income must not exceed 80% of area median.

8. The funds can be used for the purchase of a single-family dwelling, condominium, or townhouse located within designated target areas. Funds cannot be used for the purchase of a mobile home.
9. Grant is determined by need and sales price of the home. For homes priced under \$50,000.00, the maximum grant is up to \$5,000.00. For homes priced \$50,000.00 and up, the maximum grant is up to \$10,000.00.

**Lien Type:**

A Deed of Trust in the amount received will be recorded taking a second position (no less than a third position if using other City funds).

**Application Requirements:**

1. Applicant must pre-qualify with lending institution before applying for downpayment assistance with the City of Greenville. Applicant must provide a signed copy of the Lender's Good Faith Estimate (GFE) with all fees disclosed, the interest rate and terms of loan. Mortgage lenders used for financing on the first mortgage must include escrows as part of their package.
2. Applicant will provide a copy of the signed Contract or Offer to Purchase.
3. Applicant will complete a City of Greenville Application with required documentation.

Unacceptable First Mortgage Products:

- Loans with owner financing as part of the structure are not acceptable.
- All loans to borrower must be cost effective. Interest rates should be at market rate or less with no loan discount points, loan origination fee should be 1% or less and all loan fees should be normal and not excessive.
- First mortgage loan products that balloon prior to thirty (30) years, adjustable rate mortgages, buy-down or step mortgages, loans with less than twenty (20) year terms and loans with call options should not be considered as acceptable programs for borrowers requesting City of Greenville Downpayment/Closing Cost Assistance Programs.

**HOME Recapture Provisions:**

City of Greenville HOME program funds are provided to individuals for two (2) purposes:

- Substandard Housing Rehabilitation
- Low-Moderate income homebuyer assistance

These funds will be provided in a variety of forms and will be provided to households with **incomes up to but not greater than 80%** of the area median income and adjusted by family size as published by the U.S. Department of Housing and Urban Development. Assistance provided for homebuyer assistance will be in the form of secondary mortgages. Listed below are the recapture provisions for rehabilitation and homebuyer assistance programs with maximum amounts of assistance available for the activity. A Deed of Trust and Promissory Note for the amount of assistance provided under the program will be used to secure the amount of assistance.

Assistance may be in the form of deferred loans (grants) or amortized loans as established in the action plan.

Homebuyer assistance may be used for down payment assistance and/or principal mortgage reduction via Secondary Mortgage. Borrower’s income cannot exceed 80% of the area median income adjusted by family size as published annually for Greenville by the U.S. Department of Housing and Urban Development. The maximum loan amount is \$20,000.00. Loans will be amortized over a twenty (20) year period if more than \$20,000.00 and if less than \$20,000.00 is provided, loan is amortized over ten (10) years.

Substandard Housing Rehabilitation Assistance will be offered to persons/families with incomes up to but not greater than 80% of the area median income adjusted by family size and as published annually for Greenville by the U.S. Department of Housing and Urban Development. For households with incomes less than 50% of the area median income, a ten (10) year deferred loan will be offered up to \$60,000.00 for rehabilitation assistance. For households with incomes from 51% to 80% of the median area income, the combination of a deferred payment loan and a no interest loan is available. The amount of payback is determined as follows:

<u>% of Median Income</u>	<u>Amount of Payback</u>
51% - 55%	15%
56% - 60%	20%
61% - 65%	25%
66% - 70%	30%
71% - 75%	35%
76% - 80%	40%

Deferred loans are amortized over a fifteen (15) year period. Special circumstances are repairs necessary that if not performed the safety of the occupants or structural integrity of the home will be compromised as determined by program staff. These loans will also be amortized over a fifteen (15) year period.

Income will be defined as annual income as reported under the Census long-form for the most recent available decennial. To verify income, the City will rely upon tax returns, Social Security information or other information necessary to determine annual income. For the purposes of eligibility, inheritance of property will not be utilized in calculating income.

## **Chapter IV: North Carolina Housing Finance Agency (NCHFA) New Homes Loan Pool**

### **A. *Deferred Payment Secondary Mortgage Loan*** ***(Funds not available at this time)***

#### **Policy:**

The purpose of this policy is to establish requirements necessary to qualify for the Deferred Payment Secondary Mortgage Loan.

The New Homes Loan Pool provides an interest-free, deferred payment second mortgage loan of up to 18% of the home's sales price with a maximum of \$25,000.00 for new construction or like-new, substantially rehabilitated homes. The applications are forwarded to NCHFA for loan approval and funding.

#### **Eligibility:**

Qualified first-time low to moderate-income (80% or less of area median) applicants must meet all requirements as established by the City of Greenville and North Carolina Housing Finance Agency.

1. Must be a first-time homebuyer.
2. Total family income must not exceed 80% of area median.
3. Home must be located within NCHFA approved project area.
4. Buyer is to meet credit, employment, loan to value and income debt standards established by the City of Greenville, the mortgage lender and NCHFA.
5. Buyer must complete a homeownership counseling program.
6. Buyer must occupy dwelling as principal residence.
7. Buyer must meet the minimum investment requirement of \$750.00 (not gift funds) plus closing cost and have accessible assets equal to one month's house payment remaining on deposit after loan closing.

**Lien Type:**

A Deed of Trust in the amount received will be recorded taking a second position by the North Carolina Housing Finance Agency.

**Application Requirements:**

1. Applicant must pre-qualify with lending institution before applying for downpayment assistance with the City of Greenville. Applicant must provide a signed copy of the Lender's Good Faith Estimate (GFE) with all fees disclosed, the interest rate, and terms of loan. Mortgage lenders used for financing on the first mortgage must include escrows as part of their package.
2. Applicant will provide a copy of the signed Contract or Offer to Purchase.
3. Applicant will complete a City of Greenville Application with required documentation.

**Unacceptable First Mortgage Products:**

- Loans with owner financing as part of the structure are not acceptable.
- All loans to borrower must be cost effective. Interest rates should be at market rate or less with no loan discount points, loan origination fee should be 1% or less and all loan fees should be normal and not excessive.
- First mortgage loan products that balloon prior to thirty (30) years, adjustable rate mortgages, buy-down or step mortgages, loans with less than twenty (20)-year terms, and loans with call options.



## **Chapter V. Affordable Housing Bond Program**

The affordable housing bond program began in 1992 and was funded through a \$1,000,000.00 local bond issued by the City of Greenville. These funds (\$700,000.00 for homeownership, \$200,000.00 for land banking, and \$100,000.00 for rehabilitation) were allocated specifically for the following programs:

### **A. *Downpayment/Closing Cost Assistance***

#### **Policy:**

The purpose of this policy is to establish eligibility requirements to qualify for the Downpayment Assistance Program.

The Downpayment Assistance Program is designed to assist low-moderate income, first-time homebuyers with downpayment costs. Up to 10% of the loan amount in down payment assistance funds may be loaned to qualified borrowers meeting program guidelines. Assistance is in the form of a secured loan amortized over 120 months at no interest. Loans will be secured with a deed of trust in a position no less than second and no less than a third position if other City funds are used. Funds may be used for the purchase of a single-family dwelling, condominium, or townhouse. Mobile homes are not eligible.

#### **Eligibility:**

Qualified first time, low-moderate income homebuyers must meet all requirements as established by the City of Greenville. Applicants must also pre-qualify with a lending institution before applying to the City for assistance. The following requirements have been established for qualification:

1. Not having owned a home in the past three (3) years or not having inherited assets exceeding \$40,000.00.
2. Home must be located within the city limits of the City of Greenville and may not exceed \$150,000.00.
3. Good credit rating. No outstanding liens, judgments or charged off account.
4. Buyer must complete a homeownership counseling program.

5. Buyer must occupy dwelling as principal residence.
6. Borrower must meet the minimum investment requirement of \$1,000.00 plus closing cost (closing cost must be paid by buyers, seller, or through available City funds).
7. Total family income must not exceed 120% of area median.

## ***B. West Greenville and the University Area Downpayment Assistance Program***

### **Purpose:**

The purpose of this program is to increase homeownership in West Greenville and the areas surrounding East Carolina University. The program is designed to assist potential homebuyers with down payment and closing costs assistance in the purchase of existing or newly constructed houses.

### **Program Description:**

The City of Greenville Homebuyer Assistance Program for West Greenville and the University Area provides funds for flexible gap financing and closing costs associated with the purchase of homes in the East Carolina University area community.

Assistance is provided for gap financing and closing costs secured with a 10-year soft second mortgage at zero percent interest. No payment required, unless the house is sold, leased or rented out.

### **Eligibility Requirements:**

*The applicant/owner(s) must at a minimum:*

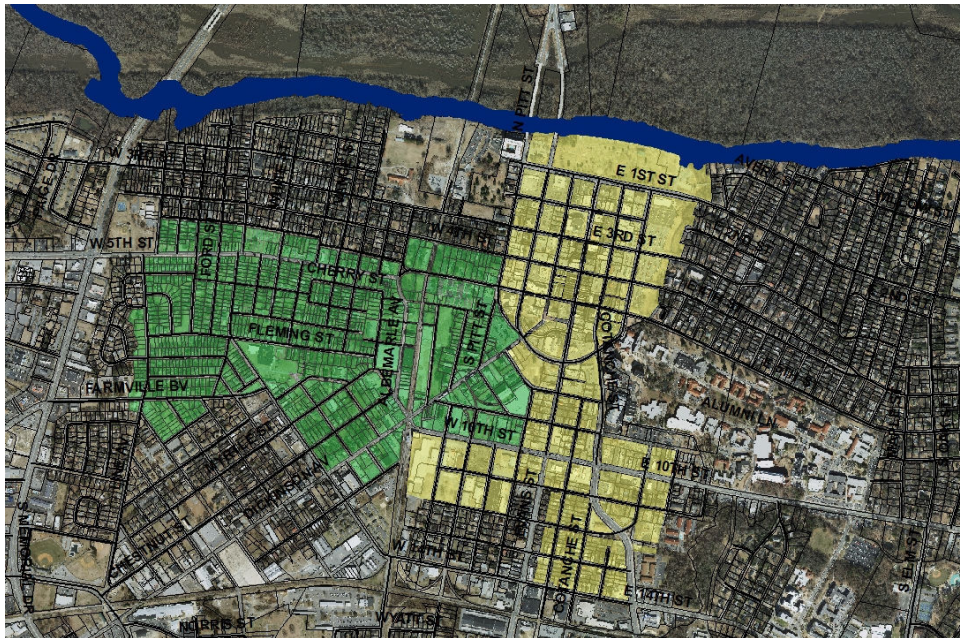
1. Purchase a home within the designated target areas (see map on below).
2. Secure first mortgage financing.
3. Contribute at least \$1,000.00 of own funds towards purchase of the home.
4. Purchase a home that meets all applicable housing codes.
5. Maintain the property in “good” condition.

6. Throughout the term of the City's mortgage the Owner must occupy and keep the home as their primary residence.

**Eligible Housing for Purchase:**

Existing – viable single-family homes, town homes or condominiums within the target areas.

New construction – single-family homes, townhouses, or condominiums within the target areas.



**Assistance Available:**

Low income (below 80% median income limit) households are eligible for up to \$10,000.00.

Moderate income and above (80% and higher of median income limit) households are eligible for up to 5% of purchase price, not to exceed \$10,000.00.

***B. First Mortgage Guarantee***

**Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the First Mortgage Guarantee.

The City of Greenville offers a First Mortgage Guarantee agreement with the Self-Help Credit Union. Applicants apply for a first mortgage with a credit union, and based on information submitted, a determination is made as to whether or not the guarantee is needed. Guarantees are limited to up to 20% of the first mortgage. Funds are held in savings for five (5) years unless a request for payment is made. If payment is necessary, the five (5) years begins again and the borrower must repay the City. This program is currently inactive.

**Eligibility:**

Qualified first time, low-moderate income homebuyers must meet all requirements as established by the City of Greenville. Applicants must also pre-qualify with the Self-Help Credit Union before applying to the city for assistance. The following requirements have been established for qualification:

1. Not having owned a home in the past 3 years or not having inherited assets exceeding \$40,000.00
2. Home may not exceed \$150,000.00
3. Good credit rating. No outstanding liens, judgments or charged-offs
4. The home must be located within the incorporated limits of the City of Greenville
5. Buyer must complete a homeownership counseling program
6. Buyer must occupy dwelling as principal residence
7. Borrower must meet the minimum investment requirement of \$1,000.00 plus closing cost (closing cost must be paid by buyers, seller, or through available city funds).
8. Total family income must not exceed 100% of area median.

***C. Elderly/Disabled Rehabilitation Assistance***

**Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the Elderly/Disabled Rehabilitation Loan Program.

The Elderly/Disabled Rehabilitation Assistance Program offers a no interest loan to elderly homeowners for general repairs to their homes. These funds are made available to homeowners that are not eligible for assistance under the CDBG or HOME Programs; however, this loan can be made in conjunction with the CDBG and HOME rehabilitation programs. The loans are up to \$20,000.00 at no interest amortized over a period of 5, 10 or 15 years depending on the applicant's ability to repay.

**Eligibility:**

1. Applicants must be the homeowner and be 62 years of age or older, or the homeowner must be permanently physically disabled.
2. Total family income must not exceed 120% of area median.
3. Good Credit Rating. Mortgage current, taxes current and no encumbrance that could affect the ownership of the property.
4. Home must be insured.
5. Home must be in moderate disrepair. Work for disabled homeowners will be limited to work to make the house handicapped accessible.

***D. Land Banking***

The City of Greenville uses bond funds to purchase land for the construction of affordable single-family subdivisions. These funds may also be used to purchase and rehabilitate homes to be sold to first-time homebuyers.

## **Chapter VI. Small Business Loan Pool**

### **Policy:**

The purpose of this policy is to establish eligibility requirements necessary to qualify for the Small Business Loan Pool.

The purpose of this program is to stimulate successful business development and expansion as well as job creation in targeted areas of the city. The program will attempt to assist businesses that have limited access to financing through conventional means or other government guaranteed sponsored programs.

**Note: The Small Business Loan Pool was dissolved at expiration of the contract dated December of 2002. The City plans to reinstate the loan pool if local lending institutions are willing to participate.**

### **Amount:**

Initial loan was capacity up to \$475,000.00, funded over a five (5) year period by pro-rated deposits to the pool from local financial institutions.

### **Commitment Period:**

The funds shall be available for five (5) years for Small Business Lending.

### **Eligibility Business Locations:**

1. Business shall be located within the target areas of West Meadowbrook, East Meadowbrook, West Greenville, and South Evans Central Business District. Businesses relocating after receiving funds from the Small Business Success Program without prior approval from the Loan Committee will be in default, and the loan repayment may be accelerated.
2. Applicants will be required to successfully complete the Small Business Technology Development Center (SBTDC) technical assistance program of ECU or Pitt Community College Small Business Development Program.
3. Applicants must be a for-profit business entity whose net worth cannot exceed \$6 million and its net profit after taxes must average less than \$2 million total during the previous

two years. This definition of small businesses is consistent with the guidelines established by the Small Business Administration of the U.S. Department of Commerce.

4. Applicants must be willing to contract for management and technical assistance if determined to be necessary by the Loan Committee and/or the Program Administrator.
5. Applicants must have an equity contribution in a start-up business of 10%.
6. Individuals with an ownership position of 20% or more of the outstanding shares of stock of the business will be required to execute an Unconditional Guaranty Agreement for the full amount of the loan.
7. Applicants who receive \$50,000.00 or more will be required to provide one full-time position in addition to business principals (two part-time positions will satisfy this requirement) for each \$50,000.00 received.

**Eligibility Uses of Loan Proceeds:**

1. Working capital or operational funds.
2. Purchase of equipment, commercial use vehicles or machinery.
3. Improvement of owner-occupied commercial property. (Owner must occupy 50% or more of total space).
4. Start up funding.
5. Expansion of business services or products.
- 6 Existing debt may be refinanced (for expansions to existing businesses) in order to improve cash flow, but program funds for that purpose shall not exceed 50% of the total loan amount.

**Ineligible use of loan proceeds:**

1. Purchase of equipment or improvement of real estate which is used as personal property
2. Political activities
3. Owner salary and dividend payments

4. Speculative ventures (examples: drilling for gas, or oil, commodity futures)
5. Media enterprises - newspapers, magazines, radio, TV shows, movie theaters, book publishing, production companies and similar enterprises
6. Lending or investment
7. Real property held for sale or investment
8. Movie theaters
9. Pyramid sales - distribution plan businesses
10. Floor plan financing
11. Individuals with pending criminal charges or who are incarcerated, on probation or parole
12. Foreign controlled businesses
14. Non-profit institutions
15. Fishing and related shore operations
16. Private membership clubs
17. Building listed on the National Register of Historical Places

**Compliance with Applicable Regulations:**

In all cases, businesses receiving loans made from this program must comply with the following:

1. All state and local regulations governing the applicant's line of business.
2. Policies established by the Loan Committee for each particular applicant.
3. Policies established by the City of Greenville for this loan program.

**Amount of Loans:**

Maximum: \$100,000.00, Minimum: \$5,000.00: Minimum and maximum loan limits may be adjusted by the loan program participants if market conditions warrant or based upon previous



experience. Minimum and maximum loan amounts will be reviewed during the program review and may be readjusted.

**Loan Term:**

The term of the loan is based on the use of funds. No non-real estate loans will have a term of more than seven (7) years. A loan where the proceeds are used to purchase real estate will have a term of no more than ten (10) years.

**Interest Rate:**

All loans will accrue on a daily basis at a fixed interest rate. Interest rates will be quoted based on the Wall Street Prime Rate less two percent. The loan rate is set at the time of application.

**Fees and Expenses:**

An origination fee will be charged, payable at closing of 1% of the loan amount but in no case to exceed \$250.00. The minimum origination fee will be \$50.00. The applicant will be responsible for all other expenses related to closing the loan, including but not limited to recording fees and legal fees. The applicant will also be responsible for all fees related to any appraisals or reports required by the Loan Committee.

**Loan Repayment:**

Loan payments shall be due on the first day of the month. A late payment will be assessed at 4% of the payment amount after the loan becomes fifteen (15) days overdue. Loans may be prepaid without penalty. In the event the loan payment becomes thirty (30) days overdue, the Loan Committee will establish and implement the Procedures for the Collection of Delinquent Loans.

**Collateral:**

Appropriate forms of collateral shall secure loans with recorded first or second lien position as appropriate. Acceptable forms of collateral will be based on commonly accepted definitions (fixed assets, inventory, accounts receivable, land, building, equipment or personal assets). Advance rates should be limited to the following percentages: Inventory - 50%, Accounts Receivables - 70% on accounts less than ninety (90) days in age, Unimproved real estate - 50%, Commercial real estate-owner occupied maximum 80% LTV, or 85% LTV on personal real estate (except for borrowers home) new equipment 80% and used equipment 60%.

### **Loan Guidelines:**

1. **Creditworthiness** - Although applicants will be considered with credit ratings showing a history of accounts up to thirty (30) days past due, preference will be given to borrowers with good credit ratings. Applicants with bankruptcy or repossessions listed on their credit report will, in most cases, be considered too great a credit risk for this program.
2. **Cash flow coverage** - The loan program is targeted to applicants with cash flow coverage, prior to new debt, (as hereafter defined) of not less than 1.3 to current maturities of long-term debt. Cash flow is further defined as net income plus depreciation.
3. **Debt/Worth** - The loan program is targeted to applicants whose total debt does not exceed net worth by 3:1.

### **Loan Program Administration:**

The City of Greenville Housing Division shall perform administration of this loan program. A non-City agency may be contracted at a future date to service loans, to include billing and generation of administrative reports. Qualifications and compensation of such agency is subject to approval by the City of Greenville and the financial institutions.

### **Procedures:**

1. Applicants will be referred to the Housing Division of the City who will meet with and process applications. This process will utilize the services of the ECU Small Business Technology and Development Center (SBTDC) or Pitt Community College business consulting resource. Other business training consulting resources will require approval of the Small Business Loan Committee.
2. The City will submit completed applications to the Loan Committee no later than two (2) weeks prior to its next scheduled meeting. The Loan Committee will normally meet once monthly.
3. At the first monthly meeting following a timely submission, the Loan Committee will act on the request based on the information provided. The City will inform the applicant in writing of the Loan Committee's decision. The Loan Committee may request that an application be supplemented and may continue its consideration of an application for that purpose. Should the Loan Committee deny the applicant's application, the Loan Committee may not consider any applications from that applicant for at least six (6) months. Incomplete applications will not be considered.

4. At its discretion, the Loan Committee may impose any additional terms and conditions necessary to improve the loan or to secure the applicant's loan.
5. Should the applicant feel that his/her application has been improperly denied, then he/she should notify, in writing, the Chairman of the Loan Committee of his/her position. The Loan Committee for further consideration shall review the application with the additional information.

**Loan Analysis:**

The Loan Committee shall review and consider a number of items in determining whether a loan should be made. Those items should include but not be limited to the following:

1. Business plan
2. Business financial statements. (Three (3) years plus interim financial statement)
3. Tax returns. (personal and business three (3) years)
4. Proformas to determine if there will be sufficient cash flow to meet obligations for two (2) years. The proformas must list income and expenses for a monthly basis
5. Personal financial statements
6. Information regarding collateral
7. Other available financing, including but not limited to whether other financial institutions have agreed to consider traditional debt financing and under what circumstances
8. Should the Loan Committee determine that it needs additional information before granting or denying the application, the Program Administrator will notify the applicant of the information needed

**Proposed Structure:**

The relationship between the participating financial institutions and the City of Greenville will be evidenced by a master loan agreement. Each participant will provide funds to the City for Small Business Loans. These credit lines will be secured by assignment of the loan receivables of such entity.

A five (5) year commitment period will be established during which time each financial institution will fund the pool on a pro rata basis program review annually. The committee will review the program's progress annually and make necessary changes to the program as needed. The City of Greenville will provide an irrevocable commitment to fund a loan loss reserve equal to 30% of the financial institutions' commitment. All financial institution participants will bear their share of any losses beyond the reserve (principal, interest, collection fees, etc.) incurred under the program. Collection procedures and loss procedures will be established. Repayment of the financial institution's loans will be on a monthly basis and will consist of the net proceeds received from Borrowers under the program. The City will pay each financial institution its percentage share of those net proceeds on a monthly basis.

The initial contributions to the pool will be by pro rata commitments from each participant. As loans are closed, pro rata contributions by participants will be required in order to fund the loans within a timely manner. This proposed structure may be subject to modification based upon the review and advice of appropriate counsel.

**Loan Loss Reserve:**

A Loan Loss Reserve of \$142,500.00 must be 100% irrevocably committed by the City of Greenville prior to implementation or activation of the loan program.

Loan Loss Reserve to be provided by the City of Greenville shall be funded in an amount not less than 30% of the aggregate principal amount of loans made during the term of the program, less amounts paid from the reserve to the participating financial institutions.

**Loan Committee:**

Membership shall consist of six (6) representatives from the participating financial institutions and two (2) representatives appointed by the City. Selection of the six (6) initial members shall be made by the members of the banking institutions participating in the program, with no less than four (4) members in this initial selection. Appointees will serve staggered terms established by the Small Business Loan Committee in order to provide for future rotation of two (2) members each year.

The election of officers will occur annually during the month of July. Meetings will be presided over by a Chairman, who will be elected by the Committee each July. It will be the responsibility of the Chairman to assure a quorum is present (five (5) members or more) at each loan Committee meeting, to generally monitor the duties of the Loan Program Administrator, to make sure loan proposal packages are properly prepared prior to their presentation at Loan Committee meetings and to oversee the preparation of commitment letters to approved borrowers.

The Small Business Loan Committee shall establish and adopt its own Rules of Procedure subject to these parameters. Such commitment letters will be signed by the Chairman, with a duplicate signed copy provided to the City as part of their notice for funding the Loan Loss Reserve. All loans will require a majority vote of the Loan Committee for approval or denial. The Loan Committee will have the following responsibilities:

1. Find creative ways to utilize loan pool funds to stimulate successful small business development and job creation
2. Meet monthly to review loan applications and determine which request will be approved and under what terms and conditions
3. Periodically review status of existing loans and recommend appropriate corrective action or special monitoring where needed
4. Approve modifications to loan agreements
5. Evaluate underwriting requirements and make appropriate adjustments as needed to accomplish the objectives of the program
6. Provide direction regarding collection (e.g. legal action, foreclosure, acceleration of amortization, determination of default/charge-off, etc.)
7. Provide direction for marketing efforts

**Portfolio Management Guidelines:**

1. Loans to start-up businesses shall not exceed 25% of the loan pool.
2. Revolving lines of credit shall not exceed 35% of outstanding loan commitments.
3. No loans may be more than sixty (60) days behind with monthly payments.
4. **Real Estate Loans (property only) shall not exceed 40% of the loan pool.** Any exception to the above will result in a moratorium on future loan requests and a review of these loan guidelines by the Loan Committee.

## Chapter VII: URGENT REPAIR PROGRAM/EMERGENCY REPAIR (CDBG)

### Policy:

The purpose of this policy is to establish eligibility requirements necessary to qualify for the CDBG Urgent Repair Program offered by the City of Greenville.

The City of Greenville provides urgent repair or emergency repair assistance to homeowners located within the corporate limits that meet the eligibility requirements set forth in this policy and in accordance with the Community Development Block Grant (CDBG) program regulations. Assistance with CDBG funds is a deferred payment loan (grant). All urgent repair loans are amortized for five (5) years, with a maximum urgent repair cost of \$8,000.00. The emergency repairs are amortized over a fifteen (15) year period, with a maximum of \$25,000.00. **The primary difference between the two repairs is that the emergency repair is immediately needed due to health and safety concerns.** Both repairs as determined by the Rehabilitation Specialist are the following:

- Leaking Roof (patch or replace)
- Broken HVAC (repair or replace)
- Repair or install handrails or ramp as needed for health and safety of occupants
- Repair or Replace broken windows and doors
- Repair or Replace blocked sewer line
- Install handicapped toilet and grab bars as needed for health reasons
- Repair existing electrical system (outlets, light fixtures)

Participation in Urgent/Emergency Repair Program does not prevent the homeowner from receiving a full rehabilitation at a later date. After the repairs are completed, the property must be maintained as the principal residence of the household and they must retain title to the property. The property owner must also complete an annual survey, as supplied by the Housing Division, maintain homeowner's insurance, keep the property taxes current, and maintain the property. Failure to honor these provisions is a violation of the program agreement.

### Eligibility:

There are a number of criteria governing eligibility for urgent repair assistance by the City of Greenville. In general these criteria pertain to the applicant and the property to be repaired. The Housing Division will not process an application for urgent repair assistance until a preliminary determination is made that all applicable eligibility requirements have been met. It should be noted that eligibility does not necessarily ensure the receipt of financial assistance.

**Eligible Applicants:**

To be eligible for housing rehabilitation assistance, an applicant must:

1. Hold **clear title** to the property. If the property is heir property, all heirs must be identified and contacted. Heir property is not eligible if there are non-resident heirs. Life Estates are **not** eligible.
2. Occupy the property as a primary residence. Single-family detached homes, town homes, condominiums and duplexes are eligible if the homeowner has a physical disability. Mobile homes are not eligible unless it is considered real property.
3. Have no credit issues that will encumber the property.
4. Be low-moderate income\* based on the area median family income provided by HUD; see appendix for current income chart.

*\*Income as defined by HUD CDBG Regulations, Subpart A 570.3: Annual income as reported under the US Census long form for the most recent available decennial. HUD Part 5 Definition of Income.*

5. Property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigations involving the applicant.
6. Applicant/Property must not have received any rehabilitation assistance from the City of Greenville within the past fifteen (15) years or within the past five years from the date of the recording of the Certificate of Satisfaction.

**Eligible Properties:**

To be eligible for assistance, the property must meet the following conditions:

1. Must be located within areas identified in the Consolidated Plan.
2. The property must be inspected and found to be in substandard condition such that repair is necessary to meet the City's minimum housing code as determined by a City of Greenville Housing Rehabilitation Specialist.
3. The structure must be suitable for habilitation as determined by the Housing Rehabilitation Specialist and not have received rehabilitation assistance from the City of

Greenville within the past fifteen (15) years or within the past five years from the date of the recording of the Certificate of Satisfaction.

4. The sum of the City of Greenville loan for urgent repair and any existing liens must not exceed 90% of the estimated appraised value of the property after rehabilitation.
5. Property must not be located within the right-of-way of any future street or highway or other public improvements anticipated within the foreseeable future, as determined by the Department of Public Works.
6. Property must not be located within a flood hazard area, as determined by the City Engineering Division, if the property is not covered by flood insurance.
7. Property must not be in violation of the adopted standards for land use and building density, as determined by the City of Greenville Zoning Administrator.
8. Property must not have any outstanding liens, judgments, encumbrances, taxes, or pending litigations involving the structure.
9. A maximum of one current lien attached to the property. The City will not take a position less than second.

**Application Requirements:**

1. Identification of all household members.
  - Picture identification
  - Copy of Social Security Cards
  - If student over the age of 18, third party verification of attendance
1. Verification of income/assets- all household income must be verified.
2. Submission of one or more of the following will be required for all members of the household:
  - a. IRS 1040 tax forms from previous three years for self employed
  - b. W-2 from previous year accepted during the first three months of the year
  - c. Current year Income statement from retirement, pension and social security
  - d. Income verification form from employer or and copies of last three pay stubs
3. Credit Report - by signing homeowners requirement form, the property owner(s) has/have given the City of Greenville the right to request a credit report from the Credit Bureau.



4. Verification of ownership and related items to include the following:
  - a. Copy of deed or Will
  - b. City/County taxes are current for all property or there is a written payment plan
  - c. Mortgage(s) being current
  - d. Homeowners Association dues are current
5. Copy of current homeowner's insurance policy.
6. Life Estates and properties with non-resident owners are not eligible.

**Urgent Repair Loan:**

The amount of assistance available for the urgent repair of an owner-occupied home varies from each circumstance. Changes in assistance amounts also vary from year to year. In some situations, the amount of the contract may increase due to unforeseen situations requiring additional rehabilitation work. These situations, which are referred to as change orders, are avoided unless absolutely essential to the completion of the urgent repair.

**A. Assistance Amount**

Deferred payment loans (grants) are available for all homeowners under 80% adjusted by family size.

If the amount of assistance exceeds \$5,000.00, then the property must be fully evaluated to determine if it must be considered as a full rehabilitation.

**B. Lien Type**

The maximum amount is \$5,000.00 and deferred payment loans will be amortized over a five-year period.

**C. Loan Conditions**

1. If home is sold, transferred, or conveyed during the life of the Deed of Trust the outstanding balance becomes due and payable based on the date of transfer.
2. If the owner dies during the life of the Deed of Trust, a the heir(s) may pay the outstanding balance due of the Deed of Trust or occupy the home as their principal residence (the occupying heir(s) must be the sole owners of the property) and assume the

(original) loan obligation, if their household income is less than 80% of median income, as well as the attached requirements that lie within these policies and procedures.

3. The occupant is required to provide the Community Development Department Housing Division with a copy of their current homeowner's insurance policy and complete an annual survey throughout the life of the loan or Deed of Trust. Failure to do so will result in the default and repayment of the outstanding balance of rehabilitation loan at the time of declaration of default.
4. City/County taxes are to remain current during the life of the urgent repair loan.
5. Owner's mortgage must remain current throughout the life of the urgent repair loan.
6. All applicants with pending legal action as a result of faulty or default repair work by a non-Housing Division approved contractor must reimburse the City from any proceeds received for the amount of housing rehabilitation cost.

Failure to comply with any of the above conditions may result in the default and repayment of your rehabilitation loan. Failure to pay as agreed will result in foreclosure, and notification of the default will be sent to the Credit Bureau.

## **VIII. Affordable Housing Loan Committee**

### **Rules of Procedure**

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#### **Membership, Terms**

The Affordable Housing Loan Committee (the Committee) will consist of seven (7) members and one (1) alternate member, all of whom shall reside within the corporate limits of the City of Greenville. The members shall have a housing background. The Greenville City Council will appoint all members.

- **Terms:** The Affordable Housing Loan Committee (the Committee) will consist of seven (7) members and one (1) alternate member, all of whom shall reside within the corporate limits of the City of Greenville. It shall be racially diverse and composed of persons with experience and an interest in housing. The members may be of the following professions: banker, lawyer, realtor, member of the building profession or developer, member of a social service organization, and a member of a local housing group.
- **Chairperson:** The Committee shall elect a Chairperson. The Chairperson will be elected by a majority vote of the Committee. The term of office shall be for one (1) year and the Chairperson may be eligible for re-election. Subject to these rules, the Chairperson shall decide upon all points of order and procedure, unless directed by a majority of the Committee in session at the time. The Chairperson shall appoint any Committees found necessary to investigate any matter before the Committee. The Chairperson shall have a vote on all matters before the Committee.
- **Vice Chairperson:** A Vice Chairperson shall be elected by the Committee from among its regular members. The Vice Chairperson shall serve as acting Chairperson in the absence of the Chairperson and at such times shall have the same powers and duties as the Chairperson.
- **Secretary:** A City staff member shall serve as the Secretary to the Committee. The Secretary, subject to the direction of the Chairperson, shall keep all records, shall conduct all correspondence of the Committee, shall notify members of pending meetings and their agendas, shall notify all parties affected of the decisions of the Committee, and shall keep a permanent volume of the minutes of each meeting.

## Meetings / Rules of Conduct

- **Quorum:** A quorum shall consist of four (4) members of the Committee. It shall be mandatory that a quorum must be present for the Committee to pass upon any question relating to the Committee.
- **Voting:** The concurring vote of two-thirds (2/3) of the members present shall be necessary to make decisions regarding review of housing policy issues and review of appeals for elderly rehabilitation and downpayment assistance loans. Voting on issues other than those listed above will be pursuant to the rules of procedure for that issue. Full membership shall be defined as seven (7) members.
- **Meetings:** Meetings will be held monthly as determined by the Committee. The meetings will be subject to the open meeting laws. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) hearing of applications; (d) reports of committees; (e) unfinished or other business. Approval by a quorum of the Committee will be required for appeal of denied downpayment assistance loans and elderly rehabilitation loans. The Committee will make recommendations to City Council for their approval to set up loan pool agreements, fund joint venture projects, make changes in funding allocations and purchase land.
- **Special Meetings:** Special meetings may be called by the Committee, the Chairperson, or any three (3) regular members of the Committee.
- **Attendance:** All appointed members of the various boards and commissions are expected to attend all regular meetings. Whenever a member of any board or commission has missed three or more consecutive regular meetings or fails to attend seventy-five percent of all regularly scheduled meetings, the staff liaison of the board or commission shall notify the City Clerk of the member's attendance record. The City Clerk's Office shall send a letter to the member asking to be notified about the person's ability to attend future meetings. A copy of the letter shall be sent to the City Council liaison, and the attendance will be monitored for a period of three months, at which time replacement may occur if the attendance requirements are still not met. If the member responds that he desires to continue serving and will attend future meetings on a regular basis, the City Clerk's Office will notify the City Council liaison. However, if the person either fails to respond to the letter within thirty (30) days or indicates that he is unable or unwilling to attend, the City Council liaison will be notified by the City Clerk's Office and the vacancy placed on the next possible City Council agenda for replacement. The appointment shall be for the duration of the unexpired term of the member whose position has been vacated.

- **Excused From Voting:** A member shall be excused from voting when such matters involve the consideration of personal or financial conflicts of interest. Request for exclusion from voting will be decided by a simple majority of the Committee. No member shall vote on any matter if he/she has not attended the meeting on that matter except to allow a Committee Member to make a motion, second or approve the minutes of a prior Affordable Housing Loan Committee meeting.

### **General Matters**

- **Applications:** Applications for consideration by the Loan Committee must be submitted to the Community Development Department fifteen (15) days prior to the meeting. Applicants should contact the Community Development Department for applications, meeting times, dates and locations.
- **Decisions:** The Loan Committee will review appeals of loans under the Affordable Housing Bond Programs. Other housing proposals may be reviewed by the Loan Committee as deemed appropriate by City staff. The Committee may be asked to make recommendations on housing proposals. In making such decisions the Committee should review proposals for good financial investments that are typical of proper mortgage lending.
- **Annual Report:** The Committee shall prepare an annual report and submit it to City Council once each year at a time and place as determined by the City Council. The report will contain a summary of its activities for the year, summarize actions taken, and include any other matters deemed appropriate for inclusion in the report.
- **Program Amendments:** The Committee shall recommend any changes necessary in the program as deemed appropriate. Substantial program changes in policy must be made to City Council for approval. Substantial changes would consist of changes in funding allocations by category, accessing other funds, entering funding agreements with financial institutions, and other matters deemed appropriate.

These rules of procedure became effective this the 9<sup>th</sup> day of April 2014.

### **Signature on file**

Chairperson

### **Signature on file**

Secretary

## **GLOSSARY**

**CDBG** - Community Development Block Grant (24 CFR 570).

**CFR** – Code of Federal Regulations.

**CHDO** – Community and Housing Development Organization.

**Consortia** – A consortium of geographically contiguous units of local government.

**Deferred Payment** – Payments that are forgiven over a defined period.

**Entitlement Community** – An urban city with a population greater than 50,000 or an urban county with a population greater than 200,000.

**EPA** – Environmental Protection Agency.

**Family** - all persons living in the same household who are related by birth, marriage, or adoption.

**Household** - all persons who occupy a housing unit. The occupants may be a single family, one (1) person living alone, two (2) or more families living together, or any group of related or unrelated persons who share living arrangements.

**Household Income** – All income of all persons living in the home.

**HOME** – Home Investment Partnership Program (24 CFR 92).

**HUD** – US Department of Housing and Urban Development.

**Income** – annual income as reported under the US Census long-form. (24 CFR 5.6).

**Low Income** – income equal to 50% of median income.

**Low- and moderate- income household** - a household having income between 50% and 80% of the median area income as determined by HUD.

**Low- and moderate- income person** - a person having an income between 50% and 80% of the median area income as determined by HUD.

**Median income** - average income as determined for the metropolitan statistical area as determined by HUD.

**Moderate Income** – income equal to 80% of median income.

**NC-DENR** – North Carolina Department of Environment and Natural Resources.

**Nonprofit** – a corporation that has received 501(c)(3) designation by the Internal Revenue Service and is not considered a private foundation.

**Pitt County HOME Consortium** – a partnership of local governments formed in order to access HOME funds for the community. The Pitt County HOME Consortium is comprised of Ayden, Bethel, Farmville, Greenville, Grifton, Pitt County and Winterville.

**SHPO** – State Historic Preservation Officer.



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Resolution of support to the North Carolina Department of Transportation for funding the intersection improvements at the intersection of West 5th Street and Memorial Drive

**Explanation:** **Abstract:** The North Carolina Department of Transportation (NCDOT) is requesting a resolution of support from the City of Greenville to secure \$250,000 in small construction funds needed for construction of intersection improvements at the intersection of West 5<sup>th</sup> Street and Memorial Drive.

**Explanation:** NCDOT is requesting a resolution of support from the City of Greenville for intersection improvements at the intersection of West 5<sup>th</sup> Street and Memorial Drive.

The US Department of Veterans Affairs constructed an outpatient clinic that opened in the fall of 2013. The Veterans Affairs (VA) Clinic administers a variety of benefits and services that provide financial and other forms of assistance to service members, veterans, and their dependents and spouses. The clinic is located in Greenville's medical district and will compliment services currently being provided. The 145,640 square foot medical facility is located on the cul-de-sac of Moye Boulevard Extension north of NC 43 (West Fifth Street).

A traffic impact analysis for the development indicates the site traffic will significantly affect traffic at the intersection of NC 43 and Moye Boulevard and the intersection NC 43 and US13/NC11 (Memorial Drive). To mitigate the impacts, recommended modifications at both locations were developed. These improvements include modification of the existing traffic signals at both intersections, widening of West 5<sup>th</sup> Street at Memorial Drive to provide dual left turn lanes, and revision of approach lanes east of Memorial Drive.

The construction cost estimates for mitigation of these traffic impacts total \$471,000. The VA clinic is participating in the amount of \$100,000 and NCDOT is providing \$250,000 in small construction funds, leaving a balance of \$121,000 which NCDOT is hoping can come from statewide discretionary funds.



NCDOT is requesting City Council's assistance through a resolution of support to NCDOT to secure the \$250,000 in small construction funds needed to fund the proposed modifications to handle the traffic associated with the VA Clinic and enable the NCDOT to implement them.

Existing funds contributed by the VA Clinic will be used to make the modifications at the intersection of West 5<sup>th</sup> Street and Moye Boulevard with the balance of the VA Clinic funds used at West 5<sup>th</sup> Street and Memorial Drive. A resolution of support is required when the amount of small construction funds exceed \$150,000. The resolution of support must be received no later than May 14, 2014, for funds to be approved by the Board of Transportation in June. Should the deadline not be met, the funds will not be able to be obligated for this project because the funds do not carry forward to the next State fiscal year.

**Fiscal Note:** There is no cost to the City associated with the support of this resolution.

**Recommendation:** Approve the resolution of support for funding the intersection improvements at the intersection of West 5<sup>th</sup> Street and Memorial Drive.

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

**Attachments / click to download**

[5th and Memorial](#)

[Resolution Expressing Support for Intersection Improvements W 5th Street and Memorial Drive 978255](#)

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RESOLUTION NO. -14  
RESOLUTION EXPRESSING SUPPORT FOR INTERSECTION IMPROVEMENTS  
AT THE INTERSECTION OF WEST FIFTH STREET (NC 43) AND  
MEMORIAL DRIVE (US 13/NC 11)

WHEREAS, the United States Department of Veterans Affairs outpatient clinic (VA Clinic) opened in the Fall of 2013 and this development is a positive addition to the City of Greenville that administers a variety of benefits and services that provide financial and other forms of assistance to service members, veterans, and their dependents and spouses;

WHEREAS, a traffic impact analysis of the VA Clinic development indicates site traffic significantly affects traffic at the intersection of West Fifth Street (NC 43) and Moye Boulevard and the intersection of West Fifth Street (NC 43) and Memorial Drive (US 13/NC 11);

WHEREAS, recommended modifications to both intersections have been developed in order to mitigate the traffic impacts caused by the VA Clinic development;

WHEREAS, the necessary funding is available for the improvements to the intersection of West Fifth Street (NC 43) and Moye Boulevard but additional funding by use of the small construction funds of the North Carolina Department of Transportation is needed for the improvements to the intersection of West Fifth Street (NC 43) and Memorial Drive (US 13/NC 11); and

WHEREAS, improvements at the intersection of West Fifth Street (NC 43) and Memorial Drive (US 13/NC 11) will promote the safety of the citizens of Greenville and the travelling public;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby express its support for the intersection improvements at the intersection of West Fifth Street (NC 43) and Memorial Drive (US 13/NC 11) and does further request that the North Carolina Department of Transportation proceed with these improvements by providing the necessary funding by utilization of small construction funds.

This 5th day of May, 2014.

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Allen M. Thomas, Mayor

ATTEST:

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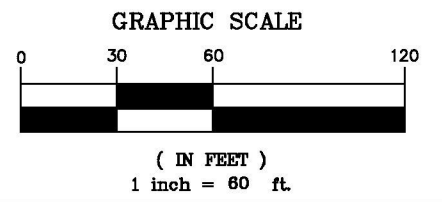
Carol L. Barwick, City Clerk



MEMORIAL DR  
FOR PUBLIC RIGHT-OF-WAY

N. C. HWY. 43  
100' PUBLIC RIGHT-OF-WAY  
66' & BACK TO BACK

**EXHIBIT B**  
**OPTION 4**



Item # 4



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Supplemental Design Agreement for additional services on the South Tar River Greenway Phase 3 Project

**Explanation:** **Abstract:** To facilitate completion of the design for the South Tar River Greenway Phase 3 project and complete right-of-way and/or easement acquisition services in the most expeditious manner possible, the City's consultant will provide certain additional design work and services.

**Explanation:** Design plans for the proposed South Tar River Greenway Phase 3 project have progressed to approximately 65% complete. To provide the proper tie-in to the newly relocated cul-de-sac on Moye Boulevard, the consultant is providing additional surveys and locations, layout, hydraulics, and grading plans for the project. Additionally, as a result of public input during the public meetings phase of design development, the consultant will provide analysis and preliminary designs for two (2) trailhead locations along the corridor.

As design has progressed, draft construction plans indicate the need for construction easements from approximately 30 properties along the corridor. In order to acquire these easements in an expeditious manner, the consultant will provide easement maps, appraisals, and acquisition services.

The additional fee for this work is \$144,608.47, which has been approved by NCDOT. Given the additional \$903,000 in funding received from NCDOT for this project, the cost of this work can be funded by the current project budget.


**Fiscal Note:** The City will not incur any net cost for these services as a result of this agreement.

**Recommendation:** Approve the attached Supplemental Design Agreement for the South Tar River Greenway Phase 3 Project.

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

Attachments / click to download

 [STRG Ph 3 Supplemental Agreement](#)

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This is **EXHIBIT K**, consisting of 4 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated August 6, 2012.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT**  
**Amendment No. 1**

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: August 6, 2012
- b. Owner: City of Greenville
- c. Engineer: Kimley-Horn and Associates, Inc.
- d. Project: EB-5539 South Tar River Greenway Phase 3

2. *Description of Modifications:*

Engineer shall perform or furnish the following Additional Services:

A1.01 Surveying

The Engineer will utilize a subconsultant for additional surveying services as outlined below and in accordance with the Agreement. Engineer will survey and locate the area along Moye Boulevard from the existing cul-de-sac location to the proposed final cul-de-sac location (approximately 1,200 feet) for a width of 100 feet.

Topographic Survey: Engineer will perform field survey of existing planimetric and topographic features inside the project limits. The topographic survey will include but not be limited to spot elevations on paving and other hard surfaces and will be to the nearest 0.01 foot. On other surfaces, spot elevations will be shown to the nearest 0.1 foot. Contours will be generated at one (1) foot intervals. Error of contours shall not exceed applicable National Map Accuracy Standards (plus or minus one-half contour interval). Engineer will also prepare a MicroStation Digital Terrain Model (DTM) file.

Utility Data: Engineer will field survey utilities in the project area using record information provided by the City or its representatives and visible surface evidence solely. Engineer will contact the North Carolina One-Call Center (NCOCC) for Utility Location on the project. Any utility paint markings provided by the One-Call process will be located and shown on the final drawings. Upon notification by One-Call, Engineer will contact each utility provider to ascertain available record information. Survey will include visible above ground utility features within the survey corridor limits, including sanitary sewer manholes, tops, inverts, pipe materials, diameter, and appropriate labels.

Storm Drain Data: Engineer will perform field surveys of visible storm pipe and structures within the survey limits including tops, inverts, pipe materials, diameter, and appropriate labels. Pipe sizes entering and exiting these structures will also be noted where accurately attainable. Storm drainage and sanitary systems will be traced and located to one structure beyond the survey limits of the project. Engineer will coordinate with the City or Greenville Utility Commission to obtain access to all blocked or inaccessible structures as needed.

Easement Maps: Engineer will prepare 11 additional recordable plats in accordance with NC GS 47-30 for use in the City's acquisition of easements and rights-of-way necessary for the construction of the Project.

#### A1.04 Meetings and Coordination

Additional meetings and coordination include a design review meeting at the 60% milestone with GUC staff.

#### A1.08 Hydraulic Design

The Engineer will perform preliminary hydraulic analysis for drainage pipe crossings and linear ditches along the additional alignment for incorporation into the multi-use path plans.

#### A1.10 Right-of-Way Plans

The Engineer will add the additional trail length to the 75% plans consisting of multi-use path plans, centerline, vertical alignment, cross sections, construction limits, proposed easements, pavement marking, trail marker and signing plans for the additional project length. The designs will be performed in accordance with applicable City, NCDOT, and AASHTO standards and guidelines. Engineer will design and specify erosion control measures which minimize erosion and limit off-site sedimentation during construction.

The Engineer will add PVC conduits and associated access handholes to the plans, specifications, and estimate for the future use of the City to add fiber and wiring for video cameras, blue light phones, and street type lighting.

The Engineer will label bearings and distances in the CADD file for use in preparing the 11 additional recordable plats.

#### A1.13 Trailhead Design

The Engineer will provide trailhead design specifically as noted below:

13.01 Attend one kick-off meeting with the City of Greenville to discuss potential trailhead locations, goals for greenway wayfinding program, and milestones for design.

- 13.02 Conduct one site visit to the project corridor. This task will be performed concurrently with the proposed kick-off meeting, Task 1.1, to provide design fee efficiencies to the City.
- 13.03 Design preliminary trailheads for two (2) locations along the project corridor. Preliminary design will include layout of a parking lot with approximately 10-20 spaces, options for accessible parking, pedestrian connection to the existing public right of way, materials selection for vehicular & pedestrian surfaces, and a conceptual landscape plan addressing any required buffers or screening. We will study the grade relationship between the trailhead and greenway and present options for providing an accessible route.
- 13.04 Present preliminary trailhead design to City for review and comment.
- 13.05 Develop final trailhead construction documents with comments received from preliminary design incorporated. The following plan sheets will be included in the project's contract documents.
  - a. Site Plan
  - b. Grading & Drainage Plan
  - c. Hardscape Details (Hardscape Plan will be included in Site Plan)
  - d. Landscape Plan & Details

#### A1.14 Right-of-Way Acquisition

The Engineer will provide an estimate of value for up to twenty-seven (27) parcels in 1 of 3 formats (noted below) at the direction of the City. Typically all settlements would be attempted with a Right of Way Claim Report if the estimated Value is under \$10,000. If settlement is not reached using a Right of Way Claim Report, then Engineer would obtain an appraisal. The appraisal formats include:

1. Using current market data, Engineer will provide a spreadsheet showing approximate per square foot values for each parcel on the project. This approach would be the equivalent of an NCDOT Right of Way Claim Report.
2. Engineer will provide Abbreviated Narrative Reports on up to seventeen (17) parcels as directed by the City.
3. Engineer will provide a Full Narrative Appraisal on up to four (4) parcels as directed by the City.

Engineer shall submit the spreadsheet of per square foot values to City for review and approval prior to reviewing same with property owners. Additionally, Engineer shall submit all other appraisals to City for purposes of completing, or causing to be completed, appraisal reviews. Should the appraisal review confirm the appraisal provided by Engineer, City will approve the appraisal. Should the appraisal review not confirm the appraisal, Engineer will make corrections to the appraisal as required for re-submission and approval.

Using the approved appraised value, Engineer will endeavor to negotiate and secure a signed Offer to Purchase on subject parcels and hand deliver the original to the City. A minimum of 3 attempts to settle with each property owner will be made. In the event that a property owner refuses to settle or negotiations reach an impasse, Engineer will deliver to the City a written recommendation to acquire the property through condemnation along with a detailed negotiation



diary and all other information regarding the attempted settlement. Depositions or testimony for a condemnation claim is not anticipated and would be considered Additional Services.

Should a Condemnation Claim occur, the City may require a Full Narrative Appraisal to be provided for a parcel in which an Abbreviated Narrative Appraisal was previously provided, not to exceed the number provided in paragraph A1.14 (3) above.

The City will perform title searches, coordinate with mortgage holders, assist the Engineer with negotiations if necessary, handle the process of taking condemnations to City Council, prepare final legal documents, and coordinate/schedule closings. The Engineer will prepare legal descriptions for up to twenty-seven (27) parcels.

3. Agreement Summary (Reference only)

a. Original Agreement amount:	\$	<u>266,874.78</u>
b. Net change for prior amendments:	\$	<u>0</u>
c. This amendment amount:	\$	<u>144,608.47</u>
d. Adjusted Agreement amount:	\$	<u>411,483.25</u>

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

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

OWNER:

ENGINEER:

CITY OF GREENVILLE

KIMLEY-HORN AND ASSOCIATES, INC.

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

By: Chad A. M... T

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

Title: Sr. Vice President

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

Date Signed: 4/8/04

# EXHIBIT C

## COMPUTATION OF MANDAY REQUIREMENTS AND FEES

Prepared for the City of Greenville

TIP NO.: EB-5539

COUNTY: Pitt

DESCRIPTION: South Tar River Greenway, Phase 3

**ENGINEERING AGREEMENT**  
 **SUPPLEMENTAL AGREEMENT NUMBER** 1  
**PROFESSIONAL SERVICES CONTRACT**  
**LIMITED SERVICES CONTRACT**

**CONTENTS:**

COVER	<u>1</u>
SUMMARY	<u>2</u>
SURVEY ESTIMATE	<u>3</u>
GEOTECHNICAL ESTIMATE	<u>      </u>
RAILROAD COORDINATION ESTIMATE	<u>      </u>
GREENWAY DESIGN ESTIMATE	<u>4 to 6</u>
RIGHT-OF-WAY ACQUISITION ESTIMATE	<u>7</u>

**ENGINEERING FIRM:** Kimley-Horn and Associates, Inc.

**PREPARED BY:** Jeffrey W. Moore, P.E.

**DATE:** April 8, 2014



**NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
LOCATION AND SURVEYS PEF COST ESTIMATE**

DATE: 4/11/2013

FIRM: Kimley-Horn and Associates, Inc.

SUB: Stewart

PROJECT: \_\_\_\_\_ COUNTY: Pitt

TIP NO.: EB-5539

LENGTH: \_\_\_\_\_  
L-LINE: \_\_\_\_\_  
Y-LINE(S): \_\_\_\_\_

RAMPS: \_\_\_\_\_  
RAILROADS: \_\_\_\_\_

LS NO.: \_\_\_\_\_

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

TASKS & PARAMETERS	MANHOURS BY CLASSIFICATION							TOTAL
	PE	PLS	SCA	ST	PC	IP	RP	
1. Research/Reconnaissance								0
2. Owner Mailing List/Letter to Owner								0
3. Property Locations								0
4. Existing Conditions Locations								0
5. Topographic Mapping <i>Approx. Length: 1200'</i>		1	1	6	12	12		32
6. Boring Location								0
7. Wetland/Stream Flag Location								0
8. Wetland/Stream JD Map								0
9. QA/QC								0
10. Partial Truss Survey								0
11. Easement Plats (11)		10	11	22	22			65
12. FFE Location <i>No. of Properties: 11 buildings</i>		1	1	2	4	4		12
13. Field Property Ties & Recon								0
<b>TOTAL MANHOURS:</b>	<b>0</b>	<b>12</b>	<b>13</b>	<b>30</b>	<b>38</b>	<b>16</b>	<b>0</b>	<b>109</b>

**CLASSIFICATION**

CLASSIFICATION	NAME
Professional Engineer	Frank Mundy
Professional Land Surveyor	Rich Penci
Survey Control Analyst	Frank Hopkins
Survey Technician	Matt Nappa
Party Chief	Dustin McCarty
Instrument Person	Jamie Harward
Rod Person	

HOURS	RATE	COST
0		\$0.00
12	\$49.04	\$588.48
13	\$30.89	\$401.57
30	\$26.00	\$780.00
38	\$22.00	\$836.00
16	\$17.00	\$272.00
0		\$0.00

**TOTAL  
MANHOURS**  
**109**

**TOTAL DIRECT  
SALARY COSTS**  
**\$2,878.05**

**INDIRECT SALARY COSTS**

Total Dir. Salary Costs	\$2,878.05	
Overhead (%)	154.80	\$4,458.22
Fee (%)	9	\$659.99
Cost of Capt. (%)	0.6400	\$18.42
<b>Total Indirect Salary Costs:</b>		<b>\$5,133.64</b>

**TOTAL DIR. and  
INDIR. SALARY COE**  
**\$8,011.69**

**DIRECT COSTS**

Carry-all \$/Day	\$45.00	_____	Days =	\$0.00
or \$/Mi	\$0.665	_____	Miles =	\$0.00
Sedan \$/Day	\$45.00	_____	Days =	\$0.00
or \$/Mi	\$0.665	200	Miles =	\$113.00
Misc. Survey Supplies =				\$0.00

**TOTAL DIRECT COS**  
**\$113.00**

**PER DIEM EXPENSES**

(Meals: \$36.35 Max., Lodging \$71.50 for lump sum jobs)								
\$ / Day	\$107.85	x	2	Persons	x	1	Days =	\$215.70

**TOTAL PER DIEM**  
**\$215.70**

Cost per Mi: \_\_\_\_\_  
Manhours per Mi: \_\_\_\_\_

**PROJECT ESTIMATE TOTAL: \$8,340.39**

ESTIMATE BY: Frank Mundy, PLS

**FEE ESTIMATE**

TASK	MANHOURS BY CLASSIFICATION							TOTAL			PROJECT PHASE
	ASSOC ENGR	SENIOR PROF II	SENIOR PROF I	ENGR I	DESIGN ENGR (E)	TECH	CLERICAL	MANHOURS	MANDAYS	NO.	TASK DESCRIPTION
A1.04		6		6				12	1.50	1	Meeting with GUC to review 80% plans
A1.08			6		6			12	1.50	2	Hydraulic Field Reconnaissance
A1.08			8		12	2		22	2.75	3	Hydraulic Design and CADD Work
A1.10				2	6			8	1.00	4	Incorporate survey
A1.10		2			6			8	1.00	5	Multi-Use Path (MUP) Centerline
A1.10				2	4			6	0.75	6	MUP edges of pavement design drafting
A1.10					4			4	0.50	7	Set up plan/profile sheets (2)
A1.10		2			8	4		12	1.50	8	MUP Proposed Profiles and Cross Sections
A1.10				2	2			4	0.50	9	Pavement marking, signing, and trail marker plans
A1.10				4	4			8	1.00	10	Erosion control plans and submit to DLO
A1.10				2	4			6	0.75	11	Revise plans per comments
A1.10		4			4	2		10	1.25	12	Final Internal QC/QA and Revise
A1.10				4	16	8		28	3.50	13	Add conduit to plans and conduit details and specifications
A1.10				2	30			32	4.00	14	Label bearings and distances for plat preparation
A1.10		2			12			14	1.75	15	Plat review and coordination
A1.13			16		36	20		72	9.00	16	Trailhead Design
A1.14		10			60			70	8.75	17	Legal Descriptors (30)
A1.14		12			12			24	3.00	18	Right-of-Way Acquisition Coordination
	0	38	30	20	214	50	0				
SUBTOTAL								352	44.00		

**EMPLOYEE CLASSIFICATION**

TIP NO.: EB-5539  
COUNTY: Pitt

CLASSIFICATION	MANHOURS	MANDAYS	RATE	COST
Associate Engineer				
Senior Professional II	38	4.75	\$ 66.36	\$ 2,521.68
Senior Professional I	30	3.75	\$ 56.26	\$ 1,687.80
Engineer I	20	2.50	\$ 44.00	\$ 880.00
Design Engineer	214	26.75	\$ 32.94	\$ 7,049.16
Technician	50	6.25	\$ 26.94	\$ 1,347.00
Clerical				
Total	352	44.00		
Total Direct Salary				\$ 13,485.64
Escalation (per year)				
Overhead			190.63%	\$ 25,707.68
Subtotal				\$ 39,193.32
Fee			9%	\$ 3,527.40
Overhead (Cost of Capital)			0.90%	\$ 121.37
<b>TOTAL DIRECT AND INDIRECT SALARY COSTS</b>				<b>\$ 42,842.08</b>

REPRODUCTION COSTS						
<b>(A) BONDS</b>						
	<b>SUBMITTAL</b>	<b>SHEETS</b>	<b>SETS</b>	<b>TOTAL</b>		
	30% Plans	_____ x	15 =	\$ -	-	
	60% Plans	_____ x	15 =	\$ -	-	
	90% Plans	_____ x	4 =	\$ -	-	
	100% Final Plans	_____ x	4 =	\$ -	-	
	Final Sealed	_____ x	3 =	\$ -	-	
	Work Sets	_____ x	8 =	\$ -	-	
+	TOTAL BOND PLANS (22"x34")	0 x	\$ 0.42 /sheet=	\$ -	-	
<b>(B) XEROX COPIES</b>						
+	TOTAL XEROX COPIES (Say)	_____ x	\$ 0.04 /sheet=	\$ -	-	
+	COVERS & BINDING (Say)	_____ x	\$ 1.00 /set=	\$ -	-	
<b>TRAVEL AND MISCELLANEOUS COSTS</b>						
<b>(C) TRAVEL</b>						
	<b>PURPOSE of TRIP</b>	<b>TRIPS</b>	<b>MILES</b>	<b>TOTAL</b>	<b>RATE</b>	<b>COSTS</b>
+	Preliminary Field Review	_____ x	_____ =	0 x	\$ 0.565 =	\$ -
+	Public Meeting/Hearing/Workshops	_____ x	_____ =	0 x	\$ 0.565 =	\$ -
+	Field Inspections (Preliminary, Combined, Final)	_____ x	_____ =	0 x	\$ 0.565 =	\$ -
+	Scheduled Reviews/Miscellaneous Meetings	2 x	200 =	400 x	\$ 0.565 =	\$ 226.00
+	Miscellaneous Local Meetings	_____ x	_____ =	0 x	\$ 0.565 =	\$ -
	<b>PER DIEM</b>	<b>TRIPS</b>	<b># ATTEND</b>	<b>TOTAL</b>	<b>RATE</b>	<b>COSTS</b>
+	Breakfast	_____ x	_____ =	_____ x	\$ 8.00 =	_____
+	Lunch	_____ x	_____ =	_____ x	\$ 10.45 =	_____
+	Dinner	_____ x	_____ =	_____ x	\$ 17.90 =	_____
+	Lodging	_____ x	_____ =	_____ x	\$ 71.50 =	_____
<b>(D) OTHER</b>						
	<b>LIST</b>		<b># ROLLS</b>	<b>RATE</b>	<b>COSTS</b>	
+	Film & Developing		_____ x	\$ 20.00 =	\$ -	
<b>TOTAL DIRECT NON-SALARY COSTS</b>						
					= \$ 226.00	

Contract Prime PEF: **Kimley-Horn and Associates, Inc.**

Subconsultant: **TELICS Right of Way Services**

Parcels	Rate for Permanent Easements	Rate for Temporary Easements	Cost
27	\$ 1,950.00		\$ 52,650.00
0		\$ 1,475.00	
Total			\$ 52,650.00

Parcels	Claim Report	Value Finding	Abbreviated Narrative	Full Narrative	Cost
6	Included				
		\$ 750.00			\$ -
17			\$ 1,750.00		\$ 29,750.00
4				\$ 2,700.00	\$ 10,800.00
Total					\$ 40,550.00

Total	\$ 93,200.00
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# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Contract award for the Municipal Building Roof Replacement and Exterior Waterproofing

**Explanation:** **Abstract:** The existing roof membrane system of the Municipal Building is in very poor condition and is in need of full removal and replacement. The Municipal Building's exterior envelope has also deteriorated due to age and environmental weathering. The building envelope is in need of window sill replacement in several areas, point up of brick and stone, and caulking of expansion joints.

**Explanation:** The East Group, in conjunction with the Public Works Department, has developed a set of construction plans for replacement of the roofing system and a procedure to provide waterproofing to the exterior. Review of plans and construction materials have also been approved by the Historic Preservation Commission.

The services in this contract include demolition of the existing roofing system with complete replacement of new insulation and membrane. Also included are removal and replacement of broken window sills, exterior waterproofing, and a new brick wythe on the building roof deck area.

The bid opening date was April 17, 2014, at which time Public Works received four (4) bids. The lowest responsible, responsive bidder is Owens Roofing, Inc. with a base bid in the amount of \$389,411. Bid alternate No. 1, provide and install new roof gravity vents, totaled \$9,000. Bid alternate No. 2, provide and install new wall hydrant "Hose Bib" on roof deck level, totaled \$1,340. Bid alternate No. 3, provide and install new diamond plate deck covers at rear of building, totaled \$2,800. Bid alternate No. 4, provide and install new guard rail system along roof parapet sections, totaled \$2,300. Owens Roofing, Inc.'s bid package total including the four (4) bid alternates for this project is \$404,851.

**Fiscal Note:**

City Council approved \$466,479 in the Capital Improvement Plan for this project. Remaining funds, after completion of the design, are approximately \$440,616 for this capital improvement project. Current available funds also allow for a 5% contingency above the total responsive bid.

**Recommendation:**

Approve the award of this contract for the Municipal Building Roof Replacement and Waterproofing Exterior Walls Project, including all four (4) bid alternates, to Owens Roofing, Inc., NC License No. 24442, for the amount of \$404,851.

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 [Bid Tab for Municipal Building Roof and Exterior Waterproofing](#)

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**BID TABULATION FORM**

<b>Project Name:</b> City of Greenville-Municipal Building Reroofing and Exterior Wall Waterproofing	<b>Project No.:</b> 20110015
<b>Bid Opening Location:</b> Public Works Offices Conference Room, 1500 Beatty Street, Greenville NC	<b>Bid Opening Date:</b> Thursday April 17 <sup>th</sup> , 2014

Bidder Company Name	NC License No.	Bid Bond	Power of Attorney	C. Ref. Form	MWBE	Addenda	Base Bid	Alternate #1	Alternate # 2	Alternate # 3	Alternate #4	Unit Price 1	Unit Price 2	Unit Price 3
Curtis Construction Company, Inc.	3529	√	√	√	√	3	\$417,720	\$6,000	\$1,500	\$3,2000	\$3,800	\$6.75	\$6.75	\$13.20
Owens Roofing, Inc.	24442	√	√	√	√	3	\$389,411	\$9,000	\$1,340	\$2,800	\$2,300	\$5.00	\$10.00	\$30.00
Progressive Contracting Co. Inc.	36100	√	√	√	√	3	\$523,300	\$11,600	\$2,800	\$6,800	\$5,000	\$7.00	\$7.00	\$18.00
Burney and Burney Construction Co. Inc	30238	√	√	√	√	3	\$490,000	\$2,200	\$2,400	\$3,600	\$4,500	\$7.15	\$7.25	\$14.50

Certified By: Richard E Johnson, AIA



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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

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

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

<u>Payee</u>	<u>Adjustment Refunds</u>	<u>Amount</u>
Jenilyn Parker	Real Property	\$ 721.34
Susan L. Clark	Real Property	\$ 860.61
Gurkins Management & Consulting Company	Real Property	\$1,152.89
Edward Alan Daughtry	Vehicle Sold	\$ 178.31
Billy Paul Morgan	Vehicle Sold	\$ 204.20
Shari Monique Acklin	Vehicle Totaled	\$ 103.26

**Fiscal Note:** The total amount to be refunded is \$3,220.61.

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

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# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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

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

**Explanation:** The Director of Financial Services reports that the following bid was awarded during the month of March 2014.

Date Awarded	Description	Vendor	Amount	MWBE Yes/No
3/11/2014	Repair Damage to Ambulance	Southeastern Specialty Vehicle	\$54,676.00	Yes

**Fiscal Note:** This repair is due to an accident, and the cost of this repair will be reimbursed from the property/casualty loss account.

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

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[Bid Tabulation for Repair of Ambulance\\_975226](#)

**BID TABULATION SHEET**  
**City of Greenville, North Carolina**  
**Financial Services Department**

**Description: Repair Ambulance due to Accident**

**Bid Due Date: 2/5/14**

Contractor	Address	Base Bid	Delivery	Comments
Southeastern Specialty Vehicles	P.O. Box 1097 Youngsville, NC 27596-1097	\$54,676.00		
Select Custom Apparatus, Inc.	P.O. Box AP, 6100 N. Main St. Falkland, NC 27827	\$57,538.82		Alt. Bid---\$64,539.30

Item # 08  
Doc#928484

Date: \_\_\_\_\_  
 Angelene E. Brinkley, Purchasing Manager



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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

- a. Planning and Zoning Commission
- b. Redevelopment Commission
- c. Community Appearance Commission

**Explanation:** The Planning and Zoning Commission, the Redevelopment Commission, and the Community Appearance Commission will make their annual presentations to City Council at the May 5, 2014, City Council meeting.

**Fiscal Note:** No direct cost related to the presentations.

**Recommendation:** Hear the presentations from the Planning and Zoning Commission, the Redevelopment Commission, and the Community Appearance Commission.

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# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Resolution accepting a gift of property from Greenville Prime Investors, LLC

**Explanation:** **Abstract:** Greenville Prime Investors, LLC, has offered to make a gift to the City of property consisting of approximately 0.644 acres, located between the Convention Center and the Greenville Hilton. The gift allows the expansion of the Convention Center in this area. The land has an appraised value of \$290,000. The adoption of a resolution is necessary to accept the gift.

**Explanation:** By the attached letter dated April 18, 2014, Greenville Prime Investors, LLC, has offered to make a gift to the City of property consisting of approximately 0.644 acres, located between the Convention Center and the Greenville Hilton. The gift allows the expansion of the Convention Center in this area. The land has an appraised value of \$290,000. A map depicting its location is attached.

**Fiscal Note:** Expenses associated with a conveyance of property will be incurred, such as legal and recording costs.

**Recommendation:** If Council determines to accept the gift of this property from Greenville Prime Investors, LLC, approval of the attached resolution to accept the gift is necessary.


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[Map of Convention Center](#)

 [Gift Letter](#)

 [Resolution Accepting a Gift of Property from Greenville Prime Investors LLC 978056](#)

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RESOLUTION NO. -14  
RESOLUTION ACCEPTING A GIFT OF PROPERTY FROM  
GREENVILLE PRIME INVESTORS, LLC

WHEREAS, Greenville Prime Investors, LLC, have offered to dedicate to the City of Greenville a tract of land consisting of approximately 0.644 acres; and

WHEREAS, the City Council of the City of Greenville hereby determines that it is for the public benefit to accept said property;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby accept the gift of property from Greenville Prime Investors, LLC, said property being located between the Convention Center and the Greenville Hilton and being described as follows:

The BEGINNING at a set PK nail in the eastern boundary line of property now owned by the City of Greenville, which set PK nail is North 01°59'36" East 359.67 feet from an existing iron pin in the southeastern corner of property now owned by the City of Greenville (currently identified as parcel number 27756, Pitt County Tax Assessor's Office and formerly known as Parcel "C" as depicted on a plat recorded in Map Book 22, page 175, Pitt County Registry); thence for a first call along and with the eastern boundary line of property now owned by the City of Greenville North 01°59'36" East 383.45 feet to a set PK nail in the aforesaid eastern boundary line; thence leaving the aforesaid eastern boundary line South 88°00'24" East 73.19 feet to a set PK nail; thence South 01°59'36" West 383.45 feet to a set PK nail; thence North 88°00'24" West 73.19 feet to the point and place of BEGINNING, and being a parcel of approximately 0.644 acres as depicted on that certain plat of survey entitled "Greenville Prime Investors, LLC and the City of Greenville," by Baldwin Design Consultants, PA, dated October 8, 2013.

Adopted this 5th day of May, 2014.

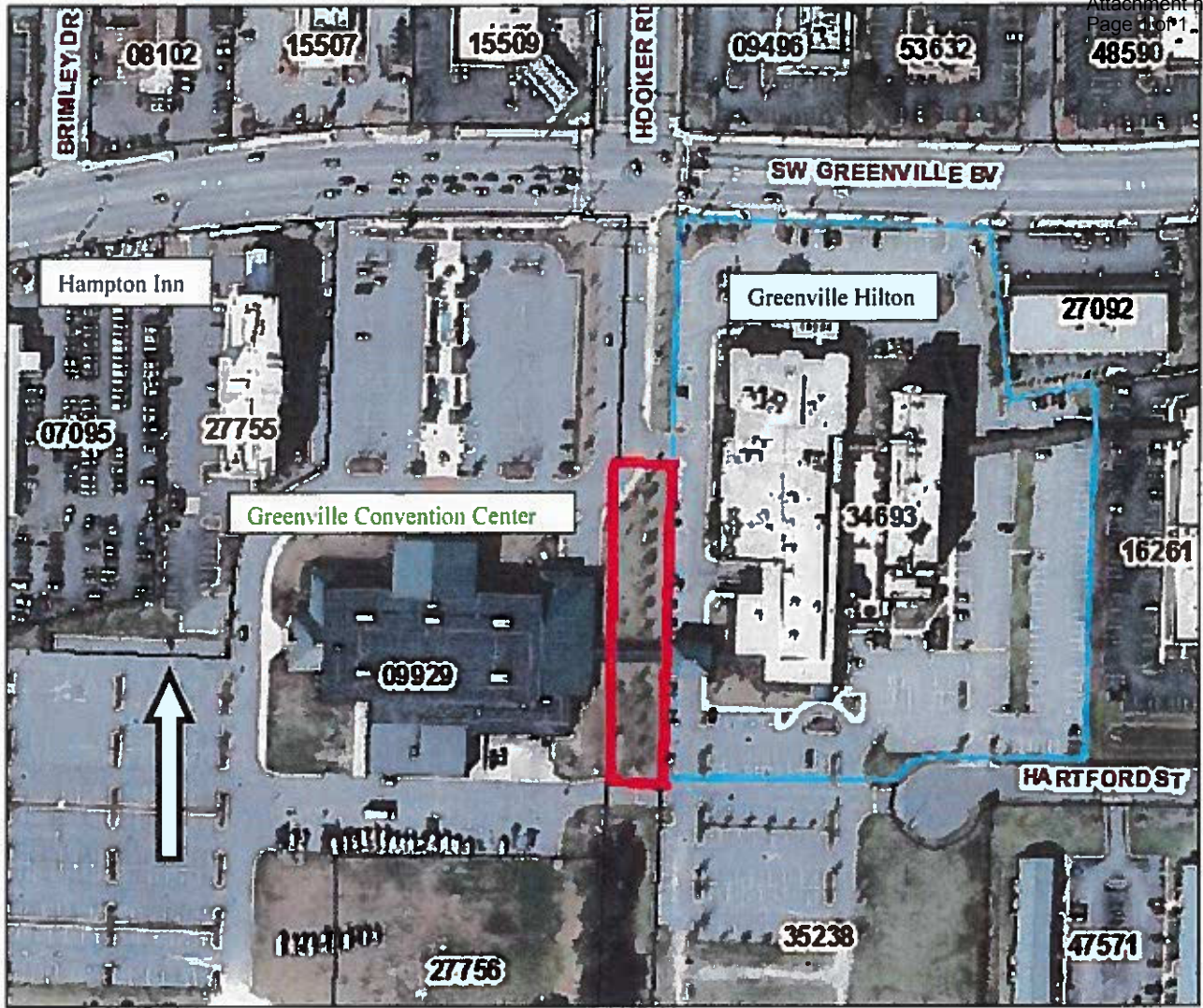
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Allen M. Thomas, Mayor

ATTEST:

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Carol L. Barwick, City Clerk





April 18, 2014

David A. Holec  
City Attorney  
City of Greenville, NC  
P.O. Box 7207  
Greenville, NC 27835

Dear Mr. Holec:

Greenville Prime Investors, LLC, the owner and operator of the Hilton Greenville, is please to present a gift of a .644 acre parcel of land, with the appraised value of \$290,000, to the City of Greenville. Greenville Prime Investors, LLC recognizes and supports the City's passion for economic growth. This gift of land is to continue that growth by allowing for the expansion of the Greenville Convention Center campus, which has been an engine for providing economic growth in the city of Greenville and Pitt County.

Greenville Prime Investors, LLC has and will continue to support the City of Greenville in its pursuit of economic growth and positive economic impact for the City, its merchants and residents. We are proud to be a part of the City and its economic fabric.

Sincerely,

A handwritten signature in black ink, appearing to read 'John VanCoutren'.

John VanCoutren  
Chief Executive Officer

HILTON GREENVILLE  
207 SW Greenville Blvd | Greenville, NC 27834

Item # 10



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Resolution approving an amendment to the Operational Management Agreement for the Greenville Convention Center

**Explanation:** **Abstract:** The City has determined to expand and renovate the Convention Center. As a result of the expansion, an Amendment to the Operational Management Agreement for the Convention Center has been negotiated. City Council approval of the Amendment by resolution is required.

**Explanation:** Exhibit Hall Managers, LLC, provides management services for the Convention Center pursuant to an Agreement between the City, Exhibit Hall Managers, LLC, the Pitt-Greenville Convention and Visitors Authority, and Greenville Prime Investors, LLC. The Agreement provides that if the City determines to expand the Convention Center, that negotiations will occur to amend the agreement to address changes to the Convention Center resulting from the expansion. Since the City has determined to expand the Convention Center, negotiations have occurred and an Amendment has been developed.

The Amendment results from the planned expansion and renovation of the Convention Center (referred to as the Exhibit Hall in the Agreement). The Amendment increases the area which comprises the Exhibit Hall Property, decreases the area which comprises the Hotel Property, addresses the vacation of offices in the Exhibit Hall by the Convention and Visitors Authority, provides for negotiation of a new agreement in the event of a future expansion or modification, provides for an option by Exhibit Hall Managers, LLC, to extend the term of the Agreement for an additional nine (9) year period, and addresses the required action in the event the Exhibit Hall is damaged or destroyed by fire or other casualty.

Attached is the proposed Amendment and a sheet which outlines key provisions of the current Agreement and summarizes the provisions of the Amendment.

The Pitt-Greenville Convention and Visitors Authority approved the

proposed Amendment at a board meeting on March 20, 2014. Exhibit Hall Managers and Greenville Prime Investors have agreed to the terms of the proposed Amendment.

**Fiscal Note:**

Exhibit Hall Managers is responsible for the operational costs of the Convention Center. Exhibit Hall Managers retains all revenue derived from the use of the Convention Center. The Convention and Visitors Authority provides the equivalent of one penny of the hotel/motel accommodations tax (approximately \$250,000) annually to Exhibit Hall Managers for marketing of the Convention Center.

**Recommendation:**

Adopt the attached resolution approving the First Amendment to Operational Management Agreement for the Greenville Convention Center.

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**Attachments / click to download**

- [2014 RESOLUTION APPROVING AN AMENDMENT TO THE OPERATIONAL MANAGEMENT AGREEMENT FOR THE GREENVILLE C](#)
  - [2014 Amendment to Convention Center Operation Managment Agreement 978109](#)
  - [Provisions of Amended Convention Center Operational Management Agreement 978191](#)
-

RESOLUTION NO. - 14  
RESOLUTION APPROVING AN AMENDMENT TO THE OPERATIONAL  
MANAGEMENT AGREEMENT FOR THE GREENVILLE CONVENTION CENTER

WHEREAS, North Carolina General Statute 160A-489 authorizes the City of Greenville to establish and support a convention center;

WHEREAS, pursuant to an Interlocal Agreement dated September 18, 1997, between the City of Greenville, Pitt County, and the Pitt-Greenville Convention and Visitors Authority, the City of Greenville has been empowered to determine all matters relating to financing, constructing, maintaining, operating, and marketing a convention center to be developed within the corporate limits of the City of Greenville; and

WHEREAS, the City of Greenville has determined to expand the Exhibit Hall facility and, in accordance with the provisions of Section 16.2 of the Operational Management Agreement dated September 20, 2011, by and among Exhibit Hall Managers, LLC, the City of Greenville, Pitt-Greenville Convention and Visitors Authority, and Greenville Prime Investors, LLC, an amendment to the Agreement has been negotiated to address changes to the Exhibit Hall resulting from the expansion.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that the First Amendment to Operational Management Agreement by and among Exhibit Hall Managers, LLC, the City of Greenville, Pitt-Greenville Convention and Visitors Authority, and Greenville Prime Investors, LLC, be and is hereby approved, said Amendment amends certain provisions relating to the Agreement which establishes the terms and conditions for the operation of the Greenville Convention Center.

This the 5th day of May, 2014.

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Allen M. Thomas, Mayor

ATTEST:

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Carol L. Barwick, City Clerk



**STATE OF NORTH CAROLINA**  
**COUNTY OF PITT**

**FIRST AMENDMENT  
TO  
OPERATIONAL  
MANAGEMENT AGREEMENT**

THIS FIRST AMENDMENT TO OPERATIONAL MANAGEMENT AGREEMENT (hereafter referred to as "Amendment"), is made and entered into as of the \_\_\_\_ day of May, 2014, by and among Exhibit Hall Managers, LLC, a North Carolina limited liability company, hereafter referred to as "EHM," the City of Greenville, a municipal corporation existing pursuant to the laws of the State of North Carolina, hereafter referred to as "Greenville," Pitt-Greenville Convention and Visitors Authority, an authority existing under the laws of the State of North Carolina, hereafter referred to as "CVA," and Greenville Prime Investors, LLC, a North Carolina limited liability company, hereafter referred to as "Hilton."

**WITNESSETH:**

WHEREAS, Greenville has determined to expand the Exhibit Hall facility and, in accordance with the provision of Section 16.2 of the Operational Management Agreement dated September 20, 2011, by and among Greenville, EHM, CVA and Hilton (hereafter referred to as "Agreement"), Greenville, EHM, CVA and Hilton have negotiated an amendment to the Agreement to address changes to the Exhibit Hall resulting from the expansion.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth below, the legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1) That Exhibit A to the Agreement is amended by increasing the area which comprises the Exhibit Hall Property by the addition to the property description contained in Exhibit A to the Agreement of the following:

ALSO INCLUDING THE FOLLOWING:

BEGINNING at a set PK nail in the eastern boundary line of property now owned by the City of Greenville, which set PK nail is North 01°59'36" East 359.67 feet from an existing iron pin in the southeastern corner of property now owned by the City of Greenville (currently identified as parcel number 27756, Pitt County Tax Assessor's Office and formerly known as Parcel "C" as depicted on a plat recorded in Map Book 22, page 175, Pitt County Registry); thence for a first call along and with the eastern boundary line of property now owned by the City of Greenville North 01°59'36" East 383.45 feet to a set PK nail in the aforesaid eastern boundary line; thence leaving the aforesaid eastern boundary line South 88°00'24" East 73.19 feet to a set PK nail; thence South 01°59'36" West 383.45 feet to a set PK nail; thence North 88°00'24" West 73.19 feet to the point and place of BEGINNING, and being a parcel of approximately 0.644 acres as depicted on that certain plat of survey entitled "Greenville Prime Investors, LLC and the City of Greenville," by Baldwin Design Consultants, PA, dated October 8, 2013, and last revised \_\_\_\_\_, 2013 (File number 08-007).

2) That Exhibit B to the Agreement is amended by reducing the area which comprises the Hotel Property by the addition to the property description contained in Exhibit B to the Agreement of the following:

EXCEPTED FROM THE ABOVE DESCRIBED PROPERTY IS THE FOLLOWING:

BEGINNING at a set PK nail in the eastern boundary line of property now owned by the City of Greenville, which set PK nail is North 01°59'36" East 359.67 feet from an existing iron pin in the southeastern corner of property now owned by the City of Greenville (currently identified as parcel number 27756, Pitt County Tax Assessor's Office and formerly known as Parcel "C" as depicted on a plat recorded in Map Book 22, page 175, Pitt County Registry); thence for a first call along and with the eastern boundary line of property now owned by the City of Greenville North 01°59'36" East 383.45 feet to a set PK nail in the aforesaid eastern boundary line; thence leaving the aforesaid eastern boundary line South 88°00'24" East 73.19 feet to a set PK nail; thence South 01°59'36" West 383.45 feet to a set PK nail; thence North 88°00'24" West 73.19 feet to the point and place of BEGINNING, and being a parcel of approximately 0.644 acres as depicted on that certain plat of survey entitled "Greenville Prime Investors, LLC and the City of Greenville," by Baldwin Design Consultants, PA, dated October 8, 2013, and last revised \_\_\_\_\_, 2013 (File number 08-007).

3) That Section 4.3 of the Agreement is amended by rewriting said section to read as follows:

4.3 CVA OFFICE SPACE

Except as otherwise provided in this section, CVA shall be provided, at no cost to the CVA (i.e., no rent but CVA shall be responsible for payment of expenses associated with cleaning and janitorial services, phone, data communication, cable tv, and other similar utilities not associated with the building itself), office space located in the Exhibit Hall for CVA to carry out its functions and responsibilities until the date CVA vacates its offices in the Exhibit Hall and locates its offices at a location other than the Exhibit Hall. It is anticipated that CVA will vacate its offices in the Exhibit Hall upon or prior to completion of the expansion and renovation of the Exhibit Hall, scheduled to occur during 2014 and 2015. CVA and EHM shall cooperate and coordinate during the period that construction relating to any expansion to or renovation of the Exhibit Hall occurs so as to not impede any such construction activity. CVA and EHM agree that cooperation and coordination includes the sharing of office space. When CVA has determined the date it is to vacate the offices in the Exhibit Hall and locate its offices at a location other than the Exhibit Hall, it shall provide Greenville and EHM at least ten (10) days' prior written notice of the effective date when the offices in the Exhibit Hall will be vacated and the offices will be at a location other than the Exhibit Hall. When CVA vacates its offices in the Exhibit Hall, the offices in the Exhibit Hall previously occupied by CVA shall be a part of the Exhibit Hall available for lease or rental for use for limited periods for out-of-town conventions, businesses, and consumer trade shows, public and private civic and community events, education events and other categories of events or be used as offices by EHM. Should CVA continue to occupy its office space in the Exhibit Hall after completion of the aforesaid expansion and renovation of the

Exhibit Hall, then the CVA office space in the Exhibit Hall shall be in a location mutually agreeable among Greenville, CVA and EHM.

- 4) That Section 16.2 of the Agreement is amended by rewriting said section to read as follows:

16.2 EXPANSION

Regardless of the termination date specified in Section 16.1, or as extended in accordance with Section 16.3, should Greenville, in its sole discretion, determine to expand and/or modify the size and configuration of the Exhibit Hall facility, after the expansion and renovation scheduled to occur during 2014 and 2015, then, Greenville, EHM, CVA, and Hilton agree to negotiate a new agreement with additional terms, if deemed appropriate, to address changes to the Exhibit Hall resulting from the expansion or modification. If the parties do not agree to a new agreement, the term of the Agreement shall remain the same as stated in Section 16.1. or as extended in accordance with Section 16.3.

- 5) That Section 16.0 of the Agreement is amended by the addition of a Section 16.3 to read as follows:

16.3 EXTENSION OF TERM

EHM shall have the option to extend the term of this Agreement for an additional nine (9) year period provided that an event of default by EHM under this Agreement, as defined by Section 15.2, does not exist when the option is exercised by EHM, as hereinafter provided. EHM may exercise the option by providing written notice to the City, CVA, and Hilton at any time during the period between January 1, 2020, and December 31, 2020. If EHM exercises the option to extend, the term of this Agreement will extend for an additional nine (9) year period commencing at 12:00 a.m. on January 1, 2022, and will terminate, unless earlier terminated in accordance

with the provisions of this Agreement, at 11:59 p.m. on December 31, 2030. During the extension, all terms and conditions of this Agreement shall remain in full force and effect.

- 6) That Section 23.0 of the Agreement is amended by rewriting said section to read as follows:

23.0 DAMAGE TO AND DESTRUCTION OF THE EXHIBIT HALL

If the Exhibit Hall is damaged or destroyed by fire or other casualty so extensively as to require the replacement of fifty percent (50%) (based upon then insurable replacement value) or more of the Exhibit Hall at any time during the term of this Agreement, Greenville shall have the option, which shall be exercised within sixty (60) days after the casualty occurs by written notice to EHM, either (i) to replace and restore the Exhibit Hall to the condition which existed prior to such damage or destruction, or to a different condition, and Greenville shall have the full proceeds from the insurance thereon to pay the costs of such restoration, in which case this Agreement shall continue in full force and effect, or (ii) to elect not to operate the Exhibit Hall, in which event this Agreement shall terminate as of the date of Greenville's election and Greenville shall release EHM from the standby letter of credit referred to in Section 3.5 and shall pay EHM the amount of \$200,000 which it deposited in the Operating Account pursuant to section 5.5 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, less any management fees it received pursuant to the provisions of section 5.4 of the Development, Pre-Opening & Operational Management Agreement dated September 11, 2000, and pursuant to section 3.4 of this Agreement. If Greenville elects to replace and restore the Exhibit Hall, Greenville shall proceed diligently with the required repairs or other corrective action and shall commence work within one

hundred twenty (120) days after the casualty occurs. If Greenville elects not to operate the Exhibit Hall after a fire or other casualty and is not otherwise required to replace and restore the Exhibit Hall premises as provided in the next sentence, Greenville shall proceed diligently with the demolition and/or repair of the damaged or destroyed portion of the Exhibit Hall, the clearance of any rubble and debris from the Exhibit Hall Property, and the planting of grass or other vegetation in the area whereupon the demolished portion of the Exhibit Hall, if any, was located, which said grass or other vegetation shall be maintained until Greenville determines to utilize again the area whereupon the demolished portion of the Exhibit Hall, if any, was located in another manner. If the Exhibit Hall is damaged or destroyed by less than the amount referred to above at any time during the term of this Agreement, Greenville shall replace and restore the Exhibit Hall premises and use the insurance proceeds therefor, except that Greenville shall have no obligation to replace or restore any damage exceeding One Hundred Thousand Dollars (\$100,000) from any one occurrence during the last twelve (12) months of the term of this Agreement. Any repair of the Exhibit Hall under this Section 23.0 prosecuted by Greenville shall be to restore that portion of the Exhibit Hall so repaired to the condition that the same was in immediately prior to the fire or other casualty.

7) That, except as expressly amended hereby, the Agreement shall remain in full force and effect and is hereby confirmed in all respects by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment to Operational Management Agreement as of the date first hereinabove written.

**CITY OF GREENVILLE**

---

Allen M. Thomas, Mayor

ATTEST

---

Carol L. Barwick, City Clerk

**PITT-GREENVILLE CONVENTION  
AND VISITORS AUTHORITY**

---

J.J. McLamb, Chairman

ATTEST

---

Candace Hollingsworth, Secretary

**EXHIBIT HALL MANAGERS, LLC**

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Thomas J. Glennon, Managing Member

**GREENVILLE PRIME INVESTORS, LLC**

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Thomas J. Glennon, Managing Member

APPROVED AS TO FORM:

\_\_\_\_\_  
David A. Holec, City Attorney

PRE-AUDIT CERTIFICATION

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

\_\_\_\_\_  
Bernita W. Demery, Director of Financial Services

NORTH CAROLINA  
PITT COUNTY

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, certify that Carol L. Barwick personally came before me and acknowledged that she is City Clerk for the City of Greenville, and that by authority duly given, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Carol L. Barwick, its City Clerk.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

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



**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, certify that Candace Hollingsworth personally came before me and acknowledged that she is Secretary for the Pitt-Greenville Convention and Visitors Authority, and that by authority duly given, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by Candace Hollingsworth, its Secretary.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014

\_\_\_\_\_  
Notary Public

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

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, do hereby certify that Thomas J. Glennon, Managing Member of Exhibit Hall Managers, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

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

**NORTH CAROLINA**  
**PITT COUNTY**

I, \_\_\_\_\_, a Notary Public of Pitt County, North Carolina, do hereby certify that Thomas J. Glennon, Managing Member of Greenville Prime Investors, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public

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

## Convention Center Operational Management Agreement

### Key Provisions of Current Agreement

1. **Operation of Exhibit Hall.** EHM is to operate and manage the exhibit hall in a first-class manner (section 3.1). First-class is defined in section 3.1. EHM is responsible for accomplishing everything required to operate the exhibit hall with its duties and responsibilities being listed in section 3.2. The funds necessary to operate the exhibit hall are to be maintained in an operating account (section 3.5). The revenues derived from the operation of the exhibit hall are to be deposited in the operating account (section 3.5). If additional funds are required, a maximum of \$200,000 of the \$300,000 letter of credit provided by EHM may be converted to the operating account at the City's option (section 3.5). Expenses incurred by EHM for the exhibit hall operation must be maintained within the annual budget approved by the City Manager (section 3.6). EHM only receives compensation for its management services in a fiscal year in which revenues of the exhibit hall exceed expenses (section 3.4). The City is not responsible for any losses associated with the operation of the exhibit hall (section 3.4).
2. **Marketing the Exhibit Hall.** EHM is to coordinate the marketing of the exhibit hall with the CVA (section 4.1). All marketing plans and budgets are to be approved by the executive committee of the CVA (section 4.1). Funding for the marketing of the exhibit hall is to be provided by the CVA to EHM on a quarterly basis in an amount equal to 1 cent of the first 3 cents of the occupancy tax (section 4.2). Office space is to be provided within the exhibit hall for the CVA (section 4.3). CVA may vacate office space (section 4.3).
3. **Hotel Operation.** Hilton is to operate its hotel in a first-class manner so that it complements the exhibit hall and together they form a convention center (section 5.0). First-class is defined in section 3.1. Hilton is to provide food and beverage service to the exhibit hall (section 5.0 b), make available its ballroom and meeting room facilities (section 5.0 c) to exhibit hall patrons, and cooperate with the marketing of the exhibit hall (section 5.0 g). Hilton is to maintain a franchise agreement with the national Hilton chain or a similar national hotel chain (section 5.0 a). Hilton is to pay, as a revenue of the exhibit hall, at least a 10% concession fee on food and beverage service and at least a 10% room referral fee (section 5.0 b and i).
4. **Guaranties.** The performance of the obligations of Hilton are guaranteed by a \$100,000 letter of credit (section 10.1). The performance of the obligations of EHM are guaranteed by a \$300,000 letter of credit (section 10.2).
5. **Financial Records.** The books, records, and financial data relating to the exhibit hall are open to the City at all times (section 17.2). A quarterly report of the operations of the exhibit hall is to be provided by EHM to the City (section 17.3). An annual audit of the exhibit hall operations prepared by an independent certified public accountant and conforming with requirements of the Local Government Commission is to be provided by

EHM to the City (section 17.4). Hilton will have an independent certified public accountant perform an annual audit and issue to the City a letter which states the type of opinion given of the financial condition of the Hilton (unqualified, qualified, or adverse), any issues relating to Hilton's ability to operate as a going concern, and whether the Hilton has had any substantial change in the financial condition of its business (section 5.0 j). Additionally, the accountant will be made available, at the City's request, to provide further financial information relating to the Hilton, with certain limitations (section 5.0 j).

6. **Term.** The term of the Agreement begins on January 1, 2012, and ends on December 31, 2021. The City or EHM may terminate the Agreement as a result of a default by the other party (section 15.4).
7. **Other Provisions.**
  - a. The treatment of naming rights is set-out in section 6.0.
  - b. The required mix of events at the exhibit hall is set out in section 7.0.
  - c. The responsibility for repairs and maintenance of the exhibit hall and its furniture, fixtures, and equipment is set out in section 8.0 and 9.0.
  - d. The non-discrimination requirement for EHM is set out in Section 3.2 y and for the Hilton is set out in section 5.0 f.
  - e. The insurance required to be maintained is set out in section 18.0.

#### **Provisions of Amendment**

- 1) The area which comprises the Exhibit Hall Property is increased to include the additional property gifted to the City by Greenville Prime Investors, LLC. (amends Exhibit A to Agreement)
- 2) The area which comprises the Hotel Property is reduced by deleting the additional property gifted to the City by Greenville Prime Investors, LLC. (amend Exhibit B to Agreement)
- 3) The vacation of offices in the Exhibit Hall by the Convention and Visitors Authority is addressed. The CVA has indicated that it intends to move its offices to another location. (amends Section 4.3)
- 4) Provides for negotiation of a new agreement in the event of a future expansion or modification. This provision existed in the current Agreement and resulted in the proposed Amendment but needs to be revised to address future expansions or modifications. (amends Section 6.2)
- 5) Provides for an option by Exhibit Hall Managers, LLC, to extend the term of the Agreement for an additional nine (9) year period. (adds a new Section 16.3)

- 6) Addresses the required action in the event the Exhibit Hall is damaged or destroyed by fire or other casualty. The requirement is included that if the Exhibit Hall is damaged or destroyed by greater than 50% and the City determines not to replace or restore it, that it will proceed diligently with demolition and plant grass or other vegetation in the area demolished until the City determines to again utilize the area. (amends Section 23.0)



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Contract award for Design-Build Services for the Greenville Convention Center renovation and expansion

**Explanation:** **Abstract:** This Design-Build Services Contract will provide for the design and construction of the Greenville Convention Center renovation and expansion. The cost of the renovation and expansion of the Greenville Convention Center will be financed through the issuance of a Series 2014 Special Obligation Revenue Bond.

**Explanation:** In December 2013, the Public Works Department advertised a Request for Qualifications (RFQ) for Design-Build Services for the Greenville Convention Center renovation and expansion. The project will consist of approximately 50,000 square feet of renovations to the existing exhibit hall, pre-function space, lobby, and breakout space. Additionally, the expansion portion of the project will include approximately 11,000 square feet of new breakout/seminar rooms and bathrooms and a new outdoor terrace area located on the east side of the Convention Center. Per City policy, the expansion will be LEED Silver Certified.

On January 22, 2014, the Public Works Department received ten (10) submittals in response to the RFQ. The submittals were reviewed and scored by the project team, and three (3) firms were shortlisted for interviews in accordance with House Bill 857. The interviews were held on February 24, 2014. On February 28, 2014, the team of TA Loving Company & Oakley Collier Architects (with Ark Consulting Group and J. Morgan Design, both of Greenville) was notified that they had been selected for the project. TA Loving Company will be the lead Design-Builder.

Fees included under the Design-Build contract are: Design fee - lump sum \$339,000.00; Pre-construction fee - lump sum \$39,000.00; and Construction fee - Cost of Work plus Design-Builder's fee of 5.5%. TA Loving Company will be providing the City a Guaranteed Maximum Price (GMP) for the project when the project is bid.

**Fiscal Note:**

The project budget is \$4,000,000. A resolution by City Council was approved on March 17, 2014, to finance the cost of the renovations and expansion of the Greenville Convention Center through the issuance of a Series 2014 Special Obligation Revenue Bond with an upper limit of \$4,200,000.

**Recommendation:**

Award a contract for Design-Build Services to TA Loving Company for the Greenville Convention Center renovation and expansion.

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

**Attachments / click to download**

 [Greenville Convention Center Contract](#)

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# AIA<sup>®</sup> Document A141<sup>™</sup> – 2004

## **Standard Form of Agreement Between Owner and Design-Builder**

**AGREEMENT** made as of the    day of    in the year  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:  
*(Name, legal status, address and other information)*

City of Greenville  
PO Box 7207  
Greenville, NC 27835

and the Design-Builder:  
*(Name, legal status, address and other information)*

T.A. Loving Company  
400 Patetown Road  
Goldsboro, NC 27530

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

Greenville Convention Center Renovation and Expansion  
303 SW Greenville Blvd  
Greenville, NC 27834

The Owner and Design-Builder agree as follows.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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**TABLE OF ARTICLES**

- 1 THE DESIGN-BUILD DOCUMENTS**
- 2 WORK OF THIS AGREEMENT**
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 MISCELLANEOUS PROVISIONS**
- 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS**

**TABLE OF EXHIBITS**

- A TERMS AND CONDITIONS**
- B DETERMINATION OF THE COST OF THE WORK**
- C INSURANCE AND BONDS**

**ARTICLE 1 THE DESIGN-BUILD DOCUMENTS**

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

**ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT**

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

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If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:  
*(Insert Owner's time requirements.)*

**§ 3.2** The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.  
*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

The Owner and Design-Builder recognize that time is of the essence in the performance of this Agreement and the Owner will suffer financial loss if the Work is not completed by the date specified in Section 3.3 plus any extensions thereof as provided in Section A.8.3 of Exhibit A to this Agreement. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design-Builder agree that as liquidated damages for delay, but not as penalty, Design-Builder shall pay Owner \$1,000.00 for each calendar day that expires after the date specified in Section 3.3 or the date said date specified in Section 3.3 is extended to, if extended as provided in Section A.8.3 of Exhibit A of this Agreement.

**§ 3.3** The Design-Builder shall achieve Substantial Completion of the Work not later than days from the date of commencement, or as follows:  
*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

The Contractor shall achieve Substantial Completion of the entire Work not later than June 01, 2015.

**Portion of Work**

**Substantial Completion Date**

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:  
*(Check the appropriate box.)*

- Stipulated Sum in accordance with Section 4.2 below;
- Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
- Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

*(Based on the selection above, complete either Section 4.2, 4.3 or 4.4 below.)*

**§ 4.2 STIPULATED SUM**

**§ 4.2.1** The Stipulated Sum shall be (\$ ), subject to additions and deductions as provided in the Design-Build Documents.

**§ 4.2.2** The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

**§ 4.2.3** Unit prices, if any, are as follows:

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Description	Units	Price (\$0.00)
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§ 4.2.4 Allowances, if any, are as follows:  
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount (\$0.00)	Included Items
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§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

**§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE**

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

**§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE**

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

A lump sum of \$429,000.00 based on the following distribution of compensation: (See Exhibit F - Design-Builder Fee Proposal)

- \$339,000.00 Design Fee
- \$39,000.00 Pre-Construction Fee

In addition to the lump sum fee amount, the Design-Builder shall also be paid a Construction Fee in the amount of 5.5% of Cost of the Work (excluding Design and Pre-Construction costs)

**§ 4.4.3 GUARANTEED MAXIMUM PRICE**

§ 4.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed (\$ ), subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

After the public opening of bids for Trade Contract packages in accordance with NC Gen. Stat. 143-128 to 132, the Design-Builder shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. Unless approved otherwise by the Owner, a minimum of three Trade Contract packages shall be required for opening of bids. The Guaranteed Maximum Price in the proposal shall be the sum of the apparent low, responsive, responsible Trade Contract bidders for the Cost of the Work, including contingencies and the Design-Builder's Fee.

Following acceptance of a Guaranteed Maximum Price, the Owner and Design-Builder shall execute the Guaranteed Maximum Price Amendment amending this Agreement. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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§ 4.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

§ 4.4.3.3 Unit Prices, if any, are as follows:

Description	Units	Price (\$0.00)
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§ 4.4.3.4 Allowances, if any, are as follows:

*(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)*

Allowance	Amount (\$0.00)	Included Items
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§ 4.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

*(Identify the assumptions on which the Guaranteed Maximum Price is based.)*

**§ 4.5 CHANGES IN THE WORK**

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

~~§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.~~

**ARTICLE 5 PAYMENTS**

**§ 5.1 PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

§ 5.1.3 Provided that an Application for Payment is received not later than the 3rd day of month, the Owner shall make payment to the Design-Builder not later than the 20th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than twenty one ( 21 ) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in

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accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## § 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent ( %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent ( %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- .1 add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section A.9.8.6 of Exhibit A, Terms and Conditions requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)*

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**§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE**

**§ 5.3.1** Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

**§ 5.3.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Exhibit B;
- .2 Add the Design-Builder's Fee, less retainage of percent ( %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .5 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

**§ 5.3.3** Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

**§ 5.3.4** Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than percent ( %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

**§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE**

**§ 5.4.1** Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 5.4.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of five percent ( 5 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Owner;

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- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than five percent ( 5 %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

**§ 5.5 FINAL PAYMENT**

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

**ARTICLE 6 DISPUTE RESOLUTION**

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

*(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)*

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)*

*(Check one.)*

- Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

**§ 6.3 ARBITRATION**

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

**ARTICLE 7 MISCELLANEOUS PROVISIONS**

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

*(Insert name, address, license number, relationship to Design-Builder and other information.)*

Init.

<u>Name and Address</u>	<u>License Number</u>	<u>Relationship to Design-Builder</u>	<u>Other Information</u>
<u>Oakley Collier Architects</u> <u>Tim Oakley</u> <u>109 Candlewood Road</u> <u>Rocky Mount, NC 27804</u>	<u>NC 5967</u>	<u>Project Architect</u>	
<u>J. Morgan Design Associates</u> <u>Judy Morgan</u> <u>906 Moye Blvd.</u> <u>Greenville, NC 27834</u>		<u>Interior Design</u>	
<u>Atlantec Engineers</u> <u>David Whitney</u> <u>Jim DelPapa</u> <u>3321 Blue ridge Rd.</u> <u>Suite 113</u> <u>Raleigh, NC 27612</u>	<u>NC 17382</u> <u>NC 22035</u>	<u>MEP Design</u>	
<u>Stewart Engineering</u> <u>Craig Fisher</u> <u>421 Fayetteville St.</u> <u>Suite 400</u> <u>Raleigh, NC 27601</u>	<u>NC 24417</u>	<u>Structural Design</u>	
<u>ARK Consulting</u> <u>Bryant Fagundus</u> <u>3280 Charles Blvd.</u> <u>Suite B</u> <u>Greenville, NC 27858</u>	<u>NC 31970</u>	<u>Civil Design</u>	

<u>Name and Address</u>	<u>License Number</u>	<u>Relationship to Design-Builder</u>	<u>Other Information</u>
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§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:  
(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

<u>Name and Address</u>	<u>License Number</u>	<u>Responsibilities to Owner</u>	<u>Other Information</u>
-------------------------	-----------------------	----------------------------------	--------------------------

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:  
(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

<u>Name and Address</u>	<u>License Number</u>	<u>Responsibilities to Owner</u>	<u>Other Information</u>
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§ 7.4 The Owner's Designated Representative is:  
(Insert name, address and other information.)

Scott P.M. Godefroy, PE  
1500 Beatty Street  
Greenville, NC 27835  
252-329-4525

Init.



§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.5 The Design-Builder's Designated Representative is:  
*(Insert name, address and other information.)*

John Berry  
400 Patetown Road  
Goldsboro, NC 27530  
919-734-8400

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

(a) As required by G.S. 143-128.1A(e), the Design-Builder certifies that each licensed design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence, and qualifications in the manner provided by North Carolina General Statute 143-64.31.

(b) As required by G.S. 143-128.1A(f), unless a change is approved in writing by the Owner, the Design-Builder shall not change any of the licensed contractors, licensed subcontractors, or licensed design professionals the Design-Builder has identified it will use for the Project's design and constructions.

(c) As required by the statutory E-verify requirements, the Design-Builder shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if the Design-Builder furnishes services, programs of goods to the Owner utilizing a subcontractor, the Design-Builder shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. The Design-Builder represents that the Design-Builder and its subcontractors are in compliance with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.

(d) The Design-Builder shall coordinate with the Owner and Exhibit Hall Managers, LLC, the manager of the Convention Center, in the scheduling and the performance of the Work so that the ongoing operation of the Convention Center may continue in a reasonable manner.

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

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

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

~~percent (—%)—~~

~~*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Design-Builder's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*~~

**ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS**

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:  
*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Exhibit D - Supplementary Conditions

Document	Title	Pages
----------	-------	-------

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

*(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)*

Exhibit E - Project Criteria

Title	Date
-------	------

§ 8.1.4 The Design-Builder's Proposal, dated , consists of the following:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

§ 8.1.6 The Addenda, if any, are as follows:

*(Either list applicable documents below or refer to an exhibit attached to this Agreement.)*

Number	Date	Pages
--------	------	-------

§ 8.1.7 Exhibit A, Terms and Conditions.

*(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)*

§ 8.1.8 Exhibit B, Determination of the Cost of the Work, if applicable.

*(If the parties agree to substitute a method to determine the cost of the Work other than that contained in AIA Document A141-2004, Exhibit B, Determination of the Cost of the Work, then identify such other method to determine the cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)*

§ 8.1.9 Exhibit C, Insurance and Bonds, if applicable.

*(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")*

Init.

§ 8.1.10 Other documents, if any, forming part of the Design-Build Documents are as follows:  
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Exhibit F - Design Builder Fee Proposal

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

\_\_\_\_\_  
**OWNER** (Signature)

\_\_\_\_\_  
**DESIGN-BUILDER** (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

Init.

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

**CITY OF GREENVILLE**

**T.A. LOVING COMPANY**

BY \_\_\_\_\_

BY \_\_\_\_\_

Allen M. Thomas

Printed Name \_\_\_\_\_

Mayor

TITLE \_\_\_\_\_

**APPROVED AS TO FORM**

\_\_\_\_\_  
David A. Holec, 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: \_\_\_\_\_  
Bernita Demery, CPA, Director of Financial Services

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

Project Code (if applicable) \_\_\_\_\_



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 13:17:57 on 04/22/2014 under Order No. 2846442549 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2004, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*



# AIA<sup>®</sup> Document A141<sup>™</sup> – 2004 Exhibit A

## ***Terms and Conditions***

**for the following PROJECT:**

*(Name and location or address)*

Greenville Convention Center Renovation and Expansion  
303 SW Greenville Blvd  
Greenville, NC 27834

**THE OWNER:**

*(Name, legal status and address)*

City of Greenville  
PO Box 7207  
Greenville, NC 27835

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

T.A. Loving Company  
400 Patetown Road  
Goldsboro, NC 27530

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

### **TABLE OF ARTICLES**

#### **A.1 GENERAL PROVISIONS**

#### **A.2 OWNER**

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#### **A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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User Notes:

(389ADA1B)  
Item # 12



**A.13 MISCELLANEOUS PROVISIONS**

**A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT**

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Item # 12

## **ARTICLE A.1 GENERAL PROVISIONS**

### **§ A.1.1 BASIC DEFINITIONS**

#### **§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS**

The Design-Build Documents are identified in Section 1.1 of the Agreement.

#### **§ A.1.1.2 PROJECT CRITERIA**

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

#### **§ A.1.1.3 ARCHITECT**

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

#### **§ A.1.1.4 CONTRACTOR**

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

#### **§ A.1.1.5 SUBCONTRACTOR**

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

#### **§ A.1.1.6 THE WORK**

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

#### **§ A.1.1.7 THE PROJECT**

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

#### **§ A.1.1.8 NEUTRAL**

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

### **§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS**

**§ A.1.2.1** If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

**§ A.1.2.2** The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

Init.

**§ A.1.3 CAPITALIZATION**

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

**§ A.1.4 INTERPRETATION**

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

**§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS**

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

**§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA**

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder’s Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Services furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project’s further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner’s compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner’s sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder’s services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder’s design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional’s Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner’s written notice to that design professional of the Owner’s assumption of the Design-Builder’s contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner’s use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

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§ A.1.6.5 Submission or distribution of the Design-Builder's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

## ARTICLE A.2 OWNER

### § A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys, if not required by the Design-Build Documents to be provided by the Design-Builder, describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

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§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

### § A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

- .1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
- .2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
- .3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
- .4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
- .5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

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§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

#### § A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

#### § A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

### ARTICLE A.3 DESIGN-BUILDER

#### § A.3.1 GENERAL

§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

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**§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES**

**§ A.3.2.1** When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builder's Architect and the Design-Builder's other design professionals and consultants are undertaken and performed in the sole interest of and for the exclusive benefit of the Design-Builder.

**§ A.3.2.2** The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

**§ A.3.2.3** The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

**§ A.3.2.4** The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

**§ A.3.2.5** The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

**§ A.3.2.6** Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

**§ A.3.2.7** The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

**§ A.3.2.8** Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

**§ A.3.2.9** The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

**§ A.3.2.10** If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for

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review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

**§ A.3.3 CONSTRUCTION**

**§ A.3.3.1** The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

**§ A.3.3.2** The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

**§ A.3.3.3** The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

**§ A.3.3.4** When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ A.3.3.5** The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

**§ A.3.3.6** The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

**§ A.3.3.7** The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

**§ A.3.3.8** The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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#### § A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

#### § A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

#### § A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

#### § A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

#### § A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

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- 3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

#### § A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's information the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

#### § A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

#### § A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

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**§ A.3.12 USE OF SITE**

**§ A.3.12.1** The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

**§ A.3.13 CUTTING AND PATCHING**

**§ A.3.13.1** The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

**§ A.3.13.2** The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

**§ A.3.14 CLEANING UP**

**§ A.3.14.1** The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

**§ A.3.14.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

**§ A.3.15 ACCESS TO WORK**

**§ A.3.15.1** The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

**§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS**

**§ A.3.16.1** The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

**§ A.3.17 INDEMNIFICATION**

**§ A.3.17.1** To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

**§ A.3.17.2** In claims against any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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## ARTICLE A.4 DISPUTE RESOLUTION

### § A.4.1 CLAIMS AND DISPUTES

**§ A.4.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§ A.4.1.2 Time Limits on Claims.** Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

**§ A.4.1.3 Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

**§ A.4.1.4 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

**§ A.4.1.5 Claims for Additional Cost.** If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

**§ A.4.1.6** If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

### § A.4.1.7 Claims for Additional Time

**§ A.4.1.7.1** If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ A.4.1.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

**§ A.4.1.8 Injury or Damage to Person or Property.** If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

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§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 **Claims for Consequential Damages.** Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

#### § A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 **Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 **Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

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#### § A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### § A.4.4 ARBITRATION

~~§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.~~

~~§ A.4.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.13.6.~~

~~§ A.4.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ A.4.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ A.4.4.5 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

#### ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-

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Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

**§ A.5.2** The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

**§ A.5.3** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

**§ A.5.4** The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

**§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS**

**§ A.5.5.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

**§ A.5.5.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

**§ A.6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

**§ A.6.1.2** The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

**§ A.6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

**§ A.6.2 MUTUAL RESPONSIBILITY**

**§ A.6.2.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

**§ A.6.2.2** If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute

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an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

**§ A.6.2.3** The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**§ A.6.2.4** The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

**§ A.6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

### **§ A.6.3 OWNER'S RIGHT TO CLEAN UP**

**§ A.6.3.1** If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

## **ARTICLE A.7 CHANGES IN THE WORK**

### **§ A.7.1 GENERAL**

**§ A.7.1.1** Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

**§ A.7.1.2** A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

**§ A.7.1.3** Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

### **§ A.7.2 CHANGE ORDERS**

**§ A.7.2.1** A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

**§ A.7.2.2** If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

**§ A.7.2.3** Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

### **§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ A.7.3.1** A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ A.7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

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§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

- .1 additional costs of professional services;
- .2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

#### § A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build

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Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

## **ARTICLE A.8 TIME**

### **§ A.8.1 DEFINITIONS**

**§ A.8.1.1** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

**§ A.8.1.2** The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

**§ A.8.1.3** The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

**§ A.8.1.4** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

### **§ A.8.2 PROGRESS AND COMPLETION**

**§ A.8.2.1** Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

**§ A.8.2.2** The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**§ A.8.2.3** The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ A.8.3 DELAYS AND EXTENSIONS OF TIME**

**§ A.8.3.1** If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

**§ A.8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

**§ A.8.3.3** This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## **ARTICLE A.9 PAYMENTS AND COMPLETION**

### **§ A.9.1 CONTRACT SUM**

**§ A.9.1.1** The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

### **§ A.9.2 SCHEDULE OF VALUES**

**§ A.9.2.1** Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner,

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shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

#### **§ A.9.3 APPLICATIONS FOR PAYMENT**

**§ A.9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

**§ A.9.3.1.1** As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

**§ A.9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

**§ A.9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ A.9.3.3** The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT**

**§ A.9.4.1** The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

#### **§ A.9.5 DECISIONS TO WITHHOLD PAYMENT**

**§ A.9.5.1** The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

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§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

#### § A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

#### § A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### § A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

**§ A.9.8.3** Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

**§ A.9.8.4** In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

**§ A.9.8.5** When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

**§ A.9.8.6** Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

#### **§ A.9.9 PARTIAL OCCUPANCY OR USE**

**§ A.9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

**§ A.9.9.2** Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

**§ A.9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

#### **§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ A.9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

**§ A.9.10.2** Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and

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waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

**§ A.9.10.3** If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ A.9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

**§ A.9.10.5** Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

#### **ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY**

##### **§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS**

**§ A.10.1.1** The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

##### **§ A.10.2 SAFETY OF PERSONS AND PROPERTY**

**§ A.10.2.1** The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ A.10.2.2** The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ A.10.2.3** The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

**§ A.10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

### § A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, 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) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

### § A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time

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claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

#### **ARTICLE A.11 INSURANCE AND BONDS**

**§ A.11.1** Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

##### **§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE**

**§ A.11.2.1** The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

**§ A.11.2.2** The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

**§ A.11.2.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

##### **§ A.11.3 OWNER'S LIABILITY INSURANCE**

**§ A.11.3.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

##### **§ A.11.4 PROPERTY INSURANCE**

**§ A.11.4.1** ~~Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by~~

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this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

**§ A.11.4.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Design-Builder's services and expenses required as a result of such insured loss.

**§ A.11.4.1.2** If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and with all of the coverages in the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and, by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

**§ A.11.4.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

**§ A.11.4.1.4** This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

**§ A.11.4.1.5** Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ A.11.4.2 Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

**§ A.11.4.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

**§ A.11.4.4** If the Design-Builder requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

**§ A.11.4.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ A.11.4.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

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~~§ A.11.4.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

~~§ A.11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.~~

~~§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article A.7.~~

~~§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power.; The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.~~

#### § A.11.5 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

#### ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

##### § A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

##### § A.12.2 CORRECTION OF WORK

###### § A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.

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§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

**§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION**

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

**§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK**

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

**ARTICLE A.13 MISCELLANEOUS PROVISIONS**

**§ A.13.1 GOVERNING LAW**

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

**§ A.13.2 SUCCESSORS AND ASSIGNS**

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a

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whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

**§ A.13.2.2** The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

**§ A.13.3 WRITTEN NOTICE**

**§ A.13.3.1** Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

**§ A.13.4 RIGHTS AND REMEDIES**

**§ A.13.4.1** Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

**§ A.13.4.2** No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**§ A.13.5 TESTS AND INSPECTIONS**

**§ A.13.5.1** Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**§ A.13.5.2** If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

**§ A.13.5.3** If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

**§ A.13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ A.13.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

**§ A.13.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

**§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD**

**§ A.13.6.1** As between the Owner and Design-Builder:

- 1 **Before Substantial Completion.** As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

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- 2 Between Substantial Completion and Final Application for Payment.** As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- 3 After Final Application for Payment.** As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

#### **ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT**

##### **§ A.14.1 TERMINATION BY THE DESIGN-BUILDER**

**§ A.14.1.1** The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

**§ A.14.1.2** The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

**§ A.14.1.3** If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

**§ A.14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

##### **§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ A.14.2.1** The Owner may terminate the Design-Build Contract if the Design-Builder:

- .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
- .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

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§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 accept assignment of contracts pursuant to Section A.5.5.1; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

#### § A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

#### § A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



# **AIA** Document A141™ – 2004 Exhibit B

## ***Determination of the Cost of the Work***

**for the following PROJECT:**

*(Name and location or address)*

Greenville Convention Center Renovation and Expansion  
303 SW Greenville Blvd  
Greenville, NC 27834

**THE OWNER:**

*(Name, legal status and address)*

City of Greenville  
PO Box 7207  
Greenville, NC 27835

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

T.A. Loving Company  
400 Patetown Road  
Goldsboro, NC 27530

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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## **ARTICLE B.1 CONTROL ESTIMATE**

**§ B.1.1** Where the Contract Sum is the Cost of the Work, plus the Design-Builder's Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Agreement, the Design-Builder shall prepare and submit to the Owner prior to the Design-Builder's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee. The Control Estimate shall be used to monitor actual costs.

**§ B.1.2** The Control Estimate shall include:

- .1 the documents enumerated in Article 8 of the Agreement, including all Addenda thereto and the Terms and Conditions of the Contract;
- .2 a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Design-Builder's Fee; and
- .3 contingencies for further development of design and construction.

**§ B.1.3** The Design-Builder shall meet with the Owner to review the Control Estimate. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge its acceptance in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

**§ B.1.4** The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

## **ARTICLE B.2 COSTS TO BE REIMBURSED**

### **§ B.2.1 COST OF THE WORK**

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

### **§ B.2.2 LABOR COSTS**

**§ B.2.2.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

**§ B.2.2.2** Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval.

**§ B.2.2.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ B.2.2.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

### **§ B.2.3 CONTRACT COSTS**

**§ B.2.3.1** Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

### **§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

**§ B.2.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

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§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS**

§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ B.2.5.5 That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

**§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES**

§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents .

**§ B.2.7 MISCELLANEOUS COSTS**

§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Data processing costs related to the Work.

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§ B.2.7.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

§ B.2.7.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

#### § B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

#### ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

#### ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

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§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

#### **ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER**

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

#### **ARTICLE B.6 ACCOUNTING RECORDS**

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

§ B.6.4 If the Owner's accountants report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner's accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner's accountant to be due the Design-Builder.

§ B.6.5 If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Design-Builder.

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# AIA<sup>®</sup> Document A141<sup>™</sup> – 2004 Exhibit C

## ***Insurance and Bonds***

**for the following PROJECT:**

*(Name and location or address)*

Greenville Convention Center Renovation and Expansion  
303 SW Greenville Blvd  
Greenville, NC 27834

**THE OWNER:**

*(Name, legal status and address)*

City of Greenville  
PO Box 7207  
Greenville, NC 27835

**THE DESIGN-BUILDER:**

*(Name, legal status and address)*

T.A. Loving Company  
400 Patetown Road  
Goldsboro, NC 27530

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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User Notes:

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Item # 12

**ARTICLE C.1**

The Owner and Design-Builder shall provide policies of liability insurance as required by the Design-Build Documents, or as follows:

*(Specify changes, if any, to the requirements of the Design-Build Documents, and for each type of insurance identify applicable limits and deductible amounts.)*

Insurance requirements are set forth in Section 22 of the Supplementary Conditions, Exhibit D.

**ARTICLE C.2**

The Design-Builder shall provide surety bonds as follows:

*(Specify type and penal sum of bonds.)*

Type	Penal Sum (\$0.00)
<u>The Design-Builder shall provide a performance and payment bond to the Owner in accordance with the provisions of Article 3 of Chapter 44A of the North Carolina General Statutes.</u>	

**§ C.2.1** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

**EXHIBIT D**

**DEFINED TERMS:**

Owner: the City of Greenville, NC

City: the City of Greenville, NC

Engineer: The Public Works Department, Engineering Division, of the City of Greenville, NC

Design-Builder: T.A. Loving Company

**SUPPLEMENTARY CONDITIONS**

1. DESIGN BUILDER'S RESPONSIBILITIES

Except where the Design-Builder is an individual and gives his personal superintendence to the work, the Design-Builder shall provide a competent superintendent, satisfactory to the Owner and the Engineer, on the work at all times during working hours with full authority to act for him. The Design-Builder shall also provide an adequate staff for the proper coordination and expediting of his work. The Owner may require the Design-Builder to dismiss from the work such employee or employees as the Owner or the Engineer may deem incompetent, careless, or insubordinate.

2. SUBCONTRACTS

The Design-Builder shall not execute an agreement with a Subcontractor or permit any Subcontractor to perform any work included in this Contract until he has submitted a non-collusion affidavit from the Subcontractor in substantially the form provided and has received written approval of such Subcontractor from the City of Greenville.

3. MUTUAL RESPONSIBILITY OF CONTRACTORS

If through acts or neglect on the part of the Design-Builder, any other Contractor or any Subcontractor shall suffer loss or damage on the work, the Design-Builder shall settle with such other Contractor or Subcontractor by agreement or arbitration, if such other Contractor or Subcontractor will so settle. If such other Contractor or Subcontractor shall assert any claim against the City of Greenville on account of any damage alleged to have been so sustained, the City of Greenville will notify the Design-Builder, who shall defend at his own expense any suit based upon such claim, and, if any judgment or claims against the City of Greenville shall be allowed, the Design-Builder shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith.

4. PAYMENTS SUBJECT TO SUBMISSION OF CERTIFICATES

Each payment to the Design-Builder by the Owner shall be made subject to submission by the Design-Builder of all written certificates required of him and his Subcontractors. Documentation required to be submitted with pay requests includes but is not limited to: schedule of values, sales tax information, and City of Greenville MWBE payment forms.

5. REQUESTS FOR SUPPLEMENTARY INFORMATION



It shall be the responsibility of the Design-Builder to make timely requests of the Owner for any additional information not already in his possession which should be furnished by the Owner under the terms of this Contract, and which he will require in the planning and execution of the work. Such requests may be submitted from time to time as the need is approached, but each shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay. Each request shall be in writing and list the various items and the latest date by which each will be required by the Design-Builder. The first list shall be submitted within two (2) weeks after Contract award and shall be as complete as possible at that time. The Design-Builder shall, if requested, furnish promptly any assistance and information the Engineer may require in responding to these requests of the Design-Builder. The Design-Builder shall be fully responsible for any delay in his work or to others arising from his failure to comply fully with the provisions of this section.

## 6. TEMPORARY FACILITIES AND CONTROLS

The Design-Builder shall provide and pay for all utilities, water, lights, power, and all temporary construction and facilities of every nature whatever necessary to execute, complete, and deliver the work.

The Design-Builder shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Department of Health, or of the other bodies, or tribunals, having jurisdiction thereof. He shall commit no public nuisance.

The Design-Builder shall provide and be responsible for all barricades, warning lights, signs, signal and flagmen, and all else required to allow safe vehicular movement in the vicinity of construction operations.

The Design-Builder shall adhere to all applicable requirements of Part VI of the "Manual on Uniform Traffic Control Devices for Streets and Highways", published by the US Department of Transportation, Federal Highway Administration, latest edition, the "North Carolina Construction and Maintenance Operations Supplement" thereto, latest edition, prepared by the North Carolina Department of Transportation, and the "Work Zone Traffic Control Standards and Guidelines" published by the US Department of Transportation.

The Design-Builder shall also be guided by requirements promulgated by officials of the City of Greenville. The Contractor shall implicitly follow instructions given by said officials.

In addition to complying with safety requirements set forth in the General Conditions, the Design-Builder shall:

Inform himself of and fully comply with all applicable requirements of the Williams-Steiger Occupational Safety and Health Act of 1970 (p.L.91596) in the performance of work required under this Contract.

The Design-Builder shall adhere to the rules, regulations, and interpretations of the Secretary of the Department of Labor (29 CFR Part 1518, 36 F.R., 7340, April 17, 1971) relating to safety and health for construction which are hereby incorporated into these requirements.

The Design-Builder shall follow all rules set out; in the regulations and recommendations published by the Associated General Contractors and the North Carolina Department of Labor, and use every effort to safeguard life and property throughout his operations.

7. MATERIALS TESTING

General: The Owner will contract with a third party Construction Materials Testing Firm. It is the responsibility of the Design-Builder to coordinate with the Testing Firm to schedule all required inspections and testing.

The Design-Builder shall be responsible for all testing costs with results which do not meet or exceed the specified standards. The Owner shall have the option to reject any materials or workmanship not meeting or exceeding the specification requirements.

8. MWBE GOALS:

It is the policy of the City of Greenville and Greenville Utilities Commission to provide minorities and women equal opportunity for participating in all aspects of the City's and Utilities' contracting and procurement programs, including but not limited to, construction projects, supplies and materials purchases, and professional and personal service contracts. The City's MWBE goals for construction are 10% MBE and 6% WBE. The Design-Build team will be required to implement this MWBE policy on behalf of the owner for all phases of the construction project.

9. SUBSURFACE INVESTIGATION:

The Design-Builder shall be responsible for subsurface investigations. Any information obtained by the Owner as a result of its own subsurface investigations will be made available upon request. This information (when available) is provided for informational purposes only and shall not relieve the Design-Builder of making his own investigations.

10. MATERIALS AND EQUIPMENT STORAGE:

The Design-Builder shall be responsible for locating and providing storage areas for construction materials and equipment in conjunction with Greenville Convention Center staff. The material and equipment storage shall comply with the local and state ordinances throughout the construction period. The Design-Builder shall restore the storage area to its original condition upon completion of the project or upon such time as directed by the Engineer. Such restoration shall be at no additional cost to the Owner.

The Design-Builder shall be responsible for the safeguarding of materials and equipment against fire, theft and vandalism and shall not hold the Owner responsible in any way for occurrences of same. The Design-Builder shall furnish and erect, at no additional cost, whatever works as may be necessary for the protection of the public, including but not limited to barricades, fences, etc. Prior to final payment being made, the Design-Builder shall obtain a release from the property owner of the storage area utilized for the project.

11. EXISTING UTILITIES:

The Design-Builder shall be responsible for contacting all involved utility owners of the effect of this project on their respective utility.

Construction plans and anticipated construction schedules shall be provided to the utility owners. Each utility owner will be requested to attend the preconstruction conference to discuss potential conflicts and their schedule for relocation where required.

The owners of utilities in this project may include:

Greenville Utilities Commission  
Centurylink Communications  
Suddenlink Communications  
NCDOT

The Design-Builder shall adhere to the provisions of 1985 Underground Damage Prevention Act North Carolina General Statutes 887 Chapter 785 Senate Bill 168 Article 3. To assist the contractor and utility owners in meeting the requirements of this law, there is a "one call system" called "NC ONECALL". Most major utilities with underground facilities in the State subscribe to this service. For calls originating within North Carolina, The NC ONECALL telephone number is 1-800-632-4949. For calls originating outside of North Carolina, the number is (919) 855-5760. The Contractor shall include the cost of any coordination and cooperation of utilities in his bid. NCDOT is not a member of ONECALL. The number to call for NCDOT for wires at intersections is 830-4393. NCDOT requires 72 hours notice.

No additional compensation shall be allowed for delays or inconveniences sustained by the Design-Builder due to utility relocation or adjustments. No additional payment will be made for re-mobilization required by the utility's failure to relocate utility at the request of the Design-Builder.

Where changes to utility facilities are to be made solely for the convenience of the Design-Builder, it shall be the Design-Builder's responsibility to arrange for such changes, and the Design-Builder shall bear all costs of such changes.

12. CONSTRUCTION STAKES, LINES AND GRADES:

Surveying, construction stakes, lines and grades are the responsibility of the Design-Builder.

13. TAXES & LICENSES:

North Carolina sales and/or use taxes are applicable to purchases of building materials and other tangible personal property by Contractors for use in performing City contracts. Use tax is also due on construction equipment brought into North Carolina for use in the performance of City contracts (N.C. Revenue Laws, G.S. 105-164.4 and G.S. 105-164.6). Contractors are liable for payment of applicable privilege licenses (N.C. Revenue Laws, G.S. 105-54). Contractors are also

liable for payment of applicable franchise, corporate income, license and withholding taxes (N.C. Revenue Laws, G.S. 105-122, G.S. 105-123, G.S. 105-134 and G.S. 105-163.2).

14. EROSION AND SEDIMENTATION CONTROL MEASURES:

The Design-Builder shall install and maintain all erosion and sedimentation control measures and devices necessary to comply with the Erosion and Sedimentation Control Plan and applicable local and state ordinances and laws. All erosion and sedimentation control measures and devices shall be installed prior to beginning clearing or grading operations. Such devices shall be maintained in proper working condition from installation throughout the duration of the project.

The Design-Builder shall indemnify and hold harmless the Owner for any penalties imposed against the Owner by any local or state agency for the Design-Builder's failure to install and properly maintain erosion and sedimentation control devices. The Design-Builder shall immediately correct any deficiencies in erosion and sedimentation measures identified by the City of Greenville or local or state agency. If the Design-Builder fails to correct the deficiencies within 24 hours after notification, the Owner will have such corrections performed and assess the cost of these corrections plus a 100% surcharge against the Design-Builder.

If any borrow or waste areas are to be utilized, it will be the responsibility of the Design-Builder to notify the property owner that the property owner is responsible for any damage occurring from the site, either as part of the agreement with the Design-Builder, or on his own. All work, sediment control structures, and seeding will be at the cost of the property owner or Design-Builder. The Owner will not participate in the cost of this work on the waste or borrow areas. Prior to final payment being made, the Design-Builder shall obtain a release from the property owner of the borrow or waste site utilized for the project.

15. HAZARDOUS MATERIALS:

If the Design-Builder encounters any materials considered or suspected of being hazardous, he shall immediately secure the area and contact the Greenville Fire Department at (252) 329-4397 for further instructions.

16. OSHA REQUIREMENTS

**GENERAL CONTRACTOR SAFETY REQUIREMENTS**

Supplement to OSHA parts 1910 and 1926.

PART 1 - GENERAL CONTRACTOR REQUIREMENTS

1.1 The Contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, Construction Industry Standards and Interpretations, and with this specification.

1.2 Requests for variances or waivers from this specification are to be made to the Engineer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for waiver or a variance shall include:

- a. Specific reference to the provision or standard in question;
- b. An explanation as to why the waiver is considered justified; and
- c. The Contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the Engineer and City's Risk Manager to render a decision.

1.3 No waiver or variance will be approved if it endangers any person. The Contractor shall not proceed under any requested revision of a provision until the Engineer has given written approval. The Contractor is to hold and save harmless the City of Greenville, North Carolina free from any claims or causes of action whatsoever resulting from the Contractor or subcontractors proceeding under a waiver or approved variance.

1.4 Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Superintendent of Document  
U.S. Government Printing Office  
Washington, DC 20402

#### 1.5 SAFETY PROGRAM

The Design-Builder and each sub-contractor are to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The Design-Builder is to submit in writing a proposed comprehensive safety program to the Owner for approval before the start of construction operations. The program is to specifically state what provisions the Design-Builder proposes to take for the health and safety of all employees, including details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

#### 1.6 PRECONSTRUCTION SAFETY MEETING

Representatives for the Design-Builder are to meet with the Engineer before the start of construction to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

#### 1.7 JOINT SAFETY POLICY COMMITTEE

The Design-Builder, or designated onsite representative, is to participate in monthly meetings of a Joint Safety Policy Committee, composed of Contracting Local Organization and Contractor supervisory personnel. At these meetings, the Contractor's project manager and the Engineer will review the effectiveness of the Contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

#### 1.8 SAFETY PERSONNEL

Each Contractor is to designate a competent supervisory employee satisfactory to the Owner to administer the safety program.

#### 1.9 SAFETY MEETINGS

A minimum of one on-the-job or toolbox safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all construction personnel at the job

site. The Design-Builder is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

#### 1.10 SAFETY INSPECTION

The Design-Builder shall perform frequent and regular safety inspections of the job site, materials, and equipment, and shall correct deficiencies.

#### 1.11 FIRST AID TRAINING

Every Contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

#### 1.12 REPORTS

Each Contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the Owner. A copy of all reports is to be provided to the Engineer. All fatal or serious injuries are to be reported immediately to the Engineer who will contact the City of Greenville's Risk Manager; and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the Engineer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The Design-Builder is to assist and cooperate fully with the Engineer and City's Risk Manager in conducting accident investigations. The Engineer is to be furnished all information and data pertinent to investigation of an accident.

### PART 2 - FIRST AID AND MEDICAL FACILITIES

2.1 FIRST AID KITS. A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least one kit for each 25 employees. The first aid kits are to be moisture-proof and dust-tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

2.2 EMERGENCY FIRST AID. At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the Design-Builder to care for injured employees. The names of the certified employees shall be posted at the job site.

2.3 COMMUNICATION AND TRANSPORTATION. Prior to the start of work, the Design-Builder is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

2.4 FIRST AID AND MEDICAL REPORTS. The Design-Builder is to maintain a record system for first aid and medical treatment on the job site. Such records are to be readily available to the Engineer and are to include--

- a. A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;

- b. Cumulative record of injury for each individual;
- c. Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- d. Required records for worker's compensation.

2.5 SIGNS AND DIRECTIONAL MARKINGS. Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

2.6 EMERGENCY LISTING. A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

### PART 3 - PHYSICAL QUALIFICATION OF EMPLOYEES

3.1 GENERAL REQUIREMENTS. Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

3.2 HOIST OPERATORS. Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The Contractor is to submit a copy of each certification to the Engineer.

3.3 MOTOR VEHICLE OPERATORS. Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated. The operators must have passed a physical examination administered by a licensed physician within the past year showing that they are physically qualified to operate vehicles safely.

### PART 4 - PERSONAL PROTECTIVE EQUIPMENT

4.1 HARDHAT AREAS. The entire job site, with the exception of offices, shall be considered a hardhat area. All persons entering the area are, without exception, required to wear hardhats.

The Contractor shall provide hardhats for visitors entering hardhat areas.

4.1.1 LABELS. Hardhats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

4.2 POSTING. Signs, at least 3 by 4 feet, worded as follows, with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hardhat area:

**CONSTRUCTION AREA  
HARDHATS REQUIRED  
BEYOND THIS POINT**

These signs are to be furnished and installed by the Design-Builder at entries to shops, construction yards, and job access points.

#### PART 5 - MACHINERY AND MECHANIZED EQUIPMENT

5.1 SAFE CONDITION. Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe operating condition and appropriate for the intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery, is to be used by equipment operators.

5.2 TAGGING AND LOCKING. The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure is to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work.

#### 5.3 OPERATORS, RIDING ON EQUIPMENT, GETTING ON OR OFF EQUIPMENT, HOURS OF OPERATION

5.3.1 OPERATORS. Machinery and mechanized equipment shall be operated only by authorized qualified persons.

5.3.2 RIDING ON EQUIPMENT. Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

5.3.3 GETTING ON OR OFF EQUIPMENT. Getting on or off equipment while the machinery is in motion is prohibited.

5.3.4 HOURS OF OPERATION. Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

#### 5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

5.5.1 ROLLOVER PROTECTIVE STRUCTURES. OSHA 1926, Subpart W, Overhead Protection, Sections 1000 and 1002, are applicable regardless of the year in which the equipment was manufactured and regardless of the stuck capacity of the equipment.

5.5.2 EQUIPMENT REQUIRING ROPS. The requirement for ROPS meeting 5.5.1 above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, and water tankers (excluding trucks and cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

#### 17. SUBLETTING:



The Engineer reserves the right to waive any subcontracting limits whenever it is deemed to be in the best interest of the City of Greenville. The limits can be waived only upon written approval from the Engineer.

18. TERMINATION FOR CONVENIENCE:

The City may terminate the contract upon ten days written notice to the Design-Builder without cause. Any project assigned prior to the termination notice shall be completed and the Design-Builder will be paid in accordance with the terms of this contract.

19. CARE OF WORK:

The Design-Builder shall furnish and erect, at no additional cost to the Owner, whatever sidewalks, bridges and culverts, or other works as may be necessary for the protection of the public including but not limited to barricades, fences, etc. and for the safe and proper execution of other public utility lines so as not to interfere therewith or damage or cause damage thereto. The Design-Builder shall be responsible for all damages to persons or property that occur as a result of his fault, emission, or negligence in connection with the prosecution of the work and shall be responsible for the proper care and protection of all work performed hereunder until completion and final acceptance, whether or not the same has been covered in whole or in part by payments made by the Owner.

20. CLEANING UP:

Before acceptance of the project, or as directed by the Engineer, roadway, borrow sources, waste areas, and all ground occupied by the Design-Builder within the project limits in connection with the work shall be cleaned of all rubbish, excess materials, temporary structures, and equipment.

21. INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and its agents and employees, from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

In any and all claims against the Owner or any of its agents or employees by any employee of the Design-Builder, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Design-Builder or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

22. INSURANCE REQUIREMENTS:

**Contractor's Liability And Other Insurance:**

The Contractor shall purchase and maintain with a company acceptable to the City of Greenville and authorized to do business with the State of North Carolina, such insurance as will protect him from claims under worker's compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from the contractors operations under the contract documents, whether such operations be by himself or any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable. This insurance shall be written for not less than the limits of liability specified below.

**Automobile** - Bodily injury and property liability covering all owned, non-owned and hired automobiles for limits of not less than \$1,000,000 bodily injury each person, each accident and \$1,000,000 property damage, or \$1,000,000 combined single limit - Bodily injury and property damage combined.

**Commercial General Liability** - Bodily injury and property damage liability as shall protect the contractor and any subcontractor performing work under this contract from claims of bodily injury or property damage which arise from operations of this contract whether such operations are performed by the contractor, any subcontractor or anyone directly or indirectly employed by either. The amounts of such insurance shall not be less than \$1,000,000 bodily injury each occurrence/aggregate and \$1,000,000 property damage each occurrence/aggregate or \$1,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products/completed operations, personal injury liability and contractual liability assumed under the indemnity provision of this contract and broad form property damage, explosion, collapse and underground property damage (XC&U). The coverage shall be on an occurrence basis.

**Worker's Compensation and Employers Liability** - Shall meet the statutory requirement of the State of North Carolina, in the amount of \$100,000 each accident and disease - each employee and \$500,000 disease policy limit.

Professional Liability (Errors and Omissions) - \$1,000,000 per claim and aggregate.

At the time of execution of the contract, the Design-Builder shall provide the City with insurance certificates certifying that the foregoing insurance is in force; and such insurance certificates shall include provisions that the insurance shall not be canceled, allowed to expire or be materially changed without giving the City thirty (30) days advance written notice by registered mail.

The Design-Builder is advised that if any part of the work under the contract is sublet, he shall require the subcontractor(s) to carry insurance as required above. However, this will in no way

relieve the Design-Builder from providing full insurance coverage on all phases of the projects, including any that are sublet.

When certain work is to be performed inside rights-of-way owned by railroads, North Carolina Department of Transportation or other agencies, both the Design-Builder and any subcontractor may be required to furnish individual insurance certificates made in favor by the controlling agency, with limits established by that agency.

23. PRECONSTRUCTION CONFERENCE:

A preconstruction conference will be scheduled as soon as practical during the Design-Build process. The Design-Builder shall attend the conference along with the prospective job superintendent; any anticipated major subcontractors and major material suppliers. A proposed progress schedule in a form satisfactory to the Engineer and a statement of the anticipated monthly progress payments showing the percent of progress each month shall be submitted. The Design-Builder shall also provide at least two (2) local telephone numbers which may be used to contact the Design-Builder or his authorized representative in the event of an emergency after normal business hours. Upon receipt of the required documentation, a Notice to Proceed will be issued by the Engineer.

24. PERIODIC PAYMENTS:

The City will make periodic payments based on the work progress estimates prepared by the Engineer and the payment request submitted by the Design-Builder on a monthly schedule established by the Engineer. Payment will be made within twenty (20) calendar days after receipt of a correct payment request.

For contracts less than \$50,000, partial payments may be made twice each month if in the judgment of the Engineer the amount of work performed is sufficient to warrant such payment. No partial payment will be made when the total value of the work performed since the last partial payment, excluding mobilization, amounts to less than \$1,000.00.

Partial payment requests submitted at the end of a quarter, fiscal year or final payment, shall be accompanied by a North Carolina Local Sales or Use Tax Statement for the prime contractor and all subcontractors. Payment requests and tax statements shall be submitted on an original "Application and Certificate for Payment", AIA Document G702, and "Continuation Sheet", AIA Document G703. A form is shown at the end of this section. The tax statement shall show the N.C. Sales Tax and Greenville County tax paid. It shall also list any payments made directly to the North Carolina Department of Revenue. If no tax has been paid during the pay request period, "NONE" shall be entered on the tax form. Each statement shall be signed by a company officer and certified by a Notary Public.

The Design-Builder shall have a copy of his current payment request on the job site, which may be reviewed by subcontractors upon request.

An amount equal to five percent (5%) of the total amount due on payment requests will be deducted and retained until one hundred percent (100%) of the work has been completed.

Payment will be made on ninety percent (90%) of materials on hand stored on the project site or in a bonded warehouse. Requests for payment of materials on hand shall be accompanied by the original supplier's invoice and proof of insurance coverage of the storage facility.

The Design-Builder can use a form other than the AIA Document G702 as long as it has a statement that the Design-Builder certifies the application for payment or adds the following statement to each request for payment:

"I hereby certify that the labor and materials listed on this request for payment have been used in the construction of the Work, or that all materials included in this request for payment and not yet incorporated into the construction are now on the site; and that all lawful charges for labor, materials, etc., covered by previous Certificates for Payment have been paid and that all other lawful charges on which this request for payment is based have been paid for in full or will be paid for in full from the funds received in payment of this request within (10) calendar days from receipt of this partial payment from OWNER."

25. GUARANTEE:

The Design-Builder shall guarantee all materials and workmanship for a period of one (1) year from the date of acceptance by the City and shall replace any portions that fail because of faulty materials or workmanship at no additional cost to the City. A six (6) month and eleven (11) month inspections will be held during the warranty period. The Design-Builder shall immediately repair all defective items upon notification. Items repaired under the provisions shall have an extended warranty period of twelve (12) months of repair of the item.

26. PROJECT CLOSEOUT DOCUMENTS:

**The Contractor shall provide the following documents with the final payment request:**

1. Consent of Surety to Final Payment (Contracts equal to or exceeding \$100,000)
2. Contractor's Release and Waiver of Claim
3. N.C. and Pitt Co. Sales or Use Tax Statements and Certifications
4. Itemized Statement of Payments Made to Minority and Women's Business Enterprises (Notarized)

No final payment will be authorized until these documents have been properly completed and submitted by the Contractor.

27. SALES TAX

Sales taxes may be listed on the proposal, but as a separate item. No charge will be allowed for Federal Excise and Transportation Tax from which the City is exempt.

The following procedure in handling the North Carolina Sales Tax is applicable to this project. Contractors shall comply fully with the requirements outlined hereinafter, in order that the Owner may recover the amount of the tax permitted under the law.

It shall be the Design-Builder's responsibility to furnish the Owner documentary evidence showing the materials used and sales tax paid by the Design-Builder and each of his

Subcontractors. Such evidence shall be transmitted to the Owner.

The documentary evidence shall consist of a certified statement, by the Design-Builder and each of his subcontractors individually showing total purchases of materials for each separate vendor and total sales taxes paid each vendor. Certified statement must show the invoice number, or numbers, covered and inclusive dates of such invoices.

## **PROJECT SPECIAL PROVISIONS:**

### **PSP-1: TRAFFIC CONTROL**

All traffic control and traffic control devices required for any operation shall be functional and in place prior to the commencement of that operation. Signs for temporary operations shall be removed during periods of inactivity. The Design-Builder is required to leave the project in a manner that will be safe to the traveling public and which will not impede motorists.

All traffic control and traffic control devices shall conform to the requirements of the latest National Manual on Uniform Traffic Control Devices.

Flaggers stationed at each end of the work zone shall control traffic movements through lane closures on roads with two-way traffic. In situations where sight distance is limited, the Design-Builder shall provide additional means of controlling traffic, including, but not limited to, two-way radios, pilot vehicles, or additional flaggers. Flaggers shall be competent personnel, adequately trained in flagging procedures, and furnished with proper safety devices and equipment, including, but not limited to, safety vests and stop/slow paddles.

All personnel when working in traffic areas or areas in close proximity to traffic shall wear an approved safety vest, or shirt or jacket which meets the color requirements of the Manual of Uniform Traffic Control Devices (MUTCD).

The Design-Builder shall comply with all applicable Federal, State, and Local laws, ordinances, and regulations governing safety, health, and sanitation, and shall provide all safeguards, safety devices, and protective equipment, and shall take any other needed actions, on his own responsibility that are reasonably necessary to protect the life and health of employees on the job and the safety of the public, and to protect property in connection with the performance of the work covered by the contract.

### **PSP-2: VEHICULAR ACCESS:**

Emergency vehicle access must be maintained to the building at all times.

### **PSP-3: EQUIPMENT:**

All vehicles, trucks, equipment tools, and machines used in the performance of the work covered by this section shall be subject to the approval of the Engineer or designee and shall be maintained in satisfactory working condition at all times. **ALL vehicles and equipment capable of a reverse operation MUST be equipped with a working backup alarm or will be rejected from this operation**

**PSP-4: WORK TIME RESTRICTIONS:**

All construction activities for the expansion portion of the project must occur between the hours of 7:30 am and 5:00 pm, Monday thru Friday unless otherwise approved by the Engineer. All construction activities for the renovation portion of the project must be coordinated with the Greenville Convention Center staff and the Engineer.

**PSP-6: SCHEDULING RENOVATION WORK:**

The Design-Builder will hold a renovation scheduling meeting every two weeks at a minimum. At these meetings, the Greenville Convention Center staff will inform the Design-Builder of the event schedule for the following month. The Design-Builder, Convention Center staff, and Engineer will then schedule times and locations for renovations. The coordination and scheduling of the renovation work is critical. If any additional events are added to the Convention Center calendar, the Convention Center staff will be required to give the Design-Builder a 2 week notice so the renovation schedule can be adjusted.

**PSP-5: CLEAN UP AND RESTORATION:**

The Design-Builder, during the course of his work, shall maintain and clean up the construction area including but not limited to removal of all construction debris, excess concrete, demolished asphalt/concrete, fabric packaging, public safety items, excess soil and miscellaneous items. The Design-Builder shall make the work area safe at the end of each day.

The Design-Builder, during the course of his work, shall maintain and clean up the renovation area including but not limited to removal of all construction debris, demolished materials, fabric packaging, public safety items, excess soil and miscellaneous items. The areas within the existing Convention Center that are operational during renovations are to remain clean and free of dust and debris. Barriers acceptable to the Engineer and Convention Center staff shall be erected to separate operational areas and areas under renovation. The Design-Builder shall make the work area safe at the end of each day.

**END OF SUPPLEMENTARY CONDITIONS**



**Exhibit E**

## Project Criteria

Area/Space	Desired SF of Space	Comments/Notes
<b>EXPANSION</b>		The expansion portion of the project is to be designed and constructed to achieve a LEED Silver rating.
Breakout Space (6 rooms)	5,450 SF	Six (6) individual Breakout Rooms with folding partition walls to allow the rooms to be combined, creating two (2) large Breakout Rooms.
Seminar Space (2 rooms)	3,150 SF	Two (2) individual Seminar Rooms separated by a partition wall allowing the rooms to be combined.
Circulation/Setup/Restrooms	2,180 SF	Circulation includes corridors and lobby space. One (1) set-up room. Restrooms designed to accommodate number of persons in new breakout/seminar rooms.
Outdoor Terrace	4,600 SF	New Outdoor Terrace to include a water feature, pavers, and landscaping.
Audio/Video System		Expansion to include AV capabilities suitable for breakout/seminar spaces. Incorporate electronic reader boards/signage into design.
Furnishings/Interior Decorating		Provide furnishings for new facility breakout/seminar rooms.
<b>RENOVATION</b>		LEED requirement to be determined during budgeting.
Entry Canopy		Add new entry canopy incorporating signage into design.
Entry Plaza		Improve sight lighting and landscaping.
Lobby/Pre-Function Space		Upgrade carpet/floor coverings, wall coverings, and lighting. Add sculptural ceiling element in lobby. Incorporate accent walls into design.
Exhibit hall		Improve acoustics with wall and ceiling finishes (currently exposed structure). Improved lighting with dimming system. Partitions to divide rooms.
Concessions		Upgrade finishes and design for functionality
Restrooms		Upgrade floor, wall and ceiling finishes, partitions, counters and mirrors.
Offices	2,800 SF	Consolidate offices to create additional breakout space.
Breakout Space (2 rooms)	1,400 SF	Breakout space created by consolidation of offices. Breakout rooms should include same finishes as breakout spaces in the expansion.
Furnishings/Interior Decorating		Provide new furnishings for lobby and pre-function areas. Incorporate artistic and historic elements into the interior design.
HVAC system		Ductwork to be reconfigured to coordinate with new ceiling finishes in exhibit hall. Current HVAC system noise level is undesirable, system to be modified / upgraded to reduce noise level.
Fire protection		Existing sprinkler piping in exhibit hall is installed tight to exposed structure. Sprinkler piping to be reconfigured to coordinate with new ceiling finishes provide proper coverage.
Audio/Video System		Upgrade AV capabilities throughout existing facility. Incorporate use of electronic reader boards/signage into design.





- Design-Builder will be responsible for all necessary surveying work required to complete the project.
- Design-Builder will be responsible for site geotechnical report.
- Design-Builder will be responsible for all necessary permits, fees, inspections
- A testing allowance of \$35,000 will be included in the project budget. Testing agent to be third party and contracted by Owner, paid through the allowance.

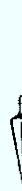
The Design-Builder will be expected to fulfill the terms of the contract through delivery of a finished, fully usable facility, on a turnkey basis, that satisfies the Owner's project requirements. The Design-Builder, as the sole responsible source for total project compliance and construction related performance (including architectural programming, design, and construction services) shall act in the best interests of the Owner. At all times and project stages, the Design-Builder shall use their best efforts to perform the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints, and budget. The lead Design-Builder shall hold all design professionals, testing services, trade contractors, and trade supplier contracts. The Design-Builder shall develop an overall project schedule, which will be a contractual obligation. In addition, the lead Design-Builder will be responsible for methods of construction and safety, as well as for the scheduling and coordination of the work of all construction and miscellaneous contracts required for completion of the project within its predetermined budget limits and schedule.

The total project budget for the Greenville Convention Center Expansion is anticipated to be approximately \$4,000,000 for the entire project, including all costs and fees. All costs include construction related expenses; architectural programming, design, and construction related services; testing services; public jurisdiction fees and charges; and other building related professional service fees necessary to fully build the Owner's project.





T.A. LOVING COMPANY  
Construction Services



919.734.8400  
P.O. Drawer 919  
Goldsboro, NC 27533  
www.taloving.com



## Greenville Convention Center Addition & Renovation Project Fee Proposal

**EXHIBIT F**

### **Design Fee \$339,000**

- Based on total job cost of \$4,000,000
- This includes the following:
  - Contract Administration, Civil, Structural, MEP Engineering & Architectural Design
  - Interior Design
  - Surveying
  - LEED Design for addition only. At this point, we assume that we will pursue LEED silver for the addition only due to budget constraints and difficulty with the nature of the renovation.

### **Preconstruction Fee \$39,000**

- Includes Budget at Schematic Design
- Includes Budget at Design Development
- Includes Budget at Construction Document Stage
- Feasibility input at all design and user meetings
- Creation and implementation of design schedule
- Creation of baseline construction schedule
- Creation of Phasing Plan
- Writing and implementation of bid packages
- Constructability reviews
- Receipt of bids and scope reviews
- Procurement of long lead items
- Coordination and adherence with Federal, State and Local Authorities
- Coordination of BIM and 3D modeling

### **Construction Fee**

- 5.5% of total construction cost
- Includes indirect job cost and profit

#### Indirect job cost includes:

- Accounting
- Executive Management
- Risk Management
- Safety Inspections
- Office Manager
- Legal Review
- WBE and MBE outreach

#### Direct job cost includes:

- On site supervision and temporary facilities
- Insurance (Builders Risk, Professional Liability, General Liability)
- Performance and Payment bond
- Subcontractor cost
- Permits





# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Bond Order, Bond Purchase Agreement, and Secondary Trust Agreement for the issuance of the City of Greenville's Special Obligation Revenue Bonds, Series 2014, for financing the Convention Center renovation and expansion

**Explanation:** **Abstract:** The Bond Order and supporting documentation are for the issuance of the Special Obligation Revenue Bond Series 2014 for financing the Convention Center renovation and expansion.

**Explanation:** The City is issuing an amount not to exceed \$4.2 million in Special Obligation Revenue Bonds, Series 2014, to finance the renovation and expansion of the Greenville Convention Center. Pitt County receives six percent of occupancy tax for each hotel stay. This money is used to operate the Convention and Visitors Bureau, market the County for tourism, and construct and renovate a convention center. The pledged net occupancy tax revenues will be sufficient to secure this Series 2014 bond. The additional annual debt service is projected to be less than \$120,000 until the previously issued debt is liquidated. This issuance was approved by resolution at the March 17, 2014, City Council meeting.

The closing date for this financing between Capital One Public Funding, LLC and the City is scheduled for June 12, 2014. The financing is over a period of 13 years at 3.25%. The attached resolution will approve the sale of the bonds and approve certain other documents and actions relating to the bond sale (Bond Purchase Agreement and Secondary Trustee Agreement).

**Fiscal Note:** The sale of Special Obligation Revenue Bonds will not exceed \$4.2 million and will be repaid with occupancy tax revenue.





**Recommendation:** Approve the attached Bond Order providing for the issuance of the 2014 Special Obligation Revenue Bonds along with the Bond Purchase Agreement and Secondary Trust Agreement authorizing the Financing with Capital One Public

Funding, LLC.

---

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

**Attachments / click to download**

-  [Conv. Center Financing Authorizing Resolution](#)
  -  [Call to Order Res. Convention Center Expn 2014 978334](#)
  -  [Concentration Center Trust Agreement Expansion 978333](#)
  -  [Bond Purchase Agreement 978332](#)
-

A regular meeting of the City Council of the City of Greenville, North Carolina was held in the City Council Chamber at the City Hall in Greenville, North Carolina, the regular place of meeting, on May 5, 2014 at \_\_\_\_\_.

Present: Mayor Allen M. Thomas, presiding, and Councilmembers

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Absent: \_\_\_\_\_

\* \* \* \* \*

Mayor Thomas introduced the following order, a copy of which had been provided to each Councilmember, which was read by its title and summarized by the City Attorney:

**ORDER AUTHORIZING THE ISSUANCE AND SALE  
OF A SPECIAL OBLIGATION REVENUE BOND AND  
AUTHORIZING THE EXECUTION AND DELIVERY OF  
CERTAIN DOCUMENTS IN CONNECTION THEREWITH**

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

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

(a) At a meeting held on March 17, 2014, the City Council authorized the filing of an application with the North Carolina Local Government Commission (the “Commission”) requesting approval of the issuance of not exceeding \$4,200,000 Special Obligation Revenue Bond, Series 2014 (the “Series 2014 Bond”) of the City for the purpose of (i) providing funds to finance the renovation and expansion of the Greenville Convention Center (the “Project”) and (ii) pay certain costs and expenses incidental to the issuance and sale of the Bond.

(b) The City, by resolution, also requested the Commission to sell the Series 2014 Bond at private sale without advertisement.



(c) The Commission is expected to approve the application of the City for the issuance of the Series 2014 Bond in a principal amount not to exceed \$4,200,000 in accordance with “The State and Local Government Revenue Bond Act”, Article 5, Chapter 159, North Carolina General Statutes (the “Revenue Bond Act”).

(d) The City has determined to issue the Series 2014 Bond in an aggregate principal amount not to exceed \$4,200,000 for the purpose of providing funds, together with other available funds, (i) to finance the Project and (ii) in other costs and expenses incident to the issuance of the Series 2014 Bond.

(e) The City proposes to sell the Series 2014 Bond to Capital One Public Funding, LLC (the “Bank”) pursuant to the provisions of a Bond Purchase Agreement (the “Bond Purchase Agreement”), at such prices as are determined by the Commission, subject to the approval of the City.

(f) There have been presented to the City Council at this meeting drafts of the following documents relating to the issuance and sale of the Series 2014 Bond:

(1) Third Supplemental Trust Agreement, to be dated as of June 1, 2014 (the “Third Supplemental Trust Agreement”), between the City and The Bank of New York Trust Company, N.A., as Trustee (the “Trustee”); and

(2) Bond Purchase Agreement, to be dated as of the date of execution thereof, among the Bank, the Commission and the City; and

(g) The issuance and sale of the Series 2014 Bond in the manner provided in this Order are in the best interests of the City.

Section 2. Capitalized words and terms used in this Order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the Third Supplemental Trust Agreement.

Section 3. Pursuant to the provisions of the Revenue Bond Act, the City hereby authorizes the issuance of the Series 2014 Bond in an aggregate principal amount not exceeding \$4,200,000. The Series 2014 Bond shall mature at such times and in such amounts as shall be set forth in the Third Supplemental Trust Agreement, subject to the provisions of this Order.

The Series 2014 Bond will be in the form of one bond certificate in the aggregate principal amount of the Series 2014 Bond with stated annual principal installments and registered in the name of the Bank as provided in the Third Supplemental Trust Agreement. Interest on the Series 2014 Bond shall be payable on June 1 and December 1 of each year, beginning December 1, 2014, until the principal of the Series 2014 Bond is fully paid.

Section 4. The Series 2014 Bond shall be subject to optional redemption upon the terms and conditions, and at the prices as shall be set forth in the Third Supplemental Trust Agreement.

Section 5. The proceeds of the Series 2014 Bond shall be applied as provided in Section 2.04 of the Third Supplemental Trust Agreement.

Section 6. The Series 2014 Bond, together with any Parity Indebtedness hereafter incurred pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Pledged Revenues and the money and Investment Obligations held in the various accounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement dated as of March 15, 2001 between the City and the Trustee and the Third Supplemental Trust Agreement.

Section 7. The proposal set forth in the Bond Purchase Agreement submitted by the Bank offering to purchase the Series 2014 Bond at the aggregate purchase price equal to the par amount of the Series 2014 Bond and bearing interest at the rate of 3.25% is hereby approved. The Commission is hereby requested to sell and award the Series 2014 Bond to the Bank on behalf of the City, subject to the approval of the City, in accordance with the terms and provisions set forth in the Bond Purchase Agreement. The Director of Financial Services and the City Manager are each hereby designated to approve on behalf of the City the sale of the Series 2014 Bond to the Bank for such purchase price and upon such terms and conditions as the City Manager or the Director of Financial Services shall determine, subject to the provisions of this Section. The City Manager and the Director of Financial Services each are hereby authorized and directed in the name and on behalf of the City to execute and deliver the Bond Purchase Agreement in substantially the form presented, together with such changes, additions and deletions as the City Manager or the Director of Financial Services, with the advice of counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 8. The forms, terms and provisions of the Third Supplemental Trust Agreement are hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute the Third Supplemental Trust Agreement in substantially the forms presented, together with such insertions, modifications and deletions as the Mayor and the City Clerk, with the advice of counsel, may deem necessary and appropriate, including, without limitation, insertions, modifications and deletions necessary to incorporate the final terms of the Series 2014 Bond as set forth in the Bond Purchase Agreement, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 9. The Mayor, the City Manager, the Director of Financial Services, the City Attorney and the City Clerk, or any of them or their deputies, are authorized and directed (without limitation except as may be expressly set forth in this Order) to take such action and to execute and deliver such certificates, agreements, instruments or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this Order, the Trust Agreement, the Third Supplemental Trust Agreement and the Bond Purchase Agreement.

The officers of the City and the agents and employees of the City are hereby authorized and directed to do all acts and things required of them by the provisions of this Order, the Series 2014 Bond, the Trust Agreement, the Third Supplemental Trust Agreement, and the Bond Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 10. The issuance and sale of the Series 2014 Bond is hereby approved, subject to the terms and conditions set forth in this Order.

Section 11. This Order shall take effect immediately upon its passage.

Thereupon the City Attorney stated that he had approved as to form the foregoing order.

Upon motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, the foregoing order entitled:

“ORDER AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL OBLIGATION REVENUE BOND AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH” was passed on roll call vote as follows:

Ayes: \_\_\_\_\_,

\_\_\_\_\_.

Noes: Councilmembers \_\_\_\_\_.

The Mayor thereupon announced that the order entitled: "ORDER AUTHORIZING THE ISSUANCE AND SALE OF SPECIAL OBLIGATION REVENUE BOND AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH" had passed by a vote of \_\_\_ to \_\_\_.

\* \* \* \* \*

I, Carol L. Barwick, City Clerk of the City of Greenville, North Carolina, DO HEREBY CERTIFY that the foregoing has been carefully copied from the recorded minutes of the City Council of said City at a meeting held on May 5, 2014, said record having been made in Minute Book No. \_\_\_ of the minutes of said City Council, beginning at page \_\_\_ and ending at page \_\_\_, and is a true copy of said proceedings of said City Council as relates in any way to the adoption of an order authorizing the issuance of Special Obligation Revenue Bond of said City.

WITNESS my hand and the corporate seal of said City, this \_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
City Clerk

[SEAL]

THIRD SUPPLEMENTAL TRUST AGREEMENT

Dated as of June 1, 2014

By and Between

CITY OF GREENVILLE, NORTH CAROLINA

and

The Bank of New York Mellon Trust Company, N.A.,  
Trustee

Authorizing and Securing  
\$4,200,000  
City of Greenville, North Carolina  
Special Obligation Revenue Bond, Series 2014

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THIS THIRD SUPPLEMENTAL TRUST AGREEMENT, dated as of June 1, 2014 (the “Supplemental Agreement”), by and between the CITY OF GREENVILLE, NORTH CAROLINA, a municipal corporation duly organized and existing under the laws of the State of North Carolina (the “City”), and The Bank of New York Mellon Trust Company, N.A., a national banking association and having a principal corporate trust office in Jacksonville, Florida, which is authorized under such laws to exercise trust powers (the “Trustee”),

WITNESSETH:

WHEREAS, the City of Greenville, North Carolina (the “City”), determined that it would benefit and be in the best interests of the City to issue bonds to finance the cost of constructing, furnishing and equipping a one-floor 52,000 (approximate) square foot exhibit hall (“Exhibit Hall”) (being a portion of a convention center); and

WHEREAS, the City adopted an order authorizing the issuance of such bonds, executed and delivered a Trust Agreement, dated as of March 15, 2001 (the “Trust Agreement”), and a First Supplemental Trust Agreement, dated as of March 15, 2001 each by and between the City and the Trustee, and on April 5, 2001 issued \$6,800,000 City of Greenville, North Carolina Special Obligation Bonds, Series 2001 (the “Series 2001 Bonds”) for purposes of financing the cost of the Exhibit Hall; and

WHEREAS, the City determined that it would benefit and be in the best interests of the City to refund the outstanding Series 2001 Bonds with refunding bonds and issued its \$4,290,000 Special Obligation Refunding Bond, Series 2011 on August 10, 2011 to refund such Series 2001 Bonds; and

WHEREAS, the City of Greenville, North Carolina (the “City”), has determined that it would benefit and be in the best interests of the City to issue bonds to finance the cost of constructing, furnishing and equipping the renovation and a \_- floor \_\_\_\_\_ square foot expansion of the Exhibit Hall (the “Project”); and

WHEREAS, has adopted an order authorizing the issuance of such additional bonds to finance the Project and the Trust Agreement authorizes the City to issue such additional bonds in accordance with Section 208 thereof;

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

ARTICLE I.

DEFINITIONS

Section 1.01. Meaning of Words and Terms. Unless otherwise required by the context, words and terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein, and the following words and terms shall have the following meanings:

“Closing” means the delivery of and payment for the Series 2014 Bond.

“Closing Date” means the date of the Closing.

“Interest Payment Date” means [June 1] or [December 1], as the case may be.

“Regular Record Date” means the 15th day of the month preceding any Interest Payment Date, whether or not a Business Day.

Section 1.02. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

References herein to particular articles or sections are references to articles or sections of this Supplemental Agreement unless some other reference is indicated.

## ARTICLE II.

### AUTHORIZATION, FORM, ISSUANCE, DELIVERY AND REGISTRATION OF THE SERIES 2014 BONDS

Section 2.01. Authorization and Issuance of the Series 2014 Bond to finance the Project. The issuance of the \$4,200,000 City of Greenville, North Carolina Special Obligation Revenue Refunding Bond, Series 2014 (the "Series 2014 Bond"), to finance the Project, all as herein provided, is hereby authorized by this Supplemental Agreement. For the purpose of financing the Project and paying certain costs and expenses incidental thereto, there shall be issued, under and pursuant to the Constitution and the laws of the State, including the Act, the Trust Agreement and this Supplemental Agreement, the Series 2014 Bond of the City in the amount and subject to the conditions herein provided.

The Bank of New York Mellon Trust Company, N.A., is hereby appointed Bond Registrar for the Series 2014 Bond under this Supplemental Agreement.

Section 2.02. Form of the Series 2014 Bond. The Series 2014 Bond is issuable in the form of a single fully registered bond designated in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Trust Agreement or this Supplemental Agreement.

Section 2.03. Details of the Series 2014 Bond. The Series 2014 Bond shall be dated the date of its delivery, shall bear interest until their payment, such interest to the maturity thereof being payable on [December 1, 2014] and semiannually thereafter on June 1 and December 1 in each year, and shall be payable in annual principal installments on the dates and in the amounts and bearing interest at the rate of 3.25% per annum to mature (subject to the right of prior redemption) on June 1 of the years, all as hereinafter provided.

The Series 2014 Bond will be in the form of one bond certificate in the aggregate principal amount of the Series 2014 Bond with stated annual principal installments and registered in the name of Capital One Public Funding, LLC. The principal of and any redemption premium on the Series 2014 Bond and interest with respect thereto shall be payable to Capital One Public Funding, LLC or any other person appearing on the registration books of the City as the registered owner of such Series 2014 Bond or its registered assigns or legal representatives.

Notwithstanding any other provisions of the Trust Agreement or this Supplemental Agreement, the Bond Registrar shall not register the transfer of this bond to any person other than a bank, an insurance company or a similar financial institution unless such transfer has been previously approved by the Local Government Commission of North Carolina.

Section 2.04. Authorization of the Series 2014 Bond. The proceeds of the Series 2014 Bond shall be used to (a) finance the Project and (b) pay certain other costs and expenses incident to the issuance of the Series 2014 Bond.

The Series 2014 Bond shall mature (subject to the right of prior redemption as hereinafter set forth) on June 1 in the following years and amounts and shall bear interest (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of 3.25%:

<u>Year of Maturity</u>	<u>Principal Amount</u>
2015	\$
2016	
2017	
2018	
2019	
2020	
2021	
2022	
2023	
2024	

The Series 2014 Bond shall be executed substantially in the form and in the manner herein set forth and shall be deposited with the Bond Registrar for authentication, but before the Series 2014 Bond shall be authenticated and delivered to the State Treasurer for redelivery to SunTrust Bank thereof, there shall be filed with the Trustee, in addition to the items required to be delivered to the Trustee pursuant to Section 208 of the Trust Agreement, an opinion of the City Attorney to the effect that (1) this Supplemental Agreement and the Trust Agreement have each been duly and validly executed and delivered by the City and are each valid and binding agreements of the City enforceable in accordance with their respective terms, (2) no provision of the Trust Agreement or this Supplemental Agreement violates any provisions of the City's charter or results in or constitutes a default under any agreement, indenture or other instrument to which the City is a party or by which the City may be bound and of which the City Attorney has knowledge, (3) the City's execution and delivery of the Trust Agreement and this Supplemental Agreement and execution and issuance of the Series 2014 Bond are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not theretofore obtained or effected, (4) the form, terms, execution, issuance and delivery of the Series 2014 Bond has been duly and validly authorized by the City and (5) all approvals, consents, authorizations, certifications and other orders of any governmental authority, board, agency or commission having jurisdiction, or filings with any such entities, which would be necessary for the financing of the Project, and which are required to have been obtained or to have been filed by the Closing Date, have been obtained or filed; provided,

however, that such opinion may except matters pertaining to compliance with federal and State securities laws, the Act, and federal and State taxation.

When the documents mentioned in Section 208 of the Trust Agreement and the immediately preceding paragraph of this Section shall have been filed with the Trustee, and when the Series 2014 Bond shall have been executed and authenticated as required by this Supplemental Agreement, the Series 2014 Bond shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the purchasers thereof, but only upon the deposit with the Trustee of the purchase price of the Series 2014 Bond and the accrued interest thereon.

Simultaneously with the Closing and the deposit of the proceeds of the Series 2014 Bond with the Trustee, the Trustee shall apply the proceeds in the amount of \$ \_\_\_\_\_ (representing the par amount of Series 2014 Bond) as follows:

- (a) \$ \_\_\_\_\_ to the credit of a Series 2014 Project Account of the Construction Fund established in Section 4.02 herein; and
- (b) the balance of \$ \_\_\_\_\_ shall be deposited to the credit of a Series 2014 Costs of Issuance Account of the Construction Fund established in Section 4.01 herein.

### ARTICLE III.

#### REDEMPTION OF SERIES 2014 BOND

Section 3.01. Redemption of Series 2014 Bond. (a) The Series 2014 Bond shall not be subject to prior redemption except as provided in this Article III and in Article III of the Trust Agreement.

(b) The Series 2014 Bond, is subject to redemption prior to maturity, at the City's option, from any funds that may be available to the City for such purpose, in whole on any date, up to and including \_\_\_\_, 2018 at a redemption price of 103%, plus accrued interest, if any, to the redemption date, from \_\_\_\_, 2018 to \_\_\_\_, 2023 at a redemption price of 102% plus accrued interest, if any, to the redemption date and (iii) and thereafter at redemption price of par, plus accrued interest, if any, to the redemption date.

Section 3.02. Notice of Redemption. At least thirty (30) days but not more than sixty (60) days prior to the redemption date of the Series 2014 Bond to be redeemed, whether such redemption is in whole or in part, the Bond Registrar shall cause a notice of any such redemption signed by the Bond Registrar to be mailed, first class, postage prepaid, to all Owners of the Series 2014 Bond to be redeemed in whole, provided that failure to mail any such notice to any Owner or any defect in such notice shall not affect the validity of the proceedings for such redemption as to the Series 2014 Bond of any other Owner. On the date designated for redemption, notice having been given as aforesaid, the Series 2014 Bond so called for redemption shall become due and payable at the redemption price provided for the redemption of such Series 2014 Bond on such date plus accrued interest to such date.

Any notice of optional redemption of the Series 2014 Bond may state that it is conditioned upon there being available on the redemption date an amount of money sufficient to pay the redemption price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price if any such condition so specified is not satisfied. If a redemption does not occur after a conditional notice is given due to an insufficient amount of funds on deposit by the Authority, the corresponding notice of redemption shall be deemed to be revoked.

If the Authority gives an unconditional notice of redemption, then on the redemption date the Series 2014 Bond called for redemption will become due and payable. If the Authority gives a conditional notice of redemption and if on the redemption date money to pay the redemption price of the Series 2014 Bond shall have been set aside in escrow with the Trustee or escrow agent for the purpose of paying the Series 2014 Bond, then on the redemption date the Series 2014 Bond will become due and payable. In either case, if on the redemption date Authority holds money to pay the Series 2014 Bond called for redemption, thereafter, no interest will accrue on the Series 2014 Bond, and a bondholder's only right will be to receive payment of the redemption price upon surrender of the Series 2014 Bond.

ARTICLE IV.

REVENUES AND FUNDS

Section 4.01. Accounts Established. (i) A special account is hereby established within the Construction Fund designated the “Series 2014 Project Account” and (ii) a special account is hereby established within the Construction Fund designated the “Series 2014 Costs of Issuance Account.”

ARTICLE V.

INVESTMENT OF FUNDS

Section 5.01. Investment of Money. Money held for the credit of the funds and accounts established under the Trust Agreement on deposit with the Trustee shall be continuously invested and reinvested at the written direction of an Authorized Officer by the Trustee in Investment Obligations to the extent practicable.

The interest accruing on any such Investment Obligations and any profit realized upon the disposition or maturity of such Investment Obligations shall be credited to such funds or accounts as follows:

<u>Accounts</u>	<u>Credited to</u>
2014 Project Account	[2014 Project Account]
2011 Costs of Issuance Account	Bond Fund
Bond Fund	Bond Fund

Any such interest accruing and any such profit realized shall be transferred upon the receipt thereof by the City or the Trustee, as the case may be, pursuant to the provisions of the Trust Agreement and this Supplemental Agreement.

An Authorized Officer shall give to the Trustee written directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Section 5.01, and the Trustee shall then invest such money as so directed. The Trustee may request in writing additional direction or authorization from the Authorized Officer with respect to the proposed investment of money. Upon receipt of such directions, the Trustee shall invest, subject to the provisions of this Section 5.01, such money in accordance with such directions. The Trustee may conclusively rely upon the City's written instructions as to both the suitability and legality of the directed investments. In the absence of written investment instructions from the City, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested. The Trustee shall not be liable for any losses from any such directed investments. Confirmations of investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered.

The Trustee shall sell at the best price obtainable or, acting in a commercially reasonable manner, reduce to cash a sufficient amount of such Investment Obligations whenever it is necessary to do so in order to provide money to make any payment from any such account. The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance with this Section.



Whenever a transfer of money between two or more of the accounts is permitted or required, such transfer may be made as a whole or value determined at the time of such transfer in accordance with Article VI of the Trust Agreement, provided that the Investment Obligations transferred are those in which money of the receiving account could be invested at the date of such transfer.

Section 5.02. Payment of Principal, Interest and Premium. The City covenants that it will promptly pay from the Pledged Revenues the principal of and the interest on the Series 2014 Bond issued under the provisions of this Supplemental Agreement at the places, on the dates and in the manner provided herein and in the Series 2014 Bond, and any amount required for the retirement of the Series 2014 Bond by purchase or redemption, according to the true intent and meaning thereof. The City further covenants that it will faithfully perform at all times all of its covenants, undertakings and agreements contained in this Supplemental Agreement and the Trust Agreement, or in any Series 2014 Bond executed, authenticated and delivered hereunder or in any proceedings of the City pertaining thereto. The City represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue the Series 2014 Bond authorized hereby and to pledge the Pledged Revenues in the manner and to the extent in the Trust Agreement set forth; that all action on its part for the issuance of the Series 2014 Bond has been duly and effectively taken; and that such Series 2014 Bond in the hands of the Owners thereof are and will be valid and binding special obligations of the City payable according to their terms.

Section 5.03. Tax Covenant. The City covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Series 2014 Bond which was excludable from the gross income of their Owners for federal income taxes on the date of their issuance shall continue to be so excludable.

ARTICLE VI.

THE TRUSTEE

Section 6.01. Acceptance of Duties by Trustee. The Trustee by execution hereof accepts and agrees to perform the duties and fulfill the trusts imposed upon it by this Supplemental Agreement.

Section 6.02. Resignation, Removal or Termination of Trustee Subject to Appointment of Successor. Notwithstanding any other provision of this Supplemental Agreement, no removal, resignation or termination of the Trustee shall take effect until a successor, shall be appointed. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within sixty (60) days after the date of any notice of resignation, removal or termination, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

## ARTICLE VII. MISCELLANEOUS PROVISIONS

Section 7.01. Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the City, the Local Government Commission and the Trustee or the Bond Registrar shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered mail, or certified mail, return receipt requested, postage prepaid, addressed as follows:

- (a) As to the City--

City of Greenville, North Carolina  
200 West 5<sup>th</sup> Street  
Greenville, North Carolina 27858-1824  
Attention: Director of Financial Services

- (b) As to the Trustee or Bond Registrar --

The Bank of New York Mellon Trust Company, N.A.  
10161 Centurion Parkway  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department

- (c) As to the Local Government Commission--

North Carolina Local Government Commission  
405 Fair Meadow Lane  
Suite 102  
Raleigh, NC 27607

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered mail, postage prepaid, to the other parties by the party effecting the change.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Supplemental Agreement sent by the City by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the City shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such instructions, which incumbency certificate shall be amended whenever a person is to be added or

deleted from the listing. If the City elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 7.02. Substitute Notice. If, because of the temporary or permanent suspension of postal service, the City, the Local Government Commission, the Trustee or the Bond Registrar shall be unable to mail any notice required to be given by the provisions of this Supplemental Agreement, such party shall give notice in such other manner as in the judgment of such party shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this Supplemental Agreement be deemed to be in compliance with the requirement for the mailing thereof.

Section 7.03. City, Trustee, Bond Registrar and Owners Alone Have Rights under Supplemental Agreement. Except as herein otherwise expressly provided, nothing in this Supplemental Agreement, express or implied, is intended or shall be construed to confer upon, or to give or grant to, any person or entity, other than the City, the Trustee, the Bond Registrar and the Owners, any right, remedy or claim, legal or equitable, under or by reason of this Supplemental Agreement or any covenant, condition or stipulation hereof, and all covenants, stipulations, promises and agreements in this Supplemental Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the City, the Trustee, the Bond Registrar and the Owners.

Section 7.04. Effect of Partial Invalidity. In case any one or more of the provisions of this Supplemental Agreement or the Series 2014 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Supplemental Agreement or the Series 2014 Bond, but this Supplemental Agreement and the Series 2014 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this Supplemental Agreement or the Series 2014 Bond shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 7.05. Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the City contained in this Supplemental Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent permitted by the Constitution and laws of the State. This Supplemental Agreement is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 7.06. Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Supplemental Agreement, nor shall they affect its meaning, construction or effect.

Section 7.07. Further Authority. The officers, attorneys, engineers and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Supplemental Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2014 Bond and this Supplemental Agreement.

Section 7.08. Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Supplemental Agreement is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this Supplemental Agreement.

Section 7.09. Multiple Counterparts. This Trust Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

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

CITY OF GREENVILLE, NORTH CAROLINA

[SEAL]

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

Attest:

\_\_\_\_\_  
City Clerk

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

By: \_\_\_\_\_  
Authorized Officer

Approved as to form:

\_\_\_\_\_  
City Attorney

**EXHIBIT A**

**FORM OF SERIES 2014 BOND**

NOTWITHSTANDING ANY OTHER PROVISIONS OF THE TRUST AGREEMENT OR THIS SUPPLEMENTAL AGREEMENT, THE BOND REGISTRAR SHALL NOT REGISTER THE TRANSFER OF THIS BOND TO ANY PERSON OTHER THAN A BANK, AN INSURANCE COMPANY OR A SIMILAR FINANCIAL INSTITUTION UNLESS SUCH TRANSFER HAS BEEN PREVIOUSLY APPROVED BY THE LOCAL GOVERNMENT COMMISSION OF NORTH CAROLINA.

R-1

[\$4,200,000]

United States of America  
State of North Carolina  
County of Pitt

CITY OF GREENVILLE  
SPECIAL OBLIGATION REVENUE BOND, SERIES 2014

INTEREST RATE

MATURITY DATE

\_\_\_\_\_%

June 1, 20\_\_

The City of Greenville (the “City”), a municipal corporation in Pitt County, North Carolina, for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to Capital One Public Funding, LLC or registered assigns or legal representative, on the maturity date set forth above (or earlier as hereinafter referred to) in the principal installments set forth in Schedule I hereto, upon the presentation and surrender hereof, at the principal corporate trust office of The Bank of New York Mellon Trust Company, N.A., Jacksonville, Florida (the “Bond Registrar”), equal to the aggregate principal sum of [FOUR MILLION TWO HUNDRED THOUSAND DOLLARS (\$4,200,000)]. The City also promises to pay, but solely from said sources, interest on this bond (calculated on the basis of a 360-day year consisting of twelve 30-day months) from the interest payment date next preceding the date on which it is authenticated, unless it is authenticated on an interest payment date, in which event it shall bear interest from such interest payment date, or it is authenticated prior to [December 1, 2014], in which event it shall bear interest from its date, payable on [December 1, 2014], and semiannually thereafter on June 1 and December 1 of each year at the rate per annum set forth above on the unpaid principal amount of such bond until the principal sum hereof is paid. The interest so payable and punctually paid or duly provided for on any interest payment date will be paid to the person in whose name this bond is registered at the close of business on the Regular

Record Date for such interest, which shall be the 15th day (whether or not a business day) of the calendar month next preceding such interest payment date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date (as defined in the Trust Agreement hereinafter mentioned) for the payment of such defaulted interest to be fixed by the Trustee (hereinafter mentioned), notice whereof being given to the registered owners not less than 10 days prior to such Special Record Date or as more fully provided in the Trust Agreement. All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond is a duly authorized series of special obligation bonds of the City, designated "Special Obligation Revenue Bond, Series 2014" (the "Series 2014 Bond"), issued under and pursuant to the Constitution and laws of the State of North Carolina, including the Act (as defined in the Trust Agreement), an order of the City adopted on May 5, 2014, authorizing the issuance of the Series 2014 Bond, a Trust Agreement, dated as of March 15, 2001 (the "Trust Agreement"), between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (in such capacity, the "Trustee") and a Third Supplement Trust Agreement, dated as of June 1, 2014 (the "Supplemental Agreement"), between the City and the Trustee. The Series 2014 Bonds are being issued for the purpose of providing funds for (i) financing the Project (as defined in the Supplemental Trust Agreement) and (ii) paying certain other costs and expenses incident to the issuance of the Series 2014 Bond.

The Series 2014 Bond will be in the form of one bond certificate in the aggregate principal amount of the Series 2014 Bond with stated annual principal installments as set forth in Schedule I hereto and registered in the name of SunTrust Bank.

The Series 2014 Bond is a special obligation of the City secured by a pledge, charge and lien upon the Pledged Revenues (as defined in the Trust Agreement). The City is not obligated to pay the principal of or the interest on the Series 2014 Bond except as provided in the Trust Agreement from the Pledged Revenues or certain other monies made available therefor under the Trust Agreement, and neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof or the City is pledged to the payment of the principal of and the interest on the Series 2014 Bond. The Trust Agreement provides for the issuance from time to time under the conditions, limitations and restrictions therein set forth of additional bonds and Parity Debt (as defined in the Trust Agreement) secured on a parity as to the pledge of the Pledged Revenues with the Series 2014 Bond.

Reference is made to the Trust Agreement and the Supplemental Agreement for a more complete statement of the provisions thereof and of the rights of the City, the Trustee and the registered owners of the Series 2014 Bond. Copies of the Trust Agreement and the Supplemental Agreement shall be available for inspection by any registered owner of the Series 2014 Bond at all reasonable times at the principal corporate trust office of the Trustee. By the



purchase and acceptance of this bond, the registered owner hereof signifies assent to all of the provisions of the Trust Agreement and the Supplemental Agreement.

The Trust Agreement provides for the creation of a special fund designated “City of Greenville Special Obligation Revenue Bond Fund” (the “Bond Fund”) which is pledged to and charged with the payment of the principal of and the interest on the Series 2014 Bond.

At the principal corporate trust office of the Bond Registrar, in the manner and subject to the conditions provided in the Trust Agreement, the Series 2014 Bond may be exchanged for an equal aggregate principal amount of Series 2014 Bond of the same maturity, of authorized denominations and bearing interest at the same rate.

The Bond Registrar shall keep at its principal corporate trust office books for the registration of transfer of the Series 2014 Bond. The transfer of this bond may be registered only upon such books and as otherwise provided in the Trust Agreement upon the surrender hereof to the Bond Registrar together with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Bond Registrar. Upon any such registration of transfer, the Bond Registrar shall deliver in exchange for this bond a new Series 2014 Bond or Bonds, registered in the name of the transferee, of authorized denominations, in an aggregate principal amount equal to the principal amount of this bond, of the same maturity and bearing interest at the same rate.

The Series 2014 Bond, is subject to redemption prior to maturity, at the City’s option, from any funds that may be available to the City for such purpose, in whole on any date, up to and including \_\_\_\_, 2018 at a redemption price of 103%, plus accrued interest, if any, to the redemption date, from \_\_\_\_, 2018 to \_\_\_\_, 2023 at a redemption price of 102% plus accrued interest, if any, to the redemption date and (iii) and thereafter at redemption price of par, plus accrued interest, if any, to the redemption date.

At least thirty (30) days but not more than sixty (60) days prior to the redemption date of any Series 2014 Bond to be redeemed, whether such redemption is in whole or in part, the Bond Registrar shall cause a notice of any such redemption signed by the Bond Registrar to be mailed, first class, postage prepaid, to all registered owners of the Series 2014 Bond to be redeemed in whole, provided that failure to mail any such notice to any registered owner or any defect in such notice shall not affect the validity of the proceedings for such redemption as to the Series 2014 Bond of any other registered owner. On the date designated for redemption, notice having been given as aforesaid, the Series 2014 Bond so called for redemption shall become due and payable at the redemption price provided for the redemption of such Series 2014 Bond on such date plus accrued interest to such date.

Any notice of optional redemption of the Series 2014 Bond may state that it is conditioned upon there being available on the redemption date an amount of money sufficient to pay the redemption price plus interest accrued and unpaid to the redemption date, and any conditional notice so given may be rescinded at any time before the payment of the redemption price if any such condition so specified is not satisfied. If a redemption does not occur after a

conditional notice is given due to an insufficient amount of funds on deposit by the Authority, the corresponding notice of redemption shall be deemed to be revoked.

If the Authority gives an unconditional notice of redemption, then on the redemption date the Series 2014 Bond called for redemption will become due and payable. If the Authority gives a conditional notice of redemption and if on the redemption date money to pay the redemption price of the Series 2014 Bond shall have been set aside in escrow with the Trustee or escrow agent for the purpose of paying the Series 2014 Bond, then on the redemption date the Series 2014 Bond will become due and payable. In either case, if on the redemption date Authority holds money to pay the Series 2014 Bond called for redemption, thereafter, no interest will accrue on the Series 2014 Bond, and a bondholder's only right will be to receive payment of the redemption price upon surrender of the Series 2014 Bond.

The registered owner of this bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement.

Upon the occurrence of certain events, and on the conditions, in the manner and with the effect set forth in the Trust Agreement, the principal of all bonds and debt secured on a parity therewith by the pledge of Pledged Revenues then outstanding under the Trust Agreement may become or may be declared due and payable before the respective stated maturities thereof.

Modifications or alterations of the Trust Agreement and the Supplemental Agreement or in any supplement trust agreement thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement and the Supplemental Agreement, as the case may be.

This bond, notwithstanding the provisions for registration of transfer stated herein and contained in the Trust Agreement and the Supplemental Agreement, at all times shall be, and shall be understood to be, an investment security within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code of North Carolina. This bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond and the execution and delivery of the Trust Agreement and the Supplemental Agreement have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement or the Supplemental Agreement until it shall have been authenticated by the execution by the Bond Registrar of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the City of Greenville, North Carolina, by order duly passed by its City Council, has caused this bond to be manually signed by the Mayor and City Clerk and its corporate seal to be impressed hereon, all as of the \_\_\_th day of June, 2014.

\_\_\_\_\_  
Mayor

[SEAL]

\_\_\_\_\_  
City Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

The issuance of the within bond has been approved under the provisions of Chapter 159 of the General Statutes of North Carolina.

\_\_\_\_\_  
Secretary  
Local Government Commission

CERTIFICATE OF AUTHENTICATION

This bond is a Bond of the Series designated therein and issued under the provisions of the within mentioned Trust Agreement and Supplemental Agreement.

The Bank of New York Mellon Trust Company,  
N.A., Bond Registrar

By \_\_\_\_\_  
Authorized Officer

Date of authentication: \_\_\_\_\_

**ASSIGNMENT**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_

\_\_\_\_\_

PLEASE INSERT SOCIAL SECURITY NUMBER  
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE

\_\_\_\_\_

the within bond and all right thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_, attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

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

In the presence of:

\_\_\_\_\_

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

Signature Guaranteed:

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

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

SCHEDULE I

Maturity Date

Principal Installments

BOND PURCHASE AGREEMENT

Among

Local Government Commission,  
City of Greenville, North Carolina,

and

Capital One Public Funding, LLC

concerning

[\$4,200,000]

City of Greenville, North Carolina  
Special Obligation Revenue Bond  
Series 2014

## BOND PURCHASE AGREEMENT

concerning

[\$4,200,000]

City of Greenville, North Carolina  
Special Obligation Revenue Bond  
Series 2014

June \_\_, 2014

City of Greenville, North Carolina  
Greenville, North Carolina

Local Government Commission  
Raleigh, North Carolina

Ladies and Gentlemen:

We Capital One Public Funding, LLC (the “Bank”) hereby offers to enter into this Bond Purchase Agreement with the Local Government Commission, a division of the Department of State Treasurer of the State of North Carolina (the “LGC”) and the City of Greenville, North Carolina (the “City”), which, upon acceptance of this offer by the LGC and approval by the City of this offer and of the LGC’s acceptance thereof, will be binding upon the LGC, the City and the Bank.

1. Purchase and Sale of the Bond. Upon the terms and conditions hereof and upon the basis of the representations set forth herein, the Bank hereby agrees to purchase, and the LGC and the City agrees to sell to the Bank, the City of Greenville Special Obligation Revenue Bond, Series 2014 in the principal amount of \$[4,200,000] (the “Bond”). The purchase price for the Bond shall be \$[4,200,000], which is equal to the par amount of the Bond. The delivery and payment for the Bond and other actions contemplated hereby shall take place at the time and place set forth in Section 6 hereof (the “Closing”).

The Bond shall consist of one fully registered bond certificate in the principal amount of \$[4,200,000], shall be dated as of June \_\_, 2014 and shall bear interest from its date, at a rate of 3.25% per annum (except as otherwise provided in the Bond). The Bond shall be issued and secured under the provisions of a Trust Agreement, dated as of March 15, 2001 (the “Trust Agreement”), between the City and The Bank of New York Mellon, N.A. (the “Trustee”) as supplemented by a Supplemental Trust Agreement, dated as of June 1, 2014 (the “Supplemental Trust Agreement”), between the City and the Trustee, and a bond order authorizing the issuance and sale of the Bond adopted by the City Council on May 5, 2014 (the “Bond Order”). All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Trust Agreement and the Supplemental Trust Agreement.

The proceeds of the Bond are to be used to provide funds, together with other available funds, to (a) providing funds to finance the renovation and expansion of the Greenville Convention Center (the “Project”) and (b) pay certain costs and expenses incidental to the issuance and sale of the Bond.

2. Representations of the Bank; Purchase for Account.

(a) The Bank hereby acknowledges and represents, in respect of the Bond, that:

(i) the Bank is familiar with the City;

(ii) the Bank has been furnished with all financial and other information about the City and the Bond as requested by the Bank; and

(iii) the City has made available to the Bank the opportunity to obtain additional information about the City and the Bond.

(b) The Bank further acknowledges and represents in respect of the Bond that a part of the Bank’s business consists of the purchase, holding and sale of obligations of the same general character as the Bond, and the Bank has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks inherent in purchasing the Bond. The Bank has made such investigation of the Bond and of the financial condition and operations of the City as it deems necessary to evaluate the merits and risks inherent in purchasing the Bond. The Bank is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond for an indefinite period. The Bank represents that it is purchasing the Bond for its own account with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Bank reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond or fractional interests in the Bond to other banks, insurance companies or similar financial institutions or any other purchaser if such sale, assignment or transfer is approved in writing by the LGC or otherwise permitted by the Supplemental Trust Agreement.

3. Representations and Warranties of the LGC. The LGC makes the following representations and warranties to the City and the Bank, all of which shall survive the delivery of the Bond:

(a) The LGC is duly organized and validly existing as a division of the Department of the State Treasurer of the State of North Carolina, vested with the rights and powers conferred upon it pursuant to Chapter 159 of the General Statutes of North Carolina, as amended.

(b) The LGC has full power and authority to approve the issuance and provide for the sale of the Bond as provided in this Bond Purchase Agreement, and the LGC has taken or will take all action required by the Act or other applicable laws in connection therewith.

(c) The LGC has duly authorized the execution and delivery of this Bond Purchase Agreement and has taken or will take all action necessary or appropriate to carry out the sale and delivery of the Bond to the Bank.



(d) The execution and delivery of this Bond Purchase Agreement and the performance by the LGC of its obligations hereunder are within the powers of the LGC and, to the best of the LGC's knowledge, will not conflict with or constitute a breach or result in a violation of (i) any federal or North Carolina constitutional or statutory provision, (ii) any agreement or other instrument to which the LGC is a party or by which it is bound, or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the LGC.

(e) Except for any action required by applicable federal or state securities laws, no consent, approval, authorization or order of any governmental or regulatory authority, other than the approvals of the City as herein required, is required to be obtained by the LGC as a condition precedent to the issuance or sale of the Bond or the execution and delivery of this Bond Purchase Agreement or the performance by the LGC of its obligations hereunder.

(f) There is no litigation or any other proceeding before any court or governmental body or agency pending or, to the knowledge of the LGC, threatened against or involving the LGC to restrain or enjoin the issuance or delivery of the Bond or the execution or delivery by the LGC of this Bond Purchase Agreement and the performance of its obligations hereunder.

4. Representations and Warranties of the City. The City makes the following representations and warranties to the Bank, all of which shall survive the delivery of the Bond:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of North Carolina, and is authorized and empowered to provide for the refunding of the Refunded Bonds by causing the Bond to be issued.

(b) The City has the full legal right, power and authority to adopt the Order and the Supplemental Trust Agreement and to execute and deliver this Bond Purchase Agreement and to perform its respective obligations hereunder and thereunder.

(c) The Bond Order has been duly adopted by the City Council, are in full force and effect and has not been modified or amended in any manner.

(d) The City has duly authorized (i) the execution and delivery of this Bond Purchase Agreement, (ii) the issuance and delivery of the Bond and (iii) such actions as may be required on the part of the City to consummate the transactions contemplated by such documents.

(e) The Bond Order, the Supplemental Trust Agreement and this Bond Purchase Agreement constitute legal, valid and binding obligations of the City enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The Owner of the Bond will be entitled to the security created by the Trust Agreement and the Supplemental Trust Agreement as provided therein.

(f) The City is not in violation of any applicable constitutional provision, law or administrative rule or regulation of the State of North Carolina or of the United States of America or in default under any agreement, resolution, indenture or instrument to which the City

is a party or by which the City or its property is bound, the effect of which violation or default would materially affect the ability of the City to perform its obligations under the Bond Order, the Supplemental Trust Agreement or this Bond Purchase Agreement, and no such event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a violation or default hereunder or thereunder.

(g) The execution and delivery of this Bond Purchase Agreement, the Trust Agreement, the Supplemental Trust Agreement, the adoption of the Bond Order and performance of the obligations of the City hereunder or thereunder do not and will not conflict with, result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the City other than Pledged Revenues pursuant to the terms of, or constitute a default under, any agreement, indenture or instrument to which the City is a party or by which the City or its property is bound, or result in a violation of any applicable constitutional provision, law or administrative regulation or any order, rule or regulation of any court or governmental agency having jurisdiction over the City or its property, except as provided and permitted by such documents.

(h) Except for any action that may be required by applicable federal or state securities laws, no consent, authorization or order of, or filing or registration with, any court or governmental agency not already obtained or made is required for the adoption of the Bond Order or the execution, delivery and performance by the City of this Bond Purchase Agreement, or the Supplemental Trust Agreement or the consummation by the City of the transactions contemplated hereunder or thereunder, and any such consent, authorization or order so obtained is in full force and effect.

(i) Any certificate signed by an authorized officer of the City and delivered to the Bank shall be deemed a representation and warranty of the City to the Bank as to the statements made therein.

(j) To the best knowledge of the City, there is no litigation or any other proceeding before or by any court, public board, agency or body, pending or threatened against or affecting the City or any of the members of the City Council in their respective capacities as such (nor is there any basis therefor), wherein an unfavorable decision, ruling or finding would in any way materially adversely affect (i) the transactions contemplated by this Bond Purchase Agreement, (ii) the organization, existence or powers of the City or the title to the office of any of the members of the City Council, (iii) the properties or assets or the condition, financial or otherwise, of the City, (iv) the validity or enforceability of this Bond Purchase Agreement, the Bond Order, the Trust Agreement or the Supplemental Trust Agreement (or any other agreement or instrument of which the City is a party or used or contemplated for use in the consummation of the transactions contemplated hereby) or (v) the exemption from federal or State of North Carolina income taxation of the interest on the Bond.

(k) There has been no material adverse change in the financial condition of the City since June 30, 2013, except as otherwise specified in writing to the Bank by the City prior to the date hereof.

5. Payment and Delivery. At 10:00 a.m., [Raleigh, North Carolina time], on June \_\_, 2014, or at such other time or on such earlier or later date as mutually agreed upon, the City and the LGC will deliver or cause to be delivered the Bond to the Bank. Upon such delivery of the Bond, the Bank shall pay the purchase price for the Bond as specified in Section 1 hereof to the Trustee in immediately available funds, and the Trustee shall deposit the full purchase price thereof in the manner specified in Section 2.04 of the Supplemental Trust Agreement. The Closing on the Bond will be held at the offices of Sidley Austin LLP in Washington, D.C., or at such other place as the City, the Trustee and the Bank may mutually agree upon.

6. Conditions of Closing. The Bank has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the LGC and the City contained herein and to be contained in the documents and instruments to be delivered at Closing and upon the performance by the LGC and the City of their respective obligations hereunder, as of the date hereof. Accordingly, the Bank's obligation under this Bond Purchase Agreement to purchase and pay for the Bond shall be subject to the performance by the LGC and the City of their respective obligations to be performed hereunder and under such documents and instruments at or prior to Closing, and shall also be subject to the following conditions:

(a) At the time of Closing (i) the representations and warranties of the LGC and the City respectively, contained herein shall be true, complete and correct, (ii) the Bond Order, the Supplemental Trust Agreement and this Bond Purchase Agreement shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Bank and (iii) the LGC and the City shall have duly adopted and there shall be in full force and effect such resolutions as in the opinion of Sidley Austin LLP, Washington, D.C. ("Bond Counsel"), shall be necessary in connection with the transactions contemplated hereby, and such resolutions shall not have been amended, modified or supplemented, except as may have been agreed to by the Bank.

(b) On or prior to the date of Closing, the Bank shall have received the following documents in form and substance reasonably satisfactory to the Bank:

(1) opinion of Bond Counsel, dated as of the date of Closing, addressed to the Bank or together with a reliance letter to the Bank, in form and substance satisfactory to the Bank;

(2) opinion of the City Attorney, dated as of the date of Closing, addressed to the Bank and in form and substance satisfactory to the Bank;

(3) executed counterparts or copies of the Supplemental Trust Agreement and this Bond Purchase Agreement;

(4) certified copies all proceedings of the City relating to approvals or authorizations for the Bond and the execution and delivery of this Bond Purchase Agreement;

(5) certified copy of approving resolution of the LGC;

(6) tax certificate of the City and Internal Revenue Service Form 8038-G;

(7) certificate of an authorized officer of the City to the effect that the fees of the LGC relating to the Bond have been paid;

(8) such other documents as may be required to be delivered pursuant to Section 208 of the Supplemental Trust Agreement; and

(9) such additional certificates (including appropriate incumbency and no-litigation certificates), instruments, opinions or other documents as the Bank may reasonably request.

All representations and warranties of the LGC and the City set forth in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Bank or any person controlling the Bank and (ii) acceptance of and payment for the Bond.

7. Limitation of Liability of the LGC and the City. The members, officers and employees of the LGC and the City shall not be personally liable under this Bond Purchase Agreement.

8. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Notices. Any notice or other communication to be given under this Bond Purchase Agreement may be given by delivering the same in writing by first-class mail, postage prepaid, to the following addresses:

To the LGC:

Local Government Commission  
405 Fair Meadow Lane  
Suite 102  
Raleigh, NC 27607

To the City:

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

To the Bank:

Capital One Public Funding, LLC

Attention: ]

10. Governing Law. This Bond Purchase Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

11. Severability. In the event any provision of this Bond Purchase Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by a duly authorized member of the LGC and the City and shall be valid and enforceable as of the time of such acceptance.

CAPITAL ONE PUBLIC FUNDING, LLC

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

[Counterpart signature page to Bond Purchase Agreement, dated June \_\_, 2014, among the Local Government Commission, the City of Greenville, North Carolina and Capital One Public Funding, LLC]

Accepted:

LOCAL GOVERNMENT COMMISSION

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

[Counterpart signature page to Bond Purchase Agreement, dated June \_\_, 2014, among the Local Government Commission, the City of Greenville, North Carolina and Capital One Public Funding, LLC]

Approved:

CITY OF GREENVILLE, NORTH CAROLINA

By: \_\_\_\_\_  
City Manager

A regular meeting of the City Council of the City of Greenville, North Carolina was held in the City Council Chamber at the City Hall in Greenville, North Carolina, the regular place of meeting, on March 17, 2014 at 6:00 p.m.

Present: Mayor Allen M. Thomas, presiding, and Mayor Pro-Tem Calvin R. Mercer and Council Members Kandie D. Smith, Rose H. Glover, Marion Blackburn, Rick Smiley and Richard Croskery

Absent: None

\* \* \* \* \*

Mayor Thomas introduced the following resolution, a copy of which had been provided to each Council Member, and which was read by its title:

**RESOLUTION NO. 013-14**

**RESOLUTION RELATING TO THE AUTHORIZATION AND ISSUANCE OF THE CITY OF GREENVILLE SPECIAL OBLIGATION REVENUE BOND SERIES 2014 TO FINANCE THE CONSTRUCTION OF A RENOVATION AND EXPANSION TO THE GREENVILLE CONVENTION CENTER**

WHEREAS, the City of Greenville, North Carolina (the "City") is considering financing a renovation and expansion to the Greenville Convention Center (the "Project") by issuing a City of Greenville, North Carolina Special Obligation Revenue Bond, Series 2014 (the "Series 2014 Bond");

WHEREAS, the City desires to proceed with financing the Project and to proceed with the authorization and issuance, pursuant to the provisions of The State and Local Government Revenue Bond Act, of a revenue bond of the City in an aggregate principal amount not to exceed \$4,200,000;

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

Section 1. The Director of Financial Services of the City and such other officers of the City as may be appropriate are hereby authorized to apply to the Local Government Commission of North Carolina (the "LGC") for the approval of the issuance of the Series 2014 Bond and otherwise to participate in the development of such financing.



Section 2. The City Council recommends the selection of the following professionals to assist the City in connection with such financing and requests the LGC to approve such selection:

Bond Counsel - Sidley Austin LLP  
Trustee and Bond Registrar - The Bank of New York Mellon Trust Company, N.A.  
Financial Advisor -- First Southwest Company

Section 3. The LGC is hereby requested to sell the Series 2014 Bond in the form of a registered bond or bonds at private sale, without advertisement, to a financial institution chosen by the City as the most favorable bid received pursuant to a request for proposal to be issued by the Financial Advisor.

Section 4. The City Council hereby finds and determines in connection with the issuance of the Series 2014 Bond that (i) the issuance of the Series 2014 Bond is necessary or expedient for the City, (ii) the proposed principal amount of the Series 2014 Bond is adequate and not excessive for the proposed purpose of such issue, (iii) the Project is feasible, (iv) the City's debt management procedures and policies are good and are managed in strict compliance with law, (v) the City has made timely payment of all sums owed by it with respect to the payment of principal of and interest on all of its outstanding debt obligations and has received no notice from the LGC or any holder concerning the City's failure to make any required payment of debt service, (vi) the Pledged Net Occupancy Tax Revenues proposed to secure the Series 2014 Bond will be sufficient to make the necessary payments on the Series 2014 Bond and (vii) under current economic conditions, the Series 2014 Bond can be marketed at a reasonable interest cost to the City.

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

Adopted this the 17th day of March, 2014.



Allen M. Thomas  
Mayor

ATTEST:



Carol L. Barwick  
City Clerk



After consideration of the foregoing resolution, Council Member Richard Croskery moved for the passage thereof, which motion was duly seconded by Council Member Marion Blackburn and the foregoing resolution was passed by the following vote:

Ayes: Mayor Pro-Tem Calvin R. Mercer and Council Members Kandie D. Smith, Rose H. Glover, Marion Blackburn, Rick Smiley and Richard Croskery.

Noes: None.

\* \* \* \* \*

I, Carol L. Barwick, hereby certify that I am the duly appointed and acting City Clerk of the City of Greenville, North Carolina, and as such I am the legal custodian of the Official Minutes and Records of the City of Greenville, North Carolina. As such, I DO HEREBY CERTIFY that the foregoing resolution has been carefully copied from the recorded minutes of the City Council of said City at a meeting held on March 17, 2014, and is a true copy of so much of said proceedings of said City Council as relates in any way to the passage of the resolution described in said proceedings.

WITNESS my hand and the official seal of said City, this 17<sup>th</sup> day of March, 2014.

{SEAL}



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



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Guaranteed Maximum Price (GMP) amendment to Construction Manager at Risk Contract for Uptown Parking Deck

**Explanation:** **Abstract:** Barnhill Contracting is currently under contract with the City for pre-construction services for the Uptown Parking Deck. Through an intensive bidding, post-bid scope and value engineering process, Barnhill Contracting has provided a Guaranteed Maximum Price (GMP) for the Uptown Parking Deck project. In order to move forward into the construction phase of the project, the GMP amendment must be accepted and executed by the City. At the March 17, 2014, City Council meeting, Council moved forward with financing of the parking deck for up to a maximum of \$5,500,000.

**Explanation:** On March 18 and 19, 2014, Barnhill Contracting, acting as Construction Manager at Risk for the Uptown Parking Deck project, opened bids for the Uptown Parking Deck project. Post-bid scope and value engineering meetings have been held with each apparent low bidder to arrive at the current guaranteed maximum price.

By amending the original Construction Manager at Risk Contract to include the GMP, it will allow the project to move out of the pre-construction phase and into the construction phase.

The Guaranteed Maximum Price provided by Barnhill Construction is \$4,448,286 which will make their total contract lump-sum price now \$4,541,786. As summarized in the attached Bid Results Summary, dated April 23, 2014, the GMP includes the cost of the work, Construction Managers Contingency, General Conditions, Payment and Performance Bond, General Liability & Builders Risk Insurance, Fee and deduction of the previously approved Tindall Change Order.

To arrive at the total project cost, we will be adding a 1% Owners Contingency, the Construction Manager's preconstruction fee and design fee (previously approved) and the special inspections fee. This cost (\$401,269) added to the

GMP brings the total project cost to \$4,899,555.

Upon approval of this GMP amendment, construction of the project will begin in late May/early June, 2014. The specific start date for the project will be determined when the existing parking space leaseholders in the Moseley lot are relocated and the contractor is able to occupy the site.

The following is a summary of the project costs associated with the Parking Deck at 4th and Cotanche, as well as, the plaza work to be performed on City property. The plaza, lighting and sidewalk items will be funded through the Redevelopment Commission.

<b>UPTOWN PARKING DECK COST BREAKDOWN</b>	
<b>Guaranteed Maximum Price (GMP)</b>	<b>\$4,448,286.00</b>
Owners Contingency	\$39,769.00
CM Preconstruction Fee	\$43,500.00
Design Assist Fee -Tindall (Changer Order No.1)	\$50,000.00
Design Fee	\$278,000.00
Special Inspections	\$40,000.00
Subtotal	\$451,269.00
<b>Total</b>	<b>\$4,899,555.00</b>
Financing Cost (2%)	\$97,991.00
<b>Grand Total</b>	<b>\$4,997,546.00</b>
Plaza and Sidewalk Work (paid by Redevelopment Commission)	\$189,460.00
<b>Project Total</b>	<b>\$5,187,006.00</b>


**Fiscal Note:**

The total project cost of \$4,899,555 is within the financing limit approved by City Council on March 17, 2014.


**Recommendation:**

Approve the Guaranteed Maximum Price Amendment to Barnhill Contracting for the Uptown Parking Deck in the amount of \$4,448,286.

**Attachments / click to download**

 [GMP Statement of Cost](#)

 [Change Order 2](#)

 [Summary](#)

 [Parking Deck Depiction](#)

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2311 North Main Street  
PO Box 1529  
Tarboro, North Carolina 27886  
252-823-1021 Fax: 252-824-8277

[www.barnhillcontracting.com](http://www.barnhillcontracting.com)

April 23, 2014

Mr. Scott P. M. Godefroy, P.E.  
City Engineer  
City of Greenville Public Works  
1500 Beatty Street  
Greenville, NC 27834

RE: Uptown Parking Deck  
GMP Statement of Cost

Dear Mr. Godefroy,

We are pleased to submit our Guaranteed Maximum Price (GMP) for the new construction of the Uptown Parking Deck in Greenville, NC.

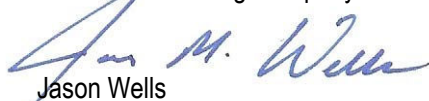
**Guaranteed Maximum Price Summary**

Cost of the Work	\$3,976,890
Subguard	\$42,183
Construction Manager's Contingency	\$39,769
Construction Manager's General Conditions	\$233,781
Construction Manager's Payment & Performance Bond	\$35,986
Construction Manager's General Liability & Builder's Risk Ins.	\$39,135
Construction Manager's Fee	\$130,541
Previously Approved Tindall Change Order	(\$50,000)
<b>Total Guaranteed Maximum Price</b>	<b>\$4,448,286</b>

Within this GMP deliverable, you will find the GMP summary, value engineering & post bid revisions summary, and statement of clarifications, assumptions, & allowances. The Guaranteed Maximum Price is based on the Bid documents dated February 17, 2014 from Walker Parking and post bid value management summarized within the deliverable.

We look forward to working with The City of Greenville on this project. Please call should you have any comments or questions in regards to this Guaranteed Maximum Price proposal.

Sincerely,  
Barnhill Contracting Company

  
Jason Wells  
Preconstruction Manager



# AIA<sup>®</sup> Document G701<sup>™</sup> – 2001

## Change Order

<b>PROJECT</b> <i>(Name and address):</i> City of Greenville Parking Deck Fourth and Contanche Streets Greenville, NC	<b>CHANGE ORDER NUMBER:</b> 002 <b>DATE:</b> 4/23/14	<b>OWNER:</b> <input checked="" type="checkbox"/> <b>ARCHITECT:</b> <input checked="" type="checkbox"/> <b>CONTRACTOR:</b> <input checked="" type="checkbox"/> <b>FIELD:</b> <input type="checkbox"/> <b>OTHER:</b> <input type="checkbox"/>
<b>TO CONTRACTOR</b> <i>(Name and address):</i> Barnhill Contracting Company 4325 Pleasant Valley Road Raleigh, NC 27622	<b>ARCHITECT'S PROJECT NUMBER:</b> <b>CONTRACT DATE:</b> 6/26/13 <b>CONTRACT FOR:</b> General Construction	

**THE CONTRACT IS CHANGED AS FOLLOWS:**

*(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)*

The Guaranteed Maximum Price is based on the Bid documents dated February 17, 2014 from Walker Parking and post bid value management summarized within the attachments

The original Contract Sum was	\$ 43,500.00
The net change by previously authorized Change Orders	\$ 50,000.00
The Contract Sum prior to this Change Order was	\$ 93,500.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 4,448,286.00
The new Contract Sum including this Change Order will be	\$ 4,541,786.00

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is To Be Determined

**NOTE:** This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

**NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.**

Walker Parking Consultants <b>ARCHITECT</b> <i>(Firm name)</i>	Barnhill Contracting Company <b>CONTRACTOR</b> <i>(Firm name)</i>	City of Greenville <b>OWNER</b> <i>(Firm name)</i>
13860 Ballantyne Corporate Place, Suite 140, Charlotte, NC 28277 <b>ADDRESS</b>	4325 Pleasant Valley Road Raleigh, NCd Raleigh, NC 27622 <b>ADDRESS</b>	PO Box 7207 Greenville, NC 27835 <b>ADDRESS</b>
<b>BY</b> <i>(Signature)</i> Joey Rowland <i>(Typed name)</i>	<b>BY</b> <i>(Signature)</i> Marty Moser <i>(Typed name)</i>	<b>BY</b> <i>(Signature)</i> Barbara Lipscomb <i>(Typed name)</i>
<b>DATE</b>	<b>DATE</b>	<b>DATE</b>



## Uptown Parking Deck

April 23, 2014

### Bid Results Summary

City of Greenville

Total Spaces: 238

Bid Package	Apparent Low Bidder	Bid Amount	Cost/Space	Notes
BP100 - GENERAL TRADES	CB&H Contracting	\$ 91,210	\$ 383.24	
BP105 - FINAL CLEANING	CB&H Contracting	\$ 17,000	\$ 71.43	
BP202 - EARTHWORK			\$ -	In BP 275
BP204 - DEMOLITION			\$ -	In BP 275
BP225 - CONCRETE PAVING & SIDEWALKS			\$ -	In BP 275
BP235 - BORED PILES/DISPLACEMENT PILES	Berkel & Company Contractors, Inc	\$ 473,000	\$ 1,987.39	
BP250 - SITE UTILITIES			\$ -	In BP 275
BP270 - ASPHALT PAVING, STONE BASE, CURB & GUTTER			\$ -	In BP 275
BP271 - ASPHALT STRIPING			\$ -	In BP 275
BP272 - UNIT PAVERS			\$ -	In BP 275
BP275 - TURNKEY SITE COMBINATION	Charles Hughes Construction	\$ 329,484	\$ 1,384.39	
BP290 - LANDSCAPING	Jacksons Lawn and Landscaping Inc.	\$ 7,000	\$ 29.41	
BP300 - CONCRETE FOUNDATIONS	Advance Concrete, LLC	\$ 287,000	\$ 1,205.88	
BP305 - CONCRETE FLATWORK, PREP, PLACE & FINISH	Advance Concrete, LLC	\$ 137,200	\$ 576.47	
BP390 - TURNKEY CONCRETE COMBINATION			\$ -	Not Accepted
BP395 - STRUCTURAL PRECAST CONCRETE	Tindall	\$ 1,746,800	\$ 7,339.50	
BP400 - TURNKEY MASONRY	Stone Creek Masonry	\$ 122,292	\$ 513.83	
BP550 - MISC. STEEL / STAIRS & RAILS / BOLLARDS	Hughes Metal Works	\$ 142,000	\$ 596.64	
BP740 - ROOFING & METAL ROOFING	Wayne Roofing	\$ 48,500	\$ 203.78	
BP750 - METAL SCREEN PANELS			\$ -	Not in Base Bid
BP790 - CAULKING & WATERPROOFING	Waterproofing Specialties, Inc	\$ 93,645	\$ 393.47	
BP800 - TURNKEY DOORS/FRAMES/HARDWARE	CHE Mid Atlantic	\$ 11,771	\$ 49.46	
BP840 - GLASS & GLAZING	Brinn Glass	\$ 33,900	\$ 142.44	Aluminum Framing Only
BP920 - EIFS & ROOF JOISTS	Sears Contract Inc.	\$ 49,700	\$ 208.82	2nd bidder; AES did not include complete scope
BP990 - PAINTING	McGowan Painting Contractors	\$ 5,500	\$ 23.11	
BP1010 - SIGNAGE & CLOCKS	CW Signs	\$ 59,663	\$ 250.68	
BP1400 - ELEVATORS	Thyssen Krupp	\$ 99,104	\$ 416.40	
BP1530 - FIRE PROTECTION	Williams Fire Sprinkler Company Inc.	\$ 21,875	\$ 91.91	
BP1540 - PLUMBING	SE&M Constructors	\$ 74,807	\$ 314.32	
BP1550 - HVAC SYSTEMS	Pitt Electric	\$ 10,222	\$ 42.95	
BP1600 - ELECTRICAL	T&H Electrical Corp	\$ 277,500	\$ 1,165.97	Does not include site lighting (Included in alternate L2 & L3)
<b>Bid Day Subtotal</b>		<b>\$ 4,139,173</b>	<b>\$ 17,391.48</b>	
Accepted Post Bid Value Management		\$ (162,283)		
<b>SUBTOTAL WITH ACCEPTED VALUE MANATEMENT</b>		<b>\$ 3,976,890</b>	<b>\$ 16,709.62</b>	
Construction Contingency (1%)		\$ 39,769		





**Uptown Parking Deck**

April 23, 2014

**Bid Results Summary**

City of Greenville

Total Spaces: 238

Bid Package	Apparent Low Bidder	Bid Amount	Cost/Space	Notes
<b>COST OF WORK SUBTOTAL</b>		\$ 4,016,659	\$ 16,876.72	
Subcontractor Bonds (1.20%) (Select BP's)		\$ 42,183		
General Conditions		\$ 233,781		
CM Fee (3.25%)		\$ 130,541		
General Liability / Builders Risk Ins (0.87% of total costs)		\$ 39,135		
Payment Bond & Performance Bond (0.80% of total costs)		\$ 35,986		
<b>TOTAL CONSTRUCTION COST</b>		\$ 4,498,286	\$ 18,900.36	
<b>TINDALL CO PREVIOUSLY APPROVED</b>		\$ (50,000)		
<b>TOTAL OF GMP</b>		\$ 4,448,286		

Total Parking Spaces

238 Spaces

MISCELLANEOUS PROJECT COST				
Owner Contingency (1%)		\$ 39,769		
CM Preconstruction Fee		\$ 43,500		
Design Fee		\$ 278,000		
Special Inspections		\$ 40,000		
<b>TOTAL MISCELLANEOUS COST</b>		\$ 401,269		

<b>TOTAL PROJECT COST</b>		\$ 4,899,555		
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Alternate Description	Alternate Total
Drawing L2	\$ 144,871.47
Drawing L3	\$ 44,588.60
Metal Screen Panels on South & West Elevations	\$ 86,180.60
Metal Screen Panels on North & East Elevations	\$ 206,044.26
Glass in Curtainwall	\$ 24,475.98





# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Contract awards for the Watershed Master Plans

**Explanation:** **Abstract:** The City of Greenville is currently implementing a comprehensive stormwater management program to fulfill requirements of our National Pollutant Discharge Elimination System (NPDES) Phase II MS4 Permit for stormwater discharges and the Tar-Pamlico River Basin Nutrient Strategy – Stormwater Rule. Compliance with our stormwater permit requires us to survey the remaining six watersheds. The City is accomplishing this through multiple contracts, which will be undertaken simultaneously. After interviews, WK Dickson, Hazen & Sawyer, and CDM Smith were selected as the firms best qualified to provide these services. Approval of this agenda item will award contracts to each firm completing the City of Greenville’s Storm Watershed Master Plans.

**Explanation:** The City of Greenville is currently implementing a comprehensive stormwater management program to fulfill requirements of our National Pollutant Discharge Elimination System (NPDES) Phase II MS4 Permit for stormwater discharges and the Tar-Pamlico River Basin Nutrient Strategy – Stormwater Rule. The objectives of the program are to improve the overall stormwater conveyance system, minimize or eliminate flooding, and address water quality/pollution problems. This will be accomplished through a field inventory and verification of our existing stormwater infrastructure, modeling of each system, and finally, through the identification of required capital infrastructure projects. The required capital projects will be those that will bring our stormwater system into compliance with our ordinance – 10-year storm detention.

In 2013, the City completed the Meetinghouse Branch Watershed Master Plan. The goals of the master plan included (1) evaluating the watershed for existing flooding, water quality, and erosion problems, (2) recommending and prioritizing capital improvements to control existing flooding by reducing the frequency and severity of flooding for property owners, and (3) identifying stream stabilization projects to reduce the risk of property loss along streams and to reduce sediment

loads as a result of erosion. To achieve these goals, an inventory of stormwater drainage infrastructure was necessary.

The results of this pilot watershed were presented to Council during a 2013 State of the Stormwater Fund workshop. City Council expressed the importance of these plans and their impacts on the Stormwater Utility Fund. As a result, the remaining watershed plans (see Attachment) were accelerated so that the City can expend Stormwater Utility funds in a prudent and efficient manner. Based on the volume of work (inventory, modeling, and project prioritization), multiple prime contracts are being forwarded.

On November 22, 2013, Public Works received submittals from qualified engineering firms interested in providing watershed master planning services that address both water quality and quantity matters. Services will include inventory of the existing system, development of geographic information system (GIS) database, hydrology/hydraulic modeling, quality assurance/control program, and capital project needs/priorities. The Public Works Department will use these products to assist with maintenance activities, assess capital improvement project needs, meet state and federal stormwater requirements, and aid in quality assurance of new/re-development efforts in the City of Greenville.

In response to the Requests for Qualifications, 12 consulting firms/teams submitted proposals. Five (5) firms/teams were pre-qualified and selected for interviews. Those firms were Hazen & Sawyer, CDM Smith, HDR, WK Dickson, and Dewberry. After interviews, WK Dickson, Hazen & Sawyer, and CDM Smith were selected as the firms best suited to provide the services noted above for the assigned watersheds. In addition, each firm/team was assigned a lead role based on their area of expertise.

CDM Smith: (Local: Spruill and Assoc)	<b>North City Phase</b> Lead-GIS/Inventory Harris Mill Run/Schoolhouse Branch Johnsons Mill/Parker Creek
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Hazen & Sawyer: (Wooten, Spruill and CWRC/ECU)	<b>Central City Phase</b> -Water Quality, sampling Lead-Public Involvement Green Mill Run
--	--

WK Dickson: (Rivers, CWRC/ECU)	<b>South City Phase</b> Lead-Program Management Fork Swamp Swift Creek Hardee Creek
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The contract will take approximately 18 months to complete.

**Fiscal Note:**

The proposed budget is as follows:

CDM Smith in the amount of \$744,490.00  
Hazen & Sawyer in the amount of \$1,150,905.00  
WK Dickson in the amount of \$1,146,716.50

The funding source for the project is the Stormwater Utility.

**Recommendation:**

City Council approve the proposed budget and award three professional services contracts for Watershed Master Plans to:

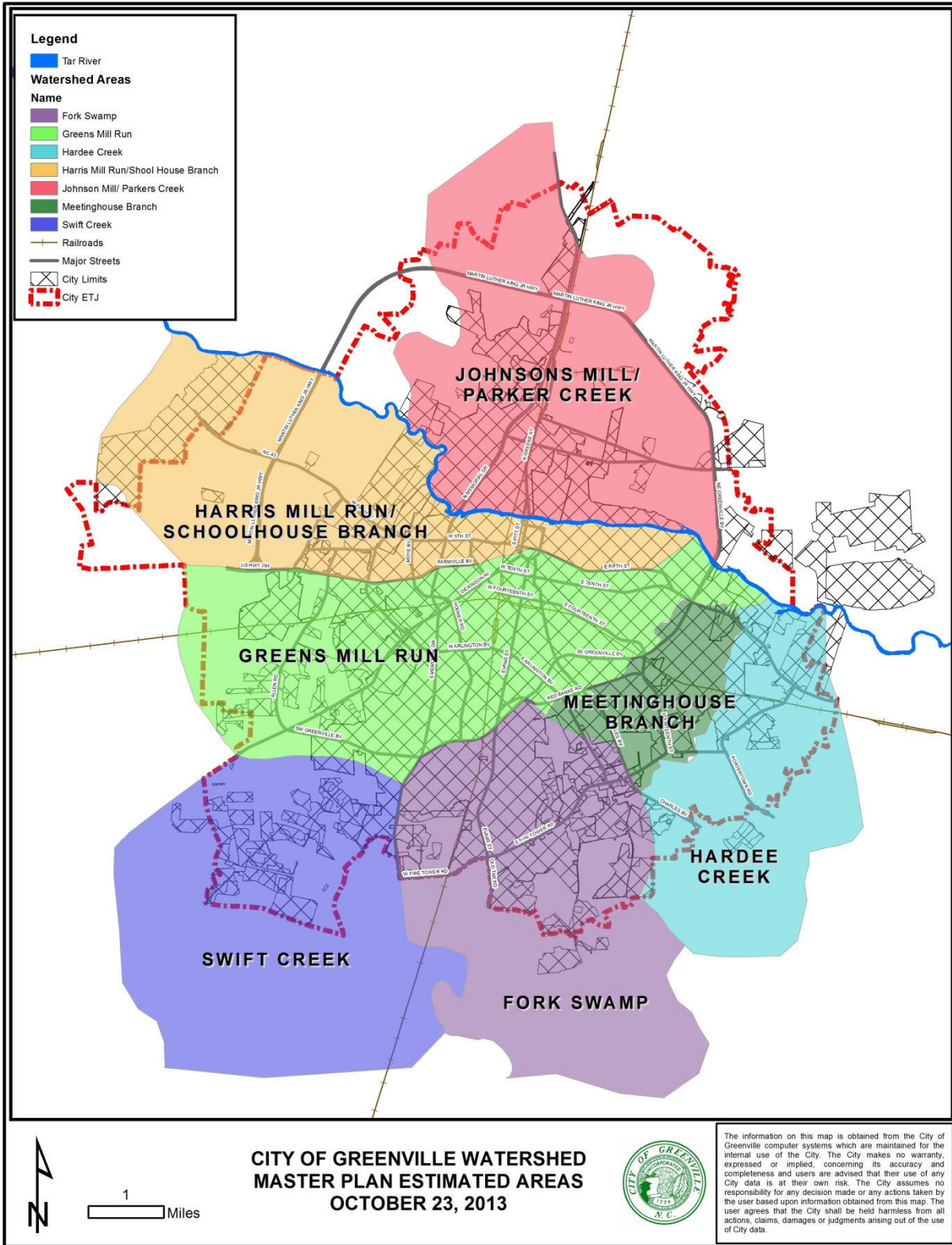
CDM Smith in the amount of \$744,490.00  
Hazen & Sawyer in the amount of \$1,150,905.00  
WK Dickson in the amount of \$1,146,716.50

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

**Attachments / click to download**

- [Hazen Sawyer Agreement for WSMP](#)
  - [WK Dickson Agreement for WSMP](#)
  - [CDM Smith WSMP Agreement](#)
  - [CC\\_Agenda\\_Item\\_\\_\\_WSMP\\_Contract\\_Award\\_Attachment\\_I\\_976301](#)
-





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

THIS IS AN AGREEMENT effective as of May 1 , 2014 (“Effective Date”) between  
City of Greenville (“Owner”) and  
Hazen and Sawyer, P.C. (“Engineer”).

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

Watershed Inventory and Master Plan – Greens Mill Run (“Project”).  
Engineer's services under this Agreement are generally identified as follows:  
See Exhibit A

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 Scope

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 General

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

Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### 3.01 Commencement

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

#### 3.02 Time for Completion

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

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### 4.01 Invoices

- A. Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### 4.02 Payments

- A. Application to Interest and Principal: Payment will be credited first to any interest owed to Engineer and then to principal.
- B. Failure to Pay: If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:



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

## ARTICLE 5 – OPINIONS OF COST

### 5.01 Opinions of Probable Construction Cost

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

### 5.02 Designing to Construction Cost Limit

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

### 5.03 Opinions of Total Project Costs

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 Standards of Performance

- A. **Standard of Care:** The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. **Technical Accuracy:** Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. **Consultants:** Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. **Reliance on Others:** Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. **Compliance with Laws and Regulations, and Policies and Procedures:**
  - 1. Engineer and Owner shall comply with applicable Laws and regulations.
  - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 Design Without Construction Phase Services

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

#### 6.03 Use of Documents

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. ~~Owner and~~ Engineer shall each deliver ~~to the other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 Suspension and Termination

- A. Suspension:
  - 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
  - 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. Termination: The obligation to provide further services under this Agreement may be terminated:
  - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
    - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
    - 3) Engineer shall have no liability to Owner on account of such termination.
  - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
- a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. Effective Date of Termination: The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. Payments Upon Termination:
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

#### 6.06 Controlling Law

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

#### 6.07 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

#### 6.08 Dispute Resolution

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

## 6.09 Environmental Condition of Site

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

## 6.10 Indemnification and Mutual Waiver

- A. Indemnification by Engineer: To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. ~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~



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

#### 6.11 Miscellaneous Provisions

- A. Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

## ARTICLE 7 – DEFINITIONS

### 7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. Additional Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
  2. Agreement – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
  3. Asbestos – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
  4. Basic Services – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
  5. Construction Contract – The entire and integrated written agreement between Owner and Contractor concerning the Work.
  6. Construction Cost – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
  7. Constituent of Concern – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. Consultants – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. Contract Documents – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. Contractor – The entity or individual with which Owner has entered into a Construction Contract.
11. Documents – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. Drawings – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. Effective Date – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. Engineer – The individual or entity named as such in this Agreement.
15. Hazardous Waste – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. Laws and Regulations; Laws or Regulations – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. Owner – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. PCBs – Polychlorinated biphenyls.
19. Petroleum – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. Radioactive Material – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. Record Drawings – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. Reimbursable Expenses – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. Resident Project Representative – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. Samples – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. Shop Drawings – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. Site – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. Specifications – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. Subcontractor – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. Substantial Completion – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. Supplier – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. Total Project Costs – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### 8.01 Exhibits Included:

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. – Not Applicable
- E. Exhibit E, Notice of Acceptability of Work. – Not Applicable
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. – Not Included
- I. Exhibit I, Limitations of Liability. – Not Included
- J. Exhibit J, Special Provisions. – Not Included
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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

### 8.02 Total Agreement:

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This

Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 Designated Representatives:

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

8.04 Engineer's Certifications:

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner: City of Greenville

Engineer: Hazen and Sawyer, P.C.

By: Allen M. Thomas

By: Alan L. Stone, P.E.

Title: Mayor

Title: Vice President

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

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

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

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

Engineer License or Firm's  
Certificate No. C-0381  
State of: North Carolina

Address for giving notices:  
Public Works Department  
1500 Beatty Street / PO Box 7207  
Greenville, NC 27834

Address for giving notices:  
4011 Westchase Boulevard  
Suite 500  
Raleigh, NC 27607

Designated Representative (Paragraph 8.03.A):  
Lisa Kirby

Designated Representative (Paragraph 8.03.A):  
Everette H. Knight, P.E.

Title: Senior Engineer

Title: Project Manager

Phone Number: 252-329-4683

Phone Number: 919-833-7152

Facsimile Number: 252-329-4525

Facsimile Number: 919-833-1828

E-Mail Address: lkirby@greenvillenc.gov

E-Mail Address: eknight@hazenandsawyer.com

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
David A. Holec, City Attorney

**PRE-AUDIT CERTIFICATION:**

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

\_\_\_\_\_  
Bernita W. Demery, Director of Financial Services

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

Project Code (if applicable) \_\_\_\_\_



This is **EXHIBIT A**, consisting of 21 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 1, 2014.

## **Engineer's Services**

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

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

### **1.0 Project Management**

Hazen and Sawyer (the "Consultant") will manage the project in a manner so as to be responsive to the needs and schedule of the City of Greenville (the City) and assure the quality of the product. The following project management and administration efforts will include but not be limited to the following items:

- Oversee the project team relative to ensuring budget, schedule and conformance to the project scope on a day-to-day basis
- Provide a minimum of two project contacts for the City so that at any time someone familiar with the project can be available to the City if questions, comments, concerns, or other project needs arise. These points of contact will be Everette H. Knight as the Project Manager ([eknight@hazenandsawyer.com](mailto:eknight@hazenandsawyer.com) / 919-833-7152) and Travis Crissman ([tcrissman@hazenandsawyer.com](mailto:tcrissman@hazenandsawyer.com) / 919-833-7152) as the Assistant Project Manager.
- Ensure the quality control program throughout the life of the project as outlined in the Project Work Plan Manual
- Perform project planning and formulation
- Update the project schedule (formally) if during the life of the project a substantial deviation in the schedule occurs for any reason. All other minor schedule updates will occur in the monthly project reporting
- Meet with the City's Project Team as appropriate throughout the life of the project via conference call or be available to answer project related questions on a regular basis via phone calls and email
- Prepare and submit via email a monthly progress report to W.K. Dickson (the "Program Manager") to update the project schedule, list milestones achieved, provide current status of each major task, support and document schedule changes, update product costs and justify any proposed changes to the schedule or budgets. Monthly progress reports are due at the end of each month and shall approximately coincide with monthly project invoicing.
- Maintain a project cost accounting system throughout the life of the Project
- Maintain a project filing system throughout the life of the Project to use for storage and retrieval of project documents.

All project final deliverables shall be certified (signed, sealed and dated) by a professional engineer and/or surveyor registered in the state of North Carolina. The Consultant shall participate in project closeout and ensure it is completed on a timely basis.

Project Management is anticipated to occur on an ongoing basis throughout the entire 18 month project schedule.

Greens Mill Run

## **2.0 Model Selection Matrix**

The Consultant shall provide a model selection matrix based on analysis of the approved SOP models for water quality, hydrologic and hydraulic modeling. The Consultant may recommend that some portions of the watershed be modeled with a proprietary version of SWMM in order to provide results that comply with the City's desired level of accuracy. It is understood that the consultant model input and output data must be compatible with the City of Greenville's available modeling software. The Consultant will work closely with the Program Manager and the City concerning this approach and will only do so if conditions warrant. Models that deviate from those discussed in the SOP will only be used with permission from the City.

## **3.0 Data Collection**

### **3.1 Review Existing Data Sources**

The Consultant will assimilate relevant data such as GIS, as-built drawings, FEMA flood studies, USGS studies, history of flooding, etc. GIS data may include aerial photography, topography, zoning, soils, planimetrics, stormwater inventory, etc.

### **3.2 Gaps Analysis**

The Consultant will determine additional data needs based on the existing data available to complete the modeling and analysis of the Watershed Inventory and Master Plan - Greens Mill Run Study. Through preliminary field investigation, discussion with City Staff and GIS analysis, The Consultant will identify primary and secondary modeling limits as defined in SOPs.

### **3.3 Engineering Field Investigation and Stream Walk**

The Consultant will complete a stream walk and photo log of the Primary System as shown in Attachment 1 within the Greens Mill Run Project Area to collect data required for the modeling analysis and geomorphic stream assessment. The field investigation and stream walk will include, but not necessarily be limited to, the following:

- Identify high water marks for survey location
- Measure channel dimensions for hydraulic model
- Verify land uses (visual)
- Estimate Manning's 'n' values
- Verify watershed boundaries
- Identify key hydraulic structures to be modeled
- Geomorphic Assessment cross sections with bankfull (BF) identification (8 sections)
- Conduct Photo log with GPS points
- Identify problem area and map via GPS

- Perform geomorphic assessment
- Perform Bank Erosion Hazard Index (BEHI) and bank stability assessment (map unstable banks) (25 locations)
- Establish bank pins to quantify erosion (bank pins will be installed at same locations as BEHIs)

The summary of findings for the stream walk will be incorporated into the Watershed Master Plan.

## 4.0 Stormwater Inventory

The intent of this task is for the Consultant to capture the stormwater utility infrastructure in the Greens Mill Run watershed area and use the data to develop a Geographic Information System (GIS) scope and coverage for the stormwater utility systems. This task will be accomplished using Global Positioning Systems (GPS) as the primary means of data capture with conventional surveying used as needed. This task will be managed as a unit cost task and only the actual number of structures collected at the established unit rates will be billed. If the actual number of structures are less than what is estimated then only that number of structures will be billed. If the number of actual structures exceeds the estimated number of structures then the Consultant will not exceed the estimated number of structures without prior written authorization from the City Project Manager. The Consultant will bill for additional structures at the applicable billing rates for each structure type. The Greens Mill Run Watershed Master Plan project area has been defined by the City as shown in Attachment 1. Refer to the July 30, 2013 version of the City's Stormwater System Inventory SOP's, including modifications as agreed to by the Consultant and the City for more details on the requirements and specifications of the Stormwater Inventory. This Scope of Services for the Inventory shall be revised as necessary based on the most current version of the Stormwater System SOP's. It is understood that the City's GIS lead consultant (GIS Lead) will be collecting and aggregating consultant inventory data into a single GIS file / geodatabase and therefore the Consultant will attend a 1-Day training meeting led by City and its GIS Lead consultant where the Consultant will receive guidelines on various conventions and methods for collecting data.

### 4.1 Inventory Specifications

- Inventory shall be limited to within the City's Corporate Boundary except as discussed in the "Primary System Open Channel Inventory" section below.
- This is a Survey Grade project
- Elevations will meet the posted standards of the NC VRS network.
- All survey work shall be "Class A" surveying standard and performed in compliance with the Standards of Practice for Land Surveying in North Carolina as defined for GIS surveys.
- The horizontal datum is NAD 83/2011.
- The coordinate system is State Plane North Carolina 3200.
- The vertical datum is NAVD 88.
- The unit of measurement is the US Survey Foot.
- Features and Attributes are provided in the Stormwater System Inventory SOP's and as delivered digitally by the City's GIS Lead.
- City will be responsible for resolving Difficult Access (DA) structures on this project.
- City will be responsible to notify property owners of work activities and the need to access drainage easements.

- City will assist with locating structures that are identified on source documents but cannot be located in the field.

## 4.2 Stormwater Utility System Mapping

### Closed System Inventory

The Consultant will employ conventional survey or survey grade GPS to locate the x, y, and z coordinates of each visible stormwater system structure. Stream/open channel and bridge surveys will be limited to those cases which are required to complete connectivity as determined by the hydraulic engineer from The Consultant and for modeling purposes. The Consultant will collect various attributes for each of these structures. The attributes may include but are not limited to the following:

- Unique identification number
- Horizontal (x, y) location
- Vertical (z) location (structure)
- Street number
- Street name
- Street designation
- Structure type
- Structure size
- Structure material
- Structure age
- Structure condition
- Water quality (odor, sheen, dry weather flow, etc.)
- Obstruction percentage
- Obstruction type
- Pipe shape
- Pipe size
- Pipe invert elevation
- Pipe material
- Pipe end type (projecting from fill, flared end section etc.)
- Headwall type
- Headwall material
- Wingwall configuration (straight or mitered to slope)
- Wingwall angle
- Structure criticality (Probability of Failure and Severity of Failure Consequence)
- Hyperlinked photo

Collection of the public stormwater drainage system will be the emphasis of this project. This will include systems that convey stormwater runoff from public streets or public property, including systems on public or private property that convey runoff originating from public streets or crossing private property. Only the outfalls of private systems will be inventoried unless the private system drains across a private property and conveys public water in which case the entire system will be inventoried. “Public water” is defined as

water draining from a public street right-of-way or originating from City-owned property. The size of the systems to be inventoried will be all pipes greater than or equal to 15” in diameter. Private crossings will not be inventoried unless they are longer than 50 feet or greater than or equal to 24” in diameter unless specific private pipe(s) are determined by the Consultant’s hydraulic engineer as critical to the system hydraulics for the master plan.

If, during the course of the stormwater inventory, the Consultant’s field crews observe odors, sheens, or potential illicit discharges the Consultant will notify the City’s Project Manager within the same business day if at all possible but no later than 24 hours from the time of observation. Additionally, if the Consultant’s field crews observe dry weather flows as defined in the City’s current Phase II permit the Consultant will record the location of the dry weather flow and report it to the City’s Project Manager on a weekly basis.

A unit cost and a specific number of closed system inventory structures have been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Primary System Open Channel Inventory

If any bridge or culvert surveys are required for modeling purposes those surveys will be performed according to FEMA standards. It is not anticipated that any transects will be physically surveyed for hydraulic modeling purposes but that all cross-section data will either be taken from the existing FEMA model(s) or from best available data.

If the Consultant’s hydraulic engineer determines that the in-channel, overbank, or floodplain area will be significant relative to providing the appropriate modeling accuracy, field surveyed cross sectional data will be obtained with the approval of the City. A portion of the Primary System identified for this project falls outside of the City’s corporate boundary and may be field surveyed for cross sectional data if needed as outlined in this paragraph.

A unit cost and a specific number of four-point surveys has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Secondary System Open Channel Inventory

If man-made or natural channels exists along the secondary system between two bounding structures (i.e. an inventoried pipe crossing or culvert crossing) a single channel measurement (top width, bottom width, depth, and liner type) will be taken between these bounding structures and incorporated into the inventory. Channel measurements will be established by use of a measuring tape or field surveyed cross sectional data. The channel between the bounding structures will be digitized from best available data and the information collected in the channel measurement will be inferred onto the digitized line as representation of the entire channel length. If bounding structures do not exist no channel measurements will be taken.

A unit cost and a specific number of channel measurements to be taken have been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### BMP Inventory

Where accessible the Consultant will field inventory the outfall of readily identifiable BMP such as a dry pond, wet pond, stormwater wetland or bioretention area. BMPs to be inventoried will be identified based

on most recently available aerial photography and City records. A point feature will be used to represent the BMP in the inventory unless the BMP is readily visible and can be digitized from the City's aerial mapping in which case it will be included as a polygon feature.

A unit cost and a specific number of BMPs to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### Bridges

If any bridge or culvert surveys are required to provide the desired level of accuracy or to include public roadways that have been constructed/revised since the FEMA study those surveys will be performed according to the Standard Operating Procedure prepared by W.K. Dickson dated July 30, 2013. It is not anticipated that any transects will be physically surveyed for hydraulic modeling as part of the bridge survey. Cross section data will be utilized from the existing FEMA model(s), best available information, and the Primary System Open Channel Inventory defined above..

A unit cost and a specific number of Bridges to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### Detention/Retention Facility Inventory

Only the information necessary to model a detention/retention facility will be inventoried if the Consultant's hydraulic engineer determines that facility needs to be accounted for in the hydraulic model to accurately reflect the attenuation effect of the detention facility. The types of information that will be typically collected would include but not necessarily be limited to the following:

- Riser elevation
- Riser material
- Riser diameter
- Barrel material
- Barrel diameter
- Barrel slope
- Emergency spillway elevation
- Emergency spillway configuration
- Emergency spillway material
- Overtopping elevation

A unit cost and a specific number of detention/retention facilities to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### **4.3 Difficult Access (DA) Structures**

There will always be some structures which cannot be accessed in the field for various reasons. These could be sedimentation, debris, structure being covered over or paved over, access problems, etc. A reasonable attempt to access the structure will be made. In the event that this is not possible, then a location will be stored for the structure and a report provided to the City's web interface designed and maintained by the GIS Lead for resolution by designated City staff. The City will resolve DA structure issues. Once the

structure is made accessible then the Consultant will re-visit the structure and collect the missing attributes. These structures will be invoiced twice, once for the initial visit and again for the second.

The Consultant will spend approximately 5 minutes searching for system structures. Difficult access structures and structures that are not found will be reported bi-weekly to the City. Should the City staff identify and resolve the issues with these structures, the Consultant will return and collect the appropriate attribute information.

For cost estimating purposes, the Consultant will assume that approximately 5% of the total structures estimated will be DA structures.

#### **4.4 Digital Development System Connectivity**

The Consultant will utilize ESRI ArcGIS software to compile a GIS representation of the underground stormwater utility system. The Consultant will identify, organize and import relevant background files to supplement the project field data and assist with establishing system connectivity. The Consultant shall provide system wide connectivity to the extent possible and perform quality control (QC) of the inventory by a hydraulic engineer.

#### **4.5 Digital Data Upload**

The Consultant will upload digital inventory data to the City's designated GIS Lead as a work zone is completed. Prior to upload, the Consultant will run the QC process provided by the City's GIS Lead for use of each of the consultant teams. The Consultant understands that the City's GIS Lead will aggregate the Consultant data with data from other consultants into a web interface for the City's use and therefore creation or maintenance of such a website is excluded from this Scope of Services. The Consultant will work with the City's GIS Lead to resolve errors or flags raised during the GIS Lead's QC process.

#### **4.6 City Redline Review Process**

The Consultant will provide inventory data to the City's GIS Lead as outlined in Section 4.5. It is understood that the City's GIS Lead will provide hard copies of all the stormwater inventory data to the City to be used for the redlining process. The Consultant will work closely with the City as inaccuracies and anomalies are identified during the redlining process and will then edit GIS layers to reflect any necessary changes. No additional field work is anticipated for this task.

### **5.0 Public Involvement**

Section 5.0 details the services the Consultant will provide to the City with respect to the overall Public Involvement process for all concurrently running Watershed Master Planning efforts. These concurrent efforts include Greens Mill Run, Harris Mill Run/Schoolhouse Branch, Johnsons Mill/Parker Creek, Hardee Creek, Fork Swamp, and Swift Creek. The Consultant's public involvement team (consisting primarily of Planners for Environmental Quality) will execute the requirements of Section 5.0 for all watersheds. In addition to this broad management role, the Consultant's technical team will participate in aspects of Section 5.0 required for the Greens Mill Run Watershed Master Plan.

Public involvement will be integrated into the technical work through a transparent process with a continuous feedback loop so that the City of Greenville, the public and other agencies can see how their

input is being incorporated into the technical work. The public involvement program will educate, inform and engage citizens and businesses about stormwater-related issues and the benefits of watershed master planning to the quality of life in and around the City of Greenville. Performance of outreach methods will be monitored continually to evaluate the effectiveness of the public involvement program and adjust, as needed, to respond to the communications needs of the public. The public involvement effort for the Greenville Stormwater Master Planning program will comprise the following tasks:

### **5.1 Public Involvement Plan**

A Public Involvement Plan (PIP) will be prepared that documents the outreach and education activities proposed as the primary methods to maximize input opportunities. The PIP will be designed to support the City of Greenville's commitment to an inclusive public involvement program that utilizes communications tools to engage and solicit input from a wide range of stakeholders. Members of the City's Public Information Office and Public Works Stormwater staff will all provide feedback to the content of the PIP. The document will be structured to engage multiple audiences including agency partners, community organizations and homeowner associations, elected officials, institutions, local businesses and business organizations, faith-based organizations and the public at large.

### **5.2 Early Education and Coordination**

Open communication between the City and stakeholders within the watershed about the upcoming watershed inventory/planning process, its purpose, and their role in the process will promote a feeling of inclusion.

#### **Activities:**

- Information collateral (fact sheets, etc.) to be used for hard copy distribution, digital messaging, web site posting and local media outlets
- Establish project web site and determine protocol for updates, identify external links
- Prepare 2 - 3 minute education video to be shown on City's cable access channel GTV9, Facebook, YouTube and other digital outlet opportunities
- Establish communication database (mailing and digital addresses of stakeholders)
- Prepare notification for field technicians activities
- Identify potential meeting venues in each watershed

### **5.3 Public Questionnaire**

A questionnaire will be distributed citywide to assess the watersheds' conditions from the perspective of residents and property owners (historical flooding, drainage issues, erosion, etc.).

#### **Activities:**

- Using the model provided in the Stormwater Master Planning SOPs, prepare drainage questionnaire to be distributed throughout the City. Methods to distribute the questionnaire will include an online survey instrument, direct and e-mail, coordination with homeowner associations, community and faith-based organizations and hard copy distribution at public locations.
- Mail questionnaires.



- Tabulate questionnaire responses in a geodatabase format using the respondent's address for geocoding.
- Present results of questionnaire in tabular format and illustrated and color coded on a watershed map.
- Prepare a general questionnaire report for sharing at public meetings, stakeholder meetings, on website and via other media as identified.

#### **5.4 Public Meetings**

Two rounds of public meetings will be held in each of the six watersheds. The first meeting will be held on completion of the watershed inventory, and will combine a report on inventory findings with a general stormwater information and education component to enhance public understanding of the project.

The second public meeting will be held following the completion of the draft master plan when the modeling is completed and draft recommendations are available.

#### **Activities:**

- Public meetings (2 per watershed plus additional 2 for Greens Mill Run = 14)
  - Initiate notification at a minimum three weeks in advance of scheduled meetings (flyers, media, other); send reminders one week in advance
  - Assist in the production of 3 exhibits per station utilizing GIS data including but not limited to: streets, buildings, tree lines, drainage system, watershed, and stakeholder questionnaire results for Greens Mill Run
  - Prepare presentation template and general 10-15 minute PowerPoint presentation. Provide guidance to consultants on structure of presentation and 2 or 3 up-front slides for Greens Mill Run
  - Prepare sign-in sheets, comment forms, etc. for each meeting location
  - Facilitation of meeting to solicit input from citizens, developers or engineers and help answer technical questions from citizens, developers or engineers
  - Prepare meeting minutes, including citizen input, and submit within five days following each meeting
  - Assist in the creation of up to four break out stations to match citizens of Greens Mill Run with Hazen & Sawyer subject matter experts (one per station) on their questions/issues of concern
  - Provide a minimum of one public involvement consultant/facilitator for each meeting; others may be provided, upon client or consultant request, as needed to assist with meeting logistics and management
- Key Stakeholder meetings (ECU, Vidant, NCDOT, HOAs, etc.)
  - Help identify specific neighborhood groups, homeowners associations, civic groups, etc., that might host a meeting or warrant additional meetings or other outreach
  - Plan, coordinate, facilitate, prepare minutes and agenda

#### **5.5 One-on-One On-Site Resident Interviews**

Data from the questionnaires will be used to help identify properties requiring on site resident interviews. The purpose of the interviews is to collect additional information that cannot necessarily be conveyed in a public meeting or questionnaire format, such as high water marks, extent of flooding, property damage, etc. It is estimated that three (3) interviews per square mile of drainage area within the City limits will be

required for Greens Mill Run (total of 36), with higher urbanized areas possibly requiring additional interviews, and less urbanized areas requiring fewer interviews.

#### **Activities:**

- Schedule, attend and record onsite interviews. These records will be incorporated into the geodatabase.

#### **5.6 Other Services**

- Prepare presentation of final Master Plans to City Council – provide presentation template and work with consultant team members to develop content
- Work with staff to develop a traveling display that can be taken to libraries, schools, area festivals and other venues as desired

### **6.0 Hydrologic and Hydraulic Modeling**

Specific care will be placed on coordination of activities with the City's staff. Prior to the field investigation phase, the Consultant will gather available project background information from the City and items which may require special attention during the field investigation. Whenever possible, the Consultant will avoid duplication of previous technical effort by utilizing resources collected during Task 3.0 for pertinent information such as Pitt County, the City of Greenville, the NC Emergency Management Agency, the Natural Resources Conservation Service, the U.S. Geological Survey, and Federal Emergency Management Agency.

#### **6.1 Hydrologic Modeling**

The Consultant will utilize a model as determined through the process detailed in the SOP to develop the hydrologic characteristics and peak flows for the various storm events for the Greens Mill Run, North Fork Greens Mill Run, Fornes Run, Reedy Branch, and an Unnamed Tributary through Greenville Golf and Country Club watersheds with a downstream limit being as follows:

- Greens Mill Run: confluence point with the Tar River
- North Fork Greens Mill Run: confluence point with Greens Mill Run
- Fornes Run: confluence point with Greens Mill Run
- Reedy Branch: confluence point with Greens Mill Run
- Unnamed Tributary: confluence point with Greens Mill Run

The hydrology limits are approximated as shown in Attachment 1. There is some uncertainty as to how the Greens Mill, Town Creek, and Harris Mill Run/Schoolhouse Branch watershed studies will overlap therefore these areas may be subtracted once more detailed data has been reviewed and the field walk completed, but at present, included in the scope is the watershed area as defined by the approximate boundaries provided by the City. Subwatersheds will be delineated as appropriate and shall typically range in size between 20 and 100 acres. Subwatersheds divides will occur at significant hydrologic features such as culvert crossings, confluences, and detention facilities. Watershed characteristics will be identified for each subwatershed in a manner consistent with the NRCS (TR-55) and proposed land uses will be developed from land use information provided by the City. Hydrologic parameters calculated will include:

subwatershed area, existing land use, future land use, curve number, time of concentration, NRCS soil types, significant detention storage areas, directly connected impervious area, and channel routing characteristics. The Consultant will evaluate the 2-, 10-, 25-, 50-, and 100-year events as part of the modeling efforts. Existing and future land use will be evaluated for the watershed.

The Consultant will also consider and, where applicable, incorporate available modeling and studies to be provided by the City and/or its representative. When possible, information and calculations obtained from existing modeling and studies will be used for this project thereby avoiding duplication of effort between this project and existing modeling and studies. Existing modeling and studies includes Red Oak Subdivision, Colonial Heights Subdivision, and Dickinson Ave./Chestnut St. area.

## 6.2 Primary System Modeling

Hydraulic modeling of the Primary System will utilize the hydraulic model as determined through the model selection process as established in the SOPs and/or refined and approved by the City during project execution. The Primary Systems studied in the hydraulic model will include the main stem of Greens Mill Run, North Fork Greens Mill Run, Fornes Run, Reedy Branch, and an Unnamed Tributary through Greenville Golf and Country Club from a downstream limit as follows:

- Greens Mill Run: confluence point with the Tar River
- North Fork Greens Mill Run: confluence point with Greens Mill Run
- Fornes Run: confluence point with Greens Mill Run
- Reedy Branch: confluence point with Greens Mill Run
- Unnamed Tributary: confluence point with Greens Mill Run

The upstream limits shall extend to the limits of the Primary System as noted on Attachment 1. The total Primary System to be evaluated is approximately 71,000 LF. The model will be used on the Primary System to determine hydraulic profiles for the various flows developed by the model described above. The effective FEMA model will be utilized to the extent possible to establish and/or check calculated starting water surface elevations, provide a point of verification for model results, and provide hydraulic input data as applicable.

## 6.3 Identification of Secondary Systems

Secondary systems include selected drainage features that drain to the main stem of Primary Systems. Examples include closed pipe systems with known flooding problems, open channel systems that drain to the Primary Systems with known flooding problems or other hydraulic systems with known flooding problems that are not located along the Primary System. For budgetary estimating purposes for this project, we have included approximately 30,000 LF of secondary systems to be studied in detail. Analyzed systems will be identified based on watershed reconnaissance, historical drainage complaints, questionnaire results, community input, feedback from the City, and other means to determine systems that may be undersized. The Consultant will present the list of secondary systems to be modeled to the City's Project Manager for approval before the secondary system analysis is performed.

## 6.4 Secondary System Modeling

For the closed systems, City approved industry standard software selected from the hydraulic modeling matrix in the SOP will be used to evaluate hydraulic performance. The selection of the actual model type will be discussed with the City during the model selection process (Task 2.0).

For open channel systems, cross sections will be developed from available topographic mapping (LiDAR) and channel dimensions measured in the field with a tape. Cross sections will be taken at sufficient intervals from the LiDAR information such that the head-loss between sections is limited to 0.5' or less unless impractical. Water surface profiles shall be determined for the 2-, 10-, 25-, 50-, and 100-year storm events for existing and future conditions. Starting water surface elevations (WSELs) will be based on either the slope area method or the WSELs developed as part of the statewide FEMA mapping project. Selection of the appropriate starting WSEL will be discussed and agreed upon with the City prior to finalizing the modeling and will be documented in the final report.

### **6.5 Model Validation**

Stormwater models will be validated utilizing high water marks, crest gauge results (if available), regression equations and USGS gauges (if available), recent floodplain mapping efforts performed by the State, and USGS Regional Relations developed for peak discharges, as well as other pertinent data provided by the City or the public. All validation efforts will be documented and reported to the City. Upon completion of the validation process, runoff hydrographs will be computed with results being presented to the City for their approval prior to beginning any hydraulic modeling.

### **6.6 Floodplain Delineation and Mapping**

The Consultant shall delineate riverine-generated floodplains for the existing and future 25- and 100-year floods for all of the primary open drainage systems. The mapping of floodplains will be compared to the effective FEMA floodplains for consistency, but may differ based on different hydrologic modeling approaches. The limits of the future floodplain mapping will extend upstream to the limits of the open channel conveyance system.

### **6.7 Model Review by Program Manager**

The Consultant will provide a digital copy of the Primary System model (both existing and future as developed in Task 6.1) to the City's designated Program Manager for review. This Scope of Services includes providing the digital model to the Program Manager, receiving one set of comments from the Program Manager, and providing responses and/or revisions to the Program Manager's comments to the satisfaction of the City.

### **6.8 Determine High Risk Areas for 25-Year Detention**

The Consultant will identify undeveloped areas that should be considered high risk requiring 25-year detention. Those areas will be identified with the following protocol:

- Identify undeveloped areas greater than 25 acres that are located upstream of existing flooding problems

- Utilizing the future conditions hydrologic model developed in Task 6.1 create a future conditions scenario with 25-year detention for areas identified above. Multiple scenarios will be created to evaluate the impact of potential developments individually and collectively.
- Evaluate peak flows from the 25-year detention models utilizing the hydraulic model developed in Task 6.2.
- Compare water surface elevations from the future conditions model developed in Task 6.1 (assumes 10-year detention) to the 25-year detention models. Areas where an improved level of service are provided as a result of 25-year detention shall be identified as high risk. Improved level of service is identified as the following:
  - Downstream infrastructure at roadway crossing now conveys a less frequent (larger) storm event. Storms evaluated will be the 2-, 10-, 25-, 50-, and 100-year storms.
  - The risk of flooding at downstream houses and businesses is reduced when evaluating the storms listed above. The risk of flooding is determined by evaluating where a floodplain intersects a house or business or other structure in plan view based on GIS planimetrics and aerial photography. Finished floor elevations will not be surveyed for this task. For the purposes of this study improved level of service occurs when homes or businesses are removed from the floodplain of one of the evaluated storms as a result of the 25-year detention.
- The potential future development areas that contribute drainage to these high risk areas, shall be identified as areas considered for 25-year detention. Areas will be reviewed with the City to determine those zones that shall be classified for 25-year detention. These zones shall be provided to the City in shapefile format for

## 7.0 Watershed Master Plan

### 7.1 Flood Hazard Mitigation Alternative Development

Based upon the modeling results portions of the storm drainage system not meeting established design standards will be identified and prioritized for possible improvements. Citizen and City Staff input will be cross-referenced to the model results to determine problems that may have been misidentified, that should be classified as maintenance or nuisance issues, or that may not qualify for service under the established project guidelines.

Once the problem areas have been identified, improvement options will be considered that may include:

- Upgrade of the entire drainage system to meet established design criteria;
- Upgrade of portions of the drainage system to lesser design standards;
- Use alternative best management practices for water quantity and quality control, such as detention ponds or Best Management Practices and analyze existing and proposed regional stormwater facilities such as Medical Shopping Center Regional Facility and the East Carolina Mall Facility to

determine if the facility can be expanded or retrofitted to produce additional quality and quantity benefits;

- Alternative alignments and materials to minimize construction cost and impacts to private property, transportation systems, and other existing infrastructure.

When possible, atypical and innovative solutions will be considered to reduce cost and provide solutions which optimize the drainage system's capacity/functionality and long-term condition while balancing the important issues of neighborhood aesthetics and public relations. Performance standards for the recommended stormwater system improvements under existing land use conditions will be evaluated for the 2, 10, 25, 50, and 100-year storm events. The function of the recommended improvements under potential future build-out conditions based upon available zoning will also be evaluated for the 2, 10, 25, 50, and 100-year storm events. In both the existing and future build-out land use conditions, attenuation within the watershed that has been included as part of the study due to its effects on system hydraulics will be included. The Consultant will provide a digital copy of the model incorporating recommended improvements in both the existing land use and build-out conditions to the City's designated Program Manager for review. This Scope of Services includes providing the digital model to the Program Manager, receiving one set of comments from the Program Manager, and providing responses to the Program Manager's comments to the satisfaction of the City.

## **7.2 Water Quality Retrofits and Bank Stability Alternatives**

Based on the Engineering Field Investigation and Stream Walk completed in Task 3.3 the Consultant will recommend bank stabilization projects to protect structure foundations and utilities, and reduce sediment loads to the streams. In some instances stream restoration projects may be recommended, particularly if the proposed restoration will mitigate for other recommended flood control projects.

Water quality retrofit projects (BMPs) will be recommended to provide water quality treatment of stormwater runoff as discussed in Task 9.3. Projects will be identified through GIS analysis and confirmed through field investigation and staff discussions.

## **7.3 Evaluate Capital Construction Costs**

Capital Improvements will be recommended and a budget (planning level) cost analysis will be computed using recent bid tab information of similar projects and input on the local bid climate from City Staff. Recent bid tab information, including up to date prices and additional items as necessary, shall be provided to the Consultant by the City or the City's Program Manager. Budget costs for improvements shall include, at a minimum, installation of the following elements: storm drainage improvements, channel restoration and stabilization materials, grading, necessary street improvements, water and sewer utility relocations (if the utility is located within a specific utility easement instead of the public right-of-way), erosion and sediment control measures, traffic control measures, miscellaneous items (e.g. fencing, walls, etc.), environmental mitigation costs and easement acquisition estimates, and stormwater Best Management Practices (BMPs) as appropriate.

## **7.4 Prioritize Projects**

The prioritization matrix that was developed in coordination with the City as part of the SOPs will be used to rank the recommended projects based on factors such as, public safety, level of service, flood reduction benefits, water quality improvements, capital costs, private property impacts, permitting requirements, funding availability, etc. The Consultant will attend a meeting with the City and the City's other consultants that are concurrently working on other watersheds to discuss and refine the prioritization protocol prior to beginning the prioritization process.

After completion of capital construction costs and prioritization, the Consultant will provide a copy of the both to the City's designated Program Manager for review. This Scope of Services includes providing the capital construction costs and prioritization scoring to the Program Manager, receiving one set of comments from the Program Manager, and providing responses to the Program Manager's comments to the satisfaction of the City.

### **7.5 Draft Watershed Plan Report**

The draft watershed plan report will be prepared in accordance with the SOP. It will include an executive summary as well as supporting documentation for all the recommended projects. Permitting requirements for each proposed project will be summarized including the expected permits required, potential mitigation requirements, and summarization of any discussions with representatives from regulatory agencies. Upon completion of the draft report the Consultant will submit three (3) copies of the report to the City for review.

### **7.6 Final Watershed Plan Report**

The Consultant will incorporate City Staff comments into a final planning report. Two (2) hard copies and an electronic copy on CD ROM of the final report will be submitted to the City as the final deliverable for the Watershed Inventory and Master Plan – Greens Mill Run Study Project.

## **8.0 Project Meetings**

Anticipated meetings for this project (specifically for the Greens Mill Run watershed, not including Public Involvement meetings required for other watersheds) include the following:

- Project kickoff meeting (1)
- Geodatabase design and GIS standard operating procedures (1)
- Field data collection training (1)
- Greens Mill Run Public Outreach (4)
- Greens Mill Run Stakeholder Meetings (4)
- Greens Mill Run Resident Meetings (36 @ 3 per square mile within City limits; assume 4/day)
- Quarterly in person project progress meetings (5)
- Conference calls will be held in the months that do not have an in-person project progress meeting scheduled (12)
- Prioritization protocol meeting (1)
- City Council Meeting (1)

Strategic project meetings will be held between the Consultant and the City during the project at mutually agreed upon times within the project. An estimate of when these meetings will likely occur has been included in the project schedule. The purpose of these meetings will be to guide the Greens Mill Run Study in order to develop alternatives and recommendations of the best and most cost-effective methods of managing stormwater in the Greens Mill Run, Fornes Run, Reedy Branch, and an Unnamed Tributary through Greenville Golf and Country Club watersheds. The Consultant will prepare meeting minutes for each resident meeting. It is the Consultant's understanding that all other agenda and minutes will be prepared by the City and/or its representative.

## **9.0 Assessment and Management of Impaired Waters**

### **Background and Objectives**

Based on a single benthic macroinvertebrate community sampling event in 2004 performed in conjunction with the NCEEP Local Watershed Plan, NCDWR has placed the entirety of Greens Mill Run (from source to the Tar River) in Category 5 of the 303(d) List of Impaired Waters. Unless they are de-listed, or re-categorized on the List, waters in Category 5 are subject to development of a Total Maximum Daily Load which will identify the primary stressors (pollutants) which are causing the impairing and determine the pollutant load reductions necessary to achieve compliance with water quality standards and eliminate the impairment. The first purpose of this task will be to determine if the listing status is warranted though more extensive benthic community sampling (to be conducted by others under a separate contract), given the paucity of data on which the listing is based. Should the sampling indicate that the biological community is indeed impaired throughout Greens Mill Run, which is quite possible, given the level of urbanization within the watershed, the second purpose of the strategy enumerated in this task will be to justify having the stream moved over to Section 4b of the 303(d) List. TMDLs are not required for waters in Section 4b because a watershed plan or other management measures other than a TMDL are expected to result in achievement of compliance with water quality standards.

The 2004 sampling event conducted by NCDWQ resulted in a bioclassification of Severe (indicating severe degradation), and the DWQ assessment report alluded to physical habitat and water quality degradation as a result of urbanization in the watershed. No specific stressors have yet been identified as the primary causes of the impaired status. As a result, the subtasks below are structured to determine if the impairment is warranted, identify the primary stressors and their sources if it is, and then identify and prioritize the BMPs and other management measures that would need to be included in the Watershed Master Plan to address the impairment.

### **9.1 Water Quality Monitoring**

The first purpose of the water quality monitoring program would be to determine what water quality parameters, if any, are acting as stressors to the aquatic community in Greens Mill Run. The second purpose would be to determine, to the extent feasible, the sources of water quality degradation and portions of the watershed impacted by those sources. The spatially explicit information could then, in turn, be utilized to optimize the targeting of stormwater BMPs and other water quality improvement strategies to the portions of the watershed where they are most needed. The water quality monitoring plan for Greens Mill Run would be primarily executed by the Coastal Water Resources Center at East Carolina University under subcontract to the Consultant.



Water quality monitoring would be performed at the seven sites shown in Attachment 1 and enumerated below. It should be noted that sites #2 - #5 coincide with sites where water quality data was previously collected by NCDWQ for the Local Watershed Plan. There is obvious merit to building upon the record established at those sites. The sites are offered for planning and scoping purposes at this juncture, and may be subject to revision/relocation as more detailed information from the watershed becomes available.

- Site #1: Greens Mill Run at Dickinson Ave.
- Site #2: Greens Mill Run at South Memorial Drive
- Site #3: Greens Mill Run at Arlington Boulevard
- Site #4: Greens Mill Run at East 14<sup>th</sup> Street
- Site #5: Greens Mill Run at East 5<sup>th</sup> Street
- Site #6: Reddy Branch at East 10<sup>th</sup> Street
- Site #7: Fornes Branch, upstream of mouth

In addition to the fixed sites described above, water quality monitoring would be conducted at three stormwater outfalls which would be selected after the stormwater inventory data are available such that outfalls draining large areas or locations of specific interest could be identified. The outfall monitoring would allow for quantification of the water quality contribution of closed systems within the watershed.

### Base Flow Sampling

At the seven sampling locations shown in Attachment 1 and three stormwater outfalls to be selected at a later date, base flow data will be collected with instrument readings and bottle samples (with lab tests) on a regular schedule throughout the 15 month monitoring period (May 2014-August 2015), as follows:

Description	Method	Frequency	Sites	Total Number
Physical parameters: temperature, salinity, conductivity, dissolved oxygen, pH	Water quality meter	Quarterly	All sites and outfalls	50
Nutrient series (N, P), organic carbon, and fecal bacteria indicators	Bottle samples, lab tests	Twice during growing season (concurrent)	#1, #3, #5 and one outfall	8
Suspended sediments	Bottle samples, lab tests	Quarterly (concurrent)	All sites and one outfall	40
Metals in water column	Bottle samples, lab tests	Once (concurrent)	#1, #3, #5 and two outfalls	5

The regularly-scheduled, base flow sampling will be conducted on days without significant rainfall.

### Wet Weather Sampling

At the seven sampling locations shown in Attachment 1, and the three stormwater outfalls to be selected at a later date, data will be collected by instrument readings and bottle samples (with lab tests) as follows, during or immediately after four anticipated storm events (at least 0.5 inches rainfall within a 24-hr period), spaced throughout the 15-month monitoring period. The four events will be selected in consultation with the Consultant.

Description	Method	Frequency	Sites	Total Number
Physical parameters: temperature, salinity, conductivity, dissolved oxygen, pH	YSI 556 instrument	4 events	All	28
Nutrient series (N, P), organic carbon, and pathogen indicators	Bottle samples, lab tests	2 events during growing season (concurrent)	#1, #3, #5	6
Suspended sediments	Bottle samples, lab tests	4 events	All	28
Metals in water column	Bottle samples, lab tests	One event	#1, #3, #5	3

Upon completion of the water quality monitoring plan ECU will develop a brief technical memorandum summarizing the water quality data for review and edit by the Consultant.

### Longitudinal Water Quality Surveys

The hydrogeology within the Green Mill Run watershed includes a shallow confining layer and water table, which can significantly affect stream water quality. Abrupt changes in water quality parameters, such as nutrients, along a stream can confound management strategies if sources are not identified accurately. Two longitudinal water quality surveys along Green Mill Run will be performed to assess the spatial distribution of water quality parameters at a higher resolution than the sampling sites listed above. Measurements will be collected via handheld meters. Sampling locations will be located approximately every 500 m and will also include sampling sites. One survey will be completed during the dormant season to assess conditions under a high water table, while the other would be conducted during the growing season with a lower water table.

Description	Method	Frequency	Sites	Total Number
Physical parameters: temperature, salinity, conductivity, turbidity, dissolved oxygen, pH, nitrates, ammonia, chloride	Water Quality Meters	2 surveys	About every 500 m and all sampling sites	20+

### **Water Level and Discharge Monitoring**

ECU will install a water level monitoring station between monitoring stations 4 and 5 during the summer of 2014. Water levels will be recorded every ½ hour. During the study period, streamflow will be measured at the gaging station at least 12 times and the stage-discharge relationship will be used to develop a rating curve. With these data a discharge record will be developed for the study period. The discharge can be used to quantify nutrient and suspended sediment exports to allow comparisons with other coastal plain streams in the region.

### **Deliverables from the Water Quality Monitoring Program**

ECU will provide spreadsheets of all water quality and stream level data. At the conclusion of field data collection after one year of monitoring, ECU will provide a synthesis of the water quality data and interpretation of potential sources of water quality impairment.

### **9.2 Identification of Stressors and Sources**

As mentioned above, the impairment of Greens Mill Run may be chemical/biological in nature, with primary stressors such as low dissolved oxygen levels or high levels of toxic pollutants, or the impairment may be more physical in nature with stressors such as channel instability and excess sediment. It may also be a combination of the two primary types of degradation. The Consultant for Greens Mill run will conduct comprehensive review, quantitatively and geospatially, of the water quality data collected in Section 9.1 and the stream assessment data collected in Section 3.3 to identify those stream reaches exhibiting physical habitat degradation from channel erosion/instability and excess sediment, and those reaches exhibiting water quality degradation, and those reaches experiencing both phenomenon. The review will also take into account the spatial variability of the benthic community and the most likely impacts illuminated by that data.

In addition, once prioritized, pollutant load reductions will be calculated for the top 10 BMP retrofit projects using the Tar-Pamlico Coastal Nutrient Loading Rates stipulated by NCDWR. The BMP Retrofit Opportunity Table will also be completed for each of these projects.

### **9.3 Targeting of Management to Address Impairment**

Utilizing the results of the comprehensive review in Section 9.2, the Consultant will target and prioritize the optimum BMPs those portions of the watershed which are subject to the various stressors in question. Portions of the watershed where stream reaches are actively eroding and unstable will be targeted for management measures such as bank stabilization and channel restoration projects, as well as upland stormwater BMPs that will reduce peak stream velocities and the associated banks scour. Portions of the watershed where stream reaches are experiencing degraded water quality conditions will be targeted for BMPs that most effectively reduce the loads of the key source pollutants identified. Implementation costs for the BMPs and other management measure identified will be developed and their rankings in the final Master Plan (in Task 8) will include consideration of their levels of performance with regard to the reduction of the key stressors in the impaired waters.

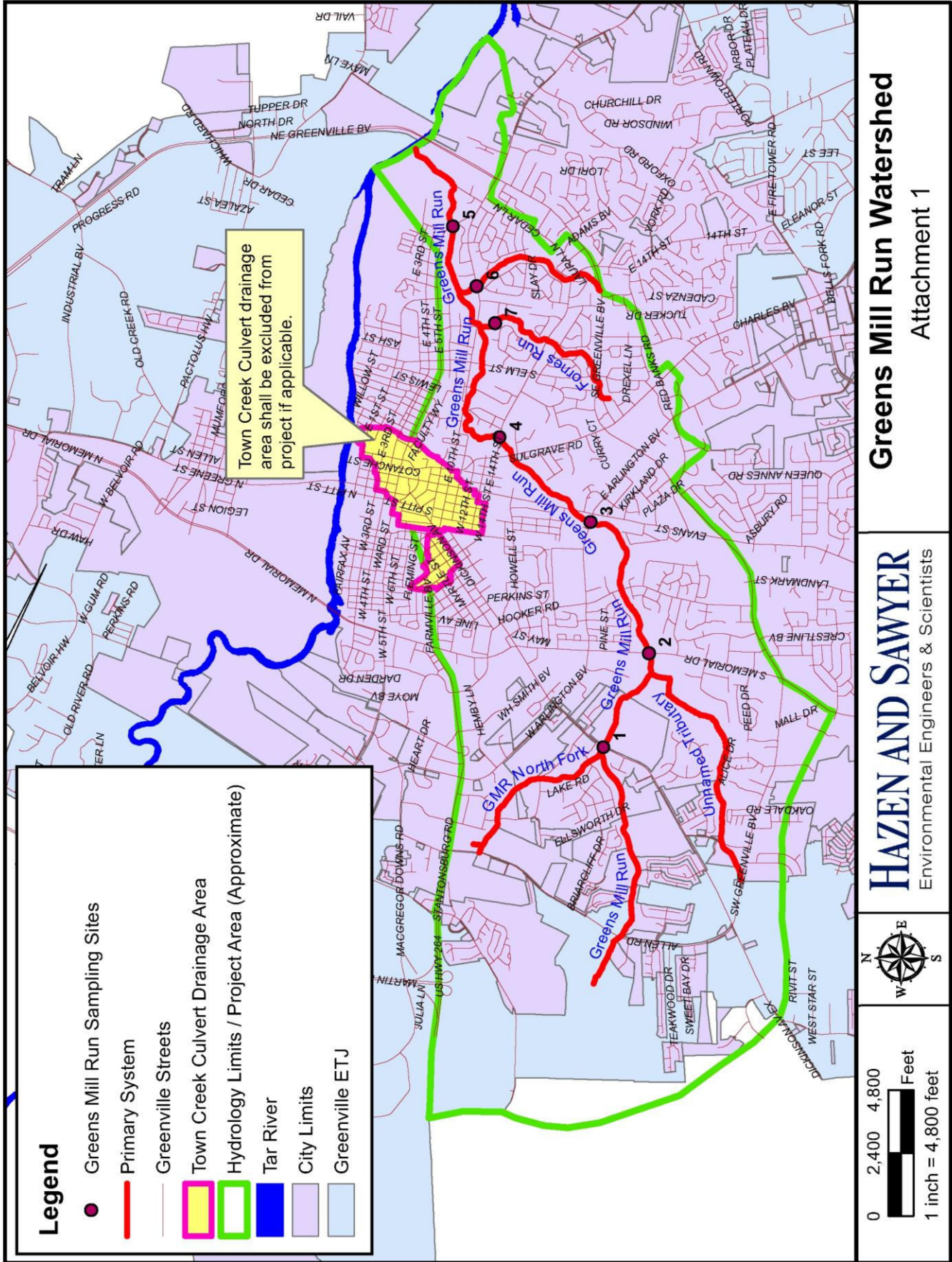
### **9.3 Justification for De-Listing.**

The Consultant will assist the City in the development of the appropriate rationale for changing the listing status or the spatial extent of the impaired waters listing for Greens Mill Run, should the data collected support such change. Should the data continue to show impairment, the Consultant will assist in developing the rationale for recategorizing Greens Mill Run to Section 4b of the 303(d) List by demonstrating that the targeted management measures in the Master Plan will result in the improvement of the ecological functions of the watershed. It is assumed that the final document setting for the rationale for de-listing or recategorization on the 303(d) List will be prepared by the City's designated Program Manager.

## **10.0 Unspecified Additional Services**

This task is to be used to provide any additional services requested by the City that were not covered in the basic scope of services outlined above. No services will be provided under this task without prior written approval from the City's Project Manager and all services provided will be provided for a lump sum fee to be negotiated based on the services to be rendered.

Should watersheds dominated by closed drainage systems be identified where overland flow represents a significant portion of the drainage problem, or where the flooding issues are so prominent as to warrant an accurate spatial explicit of surface flooding, a proprietary 2D SWMM model can be utilized to more accurately model overland flows. In such instances, representative roadway cross-sections and profiles will be surveyed to describe the overland system to check accuracy and supplement the existing LiDAR. If the City agrees that this type of modeling is warranted for a given area, fees for modeling activities and field survey data in support of 2D SWMM modeling will be negotiated at that time. No 2D SWMM modeling or surveying activities will be undertaken without the approval of the City.



This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated May 1, 2014.

## **Owner's Responsibilities**

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

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

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

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

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: [Here list any such additional services].



(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated May 1, 2014.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$1,150,905.00 based on the following estimated distribution of compensation:

a. Project Management	\$ <u>27,450.00</u>
b. Model Selection Matrix	\$ <u>3,580.00</u>
c. Data Collection	\$ <u>44,970.00</u>
d. Field Stormwater Inventory	\$ <u>385,634.00</u> (see <u>unit structure cost on following page</u> )
e. Public Involvement	\$ <u>137,900.00</u>
f. Hydrologic and Hydraulic Modeling	\$ <u>174,420.00</u>
g. Watershed Master Plan	\$ <u>174,970.00</u>
h. Project Meetings	\$ <u>49,130.00</u>
i. Assessment and Management of Impaired Waters	\$ <u>69,046.00</u>
j. Reimbursable Expenses	\$ <u>29,000.00</u>
k. Unspecified Additional Services	\$ <u>54,805.00</u>

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

Field Stormwater Inventory Table – Unit Structure Rates (see 1d above)

Structure Type	Total Unit Rate	Estimated Structures	Estimated Fee
Closed System Structures (manholes, catch basins, pipe ends, etc)	\$ 74.00	4570	\$ 338,180
Primary Open System Channel Cross-Section (50' to 200' widths)	\$ 220.00	66	\$ 14,520.00
Secondary Open System Channel Measurements	\$ 66.00	405	\$ 26,730.00
Outfall Structures	\$ 176.00	7	\$ 1,232.00
Bridges/Train Tressels	\$ 452.00	9	\$ 4,068.00
Detention Facilities	\$ 452.00	2	\$ 904.00
<b>Totals</b>		<b>5059</b>	<b>\$ 385,634.00</b>

Secondary system analysis in addition to the length specified under section 6.3 will be negotiated upon identification of areas in excess of said length. The additional analysis will include hydrologic and hydraulic modeling, development of flood mitigation alternatives, evaluation of capital costs, inclusion in prioritization matrix, and the watershed report. The price is applicable during the timeframe of the Hydrologic and Hydraulic Modeling task (6.0) and the Watershed Master Plan task (7.1-7.4). Requests for additional modeling after submission of the draft watershed plan will be renegotiated at that time. Any additional modeling associated with this task will be performed only after written authorization is provided by the City's designated Project Manager.

- B. Period of Service: The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 18 months (see attached Master Schedule prepared by the City's Program Manager). If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

**Draft Master Schedule for Greenville Watershed Inventory and Master Plan**

Task Descriptions		Time (Months)																		
		Month-1	Month-2	Month-3	Month-4	Month-5	Month-6	Month-7	Month-8	Month-9	Month-10	Month-11	Month-12	Month-13	Month-14	Month-15	Month-16	Month-17	Month-18	
1	Notice to Proceed	X																		
2	GIS development, Data Collection, Field Inventory Training and Workplanning																			
3	Stormwater Inventory and Stream Assessments																			
4	Deliver Finalized GIS Inventory																			
5	Initial Round Public Meetings																			
6	Hydrologic and Hydraulic Modeling																			
7	Model Review																			
8	Water Quality Monitoring and 303(d) Analysis																			
9	Develop Watershed Master Plan																			
10	CIP and Prioritization Meetings and Review																			
11	Draft Report Preparation																			
12	Second Round Public Meetings																			
13	Submit Draft Report																			
14	City Review of Draft Report																			
15	Final Report Preparation																			
16	Submittal of Final Master Plan Report																			



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

THIS IS AN AGREEMENT effective as of \_\_\_\_\_ , \_\_\_\_\_ (“Effective Date”) between  
City of Greenville, NC \_\_\_\_\_ (“Owner”) and  
W.K. Dickson & Co., Inc. \_\_\_\_\_ (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Watershed Inventory and Master Plan \_\_\_\_\_ (“Project”).

Engineer's services under this Agreement are generally identified as follows:  
See Exhibit A \_\_\_\_\_

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

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

instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### *3.01 Commencement*

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

#### *3.02 Time for Completion*

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

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### *4.01 Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### *4.02 Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and

2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. ~~*Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

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

### 5.02 *Designing to Construction Cost Limit*

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

### 5.03 *Opinions of Total Project Costs*

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
  - 1. Engineer and Owner shall comply with applicable Laws and regulations.
  - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any

failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

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

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between



the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in

the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. ~~Owner and~~ Engineer shall ~~each deliver to the other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall ~~contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.~~
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

##### A. *Suspension:*

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

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

- 1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
- a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

## 6.06 *Controlling Law*

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

### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

### 6.08 *Dispute Resolution*

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

### 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~**
- B. ~~*Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or

entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. ~~*Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

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

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.

11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.



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

construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## **ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS**

### *8.01 Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative – Not Applicable.
- E. Exhibit E, Notice of Acceptability of Work – Not Applicable.
- F. Exhibit F, Construction Cost Limit – Not Applicable.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution – Not Included.
- I. Exhibit I, Limitations of Liability – Not Included.
- J. Exhibit J, Special Provisions – Not Included.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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

### *8.02 Total Agreement:*

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

### *8.03 Designated Representatives:*

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

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner: City of Greenville

Engineer: W.K. Dickson & Co., Inc.

By: Allen M. Thomas

By: Scott Whalen, P.E.

Title: Mayor

Title: Vice President

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

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

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

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

Engineer License or Firm's Certificate No. F-0374  
State of: North Carolina

Address for giving notices:  
Public Works Department  
1500 Beatty Street / PO Box 7207  
Greenville, NC 27834

Address for giving notices:  
720 Corporate Center Drive  
Raleigh, NC  
27607

Designated Representative (Paragraph 8.03.A):  
Lisa Kirby

Designated Representative (Paragraph 8.03.A):  
Tom Murray, P.E.

Title: Senior Engineer

Title: Project Manager

Phone Number: 252-329-4683

Phone Number: 919-782-0495

Facsimile Number: 252-329-4535

Facsimile Number: 919-782-9672

E-Mail Address: lkirby@greenvillenc.gov

E-Mail Address: tmurray@wkdickson.com

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
David A. Holec, City Attorney

**PRE-AUDIT CERTIFICATION:**

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

\_\_\_\_\_  
Bernita W. Demery, Director of Financial Services

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

Project Code (if applicable) \_\_\_\_\_

This is **EXHIBIT A**, consisting of 20 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, \_\_\_\_\_.

## **Engineer's Services**

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

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

### **1.0 Project Management**

Engineer will manage the project in a manner so as to be responsive to the needs and schedule of the City of Greenville (the Owner) and assure the quality of the product. Task 1 is related to the direct management required for the Swift Creek, Fork Swamp, and Hardee Creek Watershed Studies. Program management responsibilities will be included in Task 10. The following project management and administration efforts will include but not be limited to the following items:

- Oversee the project team relative to ensuring budget, schedule and conformance to the project scope on a day-to-day basis
- Provide a minimum of two project contacts for the Owner so that at any time someone familiar with the project can be available to the Owner if questions, comments, concerns, or other project needs arise. These points of contact will be Tom Murray as the Project Manager and Scott Whalen as the Principal-in-Charge.
- Ensure the quality control program throughout the life of the project as outlined in the Project Work Plan Manual
- Perform project planning and formulation
- Update the project schedule (formally) if during the life of the project a substantial deviation in the schedule occurs for any reason. All other minor schedule updates will occur in the monthly project reporting
- Meet with the Owner's Project Team as appropriate throughout the life of the project via conference call or be available to answer project related questions on a regular basis via phone calls and email
- Prepare and submit via email a monthly progress report to update the project schedule, list milestones achieved, provide current status of each major task, support and document schedule changes, update product costs and justify any proposed changes to the schedule or budgets. Monthly progress reports are due at the end of each month and shall approximately coincide with monthly project invoicing.
- Maintain a project cost accounting system throughout the life of the Project
- Maintain a project filing system throughout the life of the Project to use for storage and retrieval of project documents.

All project final deliverables shall be certified (signed, sealed and dated) by a professional engineer and/or surveyor registered in the state of North Carolina. Engineer shall participate in project closeout and ensure it is completed on a timely basis.

Project Management is anticipated to occur on an ongoing basis throughout the entire 18 month project schedule.

## **2.0 Model Selection Matrix**

Engineer shall provide recommendations for hydrologic and hydraulic modeling utilizing the approved SOP's, July 30, 2013 or most current version to the extent possible. Any variations related to modeling from the July 30, 2013 version SOP's shall be approved by the Owner prior to implementation.

## **3.0 Data Collection**

### **3.1 Review Existing Data Sources**

Engineer will assimilate relevant data such as GIS, as-built drawings, FEMA flood studies, USGS studies, history of flooding, etc. GIS data may include aerial photography, topography, zoning, soils, planimetrics, stormwater inventory, etc.

### **3.2 Gaps Analysis**

Engineer will determine additional data needs based on the existing data available to complete the modeling and analysis of the Watershed Inventory and Master Plan – *Swift Creek, Fork Swamp, and Hardee Creek* Studies. Through preliminary field investigation, discussion with Owner Staff and GIS analysis, Engineer will identify primary and secondary modeling limits as defined in SOPs.

### **3.3 Engineering Field Investigation and Stream Walk**

Engineer will complete a stream walk and photolog of the primary system as shown in Attachment 1 within the Swift Creek, Fork Swamp, and Hardee Creek Study Areas to collect data required for the modeling analysis and geomorphic stream assessment. The field investigation and stream walk will include but not necessarily be limited to the following:

- Identify highwater marks for survey location
- Measure channel dimensions for hydraulic model
- Verify landuses (visual)
- Estimate Manning's 'n' values
- Verify watershed boundaries
- Identify key hydraulic structures to be modeled
- Geomorphic Assessment cross sections with bankfull (BF) identification
- Conduct Photolog with GPS points
- Identify problem area and map via GPS
- Perform geomorphic assessment
- Perform Bank Erosion Hazard Index (BEHI) and bank stability assessment (map unstable banks)
- Establish bank pins to quantify erosion

The summary of findings for the stream walk will be incorporated into the Watershed Master Plan.

## 4.0 Stormwater Inventory

The intent of this task is for Engineer to capture the stormwater utility infrastructure in the *Swift Creek, Fork Swamp, and Hardee Creek* watershed areas and use the data to develop a Geographic Information System (GIS) scope and coverage for the stormwater utility systems. This task will be accomplished using Global Positioning Systems (GPS) as the primary means of data capture with conventional surveying used as needed. This task will be managed as a unit cost task and only the actual number of structures collected at the established unit rates will be billed. If the actual number of structures are less than what is estimated then only that number of structures will be billed. If the number of actual structures exceed the estimated number of structures then we will not exceed the estimated number of structures without prior written authorization from the Owner Project Manager. Engineer will bill for the additional structures at the approved billing rates for each structure type. The *Swift Creek, Fork Swamp, and Hardee Creek* project areas have been defined by the Owner as shown in Attachment 1. Refer to the July 30, 2013 version of the Owner's Stormwater System Inventory SOP's for more details on the requirements and specifications of the Stormwater Inventory.

### 4.1 Inventory Specifications

- Elevations should meet the posted standards of the NC VRS network
- All survey work shall be "Class A" surveying standard and performed in compliance with the Standards of Practice for Land Surveying in North Carolina as defined for GIS surveys..
- The horizontal datum is NAD 83/2011.
- The coordinate system is State Plane North Carolina 3200.
- The vertical datum is NAVD 88.
- The unit of measurement is the US Survey Foot.
- Features and Attributes are provided in the Stormwater System Inventory SOP's.
- Owner will be responsible for resolving Difficult Access (DA) structures on this project.
- Owner will be responsible to notify property owners of work activities and the need to access drainage easements.
- Owner will assist with locating structures that are identified on source documents but can not be located in the field.

### 4.2 Stormwater Utility System Mapping

#### Closed System Inventory

Engineer will employ survey grade GPS as defined above to locate the x,y,z coordinates of each visible stormwater system structure. Stream/open channel and bridge surveys will be limited to those cases which are required to complete connectivity as determined by the hydraulic engineer from Engineer and for modeling purposes. Engineer will collect various attributes for each of these structures. The attributes may include but are not limited to the following:

- Unique identification number
- Horizontal location
- Vertical location (structure)
- Street number
- Street name



- Street designation
- Structure type
- Structure size
- Structure material
- Structure age
- Structure condition
- Water quality (odor, sheen, dry weather flow, etc.)
- Obstruction percentage
- Obstruction type
- Pipe shape
- Pipe size
- Pipe invert elevation
- Pipe material
- Pipe end type (projecting from fill, flared end section etc.)
- Headwall type
- Headwall material
- Wingwall configuration (straight or mitered to slope)
- Wingwall angle
- Hyperlinked photo

Collection of the public stormwater drainage system will be the emphasis of this project. This will include systems that convey stormwater runoff from public streets or public property, including systems on public or private property that convey runoff originating from public streets or crossing private property. The outfalls only of private systems will be inventoried unless the private system drains across a private property and conveys public water in which case the entire system will be inventoried. The size of the systems to be inventoried will be all pipes greater than or equal to 15” in diameter. Private crossings will only be included in the inventory if they are longer than 50 feet or greater than or equal to 24” in diameter unless specific private pipe(s) are determined by Engineer’s hydraulic engineer as critical to the system hydraulics for the master plan.

If during the course of the stormwater inventory Engineer’s field crews observe odors, sheens, or potential illicit discharges we will notify the Owner’s Project Manager within the same business day if at all possible but no later than 24 hours from the time of observation. Additionally, if our field crews observe dry weather flows as defined in the Owner’s current Phase II permit we will record the location of the dry weather flow and report it to the Owner’s Project Manager on a weekly basis.

#### Primary System Open Channel Inventory

If any bridge or culvert surveys are required for modeling purposes those surveys will be performed according to FEMA standards. It is not anticipated that any transects will be physically surveyed for hydraulic modeling purposes but that all cross-section data will either be taken from the existing FEMA model(s) or from best available data.

If Engineer’s hydraulic engineer determines that the in-channel area will be significant relative to modeling purposes a four-point cross section of the in-channel section will be field surveyed.

A unit cost and a specific number of four-point surveys has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Secondary System Open Channel Inventory

If man-made or natural channels exists along the secondary system between two bounding structures (i.e. an inventoried pipe crossing or culvert crossing) a single channel measurement taken with a tape (top width, bottom width, depth, and liner type) will be measured between these bounding structures and incorporated into the inventory. Then the channel between the bounding structures will be digitized from best available data and the information collected in the channel measurement will be inferred onto the digitized line as representation of the entire channel length. If bounding structures do not exist no channel measurements will be taken.

A unit cost and a specific number of channel measurements to be taken have been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### BMP Inventory

Where accessible Engineer will field inventory the outfall of any readily identifiable BMP such as a dry pond, wet pond, stormwater wetland or bioretention area. BMPs to be inventoried will be identified based on aerial photography and Owner records. A point feature will be used to represent the BMP in the inventory unless the BMP is readily visible and can be digitized from on the Owner's aerial mapping in which case it will be included as a polygon feature.

A unit cost and a specific number of BMPs to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Bridge Inventory

If any bridge surveys are required to provide the desired level of accuracy or to include public roadways that have been constructed/revised since the FEMA study those surveys will be performed according to the Standard Operating Procedures dated July 30, 2013. It is not anticipated that any transects will be physically surveyed for hydraulic modeling as part of the bridge survey. Cross section data will be utilized from the existing FEMA model(s), best available information, and the Primary System Open Channel Inventory defined above.

A unit cost and a specific number of bridges to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Detention/Retention Facility Inventory

Only the information necessary to model a detention/retention facility will be inventoried if Engineer's hydraulic engineer determines that facility needs to be accounted for in the hydraulic model to accurately reflect the attenuation effect of the detention facility. The types of information that will be typically collected would include but not necessarily be limited to the following:

- Riser elevation
- Riser material
- Riser diameter
- Barrel material
- Barrel diameter

- Barrel slope
- Emergency spillway elevation
- Emergency spillway configuration
- Emergency spillway material
- Overtopping elevation

A unit cost and a specific number of detention/retention facilities to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### **4.3 Difficult Access (DA) Structures**

There will always be some structures which cannot be accessed in the field for various reasons. These could be sedimentation, debris, structure being covered over or paved over, access problems, etc. A reasonable attempt to access the structure will be made. In the event that this is not possible, then a location will be stored for the structure and a report provided to the Owner via the web interface designed and maintained by the GIS lead for resolution by designated Owner staff. Once the structure is made accessible then we will re-visit the structure and collect the missing attributes. These structures will be invoiced twice, once for the initial visit and again for the second.

Engineer will spend approximately 5 minutes searching for system structures. Difficult access structures and structures that are not found will be reported bi-weekly to the Owner. Should the Owner staff identify and resolve the issues with these structures, Engineer will return and collect the appropriate attribute information.

For cost estimating purposes, Engineer will assume that approximately 5% of the total structures estimated will be DA structures.

#### **4.4 Digital Development System Connectivity**

Engineer will utilize ESRI ArcGIS software to compile a GIS representation of the underground stormwater utility system. We will identify, organize and import relevant background files to supplement the project field data and assist with establishing system connectivity. Engineer shall provide system wide connectivity to the extent possible and perform quality control of the inventory by a hydraulic engineer.

#### **4.5 Data Submittal**

Engineer will submit collected data every two weeks to the project website in geodatabase format for progress updates. Automated QA/QC tools provided by the Owner and/or its Consultant will be completed at the end of each work zone as defined prior to the onset of the field inventory. Four to six workzones are anticipated for each watershed.

Engineer will respond to one set of comments by the Owner's representative per work zone.

#### **4.6 Owner Redline Review Process**

Submission of hardcopy maps to the Owner is excluded from this Scope of Services. It is anticipated that hardcopy maps of the inventory will be submitted to the Owner by others. Engineer will meet with the Owner to review redlines of the hardcopy maps. One (1) meeting is anticipated for this task. Engineer will

edit the GIS layer to reflect any changes based on redlines from the Owner. No additional field work is anticipated for this task.

## **5.0 Public Involvement**

### **5.1 Public Meetings**

Engineer will prepare for and attend a maximum of two (2) public meetings per watershed (six total meetings). Engineer will provide the following for each meeting:

- Prepare 3 exhibits (utilizing GIS data) including but not limited to: streets, buildings, tree lines, drainage system, watershed, and citizen questionnaire results;
- Prepare a general 10-15 minute Power Point presentation. The Owner or its representative will provide a template Power Point presentation.
- Solicit input from citizens, developers or engineers via the meeting
- Answer technical questions from citizens, developers or engineers
- Document information collected on template provided by the Owner and/or its consultant and incorporate citizen input into watershed study
- Up to four break out stations will be provided
- Up to four Engineer staff persons familiar with the project will be provided

### **5.2 Public Questionnaire**

The Owner and its representative will prepare a questionnaire and provide those questionnaires to watershed residents through a variety of media to be determined by the Owner. Responses will be tallied and classified by the Owner and/or its representative and be provided in a geodatabase format to Engineer.

Engineer will present questionnaire results in final report.

### **5.3 Stakeholder Meetings**

Engineer will attend up to four (4) stakeholder meetings per watershed (12 total meetings). The stakeholders will be defined by the Owner and/or its representative. No separate presentation or exhibits will be prepared for these meetings. Presentations and/or exhibits prepared as part of Task 5.1 may be utilized during the stakeholder meetings. The Owner or its representative will prepare meeting minutes. Coordination of the stakeholder attendees, facility reservations, and scheduling of the meetings will be performed by the Owner and/or its representative. Anticipated stakeholders include Owner staff, NCDOT, Town of Winterville, and other groups as identified by the Owner and/or its representative.

### **5.4 Resident Interviews**

Engineer will schedule and attend resident interviews as needed to collect additional information such as highwater marks and other records of flooding. A total of twenty-eight (28) resident interviews are anticipated for this task. Only residents within the existing city limits will be interviewed. Minutes will be provided for each interview to the Owner and/or its representative for inclusion in the geodatabase.

## **6.0 Hydrologic and Hydraulic Modeling**

Specific care will be placed on coordination of activities with the Owner's staff. Prior to the field investigation phase, Engineer will gather available project background information from the Owner and items which may require special attention during the field investigation. Whenever possible, Engineer will avoid duplication of previous technical effort by utilizing resources collected during Task 3.0 for pertinent information such as Pitt County, the City of Greenville, the NC Emergency Management Agency, the Natural Resources Conservation Service, the U.S. Geological Survey, and Federal Emergency Management Agency.

## 6.1 Hydrologic Modeling

Engineer will utilize a model as determined using the process detailed in the July 31, 2013 SOP to develop the hydrologic characteristics and peak flows for the various storm events for the *Swift Creek, Fork Swamp, and Hardee Creek* watersheds with a boundary and downstream limit as shown in Attachment 1. The downstream hydrologic modeling limit for Swift Creek shall be the approximate intersection of Swift Creek and the Owner ETJ located near Forlines Road. The downstream hydrologic modeling limit for Fork Swamp shall be the approximate intersection of Fork Swamp and the Owner ETJ. The downstream hydrologic modeling limit for Hardee Creek shall be the confluence with the Tar River. Subwatersheds will be delineated as appropriate and shall typically range in size between 20 and 100 acres. Subwatershed divides will occur at significant hydrologic features such as culvert crossings, confluences, and detention facilities. Watershed characteristics will be identified for each subwatershed in a manner consistent with the NRCS (TR-55) and proposed land uses will be developed from land use information provided by the Owner. Hydrologic parameters calculated will include: subwatershed area, existing land use, future land use, curve number, time of concentration, NRCS soil types, significant detention storage areas, directly connected impervious area, and channel routing characteristics. Engineer will evaluate the 2-, 10-, 25-, 50-, and 100-year events as part of our modeling efforts. Existing and future land use will be evaluated for the watershed.

Engineer will incorporate available modeling and studies readily available to be provided by the Owner and/or Rivers & Associates. Known studies/modeling available include the Lynndale and West Haven projects in the Fork Swamp watershed.

## 6.2 Primary System Modeling

Hydraulic modeling of the primary system will utilize the hydraulic model as determined through the model selection process. The primary systems studied in the hydraulic model will include the mainstems of Swift Creek, Fork Swamp, and Hardee Creek as well as associated tributaries within the existing city limits as shown on Attachment 1. Sections of stream outside of the city limits will not be hydraulically modeled. See Attachment 1 for detailed modeling limits. The total primary system to be evaluated is approximately 83,000 LF divided by watershed as follows:

Swift Creek – 22,000 LF  
Fork Swamp – 45,000 LF  
Hardee Creek – 16,000 LF

The model will be used on the primary system to determine hydraulic profiles for the various flows developed by the model described above. The effective FEMA model will be utilized to the extent possible

to establish and/or check calculated starting water surface elevations, provide a point of verification for model results, and provide hydraulic input data as applicable.

### 6.3 Identification of Secondary Systems

Secondary systems include selected drainage features that drain to the *primary systems*. Examples would include closed pipe systems with known flooding problems, open channel systems that drain to primary systems with known flooding problems or other hydraulic systems with known flooding problems that are not located along the primary system. For budgetary estimating purposes for this project, we have included approximately 20,000 LF of secondary systems to be studied in detail divided by watershed as follows:

- Swift Creek – 5,000 LF
- Fork Swamp – 10,000 LF
- Hardee Creek – 5,000 LF

Analyzed systems will be identified based on watershed reconnaissance, historical drainage complaints, community input, feedback from the Owner, and other means to determine systems that may be undersized. Engineer staff will present the list of secondary systems to be modeled to the Owner's Project Manager for approval before the secondary system analysis is performed.

### 6.4 Secondary System Modeling

For the closed systems, Owner approved industry standard software selected from the hydraulic modeling matrix in the SOP will be used to evaluate hydraulic performance. The selection of the actual model type will be discussed with the Owner during the model selection process (Task 2)

For open channel systems, cross sections will be developed from available topographic mapping (LiDAR) and channel dimensions measured in the field with a tape. Cross sections will be taken at sufficient intervals from the LiDAR information such that the head-loss between sections is limited to 0.5' or less unless impractical. Water surface profiles shall be determined for the 2-, 10-, 25-, 50-, and 100-year storm events for existing and future conditions. Starting water surface elevations (WSELs) will be based on either the slope area method or the WSELs developed as part of the statewide FEMA mapping project. Selection of the appropriate starting WSEL will be discussed and agreed upon with the Owner prior to finalizing the modeling and will be documented in the final report.

### 6.5 Model Validation

Stormwater models will be validated utilizing high water marks, crest gauge results (if available), regression equations and USGS gauges (if available), recent floodplain mapping efforts performed by the State, and USGS Regional Relations developed for peak discharges, as well as other pertinent data provided by the Owner or the public. All validation efforts will be documented and reported to the Owner. Upon completion of the validation process, runoff hydrographs will be computed with results being presented to the Owner for their approval prior to beginning any hydraulic modeling.

### 6.6 Floodplain Delineation and Mapping

Engineer shall delineate riverine-generated floodplains for the existing and future 25- and 100-year floods for all of the primary open drainage systems. The mapping of floodplains will be compared to the effective FEMA floodplains for consistency, but may differ based on different hydrologic modeling approaches. The limits of the future floodplain mapping will extend upstream to the limits of the primary systems.

### **6.7 Determine High Risk Areas for 25-Year Detention**

Engineer will identify undeveloped areas that should be considered high risk requiring 25-year detention. Those areas will be identified with the following protocol:

- Identify undeveloped areas greater than 25 acres that are located upstream of existing flooding problems
- Utilizing the future conditions hydrologic model developed in Task 6.1 create a future conditions scenario with 25-year detention for areas identified above. Multiple scenarios will be created to evaluate the impact of potential developments individually and collectively.
- Evaluate peak flows from the 25-year detention models utilizing the hydraulic model developed in Task 6.2.
- Compare water surface elevations from the future conditions model developed in Task 6.1 (assumes 10-year detention) to the 25-year detention models. Areas where an improved level of service is provided as a result of 25-year detention shall be identified as high risk. Improved level of service is identified as the following:
  - Downstream infrastructure at roadway crossing now conveys a less frequent (larger) storm event. Storms evaluated will be the 2-, 10-, 25-, 50-, and 100-year storms.
  - The risk of flooding at downstream houses and businesses is reduced when evaluating the storms listed above. The risk of flooding is determined by evaluating where a floodplain intersects a house or business or other structure in plan view based on GIS planimetrics and aerial photography. Finished floor elevations will not be surveyed for this task. For the purposes of this study improved level of service occurs when homes or businesses are removed from the floodplain of one of the evaluated storms as a result of the 25-year detention.
- The potential future development areas in the city limits and the ETJ that contribute drainage to these high risk areas, shall be identified as areas considered for 25-year detention. Areas will be reviewed with the Owner to determine those zones that shall be classified for 25-year detention. These zones shall be provided to the Owner in shapefile format for Swift Creek, Fork Swamp, and Hardee Creek.

### **7.0 Watershed Master Plan**

## 7.1 Flood Hazard Mitigation Alternative Development

Based upon the modeling results portions of the storm drainage system not meeting established design standards will be identified and prioritized for possible improvements. Citizen and Owner Staff input will be cross-referenced to the model results to determine problems that may have been misidentified, that should be classified as maintenance or nuisance issues, or that may not qualify for service under the established project guidelines.

Once the problem areas have been identified, improvement options will be considered that may include:

- Upgrade of the entire drainage system to meet established design criteria;
- Upgrade of portions of the drainage system to lesser design standards;
- Use alternative best management practices for water quantity and quality control, such as detention ponds or Best Management Practices. Analyze existing and proposed regional stormwater facilities such as the Covington Downs Regional Facility and the Regency wet detention basin to determine if the facility can be expanded or retrofitted to produce additional quantity and quality benefits; and
- Alternative alignments and materials to minimize construction cost and impacts to private property, transportation systems, and other existing infrastructure.

When possible, atypical and innovative solutions will be considered to reduce cost and provide solutions which optimize the drainage system's capacity/functionality and long-term condition while balancing the important issues of neighborhood aesthetics and public relations. Performance standards for the recommended stormwater system improvements under existing land use conditions will be evaluated. The function of the recommended improvements under potential future build-out conditions based upon available zoning will also be considered.

## 7.2 Water Quality Retrofits and Bank Stability Alternatives

Based on the Engineering Field Investigation and Stream Walk completed in Task 3.3, *Engineer* will recommend bank stabilization projects to protect structure foundations and utilities, and reduce sediment loads to the streams. In some instances stream restoration projects may be recommended, particularly if the proposed restoration will mitigate for other recommended flood control projects.

Water quality retrofit projects (BMPs) will be recommended to provide water quality treatment of stormwater runoff. Projects will be identified through GIS analysis and confirmed through field investigation and staff discussions. Based on information obtained in Task 9.0, retrofit sites will be identified to support management of the impairment of 303(d) listed streams if applicable.

In addition, once prioritized, pollutant load reductions will be calculated for the top 10 BMPs using the Tar Pam Coastal nutrient loading rates provided by DWR. The BMP Retrofit Opportunity Table will be completed for each of these projects.

## 7.3 Evaluate Capital Construction Costs

Capital Improvements will be recommended and a budget (planning level) cost analysis will be computed using recent bid tab information of similar projects and input on the local bid climate from Owner Staff.



Budget costs for improvements shall include, at a minimum, installation of the following elements: storm drainage improvements, channel restoration and stabilization materials, grading, necessary street improvements, water and sewer utility relocations (if the utility is located within a specific utility easement instead of the public right-of-way), erosion and sediment control measures, traffic control measures, miscellaneous items (e.g. fencing, walls, etc.), environmental mitigation costs and easement acquisition estimates, and stormwater Best Management Practices (BMPs) as appropriate.

#### **7.4 Prioritize Projects**

The prioritization matrix that was developed in coordination with the Owner as part of the SOPs will be used to rank the recommended projects based on factors such as, public safety, level of service, flood reduction benefits, water quality improvements, capital costs, private property impacts, permitting requirements, funding availability, etc.

#### **7.5 Draft Watershed Plan Report**

The draft watershed plan reports will be prepared in accordance with the SOP. Individual reports will be developed for each watershed (Swift Creek, Fork Swamp, and Hardee Creek). They will include an executive summary as well as supporting documentation for all the recommended projects. Permitting requirements for each proposed project will be summarized including the expected permits required, potential mitigation requirements, and summarization of any discussions with representatives from regulatory agencies. Upon completion of the draft reports Engineer will submit three (3) copies of the reports to the Owner for review.

#### **7.6 Final Watershed Plan Report**

Engineer will incorporate Owner Staff comments into a final planning report for each watershed. Two (2) hard copies and an electronic copy on CD ROM of the final reports will be submitted to the Owner as the final deliverable for the Watershed Inventory and Master Plan.

#### **8.0 Project Meetings**

Anticipated meetings for this project include the following:

- Project kickoff meeting(1)
- Coordination meetings for review of the existing geodatabase and inventory procedures (1)
- Inventory Field Training (1)
- Quarterly in person project progress meetings (5)
- Conference calls will be held in the months that do not have an in-person project progress meeting scheduled (12)
- Project prioritization meetings (3)
- Attendance at one Owner Council meeting. Preparation of the presentation is anticipated to be completed by others. Engineer will provide brief summary 2-3 minutes for each watershed studied (Swift Creek, Fork Swamp, and Hardee Creek).

Engineer will prepare meeting agendas and meeting minutes for each of the project meetings.

## **9.0 Water Quality Analysis for 303(d) Listed Streams**

Engineer will develop a strategy for determining the use support of the 303(d) listed streams in the City of Greenville, Swift Creek and Greens Mill Run. The strategy will be focused on determining if the current listing of the streams in the 303(d) list can be revised. Limited benthic monitoring data currently exists for the impaired streams. The strategy will include additional benthic monitoring data at the existing DWR sampling sites as well as benthic monitoring throughout the watershed. Pending the results of the monitoring effort, the additional monitoring may be used to support de-listing one or both of the impaired stream or potentially a reduction in the length of impairment. Specific tasks for this effort are as follows:

### **9.1 Existing Data Evaluation/Summary**

Engineer will request, evaluate, and summarize existing NC Division of Water Resources (DWR) support data for the 303(d) listed waters within the city limits (Greens Mill Run and Swift Creek), with a focus on site- and species- specific, benthic macroinvertebrate (benthic) results.

### **9.2 DWR Use Support Data Acceptance Negotiation**

Upon Notice to Proceed, Engineer will begin a dialogue with DWR's Modeling and Assessment Branch (MAB: Cam McNutt, Environmental Program Consultant) for the site-specific acceptance of 'third party' data for formal use support evaluation.

A formal agreement for DWR acceptance of third party benthic data for use support evaluation for Greens Mill Run and Swift Creek will be prepared and submitted to the Owner.

### **9.3 Site Selection**

Based on the results of 3.3 (Engineering Field Investigation and Stream Walk) Engineer will identify representative locations for the initial (baseline) benthic data collection (up to 7 sites per watershed, including the existing DWR locations). Sampling sites proposed in the Water Quality Monitoring Framework previously submitted will be utilized to the extent possible, but locations may vary based on the stream walks. A map with proposed monitoring locations will be prepared and submitted to the Owner. Benthic sites will overlap with the proposed ambient monitoring sites to the extent possible. Proposed ambient monitoring sites in Greens Mill Run will be provided by others and reviewed by Engineer.

### **9.4 319 Quality Assurance Project Plan (QAPP)**

Following site selection Engineer will create a project/site specific QAPP following a previously-approved (July 2013) EPA 319 format. The QAPP will establish and formalize:

- Monitoring and experimental design
- Site selection rational/criteria
- Sampling Methods
- Sample Handling and Custody
- Analytical Methods
- Quality Control
- Instrument Testing and Maintenance
- Instrument Calibration

- Data Management
- Assessments and Response Actions
- Data Review, Verification and Validation

## 9.5 Data Collection

Pursuant to the QAPP, baseline benthic data will be collected at the selected locations between May 1, 2014 and August 31, 2014. The first trend monitoring benthic dataset will be collected at the selected sites between May 1, 2015 and August 31, 2015.

Following site identification, ambient water quality data will be collected in the Swift Creek basin quarterly for baseflow collection and immediately following representative storm events to be determined in consultation with ECU. Storm event ambient monitoring will be collected for up to four (4) storm events spaced throughout the monitoring period to the extent possible. Ambient monitoring for the Greens Mill Run watershed will be completed by others. Anticipated ambient monitoring parameters include the following:

- Baseflow Sampling
  - Temperature, salinity, conductivity, dissolved oxygen, and pH collected at seven (7) sites four (4) times over project timeframe. Additionally three (3) major outfalls with dry weather flow will be sampled once during the project for a total of 31 samples.
  - Nutrient series (Nitrogen and Phosphorus), organic carbon, and fecal bacteria indicators collected at seven (7) sites four (4) times over project timeframe. Additionally three (3) major outfalls with dry weather flow will be sampled once during the project for a total of 31 samples.
  - Suspended sediments collected at seven (7) sites four (4) times over project timeframe. Additionally three (3) major outfalls with dry weather flow will be sampled once during the project for a total of 31 samples.
  - Metals collected once at three (3) sites for a total of 3 samples.
- Storm Event Sampling
  - Temperature, salinity, conductivity, dissolved oxygen, and pH collected at seven (7) sites four (4) times over project timeframe. Additionally the three (3) major outfalls sampled during baseflow monitoring will be sampled during one wet weather event the project for a total of 31 samples.
  - Nutrient series (Nitrogen and Phosphorus), organic carbon, and fecal bacteria indicators collected at seven (7) sites four (4) times over project timeframe. Additionally the three (3) major outfalls sampled during baseflow monitoring will be sampled during one wet weather event the project for a total of 31 samples.

- Suspended sediments collected at seven (7) sites four (4) times over project timeframe. Additionally the three (3) major outfalls sampled during baseflow monitoring will be sampled during one wet weather event the project for a total of 31 samples.
- Metals collected at three (3) sites for (1) event for a total of 3 samples.

## 9.6 Data Reporting

Following initial data collection, baseline ambient data results will be evaluated and reported in the *Ambient Baseline Monitoring Report*. Quarterly and event specific ambient results will be evaluated immediately following collection. An *Ambient Trend Monitoring Report* will be created following the second quarter of data collection, and formally updated quarterly for the life of the project. Should ambient data results indicate a use support violation, the Owner will be immediately notified.

Following the initial 2014 data collection, baseline benthic data results will be evaluated, compared to previous DWR-approved results, and reported in the *Benthic Baseline Monitoring Report*. A *Benthic Trend Monitoring Report* will be created following the 2015 data collection.

Pursuant to the negotiated DWR third party data acceptance agreement, the results of both benthic monitoring efforts will be formatted and provided to DWR for formal use support evaluation. Negotiations regarding de-listing or reduction of the current listing will not be included in this contract since the level of effort is undetermined pending monitoring results.

## 10.0 Program Management

Engineer will provide program management services to the Owner for the Citywide Master Planning process to ensure consistency in planning throughout the city and to maintain the 18-month project schedule. Specific tasks anticipated for program management include the following:

- Address questions from other teams during scoping process.
- Develop standardized monthly form for project updates. Compile project updates from all three teams and deliver one project update for the entire Citywide Master Planning to the Owner each month for eighteen (18) months.
- Develop project schedule and incorporate each team's schedule into the master schedule. Maintain the schedule throughout the course of the project and deliver updated schedules to the Owner with the monthly update. Engineer will make the Owner and other consultants aware of critical path items and the impacts to the overall schedule for changes to task specific deadlines.
- Engineer will review the inventory SOP's and provide comments or suggested revisions as necessary to the Owner and the GIS Lead for the project.
- Engineer will review the Master Planning SOP and update the SOP as necessary for execution of the Citywide Master Planning process.
- Engineer will review requests for modifications to the Master Planning SOPs related to allowable models for hydrologic and hydraulic modeling.
- Engineer will respond to questions from the other teams throughout the project process related to conformance with the SOP's and to ensure consistency throughout watersheds. Questions and responses will be provided to all team members and the Owner. Estimated time allotted for

questions is assumed to be eight (8) hours per month for the project duration and may include conference calls, in-person meetings, and email correspondence.

- Engineer will review hydrologic and hydraulic models from each team for conformance with the SOP's. Engineer will provide one round of comments in word document format to each team and provide a copy to the Owner. Two reviews are anticipated as follows:
  - Existing conditions and future development modeling
  - CIP modeling and alternatives development
- Provide updated unit costs for all items in proposed CIP's. Consider and incorporate additional line items as requested.
- Review completed cost estimates for all teams' proposed CIP's.
- Review project prioritization process with Owner and update as necessary.
- Review project prioritizations for each watershed and attend Project Prioritization meetings with Owner. Meeting time included above in Task 8.
- Review finalized CIP's and provide one citywide prioritization list to Owner for all proposed capital projects. Update Meetinghouse prioritization list as necessary during this process based on any changes made to the SOP's.

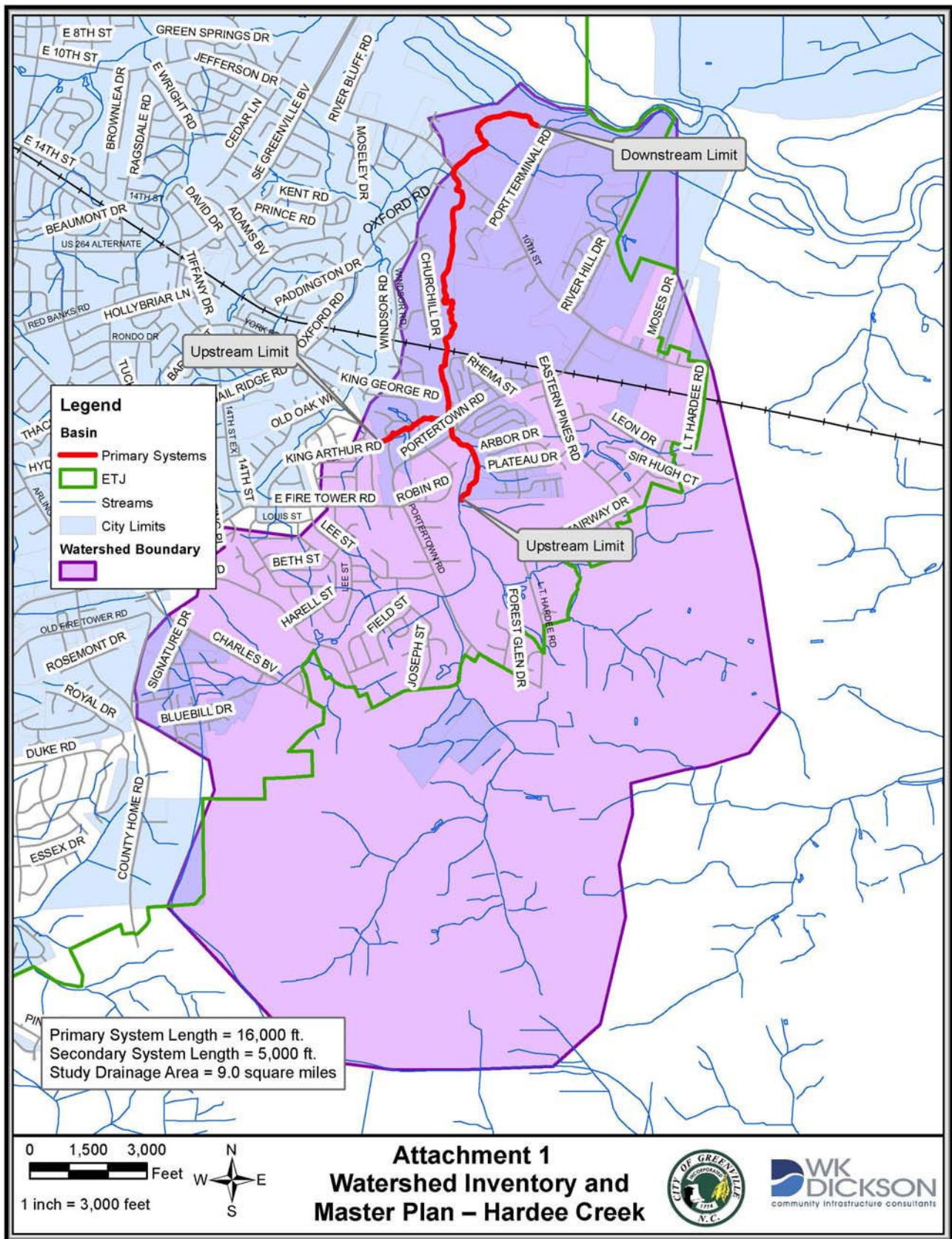
### **11.0 Unspecified Additional Services**

This task is to be used to provide any additional services requested by the Owner that were not covered in the basic scope of services outlined above. No services will be provided under this task without prior written approval from the Owner's Project Manager and all services provided will be provided for a lump sum fee to be negotiated based on the services to be rendered. Additional services may include negotiations with DWR for reclassification of 303(d) impaired waters to reduce or eliminate the listing of the impaired waters. For waters determined to be impaired additional services may include negotiations with DWR for reclassification of the waters to category 4(b) and preparation of 4(b) plans for Swift Creek and Greens Mill Run.

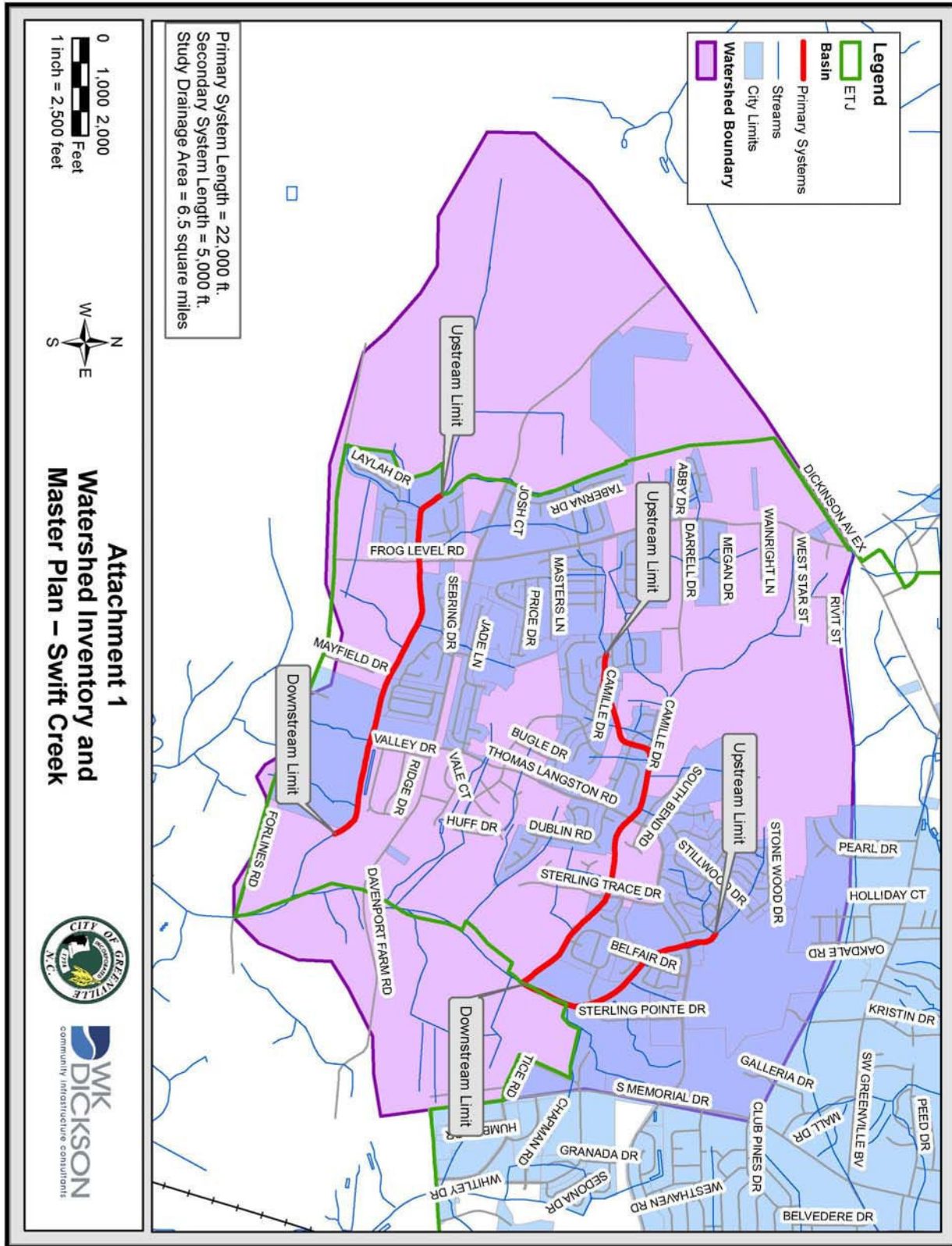
**Draft Schedule for Greenville Watershed Inventory and Master Plan**

Task Descriptions	Time (Months)																		
	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	
1 Notice to Proceed	X																		
2 GIS development, Data Collection, Field Inventory Training and Workplaning																			
3 Stormwater Inventory and Stream Assessments																			
4 Deliver Finalized GIS Inventory																			
5 Initial Round Public Meetings																			
6 Hydrologic and Hydraulic Modeling																			
7 Model Review																			
8 Water Quality Monitoring and 303(d) Analysis																			
9 Develop Watershed Master Plan																			
10 CIP and Prioritization Meetings and Review																			
11 Draft Report Preparation																			
12 Second Round Public Meetings																			
13 Submit Draft Report																			
14 City Review of Draft Report																			
15 Final Report Preparation																			
16 Submittal of Final Master Plan Report																			









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

## **Owner's Responsibilities**

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

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

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

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

responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

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

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

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

*C2.01 Compensation for Basic Services (other than Resident Project Representative) – Lump Sum Method of Payment*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$ 1,146,716.50 based on the following estimated distribution of compensation:
  - a. Project Management \$38,805.00
  - b. Model Selection Matrix \$1,270.00
  - c. Data Collection \$45,700.00
  - d. Stormwater Inventory \$324,090.00 (see unit structure cost on following page)
  - e. Public Involvement \$66,430.00
  - f. Hydrologic and Hydraulic Modeling \$167,250.00
  - g. Watershed Master Plan \$179,670.00
  - h. Project Meetings \$38,615.00
  - i. Water Quality Analysis for 303(d) Listed Streams \$53,900.00
  - j. Program Management \$98,520.00
  - k. Unspecified Additional Services \$50,712.50
  - l. Reimbursables \$40,644.00
  - m. ECU Ambient Monitoring \$41,110.00

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.
3. The Lump Sum includes compensation for Engineer's services and services of Engineer's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

**Field Stormwater Inventory Table - Unit Structure Rates (see 1d)**

<b>Structure Type</b>	<b>Total Unit Rate</b>	<b>Estimated Structures</b>	<b>Estimated Fee</b>
Closed System Structures (manholes, catch basins, pipe ends, etc.)	\$78.00	3400	\$265,200.00
Bridges	\$450.00	9	\$4,050.00
Primary Open System Channel Cross-Section (four-point)	\$130.00	160	\$20,800.00
Secondary Open System Channel Measurements	\$64.00	500	\$32,000.00
BMP Outfall Structure	\$76.00	15	\$1,140.00
Detention Facilities	\$450.00	2	\$900.00
<b>Totals</b>		4086	<b>\$324,090.00</b>

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 18 months. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.



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

THIS IS AN AGREEMENT effective as of \_\_\_\_\_, 2014 (“Effective Date”) between  
City of Greenville (“Owner”) and  
CDM Smith Inc. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:  
Watershed Inventory and Master Plan – Harris Mill Run/Schoolhouse Branch and Johnsons Mill Run/Parker Creek  
 (“Project”).

Engineer's services under this Agreement are generally identified as follows:  
See Exhibit A

Owner and Engineer further agree as follows:

**ARTICLE 1 – SERVICES OF ENGINEER**

1.01 *Scope*

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

2.01 *General*

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

Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### *3.01 Commencement*

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

#### *3.02 Time for Completion*

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

### **ARTICLE 4 – INVOICES AND PAYMENTS**

#### *4.01 Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

#### *4.02 Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
  - 1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and



2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. ~~*Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.~~

## ARTICLE 5 – OPINIONS OF COST

### 5.01 *Opinions of Probable Construction Cost*

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

### 5.02 *Designing to Construction Cost Limit*

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

### 5.03 *Opinions of Total Project Costs*

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

## ARTICLE 6 – GENERAL CONSIDERATIONS

### 6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same

- time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
1. Engineer and Owner shall comply with applicable Laws and regulations.
  2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. provided to Engineer in writing. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
  3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any

failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.

- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

#### 6.02 *Design Without Construction Phase Services*

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

#### 6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between

the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.

- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

#### 6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. ~~Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.~~
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in

the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- D. ~~Owner and~~ Engineer shall ~~each deliver to the other~~ certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

#### 6.05 *Suspension and Termination*

##### A. *Suspension:*

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

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

- 1. For cause,
  - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
  - b. By Engineer:
    - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

- 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
  - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience,
- a. By Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
  2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

## 6.06 *Controlling Law*

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

### 6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
  - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
  - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
  - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

### 6.08 *Dispute Resolution*

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

### 6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.

- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### 6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. **~~This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."~~**
- B. ~~*Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or



entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. ~~*Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.~~
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

#### 6.11 *Miscellaneous Provisions*

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

### ARTICLE 7 – DEFINITIONS

#### 7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.

2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.

11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

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

construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

## ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

### 8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative. – NOT APPLICABLE
- E. Exhibit E, Notice of Acceptability of Work. – NOT APPLICABLE
- F. Exhibit F, Construction Cost Limit. – NOT APPLICABLE
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution. – NOT INCLUDED
- I. Exhibit I, Limitations of Liability. – NOT INCLUDED
- J. Exhibit J, Special Provisions. – NOT INCLUDED
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

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

### 8.02 *Total Agreement:*

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

### 8.03 *Designated Representatives:*

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

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
  3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

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

Owner: City of Greenville

Engineer: CDM Smith Inc.

By: Allen M Thomas

By: Douglas B. Saunders, P.E.

Title: Mayor

Title: Client Service Leader

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

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

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

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

Engineer License or Firm's Certificate No. F-1255

State of: North Carolina

Address for giving notices:

Address for giving notices:

Public Works Department

5400 Glenwood Avenue

1500 Beatty Street / PO Box 7207

Suite 300

Greenville, NC 27834

Raleigh, NC 27612

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

Lisa Kirby

Michael K. Sloop, P.E.

Title: Senior Engineer

Title: Project Manager

Phone Number: 252-329-4683

Phone Number: (919) 787-5620

Facsimile Number: 252-329-4535

Facsimile Number: (919) 781-5730

E-Mail Address: lkirby@greenvillenc.gov

E-Mail Address: sloopmk@cdmsmith.com

**APPROVED AS TO FORM:**

BY: \_\_\_\_\_  
David A. Holec, City Attorney

**PRE-AUDIT CERTIFICATION:**

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

\_\_\_\_\_  
Bernita W. Demery, Director of Financial Services

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

Project Code (if applicable) \_\_\_\_\_



This is **EXHIBIT A**, consisting of 17 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, 2014.

## Engineer's Services

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

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

### **1.0 Project Management**

CDM Smith will manage the project in a manner so as to be responsive to the needs and schedule of the City of Greenville (the City) and produce a quality work product. The following project management and administration efforts will include, but not be limited to the following items:

- Oversee the project team relative to meeting budget, schedule and conformance to the project scope on a day-to-day basis
- Provide a minimum of two project contacts for the City so that at anytime someone familiar with the project can be available to the City if questions, comments, concerns, or other project needs arise. These points of contact will be Michael Sloop as the Project Manager and Rob Hopper as the Project Engineer
- Monitor the quality control program throughout the life of the project as outlined in the Project Work Plan Manual
- Perform project planning and formulation
- Update the project schedule (formally) if during the life of the project a substantial deviation in the schedule occurs for any reason. All other minor schedule updates will occur in the monthly project reporting
- CDM Smith will be available to answer project related questions on a regular basis via phone calls and email
- Prepare and submit via email a monthly progress report to the City's representative to update the project schedule, list milestones achieved, provide current status of each major task, support and document schedule changes, update product costs and justify any proposed changes to the schedule or budgets. Monthly progress reports are due at the end of each month and shall approximately coincide with monthly project invoicing.
- Maintain a project cost accounting system throughout the life of the Project
- Maintain a project filing system throughout the life of the Project to use for storage and retrieval of project documents.

All project final deliverables shall be certified (signed, sealed and dated) by a professional engineer and/or surveyor registered in the state of North Carolina. CDM Smith shall participate in project closeout and complete close-out on a timely basis.

Project Management is anticipated to occur on an ongoing basis throughout the entire 18 month project schedule.

## 2.0 Model Selection Matrix

CDM Smith shall provide a model selection matrix based on the most current version of the July 30, 2013 Standard Operating Procedures (SOP) for Stormwater Master Planning models for hydrologic and hydraulic modeling. Any variations related to modeling from the SOPs shall be approved by the City prior to implementation.

## 3.0 Data Collection

### 3.1 Review Existing Data Sources

CDM Smith will assimilate relevant available data such as GIS, as-built drawings, FEMA flood studies, USGS studies, history of flooding, etc. GIS data may include aerial photography, topography, zoning, soils, planimetrics, stormwater inventory, etc.

### 3.2 Gaps Analysis

CDM Smith will determine additional data needs based on the existing data available to complete the modeling and analysis of the Watershed Inventory and Master Plan - Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run Study. Through preliminary field investigation, discussion with City Staff and GIS analysis, CDM Smith will identify primary and secondary modeling limits as defined in SOPs.

### 3.3 Engineering Field Investigation and Stream Walk

CDM Smith will complete a stream walk and photolog of the primary system as shown in Attachment 1 and 5,000 linear feet of secondary stream within the Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run Study Area to collect data required for the modeling analysis and geomorphic stream assessment. The field investigation and stream walk will include, but not necessarily be limited to the following:

- Identify high water marks for survey location
- Measure channel dimensions for hydraulic model
- Verify land uses (visual)
- Estimate Manning's 'n' values
- Verify watershed boundaries
- Identify key hydraulic structures to be modeled
- Geomorphic Assessment cross sections with bankfull (BF) identification
- Conduct Photolog with GPS points
- Identify problem area and map via GPS
- Perform geomorphic assessment
- Perform Bank Erosion Hazard Index (BEHI) and bank stability assessment (map unstable banks)
- Establish bank pins to quantify erosion

The summary of findings for the stream walk will be incorporated into the Watershed Master Plan.

## 4.0 Stormwater Inventory

The intent of this task is for CDM Smith to capture the stormwater utility infrastructure in the Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run watershed area, as well as the areas in the City Limits outside these basins, North of the Tar River, and use the data to develop a Geographic Information System (GIS) coverage for the stormwater utility systems. This task will be accomplished using Global Positioning Systems (GPS) as the primary means of data capture. Subtasks 4.1 and 4.2 will be managed as a lump sum amount. Subtasks 4.3 through 4.6 will be managed as a unit cost task and only the actual number of structures collected at the established unit rates will be billed. If the actual number of structures are less than what is estimated then only that number of structures will be billed. If the number of actual structures exceeds the estimated number of structures then CDM Smith will not exceed the estimated number of structures without prior written authorization from the City Project Manager. CDM Smith will bill for the additional structures at the approved billing rates for each structure type. The Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run project area has been defined by the City as shown in Attachment 1. Refer to the July 30, 2013 version of the City's Stormwater System Inventory SOP's for more details on the requirements and specifications of the Stormwater Inventory.

### 4.1 GIS Management

CDM Smith will manage implementation of the city-wide stormwater GIS environment. This process will involve updating city-wide GIS data standards (SOP), coordinating GIS data deliveries from city stormwater consultants, quality reviewing the data, and delivering final data to the City. Specific responsibilities include:

- **Geodatabase Design** – Work with the City and Consultants to update current city-wide stormwater GIS geodatabase design within the Esri 10.x software environment. This geodatabase design will contain the layers (pipes, manholes, etc.), attributes for each layer (pipe size, material, etc.) and domain values (valid values for each attribute) and will be used for this project.
- **GIS SOP** – CDM Smith will update the City's GIS data collection SOPs to incorporate a multi-consultant data collection workflow. This will include:
  - Modification of the data acquisition and development strategy as appropriate.
  - Clarify what data is to be collected, process for collecting data, and mandatory data fields.
  - Developing a data collection and delivery workflow that details how data will be migrated from consultant systems to the centralized GIS data repository on a timely basis.
  - Developing protocols for citizen input points.
  - Developing a quality control process and workflow to be executed by consultants and the City.
  - Developing a consultant data delivery protocol and technologies, tools, and data transfer methods that support the protocol.
  - Update current SOP, meeting with the City and Consultants to discuss the necessary modifications, and finalizing based on comments.

- Updating the finalized SOP and geodatabase design as-needed throughout the project.
- **Quality Control Procedures** – Develop quality control procedures and tools (developed within the Esri software environment) that will be used by stormwater consultants to test data prior to upload into the master database. Distribute tools to consultants and provide training and documentation on the use of the tool.
- **Centralized GIS Database** – Develop a centralized GIS database and develop protocols and methods for integrating standardized data from consultants every two weeks.
- **Quality Control Testing and Reporting** – Complete quality control testing on compiled datasets (delivered every two weeks from consultants). Provide reports to consultants summarizing the results of the quality control process and provide guidance on resolving issues.
- **GIS Web Application** – Develop a WebGIS application that allows the City to access the centralized GIS database. This will be developed within the ArcGIS Server or ArcGIS Online software environment and will include the capabilities to access data, provide comments, upload plans, and print basic maps. CDM Smith will host the application and make it available to City and project staff.
- **Draft Data Review and Map Atlas Production** – Deliver draft GIS data to the City and develop a series of map atlases (paper and PDF format) to be used by the City to complete their quality review process and to address problem areas.
- **Final Data Integration** – CDM Smith will compile all final data, run a final QC process on the data, and deliver the final geodatabase to the City. This process will include:
  - Final GIS Quality Control
  - Final merging of all consultant datasets
  - Development on an integrated GIS-based network structure including network topology.
  - Provision of ESRI Map Documents (MXD files), Data Driven Pages (atlas map templates), QC Tools, and data entry tools (Esri’s Attribute Assistant and Utility Network Editing Toolbar).
  - Delivery, installation, and configuration of all data on City system.
  - Provide 40 hours of training on how to access, manage, and update the GIS environment.

#### 4.2 Inventory Specifications

- This is a Survey Grade project, surveyed elevations will meet the posted standards of the NC VRS network, however, elevations calculated from measurements will not be survey grade.
- The horizontal datum is NAD 83/2011.
- The coordinate system is State Plane North Carolina 3200.
- The vertical datum is NAVD 88.

- The unit of measurement is the US Survey Foot.
- Features and Attributes are provided in the Stormwater System Inventory SOP's.
- City will be responsible for resolving Difficult Access (DA) structures on this project.
- City will be responsible to notify property owners of work activities and the need to access drainage utility easements.
- City will be assist with locating structures that are identified on source documents but cannot be located in the field.
- Stormwater inventory will be collected only within the City limits except as discussed in the "Primary System Open Channel Inventory" section below. For this project that will include the Harris Mill Run/Schoolhouse Branch watershed, the Johnsons Mill Run/Parker Creek watershed, and any other areas within the City limits north of the Tar River.

### 4.3 Stormwater Utility System Mapping

#### Closed System Inventory

CDM Smith will employ survey grade GPS (RTK) to locate the x,y,z coordinates of each visible stormwater system structure. Stream/open channel and bridge surveys will be limited to those cases which are required to complete connectivity as determined by the hydraulic engineer from CDM Smith and for modeling purposes. CDM Smith will collect attributes for each of these structures. The attributes may include but are not limited to the following:

- Unique identification number
- Horizontal location
- Vertical location (structure)
- Street number
- Street name
- Street designation
- Structure type
- Structure size
- Structure material
- Structure age
- Structure condition
- Water quality (odor, sheen, dry weather flow, etc.)
- Obstruction percentage
- Obstruction type
- Pipe shape
- Pipe size
- Pipe invert elevation
- Pipe material
- Pipe end type (projecting from fill, flared end section etc.)
- Headwall type
- Headwall material
- Wingwall configuration (straight or mitered to slope)
- Wingwall angle
- Hyperlinked photo

CDM Smith will participate in a one day training session with each of the stormwater consultants and/or their inventory subconsultants to be trained on how to collect inventory data and assign the condition rating. The purpose of this training will be to assist in developing a consistent and common understanding of how the collection of data and condition ratings should be applied, which will help to increase the level of consistency among the stormwater consultants. It is assumed that the City's Program Manager will conduct the meeting.

Collection of the public stormwater drainage system will be the emphasis of this task. This will include systems that convey stormwater runoff from public streets or public property, including systems on public or private property that convey runoff originating from public streets or crossing private property. Only the outfalls of private systems will be inventoried unless the private system drains across a private property and conveys public water in which case the entire system will be inventoried. The size of the systems to be inventoried will be all pipes greater than or equal to 15" in diameter and structures identified in the SOP. Private crossings will only be included in the inventory if they are longer than 50 feet or greater than or equal to 24" in diameter unless specific private pipe(s) are determined by CDM Smith's hydraulic engineer as critical to the system hydraulics for the master plan.

If during the course of the stormwater inventory CDM Smith's field crews observe odors, sheens, or potential illicit discharges we will notify the City's Project Manager within the same business day if at all possible but no later than 24 hours from the time of observation. Additionally, if our field crews observe dry weather flows as defined in the City's current Phase II permit we will record the location of the dry weather flow and report it to the City's Project Manager on a bi-weekly basis.

#### Primary System Open Channel Inventory

If any bridge or culvert surveys are required for modeling purposes those surveys will be performed according to FEMA standards. It is not anticipated that any transects will be physically surveyed for hydraulic modeling purposes but that all cross-section data will either be taken from the existing FEMA model(s) or from best available data.

If CDM Smith's hydraulic engineer determines that the in-channel area will be significant relative to modeling purposes a four-point cross section of the in-channel section will be field surveyed.

A unit cost and a specific number of four-point surveys has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

#### Secondary System Open Channel Inventory

If man-made or natural channels exist along the secondary system between two bounding structures (i.e. an inventoried pipe crossing or culvert crossing) a single channel measurement (top width, bottom width, depth, and liner type) will be taken between these bounding structures and incorporated into the inventory. Then the channel between the bounding structures will be digitized from best available data and the information collected in the channel measurement will be inferred onto the digitized line as representation of the entire channel length. If bounding structures do not exist no channel measurements will be taken.

A unit cost and a specific number of channel measurements to be taken have been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### BMP Inventory

Where accessible CDM Smith will field inventory the outfall of any readily identifiable BMP such as a dry pond, wet pond, stormwater wetland or bioretention area. BMPs to be inventoried will be identified based on aerial photography and City records. A point feature will be used to represent the BMP in the inventory unless the BMP is readily visible and can be digitized from on the City's aerial mapping in which case it will be included as a polygon feature.

A unit cost and a specific number of BMPs to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### Detention/Retention Facility Inventory

Only the information necessary to model a detention/retention facility will be inventoried if CDM Smith's hydraulic engineer determines that facility needs to be accounted for in the hydraulic model to accurately reflect the attenuation effect of the detention facility. The types of information that will be typically collected would include but not necessarily be limited to the following:

- Riser elevation
- Riser material
- Riser diameter
- Barrel material
- Barrel diameter
- Barrel slope
- Emergency spillway elevation
- Emergency spillway configuration
- Emergency spillway material
- Overtopping elevation

A unit cost and a specific number of detention/retention facilities to be inventoried has been estimated for budgetary purposes noted in Exhibit C Compensation Packet BC-1.

### Bridge Survey

If any bridge surveys are required to provide the desired level of accuracy or to include public roadways that have been constructed/revised since the FEMA study those surveys will be performed according to the most current version of the July 30, 2013 Standard Operating Procedures. It is not anticipated that any transects will be physically surveyed for hydraulic modeling as part of the bridge survey. Cross section data will be utilized from the existing FEMA model(s), best available information, and the Primary System Open Channel Inventory defined above.

## **4.4 Difficult Access (DA) Structures**

There will always be some structures which cannot be accessed in the field for various reasons. These could be sedimentation, debris, structure being covered over or paved over, access problems, etc. A reasonable attempt to access the structure will be made. In the event that this is not possible, then a location will be stored for the structure and a report provided to the City, via the web interface designed and maintained by CDM Smith, for resolution by designated City staff. Once the structure is made accessible

then we will re-visit the structure and collect the missing attributes. These structures will be invoiced twice, once for the initial visit and again for the second.

CDM Smith will spend approximately 5 minutes searching for system structures. Difficult access structures and structures that are not found will be reported bi-weekly to the City. Should the City staff identify and resolve the issues with these structures, CDM Smith will return and collect the appropriate attribute information.

For cost estimating purposes, CDM Smith will assume that approximately 5% of the total structures estimated will be DA structures.

#### **4.5 Digital Development System Connectivity**

CDM Smith will utilize ESRI ArcGIS software to compile a GIS representation of the underground stormwater utility system. CDM Smith will identify, organize and import relevant background files to supplement the project field data and assist with establishing system connectivity. CDM Smith shall provide system wide connectivity to the extent possible and perform quality control of the inventory by a hydraulic engineer.

#### **4.6 City Redline Review Process**

After completion of the field inventory, CDM Smith will provide one set of hardcopy maps of the connected underground system and will work closely with the City to identify inaccuracies and anomalies (CDM Smith will provide this for all basins as described in Section 4.1 – Draft Data Review and Map Atlas Production). It is intended that the City will redline the entire set by circulating them among the various departments and personnel associated with the maintenance of the stormwater system, providing comments in a single response and within a mutually agreed-upon timeframe. The City will distribute the redlines to each of the individual consultants. CDM Smith will edit the GIS layer to reflect any changes for our respective watersheds. CDM Smith will receive revised data sets from each consultant. No additional field work is anticipated for this task.

### **5.0 Public Involvement**

#### **5.1 Public Meetings**

CDM Smith will prepare for and attend a maximum of four (4) public meetings for watershed residents and eight (8) stakeholder meetings. These meetings shall be split between the Harris Mill/Schoolhouse Branch and Parker Creek/Johnsons Mill watersheds. It is understood that the City and/or its representative will attend and facilitate all meetings, with CDM Smith staff present for technical support. CDM Smith will provide the following for each public meeting:

- Prepare 3 exhibits (utilizing GIS data) including but not limited to: streets, buildings, drainage system, watershed, and citizen questionnaire results
- Prepare a general 10-15 minute Power Point presentation using template provided by City
- Solicit input from citizens, developers or engineers via the meeting
- Answer technical questions from citizens, developers or engineers
- Document information collected on template provided by public relations consultant and incorporate citizen input into watershed study



- Up to four break out stations will be provided for the public meetings
- Up to four CDM Smith staff persons familiar with the project will be provided

The City and its representative will develop the necessary exhibits, handouts, and presentation material for the stakeholder meetings. Coordination, scheduling, agendas, and meeting minutes will be completed by the City and its representative.

In addition to the public and stakeholder meetings, CDM Smith will conduct interviews with individual landowners with the City limits upon request to obtain property specific information and feedback relating to watershed conditions and the intent of the watershed plans. Up to 24 individual interviews with City of Greenville residents only will be conducted and minutes provided for each interview. It is assumed that the 24 interviews will be conducted in no more than 6 site visits.

## 5.2 Public Questionnaire

It is understood that the City and/or its representative will prepare a drainage questionnaire to be mailed to watershed residents with information about the public meeting. Questionnaire will also be made web-accessible by the City and/or its representative with a link to the City's website. The City and/or its representative will coordinate the production and mailing of the questionnaires.

The City and/or its representative will tabulate results of questionnaire respondents as collected and provide to CDM Smith in a geodatabase format based on the template provided by the City. CDM Smith will incorporate the questionnaire geodatabase results from each of the City's stormwater consultants into the master geodatabase.

CDM Smith will present questionnaire results in the final for their respective basins.

## 6.0 Hydrologic and Hydraulic Modeling

Specific care will be placed on coordination of activities with the City's staff. Prior to the field investigation phase, CDM Smith will gather available project background information from the City and items which may require special attention during the field investigation. Whenever possible, CDM Smith will avoid duplication of previous technical effort by utilizing resources collected during Task 3.0 for pertinent information such as Pitt County, the City of Greenville, the NC Emergency Management Agency, the Natural Resources Conservation Service, the U.S. Geological Survey, and Federal Emergency Management Agency.

### 6.1 Hydrologic Modeling

CDM Smith will utilize a model as determined through the process detailed in the SOP to develop the hydrologic characteristics and peak flows for the various storm events for the Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run watersheds with a downstream limit being the Tar River. The hydrology limits are approximated as shown in Attachment 1. Subwatersheds will be delineated as appropriate and shall typically range in size between 20 and 100 acres. Subwatersheds divides will occur at significant hydrologic features such as culvert crossings, confluences, and detention facilities. Watershed characteristics will be identified for each subwatershed in a manner consistent with the NRCS (TR-55) and proposed land uses will be developed from land use information provided by the City. Hydrologic

parameters calculated will include: subwatershed area, existing land use, future land use, curve number, time of concentration, NRCS soil types, significant detention storage areas, directly connected impervious area, and channel routing characteristics. CDM Smith will evaluate the 2-, 10-, 25-, 50-, and 100-year events as part of our modeling efforts. Existing and future land use will be evaluated for the watershed.

Information from available modeling and studies will be incorporated as provided by the City and/or its representative to include the Vidant Medical Center, Town Creek Culvert, and the 10th Street connector.

## **6.2 Primary System Modeling**

Hydraulic modeling of the primary system will utilize the hydraulic model as determined through the model selection process. The primary systems studied in the hydraulic model will include the main stems of Harris Mill Run, Sams Branch, Schoolhouse Branch, Parker Creek, Parker Creek Tributary 1, and Parker Creek Tributary 2 and Johnsons Mill Run from a downstream limit at the Tar River to the upstream limits as noted on Attachments 1 and 2. The total primary system to be evaluated is approximately 81,000 LF, of which about 23,000 LF have been recently modeled by FEMA. CDM Smith will obtain the available FEMA models for the evaluations and update them as needed. The developed models will be used on the primary system to determine hydraulic profiles for the various flows developed by the model described above. The effective FEMA model will be utilized to the extent possible to establish and/or check calculated starting water surface elevations, provide a point of verification for model results, and provide hydraulic input data as applicable. It is assumed that the FEMA models are accurate, there are sufficient cross-sections included beyond the additional needs identified in the Scope of Work, and will not require substantial modifications as part of this project.

## **6.3 Identification of Secondary Systems**

Secondary systems include selected drainage features that drain to the primary systems. Examples would include closed pipe systems with known flooding problems, open channel systems that drain to either primary systems with known flooding problems or other hydraulic systems with known flooding problems that are not located along the primary system. For budgetary estimating purposes for this project, we have included approximately 20,000 LF of secondary systems to be studied in detail. Analyzed systems will be identified based on watershed reconnaissance, historical drainage complaints, community input, feedback from the City, and other means to determine systems that may be undersized. CDM Smith staff will present the list of secondary systems to be modeled to the City's Project Manager for approval before the secondary system analysis is performed.

## **6.4 Secondary System Modeling**

For the closed systems, City approved industry standard software selected from the hydraulic modeling matrix in the SOP will be used to evaluate hydraulic performance. The selection of the actual model type will be discussed with the City during the model selection process (Task 2).

For open channel systems, cross sections will be developed from available topographic mapping (LiDAR) and channel dimensions measured in the field with a tape. Cross sections will be taken at sufficient intervals from the LiDAR information such that the head-loss between sections is limited to 0.5' or less unless impractical. Water surface profiles shall be determined for the 2-, 10-, 25-, 50-, and 100-year storm events for existing and future conditions. Starting water surface elevations (WSELs) will be based on either the slope area method or the WSELs developed as part of the statewide FEMA mapping project.

Selection of the appropriate starting WSEL will be discussed and agreed upon with the City prior to finalizing the modeling and will be documented in the final report.

The existing conditions primary and secondary system model will be submitted to the City's representative for review and comment. One round of review comments will be provided to CDM Smith via email, with a follow-up meeting in Raleigh to be attended if needed. CDM Smith will address the comments and document the comments, responses, and any resulting changes to the model(s). The existing conditions models will be reviewed and comments addressed prior to conducting the future conditions modeling. The future conditions primary and secondary system model will be submitted to the City's representative for review and comment, with up to one round of comments provided.

## **6.5 Model Validation**

Stormwater models will be validated utilizing high water marks, crest gauge results (if available), regression equations and USGS gauges (if available), recent floodplain mapping efforts performed by the State, and USGS Regional Relations developed for peak discharges, as well as other pertinent data provided by the City or the public. All validation efforts will be documented and reported to the City. Upon completion of the validation process, runoff hydrographs will be computed with results being presented to the City for their approval prior to beginning any hydraulic modeling.

## **6.6 Floodplain Delineation and Mapping**

CDM Smith shall delineate riverine-generated floodplains for the existing and future 25- and 100-year floods for all of the primary open drainage systems. The mapping of floodplains will be compared to the effective FEMA floodplains for consistency, but may differ based on different hydrologic modeling approaches. The limits of the future floodplain mapping will extend upstream to the limits of the open channel conveyance system.

## **6.7 Determine High Risk Areas for 25-year Detention**

CDM Smith will identify undeveloped areas that should be considered high risk requiring 25-year detention. Those areas will be identified with the following protocol:

- Identify undeveloped areas greater than 25 acres that are located upstream of existing flooding problems.
- Utilizing the future conditions hydrologic model developed in Task 6.1, create a future conditions scenario with 25-year detention for areas identified above. Multiple scenarios will be created to evaluate the impact of potential developments individually and collectively.
- Evaluate peak flows from the 25-year detention models utilizing the hydraulic model developed in Task 6.2.
- Compare water surface elevations from the future conditions model developed in Task 6.1 (assumes 10-year detention) to the 25-year detention models. Areas where an improved level of service is provided as a result of 25-year detention shall be identified as high risk. Improved level of service is identified as the following:

- Downstream infrastructure at roadway crossing now conveys a less frequent (larger) storm event. Storms evaluated will be the 2-, 10-, 25-, 50-, and 100-year storms.
- The risk of flooding at downstream houses and businesses is reduced when evaluating the storms listed above. The risk of flooding is determined by evaluating where a floodplain intersects a house or business or other structure in plan view based on GIS planimetrics and aerial photography. Finished floor elevations will not be surveyed for this task. For the purposes of this study improved level of service occurs when homes or businesses are removed from the floodplain of one of the evaluated storms as a result of the 25-year detention.
- The potential future development areas that contribute drainage to these high risk areas, including areas within City limits and the City's ETJ, shall be identified as areas considered for 25-year detention. Areas will be reviewed with the City to determine those zones that shall be classified for 25-year detention. These zones shall be provided to the City in shapefile format for the Harris Mill Run/Schoolhouse Branch and Johnsons Mill Run/Parker Creek watersheds.

## **7.0 Watershed Master Plan**

### **7.1 Flood Hazard Mitigation Alternative Development**

Based upon the modeling results, portions of the storm drainage system not meeting established design standards will be identified and prioritized for possible improvements. Citizen and City Staff input will be cross-referenced to the model results to determine problems that may have been misidentified, that should be classified as maintenance or nuisance issues, or that may not qualify for service under the established project guidelines.

Once the problem areas have been identified, improvement options will be considered that may include:

- Upgrade of the entire drainage system to meet established design criteria;
- Upgrade of portions of the drainage system to lesser design standards;
- Use alternative best management practices for water quantity and quality control, such as detention ponds or Best Management Practices;
- Analyze existing and proposed regional stormwater facilities such as Vidant Medical Center Pond and Moyewood Pond to determine if the facility can be expanded or retrofitted to produce additional water quality and quantity benefits; and
- Alternative alignments and materials to minimize construction cost and impacts to private property, transportation systems, and other existing infrastructure.

Up to three alternatives may be included for each problem area. When possible, atypical and innovative solutions will be considered to reduce cost and provide solutions which optimize the drainage system's capacity/functionality and long-term condition while balancing the important issues of neighborhood aesthetics and public relations. Performance standards for the recommended stormwater system improvements under existing land use conditions will be evaluated. The function of the recommended

improvements under potential future build-out conditions based upon available zoning will also be considered.

## **7.2 Water Quality Retrofits and Bank Stability Alternatives**

Based on the Engineering Field Investigation and Stream Walk completed in Task 3.3, CDM Smith will recommend bank stabilization projects to protect structure foundations and utilities, and reduce sediment loads to the streams. In some instances stream restoration projects may be recommended, particularly if the proposed restoration will mitigate for other recommended flood control projects.

Water quality retrofit projects (BMPs) will be recommended to provide water quality treatment of stormwater runoff. Up to 20 candidate projects will be identified through GIS analysis and discussions with City staff. CDM Smith will perform site investigations for the candidate sites to identify the top 10 sites for conceptual design. Pollutant load reductions for each proposed BMP shall be calculated using the Tar Pam Coastal nutrient loading rates provided by DWR. The BMP Retrofit Opportunity Table will be completed for each of the candidate projects.

## **7.3 Evaluate Capital Construction Costs**

Capital Improvements will be recommended and a budget (planning level) cost analysis will be computed using unit costs provided in the SOP. Budget costs for improvements shall include, at a minimum, installation of the following elements: storm drainage improvements, channel restoration and stabilization materials, grading, necessary street improvements, water and sewer utility relocations (if the utility is located within a specific utility easement instead of the public right-of-way), erosion and sediment control measures, traffic control measures, miscellaneous items (e.g. fencing, walls, etc.), environmental mitigation costs and easement acquisition estimates, and stormwater Best Management Practices (BMPs) as appropriate. Unit costs identified for the Capital Improvements which are not included in the unit prices provided in the SOP will be submitted to the City's representative, who will develop and provide the additional unit costs for use in budgeting costs for improvements.

It is understood that the City and/or its representative will update existing unit costs as needed and supply that information to CDM Smith.

## **7.4 Prioritize Projects**

The prioritization matrix that was developed in coordination with the City as part of the SOP will be used to rank the recommended projects based on factors such as, public safety, level of service, flood reduction benefits, water quality improvements, capital costs, private property impacts, permitting requirements, funding availability, etc.

The draft CIP prioritization and cost estimates will be submitted to the City and its representative for review and comment. CDM Smith will participate in a meeting to discuss the review comments. CDM Smith will address the comments and document the comments, responses, and any resulting changes to the CIP prioritization. The City's representative will use the final watersheds CIP prioritization list in conjunction with the other City watersheds' lists to develop the City-wide CIP prioritization list.

## 7.5 Draft Watershed Plan Report

The draft watershed plan report will be prepared in accordance with the SOP. Individual reports will be developed for each watershed (Harris Mill Run/Schoolhouse Branch and Johnsons Mill Run/Parkers Creek). They will include an executive summary as well as supporting documentation for all the recommended projects. Permitting requirements for each proposed project will be summarized including the expected permits required, potential mitigation requirements, and summarization of any discussions with representatives from regulatory agencies. Upon completion of the draft report CDM Smith will submit three (3) copies of the report to the City for review.

CDM Smith will meet with City staff to review comments/questions on the draft report.

## 7.6 Final Watershed Plan Report

CDM Smith will incorporate City Staff comments into a final planning report for each watershed. Two (2) hard copies and an electronic copy on CD ROM of the final reports will be submitted to the City as the final deliverable for the Watershed Inventory and Master Plan.

## 8.0 Project Meetings

Anticipated meetings for this project include the following:

- Project kickoff meeting (1)
- In-person quarterly project progress meetings (5)
- Conference calls will be held in the months that do not have an in-person project progress meeting scheduled (12)
- Watershed CIP prioritization meeting for Harris Mill Run/Schoolhouse Branch and Johnsons Mill Run/Parker Creek (1)
- City Council meeting to present Master Plan (1)
- Inventory and Geodatabase Review (2)
- Draft Report review meeting (1)

The project meetings included above will be held between CDM Smith and the City during the project at mutually agreed upon times within the project. An estimate of when these meetings will likely occur has been included in the project schedule. The purpose of these meetings will be to guide the Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run Study in order to develop alternatives and recommendations of the best and most cost-effective methods of managing stormwater in the Harris Mill Run/Schoolhouse Branch and Parker Creek/Johnsons Mill Run watersheds. It is understood that all meetings will be facilitated by the City and/or its representative and that they will prepare meeting agendas and meeting minutes for each of the project meetings.

## 9.0 Unspecified Additional Services

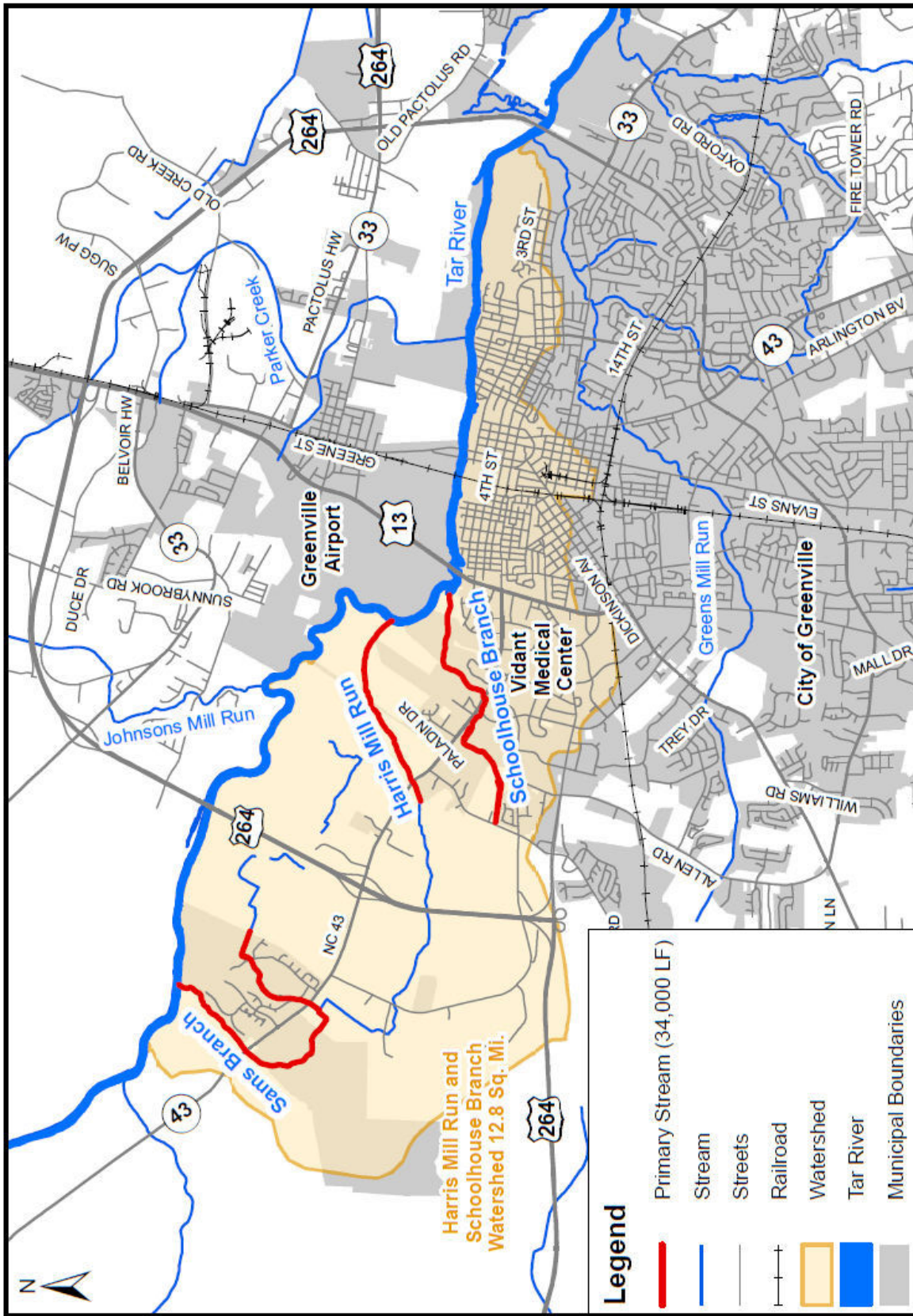
### 9.1 Geodatabase Design (OPTIONAL TASK)

CDM Smith will work with the City to develop an updated city-wide stormwater GIS geodatabase design within the Esri 10.x software environment to meet current industry standards and take advantage of the full suite of Esri applications and tools. This geodatabase design will contain the layers (pipes, manholes,

etc.), attributes for each layer (pipe size, material, etc.) and, domain values (valid values for each attribute) and will be used for this project., and related topology/connectivity rules. CDM Smith will reference the City's existing geodatabase design, along with Esri data model standards, to develop a draft design. CDM Smith will meet with the City and Consultants to review the design and will finalize based on comments. The geodatabase design will contain place-holders for stormwater infrastructure data, as well for difficult access structures, illicit connection point locations, and public outreach problem areas. Once accepted the current GIS data will be migrated to the new Geodatabase Design.

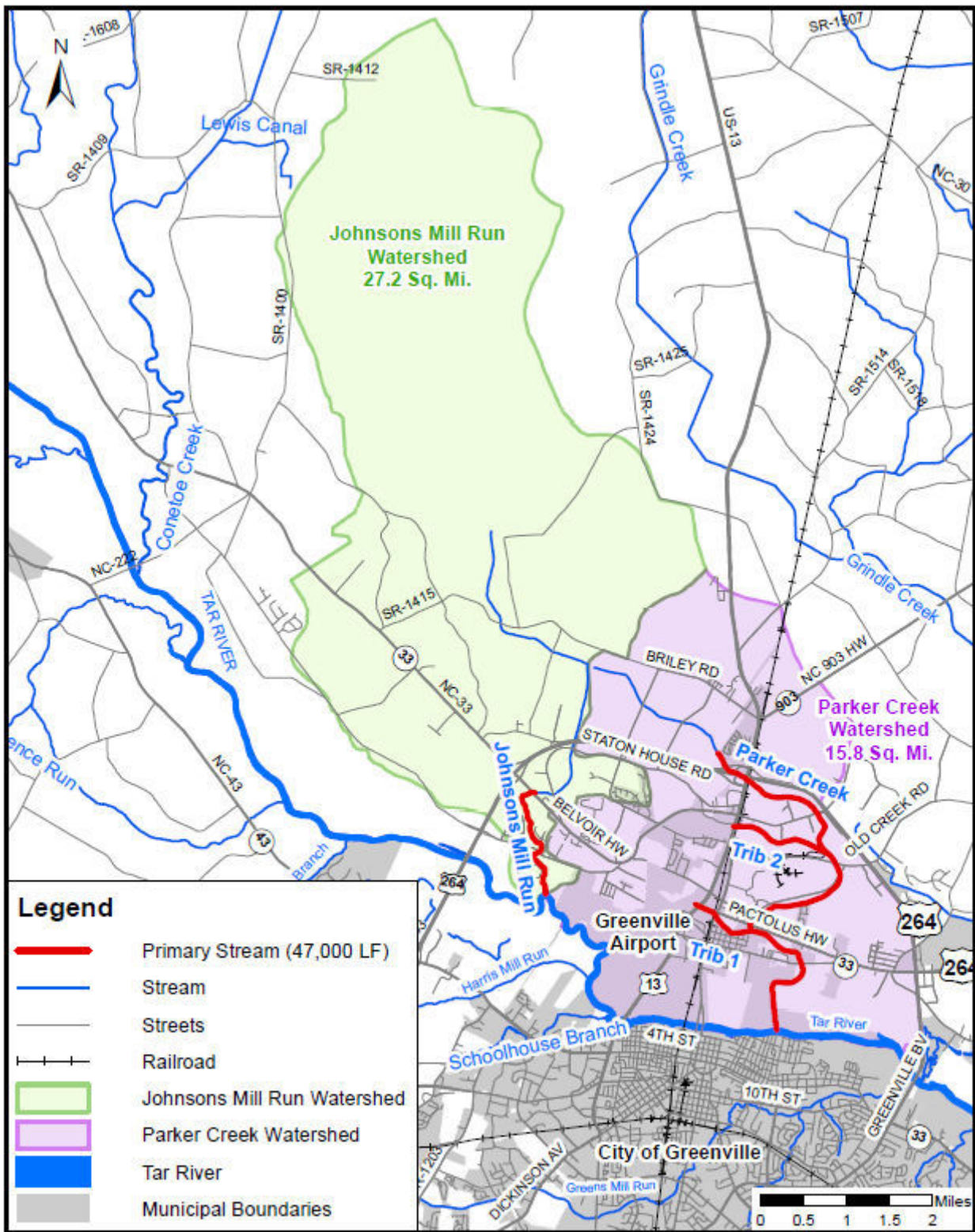
## **9.2 Contingency**

This task is to be used to provide any additional services requested by the City that were not covered in the basic scope of services outlined above. No services will be provided under this task without prior written approval from the City's Project Manager and all services provided will be provided for a lump sum fee to be negotiated based on the services to be rendered.



Greenville Watershed Master Plan  
Attachment 1. Harris Mill Run / Schoolhouse Branch Watershed





Greenville Watershed Master Plan  
Attachment 2. Johnsons Mill Run / Parker Creek Watersheds

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated \_\_\_\_\_, 2014.

## **Owner's Responsibilities**

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

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

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

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

responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.

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

This is **EXHIBIT C**, consisting of 2 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, 2014.

**Payments to Engineer for Services and Reimbursable Expenses**  
**COMPENSATION PACKET BC-1: Basic Services – Lump Sum**

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

**ARTICLE 2 – OWNER’S RESPONSIBILITIES**

C2.01 *Compensation for Basic Services (other than Tasks 4.3 through 4.6) – Lump Sum Method of Payment. Compensation for Tasks 4.3 through 4.6 – Unit Cost Basis*

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$744,490 based on the following estimated distribution of compensation:

- |   |  |
|---|--|
| a. Task 1 – Project Management                | <u>\$48,470</u>                            |
| b. Task 2 – Model Selection Matrix            | <u>\$2,690</u>                             |
| c. Task 3 – Data Collection                   | <u>\$45,325</u>                            |
| d. Tasks 4.1 & 4.2 – GIS Management           | <u>\$81,740</u>                            |
| e. Tasks 4.3 to 4.6 – Stormwater Inventory    | <u>\$197,620</u> (see unit structure cost) |
| f. Task 5 – Public Involvement                | <u>\$48,450</u>                            |
| g. Task 6 – Hydrologic and Hydraulic Modeling | <u>\$120,415</u>                           |
| h. Task 7 – Watershed Master Plan             | <u>\$116,340</u>                           |
| i. Task 8 – Project Meetings                  | <u>\$21,980</u>                            |
| j. Task 9 – Unspecified Additional Services   | <u>\$35,290</u>                            |
| k. Reimbursable Expenses                      | <u>\$26,170</u>                            |

2. Engineer may alter the distribution of compensation between individual phases noted in Section C2.01A.1 to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount for those tasks unless approved in writing by the Owner.

3. The Lump Sum in Section C2.01.A.1 includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
4. The portion of the Lump Sum in Section C2.01.A.1 amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.
5. The Unit Price Basis for Basic Services Tasks 4.3 to 4.6. Compensation shall be paid pursuant to the unit price and rates set forth in the table below. If the number of structures inventoried is less 75 percent of the total estimated structures, Engineer reserves the right to renegotiate the unit costs with the Owner.

**Field Stormwater Inventory Table – Unit Structure Rates (see 1.e)**

<b>Structure Type</b>	<b>Total Unit Rate</b>	<b>Estimated Structures</b>	<b>Estimated Fee</b>
Closed System Structures (manholes, catch basins, pipe ends, etc.)	\$87	1,830	\$159,210
Bridges	\$470	20	\$9,400
Primary Open System Channel Cross-Section (four-point)	\$235	60	\$14,100
Secondary Open System Channel Measurements (four-point)	\$60	230	\$13,800
BMP Outfall Structure	\$85	2	\$170
Detention Facility	\$470	2	\$940
<b>Totals</b>		<b>2,144</b>	<b>\$197,620</b>

Secondary system analysis in addition to the length specified in Section 6.4 will be provided for \$2,250 per 1,000 feet of system studied. The additional analysis will include hydrologic and hydraulic modeling, development of flood mitigation alternatives, evaluation of capital cost, inclusion in prioritization matrix, and the watershed report. The price is applicable during the timeframe of the Hydrologic and Hydraulic Modeling task (8.0) and the Watershed Masterplan task (7.1 to 7.4) as defined in the attached schedule. Requests for additional modeling after submission of the draft watershed plan will be renegotiated at that time. Any additional modeling associated with this task will be performed only after written authorization is provided by the City’s designated Project Manager.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 18 months (see Attached Schedule). If such

period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.



# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Presentation on the status of private streets within the City of Greenville

**Explanation:** **Abstract:** There are approximately 16 lane miles of private streets within the City limits. The estimated cost to repair and accept these streets is approximately \$6 to \$10 million. Additionally, should the City eventually annex the area in the Extra Territorial Jurisdiction (ETJ), there are another 17 lane miles of private roads.

**Explanation:** The City currently has a private street development standard that has been used intermittently. Approximately 16 lane miles of the City's 700+ lane miles of streets are classified as private. There have been several inquiries recently about the City accepting private streets. As a result, the City's Public Works, Community Development, and Fire/Rescue Departments have jointly met to discuss and analyze the fiscal, zoning, and public safety implications associated with this potential acceptance.

The City's private street requirements have changed with the most recent update to the City's Manual of Standard Design and Details. The current standard is for a 40-foot easement on private streets versus 50-foot right-of-way for a public street and 24-foot pavement width for private streets versus a 28-foot width for public streets. Another key private street consideration is the allowance of on-street parking. Besides the costs to upgrade the streets as shown above, additional costs may occur if other infrastructure requires improvements. The maintenance of these private streets has always been the responsibility of the Homeowners Associations or property owners.

The current City Code requirements for acceptance of private streets include the following:

- Must be within the City limits
- Must meet minimum design standards for public streets
- Inspections and repairs are completed before acceptance
- Right-of-way dedication occurs prior to acceptance



Benchmark data of peer cities indicates that other jurisdictions have moved to a standard that all streets, public and private, must be built to public street standards to avoid future requests of this nature and their long term financial implications. A presentation on private streets will be made at the City Council meeting.

**Fiscal Note:**

The cost to the City to accept all private streets based on required improvements to streets, stormwater, sidewalks, curbs, gutters, and other necessary infrastructure could be between \$6 to \$10 million.

**Recommendation:**

Council provide direction as to the following options:

1. Removing private street options from the City's Manual of Standard Design & Details (i.e. eliminating any new private streets) and continuing current policy to accept private streets (recommended)
2. Accepting all private streets within City limits
3. Modifying acceptance requirements in some manner, to be determined

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# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

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**Title of Item:** Presentation of the City's proposed fiscal year 2014-2015 operating budget and fiscal year 2015-2016 financial plan

**Explanation:** **Abstract:** Staff will present the City's proposed fiscal year 2015 operating budget and fiscal year 2016 financial plan.

**Explanation:** As provided in the approved budget schedule, staff will present the City's proposed fiscal year 2015 operating budget and fiscal year 2016 financial plan during the May 5, 2014, City Council meeting.

In compliance with Section 160A-148(5) of the North Carolina General Statutes, the City Council will hold a public hearing on Monday, June 9th and consider adopting the annual budget ordinance on Thursday, June 12th.

**Fiscal Note:** The final amount for the City's budget will be determined by City Council action at the June 12, 2014, City Council meeting.

**Recommendation:** Receive the presentation on the proposed fiscal year 2015 operating budget and fiscal year 2016 financial plan, and provide feedback and direction.

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 [2015 COG Budget](#)



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## MEMORANDUM

To: Honorable Mayor and City Council Members

From: Barbara Lipscomb, City Manager

Date: April 30, 2014

Subject: City Manager's proposed FY 2015 Budget and FY 2016 Financial Plan

Presented herein is the proposed FY 2015 Budget and FY 2016 Financial Plan for your review and consideration. The proposed budget and financial plan were developed using the City's anticipated revenues, including ad valorem revenues based upon the City's current tax rate of \$.52 per \$100 of assessed property valuation. North Carolina General Statutes require presentation of a balanced budget at least 10 days prior to the public hearing on the budget (scheduled for June 9<sup>th</sup>) and adoption of a balanced budget before July 1st.

The FY 2015 Budget and FY 2016 Financial Plan include the following City funds: General, Public Transportation, Sanitation, Fleet Maintenance, Stormwater, Debt Service, Housing, Health Insurance, Capital Reserve, and Vehicle Replacement. The budget document also includes separate budgets and financial plans for Greenville Utilities Commission, Convention and Visitors Authority, and Sheppard Memorial Library. The General Fund, the City's primary general government operating fund, is budgeted at \$76,310,061 for FY 2015, a 10% decrease from the current year's adopted amount of \$84,803,595, and \$76,684,680 for FY 2016. The proposed FY 2015 City of Greenville total operating budget is \$118,996,516 and for FY 2016 is \$120,437,154.

BUDGET COMPARISON CITY MANAGED FUNDS							
	FY 2012	FY 2013	FY 2014	%	FY 2015	%	FY 2016
Fund	Actual	Actual	Original	Change	Proposed Original	Change	Proposed Plan
General Fund	\$ 74,729,490	\$ 70,306,852	\$ 84,803,595	-10.02%	\$ 76,310,061	0.49%	\$ 76,684,680
Special Revenue Funds	2,583,675	1,851,584	1,453,265	14.72%	1,667,227	3.39%	1,723,762
Internal Service Fund	7,128,526	7,636,053	21,893,135	-6.37%	20,499,414	4.11%	21,342,110
Debt Service	8,975,194	24,337,758	4,503,760	11.58%	5,025,316	-2.48%	4,900,805
Enterprise	10,362,013	13,165,002	21,770,879	-28.83%	15,494,498	1.88%	15,785,797
	\$ 103,778,898	\$ 117,297,249	\$ 134,424,634		\$ 118,996,516		\$ 120,437,154

### General Fund Budget Overview

- Due primarily to the one-time appropriation of fund balance for capital needs in the current fiscal year, the General Fund's recommended FY 2015 budget reflects a reduction of \$8.5M, or 10%, from the FY 2014 original budget.
- The FY 2015 budget and FY 2016 financial plan are designed to continue current service and programmatic levels. **No enhanced service levels or new programs are proposed other than a new West Greenville Down Payment Assistance Program as previously requested by City Council (\$20k).**

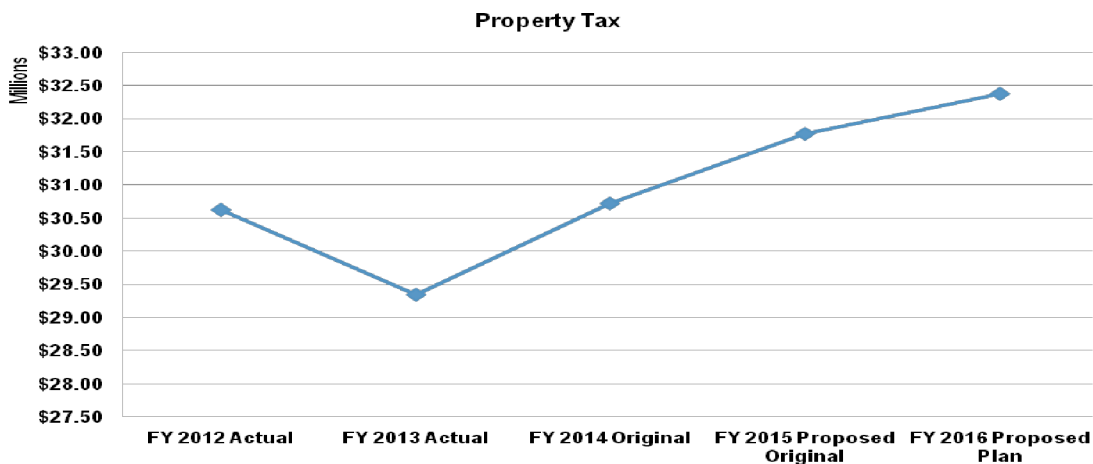
- This budget and financial plan are being developed during a time of economic and legislative uncertainty. The City’s revenues are growing much slower than before the national recession and various proposals associated with state-level tax reform may adversely impact City revenues in future years.
- Due to revenue levels not being sufficient to fully address all needs, multiple functional areas are proposed with partial funding. These areas include maintenance of existing facilities, transportation, capital and personnel. Additional details related to needs and proposed funding allocations associated with these areas are provided later in this memorandum.

**~GENERAL FUND REVENUES~**

	<b>FY 2012</b>	<b>FY 2013</b>	<b>FY 2014</b>	<b>Inc/ (Dec)</b>	<b>FY 2015 Proposed</b>	<b>Inc/ (Dec)</b>	<b>FY 2016 Proposed</b>
	<b><u>Actual</u></b>	<b><u>Actual</u></b>	<b><u>Original</u></b>		<b><u>Original</u></b>		<b><u>Plan</u></b>
Property Tax	\$30,624,236	\$29,342,420	\$30,725,377	3%	\$31,767,723	2%	\$32,376,898
Sales Tax	14,694,475	14,672,441	14,910,654	2%	15,236,081	1%	15,388,440
Utilities Franchise Tax	5,488,817	5,441,125	5,650,969	2%	5,763,988	2%	5,879,268
GUC Transfers In	5,763,630	5,761,460	6,482,380	0%	6,485,183	-4%	6,210,609
Powell Bill - State Allocation	2,125,754	2,171,367	2,190,005	1%	2,215,848	4%	2,305,369
Rescue Fees	2,875,125	3,237,867	3,109,570	-2%	3,055,250	1%	3,085,803
Investment Earnings	951,911	62,362	1,416,062	-61%	551,012	0%	553,765
Motor Vehicle Fee	943,082	933,412	947,925	12%	1,065,237	2%	1,086,344
All Other Revenues	<u>11,262,460</u>	<u>8,684,398</u>	<u>11,237,908</u>	-11%	<u>10,019,739</u>	-7%	<u>9,274,599</u>
<b>Subtotal</b>	<b><u>\$74,729,490</u></b>	<b><u>\$70,306,852</u></b>	<b><u>\$76,670,850</u></b>	<b>-1%</b>	<b><u>\$76,160,061</u></b>	<b>0%</b>	<b><u>\$76,161,095</u></b>
Appropriated Fund Balance							
General Fund			\$7,047,025		\$150,000		\$250,000
Powell Bill			<u>1,085,720</u>				<u>273,585</u>
<b>Total</b>	<b><u>\$74,729,490</u></b>	<b><u>70,306,852</u></b>	<b><u>\$84,803,595</u></b>	<b>-10%</b>	<b><u>\$76,310,061</u></b>	<b>&lt;1%</b>	<b><u>\$76,684,680</u></b>

**PROPERTY TAX**

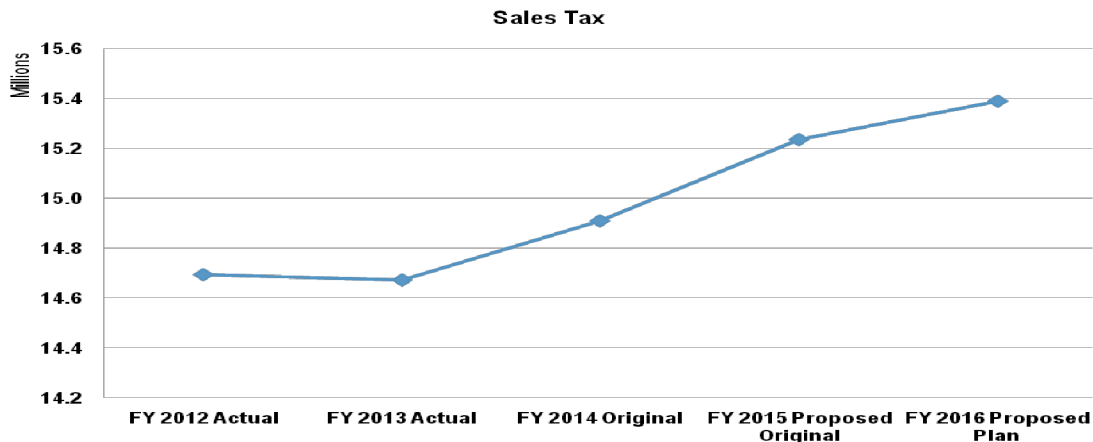
Prior to the 2008-2009 economic recession, property tax growth averaged six percent consistently. As a result of the recession, that growth slowed significantly from FY 10 – FY 12, and the City realized a reduction in property tax revenue in FY 13 as a result of a countywide property revaluation. In FY 2014, the assessed value for the City of Greenville is projected to be \$5.9 billion. In FY 2015 assessed values are projected to grow to \$6.1M, equating to three percent growth. For FY 2015, each 1¢ of the tax rate is anticipated to generate \$597,000. The FY 2015 budget anticipates a continuation of the 52¢ rate. Total property tax collections for FY 2015, therefore, are anticipated to be \$31.8 million. This revenue source is projected to generate 42% of total General Fund revenues in FY 15.



**SALES TAX**

This revenue source is projected to generate 20% of total General Fund revenues in FY 2015. Sales Tax is historically difficult to project because it is a State-collected and distributed revenue. Changes in the distribution formula, distribution errors that required repayment, and variations in the timing of refunds and reallocations prevent prior years from being reliable indicators of future year distributions. Additionally the 2013 Tax Reform Act broadens the tax base for applicable sales tax. Improvements in the economy will impact the sales tax revenue as well. Management has recommended a growth rate of approximately one percent for both the proposed FY 2015 budget and for the FY 16 financial plan.

The General Assembly passed a number of exchanges or swaps involving sales tax revenues during the 2013 legislative session. The State advises that these changes should not have a negative fiscal impact on municipalities, but without collection history, there remains some degree of uncertainty regarding their impact. Changes for sales tax beginning in late FY 2014 and fully impacting FY 2015 and beyond include sales taxes on service contracts for maintenance and repair of automobiles and goods, expansion of the sales tax to cover admissions to movies, live entertainment and museums, the elimination of the exemption from sales tax for nutritional supplements sold by chiropractors, food sold in public and private college dining rooms, and most newspaper sales. Legislation also eliminates the annual sales tax holiday, the Energy Star sales tax holiday, the exemption for bakery items sold in bakery thrift shops, and the exemption for certain items sold to farmers with gross receipts under \$10,000. The new legislation also swaps the currently received Franchise Taxes for sales tax on electricity and natural gas.



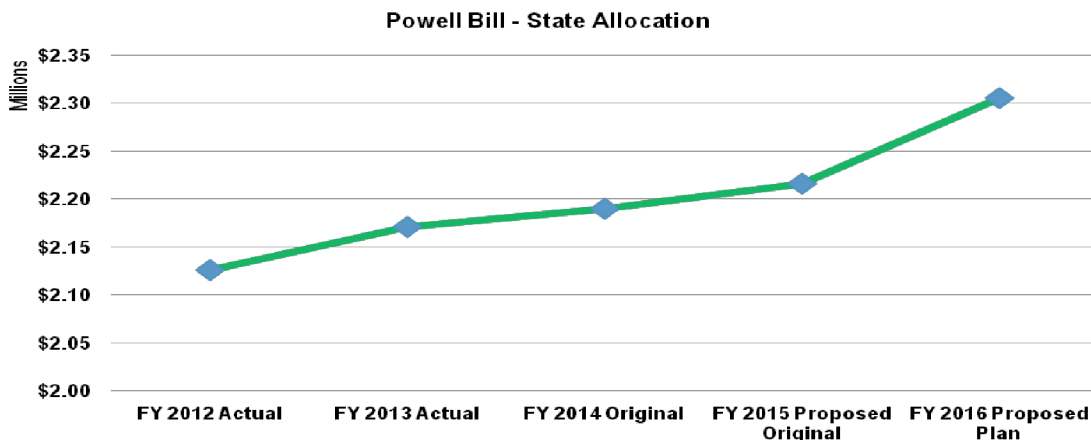
**INTERGOVERNMENTAL REVENUE**

Intergovernmental revenue sources, excluding sales tax, are revenues received from other government entities, such as Federal, State, other local governments, or grants from an agency of those governments. Intergovernmental Revenues represent 15% of General Fund revenues. The two largest sources of intergovernmental revenues, Utility Franchise Tax and Powell Bill receipts, comprise eight percent and three percent, respectively.

The City’s share of the Utility Franchise Tax is based primarily on the actual receipts from electric service sold within the municipal boundaries (a small and declining portion comes from telephone service in the municipality). The electric component of this revenue source is highly sensitive to the weather. The revenue base for Utility Franchise Tax previously was a 3.2% tax. As previously stated, the 2013 Tax Reform law eliminates the state and local franchise taxes on electricity and natural gas and applies the combined general sales tax rate of seven percent to sales of both. The legislation provides municipalities with 44% of the State sales tax on electricity and 20% of the State sales tax on natural gas collected. Each municipality will get a quarterly distribution equal to the amount of electricity and natural gas franchise taxes it receives for the same quarter during FY 2014. After such distribution, any remaining money would be divided among cities and towns on a percentage of ad valorem bases.

Over the past five years, Utility Franchise taxes have experienced a 3.65% increase. Some of the increases in the past five years have been driven by increases in rates. The City is projected to meet budgeted revenues for this source in FY 14, but recognizing that rate increases are not an annual event, projections for FY 15 and FY 16 are based upon two percent growth each year.

Revenues from the Powell Bill State allocation are based upon collections on motor vehicle fuels and motor vehicles sales. The distribution to municipalities is based on a formula that uses population as 75% of the allocation and the number of city-maintained street mileage as 25% of the calculation at July 1 of each fiscal year. The mileage rate and the per capita distribution rate change annually. These State-shared revenues are restricted to street and sidewalk construction and maintenance purposes and are tracked in a separate fund, Powell Bill. Fluctuations in State population and the size and number of streets drive this revenue. Revenues from this source are projected to be relatively flat in FY 15 and FY 16.



**LICENSES, PERMITS, & FEES**

Revenue from Licenses, Permits, and Fees for the City comprises six percent of total General Fund revenue. The largest source of revenue in this category is Building Inspections Permits and Fees. Prior to the 2008 economic recession and the collapse of the housing market, the Inspection Division and related permits and fees experienced phenomenal growth. FY 2009 saw a reduction in fees by more than 50%. In the years since 2009, growth has been uncertain showing fluctuations up and down. Due to the startup of several large projects in the City, FY 2014 revenues are expected to be up 4.5% over FY 2013. Inspections revenue is projected at \$714,700 for FY 2014. The revenue is expected to increase in FY 2015 to \$875,550, or 22.51%. The estimate is projected to be \$945,350 for the FY 2016 financial plan. The rising revenues, although modest, indicate that the local economy is improving.

Per revised City ordinance, adopted April 7, 2014, the annual Privilege License tax for business activity, not otherwise set forth in the schedule of fees or by state statute, shall be calculated as follows:

Gross Receipts < \$25,000	Gross Receipts > \$25,000
\$50.00	\$50.00 + Additional \$.50 per \$1,000

This change affects privilege licenses expiring June 30, 2014 and removes the previous \$2,000 maximum cap. The license renewal year is July 1, 2014 through June 30, 2015. For FY 2015, as a result of this modification, \$407,363 in additional revenue is anticipated, yielding a total of \$1,127,495. For the FY 16 financial plan, an increase of one percent is projected, yielding \$1,133,316.

**SALES & SERVICE FEES**

Sales & Service Fees revenue for the City comprises six percent of total General Fund revenue. The two largest sources of revenue in this category are Rescue Transport and Recreation Fees, representing four percent and two percent of total General Fund revenue, respectively. Greenville is one of a few cities in North Carolina that provides emergency advanced life support (ALS) medical services and ambulance transportation. Medical rescue/transport revenue generates four percent of total General Fund revenue. Anticipated general growth is based on increases in the City’s population. A projected growth rate of one percent is used for outlying years.

Recreation and Parks revenues are generated from general recreation and parks services, Bradford Creek Golf Course, and the Aquatics and Fitness Center. The five-year average for these revenues is flat at .37%. Revenues projected to year end for FY 2014 remain flat when compared to prior year; however, this year’s winter weather was unusually poor for recreational activities. Revenue projections for FY 15 depict a modest increase of two percent (\$1,980,900) and .50% (\$1,990,805) for the FY 16 financial plan.

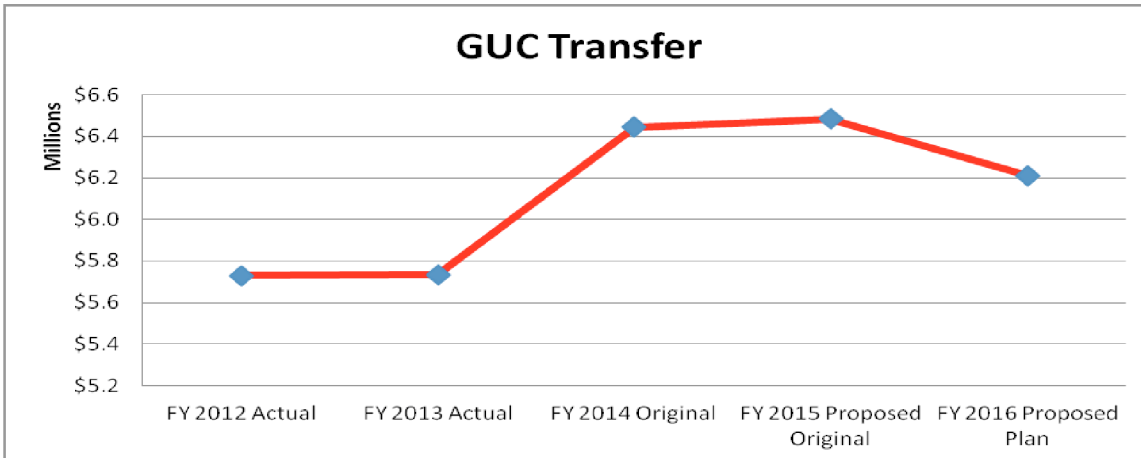
**INTEREST ON INVESTMENTS**

This revenue stream has been very volatile since the economic downturn in 2008. This category reflects all interest earned within the General Fund from coupon payments on investments to adjustments that are required based on the market rates as of the end of the fiscal year. Based on current investments and a new way of keeping investments in line with market throughout the year, it is estimated that current year investments will yield approximately \$500,000. Also impacting investment income is a reduction in the actual dollars available for investment. Until rates are more stabilized, projections include <1% for outlying years.

Investment income projected for FY 2015 is \$551,000 and \$553,765 for FY 2016, or <1% increase over FY 2015.

**GUC TURNOVER**

The turnover amount from GUC represents eight percent of anticipated General Fund revenues in the approved budget for FY 2014. These transfers are made based on a formula outlined in the Commission’s charter. The transfer has two components: (1) the base amount based on net fixed assets of the electric and gas systems less bonded indebtedness and (2) reimbursement for City street and park lighting expenditures.



Based on current GUC projections, the amount of the transfer for the first component of the formula is anticipated to be \$5,754,275 for FY 2015, representing an increase of \$64,660 from the current year projected amount of \$5,689,615. Due to the planned timing for GUC issuing debt obligation or bonds, the projection for this component for FY 16 is \$5,457,774, representing a five percent decrease. The street and park lighting reimbursement for FY 2015 is projected to be \$730,908 and for FY 16 \$752,835, which represents one-half of the anticipated annual expense for public lighting.

**APPROPRIATED FUND BALANCE**

A final revenue item that should be noted is the appropriated fund balance. This revenue source will represent dollars carried over to the next fiscal year from the prior fiscal year for specific purposes from previous budget years and dollars to offset any contingency funds that are provided. To date there have been no estimates made on what projects will carry forward from FY 14 to FY 15. The proposed FY 2015 budget contains a total appropriated fund balance of \$150,000 for contingency and \$200,000 is provided in FY 16 for the same purpose.

**~GENERAL FUND EXPENSES~**

As previously stated, the General Fund’s recommended FY 2015 budget reflects a reduction of \$8.5M, or 10%, from the FY 2014 original budget. This reduction is due primarily to the one-time appropriation of fund balance for capital needs in the current fiscal year. Significant issues associated with expenses are summarized below:

**PERSONNEL**

- No new positions are proposed in either year.
- Five frozen positions from current year remain unfilled for both years and funding for those positions has been eliminated.



- 1.5% market adjustment included for FY 2015 (total cost - \$521k). 1.25% market adjustment included for FY 2016 (total cost - \$434k).
- Health insurance funding for FY 2015 increased one percent (\$102k). This increase was mitigated by the significant increase budgeted in FY 2014 (\$1.4M) and because of positive current year fund results to date. A much larger increase (\$700k) is proposed for FY 2016.
- Proposed reclassifications / allocation modifications (total cost - \$25k)
  - ✓ IT: - 1 Systems Analyst IV to 1 Support Services Manager
  - ✓ IT: - Removal of 1.5 Help Desk Technicians (Designated Part Time) from the position allocation. These positions were mistakenly classified as designated part-time in FY 12, but have not been filled/used in that capacity.
  - ✓ F/R: - 1 Battalion Chief to 1 Life Safety Educator
    - Elimination of 1 vacant Grounds Maintenance Worker as department is using contracted services to address this need.
  - ✓ FS: - 1 Accounting Tech II to 1 Internal Auditor
  - ✓ FS: - 1 Warehouse Technician to 1 Administrative Assistant
  - ✓ FS: - 1 Collections Technician to 1 Collections Officer
  - ✓ FS: - 3 Accounting Technicians to 3 Accounting Generalist
  - ✓ HR: - 1 Training Officer and 1 Benefits Manager to 2 HR Generalist
  - ✓ HR: - 1 Staff Support Specialist I to 1 Staff Support Specialist III

## OPERATIONS

- Operations funding for FY 2015 has been decreased by over \$800k, or 5%, from FY 2014 original budget levels. This reduction comes from multiple areas within all departments including contracted services, equipment maintenance, fuel, and etc.

## CAPITAL

- Vehicle Replacement Fund continues to be funded and is sustainable.
- Facilities Improvement Program is partially funded with \$1M allocated for capital-related needs.
- Transportation needs (street resurfacing and sidewalks) are partially funded at \$750k (\$600k street resurfacing and \$150k sidewalks). Additional expenditures from appropriated fund balance approved as part of the FY 2014 budget are expected during FY 2015.
- Other Capital Items Funded Include:
  - ✓ Viper Radio System (\$125k) - Funded by Controlled Substance funds
  - ✓ Storage Area Network System (\$105k)
  - ✓ New Evidence Storage Building (\$250k)- Funded by Controlled Substance funds

- ✓ Town Common Improvements (\$150k)
- ✓ Comprehensive Plan Re-Write (\$140k)
- ✓ GTAC local contribution (\$178k)
- ✓ Economic development grant (\$50,000)

## UNFUNDED NEEDS

- **Facilities Improvement Program** – Annual investment for full sustainability is estimated at \$2.2M. Current shortfall: \$1.2M
- **Transportation Maintenance / Improvement Needs** – Annual investment for full sustainability (20-year resurfacing program and continued progress on sidewalks and signalization), not including major street reconstruction / streetscape projects: \$2.8M. Current shortfall: \$2.05M
- **Personnel** – Desire to pay at market rate. Need for FY 15:
  - ✓ Based upon CAI data - 2.4% (\$833k). Current shortfall: \$312k;
  - ✓ Based on Joint Pay and Benefits Committee Recommendation – 2.5% (\$868k). Current shortfall: \$347k;
- **Large Capital Projects:**
  - ✓ South Greenville Recreation Center - \$3.1M (potential cost share with County may reduce City cost)
  - ✓ Town Common Master Plan Improvements - \$10M - \$13M
  - ✓ 10<sup>th</sup> Street Connector Sidewalks and Enhancements - \$1.1M
  - ✓ Cotanche to Reade Alley Improvements - \$275k
  - ✓ Dickinson Avenue Improvements (streetscape and parking) – \$2.2M
  - ✓ State Theater - \$2.5M

It should be recognized that the capital projects identified above are a select few that have been discussed by City Council recently. A full listing of all capital needs was provided during the Capital Improvement Plan presentation provided to City Council on March 17, 2014.

Should City Council be interested in considering additional revenues to address one or more of the unfunded needs identified, the following table illustrates the additional revenues anticipated from various levels of ad valorem tax rate increases:

<b>Increase in Ad Valorem Tax Rate</b>	<b>FY 2015 Additional Revenues</b>
+\$ .01	\$ 597,000
+\$ .02	\$1,194,000
+\$ .03	\$1,791,000
+\$ .04	\$2,388,000
+\$ .05	\$2,985,000
+\$ .06	\$3,582,000

**Note:** The value of \$.01 on the tax rate for FY 15 is projected to be \$597k.

Please contact me if you have any questions prior to the scheduled May 5, 2014 presentation.

cc: Dave Holec, City Attorney  
Carol Barwick, City Clerk  
Chris Padgett, Assistant City Manager  
Bernita Demery, Director of Financial Services



# **General Fund**

## Budget Summary

# General Fund

## Summary

The General Fund is established to account for the revenues and expenditures in operating the general functions of a non-proprietary nature. This fund receives ad valorem tax revenues, state shared revenues, licenses, permits and fees. The major operating activities include general government, police, fire, public works, recreation and parks, and other governmental service functions.

## ORDINANCE NO. 14-

CITY OF GREENVILLE, NORTH CAROLINA  
2014-2015 BUDGET ORDINANCE

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

Section I: Estimated Revenue. It is estimated that the following revenues will be available for the City of Greenville during the fiscal year beginning July 1, 2014 and ending June 30, 2015:

## GENERAL FUND

## Unrestricted Intergovernmental Revenues:

Ad Valorem Taxes;		
Current Year Taxes - Operations	\$ 31,725,943	
Prior Year's Taxes and Penalties	41,780	
Subtotal		\$ 31,767,723
Sales Tax	\$ 15,236,081	
Video Programming & Telecommunication Services Tax	904,000	
Rental Vehicle Gross Receipts	124,440	
Utilities Franchise Tax	5,763,988	
Motor Vehicle Tax	1,065,237	
Other Unrestricted Intergovernmental Revenues	777,245	
Subtotal		\$ 23,870,991
Restricted Intergovernmental Revenues:		
Restricted Intergovernmental Revenues	\$ 1,530,912	
Powell Bill - State allocation payment	2,215,848	
Subtotal		\$ 3,746,760
Licenses, Permits, & Fees:		
Privilege Licenses	\$ 1,127,495	
Other Licenses, Permits & Fees	4,404,314	
Subtotal		\$ 5,531,809
Sales and Services:		
Rescue Service Transport	\$ 3,055,250	
Parking Violation Penalties, Leases, and Meters	430,650	
Other Sales and Services	472,577	
Subtotal		\$ 3,958,477
Other Revenues:		
Other Revenue Sources	\$ 248,106	
Subtotal		\$ 248,106
Investment Earnings:		
Interest on Investments	\$ 551,012	
Subtotal		\$ 551,012
Other Financing Sources:		
Transfer from Greenville Utilities Commission	\$ 6,485,183	
Appropriated Fund Balance	150,000	
Other Transfers	-	
Subtotal		\$ 6,635,183
TOTAL GENERAL FUND REVENUES		<u>\$ 76,310,061</u>

DEBT SERVICE FUND

Powell Bill Fund	\$	62,389	
Occupancy Tax		793,303	
Transfer from General Fund		<u>4,169,624</u>	
<b>TOTAL DEBT SERVICE FUND</b>			<b><u>\$ 5,025,316</u></b>

PUBLIC TRANSPORTATION FUND

Operating Grant 2013-2014	\$	1,414,408	
Capital Grant 2013-2014		434,712	
Planning Grant 2013-2014		32,103	
State Maintenance Assistant Program		285,000	
Hammock Source		955	
Other Revenue		1,912	
Pitt Community College Bus Fare		9,553	
Bus Fares		244,187	
Bus Ticket Sales		107,234	
Pitt County Bus Service		4,776	
Transfer from General Fund		<u>711,443</u>	
<b>TOTAL TRANSPORTATION FUND</b>			<b><u>\$ 3,246,283</u></b>

FLEET MAINTENANCE FUND

Fuel Markup	\$	1,784,792	
Labor Fees		1,003,100	
Pool Car Rentals		13,500	
Other Revenue Sources		<u>1,684,053</u>	
<b>TOTAL FLEET MAINTENANCE FUND</b>			<b><u>\$ 4,485,445</u></b>

SANITATION FUND

Refuse Fees	\$	7,219,314	
Extra Pickup		5,000	
Recycling Revenue		10,000	
Cart and Dumpster		140,000	
Solid Waste Tax		54,000	
Other Revenue		146,500	
Bond Proceeds		370,000	
<b>TOTAL SANITATION FUND</b>			<b><u>\$ 7,944,814</u></b>

STORMWATER MANAGEMENT UTILITY FUND

Utility Fee	\$	4,301,401	
Recycling / Scrap Metal		2,000	
Bond Proceeds		-	
Appropriated Fund Balance		<u>-</u>	
<b>TOTAL STORMWATER MANAGEMENT UTILITY FUND</b>			<b><u>\$ 4,303,401</u></b>

COMMUNITY DEVELOPMENT HOUSING FUND

Annual CDBG Grant Funding	\$	851,448	
HUD City of Greenville		357,976	
Transfer from Small Business Loan		-	
Transfer from General Fund		457,803	
		<u>          </u>	
TOTAL COMMUNITY DEVELOPMENT HOUSING FUND			<u><u>\$ 1,667,227</u></u>

HEALTH FUND

Employer Contributions - City of Greenville	\$	9,054,863	
Employee Contributions - City of Greenville		1,665,942	
Other Health Sources		2,384,664	
		<u>          </u>	
TOTAL HEALTH FUND			<u><u>\$ 13,105,469</u></u>

VEHICLE REPLACEMENT FUND

Transfer from Other Funds	\$	2,687,394	
Appropriated Fund Balance		221,106	
		<u>          </u>	
TOTAL VEHICLE REPLACEMENT FUND			<u><u>\$ 2,908,500</u></u>
TOTAL ESTIMATED CITY OF GREENVILLE REVENUES			<u><u>\$ 118,996,516</u></u>

SHEPPARD MEMORIAL LIBRARY FUND

City of Greenville	\$	1,140,440	
Pitt County		570,220	
Pitt County-Bethel/Winterville		6,229	
Town of Bethel		30,015	
Town of Winterville		171,423	
State Aid		184,113	
Desk/Copier Receipts		127,500	
Interest		1,000	
Miscellaneous Revenues		31,000	
Greenville Housing Authority		10,692	
Federal Grants		50,000	
Capital - City Funded		108,334	
Capital - County Funded		31,666	
Appropriated Fund Balance		36,117	
		<u>          </u>	
TOTAL SHEPPARD MEMORIAL LIBRARY FUND			<u><u>\$ 2,498,749</u></u>

PITT-GREENVILLE CONVENTION AND VISITORS AUTHORITY

Occupancy Tax (2%)	\$	830,000	
Interest on Checking		1,200	
Appropriated Fund Balance		98,607	
		<u>          </u>	
TOTAL PITT-GREENVILLE CONVENTION AND VISITORS AUTHORITY FUND			<u><u>\$ 929,807</u></u>



Section II: Appropriations. The following amounts are hereby appropriated for the operation of the City of Greenville and its activities for the fiscal year beginning July 1, 2014 and ending June 30, 2015:

GENERAL FUND	
Mayor & City Council	\$ 319,837
City Manager	1,178,835
City Clerk	256,358
City Attorney	455,458
Human Resources	2,813,055
Information Technology	2,924,536
Fire/Rescue	13,503,707
Financial Services	2,583,953
Contingency	352,437
Other Post Employment Benefits	400,000
Police	23,665,071
Recreation & Parks	7,613,976
Public Works	8,934,835
Community Development	2,600,951
Capital Improvement	3,325,228
Transfers to Other Funds	6,650,038
Indirect Cost Reimbursement	(1,268,214)
<b>TOTAL GENERAL FUND</b>	<b><u>\$ 76,310,061</u></b>
DEBT SERVICE FUND	
Debt Service	\$ 5,025,316
PUBLIC TRANSPORTATION FUND	
Public Transportation	\$ 3,246,283
FLEET MAINTENANCE FUND	
Fleet	\$ 4,485,445
SANITATION FUND	
Sanitation Service	\$ 7,944,814

STORMWATER MANAGEMENT UTILITY FUND

Stormwater Management Utility \$ 4,303,401

COMMUNITY DEVELOPMENT HOUSING FUND

Community Development Housing/CDBG \$ 1,667,227

HEALTH FUND

Health Fund \$ 13,105,469

VEHICLE REPLACEMENT FUND

Vehicle Replacement Fund \$ 2,908,500

TOTAL CITY OF GREENVILLE APPROPRIATIONS \$ 118,996,516

SHEPPARD MEMORIAL LIBRARY FUND

Sheppard Memorial Library \$ 2,498,749

PITT-GREENVILLE CONVENTION AND VISITORS AUTHORITY

Pitt-Greenville Convention and Visitors Authority \$ 929,807

Section III: Encumbrances. Appropriations herein authorized and made shall have the amount of outstanding purchase orders as of June 30, 2014, added to each appropriation as it appears in order to account for the expenditures in the fiscal year in which it was paid.

Section IV: Taxes Levied. There is hereby levied a tax rate of 52 cents per one hundred dollars (\$100) valuation of taxable properties, as listed for taxes as of January 1, 2014, for the purpose of raising the revenue from current year's property tax, as set forth in the foregoing estimates of revenue, and in order to finance the foregoing appropriations.

Section V: Salaries.

(a) Salaries of Elected Officials. The annual salaries of the Mayor, Mayor Pro-Tem, and other members of the City Council shall be as follows:

Mayor	\$ 13,900
Mayor Pro-Tem	\$ 9,600
Council Members	\$ 8,700

(b) Salary Cap of Greenville Utilities Commission Members. Pursuant to Section 4 of the Charter of the Greenville Utilities Commission of the City of Greenville, the monthly salaries of members of the Greenville Utilities Commission shall not exceed the following caps:

Chair	\$ 350
Member	\$ 200

Section VI: Amendments.

(a) Pursuant to General Statutes 159-15, this budget may be amended by submission of proposed changes to the City Council.

(b) Notwithstanding Subsection (a) above, the City Manager is authorized to transfer funds from one appropriation to another within the same fund in an amount not to exceed \$10,000. Any such transfers shall be reported to the City Council at its regular meeting and shall be entered in the minutes.

(c) In case of emergency which threatens the lives, health, or safety of the public, the City Manager may authorize expenditures in an amount necessary to meet the emergency so long as such amount does not exceed the amount in contingency accounts and the expenditure is reported to the City Council as soon as possible, and the appropriate budget amendments are submitted at the next regular meeting.

Section VII: The Manual of Fees, dated July 1, 2014, is adopted herein by reference.

Section VIII: Community Development. The City Council does hereby authorize grant project funds for the operation of FY 2015-2016 CDBG Entitlement and Community Development Home Consortium programs under the Community Development Block Grant Program and Home Consortium Program for the primary purpose of housing rehabilitation and other stated expenditures.

Section IX: Greenville Utilities Commission. The City Council adopts a separate ordinance for the budget of the Greenville Utilities Commission.

Section X: Distribution. Copies of this ordinance shall be furnished to the City Manager and the Director of Financial Services of the City of Greenville to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this the 12th day of June, 2014.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

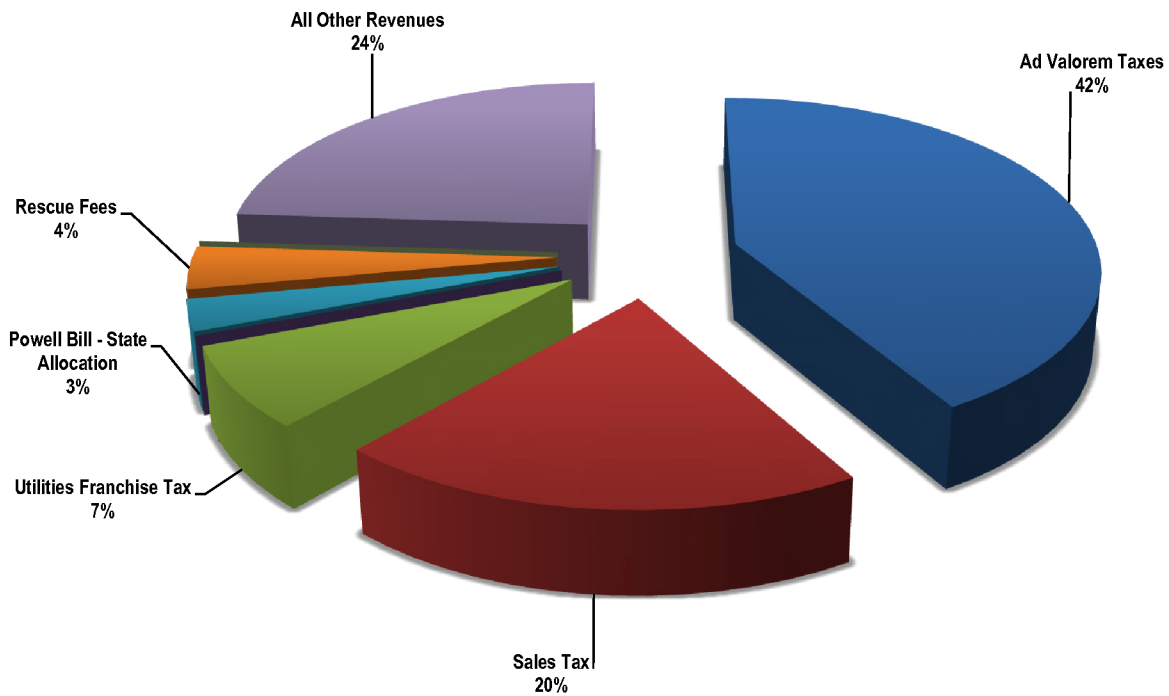
\_\_\_\_\_  
Carol L. Barwick, City Clerk

## Revenues

**GENERAL FUND  
REVENUE SUMMARY**

	<b>2012</b>	<b>2013</b>	<b>Inc/ (Dec)</b>	<b>2014</b>	<b>Inc/ (Dec)</b>	<b>2015</b>	<b>Inc/ (Dec)</b>	<b>2016</b>
	<b>Actual</b>	<b>Actual</b>		<b>Original</b>		<b>Proposed Original</b>		<b>Proposed Plan</b>
Ad Valorem Taxes	\$ 30,624,236	\$ 29,342,420	5%	\$ 30,725,377	3%	\$ 31,767,723	2%	\$ 32,376,898
Sales Tax	14,694,475	14,672,441	2%	14,910,654	2%	15,236,081	1%	15,388,440
Utilities Franchise Tax	5,488,817	5,441,125	4%	5,650,969	2%	5,763,988	2%	5,879,268
GUC Transfers In	5,763,630	5,761,460	13%	6,482,380	0%	6,485,183	-4%	6,210,609
Powell Bill - State Allocation	2,125,754	2,171,367	1%	2,190,005	1%	2,215,848	4%	2,305,369
Rescue Fees	2,875,125	3,237,867	-4%	3,109,570	-2%	3,055,250	1%	3,085,803
Investment Earnings	951,911	62,362	>100%	1,416,062	-61%	551,012	0%	553,765
Motor Vehicle Fee	943,082	933,412	2%	947,925	12%	1,065,237	2%	1,086,344
All Other Revenues	11,262,460	8,684,398	29%	11,237,908	-11%	10,019,739	-7%	9,274,599
<b>Subtotal</b>	<b>\$ 74,729,490</b>	<b>\$ 70,306,852</b>	<b>9%</b>	<b>\$ 76,670,850</b>	<b>-1%</b>	<b>\$ 76,160,061</b>	<b>0%</b>	<b>\$ 76,161,095</b>
Appropriated Fund Balance								
General Fund	-	-		7,047,025		150,000		250,000
Powell Bill	-	-		1,085,720		-		273,585
<b>Total</b>	<b>\$ 74,729,490</b>	<b>\$ 70,306,852</b>	<b>21%</b>	<b>\$ 84,803,595</b>	<b>-10%</b>	<b>\$ 76,310,061</b>	<b>&lt;1%</b>	<b>\$ 76,684,680</b>

**FY15 Proposed Original Budget**

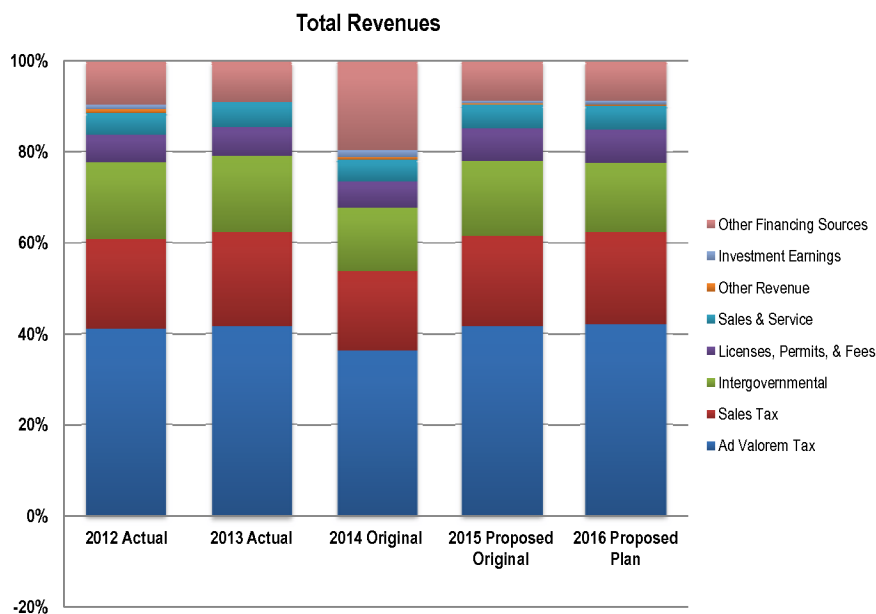


GENERAL FUND  
DETAILED REVENUE SUMMARY

	2012 Actual	2013 Actual	2014 Original	2015 Proposed Original	2016 Proposed Plan
<b>Unrestricted Intergovernmental</b>					
<b>Ad Valorem Taxes</b>					
Current Year Taxes	\$ 30,425,540	\$ 29,258,868	\$ 30,625,127	\$ 29,311,737	\$ 29,897,972
DMV Property Tax Collections	-	-	-	2,414,206	2,438,348
Prior Years Taxes	519,143	444,458	468,250	386,325	390,188
Tax Penalties & Interest	185,311	184,568	144,000	180,000	180,180
Tax Discounts	(382,012)	(404,962)	(410,000)	(369,545)	(373,240)
Tax Refunds	(123,746)	(140,513)	(102,000)	(110,000)	(111,100)
NC Collections Fees	-	-	-	(45,000)	(45,450)
<b>Subtotal</b>	<b>\$ 30,624,236</b>	<b>\$ 29,342,419</b>	<b>\$ 30,725,377</b>	<b>\$ 31,767,723</b>	<b>\$ 32,376,898</b>
<b>Other Unrestricted Intergovernmental</b>					
Sales Tax	\$ 14,694,475	\$ 14,672,441	\$ 14,910,654	\$ 15,236,081	\$ 15,388,440
Rental Vehicle - Gross Receipts	121,759	118,679	124,554	124,440	126,929
Video Program & Supplemental Peg	953,187	919,187	988,360	904,000	904,000
Motor Vehicle Fee	943,082	933,412	947,925	1,065,237	1,086,344
Payment in Lieu of Taxes	-	91,335	15,000	15,000	15,000
State Fire Protection	395,352	396,706	395,352	395,000	397,200
Utilities Franchise Tax	5,488,817	5,441,125	5,650,969	5,763,988	5,879,268
Wine & Beer	368,940	343,423	363,609	367,245	370,917
<b>Subtotal</b>	<b>\$ 22,965,612</b>	<b>\$ 22,916,308</b>	<b>\$ 23,396,423</b>	<b>\$ 23,870,991</b>	<b>\$ 24,168,098</b>
<b>Restricted Intergovernmental</b>					
Traffic Control Lights Maintenance	\$ 249,327	\$ 345,686	\$ 180,000	\$ 274,716	\$ 183,500
Street Sweeper Agreement	25,035	25,035	25,035	25,035	25,035
Reimbursable Agreements	71,360	192,831	-	413,600	-
Federal Forfeiture Money	153,045	90,631	-	134,000	-
Powell Bill State Allocation	2,125,754	2,171,367	2,190,005	2,215,848	2,305,369
Special State/Federal/Local Grants	663,293	167,010	75,000	-	-
Controlled Substance Tax	47,297	65,322	-	325,000	84,000
Police Dept Grants	432,363	14,939	105,809	19,100	19,100
Task Force Overtime Reimbursement	101,217	35,310	-	-	-
Section 104F Planning Grant MPO	115,582	173,862	426,856	339,461	339,461
Fire/Rescue Safer Grant	268,794	155,288	93,600	-	-
<b>Subtotal</b>	<b>\$ 4,253,067</b>	<b>\$ 3,437,281</b>	<b>\$ 3,096,305</b>	<b>\$ 3,746,760</b>	<b>\$ 2,956,465</b>
<b>Licenses, Permits &amp; Fees</b>					
Privilege Licenses	\$ 551,249	\$ 601,335	\$ 635,694	\$ 1,127,495	\$ 1,138,770
Inspection Division Permits	864,695	683,851	893,000	875,550	945,350
Planning Fees	111,002	82,388	122,405	135,000	140,248
Recreation Dept Activity Fees	2,181,639	2,032,002	2,094,550	1,980,900	1,990,805
Police Fees	803,884	951,183	1,133,050	1,200,914	1,216,458
Engineering Fees	12,338	9,955	14,200	10,400	11,900
Fire/Rescue Fees	184,983	195,170	184,700	201,550	203,305
<b>Subtotal</b>	<b>\$ 4,709,790</b>	<b>\$ 4,555,884</b>	<b>\$ 5,077,599</b>	<b>\$ 5,531,809</b>	<b>\$ 5,646,836</b>
<b>Sales and Services</b>					
Rescue Service Transport	\$ 2,875,125	\$ 3,237,867	\$ 3,109,570	\$ 3,055,250	\$ 3,085,803
Leased Parking & Meters	105,109	111,688	120,760	220,650	223,500
Parking Violation Penalty	174,679	192,902	200,000	210,000	212,100
Other Sales and Services	484,064	402,623	594,405	472,577	477,577
<b>Subtotal</b>	<b>\$ 3,638,977</b>	<b>\$ 3,945,080</b>	<b>\$ 4,024,735</b>	<b>\$ 3,958,477</b>	<b>\$ 3,998,980</b>
<b>Other Revenues</b>					
Donations	\$ 81,544	\$ 88,494	\$ -	\$ -	\$ -
GUC Joint Programs	34,210	27,984	38,917	38,917	39,112
Sale of Property	72,958	14,392	78,000	25,250	25,503
Other Revenue	228,992	(291,748)	290,049	183,939	184,829
<b>Subtotal</b>	<b>\$ 417,704</b>	<b>\$ (160,878)</b>	<b>\$ 406,966</b>	<b>\$ 248,106</b>	<b>\$ 249,444</b>
<b>Investment Earnings</b>					
Investments Earnings	\$ 951,911	\$ 62,362	\$ 1,416,062	\$ 551,012	\$ 553,765

**GENERAL FUND  
DETAILED REVENUE SUMMARY**

	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
	<b>Actual</b>	<b>Actual</b>	<b>Original</b>	<b>Proposed</b>	<b>Proposed</b>
	<b>Original</b>	<b>Original</b>	<b>Original</b>	<b>Original</b>	<b>Plan</b>
<b>Other Financing Sources</b>					
Transfer in GUC	\$ 5,729,419	\$ 5,733,476	\$ 6,443,463	\$ 6,485,183	\$ 6,210,609
Capital Reserve	394,129	70,000	1,779,000	-	-
Transfer from Public Safety	680,000	-	-	-	-
Transfer from Administrative Facility	12,701	-	-	-	-
Transfer from Sanitation	104,920	104,920	104,920	-	-
Transfer from General Fund	64,000	300,000	200,000	-	-
Other Transfers	183,024	-	-	-	-
Appropriated Fund Balance General Fund	-	-	7,047,025	150,000	250,000
Appropriated Fund Balance Powell Bill	-	-	1,085,720	-	273,585
<b>Subtotal</b>	<b>\$ 7,168,193</b>	<b>\$ 6,208,396</b>	<b>\$ 16,660,128</b>	<b>\$ 6,635,183</b>	<b>\$ 6,734,194</b>
<b>Total Revenues not including Other Financing Sources</b>	<b>\$ 73,290,716</b>	<b>\$ 69,831,932</b>	<b>\$ 68,143,467</b>	<b>\$ 69,674,878</b>	<b>\$ 69,950,486</b>
<b>Total Revenues including Other Financing Sources</b>	<b>\$ 74,729,490</b>	<b>\$ 70,306,852</b>	<b>\$ 84,803,595</b>	<b>\$ 76,310,061</b>	<b>\$ 76,684,680</b>

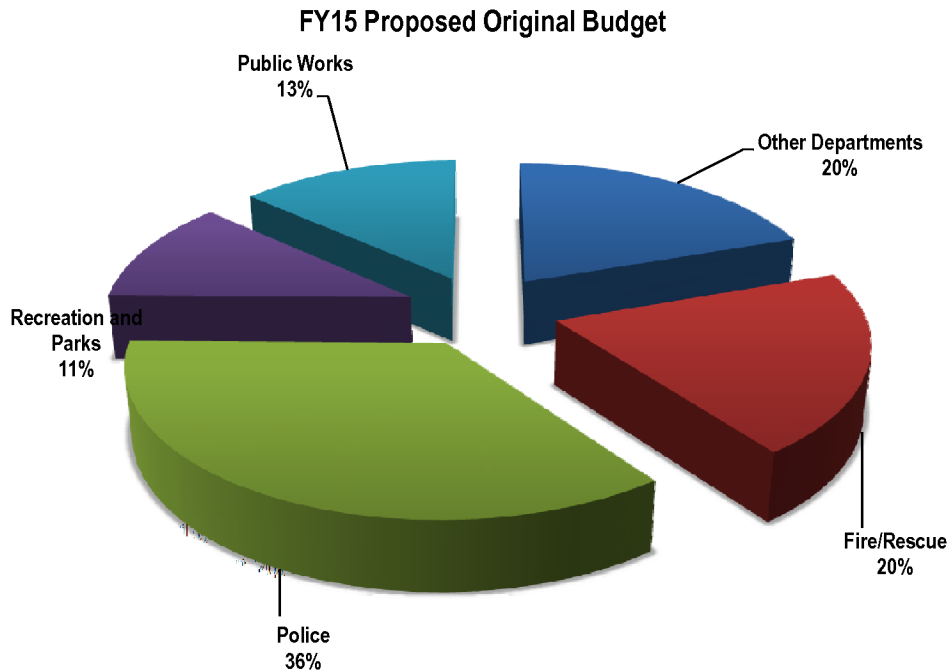


## Expenses



**GENERAL FUND  
EXPENSE SUMMARY BY DEPARTMENT**

	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
	<b>Actual</b>	<b>Actual</b>	<b>Original</b>	<b>Proposed</b>	<b>Proposed</b>
	<b>Original</b>	<b>Original</b>	<b>Original</b>	<b>Original</b>	<b>Plan</b>
Mayor & City Council	\$ 366,777	\$ 297,960	\$ 388,957	\$ 319,837	\$ 397,661
City Manager	1,004,025	1,003,757	1,305,183	1,178,835	1,193,946
City Clerk	230,830	232,301	273,769	256,358	259,960
City Attorney	431,687	444,252	453,843	455,458	468,251
Human Resources	2,153,506	2,147,256	2,629,432	2,813,055	2,924,647
Information Technology	2,758,250	2,781,371	2,904,800	2,924,536	3,011,197
Fire/Rescue	12,791,728	12,518,984	13,404,759	13,503,707	13,805,955
Financial Services	2,154,877	2,228,036	2,388,772	2,583,953	2,601,023
Police	21,649,549	22,226,337	22,912,155	23,665,071	24,096,652
Recreation and Parks	6,572,707	7,111,553	7,483,635	7,613,976	7,605,739
Public Works	8,562,137	8,380,468	9,970,627	8,934,835	9,178,816
Community Development	1,668,323	1,633,906	1,902,446	2,600,951	2,748,206
<b>Total by Department</b>	<b>\$ 60,344,396</b>	<b>\$ 61,006,181</b>	<b>\$ 66,018,378</b>	<b>\$ 66,850,572</b>	<b>\$ 68,292,053</b>
Indirect Cost Reimbursement	\$ (601,354)	\$ (1,014,572)	\$ (1,014,572)	\$ (1,268,214)	\$ (1,268,214)
Other Post Employment Benefits	250,000	300,000	350,000	400,000	450,000
Contingency	-	-	200,000	352,437	428,396
<b>Total Expenses by Department</b>	<b>\$ 59,993,042</b>	<b>\$ 60,291,609</b>	<b>\$ 65,553,806</b>	<b>\$ 66,334,795</b>	<b>\$ 67,902,235</b>
Transfers to Other Funds	\$ 7,364,595	\$ 6,863,989	\$ 13,283,400	\$ 6,650,038	\$ 6,470,652
Total Capital Improvements	3,626,076	3,765,906	5,966,389	3,325,228	2,311,793
<b>Total General Fund</b>	<b>\$ 70,983,713</b>	<b>\$ 70,921,504</b>	<b>\$ 84,803,595</b>	<b>\$ 76,310,061</b>	<b>\$ 76,684,680</b>



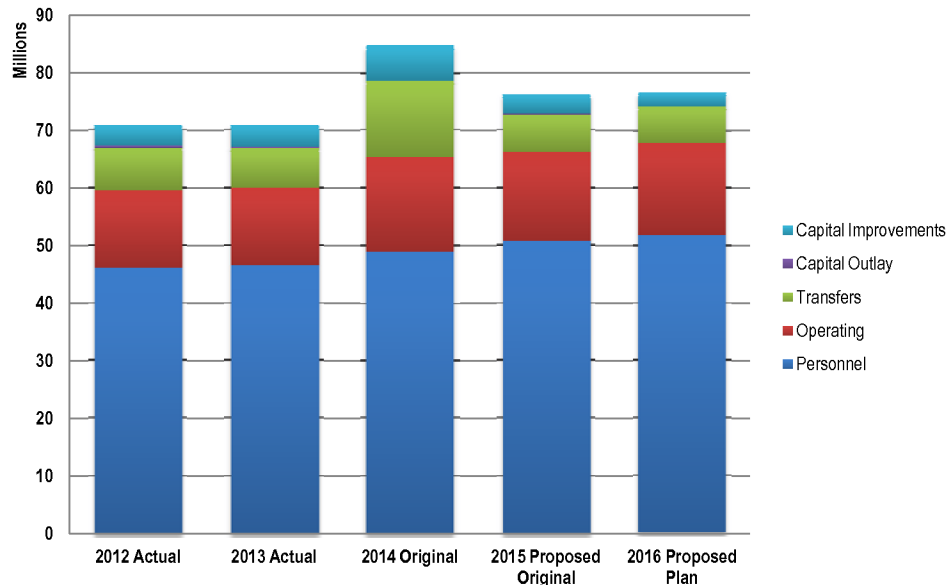
**GENERAL FUND**  
**DETAILED EXPENSE SUMMARY**

	2012 Actual	2013 Actual	2014 Original	2015 Proposed Original	2016 Proposed Plan
<b>Personnel</b>					
Salaries	\$ 32,721,551	\$ 32,848,238	\$ 34,000,912	\$ 34,443,770	\$ 34,857,592
Allowances	339,893	388,977	427,463	466,940	467,940
FICA	2,370,202	2,408,968	2,308,697	2,303,147	2,332,141
Group Life Insurance	77,591	88,049	84,420	149,191	148,940
Group Life Insurance Retirees	521	565	600	600	600
Retirement	2,160,568	2,127,340	2,316,182	2,295,961	2,324,216
Health Insurance	5,900,976	6,171,895	6,809,832	7,608,436	8,217,121
Retirees Supplemental BC/BS	180,399	215,372	244,668	351,402	379,515
Health Insurance - Retirees	519,360	597,640	821,806	801,549	865,612
401K Regular Employees	426,087	326,445	337,006	349,206	349,206
401K Police	489,951	501,725	461,138	471,832	471,832
Workers Comp Premium	86,453	76,814	141,823	184,474	184,474
Workers Comp Loss	484,235	580,135	718,761	718,500	606,000
ICMA	14,133	14,243	16,989	16,001	16,001
Unemployment Compensation	54,055	47,445	75,000	247,000	247,000
Employee Medical Services	89,580	80,641	140,175	147,185	154,545
Educational Assistance	12,700	9,122	17,100	17,100	17,100
Fees Paid to Elected Officials	57,780	66,383	67,000	67,000	67,000
<b>Total Personnel</b>	<b>\$ 45,986,035</b>	<b>\$ 46,549,997</b>	<b>\$ 48,989,572</b>	<b>\$ 50,639,294</b>	<b>\$ 51,706,835</b>
<b>Operating</b>					
Printing	\$ 76,059	\$ 63,797	\$ 113,850	\$ 76,983	\$ 81,027
Travel/Training	369,012	320,641	363,348	380,120	383,375
Equipment Maintenance	221,817	208,432	247,805	191,770	152,040
Vehicle Maintenance	524,023	553,824	575,927	692,500	712,688
Building Maintenance	259,302	298,449	305,346	308,900	324,635
Fleet/Commercial Labor	532,046	525,201	516,026	603,575	623,966
Fleet Service Cost-Fixed	1,087,981	1,073,089	1,074,204	966,141	967,040
Demolitions	107,525	87,956	165,000	175,000	175,500
Radio Maintenance	110,074	111,318	120,432	137,037	153,870
Copier Maintenance	57,090	52,960	62,622	61,730	61,730
Supplies & Materials	1,191,925	1,182,716	1,334,520	1,509,768	1,507,060
Computer Hardware & Software	329,100	507,764	516,093	827,998	774,952
Fire Fighting Gear	95,355	91,725	117,875	95,675	129,100
Traffic Signals Maintenance	64,841	105,969	88,172	83,000	101,000
Contracted Services	2,422,421	2,235,882	2,865,000	2,543,995	2,678,853
Commissions Pitt County	482,663	456,506	500,000	550,000	560,000
Economic Development	62,204	176,804	245,135	210,800	215,800
Dues & Subscriptions	152,287	176,872	204,062	189,513	191,638
Advertising	81,034	81,264	130,452	107,450	109,950
Postage	123,466	66,702	74,606	69,000	70,935
Telephone	327,282	316,732	339,567	305,732	309,374
Utilities	1,128,791	1,064,491	1,351,797	1,093,041	1,101,674
Street Lighting	1,289,067	1,414,354	1,476,990	1,524,530	1,536,660
Fuel	949,559	948,135	1,155,265	922,387	946,210
Insurance	425,925	456,257	740,632	745,000	745,000
Uniforms/Laundry & Dry Cleaning	208,641	170,611	311,874	318,973	326,927
Other Expenses	330,913	317,306	820,122	431,881	622,746
Property & Casualty Loss	403,182	437,104	310,693	406,000	322,000
Special Investigations & Drug Task Force	252,567	297,369	295,000	284,000	284,000
Special Programs	204,318	179,349	207,594	135,401	135,601
Grants & Donations	175,256	200,379	251,797	123,178	221,367
<b>Total Operating</b>	<b>\$ 14,045,726</b>	<b>\$ 14,179,958</b>	<b>\$ 16,881,806</b>	<b>\$ 16,071,078</b>	<b>\$ 16,526,718</b>
<b>Indirect Cost Reimbursement</b>	(601,354)	(1,014,572)	(1,014,572)	(1,268,214)	(1,268,214)
<b>Other Post Employment Benefits</b>	250,000	300,000	350,000	400,000	450,000
<b>Contingency</b>	-	-	200,000	352,437	428,396

**Transfers**

Debt Service	4,131,344	3,795,422	3,995,586	4,232,013	4,116,382
Capital Reserve Fund	250,000	12,591	-	-	-
Public Transportation	-	84,804	214,889	711,443	677,740
Sanitation	284,021	139,163	252,598	-	-
Sheppard Memorial Library	1,200,006	1,110,181	1,178,914	1,248,779	1,162,192
Group Benefits	-	-	783,044	-	-
Housing Fund	168,590	219,937	211,369	457,803	514,338
Vehicle Replacement	-	-	-	-	-
Maintenance Fund	-	-	150,000	-	-
Emergency Operations Center	400,000	48,700	-	-	-
Economic Development Fund	-	-	-	-	-
Greenways	-	-	-	-	-
BANA - ERP	-	-	2,500,000	-	-
Wayfinding Signs	-	52,906	-	-	-
Public Safety FC	-	8,750	-	-	-
South Greenville Recreation Center	-	-	200,000	-	-
Dream Park Capital Project	-	534,841	-	-	-
Tar River Study	-	-	200,000	-	-
South Tar River Greenway	226,902	-	-	-	-
Unemployment Reserve Fund	-	-	172,000	-	-
Governor's Crime Commission	50,536	-	-	-	-
Dickinson Avenue Land use	-	-	150,000	-	-
Street Improvement Program	-	-	3,075,000	-	-
Green Mill Run Fund	343,600	-	-	-	-
Greene Street Parking Lot	74,696	-	-	-	-
King George Road	101,000	-	-	-	-
Greenways	-	68,790	-	-	-
Powell Bill	-	300,000	200,000	-	-
Health Insurance	-	467,904	-	-	-
Special Revenue Fund	-	20,000	-	-	-
Drew Steele Center	133,900	-	-	-	-
<b>Total Transfers</b>	<b>\$ 7,364,595</b>	<b>\$ 6,863,989</b>	<b>\$ 13,283,400</b>	<b>\$ 6,650,038</b>	<b>\$ 6,470,652</b>
Capital Outlay	\$ 312,635	\$ 276,226	\$ 147,000	\$ 140,200	\$ 58,500
Capital Improvements	\$ 3,626,076	\$ 3,765,906	\$ 5,966,389	\$ 3,325,228	\$ 2,311,793
<b>Total General Fund Capital</b>	<b>\$ 3,938,711</b>	<b>\$ 4,042,132</b>	<b>\$ 6,113,389</b>	<b>\$ 3,465,428</b>	<b>\$ 2,370,293</b>
<b>Total Expenditures</b>	<b>\$ 70,983,713</b>	<b>\$ 70,921,504</b>	<b>\$ 84,803,595</b>	<b>\$ 76,310,061</b>	<b>\$ 76,684,680</b>

**Total Expenses**





# **Other Fund**

## Budget Summaries

## Other Funds

This section will include the revenues and expenses from the following funds:

- Debt Service
- Public Transportation
- Fleet Maintenance
- Sanitation
- Stormwater
- Housing
- Health Insurance
- Vehicle Replacement

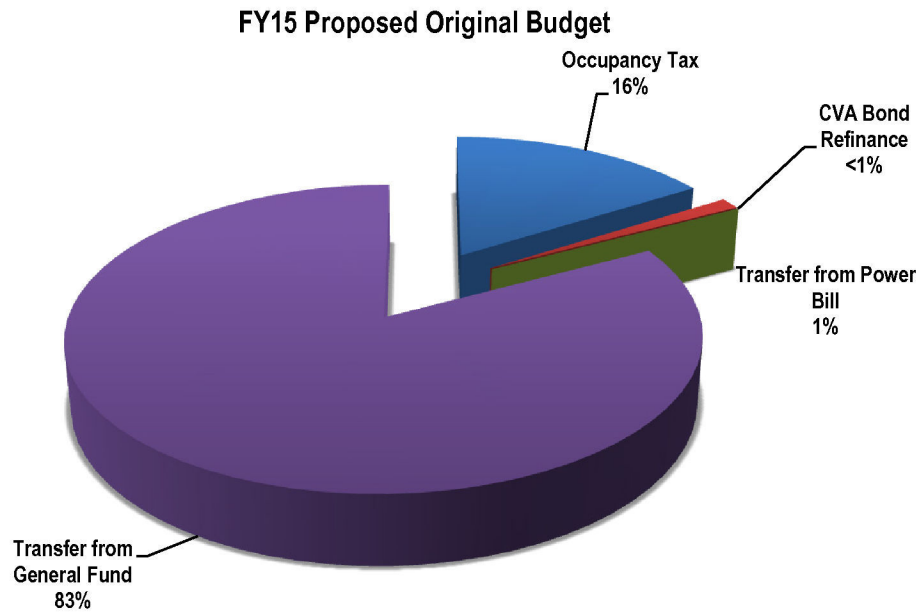
# Debt Service Fund Budget Summary

## Debt Service

The Debt Service Fund accounts for the payment of the City's debt. When payments are due, the General Fund transfers the needed funds into this fund for payment.

**DEBT SERVICE FUND  
REVENUE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Occupancy Tax	\$ 550,372	\$ 591,792	\$ 508,173	\$ 793,303	\$ 784,423
Transfer from Power Bill	65,186	64,025	64,008	62,389	60,440
CVA Bond Refinance	4,292,944	19,950,000	-	-	-
Transfer from General Fund	4,066,158	3,731,398	3,931,579	4,169,624	4,055,942
Investment Earnings	534	543	-	-	-
<b>Total</b>	<b>\$ 8,975,194</b>	<b>\$ 24,337,758</b>	<b>\$ 4,503,760</b>	<b>\$ 5,025,316</b>	<b>\$ 4,900,805</b>

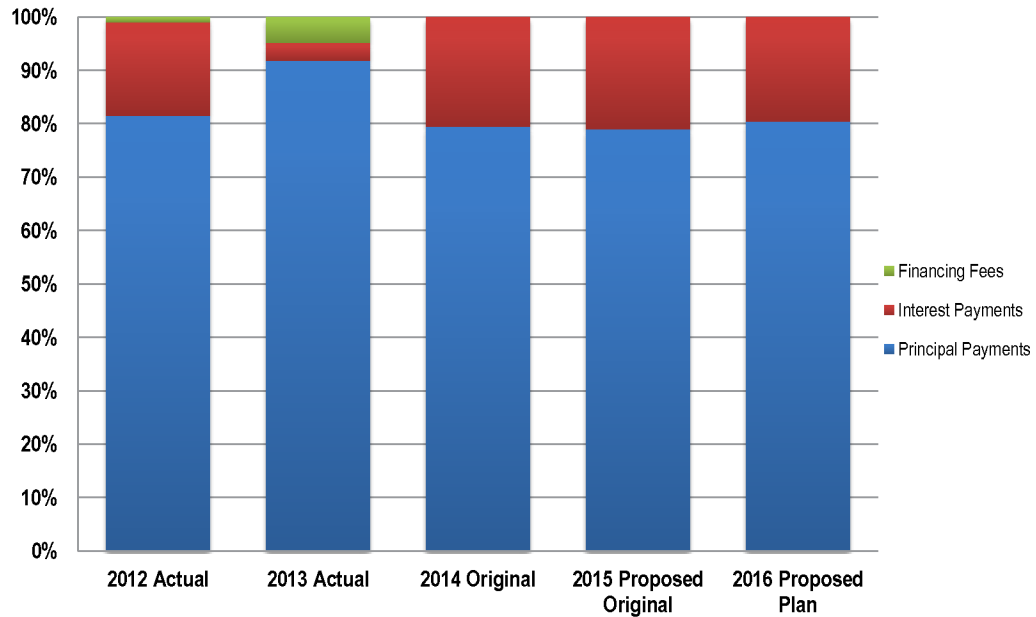




**DEBT SERVICE FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Principal Payments	\$ 7,309,639	\$ 22,363,973	\$ 3,577,233	\$ 3,971,228	\$ 3,941,560
Interest Payments	1,564,942	821,632	926,527	1,054,088	959,245
Financing Fees	91,356	1,188,689	-	-	-
<b>Total</b>	<b>\$ 8,965,937</b>	<b>\$ 24,374,294</b>	<b>\$ 4,503,760</b>	<b>\$ 5,025,316</b>	<b>\$ 4,900,805</b>

**Total Expenses**



# Public Transportation Budget Summary

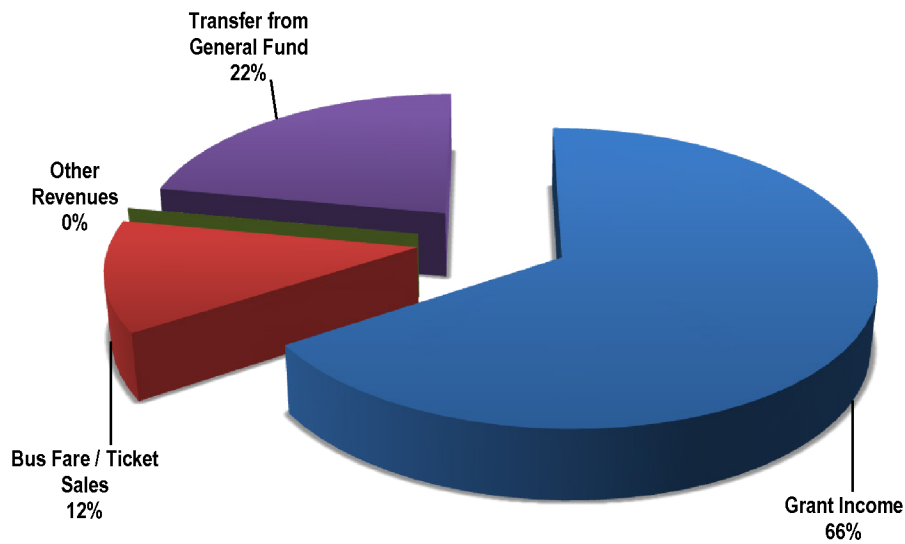
## Public Transportation

Planning activities remain approximately the same and are reimbursable at 90% (80% Federal and 10% State). Federal operating funding remains at one-half the net deficit. Continuation of state operating support is anticipated. Capital items and ADA service and preventative maintenance items requested are reimbursable at 80% Federal share.

**PUBLIC TRANSPORTATION FUND  
REVENUE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Grant Income	\$ 1,009,120	\$ 1,451,223	\$ 1,927,627	\$ 2,166,223	\$ 2,024,009
Bus Fare / Ticket Sales	292,666	326,919	264,000	368,379	376,474
Other Revenues	67,673	31,767	16,221	238	238
Transfer from General Fund	-	84,804	214,889	711,443	677,740
Appropriated Fund Balance	-	-	1,308,451	-	-
<b>Total</b>	<b>\$ 1,369,459</b>	<b>\$ 1,894,713</b>	<b>\$ 3,731,188</b>	<b>\$ 3,246,283</b>	<b>\$ 3,078,461</b>

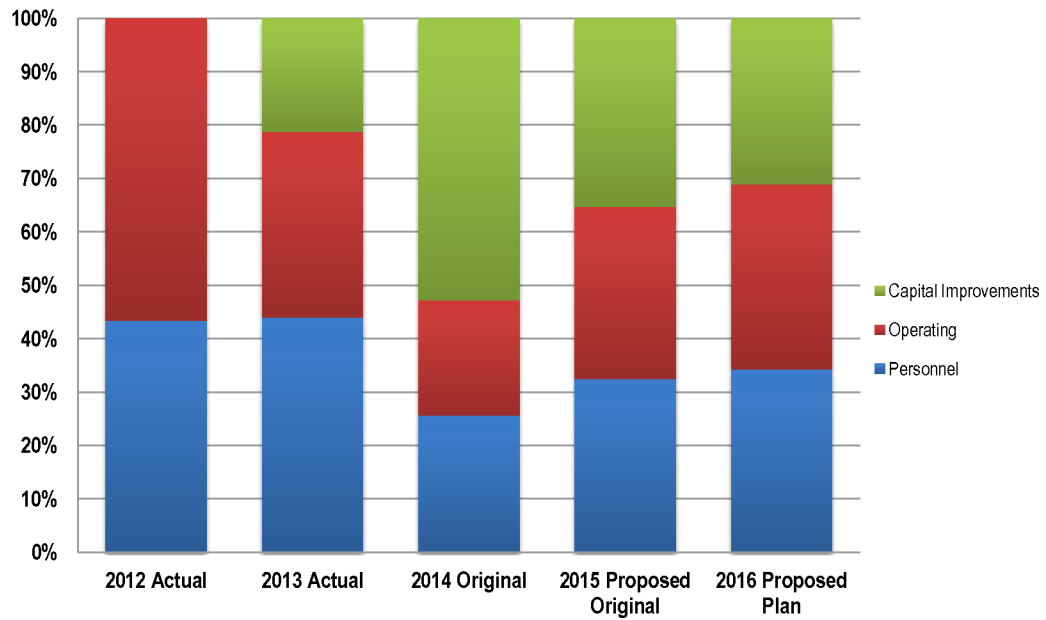
**FY15 Proposed Original Budget**



**PUBLIC TRANSPORTATION FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Personnel	\$ 922,302	\$ 1,100,542	\$ 957,392	\$ 1,052,225	\$ 1,053,270
Operating	1,205,801	868,443	802,537	1,048,664	1,069,029
Capital Improvements	-	530,450	1,971,259	1,145,394	956,162
<b>Total</b>	<b>\$ 2,128,103</b>	<b>\$ 2,499,435</b>	<b>\$ 3,731,188</b>	<b>\$ 3,246,283</b>	<b>\$ 3,078,461</b>

**Total Expenses**



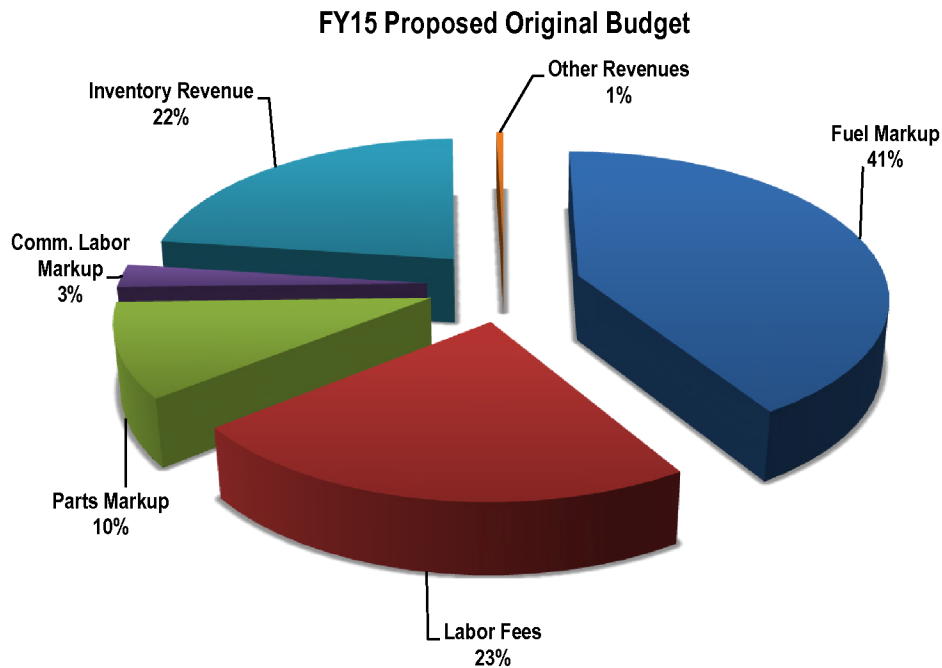
# Fleet Maintenance Budget Summary

## Fleet Maintenance

The Fleet Maintenance Fund has been established as an internal service fund to account for charge-backs to the respective departments of the City for labor, fuel, and parts for items needed to maintain City vehicles. The creation of this fund will assist the City in more accurately reflecting the true costs of the vehicle maintenance by department.

**FLEET FUND  
REVENUE SUMMARY**

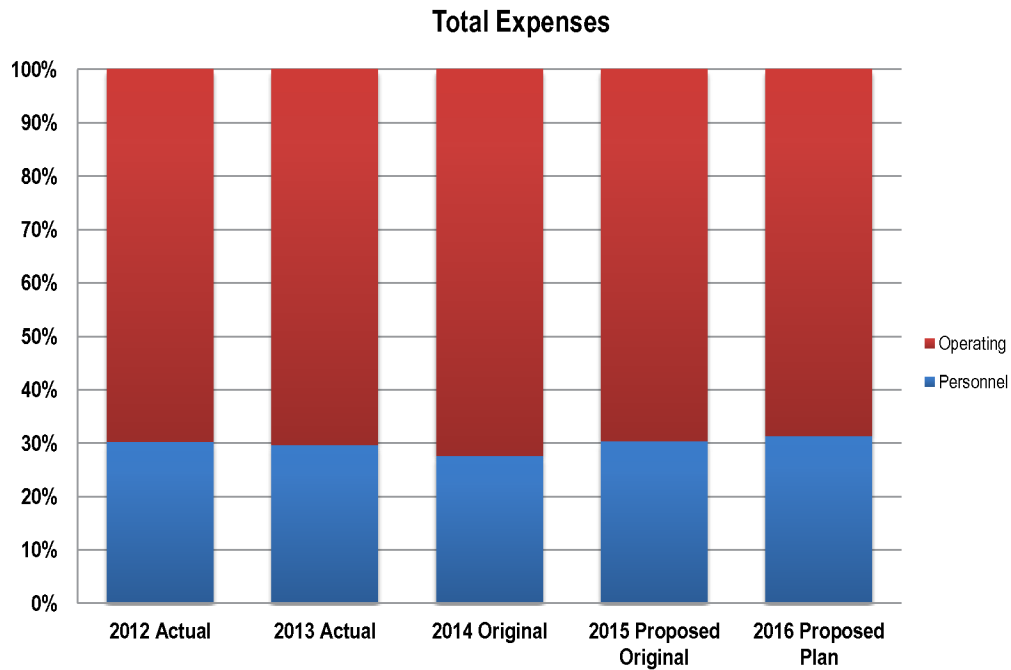
	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Fuel Markup	\$ 1,741,127	\$ 1,647,869	\$ 2,030,871	\$ 1,784,792	\$ 1,837,197
Labor Fees	883,291	851,235	949,699	1,003,100	1,026,765
Parts Markup	218,782	233,711	221,500	418,283	460,365
Comm. Labor Markup	225,503	290,186	265,000	259,800	113,590
Inventory Revenue	619,771	739,866	1,000,000	1,000,000	1,000,000
Other Revenues	18,097	13,383	24,986	19,470	19,470
Trans fm Vehicle Replacement Fund	-	175,000	-	-	-
Appropriated Fund Balance	-	-	180,747	-	-
<b>Total</b>	<b>\$ 3,706,571</b>	<b>\$ 3,951,250</b>	<b>\$ 4,672,803</b>	<b>\$ 4,485,445</b>	<b>\$ 4,457,387</b>





**FLEET FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Personnel	\$ 1,174,993	\$ 1,170,480	\$ 1,292,148	\$ 1,363,854	\$ 1,397,650
Operating	<u>2,705,582</u>	<u>2,770,858</u>	<u>3,380,655</u>	<u>3,121,591</u>	<u>3,059,737</u>
<b>Total</b>	<b><u>\$ 3,880,575</u></b>	<b><u>\$ 3,941,338</u></b>	<b><u>\$ 4,672,803</u></b>	<b><u>\$ 4,485,445</u></b>	<b><u>\$ 4,457,387</u></b>



# Sanitation Fund Budget Summary

## Sanitation

The Sanitation Fund is established to account for the user charges, fees, and all operating costs associated with the operation of the Sanitation Division operated through the Public Works Department of the City. The Sanitation Division offers comprehensive solid waste services such as garbage, recyclable, bulky trash, leaf collection, as well as mosquito and rodent control. Annexations and growth within the city continue to challenge the division to maintain the level of service our citizens expect. The Sanitation Division will continue to strive to uphold the quality service our citizens are accustomed to while looking for additional means to provide efficient and effective service in order to manage the future cost of service within our growing city.

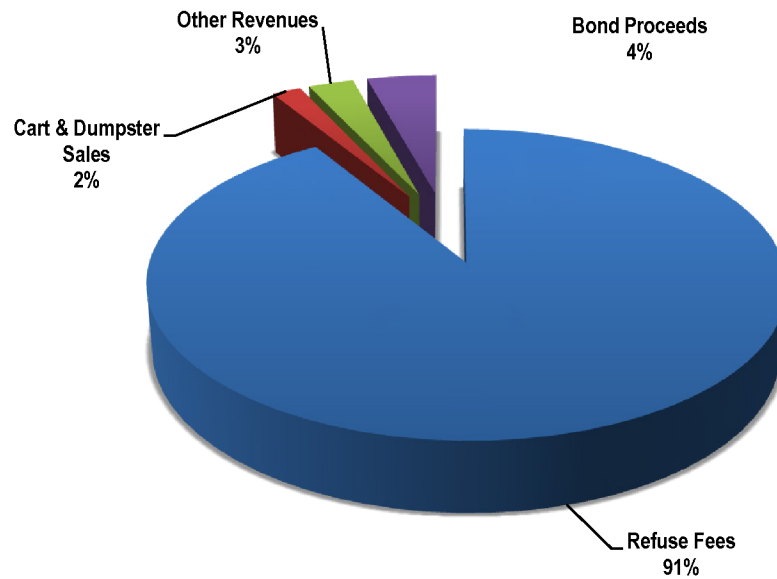
Sanitation has a seven year plan to recover from previous year deficits. Future proposed rates are below:

<b>Fiscal Year</b>	<b>Proposed Rate Increase</b>	<b>% Increase (Based on Basic and Multifamily)</b>	<b>Proposed Monthly Rate</b>
2015	\$1.25	9.4%	\$14.50
2016	\$0.75	5.2%	\$15.25
2017	\$0.50	3.3%	\$15.75
2018	\$0.25	1.6%	\$16.00
2019	\$0.25	1.6%	\$16.25
2020	\$0.25	1.5%	\$16.50

**SANITATION FUND  
REVENUE SUMMARY**

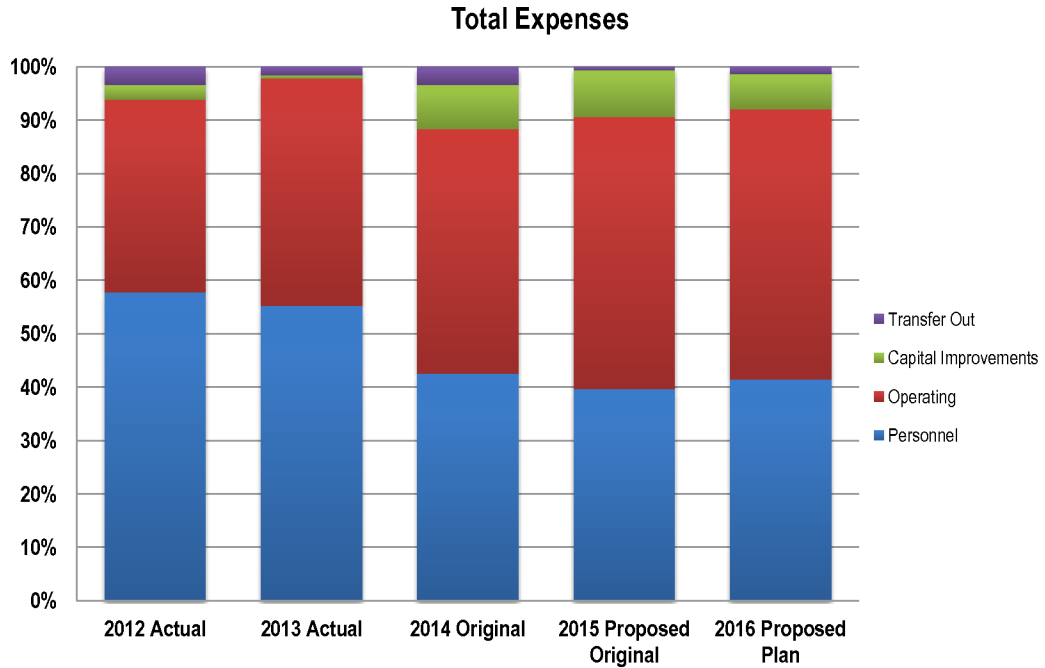
	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Refuse Fees	\$ 5,216,407	\$ 6,289,347	\$ 7,148,261	\$ 7,219,314	\$ 7,116,078
Cart & Dumpster Sales	133,147	177,476	155,000	140,000	140,000
Other Revenues	81,944	183,920	156,052	215,500	215,500
Transfer from General Fund	284,021	139,163	252,597	-	-
Transfer from FEMA	148,158	-	-	-	-
Bond Proceeds	-	-	-	370,000	330,000
Appropriated Fund Balance	-	-	264,426	-	-
<b>Total</b>	<b>\$ 5,863,677</b>	<b>\$ 6,789,906</b>	<b>\$ 7,976,336</b>	<b>\$ 7,944,814</b>	<b>\$ 7,801,578</b>

**FY15 Proposed Original Budget**



**SANITATION FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Personnel	\$ 3,872,086	\$ 3,780,996	\$ 3,397,911	\$ 3,147,411	\$ 3,233,895
Operating	2,422,392	2,913,810	3,652,619	4,048,947	3,952,396
Capital Improvements	184,593	46,415	655,931	695,000	510,000
Transfer Out	226,686	104,920	269,875	53,456	105,287
<b>Total</b>	<b>\$ 6,705,757</b>	<b>\$ 6,846,141</b>	<b>\$ 7,976,336</b>	<b>\$ 7,944,814</b>	<b>\$ 7,801,578</b>



# Stormwater Fund Budget Summary

## Stormwater

The Stormwater Utility is an enterprise fund established to implement the City's Stormwater Management Program. Revenue for this program is generated through a Stormwater fee paid by citizens owning improved property with buildings, parking lots, driveways, etc. The Stormwater Management Program is implemented through the Public Works Department's Engineering and Street Maintenance Divisions. It is directed at compliance with federal and state environmental regulations through the implementation of local development regulations, capital improvements and storm drain maintenance. A fee increase of \$0.50/ERU is proposed annually for the next four years. This increase will allow Public Works to complete Watershed Master Planning throughout the City as well as complete several projects that are of high priority. Should additional projects be desired or become necessary, the proposed fee structure will need to be adjusted.

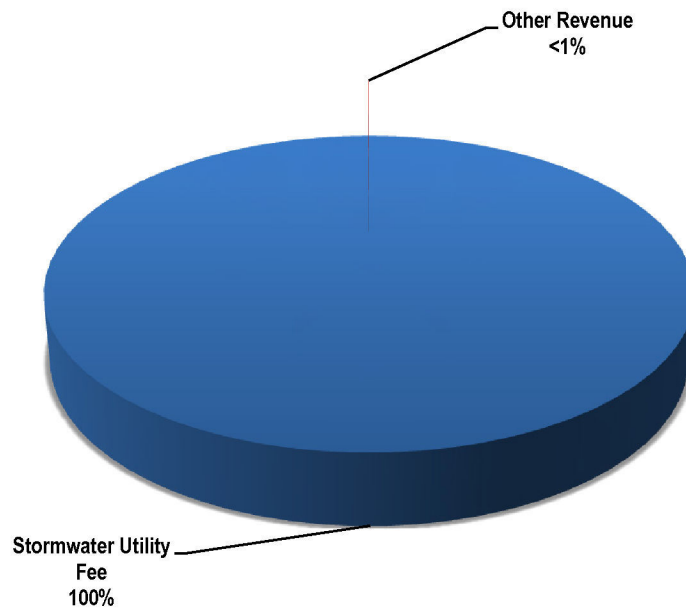
The table below depicts the planned multi-year schedule for this fund.

<b>Fiscal Year</b>	<b>Proposed Rate Increase</b>	<b>Proposed Monthly ERU</b>
2015	\$0.50	\$3.85
2016	\$0.50	\$4.35
2017	\$0.50	\$4.85
2018	\$0.50	\$5.35

**STORMWATER FUND  
REVENUE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Stormwater Utility Fee	\$ 3,113,557	\$ 3,112,661	\$ 3,710,491	\$ 4,301,401	\$ 4,903,758
Other Revenue	15,320	4,508	-	2,000	2,000
Trans fm SW Drainage Maint. Fund	-	1,363,214	976,000	-	-
Bond Proceeds	-	-	5,300,000	-	-
Appropriated Fund Balance	-	-	76,864	-	-
<b>Total</b>	<b>\$ 3,128,877</b>	<b>\$ 4,480,383</b>	<b>\$ 10,063,355</b>	<b>\$ 4,303,401</b>	<b>\$ 4,905,758</b>

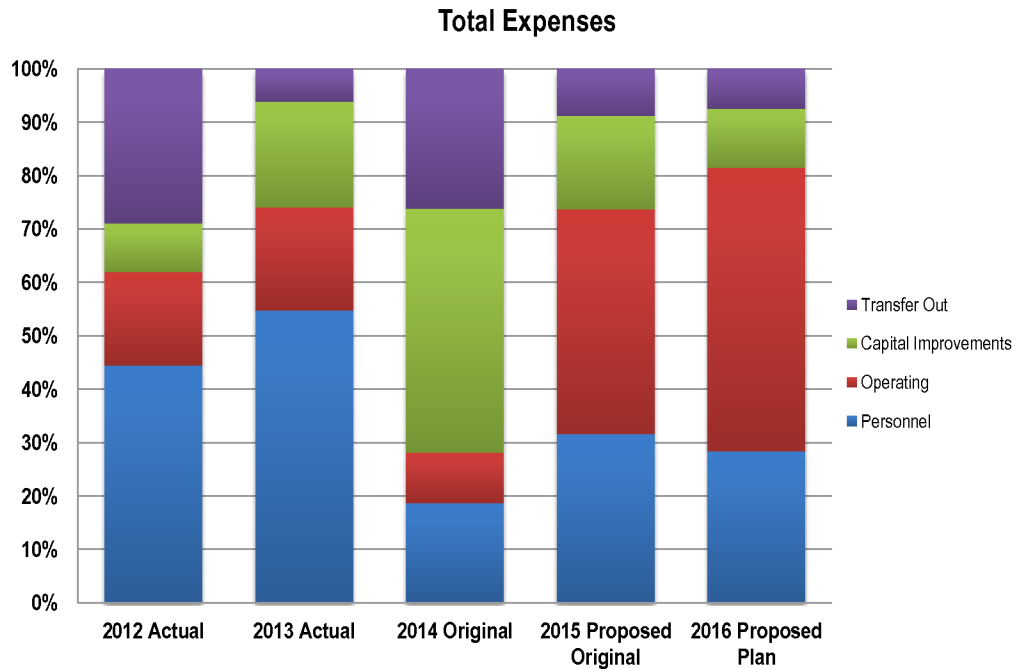
**FY15 Proposed Original Budget**





**STORMWATER FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Personnel	\$ 1,813,676	\$ 1,793,688	\$ 1,881,667	\$ 1,359,989	\$ 1,393,430
Operating	712,740	632,607	958,257	1,810,619	2,606,368
Capital Improvements	371,126	649,583	4,590,096	754,000	539,000
Transfer Out	1,181,687	200,401	2,633,335	378,793	366,960
<b>Total</b>	<b>\$ 4,079,229</b>	<b>\$ 3,276,279</b>	<b>\$ 10,063,355</b>	<b>\$ 4,303,401</b>	<b>\$ 4,905,758</b>



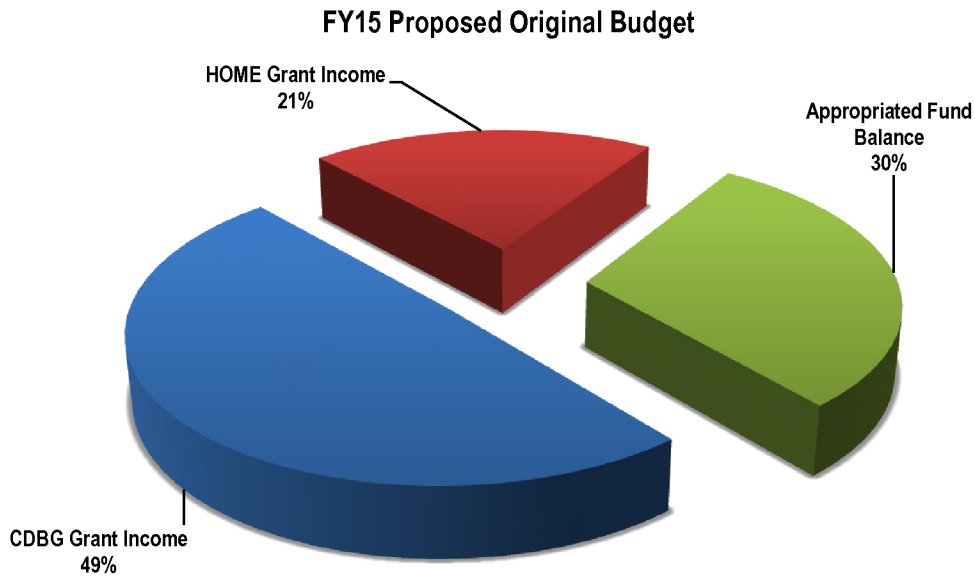
# Housing Fund Budget Summary

## Housing

The Housing Division will administer US Department of Housing and Urban Development Community Development Block Grant Funds and Local Bond Funds. The funds are used to develop programs to serve low and moderate-income households. To this end, this fund is responsible for monitoring programs for compliance with local, state, and federal program standards. This fund also provides housing rehabilitation assistance to owner occupants, assistance to nonprofit agencies, down-payment assistance to homebuyers, acquisition and demolition of substandard structures, and program administrative funding.

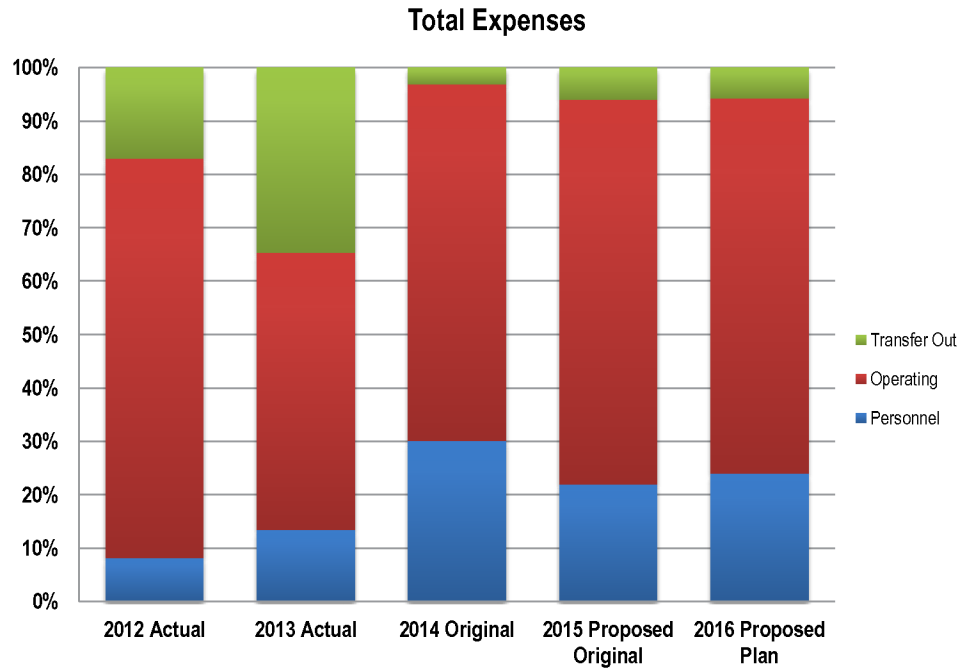
**COMMUNITY DEVELOPMENT HOUSING FUND  
REVENUE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
CDBG Grant Income	\$ 1,162,929	\$ 442,452	\$ 781,037	\$ 851,448	\$ 851,448
HOME Grant Income	1,145,010	1,261,731	387,237	357,976	357,976
Program Income	107,146	76,372	73,622	-	-
Transfer from General Fund	168,590	-	211,369	457,803	514,338
Transfer from Small Business Loan	-	71,029	-	-	-
Appropriated Fund Balance	-	-	-	-	-
<b>Total</b>	<b><u>\$ 2,583,675</u></b>	<b><u>\$ 1,851,584</u></b>	<b><u>\$ 1,453,265</u></b>	<b><u>\$ 1,667,227</u></b>	<b><u>\$ 1,723,762</u></b>



**COMMUNITY DEVELOPMENT HOUSING FUND  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Personnel	\$ 219,981	\$ 250,333	\$ 436,802	\$ 365,467	\$ 412,654
Operating	2,011,042	967,157	971,463	1,202,760	1,212,108
Transfer Out	457,446	643,682	45,000	99,000	99,000
<b>Total</b>	<b>\$ 2,688,469</b>	<b>\$ 1,861,172</b>	<b>\$ 1,453,265</b>	<b>\$ 1,667,227</b>	<b>\$ 1,723,762</b>



# Health Fund Budget Summary

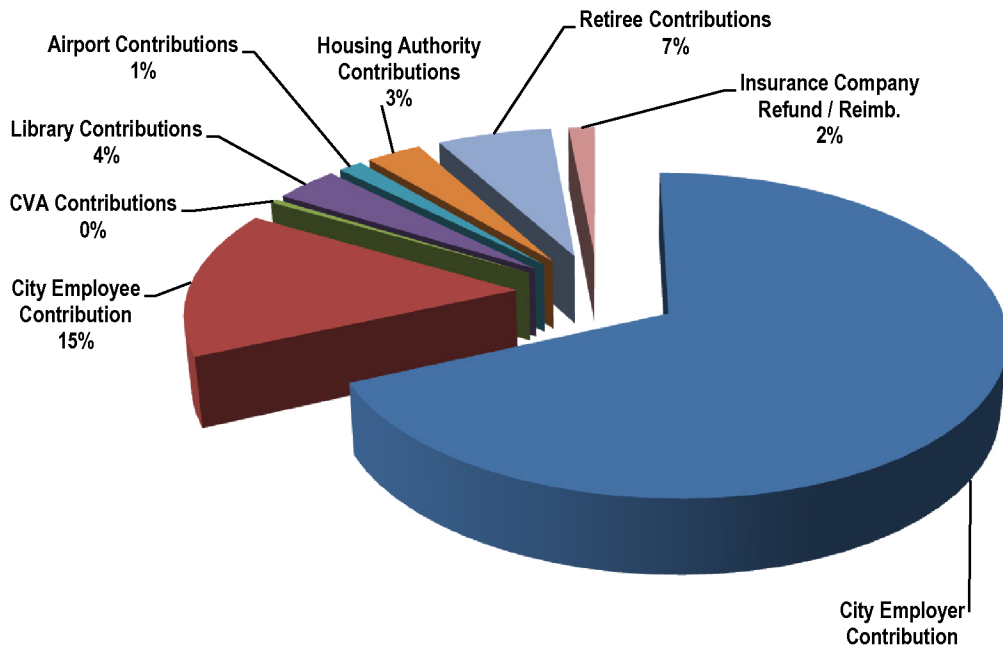
## Health Fund

The Health fund is used to account for the administration of the City's health insurance program. Prior to fiscal year beginning July 1, 2012, this fund was established as a fund that did not warrant annual appropriations for the fund annually; therefore, it has become a part of the annual budget cycle.

**HEALTH FUND  
REVENUE SUMMARY**

	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
	<b>Actual</b>	<b>Actual</b>	<b>Original</b>	<b>Proposed Original</b>	<b>Proposed Plan</b>
City Employer Contribution	\$ 16,873,886	\$ 7,699,322	\$ 8,355,454	\$ 9,179,044	\$ 9,903,432
City Employee Contribution	4,176,434	1,744,335	2,024,039	1,665,942	1,732,579
CVA Contributions	153,756	83,310	56,458	60,400	64,875
Library Contributions	672,887	189,508	487,153	168,832	179,733
Airport Contributions	404,164	142,108	185,741	136,059	144,865
Housing Authority Contributions	1,152,583	591,768	422,505	492,415	528,535
Retiree Contributions	1,732,356	927,101	873,276	1,214,558	1,295,202
Other Revenues	1,205	(34,303)	783,044	-	-
Mercer Fees	232,873	467,904	-	-	-
Insurance Company Refund / Reimb.	361,951	188,486	200,000	188,219	188,219
<b>Total</b>	<b>\$ 25,762,095</b>	<b>\$ 11,999,539</b>	<b>\$ 13,387,670</b>	<b>\$ 13,105,469</b>	<b>\$ 14,037,440</b>

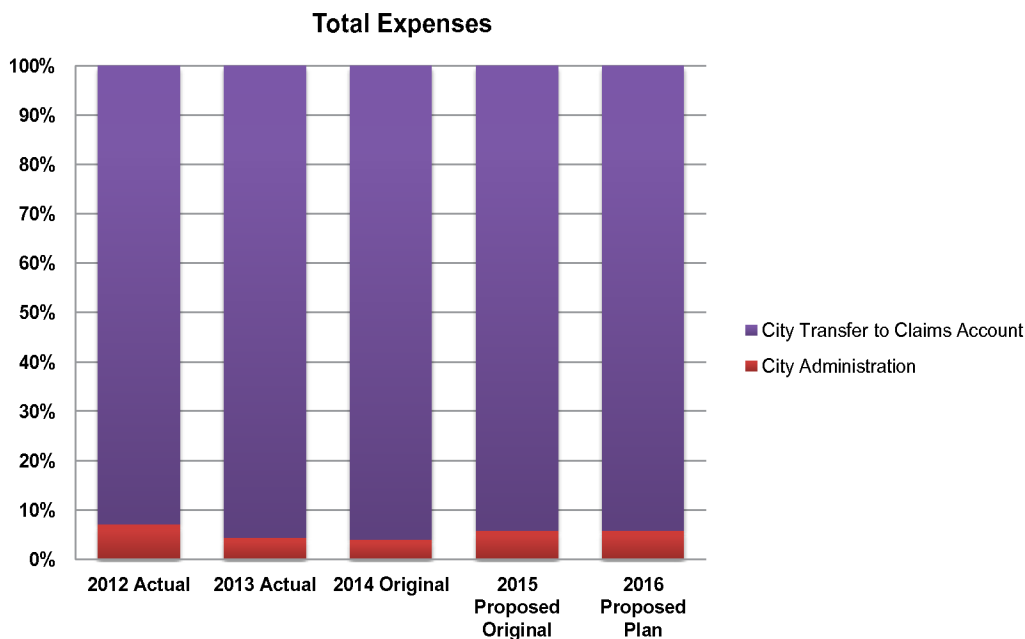
**FY15 Proposed Original Budget**





**HEALTH FUND  
EXPENSE SUMMARY**

	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
	<b>Actual</b>	<b>Actual</b>	<b>Original</b>	<b>Proposed Original</b>	<b>Proposed Plan</b>
City Administration	\$ 1,383,006	\$ 445,359	\$ 449,373	\$ 566,033	\$ 646,235
City Transfer to Claims Account	18,138,937	9,731,879	10,671,134	9,110,758	10,482,157
City Stop Loss	519,797	315,678	329,257	421,996	489,886
Library Administration	26,147	9,951	10,352	11,835	13,740
Library Transfer to Claims Account	358,082	196,522	222,968	159,408	185,053
Library Stop Loss	14,163	8,465	9,029	10,194	11,834
CVA Administration	5,405	2,071	2,092	2,823	3,276
CVA Transfer to Claims Account	80,389	46,393	50,254	45,385	52,686
CVA Stop Loss	2,570	1,486	1,536	2,175	2,525
Housing Authority Administration	61,864	23,674	24,069	30,202	35,060
AuTransfer to Claims Account	1,018,912	414,625	447,350	498,877	579,135
Housing Authority Stop Loss	34,274	20,052	20,942	25,657	29,785
Airport Administration	17,005	6,893	7,131	8,389	9,739
Airport Transfer to Claims Account	212,676	139,624	158,013	127,479	147,986
Airport Stop Loss	9,285	5,938	6,313	7,121	8,267
Retiree	1,878,227	863,845	887,857	1,073,168	1,245,820
Wellness Program	9,380	69,705	90,000	90,000	90,000
Increase in Reserve	-	-	-	-	-
Other Expense (PCORI)	-	-	-	4,256	4,256
Contingencies	-	-	-	909,713	-
<b>Total</b>	<b>\$ 23,770,119</b>	<b>\$ 12,302,160</b>	<b>\$ 13,387,670</b>	<b>\$ 13,105,469</b>	<b>\$ 14,037,440</b>



# Vehicle Replacement Budget Summary

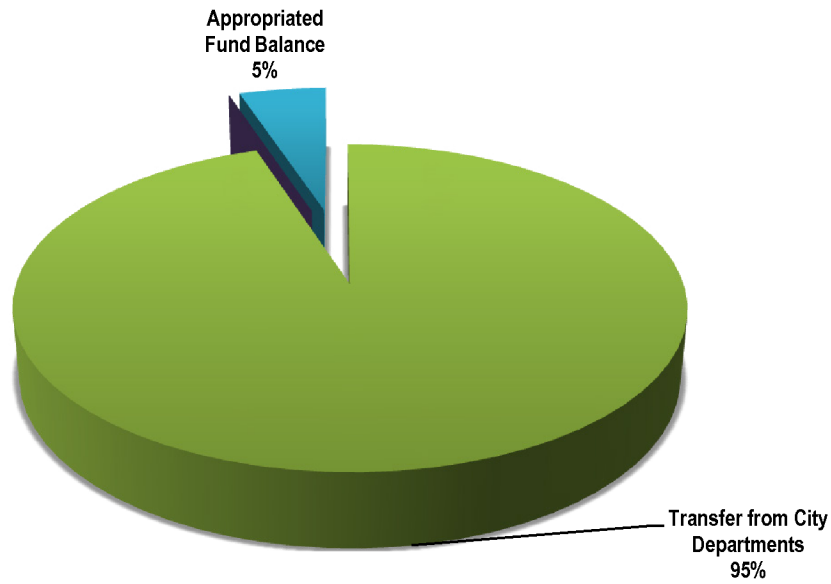
## Vehicle Replacement Fund

The Vehicle Replacement fund accounts for monies to fund the City's capital budget, for the replacement of vehicles. All vehicles/equipment maintained by the Fleet Maintenance Division of the Public Works Department are considered under this fund. This fund minimizes fluctuations in the annual budget vehicle expenditures and establishes manageable replacement cycles.

**VEHICLE REPLACEMENT  
REVENUE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Sale of Property	\$ 34,087	\$ 389,224	\$ -	\$ -	\$ -
Investment Income	178,075	144,071	-	-	-
Transfer from City Departments	3,088,027	3,151,508	3,772,949	2,687,394	2,702,781
Transfer from GF - Sanitation	121,766	-	-	-	-
Appropriated Fund Balance	-	-	59,713	221,106	144,502
<b>Total</b>	<b>\$ 3,421,955</b>	<b>\$ 3,684,803</b>	<b>\$ 3,832,662</b>	<b>\$ 2,908,500</b>	<b>\$ 2,847,283</b>

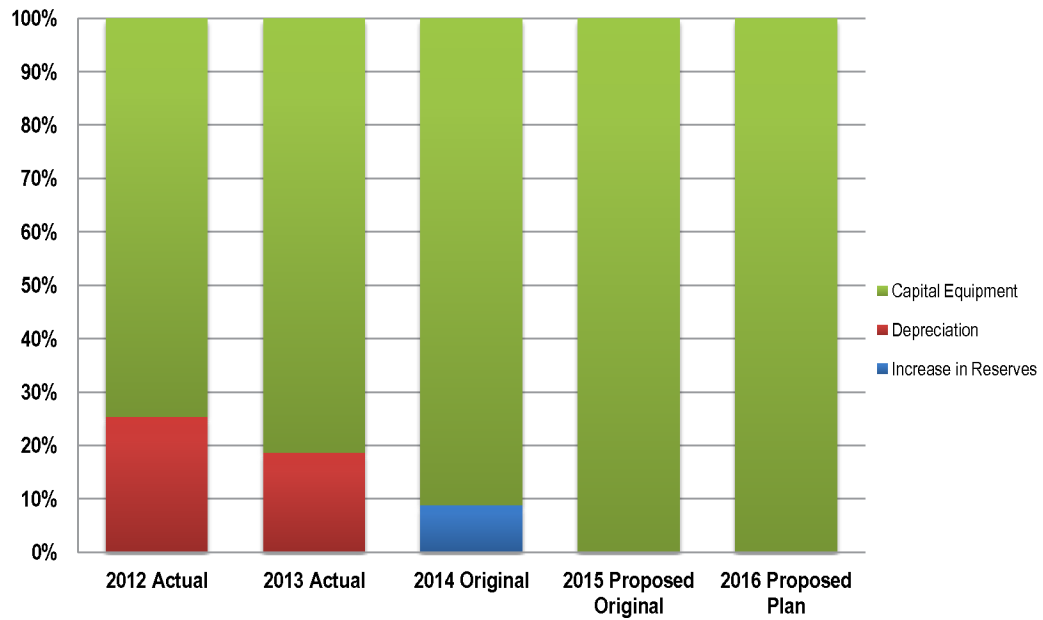
**FY15 Proposed Original Budget**



**VEHICLE REPLACEMENT  
EXPENSE SUMMARY**

	<b>2012 Actual</b>	<b>2013 Actual</b>	<b>2014 Original</b>	<b>2015 Proposed Original</b>	<b>2016 Proposed Plan</b>
Increase in Reserves	\$ -	\$ -	\$ 336,949	\$ -	\$ -
Depreciation	895,969	695,554	-	-	-
Capital Equipment	2,639,820	3,019,129	3,495,713	2,908,500	2,847,283
<b>Total</b>	<b>\$ 3,535,789</b>	<b>\$ 3,714,683</b>	<b>\$ 3,832,662</b>	<b>\$ 2,908,500</b>	<b>\$ 2,847,283</b>

**Total Expenses**





# City of Greenville, North Carolina

Meeting Date: 5/5/2014  
Time: 6:00 PM

**Title of Item:** Budget ordinance amendment #7 to the 2013-2014 City of Greenville budget (Ordinance #13-026), budget ordinance amendment to the Uptown Parking Deck Capital Project Fund (Ordinance #13-025), and ordinances to establish the capital project funds for the Watershed Master Plans and the Convention Center Expansion (Phase III)

**Explanation:** **Abstract:** The attached ordinances are for City Council to approve proposed changes to the adopted 2013-2014 budget and the Uptown Parking Deck Capital Project Fund and to establish the capital project budgets for the Watershed Master Plans and Convention Center Expansion (Phase III).

**Explanation 1:** Attached is an amendment to the 2013-2014 budget ordinance for consideration at the May 5, 2014, City Council meeting. For ease of reference, a footnote has been added to each line item of the budget ordinance amendment, which corresponds to the explanation below:

**A** To appropriate funds donated for United Way to be used for program expenses (Total - \$2,871).

**B** To appropriate fund balance from the Stormwater Utility Fund to fund expenses for the Watershed Master Plans. Approximately \$1.1 million is budgeted within the Stormwater Utility Fund in current year as a capital improvement. It is requested that an additional \$2.1 million be allocated from fund balance (Total - \$2,069,320).

**C** To appropriate additional funds needed to complete the Uptown Parking Deck (\$971,306).

**Explanation 2:** Attached is the budget ordinance to establish the capital project fund for the Watershed Master Plans. This project develops master plans that will enable the City to manage its stormwater drainage system more efficiently. These master plans address both water quality and quantity. These plans will identify and prioritize stormwater capital projects that eliminate or reduce existing and future localized flooding, and water quality problems (\$3,200,000).

**Explanation 3:** Attached is the budget ordinance to establish the capital project fund for the Convention Center Expansion (Phase III). This project will allow for the renovation and expansion of the Convention Center. The renovation will cover approximately 50,000 square feet, while the expansion will add approximately 11,000 square feet (\$4,480,000).

**Fiscal Note:**

The budget ordinance amendment affects the following funds: increase the General Fund by \$2,871, the Stormwater Utility Fund by \$2,069,321, the Uptown Parking Deck Fund by \$971,306, the Watershed Master Plans Fund by \$3,200,000, and the Convention Center Expansion Phase III Fund by \$4,480,000:

<u>Fund Name</u>	<u>Original/Amended Budget</u>	<u>Proposed Amendment</u>	<u>Amended Budget 5/5/2014</u>
General	\$87,406,663	\$ 2,871	\$ 87,409,534
Stormwater Utility	10,063,355	2,069,321	12,132,676
Watershed Master Plans	-	3,200,000	3,200,000
Uptown Parking Deck	4,026,240	971,306	4,997,546
Convention Center (Phase III)	-	4,480,000	4,480,000

**Recommendation:**

Approve budget ordinance amendment #7 to the 2013-2014 City of Greenville budget (Ordinance #13-026), budget ordinance amendment to the Uptown Parking Deck Capital Project Fund (Ordinance #13-025), and ordinances to establish the capital project funds for the Watershed Master Plans and the Convention Center Expansion Phase III

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

**Attachments / click to download**

- [Budget Amendment FY 2013 2014 958470](#)
- [WaterShed\\_MasterPlans\\_Capital\\_Project\\_970170](#)
- [Convention\\_Center\\_Expansion\\_Phase\\_III\\_CP\\_Fund\\_978455](#)

ORDINANCE NO. 14-  
CITY OF GREENVILLE, NORTH CAROLINA  
Ordinance (#7) Amending the 2013-2014 Budget (Ordinance No. 13-026) and  
Amending Uptown Parking Deck Capital Project Fund (Ordinance No. 03-025)

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

**Section I:** Estimated Revenues and Appropriations. **General Fund**, of Ordinance 13-026, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ORIGINAL 2013-2014 BUDGET</b>	<b>#7 Amended 5/5/14</b>	<b>Total Amendments</b>	<b>Amended 2013-2014 Budget</b>
<b>ESTIMATED REVENUES</b>				
Property Tax	\$ 30,725,377	\$ -	\$ -	\$ 30,725,377
Sales Tax	14,910,654	-	-	14,910,654
Video Prog. & Telecom. Service Tax	988,360	-	-	988,360
Rental Vehicle Gross Receipts	124,554	-	-	124,554
Utilities Franchise Tax	5,650,969	-	-	5,650,969
Motor Vehicle Tax	947,925	-	-	947,925
Other Unrestricted Intergov't Revenue	773,961	-	-	773,961
Powell Bill	2,190,005	-	-	2,190,005
Restricted Intergov't Revenues	906,300	A 2,871	614,977	1,521,277
Privilege License	635,694	-	-	635,694
Other Licenses, Permits and Fees	4,441,905	-	-	4,441,905
Rescue Service Transport	3,109,570	-	-	3,109,570
Parking Violation Penalties, Leases, & Meters	320,760	-	-	320,760
Other Sales & Services	594,405	-	27,803	622,208
Other Revenues	368,049	-	-	368,049
Interest on Investments	1,416,062	-	-	1,416,062
Transfers In GUC	6,482,380	-	-	6,482,380
Other Financing Sources	2,083,920	-	629,767	2,713,687
Appropriated Fund Balance	9,466,137	-	-	9,466,137
<b>TOTAL REVENUES</b>	<b>\$ 86,136,987</b>	<b>\$ 2,871</b>	<b>\$ 1,272,547</b>	<b>\$ 87,409,534</b>
<b>APPROPRIATIONS</b>				
Mayor/City Council	\$ 388,957	\$ -	\$ -	\$ 388,957
City Manager	1,307,015	-	-	1,307,015
City Clerk	273,769	-	-	273,769
City Attorney	453,843	-	-	453,843
Human Resources	2,632,937	A 2,871	2,871	2,635,808
Information Technology	3,089,753	-	-	3,089,753
Fire/Rescue	13,465,164	-	21,404	13,486,568
Financial Services	2,388,772	-	1,880	2,390,652
Recreation & Parks	7,532,229	-	168,051	7,700,280
Police	23,120,136	-	331,853	23,451,989
Public Works	10,196,796	-	(739,646)	9,457,150
Community Development	1,917,798	-	827,241	2,745,039
OPEB	350,000	-	-	350,000
Contingency	200,000	-	418,175	618,175
Indirect Cost Reimbursement	(1,014,572)	-	-	(1,014,572)
Capital Improvements	6,550,990	-	506,821	7,057,811
Total Appropriations	\$ 72,853,587	\$ 2,871	\$ 1,538,650	\$ 74,392,237
<b>OTHER FINANCING SOURCES</b>				
Debt Service	\$ 3,995,586	\$ -	\$ -	\$ 3,995,586
Transfers to Other Funds	9,287,814	-	(266,103)	9,021,711
	\$ 13,283,400	\$ -	\$ (266,103)	\$ 13,017,297
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 86,136,987</b>	<b>\$ 2,871</b>	<b>\$ 1,272,547</b>	<b>\$ 87,409,534</b>



**Section II:** Estimated Revenues and Appropriations. **Stormwater Utility Fund**, of Ordinance 13-026, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ORIGINAL 2013-2014 BUDGET</b>		<b>Amended 5/5/14</b>	<b>Total Amendments</b>	<b>Amended 2013-2014 Budget</b>
<b>ESTIMATED REVENUES</b>					
Stormwater Utility Fee	\$ 3,710,491		\$ -	\$ -	\$ 3,710,491
Transfer from SW Drainage Maint. Fund	976,000		-	-	976,000
Bond Proceeds	5,300,000		-	-	5,300,000
Appropriated Fund Balance	76,864	<b>B</b>	2,069,321	2,069,321	2,146,185
<b>TOTAL REVENUES</b>	<b>\$ 10,063,355</b>	<b>\$ -</b>	<b>\$ 2,069,321</b>	<b>\$ 2,069,321</b>	<b>\$ 12,132,676</b>
<b>APPROPRIATIONS</b>					
Stormwater Fund	\$ 10,063,355	<b>B</b>	\$ 2,069,321	\$ 2,069,321	\$ 12,132,676
Total Expenditures	\$ 10,063,355		\$ 2,069,321	\$ 2,069,321	\$ 12,132,676
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 10,063,355</b>		<b>\$ 2,069,321</b>	<b>\$ 2,069,321</b>	<b>\$ 12,132,676</b>

**Section III:** Estimated Revenues and Appropriations. **Uptown Parking Deck Capital Project Fund**, of Ordinance 03-025, is hereby amended by increasing estimated revenues and appropriations in the amount indicated:

	<b>ADJUSTED BUDGET</b>		<b>Amended 5/5/14</b>	<b>Total Amendments</b>	<b>Amended Budget</b>
<b>ESTIMATED REVENUES</b>					
Bond Proceeds	\$ 4,026,240	<b>C</b>	\$ 971,306	\$ 971,306	\$ 4,997,546
<b>TOTAL REVENUES</b>	<b>\$ 4,026,240</b>		<b>\$ 971,306</b>	<b>\$ 971,306</b>	<b>\$ 4,997,546</b>
<b>APPROPRIATIONS</b>					
Design	\$ 266,112	<b>C</b>	145,388	\$ 145,388	\$ 411,500
Property Management	304,128	<b>C</b>	(304,128)	(304,128)	-
Construction	3,456,000	<b>C</b>	992,286	992,286	4,448,286
Contingency	-	<b>C</b>	39,769	39,769	39,769
Bond Administrative Costs	-	<b>C</b>	97,991	97,991	97,991
Total Expenditures	\$ 4,026,240		\$ 971,306	\$ 971,306	\$ 4,997,546
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 4,026,240</b>		<b>\$ 971,306</b>	<b>\$ 971,306</b>	<b>\$ 4,997,546</b>

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

Adopted this 5th day of May, 2014.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

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

ORDINANCE NO. 14-\_\_\_\_  
ORDINANCE ESTABLISHING THE WATERSHED MASTER PLANS  
CAPITAL PROJECT FUND

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

Section I: Estimated Revenues. It is estimated that the following revenues will be available for the Watershed Master Plans Capital Project Fund:

	<b>ORIGINAL 2013-2014 BUDGET</b>
<b><u>ESTIMATED REVENUES</u></b>	
Transfer from Stormwater Utility Fund	\$ 3,200,000
<b>TOTAL REVENUES</b>	<b>\$ 3,200,000</b>

Section II: Appropriations. The following amounts are hereby appropriated for the Watershed Master Plans Capital Project Fund:

<b><u>APPROPRIATIONS</u></b>	
Green Mill Run - Study/Design	\$ 1,200,000
Neuse River - Study/Design	1,200,000
Schoolhouse Branch & North of Tar River - Study/Design	800,000
<b>TOTAL APPROPRIATIONS</b>	<b>\$ 3,200,000</b>

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

Section IV: This ordinance will become effective upon its adoption.

Adopted this 5th day of May, 2014.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

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

ORDINANCE NO. 14-\_\_\_\_  
ORDINANCE ESTABLISHING THE CONVENTION CENTER EXPANSION (Phase III)  
CAPITAL PROJECT FUND

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

Section I: Estimated Revenues. It is estimated that the following revenues will be available for the Convention Center Expansion (Phase III) Capital Project Fund:

	<b>ORIGINAL 2013-2014 BUDGET</b>
<b><u>ESTIMATED REVENUES</u></b>	
Bond Proceeds	\$ 4,080,000
Transfer from Convention Center Project (Phase II)	400,000
<b>TOTAL REVENUES</b>	<b><u>\$ 4,480,000</u></b>

Section II: Appropriations. The following amounts are hereby appropriated for the Convention Center Expansion (Phase III) Capital Project Fund:

<b><u>APPROPRIATIONS</u></b>	
Design	\$ 339,000
Construction	3,486,666
Contingency	174,334
Furniture, Fixture & Equipment	400,000
Bond Expense	80,000
<b>TOTAL APPROPRIATIONS</b>	<b><u>\$ 4,480,000</u></b>

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

Section IV: This ordinance will become effective upon its adoption.

Adopted this 5th day of May, 2014.

\_\_\_\_\_  
Allen M. Thomas, Mayor

ATTEST:

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