



# Agenda

## Greenville City Council

October 8, 2007  
6:00 PM  
City Council Chambers  
200 West Fifth Street

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**I. Call Meeting To Order**

**II. Invocation - Mayor Pro-Tem Council**

**III. Pledge of Allegiance**

**IV. Roll Call**

**V. Approval of Agenda**

**VI. Consent Agenda**

1. Minutes for the September 10 and September 13, 2007 City Council meetings
2. Agreement for federal lobbying services with The Ferguson Group
3. Resolution authorizing a Law Enforcement Liaison Grant from the Governor's Highway Safety Program
4. Amendments to the City of Greenville, Greenville Area Transit System Substance Abuse Policy
5. Contract award for the purchase of two expansion transit buses
6. Resolution approving a municipal agreement with the North Carolina Department of Transportation for biannual bridge inspections
7. Resolution approving a supplemental agreement with the North Carolina Department of Transportation for the Greene Street Bridge Relocation Project

8. Resolution accepting dedication of rights-of-way and easements for Taberna, Phase 2-Section 1
9. Preliminary Engineering Agreement with CSX Transportation for the Thomas Langston Road Extension Project
10. Resolution designating the Operations Manager with the authority to sign and execute all papers and documents in connection with mosquito control
11. Resolution exempting the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project from the statutory procurement process and a contract award for architectural/engineering services for the project
12. Water Capital Projects Budget Ordinance and Reimbursement Resolution for Greenville Utilities Commission's Water Resources Automated Meter Reading Project
13. Various tax refunds
14. Report on bids awarded

**VII. Old Business**

15. Offer by Place Acquisition, LLC to lease property owned by the City of Greenville for the use and benefit of Greenville Utilities Commission located west of Cherry Hill Cemetery

**VIII. New Business**

16. Presentations by boards and commissions
  - a. Recreation and Parks Commission
17. Pitt County local option sales tax referendum
18. Painted Pirate Project

**IX. Review of October 11, 2007 City Council agenda**

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

**XI. City Manager's Report**

**XII. Adjournment**



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Minutes for the September 10 and September 13, 2007 City Council meetings

**Explanation:** The September 10 and September 13, 2007 City Council minutes have been prepared and are ready to be considered for approval by City Council.

**Fiscal Note:** None

**Recommendation:** Approval of the September 10 and September 13, 2007 City Council minutes.

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**Attachments / click to download**

[September 10 2007 City Council Minutes 716165](#)

[September 13 2007 City Council Minutes 717264](#)

## MINUTES PROPOSED FOR ADOPTION BY CITY COUNCIL

Greenville, NC  
September 10, 2007

The Greenville City Council met in a regular meeting on the above date at 6:00 PM in the City Council Chambers, third floor of City Hall, with Mayor Robert D. Parrott presiding. The meeting was called to order, followed by the invocation by Council Member Chip Little and the pledge of allegiance to the flag. The following were present.

Mayor Robert D. Parrott  
Mayor Pro-Tem Mildred A. Council  
Council Member Ray Craft  
Council Member Pat Dunn  
Council Member Rose H. Glover  
Council Member Chip Little  
Council Member Larry Spell  
Wayne Bowers, City Manager  
Wanda T. Elks, City Clerk  
David A. Holec, City Attorney

### APPROVAL OF AGENDA

Motion was made by Council Member Craft and seconded by Mayor Pro-Tem Council to approve the agenda as presented. Motion carried unanimously.

### APPROVAL OF CONSENT AGENDA - APPROVED

Motion was made by Council Member Craft and seconded by Council Member Glover to approve the items under the consent agenda as listed below. Motion carried unanimously.

- 1) Minutes from the August 6, 2007 and August 9, 2007 City Council meetings
- 2) Resolution amending the Board and Commission Policy to include the Investment Advisory Committee (Resolution No. 07-52)
- 3) Resolution accepting dedication of rights-of-way and easements for Corey Ridge, Section Two, Phase Two; Stonehenge Office Park; Birch Place, Treetops Subdivision; Charleston Village, Section 1, Phase 1; Charleston Village, Section 1, Phase 2; and Savannah Place, Section 3 (Resolution No. 07-53)
- 4) Authorization for Greenville Utilities Commission to submit a grant application for Aquifer Storage and Recovery (ASR) Wellhead Facilities Project
- 5) Ordinance establishing a Sewer Capital Projects Budget for the Stokes and Pactolus Schools sewer extensions (Ordinance No. 07-105)
- 6) Capital Projects Budget Ordinance and Reimbursement Resolution for Greenville Utilities Commission River Hill Annexation Sewer Project (Ordinance No. 07-07-106; Resolution No. 07-54)

- 7) Capital Project Budget Ordinance and Reimbursement Resolution for Greenville Utilities Commission Gas Distribution System SCADA Upgrade Project (Ordinance No. 07-107; Resolution No. 07-55)

## PRESENTATIONS BY BOARDS AND COMMISSIONS

### Human Relations Council

Mrs. Franchine Pena, Chair of the Human Relations Council, explained the mission and vision of the Human Relations Council and stated that it is committed to promoting equal opportunity and working to create a climate where differences are valued. Mrs. Pena stated that the Human Relations Council's primary goal is to ensure equal opportunity to everyone who works in, lives in or visits Greenville and to promote better human relations in Greenville, because its ultimate vision is to have a city free of any unlawful discrimination and unfair treatment. In addition, it is imperative to encourage the youth to become better trained and qualified for gainful employment.

Mrs. Pena stated that in 2006, the Human Relations office responded to a total of 218 complaints/requests. There were 96 tenant/landlord complaints, 2 housing discrimination/unfair treatment complaints, 3 employment complaints, 69 requests from families needing assistance with their utilities, 6 requests from families needing assistance with rental payments or assistance for finding adequate housing, and 12 families were in need of food/clothing. The Human Relations Office has conducted five mediation sessions for tenant/landlord disputes. Three of the sessions were conducted by the Human Relations Office and the Human Relations Council's Fair Housing Committee and two were conducted by the Human Relations Office and the Code Enforcement Division of the Community Development Department. Four of the cases were settled through the mediation process and the other case has been filed with Pitt County Courthouse. In March of this year, the Human Relations Council presented its Five Year Strategic Plan. Some of the Human Relations Council's key priorities addressed in the Plan are (1) the establishment of a Human Relations Department; (2) development of new initiatives to promote City's efforts to become a more inclusive community; (3) promotion of decent and safe affordable housing conditions for all citizens, especially the elderly and persons with disabilities; and (4) creation of an educational outreach program on human and civil rights for all citizens. Mrs. Pena further stated that the events completed for 2007 included the Best-Irons Humanitarian Awards Banquet, two Fair Housing Seminars, and an Inclusive Community Ceremony. The ongoing responsibilities and activities to be completed by December 2007 include (1) preparation of a two-year budget for City Council consideration and approval; (2) development of guidelines for the Greenville Youth Festival; (3) development of initiatives for building a more inclusive city; (4) development of a Fair Housing Ordinance for City Council's consideration and approval; and (5) development of brochures for the Human Relations Council and Youth Council (translated in different languages), and celebration of Race Equality Week, Young Citizen of the Year, and Bill of Rights and Universal Declaration of Human Rights. Mrs. Pena concluded by stating that the Human Relations Council looks forward to the challenge of creating a more inclusive community for all of Greenville.

Mayor Parrott thanked Mrs. Pena and asked her to take his thanks for the work they are doing in the community back to the Human Relations Council.

### Youth Council

Ms. Ariel Lopez, Chair of the Youth Council, stated that the Greenville Youth Council is working to enable more young people to become active citizens by developing and improving the communities to benefit not only the youth or young people, but all of Greenville. Young people are an important part of Greenville, but they are not always seen as important when it comes to listening to their views. Hopefully, the City's inclusive community initiative will assist in providing a voice for the youth to influence, direct and change issues that affect young people in Greenville. The Youth Council has raised money to attend the National League of Cities Conference in Reno, served as volunteers at the City's Kid Fest event, served as volunteers with the City's Spring Clean-Up project, and raised monies for Aids Awareness. The Youth Council's responsibilities for the remainder of the year are to assist the Human Relations Council with developing criteria/guidelines for Greenville Youth Festival, assist the Human Relations Council with promoting and creating new initiatives for building an inclusive Greenville, assist the Human Relations Council with promoting and celebrating Race Equality Week, volunteer and participate in the River Rock Festival on Saturday, September 22, 2007, and continue with other fundraisers. The primary concentration will be the establishment of a Teen Center for Greenville youth.

Mayor Pro-Tem Council, Liaison to the Youth Council, stated that she is proud of the youth and welcomes the new members.

After the members of the Youth Council were introduced, Mayor Parrott thanked them for a fine presentation and for the work they do.

Council Member Glover stated that the group has worked hard to raise money, and she is going to seriously look at the budget for the Youth Council because they need funding to carry out their mission.

### PRESENTATION OF ANNUAL AUDIT FOR FISCAL YEAR ENDED JUNE 30, 2007

Mrs. Bernita Demery, Director of Financial Services, informed the Council that in FY 2007 the City was involved in the first phase of the 2004 General Obligation Bond Issuance, representing \$12.715 million. The net assets, including Greenville Utilities, rose slightly to just over \$415 million. Revenues are shown as \$1.2 million below expenses; however, that is because of the transfer of \$2.7 million from the General Fund to the Vehicle Replacement Fund and service fees of \$1.7 million from the General Fund. Revenues were 2.9% over budget and expenditures were 8.5% under budget. The amount in Fund Balance is \$27.5 million, with \$10.7 million of that being unreserved/undesignated. The top two revenues continue to be property taxes (39.27%) and sales tax (22.30%), which comprise 61.57% of revenues. Revenue from property taxes was \$23.9 million, revenue from sales tax was \$13.5 million, and revenue from the utilities franchise was \$4.4 million. There was a 10.8% growth in assessed valuation, and 96.5% of the taxes were collected. The top General Fund expenses are Public Safety (Police--\$16.9 million; Fire/Rescue-

-\$10.4 million) with a total of \$27.3 million (48.9%), Public Works with a total of \$12.3 million (22.08%), and Cultural and Recreational with a total of \$4.7 million (8.37%), for a combined total of \$55.8 million. The outstanding debt as of June 30, 2007 was \$49.1 million. The debt margin as of June 30, 2007 is \$316.9 million, and future debt of \$8.1 million in October 2008 and \$10.2 million in October 2009 is projected. Revenues exceeded expenditures in each of the Enterprise Funds, with the exception of the Aquatics and Fitness Center, which fell short by \$195 due to having to be closed for repairs for some time, and the Golf Course, which fell short by \$83,135. Mrs. Demery concluded by stating that there are still many “unmet” Capital Improvements. Refinancing of Bradford Creek Golf Course is being considered. In the future, GASBY 43 post-retirement pension benefits will be required to be included on the balance sheet. The City needs to plan for inevitable economic downturns.

Mr. Bryan Starnes of Martin Starnes & Associates, CPAs, PA, gave an unqualified opinion on the audit. There were no findings or questioned costs, no material internal control weaknesses identified, and no sign of unrecorded errors. Greenville’s budget is used as a model for other cities that are interested in going to a two-year budget.

Upon being asked about the negative balances shown on the Greene Street Bridge, Mrs. Demery stated that there is a supplemental agreement for that project that will come in in October. The City is waiting on reimbursement of \$346,000 and has received \$50,000 from the North Carolina Department of Transportation. Staff is wrapping this up with the State.

Mayor Parrott thanked Mr. Starnes for a good job.

Motion was made by Council Member Little and seconded by Mayor Pro-Tem Council to accept the Audit Report. Motion carried unanimously. (Document No. 07-06)

RESOLUTION AUTHORIZING LEASE BY NEGOTIATED OFFER, ADVERTISEMENT, AND UPSET BID METHOD OF PROPERTY TO PLACE ACQUISITION, LLC - ADOPTED

City Attorney Holec informed the Council that Greenville Utilities and City staff have been working with Place Acquisition, LLC, a student housing developer from Atlanta, Georgia, on a lease agreement for property located near Greenville Utilities’ old Power Plant site just off First Street near the Tar River. Place Acquisition, LLC plans to construct a multi-story student housing facility on the property they are purchasing adjacent to the site and desires to enter into a long-term lease agreement for this property to be used for surface parking for the proposed facility. The property is owned by the City for the use and benefit of Greenville Utilities and is the previous location of the manufactured gas plant. For several years, Greenville Utilities has been involved in the remediation of this site due to coal/tar deposits that have contaminated the soils. This remediation will be entering the final phase in the near future. The property is currently not being used, and Greenville Utilities does not plan to use it in the future. The Greenville Utilities Commission Board authorized the General Manager/CEO to execute this lease agreement on behalf of GUC at its August 21, 2007 meeting, subject to similar approval by the City Council. Annual lease payments will be made to Greenville Utilities and the City will receive increased property tax revenues from the new construction on the adjacent site.

After a concern being expressed about building in the floodplain, Mr. Harry Hamilton, Chief Planner, stated that the building area is high and outside the floodplain.

Council Member Spell stated that some people in the area were concerned and requested that they be allowed to provide public input. He suggested that the Council table this request and put it on the agenda after the public comment period on September 13, 2007, so people could speak at that time.

Council Member Dunn asked for clarification on whether Greenville Utilities would be using the property in the future.

City Manager Wayne Bowers stated that Greenville Utilities says they have no need for it as far as a utility operation. There are, however, retained easements for lines.

Mr. Tony Cannon, Assistant General Manager of Greenville Utilities Commission, stated that this is the largest drainage area one would see when looking at the Blount property. It is the site of the old water plant and gas plant, and the Utilities does not have plans to use it in the foreseeable future. Greenville Utilities supports the proposed use of this property.

Mayor Parrott asked Mr. Cannon if this would enhance the clean-up costs, and Mr. Cannon replied that it would help them pay for it over time.

Motion was made by Council Member Spell and seconded by Mayor Pro-Tem Council to delay this until the September 13, 2007 meeting.

Council Members Craft and Little stated that, based on the comments, they don't see any need to delay. This was approved by the Board of the Greenville Utilities Commission.

The motion made by Council Member Spell and seconded by Mayor Pro-Tem Council to delay this until the September 13, 2007 meeting was then voted on and failed with a 2:4 vote. Mayor Pro-Tem Council and Council Member Spell voted in favor of the motion. Council Members Glover, Dunn, Craft and Little voted in opposition to the motion.

Motion was then made by Council Member Craft and seconded by Council Member Glover to adopt the resolution authorizing the lease of property to Place Acquisition, LLC, through the negotiated offer and upset bid method. Motion carried with a 4:2 vote. Council Members Glover, Dunn, Craft and Little voted in favor of the motion. Mayor Pro-Tem Council and Council Member Spell voted in opposition. (Resolution No. 07-56)

#### REVIEW OF SEPTEMBER 13, 2007 CITY COUNCIL AGENDA

The Council did a cursory review of the items on the September 13, 2007 City Council Meeting agenda and reviewed the appointments to Boards and Commissions.

## COMMENTS FROM MAYOR AND CITY COUNCIL

Council Member Spell stated that he had read the information from staff on how good the City is doing in foreclosures of affordable housing. The staff has a good process to keep people in houses they can afford.

Council Member Spell welcomed everyone back to East Carolina University, Pitt Community College and Shaw University. He also congratulated everyone who participated in the Dental School issue.

Mayor Pro-Tem Council stated that she attended the University of North Carolina system meeting with Erskine Bowles at the Murphy Center and it was a good meeting.

Council Member Dunn stated that there is a new group in the area, Rebuilding Together, which came from Goldsboro to help relocate the Little Willie Center. She thanked all those who helped make that happen. The organization is very interested in helping people refurbish their homes.

Council Member Glover stated that she also attended the University system's meeting this morning and heard good comments and shared comments. They discussed how cities and universities can work together to increase the economic impact of the community. She gave facts and figures, such as 1.2 million students not graduating from high school in 2006, which created a loss of \$309 billion. Americans would save more than \$17 million in healthcare costs if each class of dropouts had to earn their diplomas. She concluded by stating that she hopes the City can work more with the School System.

Mayor Parrott concurred with Council Member Glover's comments.

## CITY MANAGER'S REPORT

Director of Recreation and Parks Gary Fenton introduced Shana Kriewall, who replaced Bill Twine on his staff.

Ms. Kriewall addressed the Council and stated that she is excited to be here.

City Manager Bowers recommended that the Council cancel the September 24 meeting and asked them to think about it so it could be addressed at the September 13 meeting.

City Manager Bowers stated that Congressman Walter B. Jones will be in Greenville on Wednesday, September 12. During his visit, he will be taken on a tour of the Intergenerational Center.

City Manager Bowers thanked the Council Members who attended the ceremony prior to this Council meeting for the new fountain. The purpose of the ceremony was to recognize the West Memorial Fund, who donated funding for the addition to the City complex. He presented a picture to the Mayor, who was instrumental in getting the fountain.

Mayor Parrott stated that it took everyone working together to make it happen. This is the first fountain in Greenville and it is special.

CLOSED SESSION

Motion was made by Council Member Spell and seconded by Mayor Pro-Tem Council to go into closed session (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 the Open Meetings Law and (2) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. Motion carried unanimously.

RETURN TO OPEN SESSION

Motion was made by Council Member Craft and seconded by Mayor Pro-Tem Council to return to open session. Motion carried unanimously.

ADJOURN

Motion was made by Council Member Craft and seconded by Council Member Spell to adjourn the meeting at 7:30 p.m. Motion carried unanimously.

Respectfully submitted,

Wanda T. Elks, MMC  
City Clerk

MINUTES PROPOSED FOR ADOPTION BY CITY COUNCIL

Greenville, NC  
September 13, 2007

The Greenville City Council met in a regular meeting on the above date at 7:00 PM in the City Council Chambers, third floor of City Hall, with Mayor Robert D. Parrott presiding. The meeting was called to order, followed by the invocation by Council Member Dunn and the pledge of allegiance to the flag. The following were present.

Mayor Robert D. Parrott  
Mayor Pro-Tem Mildred A. Council  
Council Member Ray Craft  
Council Member Pat Dunn  
Council Member Rose H. Glover  
Council Member Chip Little  
Council Member Larry Spell  
Wayne Bowers, City Manager  
Wanda T. Elks, City Clerk  
David A. Holec, City Attorney

APPROVAL OF AGENDA

City Manager Bowers reported that a request has been received to continue until October 11, 2007 the request to amend Horizons: Greenville's Community Plan for the area located at the southeast corner of the intersection of Greenville Boulevard and Fourteenth Street, along Greenville Boulevard, from an "office/institutional/multi-family" category to a "commercial" category and the request to rezone the Ward Holdings, LLC property located at the southeast corner of the intersection of Greenville Boulevard and Fourteenth Street from R9S to CH. In addition, a request has been received from Greenville Utilities Commission to add an ordinance establishing a Sewer Capital Projects Budget for the Hardee Creek Outfall/Porter's Grove Subdivision. He recommended that, if Council votes to add the ordinance, it be added as Item #29.

Motion was made by Council Member Dunn and seconded by Council Member Spell to continue until October 11, 2007 the request to amend the Horizons: Greenville's Community Plan for the area located at the southeast corner of the intersection of Greenville Boulevard and Fourteenth Street along Greenville Boulevard from an "office/institutional/multi-family" category to a "commercial" category and the request to rezone the Ward Holdings, LLC property and to add as Item #29 the ordinance establishing a Sewer Capital Projects Budget for the Hardee Creek Outfall/Porter's Grove Subdivision. Motion carried unanimously.

Motion was made by Council Member Spell and seconded by Mayor Pro-Tem Council to approve the agenda as amended. Motion carried unanimously.

## SPECIAL RECOGNITIONS

Director of Recreation and Parks Gary Fenton and Council Member Craft presented certificates to the coaches and the North State 10-11 Year-Olds Baseball Team members for winning the State Championship for the 10-11 year old age group. This is the first time a 10-11 team from Greenville has ever won the state championship. It is the first State championship the North State league has won since 1984 and only the second one in over 50 years.

Mr. Hyman Ebron was presented with a plaque upon his retirement with 32 years and 6 months of service in the Public Works Department.

Mr. Tom Tysinger, Director of Public Works, was presented with a plaque upon his retirement with 21 years of service.

## APPOINTMENTS TO BOARDS AND COMMISSIONS

### Affordable Housing Loan Committee

Council Member Glover asked that the appointment to the Affordable Housing Loan Committee be continued until October 2007.

### Human Relations Council

Motion was made by Council Member Dunn and seconded by Council Member Little to reappoint Manolita Buck and James Cox to a second three-year term expiring September 2010. Motion carried unanimously.

### Pitt-Greenville Convention and Visitors Authority

Council Member Spell asked that the appointment to the Pitt-Greenville Convention and Visitors Authority be continued until October 2007.

### Public Transportation and Parking Commission

Mayor Pro-Tem Council asked that the appointment to the Public Transportation and Parking Commission be continued until October 2007.

### Youth Council

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Little to appoint Elisha Linton to the Youth Council to represent South Central High School. Motion carried unanimously.

## REPORT ON SELF HELP AND THE CENTER FOR RESPONSIBLE LENDING

Mr. Adelcio Lugo, Self-Help Regional Director, stated that the Self-Help is a non-profit and community development financial institution that has been in existence over 27 years operating

mostly in North Carolina helping those underserved communities. Since its inception in 1980, it has provided over \$5 billion in loans to homeowners, small business and nonprofits. Its mission is to create ownership and economic opportunities, particularly for those families underserved by traditional financial institutions.

Ms. Lisa Pittman, Senior Program Associate for the Center for Responsible Lending, stated that the organization formed after the 1999 predatory lending laws were passed. The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. Greenville had the third highest discrepancy in high cost loans to African-Americans as opposed to non-African Americans, based on Home Mortgage Data Act (HMDA) data. There are some limitations to the data, even though it does have good points about it. Subprime loans used to be a small portion of market, but they have risen substantially since 2003. Data shows that in 2005, the percentage of higher cost (subprime) first lien loans to African Americans was 52%, to Latinos was 40%, and to whites was 19%. Of families with subprime loans, 2.2 million are projected to lose their home, resulting in \$164 billion in lost equity. One in five (19.4%) of the recent subprime loans will end in foreclosure. The reasons for the foreclosures are exploding adjustable rate mortgages (ARMs) without solid underwriting, no escrows for taxes and insurance, predatory lending, and low quality broker originations. An example of how ARMs get people in trouble is that the borrower will provide a person with a low interest rate that they can afford the monthly payments on, and then when it is fully indexed, the monthly payments are unaffordable for the borrower. For instance, a person can borrow \$200,000 with a \$1405 payment at 7.55% interest, which is a payment of 61% debt to income ratio. The fully indexed rate would be a payment of \$1918, with an interest rate of 11.7% and 83% after-tax debt to income ratio.

Mrs. Pittman recommended that if the City has the manpower to look at all the deeds from the City and County for the last couple of years for the adjustable rate mortgages and talk to those people that have those mortgages, it may be able to make a difference. Advice should be given to people who have those mortgages. It is difficult to help people after they have already gotten into trouble. She provided the Council a list of the top ten high cost lenders for 2004-05 and stated that the Council should look at those first and ask the lenders what they can do modify the loans.

Council Members expressed concern about Greenville being the third worst city in the nation regarding foreclosures, stating that it raises the cost of the City to operate, raises the cost of crime, and everything the City is trying to do.

Upon being asked if there is value in someone providing training and workshops to help people know what to look for Mrs. Pittman responded that education and financial literacy is positive. If regions can have a workshop including the bankers and the people that are already in trouble, the bankers may be able to assist them. Mrs. Pittman encouraged the Council to prod local banks and put pressure on them to do the right things. For every foreclosure in a block area, it reduces the property value for everyone else on the block.

Mayor Parrott expressed appreciation to Mrs. Pittman and stated that he would like to have her present at a workshop of the Council. This is a starting point for addressing the issue.

ORDINANCE REZONING ALLEN THOMAS PROPERTY LOCATED AT THE NORTHWEST CORNER OF ARLINGTON BOULEVARD AND DICKINSON AVENUE FROM RA20 AND O TO MO - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Allen Thomas to rezone 7.737 acres located at the northwest corner of Arlington Boulevard and Dickinson Avenue from RA20 and O to MO. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request

Mayor Parrott declared the public hearing open and solicited comments from the audience.

Mr. Mike Baldwin, representing Allen Thomas, stated that this property is under contract with Jimmy and Amos Evans and is a portion of Arlington West Office Park that was developed about five years ago. There is already some infrastructure there. The request is in compliance with the Comprehensive Plan. This is an excellent location and the MO zoning gives more flexibility in providing more uses at the intersection. The traffic impacts are minimal.

There being no further comments, the public hearing was closed.

Motion was made by Council Member Craft and seconded by Council Member Glover to adopt the ordinance rezoning 7.737 acres located at the northwest corner of Arlington Boulevard and Dickinson Avenue from RA20 and O to MO. Motion carried unanimously. (Ordinance No. 07-109)

ORDINANCE REZONING DR. LEDYARD ROSS PROPERTY LOCATED ALONG THE NORTHERN RIGHT-OF-WAY OF ARLINGTON BOULEVARD, EAST OF SEABOARD COASTLINE RAILROAD, AND WEST OF EVANS STREET FROM OR TO CG - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Dr. Ledyard Ross to rezone 0.4021 acres located along the northern right-of-way of Arlington Boulevard, 320± feet east of Seaboard Coastline Railroad, and 815± feet west of Evans Street from OR to CG. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request. She explained that the request is not in conflict with the intent of the Comprehensive Plan.

Mayor Parrott declared the public hearing open and solicited comments from the audience.

Dr. Ledyard Ross explained to the Council that the lot next to this property is General Commercial, and he is trying to consolidate both of them into one.

There being no further comments, the public hearing was closed.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Dunn to adopt the ordinance rezoning 0.4021 acres located along the northern right-of-way of Arlington Boulevard, 320± feet east of Seaboard Coastline Railroad, and 815± feet west of Evans Street from OR to CG. Motion carried unanimously. (Ordinance No. 07-110)

ORDINANCE REZONING PARKER'S CHAPEL FREE WILL BAPTIST CHURCH  
LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF PACTOLUS  
HIGHWAY AND GREENVILLE BOULEVARD FROM RA20 AND CH TO OR - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Parker's Chapel Free Will Baptist Church to rezone 19.53 acres located at the southwest corner of the intersection of Pactolus Highway and Greenville Boulevard from RA20 and CH to OR. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request. She explained that it is impacted by the 100 and 500-year floodplain, so there are building elevation standards that would apply. There is a regional focus area at the intersection of US 264 Business and US 264.

Mayor Parrott declared the public hearing open and solicited comments from the audience.

Mr. Lorenzo Stox, pastor of Parker's Chapel Free Will Baptist Church, stated that this property was purchased in four different sections, most of that being zoned RA-20. There are no plans to build anything other than another church, an education building, ball fields, etc. It has been determined that it will be cost prohibitive to build a retirement village as was originally planned.

There being no further comments, the public hearing was closed.

Upon being asked if the Church would be allowed to do expansion with the current zoning, Ms. Gooby replied that there is OR zoning further south, and that expansion of high density residential in this area is not good.

City Attorney reminded the Council that the rezoning has to be based on all uses that are allowable under the zoning classification.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Glover to adopt the ordinance rezoning 19.53 acres located at the southwest corner of the intersection of Pactolus Highway and Greenville Boulevard from RA20 and CH to OR. Motion carried with a vote of 5:1. Mayor Pro-Tem Council and Council Members Glover, Craft, Dunn and Little voted in favor of the motion. Council Member Spell voted in opposition. (Ordinance No. 07-111)

ORDINANCE REZONING TUCKER FARMS, INC. PROPERTY LOCATED ALONG THE WESTERN RIGHT-OF-WAY OF COUNTY HOME ROAD, SOUTH OF PICCADILLY DRIVE, AND EAST OF ROYAL DRIVE FROM R6 TO O AND R9S - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Tucker Farms, Inc. to rezone 7.1822 acres located along the western right-of-way of County Home Road, 200± feet south of Piccadilly Drive, and 160± feet east of Royal Drive from R6 to O and R9S. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request. This request is in compliance with the Comprehensive Plan.

Mayor Parrott declared the public hearing open and solicited comments from the audience.

Mr. Ken Malpass was available to answer questions.

There being no further comments, the public hearing was closed.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Little to adopt the ordinance rezoning 7.1822 acres located along the western right-of-way of County Home Road, 200± feet south of Piccadilly Drive, and 160± feet east of Royal Drive from R6 to O and R9S. Motion carried unanimously. (Ordinance No. 07-112)

ORDINANCE REQUESTED BY SHERRYL TIPTON TO AMEND THE OFFICE DISTRICT TABLE OF USES TO INCLUDE "DANCE STUDIO" AS A PERMITTED USE - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Sherryl Tipton to amend the Office district table of uses to include "Dance studio" as a permitted use. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Mr. Harry Hamilton, Chief Planner, explained that a dance studio would be an appropriate use in the Office zoning district.

Mayor Parrott declared the public hearing open and solicited comments from the audience.

Mrs. Sherryl Tipton was present to answer questions.

There being no further comments, the public hearing was closed.

Motion was made by Council Member Spell and seconded by Council Member Dunn to adopt the ordinance to amend the Office district table of uses to include "Dance studio" as a permitted use. Motion carried unanimously. (Ordinance No. 07-108)

ORDINANCE REZONING SHERRYL TIPTON'S PROPERTY LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF PLAZA DRIVE AND CARLTON STREET FROM CG TO O - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by Sherryl Tipton to rezone 0.66 acres located at the northeast corner of the intersection of Plaza Drive and Carlton Street from CG to O. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to recommend approval of the request.

Ms. Chantae Gooby, Planner, delineated the property on a map and explained the request.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Dunn and seconded by Mayor Pro-Tem Council to adopt the ordinance rezoning 0.66 acres located at the northeast corner of the intersection of Plaza Drive and Carlton Street from CG to O. Motion carried unanimously. (Ordinance No. 07-113)

ORDINANCE ANNEXING ARBOR HILLS SOUTH LOCATED WEST OF EASTERN PINES ROAD AND SOUTH OF PLATEAU DRIVE - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Eastern Pines Development Company, LLC to annex Arbor Hills South, containing 27.762 acres located west of Eastern Pines Road and south of Plateau Drive. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 4 and will be served by Fire Station Number 6. The property is currently vacant and the proposed use is 59 single family homes. The current population is 0, and the anticipated population at full development is 156, with 38 being minority.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Glover and seconded by Council Member Dunn to adopt the ordinance annexing Arbor Hills South, containing 27.762 acres located west of Eastern Pines Road and south of Plateau Drive. Motion carried unanimously. (Ordinance No. 07-114)

ORDINANCE ANNEXING BEDFORD, SECTION 11, LOCATED WEST OF SUMMERHAVEN SUBDIVISION AND EAST OF WICKHAM DRIVE - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Cherry Construction Co., Inc. to annex Bedford, Section 11, containing 5.935 acres

located west of Summerhaven Subdivision and east of Wickham Drive. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 5 and will be served by Fire Station Number 3. The property is currently vacant and the proposed use is 9 single family homes. The current population is 0, and the anticipated population at full development is 21, with 3 being minority.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Glover to adopt the ordinance annexing Bedford, Section 11, containing 5.935 acres located west of Summerhaven Subdivision and east of Wickham Drive. Motion carried unanimously. (Ordinance No. 07-115)

ORDINANCE ANNEXING BROOK HOLLOW, SECTION TWO, LOCATED NORTH OF DICKINSON AVENUE EXTENSION AND WEST OF BROOK HOLLOW, SECTION ONE - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by WHW and Associates, LLC, to annex Brook Hollow, Section Two, containing 21.028 acres located north of Dickinson Avenue extension and west of Brook Hollow, Section One. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 1 and will be served by Fire Station Number 5. The property is currently vacant and the proposed use is 66 duplexes with 132 units. The current population is 0, and the anticipated population at full development is 289, with 182 being minority.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Glover to adopt the ordinance annexing Brook Hollow, Section Two, containing 21.028 acres located north of Dickinson Avenue extension and west of Brook Hollow, Section One. Motion carried unanimously. (Ordinance No. 07-116)

ORDINANCE ANNEXING COPPER BEECH TOWNHOMES LOCATED SOUTH OF NC HIGHWAY 33 AND WEST OF BROOK VALLEY SUBDIVISION - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Copper Beech Townhomes to annex Cooper Beech Townhomes, containing 46.11 acres located south of NC Highway 33 and west of Brook Valley Subdivision. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 3 and will be served by Fire Station Number 6. The property is currently vacant and the proposed use is 440 multifamily suites. The current population is 0, and the anticipated population at full development is 1,234, with 192 being minority.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Spell and seconded by Mayor Pro-Tem Council to adopt the ordinance annexing Copper Beech Townhomes, containing 46.11 acres located south of NC Highway 33 and west of Brook Valley Subdivision. Motion carried unanimously. (Ordinance No. 07-117)

ORDINANCE ANNEXING EMBARQ PROPERTY LOCATED SOUTH OF OLD FIRE TOWER ROAD AND EAST OF COREY ROAD - ADOPTED

City Manager Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Embarq to annex Embarq property, containing 3.039 acres located south of Old Fire Tower Road and east of Corey Road. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 5 and will be served by Fire Station Number 3. The property is currently an Embarq Utility Hut and the proposed use is addition of a restroom facility to the existing hut. The current population is 0, and the anticipated population at full development is 0.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Mayor Pro-Tem Council and seconded by Council Member Little to adopt the ordinance annexing Embarq property, containing 3.039 acres located south of Old Fire Tower Road and east of Corey Road. Motion carried unanimously. (Ordinance No. 07-118)

ORDINANCE ANNEXING GREYFOX RUN, PHASE 1, LOCATED WEST OF NC HIGHWAY 43 AND EAST OF KITTRELL FARMS PATIO HOMES - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Bill Clark Homes of Greenville, LLC, to annex Greyfox Run, Phase 1, containing 26.8952 acres located west of NC Highway 43 and east of Kittrell Farms Patio Homes. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 5 and will be served by Fire Station Number 3. The property is currently vacant and the proposed use is 119 multi-family units. The current population is 0, and the anticipated population at full development is 279, with 48 being minority.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Little and seconded by Council Member Dunn to adopt the ordinance annexing Greyfox Run, Phase 1, containing 26.8952 acres located west of NC Highway 43 and east of Kittrell Farms Patio Homes. Motion carried unanimously. (Ordinance No. 07-119)

ORDINANCE ANNEXING UNIVERSITY MEDICAL PARK NORTH, LOCATED NORTH OF WEST FIFTH STREET AND WEST OF MOYEWOOD SUBDIVISION - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 10, 2007 setting this time, date and place for a public hearing to consider a request by Thomas F. Taft, to annex University Medical Park North, containing 46.24 acres located north of West Fifth Street and west of Moyewood Subdivision. This is a contiguous annexation.

Mr. Mike Dail, Planner, delineated the property on a map and stated that the property is located in Voting District 5 and will be served by Fire Station Number 2. The property is currently vacant and the proposed use is commercial and office development. The current population is 0, and the anticipated population at full development is 0.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Dunn and seconded by Council Member Craft to adopt the ordinance annexing University Medical Park North, containing 46.24 acres located north of West Fifth Street and west of Moyewood Subdivision. Motion carried unanimously. (Ordinance No. 07-120)

ORDINANCE AMENDING THE SPECIAL USE STANDARDS AND CRITERIA FOR THE USE ENTITLED "HOTEL OR MOTEL" BY DELETING SECTIONS 9-4-85(j) AND 9-4-86(j) IN THEIR ENTIRETY - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by the community Development Department to amend the special use standards and criteria for the use entitled "hotel or motel" by deleting sections 9-4-85(j) and 9-4-86(j) in their entirety. The Planning and Zoning Commission at the August 21, 2007 meeting voted to approve the request.

Mr. Harry Hamilton, Chief Planner, explained that the two motel types are limited stay for daily and weekly periods up to 30 days and extended stay for daily, weekly and monthly periods up to 90 days. The proposed amendment will eliminate the 50-foot building setback that is applicable only to those motels subject to special use permit approval in MS, MO, OR and MCH zoning districts. Motels will be subject to the bufferyard and street setback requirements applicable for

all other uses in the district. The Board of Adjustment may require reasonable conditions including additional buffers and screening in the particular case.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Craft and seconded by Council Member Spell to adopt the ordinance amending the special use standards and criteria for the use entitled "hotel or motel" by deleting sections 9-4-85(j) and 9-4-86(j) in their entirety. Motion carried unanimously. (Ordinance No. 07-121)

ORDINANCE AMENDING THE ZONING REGULATIONS TO SPECIFY THE PROCEDURE FOR CONSIDERATION OF A REZONING PETITION SUBMITTED IN CONJUNCTION WITH A FUTURE LAND USE PLAN MAP AMENDMENT REQUEST - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3 and 10, 2007 setting this time, date and place for a public hearing to consider a request by the Community Development Department to amend the zoning regulations to specify the procedure for consideration of a rezoning petition submitted in conjunction with a future land use plan map amendment request. The Planning and Zoning Commission, at its August 21, 2007 meeting, voted to approve the request.

Mr. Harry Hamilton, Chief Planner, delineated the property on a map and explained that the future land use plan map physically depicts the policy intent of the Comprehensive Plan and provides a visual illustration of the Urban Form Policies set out in the Plan. The Zoning Regulations and Zoning Map are the primary tools for carrying out the plan. Both the Comprehensive Plan and the Zoning Regulations are official documents adopted by ordinance of the City Council. The current land use plan map was adopted in 2004, and there have been five applications for amendment of the plan map since 2004. Four of those applications have been submitted in conjunction with rezoning petitions in the last three months. This dual application trend has become typical where proposed rezoning is in conflict with the adopted Future Land Use Plan Map. The Comprehensive Plan and Future Land Use Plan Map recommendations were developed through an extensive public involvement process absent the heated controversy and investment-backed expectations of site-specific zoning. A primary purpose of the Future Land Use Plan is to define and decide community objectives and policy in advance of individual investment decisions and to eliminate ad hoc zoning. Amendments should, therefore, be considered in a similar atmosphere as existed at the time of the original adoption absent the pressure and immediacy of an actual zoning decision. Separation of a land use plan amendment and a rezoning affecting the same land will afford a more qualified review of both issues. The Planning and Zoning Commission should evaluate zoning based on the most current adopted plan and not a pending plan amendment. The proposed ordinance will establish a procedure to address this issue, by creating a two-step process separating land use plan and zoning consideration. Thus, when a petition has been initiated for an amendment to the Future Land Use Plan Map, a petition for an amendment to the official zoning map of the City of Greenville affecting the same property or any portion thereof, shall not be initiated in accordance with

Section 9-4-331 and shall not be considered by the Planning and Zoning Commission until City Council approves or denies the amendment to the Future Land Use Plan Map.

Mr. Hamilton stated that the first step in the Land Use Plan Map amendment process would involve the Planning and Zoning Commission making a recommendation following a public meeting (first month). The City Council public hearing would be the final action in the Land Use Plan Map amendment process, and it would take place the following month. The Planning and Zoning Commission recommendation following Council action to approve or deny the associated land use plan amendment would take place the third month, and the City Council public hearing and final action would take place the following month, making it about a four month process. Mr. Hamilton concluded by reminding the Council that concerns were expressed by Council, so staff is bringing this forward.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Dunn and seconded by Council Member Little to adopt the ordinance amending the zoning regulations to specify the procedure for consideration of a rezoning petition submitted in conjunction with a future land use plan map amendment request. Motion carried unanimously. (Ordinance No. 07-122)

FEDERAL HOME INVESTMENT PARTNERSHIP PROGRAM AND COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM BUDGET AMENDMENTS TO FISCAL YEARS 2005, 2006 AND 2007 ANNUAL ACTION PLANS - ADOPTED

City Manager Wayne Bowers reported that a notice of public hearing was published in The Daily Reflector on September 3, 2007 setting this time, date and place for a public hearing to consider the Federal Home Investment Partnership Program and Community Development Block Grant Program Budget Amendments to Fiscal Years 2005, 2006 and 2007 Annual Action Plans. Motion carried unanimously.

Mrs. Sandra Anderson, Senior Planner, stated that as a condition of receiving federal funding under the Community Development Block grant (CDBG) and HOME Investment Partnership program, the City and the Pitt County HOME Consortium are required to submit an Annual Action Plan that outlines sources of funds and projects to be accomplished. Changes are recommended to the Annual Action Plan as required by City Council at the August 6, 2007 City Council meeting to set up a substandard owner-occupied housing rehabilitation assistance program for residents living outside of the West Greenville 45-Block Revitalization Area. Changes are also recommended to make adjustments for new projects and programs. Amendments to funding categories of the 2005, 2006 and 2007 FY Annual Action Plan are recommended. These recommended changes will (1) assist in making housing rehabilitation assistance available to citizens outside the West Greenville 45-Block Area, (2) address the need for increased police presence in West Greenville, (3) reallocate unspent HOME Consortium funds, and (4) support the development of a ten-year plan to end chronic homelessness in Pitt County. In reviewing the City's housing program and HOME Consortium members' progress, staff determined that additional production of new affordable units, housing rehabilitation assistance, and reduction of crime was needed. Therefore, the following adjustments and

description of new activities are proposed to increase CDBG and HOME program performance and increase the community impact of funds.

- Scattered Site Housing Rehabilitation Program—Funding of the program to provide housing rehabilitation assistance in the form of a deferred loan to low to moderate income owner-occupied residents within the city limits of Greenville but outside the West Greenville 45-Block Revitalization Area. Funds to be reallocated from the 2006 HOME program budget in the amount of \$80,000 and \$100,000 to be redirected from the 2007 CDBG program budget.
- Police Substation/Public Facility—CDBG funds of \$125,000 to purchase a facility to house the City of Greenville Police Department “IMPACT” team and Police Athletic League administrative personnel. The IMPACT team consists of 24 officers who will be assigned to patrol the West Greenville area.
- Farmville Housing Development Corporation—Funds to supplement the construction of three affordable single-family units in the Town of Farmville by a qualified Community Housing Development Organization (CHDO). Suspect funds by Pitt County HOME Consortium of \$35,000 and \$45,000 from 2007 HOME budget.
- 602 Contentnea Street—Additional funds to a qualified CHDO to construct a single-family affordable unit on City-owned property. Unspent funds from HOME Consortium members in the 2005 funding year totaling \$90,000 and the redirection of \$20,000 in unspent HOME Consortium Funds totaling \$110,000 is proposed for this amendment.
- Town of Ayden. Funds are needed to supplement a required HOME project to construct a single-family affordable unit in the Town of Ayden. \$40,000 is the requested amount to be allocated for this activity from 2005 unspent HOME funds.
- Ten-Year Plan to End Chronic Homelessness—A resolution of support for a Ten-Year Plan to End Chronic Homelessness was approved by the Greenville City Council on April 9, 2007. \$15,000 is proposed from CDBG Public Service category to assist with the needed budget to hire a consultant to coordinate the ten-year planning process. Pitt County government has also committed \$15,000 to this project. The budget amendment includes \$166,192 unspent of fiscal year 2005 HOME funds; fiscal year 2006 approved funds of \$844,098 HOME and \$824,276 CDBG; and FY 2007 approved funds of \$837,860 HOME and \$822,811 CDBG.

Council Member Glover stated that staff was seeing a problem with houses in West Greenville that need to be repaired that were outside the 45-Block area. The Affordable Housing Loan Committee was also concerned about that and had received complaints from citizens. This will give some leeway to do other things that need to be done.

Mayor Parrott declared the public hearing open and solicited comments from the audience. There being none, the public hearing was closed.

Motion was made by Council Member Craft and seconded by Council Member Glover to approve the budget amendments regarding the Federal Home Investment Partnership Program and Community Development Block Grant Program budget amendments to Fiscal years 2005, 2006 and 2007 Annual Action Plans. Motion carried unanimously.

### PUBLIC COMMENT PERIOD

Mr. Ozie Hall informed the Council that on September 27 at 6:30, Peter Skillern, Executive Director of the Community Reinvestment Association of North Carolina, will be the featured guest speaker at a presentation and panel discussion on “Racial Disparities in Lending in Pitt County: Are Blacks and Hispanics Targets of Sub-prime and Predatory Lenders? If so, what can be done?” This event will be held at the Eppes Recreation Center. Mr. Hall stated that federal regulators don’t enforce the Community Reinvestment Act. The information is not put in public fashion so anyone can see the culprits. It is beginning to happen now. Mr. Hall asked that the Council to adopt a resolution asking the Federal Reserve, Comptroller, and all federal and state regulators to enforce the law. Their not doing so is allowing them to take advantage of African-Americans.

Mr. R. J. Hemby stated that on October 19 there will be a foreclosure meeting at the Willis Building from 12:30 to 5:00. Senator Dole started the process; however, it was felt that was not enough in the foreclosure way. At this event, banks, housing counselors and other nonprofits will be available to try to help the situation.

### AMENDMENT TO THE AIRPORT ECONOMIC STIMULUS PLAN - APPROVED

Mr. Jim Turcotte, Manager of the Pitt-Greenville Airport, reminded the Council that on November 22, 2004 the City Council approved an economic stimulus plan designed to assist the Pitt-Greenville Airport in retaining and attracting private aircraft. The initial plan was approved for the 2005 calendar year and has subsequently been renewed through the 2008 calendar year. It is hoped that the City Council will expand the economic stimulus plan to include a commercial air service enhancement component that would become effective with the 2008 calendar year. Mr. Turcotte stated that he is unable to publicly announce the airline or airlines for which this plan is being crafted; however, that will be done if Mr. Turcotte is successful in his endeavors as soon as the announcement is made by the airline. He feels extremely confident that an announcement could be made before the end of the year. Mr. Turcotte explained how a certain airline is willing to come to Greenville if there is a risk mitigation plan of \$500,000, which will be held in escrow, and if at the end of a 12-month period, if the airline hasn’t generated enough revenues to offset expenses, it can tap into the funds. Mr. Turcotte explained that he has received \$100,000 from the Division of Aviation Branch of NCDOT and has received \$67,000 from the Pitt County Development Commission. He proposed to the Council that the Economic Development Stimulus Plan be amended to allow Pitt-Greenville Airport to use it for air service enhancement should it be needed. Since the Airport has been the recipient of \$40 million in grants for infrastructure improvements, it cannot use airport generated revenues for this purpose. Mr. Turcotte also stated that in addition, he is requesting that this be supplemented with \$67,000 additional dollars for air service enhancement to be used if they go through the money in the 2008 Economic Development Stimulus Plan. The County Commissioners have been asked for a match.

Motion was made by Council Member Craft and seconded by Council Member Spell to approve the agreement amending the Airport Economic Stimulus Plan and to appropriate \$67,000 for the new commercial air service enhancement component. Motion carried unanimously. (Contract No. 07-1379B)

AWARD OF BID FOR 1411 WEST FIFTH STREET - APPROVED

Mrs. Sandra Anderson, Senior Planner, stated that on August 22, 2007 bids were received for City-owned single-family homes for sale. Ms. Mary V. Newsome submitted bids for 1501 West Fifth Street and 1411 West Fifth Street. In the package for 1501 West Fifth Street, Ms. Newsome omitted the signature page of the "Offer to Purchase" document, which caused her package to be incomplete. As a second choice, she submitted a package for 1411 West Fifth Street, which included all required documents. Ms. Newsome submitted the only bid for 1411 West Fifth Street. Fair market value for this property has previously been established at \$93,000.

Motion was made by Council Member Craft and seconded by Mayor Pro-Tem Council to award the bid for 1411 West Fifth Street to Mary V. Newsome and authorize the Community Development Director to sign the Offer to Purchase at a sales price of \$93,000. Motion carried unanimously.

AWARD OF BID FOR 1501 WEST FIFTH STREET - APPROVED

Mrs. Sandra Anderson, Senior Planner, stated that bids were received on August 22, 2007 for the purchase of City-owned property located at 1501 West Fifth Street. The new single-family structure is a three-bedroom, two-bath unit with fair market value previously established at \$94,000. Both Carolyn Warren and Mary Newsome submitted bids in the amount of \$94,000. After review of the bid packages, staff determined that Carolyn Warren's package was complete and Mary Newsome's package was incomplete. Therefore, it was recommended that the award go to Carolyn Warren in the amount of \$94,000.

Motion was made by Council Member Little and seconded by Council Member Dunn to award the bid for 1501 West Fifth Street to Carolyn Warren and authorize the Community Development Director to sign the Offer to Purchase at a sales price of \$94,000. Motion carried unanimously.

PURCHASE OF POLICE SUBSTATION FACILITY FROM PITT COMMUNITY COLLEGE - APPROVED

Mrs. Sandra Anderson, Senior Planner, stated that in an expanded effort to provide a suitable living environment for residents of the West Greenville 45-Block Revitalization Area, the Community Development Department has formed a partnership with the Greenville Police Department to install a "Police Substation" on City-owned property. This proposed facility will be located in the area of 1010-1022 West Fifth Street to house the Greenville Police Department "IMPACT" Team and the Police Athletic League (PAL) administrative personnel. The IMPACT team consists of 24 police officers who will be stationed at this facility. Through a negotiated offer to purchase, this is a request to acquire from Pitt Community College a structure for \$68,500 to be used as the Police Substation. In addition to the structure purchase, it will be necessary to make infrastructure improvements, install plumbing, electrical connections and a porch, for a total combined budget of \$125,000 for a 28 x 56 unit.

Motion was made by Council Member Craft and seconded by Council Member Spell to approve the purchase from Pitt Community College of a structure for \$68,500 and infrastructure improvements as needed. Motion carried unanimously.

#### GRAFFITI ORDINANCE - ADOPTED

Chief of Police William Anderson stated that the purpose of this anti-graffiti ordinance is to establish a procedure for removal and eradication of graffiti from buildings, walls, and other structures within the City of Greenville in order to reduce social deterioration within the City, to remove and abate public nuisances, and to promote public safety and health. Graffiti is a crime of vandalism that sends a message that the neighborhood is decaying and infested with crime and gangs. Graffiti is a nuisance that under this proposed ordinance will facilitate its removal by the property owner. This proposed ordinance will provide that the existence of graffiti on public or private property in violation of this ordinance is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this ordinance. The ordinance provides that it is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti. Ideally, local police would apprehend the perpetrator of graffiti vandalism and then require that person to remove the graffiti at little or no cost to the local government or the property owner. However, given that many graffiti vandals are never apprehended, the removal burden most often falls on the property owner or the local government. It is the intent of this proposed ordinance to provide additional enforcement tools to protect public and private property from acts of graffiti vandalism and defacement. This would be a civil penalty and the offenses would be counted through one calendar year.

Concern was expressed about the graffiti being hard to get off and the victim being the one being punished with the fine.

Upon being asked if there is a special paint to cover it up and concern being expressed about the expense associated with the paint, Chief Anderson stated that the Police Department is working with property owners to help them come up with solutions to conceal the graffiti and get it removed. There are graffiti removal kits. There are also things the Police Department can do working with Code Enforcement. It is based on education. There has to be a community based concept as well.

The Council was informed that this is a part of Keep America Beautiful, which has a program that deals with this, and there are places where volunteers assist in the removal of graffiti. That may go along with the community concept idea.

It was expressed that there are persons who mimic gangs and the neighbors are afraid to remove the graffiti that they put on houses. There is an element of fear that has to be worked with before the community will get involved.

Chief Anderson stated that it is the Police Department's job to ensure that the element of fear is eliminated so it is not solely on the backs of people the Council works with.

It was suggested that the School System would be a great way to talk to the kids. The youth need to be taught that it is a crime.

City Manager Bowers stated that the ordinance is based on numerous studies across the country that show that the people like to see their work. The key is to have an aggressive program and take it down as soon as it goes up to discourage further graffiti.

Motion was made by Council Member Craft and seconded by Council Member Glover to adopt the graffiti ordinance as presented. Motion carried unanimously. (Ordinance No. 07-123)

AMENDMENT TO AGREEMENT WITH THE GREENVILLE MUSEUM OF ART TO PROVIDE THE ART IN CITY HALL PROGRAM - APPROVED

City Manager Bowers reminded the Council that on June 21, 2006, the City entered into an agreement with the Greenville Museum of Art to provide an ongoing display of locally produced art in the public areas of the new City Hall. The program has now been in place for over a year and has provided positive benefits for the City, the Museum of Art, the artists, and visitors to City Hall. At the time of the first renewal of the agreement, the Museum of Art requested that the City provide funding to partially offset the cost of providing the program. During the first year, all expenses were paid by the Museum of Art. The artwork is changed three times a year. City Manager Bowers recommended that the Council approve the request to reimburse the Museum of Art \$5000 each year, as this is a reasonable request.

Discussion occurred about ensuring that there be some ethnic art showcased in City Hall since it serves a diverse community. There may be other artists around that might not live in Pitt County. Currently, the art consists of Pitt County artists or Pitt County scenes.

Mrs. Bonnie Brewer informed the Council that the Greenville Museum of Art Artists Association has great diversity. If someone is a member of the Association, which costs \$25 to join, he/she can have their work put in City Hall. Oftentimes, artists do not want their work tied up for a four month rotation because the artists need to sell them. All of the pictures displayed in City Hall are for sale; however, they have to stay up the entire four months. The City publishes a brochure that lists all the art work.

Motion was made by Council Member Dunn and seconded by Council Member Little to approve the amendment to the agreement with the Greenville Museum of Art to provide the Art in City Hall Program. Motion carried unanimously. (Contract No. 1515A)

ORDINANCE REPEALING CITY CODE PROVISIONS RELATING TO CABLE TELEVISION CUSTOMER SERVICE STANDARDS AND RATE REGULATION - ADOPTED

City Attorney Dave Holec informed the Council that Chapter 12 of Title 11 of the Greenville City Code contains provisions relating to the regulation of customer standards and rates charged for cable television services. These provisions no longer apply since the State, by the enactment of Session Law 2006-151, is now the exclusive franchising authority for cable service provided over a cable system. Because of this, the repeal of this chapter of the City Code would be

appropriate. This is a clean-up measure to remove no longer applicable provisions from the City Code and does not impact the service standards and rate regulations which lawfully may be exercised by the franchise authority.

Motion was made by Council Member Little and seconded by Council Member Glover to adopt the ordinance which repeals the provisions of the City Code relating to cable television customer service standards and rate regulation. Motion carried unanimously. (Ordinance No. 07-124)

BUDGET ORDINANCE AMENDMENT #2 TO THE 2007-2008 CITY OF GREENVILLE BUDGET, BUDGET AMENDMENT TO ORDINANCE 97-1 CONVENTION CENTER CAPITAL PROJECT FUND, AND AN ORDINANCE ESTABLISHING THE CAPITAL PROJECT FOR THE DICKINSON AVENUE RELOCATION PROJECT - ADOPTED

Motion was made by Council Member Craft and seconded by Council Member Dunn to adopt budget ordinance amendment #2 to the 2007-2008 City of Greenville budget and budget amendment to Ordinance 97-1 Convention Center Capital Project Fund, and ordinance establishing the capital project for the Dickinson Avenue Relocation Project. Motion carried unanimously. (Ordinance Nos. 07-125 and 07-126)

ORDINANCE ESTABLISHING A SEWER CAPITAL PROJECTS BUDGET FOR THE HARDEE CREEK OUTFALL/PORTER'S GROVE SUBDIVISION – ADOPTED

Motion was made by Council Member Craft and seconded by Council Member Dunn to adopt the ordinance establishing a Sewer Capital Projects Budget for the Hardee Creek Outfall/Porter's Grove Subdivision. Motion carried unanimously. (Ordinance No. 07-127)

COMMENTS

Council Member Glover expressed her condolences to Merrill Flood, Director of Community Development, on the death of his mother-in-law.

Council Member Glover stated that she is on the committee to name the Intergenerational Center. She made a motion to approve the budget of \$5000, which was given to the City Manager, as there is an artist that is doing the portrait and he needs to be paid. The celebration is already scheduled. It was decided that no motion was necessary. The consensus of the Council was to take the \$5000 out of contingency. The entire amount may not be needed, because there is an operating budget.

Council Member Glover stated that when Congressman Walter Jones was here and toured the Intergenerational Center, he was very impressed. He got to see the mobile welding classroom, cabinet making, etc. and talk to students in the Adult Basic Education classes. They were all pleased to see him there. He wanted to see the Little Willie Center; however, the repairs are not complete.

Council Member Dunn stated that this shows that when people work together, a lot of good things can happen. She was impressed that 1500 people have gone through the Intergenerational Center. More good things will happen. She thanked the people who made it happen.

Mayor Pro-Tem Council stated that on October 27, Duke University will be sponsoring its Sixth Annual Alzheimer's Caregivers Conference from 8:00 until 3:30 at Friendship Missionary Baptist Church in Charlotte.

Council Member Council stated that on Saturday, the Pitt County 4-H AllStars will be rewarded for their outstanding work by being taken to witness the Shaw University vs. Morehouse football game. Next Saturday, she will take another group to the Down East Vikings Classic in Rocky Mount.

Council Member Spell stated that he is glad that Congressman Jones got to see the good work being done in Greenville. The Lucille Gorham Center gives the City an opportunity to be proactive. He is pleased that this has come together. He thanked Dean Lusk and others at Pitt Community College who have embraced the program into the heart of Greenville. It is wonderful to see different institutions in the City pull together on projects like that.

Council Member Spell thanked Jim Turcotte for his fine work at the airport. This is a growing community and it needs dynamic air service.

Council Member Spell thanked Tom Tysinger for his years of service to the City and stated that it has been good working with him.

#### CITY MANAGER'S REPORT

City Manager Bowers reported that an announcement was received from Senator Burr informing the City of an award of \$2,977,343 to complete the countywide interoperability communications system. The grant was written with assistance from the Pitt County Sheriff's Office and in cooperation with all law enforcement agencies in Pitt County. The funds will be used to purchase radio equipment that will allow for the Greenville Police Department, the Pitt County Sheriff's Office, and other Pitt County Law Enforcement to communicate through the State of North Carolina VIPER system. At this time, in many cases, agencies are unable to communicate from car to car or officer to officer. The radio system will also allow for enhanced communication with state agencies and local agencies across the entire state.

Chief Anderson explained how this would enhance the communications between law enforcement agencies.

Upon being told that there is not a need for the September 24, 2007 City Council meeting, motion was made by Council Member Craft and seconded by Mayor Pro-Tem Council to cancel the September 24, 2007 City Council meeting. Motion carried unanimously.

ADJOURN

Motion was made by Council Member Craft and seconded by Mayor Pro-Tem Council to adjourn the meeting at 10:00 p.m. Motion carried unanimously.

Respectfully submitted,

Wanda T. Elks, MMC  
City Clerk



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Agreement for federal lobbying services with The Ferguson Group

**Explanation:** Since 2002, the City has contracted on an annual basis with The Ferguson Group to act as the City's representative with the federal government in Washington, DC. The current agreement expires on October 31, 2007. The attached proposed agreement extends the services of The Ferguson Group for another year to October 31, 2008 under the same terms and conditions as contained in the current agreement.

**Fiscal Note:** The annual cost to the City for the services of The Ferguson Group included in the proposed agreement is \$90,000 payable in monthly installments of \$7,500. This is the same cost as in the current agreement. Funds are available for this expense in the Mayor and City Council budget.

**Recommendation:** The City Council approve the attached agreement with The Ferguson Group.

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 [2007-08 Contract with The Ferguson Group](#)

AGREEMENT  
CITY OF GREENVILLE, NORTH CAROLINA AND  
THE FERGUSON GROUP, L.L.C.

Pursuant to this Agreement, the City of Greenville, North Carolina (hereinafter referred to as "the City ") and The Ferguson Group, L.L.C. (hereinafter referred to as "the Washington Representative"), agree to assume the following obligations:

1. OBLIGATIONS OF THE FERGUSON GROUP

- A. The Washington Representative will act as the representative of the City in Washington, D.C.
- B. The Washington Representative will confer with the City Manager and such other personnel as the City Manager may designate at the times and places mutually agreed to by the City Manager and the Washington Representative. This will be done on all organizational planning and program activity that has a bearing on the ability of the City to make the best use of federal programs and develop strategies consistent with federal agendas for accomplishing the City's goals and objectives. In addition, the Washington Representative will coordinate with the City to develop a joint, comprehensive strategic plan for legislative appropriations and other federal issues.
- C. The Washington Representative will review federal executive proposals, legislation under consideration, proposed and adopted administrative rules and regulations and other Washington developments for the purpose of advising the City, on the representative's own initiative, of those items that may have a bearing on the City's policies or programs. And, the Washington Representative will notify the City in advance of opportunities for federal funding prior to formal publication and obtain applications upon request.
- D. The Washington Representative will secure and furnish such detailed information as may be available on federal issues in which the City indicates an interest.
- E. The Washington Representative will review and comment on proposals of the City, which are being prepared for submission to federal agencies, when requested to do so by the City Manager.
- F. The Washington Representative will maintain liaison with the City's Congressional Delegation and assist the delegation in any matter that is in the best interest of the City and in the same manner as any other member of the City's staff might render assistance.
- G. The Washington Representative will counsel with the City and prepare briefing materials and/or conduct briefings for City representatives who are preparing to meet with Members of Congress, testify before Congressional committees and administrative agencies, and conduct

other City business, or attend national conferences.

- H. The Washington Representative will arrange appointments (and accommodations when requested) for City officials to facilitate the efficient and effective performance of City business while in Washington, D.C.
- I. The Washington Representative will contact federal agencies on the City's behalf when applications are under consideration by such agencies and otherwise take whatever steps necessary to obtain the most favorable consideration of such applications.
- J. The Washington Representative will submit periodic reports providing the latest information on issues of interest to the City; and provide an annual report giving an overview of The Ferguson Group's work over the past year and a forecast of issues to be faced in the upcoming year.
- K. In fulfilling the responsibilities under this Agreement, the Washington Representative will act in the name of the City and with the title Washington Representative of the City of Greenville, North Carolina.

2. OBLIGATIONS OF THE CITY OF GREENVILLE, NORTH CAROLINA

- A. The City will contract with the Washington Representative for a period of twelve months.
- B. The contract will be \$90,000 payable in advance in equal monthly installments of \$7,500. This figure includes fees for professional services described under paragraph 1, subparagraphs A-K, and travel expenses, telephone charges, document production costs, and other expenses incurred in the course of conducting the City's business.
- C. The City, through the City Manager, will advise the Washington Representative of the name or names of persons other than the City Manager authorized to request service by the Washington Representative and the person or persons to be kept advised by the Representative.
- D. The City will supply the Washington Representative with a summary of all federal issues in which the City has interests and advise the Washington Representative of any new developments, together with the pertinent details as to the substance of such developments.
- E. The City will supply the Washington Representative with copies of budgets, planning documents and regular reports of the City Manager, the City's agenda and proceedings, newspapers and other materials to assist the Washington Representative in keeping current on the City's policies and programs.

3. THE CITY OF GREENVILLE, NORTH CAROLINA AND THE FERGUSON GROUP CONCUR THAT THE FOLLOWING EXCLUSIONS SHALL APPLY TO THIS

AGREEMENT.

The Washington Representative assigned to the City:

- A. will not represent the City before formal congressional committee hearings or in any judicial or quasi-judicial hearing conducted by boards or examiners of federal agencies or commissions; and
  - B. will not perform any legal, engineering, accounting or other similar professional services.
4. Either party may terminate this Agreement at any time by giving the other at least thirty-days notice in writing of such termination. From and after said termination date as herein provided all further monthly installments shall cease notwithstanding the contract amount set out in paragraph 2, subparagraph B.

This Agreement shall take effect on November 1, 2007 and terminate on October 31, 2008.

THE FERGUSON GROUP, L.L.C.

CITY OF GREENVILLE, NORTH CAROLINA

\_\_\_\_\_  
WILLIAM FERGUSON, JR.  
Chief Executive Officer

\_\_\_\_\_  
WAYNE BOWERS  
City Manager

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



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Resolution authorizing a Law Enforcement Liaison Grant from the Governor's Highway Safety Program

**Explanation:** The Greenville Police Department has been awarded a Law Enforcement Liaison Grant from the Governor's Highway Safety Program. This grant entitles the Greenville Police Department to receive \$10,000 in grant funds with no City match. Half of the funds must be used to cover travel and related expenses for Sergeant Phil Worthington in the performance of his duties as Regional Coordinator. The grant requires a resolution of support from the governing body of the agency.

**Fiscal Note:** No direct cost to the City.

**Recommendation:** Approve the attached resolution.

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 [Traffic Resolution 720226](#)

RESOLUTION NO. 07-  
RESOLUTION AUTHORIZING AN APPLICATION CONTRACT ENTITLED  
LAW ENFORCEMENT LIAISON PROGRAM

WHEREAS, the Greenville Police Department (herein called the "Agency") has completed an application contract entitled Law Enforcement Liaison and the Greenville City Council (herein called the "Governing Body") has thoroughly considered the problem identified and has reviewed the project as described in the contract;

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

1. That the project referenced above is in the best interest of the Governing Body and the general public;
2. That William J. Anderson, Chief of Police, is authorized to file, on behalf of the Governing Body, an application contract in the form prescribed by the Governor's Highway Safety Program for federal funding in the amount of \$10,000.00 to be made to the Governing Body to assist in defraying the cost of the project described in the contract application;
3. That the Governing Board has formally appropriated the \$10,000 as required by the project contract; and
3. That the Project Director designated in the application contract shall furnish or make arrangement for other appropriate persons to furnish such information, data, documents and reports as required by the contract, if approved, or as may be required by the Governor's Highway Safety Program;
4. That certified copies of this resolution be included as part of the contract referenced above; and
6. That this resolution shall take effect immediately upon its adoption.

This the 8th day of October, 2007.

\_\_\_\_\_  
Robert D. Parrott, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Amendments to the City of Greenville, Greenville Area Transit System Substance Abuse Policy

**Explanation:** The City of Greenville has established a Drug-Free Workplace Policy and Procedures Program for all City employees. Under the umbrella of this program, a specific substance abuse policy was adopted for the safety-sensitive employees of the transit system (GREAT) as mandated by the Federal Transit Administration (FTA) of the U.S. Department of Transportation (DOT). Periodically, DOT amends its regulations for transit employees, and these amendments must be incorporated into the local policies and procedures. The current technical amendment adds an updated explanation for secondary testing in the case of a dilute negative drug test, and it is included as a new paragraph in Section 6.0 of the Policy. In addition, a new Section 12.0, entitled "Amendments", has been added. This section authorizes the City Manager to administratively amend this policy as needed in order to comply with federal mandates and to keep system contact information current.

**Fiscal Note:** None

**Recommendation:** City Council approve the attached document amending the City of Greenville, Greenville Area Transit System Substance Abuse Policy to incorporate the DOT mandatory update for dilute negative drug tests and to authorize the City Manager to approve such technical changes in the future.

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 [Substance Abuse Policy 2007\\_revisions\\_714612](#)

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## **CITY OF GREENVILLE GREENVILLE AREA TRANSIT SYSTEM SUBSTANCE ABUSE POLICY**

### **1.0 POLICY**

Greenville Area Transit (hereinafter referred to as GREAT) is dedicated to providing safe, dependable, and economical transportation services to our transit system passengers. GREAT employees are our most valuable resource and it is our goal to provide a healthy, satisfying working environment which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) create a workplace environment free from the adverse effects of drug abuse and alcohol misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) encourage employees to seek professional assistance anytime personal problems, including alcohol or drug dependency, adversely affect their ability to perform their assigned duties.

### **2.0 PURPOSE**

The purpose of this policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the misuse of alcohol and use of prohibited drugs. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. The Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandate urine drug testing and breath alcohol testing for safety-sensitive positions and prohibit performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (DOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens. In addition, the Federal government published 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. This policy incorporates those requirements for safety-sensitive employees and others when so noted.

### **3.0 APPLICABILITY**

The City of Greenville has established a Drug-Free Workplace Policy and Procedures Program for all City employees and our contractors. This Greenville Area Transit System Substance Abuse Policy is adopted to supplement and reinforce the overall City commitment to a drug-free workplace. Where the general City policy conflicts with specific sections of this Substance Abuse Policy, the Substance Abuse Policy will be the governing policy for those employees designated by the FTA as subject to its regulations.

**This policy applies to all safety-sensitive transit system employees, paid part-time employees, volunteers, contract employees and contractors** when they are on transit property or **when performing any transit-related safety-sensitive business**. This policy applies to off-site lunch periods or breaks when an employee is scheduled to return to work. Visitors, vendors, and contractor employees are governed by this policy while on transit premises and will not be permitted to conduct transit business if found to be in violation of this policy.

**A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch, maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee who holds a Commercial Driver's License. A list of safety-sensitive positions who perform one or more of the above mentioned duties is attached.**

#### 4.0 PROHIBITED SUBSTANCES

"Prohibited substances" addressed by this policy include the following:

##### 4.1 Illegally Used Controlled Substances or Drugs

The use of any illegal drug or substance identified in "North Carolina Controlled Substances Act", Article 5, Chapter 90 of N.C. General Statutes and in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times unless the employee has a legal prescription for this substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal uses include use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. **Safety sensitive employees will be tested for marijuana, cocaine, amphetamines, opiates, and phencyclidine as described in Section 6.0 of this policy.**

##### 4.2 Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgement may be adversely affected must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing work-related duties. Employees are required to obtain a written release to work from their attending physician indicating that safety-sensitive job functions can be performed while taking the prescription.

A legally prescribed drug means that the individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing transit business is prohibited.

##### 4.3 Alcohol

The use of beverages containing alcohol or substances including any medication, mouthwash, food, candy, or any other substance such that alcohol is present in the body while performing transit business is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

#### 5.0 PROHIBITED CONDUCT

##### 5.1 Manufacture, Trafficking, Possession, and Use

While on or off duty, transit system employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances on City premises, in transit vehicles, in uniform, or while on City business. Employees who violate this provision will be subject to disciplinary action, up to and including termination. Law enforcement will be notified, as appropriate, where criminal activity is suspected.

## 5.2 Intoxication/Under the Influence

Any safety-sensitive employee who is reasonably suspected of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty will be suspended from job duties pending an investigation and verification of condition. Employees found to be under the influence of a prohibited substance or **who fail to pass a drug or alcohol test will be removed from duty** and subject to disciplinary action, up to and including termination. **A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.**

## 5.3 Alcohol and Drug Use

**No safety-sensitive employee should report for duty or remain on duty when his or her ability to perform assigned safety-sensitive functions is adversely affected by alcohol or when his or her breath alcohol concentration is 0.02 or greater. No safety-sensitive employee will use alcohol while on duty, in uniform, while performing safety-sensitive functions, or just before or just after performing safety-sensitive functions. No safety-sensitive employee will use alcohol within four hours of reporting to duty, or during the hours that they are on call.**

**All safety sensitive employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.** Violation of these provisions is prohibited and punishable by disciplinary action up to and including termination.

## 5.4 Compliance with Testing Requirements

**All safety-sensitive employees will be subject to urine drug testing and breath alcohol testing as a condition of employment. Any safety-sensitive employee who refuses to comply with a request to testing will be removed from duty and their employment terminated. Any safety-sensitive employee who is suspected of providing false information in connection with a test, or who is suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of falsifying test results will result in the employee's removal from duty and their employment terminated. Refusal can include an inability to provide a sufficient urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test. Drug tests can be performed any time a safety sensitive employee is on duty. An alcohol test can be performed when the safety sensitive employee is actually performing a safety sensitive duty, just before, or just after the performance of a safety sensitive duty.**

## 5.5 Treatment Requirements

All employees are encouraged to make use of the available resources for treatment for alcohol misuse and illegal drug use problems. Under certain circumstances, including self-referral, employees may be required to undergo treatment for substance abuse or alcohol misuse. Any employee who refuses or fails to comply with transit system requirements for treatment, after care, or return to duty will be subject to disciplinary action, up to and including termination. The cost of any treatment or rehabilitation services will be paid for directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

#### 5.6 Notifying the Transit System of Criminal Drug Arrest or Conviction

All employees are required to notify the transit system of any criminal drug statute arrest or conviction for a violation occurring in the workplace within five days after such arrest or conviction. Failure to comply with this provision will result in disciplinary action, up to and including termination.

#### 5.7 Proper Application of the Policy

The transit system is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, will be subject to disciplinary action, up to and including termination.

#### 6.0 TESTING PROCEDURES

Analytical urine drug testing and breath testing for alcohol may be conducted when circumstances warrant or as required by Federal regulations. **All safety-sensitive employees will be subject to testing prior to employment, for reasonable suspicion, and following an accident as defined in Section 6.2, 6.3, and 6.4 of this policy. In addition, all safety-sensitive employees will be tested prior to returning to duty after failing a drug or alcohol test and after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will be conducted for a period of one to five years, with at least six tests performed during the first year.**

**Those employees who perform safety-sensitive functions as defined in the attachment to this policy will also be subject to testing on a random, unannounced basis.**

**Testing will be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in 40 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.**

**The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine. Urine specimens will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. An initial drug screen will be conducted on each urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as amended.**

**The test results from the laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive test result. The MRO will contact the employee, notify the employee of the positive laboratory result, and provide the employee with an opportunity to explain the confirmed test result. The MRO will subsequently review the employee's medical history/medical records to determine whether there is a legitimate medical explanation for a positive laboratory result. If no legitimate medical explanation is found, the test will be verified positive and reported to the City's Human Resources Director. If a legitimate explanation is found, the MRO will report the test result as negative.**

**The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer.**

Employees are required to submit to secondary testing when the MRO informs the City that a negative drug test was dilute (i.e., a creatinine concentration of less than 20 milligrams per deciliter and a specific gravity of 1.003 or less. Each employee directed to take another test will be given the minimum possible advance notice that they must go to the collection site to take another test. Any employee who is directed to take another test, but declines to do so, will be considered to have refused the test for purposes of this section. If an employee is directed to take another test, the result of the second test replaces the result of the initial original test and becomes the test of record which the transit system will rely on for purposes of this section.

In instances where there is a reason to believe an employee is abusing a substance other than the five drugs listed above, the transit system reserves the right to test for additional drugs under the City of Greenville's own authority using standard laboratory testing protocols.

**Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) - approved testing device operated by a trained technician. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test will be performed using a NHTSA-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout along with an approved alcohol testing form will be used to document the test and the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.**

**A safety-sensitive employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his or her position for eight hours unless a retest results in a concentration measure of less than 0.02. The inability to perform safety-sensitive duties due to an alcohol test result of greater than 0.02 but less than 0.04 will be considered an unexcused absence subject to the City of Greenville's disciplinary procedures. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy and a violation of the requirements set forth in 49 CFR Part 654 for safety-sensitive employees.**

**Any safety-sensitive employee that has a confirmed positive drug or alcohol test will be removed from his or her position, informed of educational and rehabilitation programs available, and referred to a Substance Abuse Professional (SAP) for assessment. A positive drug and/or alcohol test will also result in disciplinary action up to and including termination.**

The transit system affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. In addition, if at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled.

#### 6.1 Employee Requested Testing

**Any safety-sensitive employee who questions the results of a required drug test under paragraph 6.2 through 6.7 of this policy may request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the original sample. All costs for such testing are paid by the employee unless the result of the split sample test invalidates the results of the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The**

employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test results. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

#### 6.2 Pre-Employment Testing

All safety-sensitive position applicants will undergo urine drug testing immediately prior to hire or transfer into a safety-sensitive position. Receipt by the transit system of a negative drug test result is required prior to employment. Receipt of a negative alcohol test is also required prior to employment. Failure of a pre-employment drug or alcohol test will disqualify an applicant for employment for a period of 120 days. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with the approval of the City and a negative pre-employment drug test will be required prior to further consideration for employment. The cost for the assessment and any subsequent treatment will be the sole responsibility of the individual. A pre-employment/pre-transfer test will also be performed anytime an employee's status changes for medical reasons from an inactive status in a safety-sensitive position to an active status in a safety-sensitive position (i.e., return from workers' compensation leave, return from a medical leave of absence).

#### 6.3 Reasonable Suspicion Testing

All safety-sensitive employees may be subject to a fitness for duty evaluation, and urine and/or breath testing when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with the short-term effects of substance abuse or alcohol misuse. Examples of reasonable suspicion include, but are not limited to the following:

1. Physical signs and symptoms consistent with prohibited substance abuse or alcohol misuse.
2. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substances.
3. Occurrence of a serious or potentially serious accident that may have been caused by prohibited substance abuse or alcohol misuse.
4. Fights (to mean physical contact), assaults, and flagrant disregard or violations of established safety, security, or other operating procedures.

Reasonable suspicion referrals must be made by a supervisor who is trained to detect the signs and symptoms of drug and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his or her work performance due to possible prohibited substance abuse or alcohol misuse.

#### 6.4 Post-Accident Testing

All safety-sensitive employees will be required to undergo urine and breath testing if they are involved in an accident with a GREAT vehicle (regardless of whether or not the vehicle is in revenue service) that results in a fatality. This includes all surviving safety-sensitive employees that are operating the vehicles and any other whose performance could have contributed to the accident. In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage that requires towing from the site; unless the employee can be completely discounted as a contributing factor to the accident. If no citation is given, the transit system's safety-sensitive employees may still be tested if they could have contributed to the accident. The accident definition may include some incidents where an individual is injured even though there is no vehicle collision.

Following an accident, the safety-sensitive employees will be tested as soon as possible, but not to exceed eight hours for alcohol testing and 32 hours for drug testing. Any safety-sensitive employee involved in an accident must refrain from alcohol use for eight hours following the accident or until he or she undergoes a post-accident alcohol test. Any safety-sensitive employee who leaves the scene of the accident without justifiable explanation prior to the submission to drug and alcohol testing will be considered to have refused the test and their employment will be terminated. Employees tested under this provision will include not only the operations personnel, but any covered employee whose performance could have contributed to the accident.

#### 6.5 Random Testing

Employees in safety-sensitive positions will be subjected to random, unannounced testing. The selection of safety-sensitive employees for random alcohol testing will be made using a scientifically valid method that ensures each covered employee that they will have an equal chance of being selected each time selections are made. The random tests will be unannounced and spread throughout the year. Tests can be conducted at any time during an employee's shift (i.e., beginning, middle, end). Employees are required to proceed immediately to the collection site upon notification of their random selection.

#### 6.6 Return-to-Duty Testing

All safety-sensitive employees who previously tested positive on a drug or alcohol test must test negative (below 0.02 for alcohol) and be evaluated and released to duty by the Substance Abuse Professional before returning to work. A Substance Abuse Professional (SAP) is a licensed physician or certified psychologist, social worker, employee assistance professional, or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse. The SAP must also have clinical experience in the diagnosis and treatment of drug and alcohol related diseases. Before scheduling the return to duty test, the SAP must assess the employee and determine if the required treatment has been completed.

#### 6.7 Follow-up Testing

Safety-sensitive employees will be required to undergo frequent unannounced random urine and/or breath testing following their return to duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests beyond the minimum will be determined by a qualified Substance Abuse Professional.

#### 6.8 Blind Performance Testing

In addition to the major employee testing categories described above, the transit system is required to perform blind sample proficiency testing as a quality assurance measure for the testing laboratory (40.31). Three quality control specimens must be submitted to the laboratory for every 100 employee specimens sent for testing, up to a maximum of 100 blind samples per quarter. These specimens are referred to as blind performance tests because the testing laboratory does not know they are quality control specimens rather than actual employee specimens.

The blind quality control specimens must not be distinguishable from employee specimens, and can be either blanks (negatives) or spikes (positives). If a laboratory reports a positive on a quality control specimen that was a blank (negative), the City is required to notify the FTA immediately. If a laboratory reports a negative on a quality control specimen that was a spike (positive), the City should notify the laboratory and attempt to discover the cause of the error. Repeated false negative errors should be reported to the FTA.

## 7.0 EMPLOYMENT ASSESSMENT

**Any safety-sensitive employee who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, as amended, will be referred for evaluation by a Substance Abuse Professional (SAP). A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders. The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug or alcohol misuse.**

Assessment by a SAP or participation in the City's Employee Assistance Program does not shield an employee from disciplinary action or guarantee employment or reinstatement with the transit system. The Personnel Policies Manual of the City of Greenville should be consulted to determine the penalty for performance-based infractions and violation of policy provisions.

**If a safety-sensitive employee is allowed to return-to-duty, he or she must properly follow the rehabilitation program prescribed by the SAP, the employee must have negative return-to-duty drug and alcohol tests, and be subject to unannounced follow-up tests for a period of one to five years.** The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. Employees will be allowed to take accumulated sick leave and vacation leave to participate in the prescribed rehabilitation program.

## 8.0 INFORMATION DISCLOSURE

**All drug and alcohol testing records will be maintained in a secure manner so that disclosure of information to unauthorized persons does not occur. Information will only be released in the following circumstances:**

1. **To a third party only as directed by specific, written instruction of the employee;**
2. **To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;**
3. **To a subsequent employer upon receipt of a written request from the employee;**
4. **To the National Transportation Safety Board during an accident investigation;**
5. **To the DOT or any DOT agency with regulatory authority over the employer or any of its employees, or to a State oversight agency authorized to oversee rail fixed-guideway systems;**  
**or**
6. **To the employee, upon written request.**

## 9.0 EMPLOYEE AND SUPERVISOR TRAINING

**All safety sensitive employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training must also include manifestations and behavioral cues that may indicate prohibited drug use.**

**Supervisors will also receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.**

#### 10.0 RE-ENTRY CONTRACTS

Employees who re-enter the workforce must agree to a re-entry contract. That contract may include (but is not limited to):

1. A release to work statement from the Substance Abuse Professional.
2. A negative test for drugs and/or alcohol.
3. An agreement to unannounced frequent follow-up testing for a period of one to five years with at least six tests performed the first year.
4. A statement of expected work-related behaviors.
5. An agreement to follow specified after-care requirements with the understanding that violation of the re-entry contract is grounds for termination.
6. After-care status reports, to include attendance and compliance with counselor's treatment program.

#### 11.0 SYSTEM CONTACT

Any questions regarding this policy or any other aspect of the drug-free and alcohol-free transit program should contact the following transit system representative:

##### Program Manager:

Name: Gerry L. Case  
Title: Director of Human Resources  
Address: City of Greenville  
Telephone: 252-329-4495  
Fax: 252-329-4747

##### Medical Review Officer

Name: Dr. Teresa A. Smith  
Med Center 1  
Address: 1688 East Arlington Blvd.  
Greenville, NC 27858  
Telephone: 252-353-1464  
Fax: 252-353-1272

##### Substance Abuse Professional

Name: Nicole Hall-Wilkins, MS, LPC, LCAS  
Cigna Behavioral Health Care  
Title: SAP Counselor  
Address: 704B Cromwell Drive  
Greenville, NC 27834  
Telephone: 252-531-9559

12.0 AMENDMENTS

The City Manager is authorized to amend this policy as needed in order to comply with mandated requirements imposed by applicable federal regulations and to keep system contact information current.

Document No. 98-13

Adopted 10/08/98

Amended 02/26/03

Amended 10/08/07

---

Wayne Bowers, City Manager

---

Date

Doc #714612

Attachment 1

City of Greenville Transit System

Safety-Sensitive Functions\*

Transit Manager  
Full-time Bus Drivers  
Part-time Bus Drivers  
Mechanics  
Auto Service Workers

\* or any others who operate a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch (anyone who controls revenue service vehicles' movement), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee who holds a Commercial Driver's License.



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Contract award for the purchase of two expansion transit buses

**Explanation:** As part of the FY 2007-2008 budget, City Council approved the purchase of two expansion buses for Greenville Area Transit (GREAT). These buses will be 36-foot, heavy-duty, low-floor, ADA-accessible buses manufactured by GILLIG Corporation and purchased from the State of North Carolina Transit Bus Contract (Contract No. 556A).

This purchase will allow for future system expansion and reliable public transit service. Included on these buses are video surveillance cameras that will provide documentation of incidents and/or accidents that may occur during daily operations.

**Fiscal Note:** A total of \$639,546 is included in the FY 2007-2008 budget for the purchase of two buses. Each bus costs \$319,773. The total cost for the buses includes the cameras and support equipment. This purchase will be funded through Federal Transit Administration Grants, the North Carolina Department of Transportation, and the City. The cost share breakdown is as follows:

Federal	\$511,637
State	\$ 62,250
Local	\$ 65,659
TOTAL	\$639,546

**Recommendation:** It is recommended that City Council award a contract to the GILLIG Corporation for \$639,546 to purchase two 36-foot low-floor GILLIG transit buses from State Contract No. 556A.

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

Attachments / click to download

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# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Resolution approving a municipal agreement with the North Carolina Department of Transportation for biannual bridge inspections

**Explanation:** Every two years, the City of Greenville is required to have all bridges and large culverts maintained by the City inspected for safety and sufficiency. In order to comply with these requirements, it is recommended that we partner with the North Carolina Department of Transportation (NCDOT) for the inspection of the City's 11 bridge structures. In this arrangement, NCDOT pays 80 percent of the inspection costs and the City pays 20 percent.

Attached is a Municipal Agreement as proposed by NCDOT, which outlines the conditions of this cooperative effort.

**Fiscal Note:** The City's anticipated cost of the inspection is \$5,600 and is budgeted as part of the City's Powell Bill Fund.

**Recommendation:** City Council approve the municipal agreement to partner with NCDOT for the inspection of bridge structures.

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

Attachments / click to download

[Bridge\\_Resolution\\_721389](#)

**North Carolina  
Pitt County**

**North Carolina Department of Transportation and the City of Greenville  
Municipal Agreement  
Inspection of Bridges on Municipal Street System  
F.A. Project BRZ-NBIS (15)**

This Agreement, made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2007, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the DEPARTMENT, and the CITY OF GREENVILLE, a municipal corporation hereinafter referred to as the MUNICIPALITY;

Witnesseth:

WHEREAS, the Surface Transportation Assistance Act of 1978 provided funding for a Federal-Aid Highway Bridge Replacement and Rehabilitation Program; and

WHEREAS, the Highway Bridge Replacement and Rehabilitation portion of the law requires that all structures defined as bridges located on public roads must be inspected on a cycle, not to exceed two years in accordance with the National Bridge Inspection Standards (NBIS); and

WHEREAS, the Municipality has requested the Department or a Consultant retained by the Department to inspect and analyze all public bridges located on its Municipal Street System in compliance with the National Bridge Inspection Standards; and

WHEREAS, the Department and the Municipality are authorized to enter into an agreement for such work under the provisions of G.S. 136-18(12), G.S. 136-41.3, and G.S. 136-66.1; and

WHEREAS, the City Council of the Municipality has approved the herein above referenced inspections and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.

NOW, THEREFORE, the Department and the Municipality agree as follows:

1. The Department or a Consulting Engineering firm retained by the Department shall inspect, analyze, and prepare the necessary inspection reports for all bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards.
2. All work shall be done in compliance with the following documents:
  - a. National Bridge Inspection Standards (23 CRF, Chapter 1 Part 650)
  - b. AASHTO Manual for Maintenance Inspection of Bridges – 1994 including all Interim Revisions.
  - c. Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges – December, 1988
3. The Municipality shall be responsible for providing any required traffic control personnel during the work period.

4. The Municipality shall furnish all data in the possession of the Municipality that can be released that will help the Department or its Consultant in the accomplishment of the work including but not limited to appropriate municipal maps showing the location of the bridges, plans for the bridges when available, and any prior inspection reports.
5. During the inspection process, some repairs may be discovered that require immediate attention or repair, or a regulatory sign may be missing, damaged or incorrect. A Prompt Action Notice or Regulatory Sign Notice will be issued in these cases. It is required that the Municipality resolve the Prompt Actions and/or Regulatory Sign Notice within ninety (90) days of issuance.
6. The Municipality shall designate a responsible Municipal official with whom the Department or its Consultant will coordinate the work.
7. It is understood by the parties hereto that the Federal Highway Administration, through the Department, is to participate in the costs of the work to the extent of eighty (80) percent of actual costs, subject to compliance with all applicable federal policy and procedural rules and regulations. All costs not participated in by the Federal Highway Administration shall be borne by the Municipality.
8. Upon completion of the bridge inspection, and analysis work, the Department shall invoice the Municipality for accumulated project costs not participated in by the Federal Highway Administration. Upon FHWA final audit, the Department shall invoice/refund the Municipality any differences in the amount previously invoiced and the actual costs not participated in by the Federal Highway Administration. Reimbursement shall be made by the Municipality within sixty (60) days of the invoice date. After the due date, a late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23 and G.S. 105-24.1 (I).
9. In the event the Municipality fails for any reason to pay the Department in accordance with the provisions for payment hereinabove provided, the Municipality hereby authorizes the Department to withhold so much of the Municipality's share of funds allocated to said Municipality by the General Statutes of North Carolina, Section 136-41.1, until such time as the Department has received payment in full.
10. Upon completion of the work the Department shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this agreement. Further, the Department shall make such materials available at its office for three (3) years from the date of payment of the Final Voucher by the Federal Highway Administration under this agreement, for inspections and audit by the Federal Highway Administration, or any authorized representatives of the Federal Government.

IT IS UNDERSTOOD AND AGREED that the approval of the work by the Department is subject to the conditions of this agreement, and that no expenditure of funds on the part of the Department will be made until the terms of this agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of resolution, ordinance or charter provision as the case may be.

L.S. Attest

**City of Greenville**

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Clerk

---

Mayor

Seal of Municipality

L.S. Attest

**Department of Transportation**

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Secretary to the Board

---

State Highway Administrator

Board of Transportation Seal

Approved as to Form  
Roy Cooper  
Attorney General

---

Assistant Attorney General

Resolution Passed by the City Council  
of the  
City of Greenville, North Carolina

The following resolution was introduced, and Council Member \_\_\_\_\_ moved that it be adopted. The motion was seconded by Council Member \_\_\_\_\_, and, upon being put to a vote, the resolution was \_\_\_\_\_ carried,

WHEREAS, the City of Greenville has requested the Department of Transportation to perform certain work under the Federal-Aid Highway Bridge Replacement and Rehabilitation Program, said work to consist of the inspection and analysis of all public bridges on the Municipal Street System in the City of Greenville; and

WHEREAS, the City of Greenville proposes to enter into an agreement with the North Carolina Department of Transportation for said work wherein the Department of Transportation or a Consulting Engineering firm retained by the Department of Transportation will inspect and prepare the necessary reports for all public bridges on the Municipal Street System in accordance with the National Bridge Inspection Standards; and

WHEREAS, under the proposed agreement the Federal Highway Administration shall reimburse the Department of Transportation for eighty (80) percent of the cost of the work subject to compliance with all applicable federal policy and procedural rules and regulations; and

WHEREAS, under the proposed agreement the City of Greenville shall reimburse the Department of Transportation for all costs of the work incurred by the Department of Transportation not paid by the Federal Highway Administration.

NOW THEREFORE, BE IT RESOLVED that the agreement for the herein above referenced bridge inspection work is hereby formally approved by the City of Greenville and the Mayor and Clerk (or Manager) of this Municipality are hereby empowered to sign and execute the required agreement between the City of Greenville and the Department of Transportation.

This resolution was passed and adopted the \_\_\_\_ day of \_\_\_\_\_, 2007.

I, \_\_\_\_\_, Clerk (or Manager) of the City of Greenville, North Carolina, do hereby certify that the foregoing is a true and correct copy of excerpts from the minutes of the City Council of this Municipality;

WITNESS, my hand and the official seal of the City of Greenville on this the \_\_\_\_ day of \_\_\_\_\_, 2007.

Seal of Municipality

\_\_\_\_\_  
Clerk (or Manager)  
City of Greenville, North Carolina



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

---

**Title of Item:** Resolution approving a supplemental agreement with the North Carolina Department of Transportation for the Greene Street Bridge Relocation Project

**Explanation:** Attached for City Council consideration is a supplemental agreement with the North Carolina Department of Transportation (NCDOT) for the Greene Street Bridge Relocation Project (E-4107). The attached agreement must be executed before the City can seek reimbursement from NCDOT for the additional funds approved by the North Carolina Board of Transportation for this project.

When the City Council considered an award of contract for this project in April 2004, the City also requested NCDOT provide additional funding due to construction cost increases and unforeseen construction delays. The funds being requested were in addition to those from an Enhancement Grant already approved for this project. The Board of Transportation approved the request and increased the State's funding share of this project from its Bicycle and Pedestrian Moving Ahead program. As this action increased the amount identified in the original municipal agreement, NCDOT determined that it is necessary to execute a supplemental agreement for the additional funds and fiscal purposes. Public Works staff's review finds the agreement acceptable.

**Fiscal Note:** The City has been reimbursed 100% of the funds from the Enhancement Grant by NCDOT. In accordance with the agreement, the City shall be reimbursed for project costs up to the additional amount of \$160,000.

**Recommendation:** City Council adopt the attached resolution indicating approval of the supplemental agreement with NCDOT for the Greene Street Bridge Relocation Project (E-4107).

**Attachments / click to download**

 [NCDOT Supplemental Agreement for Greene Street Bridge 711836](#)

---

NORTH CAROLINA  
PITT COUNTY

8/14/07

NORTH CAROLINA DEPARTMENT OF  
TRANSPORTATION

AND

SUPPLEMENTAL AGREEMENT

CITY OF GREENVILLE

WBS Element: 33983.1.1 PE 33983.3.1CON  
WBS Element: 39434 Moving Ahead

PROJECT: E-4701  
CFDA NO.: 20.205

THIS AGREEMENT, made and entered into this the \_\_\_\_ day of \_\_\_\_\_ 2007, between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF GREENVILLE, a municipal corporation, hereinafter referred to as the Municipality:

W I T N E S S E T H:

WHEREAS, the Department and the Municipality, on the 5<sup>th</sup> day of February 2001, entered into a certain Enhancement Agreement for the relocation, preservation and reuse of the historic Greene Street Truss Bridge in the City of Greenville, Pitt County, under Project E-4701; and,

WHEREAS, the City of Greenville has requested that the Department provide additional funding for this project due to construction costs increases and unforeseen construction delays; and,

WHEREAS, the parties hereto now wish to supplement the aforementioned Agreement whereby the following provisions are added and amended:

Paragraph 12 (N) shall be amended to add the following: The Disadvantaged Business Enterprise Goal for this project is **Five Percent (5%)**. The Municipality incorporated all DBE goals and federal provisions in the construction contract bid documents used to advertise the project and the goal was met. The Municipality and or its agent followed the policies as set forth in the attached Exhibit A as herein incorporated and made apart of this Agreement.

Paragraph 14 is amended as follows to increase funding in the amount of \$160,000 from Bicycle and Pedestrian Moving Ahead funds under WBS 39434:

14. (K) The Department shall reimburse the Municipality to the extent of one hundred percent (100%) of the approved eligible costs covered under this Agreement up to the maximum award of **ONE HUNDRED SIXTY THOUSAND DOLLARS** (\$160,000) from Moving Ahead Funds established and approved under WBS 39434. All expenditures that exceed this amount shall be borne by the Municipality. Upon execution of this agreement by the Department, the Municipality may bill the Department for eligible costs by submitting an itemized invoice, in duplicate, to the Bicycle and

Pedestrian Transportation Division. Proper supporting documentation shall accompany each invoice as may be required by the Department which shall include, but not be limited to, a line item invoice from the contractor, a listing of DBE subcontractor, and a listing of all subcontractor payments.

Except as hereinabove provided, the Agreement heretofore executed by the Department and the Municipality on the 5<sup>th</sup> day of February 2001, is ratified and affirmed as therein provided.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given, as evidenced by the attached certified copy of Resolution, Ordinance or Charter Provision, as the case may be.

L. S.  
ATTEST

CITY OF GREENVILLE

\_\_\_\_\_  
CLERK

BY: \_\_\_\_\_  
MAYOR

(MUNICIPAL SEAL)

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

\_\_\_\_\_  
Municipal Finance Officer

Federal Tax Identification Number

56-60000229  
City of Greenville

Remittance Address:  
City of Greenville

\_\_\_\_\_  
\_\_\_\_\_

DEPARTMENT OF TRANSPORTATION

\_\_\_\_\_  
Deputy Secretary for Transportation

APPROVED AS TO FORM:

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

RESOLUTION PASSED BY THE CITY COUNCIL  
OF THE CITY OF GREENVILLE, NORTH CAROLINA

A motion was made by \_\_\_\_\_ and seconded by \_\_\_\_\_ for the adoption of the following Resolution, and upon being put to a vote was duly adopted:

WHEREAS, the City of Greenville, due to construction cost increases has requested additional funding in the amount of \$160,000 in order to completed the preservation and reuse of the historic Greene Street Truss Bridge in the City of Greenville, Pitt County, under Project E-4701; and,

WHEREAS, the Department has agreed to provide the requested additional funds from the Bicycle and Pedestrian Moving Ahead funds approved under WBS 39434; and,

WHEREAS, the Department and the Municipality now wish to amend the Agreement to add Provision 14 (K) which will allow the Department's Bicycle and Pedestrian Division to reimburse the Municipality up to \$160,000 in Moving Ahead Funds (WBS 39434) for eligible costs associated with the preservation and reuse of the historic Green Street Truss Bridge.

NOW, THEREFORE, BE IT RESOLVED that Project E-4701, Pitt County, is hereby formally approved by the City Council of the City of Greenville and that the Mayor and Clerk of this Municipality are hereby empowered to sign and execute the Agreement with the Department of Transportation.

I, \_\_\_\_\_, Clerk of the City of Greenville, do hereby certify that the foregoing is a true and correct copy of excerpts from the Minutes of the meeting of the City Council duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

WITNESS, my hand and the official seal of said Municipality on this the \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

(Municipal Seal)

\_\_\_\_\_  
Clerk  
City of Greenville  
North Carolina



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

- 
- Title of Item:** Resolution accepting dedication of rights-of-way and easements for Taberna, Phase 2-Section 1
- Explanation:** In accordance with the City's Subdivision regulations, rights-of-way and easements have been dedicated for Taberna, Phase 2 - Section 1 (Map Book 65 at Page 83). A resolution accepting the dedication of the aforementioned rights-of-way and easements is attached for City Council consideration. The final plat showing the rights-of-way and easement is also attached.
- Fiscal Note:** Funds for the maintenance of these rights-of-way and easements are included within the FY 2007-2008 budget.
- Recommendation:** City Council adopt the attached resolution accepting dedication of rights-of-way and easements for Taberna, Phase 2-Section 1.
- 

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

**Attachments / click to download**

- [Taberna](#)
  - [October\\_2007\\_Right\\_of\\_Way\\_and\\_Easement\\_Resolution\\_715157](#)
-

RESOLUTION NO. 07 \_\_\_\_\_  
A RESOLUTION ACCEPTING DEDICATION TO THE PUBLIC OF  
RIGHTS-OF-WAY AND EASEMENTS ON SUBDIVISION PLATS

WHEREAS, G.S. 160A-374 authorizes any city council to accept by resolution any dedication made to the public of land or facilities for streets, parks, public utility lines, or other public purposes, when the lands or facilities are located within its subdivision-regulation jurisdiction; and

WHEREAS, the Subdivision Review Board of the City of Greenville has acted to approve the final plats named in this resolution, or the plats or maps that predate the Subdivision Review Process; and

WHEREAS, the final plats named in this resolution contain dedication to the public of lands or facilities for streets, parks, public utility lines, or other public purposes; and

WHEREAS, the Greenville City Council finds that it is in the best interest of the public health, safety, and general welfare of the citizens of the City of Greenville to accept the offered dedication on the plats named in this resolution.

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

Section 1. The City of Greenville accepts the dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes offered by, shown on, or implied in the following approved subdivision plats:

Taberna, Phase 2 – Section 1                      Map Book 65                      Page 83

Section 2. Acceptance of dedication of lands or facilities shall not place on the City any duty to open, operate, repair, or maintain any street, utility line, or other land or facility except as provided by the ordinances, regulations or specific acts of the City, or as provided by the laws of the State of North Carolina.

Section 3. Acceptance of the dedications named in this resolution shall be effective upon adoption of this resolution.

Adopted the 8<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Robert D. Parrott, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk

NORTH CAROLINA  
PITT COUNTY

I, Patricia A. Sugg, a Notary Public, do hereby certify that Wanda T. Elks, City Clerk, personally appeared before me this day and acknowledged that she is the City Clerk of the City of Greenville, a municipality, and that by authority duly given and as the act of the municipality, the foregoing instrument was signed in its name by its mayor, sealed with the corporate seal, and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this 8<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Notary Public

My Commission Expires: 9/4/2011



NOTES:  
 1) THE DESIGNATION NOTED OVER WATER, SANITARY SEWER, GAS OR ELECTRIC LINES ARE FOR THE PURPOSE OF ESTABLISHING WIDTH OF SAID EASEMENTS. THE EASEMENTS SHOWN ARE NOT EXCLUSIVE AND WILL PERMIT THE FUTURE INSTALLATION OF WATER, SANITARY SEWER, GAS AND ELECTRIC LINES WITHIN THE DESIGNATED WIDTHS.  
 2) THIS PROPERTY IS NOT LOCATED WITHIN A 100 YEAR FLOOD PLAIN (FEMA PANEL NO. 370191 K000 J, DATED 01/04/05).  
 3) NO BUILDINGS, STRUCTURES, OR OTHER IMPROVEMENTS, MATERIALS AND SUPPLIES INCLUDING BUT NOT LIMITED TO PRINCIPAL OR APPURTENANCES THEREOF, AND ADDITIONS OR ALTERATIONS THEREOF, SHALL BE PERMITTED, INCLUDING BUT NOT LIMITED TO: SIGNAGE, CANOPIES, ANTENNAS, MOBILE RESIDUALS, MONUMENTS, LIGHTS, BARRIERS, FILL MATERIALS, DEBRIS, SOLID WASTE COLLECTION CONTAINERS, MAIL RECEPTACLES AND IMPERVIOUS SURFACES, SHALL BE INSTALLED WITHOUT THE APPROVAL OF THE CITY OF GREENVILLE.

Doc ID: 0000000001 Type: DM  
 Recorded: 02/18/2006 at 11:20:46 AM  
 File Name: 81127.PDF  
 Job #: 2-1-2006  
 65 p83

SITE DATA	
TOTAL AREA.....	13.8489 AC
NUMBER OF LOTS.....	38
RECREATION, ETC.....	0.00 AC

VICINITY MAP  
1" = 1000'

NANNIE BEST  
NANNIE FIELDS  
DB L-33, P. 443

LEGEND

- IRON STAKE SET (UNLESS OTHERWISE NOTED)
- EXISTING IRON STAKE
- CONTROL CORNER
- NO POINT SET



CENTERLINE CURVE DATA - TABERNA DRIVE

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	500.00'	112.45'	112.22'	N 71°11'12"W

CENTERLINE CURVE DATA - BERT COURT

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	300.00'	45.77'	45.72'	N 83°54'51"E

CENTERLINE CURVE DATA - BRIFSON DRIVE

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	5000.00'	414.79'	616.67'	N 81°54'00"E

CENTERLINE CURVE DATA - CALVARY DRIVE

CURVE	RADIUS	LENGTH	CHORD	CHORD BEARING
1	1000.00'	33.08'	93.05'	N 07°20'43"W

I HEREBY CERTIFY THAT THIS SURVEY, MAP OR SUBDIVISION PLAN WAS MADE BY ME OR UNDER MY SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF NORTH CAROLINA THAT REGULATES SUBDIVISIONS.

CARLTON E. PARKER

1. CARLTON E. PARKER, CERTIFY THAT THIS MAP WAS DRAWN BY ME OR UNDER MY SUPERVISION FROM AN ORIGINAL SURVEY BY ME OR UNDER MY SUPERVISION, THAT THE RATIO OF PRECISION AS CALCULATED FROM LATITUDES AND LONGITUDES IS 1:110,000+1 THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS DASHED LINES PLOTTED FROM INFORMATION FOUND IN BOOK PAGE THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS 18th DAY OF FEBRUARY, A.D., 2006.

CARLTON E. PARKER 1-2380

TABERNA  
PHASE 1, SECTION 2  
NO 82, P. 39



MAP FOR RECORD  
**TABERNA**  
 PHASE 2 - SECTION 1

GREENVILLE WINTERTVILLE TWP. ATTY CO. NORTH CAROLINA

OWNER: DON PARROTT  
 1005 RED BANKS ROAD  
 GREENVILLE, NC 27656  
 (252) 321-0087

MALPASS & ASSOCIATES  
 1644 EAST ARLINGTON BLVD.  
 SUITE D  
 GREENVILLE, NC 27664  
 (252) 756-1780

PROJECT NO. P-347 DRAWING NO. P347MERPH2.DGN

SOURCE OF TITLE

THIS IS TO CERTIFY THAT THE LAST INSTRUMENTS IN THE CHAIN OF TITLES OF THIS PROPERTY AS RECORDED IN THE PITT COUNTY REGISTER AT GREENVILLE, NORTH CAROLINA IS:

DEED BOOK PAGE 808  
 DEED BOOK PAGE 808  
 N.C. REGISTRATION NO. 1-2280

OWNER'S STATEMENT

THIS IS EVIDENCE THAT THIS SUBDIVISION IS MADE BY THE OWNER OF THE PROPERTY.

OWNER: DON PARROTT  
 SHOWN AND SUBSCRIBED BEFORE ME THIS 18th DAY OF FEBRUARY, 2006.

NOTARY PUBLIC  
 MY COMMISSION EXPIRES 3/23/06

APPROVAL

THIS FINAL PLAT, NO. 05-124 WAS APPROVED BY THE SUBDIVISION REVIEW BOARD IN ACCORDANCE WITH TITLE 9, CHAPTER 5 OF THE GREENVILLE CITY CODE THE 18th DAY OF FEBRUARY, 2006.

SIGNED: [Signature]  
 CITY PLANNER

DENICATION

THE UNDERSIGNED HEREBY ACKNOWLEDGES THIS PLAT AND ALLOTMENT TO BE HIS FREE ACT AND DEED, AND HEREBY DEDICATES TO PUBLIC USE AS STREETS, PAVES, PLAYGROUNDS, OPEN SPACES AND EASEMENTS FOREVER, ALL AREAS AS SHOWN OR AS PROJECTED ON SAID PLAT.

SIGNED: [Signature]  
 ATTEST: [Signature]

NORTH CAROLINA, PITT COUNTY  
 FILED FOR REGISTRATION THIS 18th DAY OF FEBRUARY, 2006, AT  
 THE OFFICE OF THE  
 CLERK OF SUPERIOR COURT  
 JUDY HART, REGISTER OF DEEDS



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Preliminary Engineering Agreement with CSX Transportation for the Thomas Langston Road Extension Project

**Explanation:** Attached is a Preliminary Engineering Agreement presented by DMJM Harris, who is under contract with CSX Transportation (CSXT) to provide engineering services in North Carolina on CSXT's behalf. The agreement is in response to the City's request for a new at-grade crossing on the CSXT railroad that is part of the Thomas Langston Road Extension Project.

In order for a review of the project documents to be initiated, CSXT requires a Preliminary Engineering Agreement be executed between CSXT and the City. CSXT is also requiring an advance payment in the amount of \$40,000 to be paid prior to the review of any project documents commencing. This is an advance deposit to be held in an account against which CSXT's actual costs will be assessed. If the actual costs are less than the deposit, a refund will be returned, and if the actual costs are more than the deposit, a further deposit will be requested. Once the executed agreement and the payment have been presented to CSXT, DMJM Harris will coordinate the project review of the proposed crossing.

Following a review of the potential impacts, DMJM Harris will identify any issues that may need to be addressed before the project can progress. If the crossing is approved and no exceptions are taken to the project, DMJM Harris will prepare a Force Account Estimate (for costs during construction) and a Construction Agreement for execution between the City and CSXT.

**Fiscal Note:** Funds for this agreement have been included in the project's budget funded from the capital improvement bonds authorized by the voters in November 2004.

**Recommendation:** City Council approve the attached Preliminary Engineering Agreement with CSX Transportation to facilitate the development of an at-grade crossing on the Thomas Langston Road Extension Project.

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

**Attachments / click to download**

 [Thomas Langston Rd Ext Project](#)

---

**DMJM Harris**

The Atlantic Building, 260 South Broad St., Suite 1500, Philadelphia, PA 19102  
T 215.735.0832 F 215.735.0903 www.dmjmharris.com

August 15, 2007

Mr. David T. Brown, P.E.  
City Engineer – Department of Public Works  
City of Greenville  
1500 Beatty Street  
Greenville, North Carolina 27834

**SUBJECT:** Greenville, Pitt County, NC – Thomas Langston Road extension and at-grade crossing with CSXT; Approximate Milepost AA-152.95; Florence Division, Parmele Subdivision, CSXT OP# NC0486 – **Preliminary Engineering Agreement Transmission**

Dear Mr. Brown:

DMJM Harris, under contract to CSX Transportation (CSXT), is working as the Point of Contact (POC) Consultant in the State of North Carolina. All future correspondence on the abovementioned project should be directed to our office for handling, distribution, and review. This Preliminary Engineering Agreement has been prepared in response to the City of Greenville letter dated August 9, 2007 and accompanying preliminary plans regarding the subject project.

In order for a review of the project documents to be initiated and CSXT reimbursed for its costs, CSXT requires a Preliminary Engineering Agreement to be fully executed between the City of Greenville and CSXT prior to the review of the project documents. Two (2) copies of the Agreement are enclosed. Please arrange for each original to be executed and return both to this office for our further handling with CSXT. Payment of \$40,000 should be made payable to "CSX Transportation" and sent directly to the appropriate CSXT office as mentioned on the last page of the Agreement (CSXT Schedule PA). Please also provide a copy of the check and CSXT Schedule PA to this DMJM Harris office for our records. The advance payment in the amount of \$40,000 is not a fee, but an advance deposit held in an account against which CSXT actual costs are assessed. If the actual costs are less than the deposit, a refund will be returned, and if the actual costs are more than the deposit, a further deposit will be requested.

Once the payment has been sent to the appropriate CSXT office in Atlanta, GA and the signed Agreements along with a copy of the check and CSXT Schedule PA have been received by this office, DMJM Harris will coordinate project review activities. Following a review of the potential impacts to CSXT's right-of-way and/or operations, correspondence will be sent to you highlighting any issues that need to be addressed before the project can progress. If no exceptions are taken to the project, a Force Account Estimate (for costs during construction) and Construction Agreement will be prepared by DMJM Harris for execution between the appropriate parties.

If you have any questions or comments, please contact George J. Kevgas or me at (215) 965-2220.

Very Sincerely,



Jeffrey A. Konrad, P.E.  
Principal Engineer

Project: **Greenville, Pitt County, North Carolina – Thomas Langston Road extension and at-grade crossing with CSXT – Approximate Milepost: AA-152.95; Florence Division, Parmele Subdivision**  
CSXT OP#NC0486

## **PRELIMINARY ENGINEERING AGREEMENT**

This Preliminary Engineering Agreement (this “**Agreement**”) is made as of August 13, 2007, by and between CSX TRANSPORTATION, INC., a Virginia corporation with its principal place of business in Jacksonville, Florida (“**CSXT**”), and City of Greenville, a body corporate and political subdivision of the State of North Carolina (“**Agency**”).

### **EXPLANATORY STATEMENT**

1. Agency wishes to facilitate the development of the proposed Thomas Langston Road extension and at-grade crossing with CSXT, in the vicinity of Milepost AA-152.95 of the Florence Division and Parmele Subdivision in Greenville, Pitt County, North Carolina (the “**Project**”).
2. Agency has requested that CSXT proceed with certain necessary engineering and/or design services for the Project to facilitate the parties’ consideration of the Project.
3. Subject to the approval of CSXT, which approval may be withheld for any reason directly or indirectly related to safety or CSXT operations, property, or facilities, the Project is to be constructed, if at all, at no cost to CSXT, under a separate construction agreement to be executed by the parties at a future date.

NOW, THEREFORE, for and in consideration of the foregoing Explanatory Statement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

#### 1. Scope of Work

1.1. Generally. The work to be done by CSXT under this Agreement shall consist of: (i) the preparation or review and approval of preliminary and final engineering and design plans, specifications, drawings, agreements and other documents pertaining to the Project, (ii) the preparation of cost estimates for CSXT's work in connection with the Project, and (iii) the review of construction cost estimates, site surveys, assessments, studies, agreements and related construction documents submitted to CSXT by Agency for the Project (collectively, the “**Engineering Work**”). Engineering Work may also include office reviews, field reviews, attending hearings and meetings, and preparing correspondence, reports, and other documentation in connection with the Project. Nothing contained in this Agreement shall oblige CSXT to perform work which, in CSXT’s opinion, is not relevant to CSXT’s participation in the Project.

1.2. Effect of CSXT Approval or Preparation of Documents. By its review, approval or preparation of plans, specifications, drawings or other documents pursuant to this Agreement (collectively, the “**Plans**”), CSXT signifies only that the Plans and the Project proposed to be constructed in accordance with the Plans satisfy CSXT’s requirements. CSXT expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of Agency or any other persons of such Plans or the Project constructed in accordance with the Plans.

2. Project Construction. Nothing contained in this Agreement shall be deemed to constitute CSXT's approval of or consent to the construction of the Project, which approval or consent may be withheld

Project: **Greenville, Pitt County, North Carolina – Thomas Langston Road extension and at-grade crossing with CSXT – Approximate Milepost: AA-152.95; Florence Division, Parmele Subdivision**  
CSXT OP#NC0486

for any reason directly or indirectly related to safety or CSXT operations, property, or facilities. The Project if constructed is to be constructed, if at all, under a separate construction agreement to be executed by the parties at a future date.

3. Reimbursement of CSXT Expenses.

3.1. Reimbursable Expenses. Agency shall reimburse CSXT for all costs and expenses incurred by CSXT in connection with the Engineering Work, including, without limitation: (i) all out of pocket expenses, (ii) travel and lodging expenses, (iii) telephone, facsimile, and mailing expenses, (iv) costs for equipment, tools, materials and supplies, (v) sums paid to consultants and subcontractors, and (vi) labor, together with labor overhead percentages established by CSXT pursuant to applicable law (collectively, the “**Reimbursable Expenses**”).

3.2. Estimate. CSXT has estimated the total Reimbursable Expenses for the Project to be approximately \$40,000 (the “**Estimate**” as amended or revised). In the event CSXT anticipates that actual Reimbursable Expenses may exceed such Estimate, it shall provide Agency with the revised Estimate of total Reimbursable Expenses for Agency's approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses as reflected in the revised Estimate. CSXT may elect, by delivery of notice to Agency, to immediately cease all further Engineering Work, unless and until Agency provides such approval and confirmation.

3.3. Payment Terms.

3.3.1. Advance Payment in Full. Upon execution and delivery of this Agreement by Agency, Agency will deposit with CSXT a sum equal to the Reimbursable Expenses, as shown by the Estimate. Agency shall pay CSXT for Reimbursable Expenses in the amount set forth in CSXT Schedule PA attached hereto, a copy of which shall accompany the advance payment. If CSXT anticipates that it may incur Reimbursable Expenses in excess of the deposited amount, CSXT will request an additional deposit equal to the then remaining Reimbursable Expenses which CSXT estimates that it will incur. CSXT shall request such additional deposit by delivery of invoices to Agency. Agency shall make such additional deposit within thirty (30) days following delivery of such invoice to Agency.

3.3.2. Following completion of all Engineering Work, CSXT shall reconcile the total Reimbursable Expenses incurred by CSXT against the total payments received from Agency and shall submit to Agency a final invoice if required. Agency shall pay to CSXT the amount by which actual Reimbursable Expenses exceed total payments, as shown by the final invoice, within thirty (30) days following delivery to Agency of the final invoice. CSXT will provide a refund of any unused deposits if the deposit exceeds the incurred Reimbursable Expenses for the Project.

3.3.3. In the event that Agency fails to pay CSXT any sums due CSXT under this Agreement: (i) Agency shall pay CSXT interest at the lesser of 1.0% per month or the maximum rate of interest permitted by applicable law on the delinquent amount until paid in full; and (ii) CSXT may elect, by delivery of notice to Agency: (A) to immediately cease all further work on the Project, unless and until Agency pays the

**Project: Greenville, Pitt County, North Carolina – Thomas Langston Road extension and at-grade crossing with CSXT – Approximate Milepost: AA-152.95; Florence Division, Parmele Subdivision**  
CSXT OP#NC0486

entire delinquent sum, together with accrued interest; and/or (B) to terminate this Agreement.

- 3.4. Effect of Termination. Agency's obligation to pay CSXT Reimbursable Expenses in accordance with this Section shall survive termination of this Agreement for any reason.
4. Appropriations. Agency represents to CSXT that: (i) Agency has obtained appropriations sufficient to reimburse CSXT for the Reimbursable Expenses encompassed by the initial Estimate; (ii) Agency shall use its best efforts to obtain appropriations necessary to cover Reimbursable Expenses encompassed by subsequent Estimates approved by Agency; and (iii) Agency shall promptly notify CSXT in the event that Agency is unable to obtain such additional appropriations.
5. Termination.
  - 5.1. By Agency. Agency may terminate this Agreement, for any reason, by delivery of notice to CSXT. Such termination shall become effective upon the expiration of fifteen (15) calendar days following delivery of notice to CSXT or such later date designated by the notice.
  - 5.2. By CSXT. CSXT may terminate this Agreement (i) as provided pursuant to Section 3.3.3., or (ii) upon Agency's breach of any of the terms of, or its obligations under, this Agreement and such breach continues without cure for a period of ninety (90) days after written notification from CSXT to Agency of such breach.
  - 5.3. Consequences of Termination. If the Agreement is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical to immediately stop the Engineering Work. Accordingly, both parties agree that, in such instance a party may continue to perform Engineering Work until it has reached a point where it may reasonably and/or safely suspend the Engineering Work. Agency shall reimburse CSXT pursuant to this Agreement for the Engineering Work performed, plus all costs reasonably incurred by CSXT to discontinue the Engineering Work and all other costs of CSXT incurred as a result of the Project up to the time of full suspension of the Engineering Work. Termination of this Agreement or Engineering Work on the Project, for any reason, shall not diminish or reduce Agency's obligation to pay CSXT for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of this Agreement or the Engineering Work for any reason, CSXT's only remaining obligation to Agency shall be to refund to Agency payments made to CSXT in excess of Reimbursable Expenses in accordance with Section 2.
6. Subcontracts. CSXT shall be permitted to engage outside consultants, counsel and subcontractors to perform all or any portion of the Engineering Work.
7. Notices. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered (i) on the expiration of three (3) days following mailing by first class U.S. mail, (ii) on the next business day following mailing by a nationally recognized overnight carrier, or (iii) on the date of transmission, as evidenced by written confirmation of successful transmission, if by facsimile or other electronic transmission if sent on a business day (or if not sent on a business day, then on the next business day after the date sent), to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

Project: **Greenville, Pitt County, North Carolina – Thomas Langston Road extension and at-grade crossing with CSXT – Approximate Milepost: AA-152.95; Florence Division, Parmele Subdivision**  
CSXT OP#NC0486

If to CSXT: CSX Transportation, Inc.  
500 Water Street, J301  
Jacksonville, Florida 32202  
Attention: Principal Engineer – Public Projects  
Shelby Stevenson

If to Agency: City of Greenville – Department of Public Works  
1500 Beatty Street  
Greenville, NC 27834  
Attention: City Engineer  
David T. Brown, P.E.

- 8. Entire Agreement. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, agreements or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
- 9. Waiver. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
- 10. Assignment. CSXT may assign this Agreement and all rights and obligations herein to a successor in interest, parent company, affiliate, or future affiliate. Upon assignment of this Agreement by CSXT and the assumption by CSXT's assignee of CSXT's obligations under this Agreement, CSXT shall have no further obligations under this Agreement. Agency shall not assign its rights or obligations under this Agreement without CSXT's prior written consent, which consent may be withheld for any reason.
- 11. Applicable Law. This Agreement shall be governed by the laws of the State of North Carolina, exclusive of its choice of law rules. The parties further agree that the venue of all legal and equitable proceedings related to disputes under this Agreement shall be situated in Duval County, Florida, and the parties agree to submit to the personal jurisdiction of any State or Federal court situated in Duval County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate, each by its duly authorized officers, as of the date of this Agreement.

**City of Greenville**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CSX TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Eric G. Peterson  
Assistant Chief Engineer - Public Projects

Project: **Greenville, Pitt County, North Carolina – Thomas Langston Road extension and at-grade crossing with CSXT – Approximate Milepost: AA-152.95; Florence Division, Parmele Subdivision**  
CSXT OP#NC0486

**CSXT Schedule PA**  
(Advance Payment – Preliminary Engineering Agreement)

**PAYMENT SUBMISSION FORM**

\*\*\*\*\*

Payment is hereby provided in accordance with the terms of Section 3.3 of the Agreement dated August 13, 2007, between Agency and CSXT.

\*\*\*\*\*

A copy of this Payment Submission Form shall accompany all payments delivered by Agency to CSXT which shall be forwarded to the following address:

**CSX Transportation, Inc.  
P. O. Box 116651  
Atlanta, GA 30368-6651**

.....

**Payment due within ten (10) days of Agency's receipt of fully executed agreement**

\*\*\*\*\*

**(All information below to be completed by Agency providing Payment)**

Payment Date                      Payment Amount                      Check No.

\_\_\_\_\_

\*\*\*\*\*

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

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

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

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

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

Email: \_\_\_\_\_



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Resolution designating the Operations Manager with the authority to sign and execute all papers and documents in connection with mosquito control

**Explanation:** Attached for the City Council's consideration is a resolution authorizing and empowering the Operations Manager in the Department of Public Works to sign and execute all papers and documents necessary in connection with the request made to the Division of Environmental Health, North Carolina Department of Environment and Natural Resources, for aid in control of mosquitoes. With the recent retirement of the Director of Public Works, the Division of Environmental Health is requiring the designation of an official with the referenced authorization to administer the City's mosquito control program and to execute requests for aid in connection with the current grant cycle.

**Fiscal Note:** There are no direct City costs associated with this item.

**Recommendation:** City Council approve the attached resolution designating the Operations Manager with the authority to sign and execute all papers and documents in connection with mosquito control.

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Attachments / click to download

[Mosquito\\_Resolution\\_719554](#)

RESOLUTION NO. 07- \_\_\_\_\_  
A RESOLUTION BY THE CTY COUNCIL OF THE CITY OF GREENVILLE  
DESIGNATING OFFICIAL TO SIGN NECESSARY PAPERS AND TO OTHERWISE  
REPRESENT BOARD IN CONNECTION WITH MOSQUITO CONTROL

Upon motion of \_\_\_\_\_, seconded by \_\_\_\_\_,  
it is hereby ordered that Kenneth Jackson, Operations Manager, as agent for the City of  
Greenville, is hereby authorized and empowered to sign and execute all papers and documents  
necessary in connection with the request made to the Division of Environmental Health, North  
Carolina Department of Environment and Natural Resources, for aid in control of mosquitoes.  
He is further authorized and required to carry out all agreements stipulated in the project  
application submitted by us to the Division of Environmental Health, North Carolina Department  
of Environment and Natural Resources, and to perform other acts that are proper and necessary  
in connection with the operation of this project. Acts of said person on behalf of the City of  
Greenville are in all respects validated, approved, and confirmed.

The undersigned Wanda Elks, Clerk of the City of Greenville, hereby certifies that the  
foregoing is a true copy of the resolution of the City of Greenville at a meeting held on the 8<sup>th</sup>  
day of October, 2007.

Adopted the 8<sup>th</sup> day of October, 2007.

\_\_\_\_\_  
Robert D. Parrott, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Resolution exempting the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project from the statutory procurement process and a contract award for architectural/engineering services for the project

**Explanation:** The need for the Phase I Expansion of Exhibit Hall Project is twofold: 1) It provides for improvements and much-needed storage space attached to the Exhibit Hall allowing Exhibit Hall Managers, LLC (EHM), the contract operator of the Convention Center, to better serve those leasing the facility; and 2) it replaces parking for the Convention Center that was lost due to the sale of the old Pizza Hut Property to Greenville Prime Investors, LLC for the new Hampton Inn. The expansion project is critical to the upcoming North Carolina League of Municipalities Conference scheduled to be held in Greenville in the fall of 2009.

A list of improvements needed for the Greenville Convention Center's Exhibit Hall was developed jointly by the City and EHM, Inc. This list of improvements includes the new construction of storage areas and renovation of existing areas, audio/electronic technology improvements, acoustical improvements to the HVAC system, resurface (paint) the Exhibit Hall's floor and repaint its walls, and the construction of approximately 150 parking spaces with associated site utility and stormwater infrastructure.

It is recommended that Hite & Associates be awarded a professional services contract for the design and construction administration of the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project and associated parking lot improvements. Mr. Jimmy Hite of Hite & Associates is the architect of record for the existing facility and is most familiar with the building design. The attached proposal includes a fee for this work of \$80,000.

The fee for the work associated with this contract includes, but is not limited to, design and preparation of bid documents to complete the identified improvements, bidding and construction contract negotiation, and construction administration services for the project.

In order to legally award this contract without going through a qualification-

based procurement process, City Council must adopt a resolution exempting this project from the statutory procurement process for architectural/engineering services. This is an authority granted to cities by statute provided that City Council adopts a resolution which includes the reasons and circumstances relating to the exemption. A proposed resolution is attached for consideration.

**Fiscal Note:** Funding for this contract and the proposed improvements are available in a designated Convention Center account in the Capital Reserve Fund.

**Recommendation:** It is recommended that City Council:

- 1) Adopt the attached resolution exempting the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project from the Statutory Procurement Process for Architectural and Engineering Services, and
- 2) Award a professional services contract to Hite & Associates for the design and construction administration of the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project in the amount of \$80,000.

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**Attachments / click to download**

 [Convention Center](#)

 [Resolution for Contracted Services for Convention Center 718002](#)

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RESOLUTION NO. 07-

RESOLUTION EXEMPTING THE GREENVILLE CONVENTION CENTER  
IMPROVEMENTS, PHASE I EXPANSION OF EXHIBIT HALL PROJECT  
FROM THE STATUTORY PROCUREMENT PROCESS FOR  
ARCHITECTURAL AND ENGINEERING SERVICES

WHEREAS, the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes establish a process for the procurement of architectural and engineering services from which particular projects may be exempted in the sole discretion of the unit of local government; and

WHEREAS, it is appropriate to exempt the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project from the statutory procurement process for architectural and engineering services since the plans for the expansion project need to be coordinated with the existing facility;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Greenville that it does hereby exempt the Greenville Convention Center Improvements, Phase I Expansion of Exhibit Hall Project from the statutory procurement process for architectural services in accordance with the provisions of Article 3D of Chapter 143 of the North Carolina General Statutes.

Adopted this 8th day of October, 2007.

\_\_\_\_\_  
Robert D. Parrott, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk

# Hite associates

**ARCHITECTURE / ENGINEERING / TECHNOLOGY**

August 22, 2007

Mr. Tom Tysinger, PE, Director of Public Works  
CITY OF GREENVILLE  
1500 Beatty Street  
Greenville, NC 27834

**RE: Proposal for Design and Construction Administration Services  
GREENVILLE CONVENTION AND VISITORS CENTER – Phase I EXPANSION**

Dear Tom,

Thank you for the opportunity to propose continuation of our services to the City for the referenced project. We understand the scope of work for this project is to provide design and bid documents, bidding and construction contract negotiation, and construction administration services for Phase I of the planned expansions to the Greenville Convention and Visitors Center, to include new construction for storage areas, renovation of existing storage areas, and associated modifications to building mechanical and electrical services. Exterior construction will include the addition of approximately 150 parking spaces, driveway modifications, and associated site utility and storm water work.

In the existing exhibit hall areas, improvements will be designed and implemented as follows:

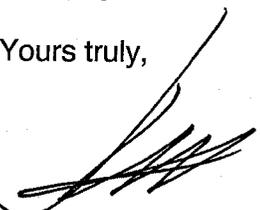
1. Audio electronic technology improvements
2. HVAC improvements for air and vibration mitigation
3. New finishes for existing exhibit hall floors and walls

To further describe the scope of work, I have attached both preliminary site and floor plans as prepared under our agreement for master planning work.

In consideration of the professional services above, we propose a fixed fee of \$80,000. Our services, as indicated above, and as performed for other projects for the City of Greenville, are comprehensive and will be written into our usual form of contract.

Again, we appreciate this opportunity to offer our services to the City for this work. Please let me know if you have any questions or need any clarification or additional detail.

Yours truly,



Jimmy Hite, AIA, President  
Hite Associates, PC

JGH/lt

Attachment (2)

Item # 11



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Water Capital Projects Budget Ordinance and Reimbursement Resolution for Greenville Utilities Commission's Water Resources Automated Meter Reading Project

**Explanation:** Automated Meter Reading (AMR) facilitates reading meters without physical access to the customer's premises. Instead, data is transmitted through radio frequency. This technology is available for electric, water, and gas applications.

Greenville Utilities Commission (GUC) has deployed select AMR meters in the Electric Department since 2004. The deployment of electric AMR meters continues at a rate of approximately 7,500 meters per year and is scheduled for completion in FY 2011-2012. AMR meters for the Gas Department are being deployed at a rate of 4,000 per year for the next four years, and deployment is scheduled for completion in FY 2010-2011.

The number of customer accounts at GUC is currently increasing at a rate of 4% per year. The full implementation of AMR technology will allow avoided costs in terms of additional meter readers and the purchase of additional vehicles for meter reading. Additional benefits include increased productivity, increased cash flow, theft protection, and the reduction of personal injury.

In order to gain the full benefits from this technology, it is crucial that Water Resources also deploy AMR meters. This project is included in GUC's five-year capital plan. This project, along with the debt service assumptions, was factored in the recent water/sewer rate study.

The GUC Board, at their meeting on September 11, 2007, adopted a Water Capital Projects Budget and a reimbursement resolution and recommended similar action by the City Council.

**Fiscal Note:** No cost to the City of Greenville

**Recommendation:** Adopt the attached Water Capital Projects Budget Ordinance and Reimbursement Resolution to allow GUC to reimburse itself from future debt financing.

---

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

**Attachments / click to download**

 [Water Capital Projects Budget](#)

 [Reimbursement Resolution](#)

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ORDINANCE NO. \_\_\_\_\_

FOR WATER CAPITAL PROJECTS BUDGET  
AUTOMATED METER READING (AMR)

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

Section 1. Revenues. Revenues of Water Capital Project Budget, Automated Meter Reading (AMR), is hereby established to read as follows:

Revenue:

Debt Financing	<u>\$2,020,000</u>	
Total Revenue		<u><u>\$2,020,000</u></u>

Section 2. Expenditures. Expenditures of the Water Capital Project Budget, Automated Meter Reading (AMR), is hereby established to read as follows:

Expenditures:

Project Costs	<u>\$2,020,000</u>	
Total Expenditures		<u><u>\$2,020,000</u></u>

Section 3. All ordinances and clauses of ordinances in conflict with this ordinance are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Robert D. Parrott, Mayor

ATTEST:

\_\_\_\_\_  
Wanda T. Elks, City Clerk

**RESOLUTION NO. 07-\_\_**

**RESOLUTION DECLARING THE INTENTION OF THE  
CITY COUNCIL OF THE CITY OF GREENVILLE  
TO REIMBURSE THE CITY FROM THE PROCEEDS  
OF A DEBT FINANCING FOR CERTAIN EXPENDITURES  
MADE AND TO BE MADE IN CONNECTION WITH THE ACQUISITION  
AND CONSTRUCTION OF CERTAIN CAPITAL IMPROVEMENTS**

WHEREAS, the City of Greenville, North Carolina (the "City") has paid, beginning, October 8, 2007, which date is no more than 60 days prior to the date hereof, certain expenditures in connection with the acquisition and construction of certain improvements (the "Improvements") more fully described in Exhibit A attached hereto, consisting of improvements to its electric, gas, sanitary sewer and water systems (collectively, the "System"); and

WHEREAS, the City Council of the City (the "City Council") has determined that those moneys previously advanced no more than 60 days prior to the date hereof to pay such expenditures in connection with the acquisition and construction of the Improvements (the "Expenditures") are available only on a temporary period and that it is necessary to reimburse the City for the Expenditures from the proceeds of an issue of debt (the "Debt");

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

Section 1. The City Council hereby declares its intent to reimburse the City from the proceeds of the Debt for the Expenditures made on and after October 8, 2007, which date is no more than 60 days prior to the date hereof. The City Council reasonably expects on the date hereof that it will reimburse the City for the Expenditures from the proceeds of a like amount of the Debt.

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

Section 3. The principal amount of the Bonds estimated to be issued to reimburse the City for Expenditures for the Improvements is estimated to be \$2,020,000.

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

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

Adopted this the \_\_\_\_ day of \_\_\_\_\_, 2007.

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Robert D. Parrott, Mayor

ATTEST:

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Wanda T. Elks, City Clerk

**EXHIBIT A**

**THE IMPROVEMENTS**

The Improvements referenced in the resolution include, but are not limited to, all operating and capital expenditures associated with the Water Resources Automated Meter Reading project.



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Various tax refunds

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

<b><u>Payee</u></b>	<b><u>Description</u></b>	<b><u>Amount</u></b>
Perry King Burrows	Refund of City Taxes Paid	\$164.45
Glenwood Ray Edwards	Refund of City Taxes Paid	\$187.15
Linda K. Lowe	Refund of City Taxes Paid	\$112.62
WCKNG Construction Inc.	Refund of City Taxes Paid	\$149.07
Honda Lease Trust	Refund of City Taxes Paid	\$103.08
Paulo Sergio Gabrielli	Refund of City Taxes Paid	\$106.41
Belinda Perry Patterson	Refund of City Taxes Paid	\$148.33

**Fiscal Note:** The total amount to be refunded is \$971.11.

**Recommendation:** Approval of taxes refunded by City Council

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# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Report on bids awarded

**Explanation:** The Director of Financial Services reports that the following bid was awarded in the month of August and is to be included on the City Council agenda for information.

Date Awarded	Description	Vendor	Amount	M/WBE Yes/No
8/29/07	Rehab of Property at 514 Sheppard Street-Lizzie King	Robert Cunningham	\$50,000*	No
	*The original bid amount was \$44,305. A change order was issued to add an additional \$5,695.			

**Fiscal Note:** An expenditure of \$50,000 was appropriated in the Bond for West Greenville 45-Block Revitalization Area.

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

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[Bid Tabulation 514 Sheppard Street 721241](#)



**BID TABULATION SHEET**  
**City of Greenville, North Carolina**  
**Financial Services Department**

**Description: Rehab of Property at 514 Sheppard Street**

**Bid Due Date: October 30, 2006**

Contractor	Bid Bond	Addendum #1	Base Bid	Comments
Chance & Smith	n/a	n/a	No Bid	
Art Reynolds	n/a	n/a	\$67,670.00	
Robert Cunningham	n/a	n/a	\$44,305.00	*Bid Awarded to this vendor
Charles Hughes	n/a	n/a	No Bid	

Present at opening:  
 Virgil Smith, Housing Rehabilitation Specialist  
 Mike Watson, Housing Rehabilitation Specialist

\_\_\_\_\_ Sandra Anderson, Housing Administrator

Doc#721241

Change Order # 1

CITY OF GREENVILLE  
COMMUNITY DEVELOPMENT BLOCK GRANT  
CDBG ENTITLEMENT PROGRAM

**CHANGE ORDER TO REHABILITATION CONTRACT**

In connection with the contract dated July 17, 2007  
for the rehabilitation of the property located at 514 Sheppard Street  
between the owner, Lizzie King and the contractor, Robert P. Cunningham  
all parties hereby agree to the following changes:

The contract price is decreased ( ) increased ( **X** ) **\$5,695.00**

The contract time is not extended ( **X** ), is extended ( ) \_\_\_\_\_

calendar days. The change (s) and work effected in this contract are subject to all contract stipulations and covenants.

This change order is made a part of the contract dated first above, and the parties have hereunto set their signatures:

\_\_\_\_\_  
Contractor's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Housing Rehabilitation Specialist

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved / \_\_\_\_\_ Denied by the Community Development Department:

\_\_\_\_\_  
Housing Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Community Development Director

\_\_\_\_\_  
Date

CITY OF GREENVILLE  
COMMUNITY DEVELOPMENT BLOCK GRANT  
CDBG ENTITLEMENT PROGRAM

**CHANGE ORDER TO REHABILITATION CONTRACT**

Address: **514 Sheppard Street**

Original contract price dated July 17, 2007: **\$44,305.00**

Items deleted from the contract:

- |   |                 |
|---|-----------------|
| 1. Repair the interior door in the kitchen.       | \$ 50.00        |
| 2. Repair the interior door to the bathroom.      | \$ 50.00        |
| 3. Installation of new exterior doors. (3 ea.)    | \$900.00        |
| 4. The repair and replacing the soffit and eaves. | \$100.00        |
| 5. The repair of the baseboard and shoe molding.  | <u>\$150.00</u> |

Total of deleted items from the contract: **-\$ 1,250.00**

Sub total: **\$43,055.00**

Items to be added to the contract by this change order:

- |  |                   |
|--|-------------------|
| 1. Add guardrails and handrails at the front porch.  | \$1,695.00        |
| 2. Install new indoor/outdoor carpet at the front porch.   | \$ 350.00         |
| 3. Paint the living room, hallway, utility room, bedrooms #2, #8, and #9, and the upstairs hallway including ceiling and woodwork. | \$2,800.00        |
| 4. Install new carpet to the living room, hallway, stairs, bedrooms #2, #8, #9, and the upstairs hallway.                          | <u>\$2,100.00</u> |

Total of added items to the contract: **\$ 6,945.00**

**Total contract amount including the change order: **\$50,000.00****

(#718066)



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Offer by Place Acquisition, LLC to lease property owned by the City of Greenville for the use and benefit of Greenville Utilities Commission located west of Cherry Hill Cemetery

**Explanation:** At its September 10, 2007, meeting, City Council approved a resolution which authorized the lease of property owned by the City of Greenville for the use and benefit of Greenville Utilities Commission located west of Cherry Hill Cemetery by the negotiated offer, advertisement, and upset bid method with the offer of Place Acquisition, LLC to lease the property serving as the negotiated offer. On September 14, 2007, Place Acquisition, LLC submitted a deposit of \$31,840, and a Notice of the Offer and Request for Upset Bids was published on September 17, 2007. No upset bids were received by the deadline for submittal (September 27, 2007). Council now has the authority to accept or reject the offer of Place Acquisition, LLC.

In summary, Place Acquisition, LLC has offered to lease the property for a term of forty (40) years with three (3) options to renew of twenty (20) years each and at an annual payment of \$15,920 with an annual rental adjustment formula based upon the consumer price index. Place desires to enter into this long-term lease agreement for this property which will be used for surface parking. Place plans to construct a multi-story student housing facility on a site adjacent to this property.

The property is owned by the City for the use and benefit of Greenville Utilities and is the previous location of the Manufactured Gas Plant. For several years, GUC has been involved in the remediation of this site due to coal/tar deposits that have contaminated the soils. This remediation will be entering the final phase in the near future. The property is currently not being used, and GUC does not plan to use it in the future. The GUC Board, at their meeting on August 21, 2007, authorized the General Manager/CEO to execute this lease agreement on behalf of GUC, subject to similar approval by the City Council.

**Fiscal Note:** Annual lease payments will be made to GUC. The City will receive increased

property tax revenues from the new construction on the adjacent site.

**Recommendation:** By a motion, Council may either accept or reject the offer of Place Acquisition, LLC to lease the property owned by the City of Greenville for the use and benefit of Greenville Utilities Commission located beside Cherry Hill Cemetery.

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 [Map of Property](#)

 [Place Acquisition LLC Lease 715749](#)

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### SUMMARY OF BASIC TERMS

LESSOR: CITY OF GREENVILLE, NORTH CAROLINA for the use and benefit of GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, NORTH CAROLINA, and the GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, NORTH CAROLINA

LESSEE: PLACE ACQUISITION, LLC , a Georgia limited liability company and its successors and assigns

PREMISES: See Exhibit "A" attached hereto

TERM: Forty (40) years

OPTIONS TO RENEW: Three (3) of twenty (20) years each

RENTAL RATE: See attached Exhibit "D"

BROKERS: None

DATE OF LEASE: October \_\_, 2007

PERMITTED USE: Parking Facility

## GROUND LEASE

THIS GROUND LEASE, dated October \_\_, 2007 (this "Lease"), made and entered into by and between, THE CITY OF GREENVILLE, NORTH CAROLINA for the use and benefit of GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, NORTH CAROLINA (the "City") and THE GREENVILLE UTILITIES COMMISSION OF THE CITY OF GREENVILLE, NORTH CAROLINA (the "GUC") (the City and the GUC hereinafter collectively, "Lessor"), and PLACE ACQUISITION, LLC, a Georgia limited liability company and its successors and assigns ("Lessee");

### WITNESSETH:

WHEREAS, Lessor is the owner of fee simple title to the Land described on Exhibit "A" attached hereto, which is located in Greenville, North Carolina; and

WHEREAS, certain conditions precedent are required to be satisfied and Lessor has agreed to perform certain obligations as set forth herein as conditions to Lessee's obligations hereunder; and

WHEREAS, Lessor and Lessee desire to reduce to writing their agreements with respect to the leasing of the Land from Lessor to Lessee;

NOW, THEREFORE, for and in consideration of the mutual agreements and covenants hereinafter set forth and for other good and valuable considerations, the receipt, adequacy and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, hereby agree as follows:

## ARTICLE I

### Definitions

1.1 Certain Defined Terms. As used in this Lease, certain capitalized terms, whether singular or plural, shall have the meanings set forth in Exhibit "B" attached hereto. All defined terms used in this Ground Lease which are not defined in Exhibit "B" attached hereto shall have the meanings ascribed to them elsewhere in this Ground Lease.

## ARTICLE II

### Inspection Period, Title and Termination Rights

Between the date hereof and 120 days, Lessee shall have the right to examine the Property pursuant to the terms of Exhibit "C" attached hereto and to exercise the rights set forth therein.

## ARTICLE III

### Environmental Matters

3.1 Lessor's Environmental Obligations. Lessor shall promptly and diligently conduct and complete the cleanup and remediation of any and all Hazardous Substance or any other environmental contamination on or affecting the Land, all in accordance with the "Re-use Plan" attached hereto as Exhibit "H" (the "Re-use Plan") [the ReTec Group Plan] and any "no-action" or similar letter from the applicable Governmental Authority (the "Lessor's Environmental Obligations") to enable Lessee to obtain site disturbance and building permits necessary for the construction of the Initial Improvements and any easement relocation related to the Initial Improvements. Lessor and Lessee acknowledge that the Re-use Plan attached hereto is a preliminary draft, and that subsequent modifications to the attached draft shall be subject to the approval of both Lessor and Lessee. Lessor and Lessee agree to cooperate in good faith and with best efforts to resolve any disputes regarding the responsibilities and obligations related to any subsequent modifications to the Re-use Plan. Lessor and Lessee agree and understand that to the extent that any subsequent modifications to the Re-use Plan affect the Land, Lessor shall be obligated to perform, at Lessor's cost, all obligations related to the Land. Lessor and Lessee further agree and understand that to the extent that any subsequent modifications to the Re-use Plan are imposed because of Lessee's construction or use of the Land, then Lessor shall be obligated to perform such obligations as part of Lessor's Environmental Obligations, except that Lessee shall pay to Lessor the cost of those obligations related to Lessee's construction and use. In order to accommodate the foregoing, Lessor shall use reasonable efforts to prepare the final form of the Re-use Plan such that the Re-use Plan shall delineate as clearly as possible those obligations that relate to the Land without Lessee's construction and use, and those obligations that are imposed as a direct result of Lessee's construction and use. It is expressly understood by Lessor and Lessee that, except as expressly set forth herein, Lessor shall bear all financial responsibility, cost, and expense related to Lessor's Environmental Obligations. Lessor and Lessee recognize and acknowledge that final completion of Lessor's Environmental Obligations may be delayed by the State of North Carolina (the "State") not approving the Re-use Plan. To the extent that the field work component of Lessor's Environmental Obligations cannot be completed by Lessor such that Lessee may enter upon the Land to begin site work and construction on or before July 1<sup>st</sup>, 2008 (the "Field Work Completion Date") due to a failure on the part of the State of North Carolina to approve the Re-use Plan, and which State approval is not withheld because of matters within the control of Lessor (and Lessor has timely fulfilled all obligations in connection with the approval, submittal, application, and satisfaction of the Re-use Plan) Lessor shall deliver written notice to Lessee indicating that there will be a delay due to the State's failure to approve the Re-Use Plan. Other than as set forth in the preceding sentence, in the event that Lessor has not completed the field work component of Lessor's Environmental Obligations on or before the Field Work Completion Date, Lessor shall be in default under this Lease, and Lessee shall have the right, on or before the tenth (10th) day following the Field Work Completion Date, to exercise Lessee's right to specific performance as set forth in Section 15.7.

3.2 Lessor's Environmental Monitoring. In addition to Lessor's Environmental Obligations, Lessor shall be responsible, at Lessor's sole cost and expense, for all subsequent and ongoing maintenance, testing, examination, remediation obligations for the Land through the

term of this Lease which ongoing obligations are included in the Re-use Plan (said obligations hereinafter referred to as “Lessor’s Environmental Monitoring”), except as may be required as a result of any action of Lessee, Lessee’s agents, assigns, designees, invitees as may occur in connection with Lessee’s construction or use upon the Property. Lessor shall have full access to the Land to perform any environmental monitoring following the completion of Lessor’s Environmental Obligations as set forth in the ReTec Group Plan. Lessor’s Environmental Monitoring shall include taking all actions or remediation as may be required by the State of North Carolina, or other Governmental Authority, as a result of any new discoveries of contamination that may be found in the course of Lessor’s ongoing inspection and monitoring of the Land prior to the Delivery Date. Lessor shall deliver to Lessee a copy of any correspondence, reports, or documents with the State of North Carolina, its agents, consultants, or any other third party in connection with Lessor’s Environmental Obligations. Furthermore, Lessee shall have the right to contact the State of North Carolina in a timely fashion in connection with any environmental contamination upon the Property and in connection with Lessor’s Environmental Obligations.

3.3 Environmental Indemnifications. Lessor shall indemnify and hold harmless Lessee for any loss, costs, liability or damages arising from any environmental contamination existing on the Land prior to the Delivery Date, except for any loss, costs, liability, or damages resulting from any action of Lessee or Lessee’s agents or invitees, or as a result of Lessee’s use of the Land, including but not limited to, the construction of the Improvements on the Land, the maintenance and repair of the Improvements on the Land, and the use of the Improvements on the Land. Furthermore, Lessor shall indemnify Lessee for any damages to the Premises, that may be caused as a result of Lessor’s Environmental Monitoring, remediation, testing, or examination of the property in connection with any environmental contamination, except for any loss, costs, liability, or damages resulting from any action of Lessee or Lessee’s agents or invitees, or as a result of Lessee’s use of the Land, including but not limited to, the construction of the Improvements on the Land, the maintenance and repair of the Improvements on the Land, and the use of the Improvements on the Land. In the event that the Premises is damaged in connection with Lessor’s Environmental Monitoring, Lessor shall promptly restore the Premises to its condition prior to such damage. Lessee shall indemnify and hold harmless Lessor for any loss, costs, liability or damages arising from any and all environmental contamination, related maintenance, testing, examination, remediation, and related costs for the Land caused by the Lessee or Lessee’s agents or invitees, or as a result of Lessee’s use of the Land, including but not limited to, the construction of the Improvements on the Land, the maintenance and repair of the Improvements on the Land, and the use of the Improvements upon the Land following the Delivery Date. Furthermore, in the event that there is any further release related to the Premises, the investigation and cleanup shall be performed by a North Carolina Superfund Section Approved Registered Environmental Consultant in a manner consistent with the Re-use Plan.

## ARTICLE IV

### Ground Lease Terms

4.1 The date which is thirty (30) days following written notice from Lessor to Lessee that it has fully completed and satisfied the Lessor’s Environmental Obligations shall be deemed

to be the Delivery Date and from and after such Delivery Date, the conditions set forth in the following Articles shall govern the terms of this Lease.

## ARTICLE V

### Grant of Term

5.1 Grant. For and in consideration of the Rent and the mutual covenants and agreements contained herein, Lessor hereby grants and leases to Lessee, and Lessee hereby takes and leases from Lessor, the Premises, on the terms and conditions set forth in this Lease.

5.2 Term. The term of this Lease (herein referred to as the "Term" or "Lease Term") shall commence on the Date of this Lease and expire on the last day of the month containing the fortieth (40<sup>th</sup>) anniversary of the Rental Commencement Date. Promptly following the Rental Commencement Date, Lessor and Lessee shall execute an instrument in recordable form setting forth the Rental Commencement Date and the initial Term of this Lease.

5.3 Title. Lessor warrants and represents that the Land is owned by Lessor in fee simple.

5.4 Quiet Enjoyment. Subject to the Permitted Title Exceptions, Lessor covenants to the extent permitted by law, as against the valid claims of all Persons claiming by, through or under Lessor, that Lessee shall have and enjoy throughout the Term the quiet, peaceful, exclusive and undisturbed possession of the Land, without hindrance, ejection or molestation by any Person.

5.5 Renewal Options. So long as Lessee is not then in default under the Lease, Lessee shall have the right to renew the term of this Lease for three (3) additional successive renewal periods of twenty (20) years each (each an "Extension Term") by giving written notice of Lessee's election to so extend this Lease. During any Extension Term, the terms of this Lease shall remain in full force and effect, except that Basic Rent shall be calculated as set forth in Section 6.6 during any applicable Extension Term.

## ARTICLE VI

### Rent

6.1 Basic Rent. Commencing on the Rental Commencement Date, Lessee shall pay to Lessor throughout the Term the basic rent (the "Basic Rent") described in Exhibit "D" attached hereto. The Basic Rent shall be due and payable monthly in advance on or before the first (1<sup>st</sup>) day of each calendar month for such calendar month. A prorated monthly installment, based on a thirty (30) day month, shall be paid in advance (i) on the Rental Commencement Date for any fraction of a month if the Rental Commencement Date is any day other than the first day of any calendar month and (ii) on the first day of the final month of the Term for any fraction of a month if the Term shall terminate on any day other than the last day of any month.

6.2 Manner of Payment. The Basic Rent payable hereunder shall be paid in the lawful money of the United States of America at the time of payment to Lessor at Lessor's

address for Notice as set forth herein, or to such other Person or address of which Notice has been given by Lessor to Lessee.

6.3 "Net" Lease". This Lease shall be a completely net lease, and Lessee shall pay to Lessor, net throughout the Term, the Basic Rent, free of any offset, abatement or other deduction whatsoever and without Notice. Lessor shall not be required to make any payment of any kind whatsoever with respect to the Premises, except as may be expressly set forth herein.

6.4 Late Charge and Default Rate. If Lessor fails to receive any Rent payment within ten (10) days after it becomes due, then Lessee shall be obligated to pay Lessor a late fee of ten percent (10%) of the overdue amount of Rent (including interest). In addition, if any payment of Rent payable by Lessee to Lessor, including Basic Rent, is not made to Lessor as provided herein on or before the thirtieth (30th) day following the date when due, then such payment shall bear interest, prorated on a daily basis, at the Default Rate, from the thirtieth (30th) day following the due date until paid. This interest shall be due on late payments without any Notice and regardless of whether or not an Event of Default ever occurs with respect thereto. The late charges and accrual of interest described in this Section 6.4 shall be in addition to, and shall not limit Lessor's rights under Article XV. The Parties agree that such late charges and interest charges do not constitute a penalty, but rather represent a fair and reasonable estimate of the costs Lessor will incur by reason of such late payments.

6.5 Negation of Partnership. Nothing in this Lease shall be construed to render or constitute Lessor in any way or for any purpose a partner, joint venturer or associate in any relationship with Lessee other than that as Lessor and Lessee, nor shall this Lease be construed to authorize either Party to act as agent for the other Party except as expressly provided to the contrary in this Lease.

6.5.1 Periodic Basic Rent Increases. Basic Rent shall be increased on the anniversary of the Rental Commencement Date and each anniversary thereafter to reflect the increase, if any, in the cost of living as such increases are reflected by changes in the then most recently published Consumer Price Index ("CPI"). At the time of each adjustment, the Basic Rent shall be multiplied by a fraction, the denominator of which is the point at which the CPI stood on the first day following the Rental Commencement Date and the numerator of which shall be the point at which the CPI stood on the applicable adjustment date. The product obtained shall be the Basic Rent payable monthly beginning on the date of the adjustment and continuing until the next time Basic Rent is adjusted, as provided herein. Notwithstanding the foregoing, in no event shall the amount of any adjustment exceed three percent (3%), nor be increased by less than two percent (2%) of the amount of the Basic Rent payable during the prior rental period. In the event the published CPI for a rental period exceeds 3% (said amount above 3%, hereinafter the "CPI Overage"), the amount of rent payable hereunder shall be subject to true-up for the amount of the CPI Overage over subsequent rental periods but at no time shall the amount of any adjustment to the Basic Rent exceed 3%. The Consumer Price Index (CPI) shall be the "Consumer's Price Index, U.S. City Average, All Items (1967=100)", published by the U. S. Department of Labor, Bureau of Labor Statistics.

(a) By way of example, and as example only, if the CPI for year three is 4% and the CPI for year four is 2%, the applied increase in rent for year three shall be 3% and the amount of increase for year four shall be 3%.

## ARTICLE VII

### Impositions

7.1 Utility Charges/Charges Under Cost Sharing Agreements. Lessee shall timely pay or cause to be paid any and all charges for water, storm water, electricity, gas, sewage, trash and garbage disposal, telephone, and other utility services furnished to the Premises at the request of Lessee. In addition, Lessee shall timely pay or caused to be paid any and all costs and charges which are applicable to the Land under any easements, restrictive covenant agreements or other encumbrances burdening the Land.

### 7.2 Taxes.

7.2.1 Lessee shall pay to the appropriate taxing authority all ad valorem taxes, assessments, and other public charges of every description (collectively called "Taxes") levied on or assessed against the Premises, which are apportionable to the Term. Lessee shall pay the Taxes before any interest or penalty is imposed upon such payment.

7.2.2 Lessee shall not be required to pay, and the term "Taxes" shall not include (i) any income, estate, gift, inheritance, transfer, or capital levy tax, or (ii) any assessments which may have been levied against the Premises prior to the commencement of the Term.

7.2.3 Lessor and Lessee shall jointly take such action as may be reasonably required to effect the separation of the Land on the assessment records and tax rolls from other property owned by Lessor, with the Taxes to be equitably apportioned until such separation is effected.

7.2.4 To the extent received by Lessor, Lessor shall furnish all tax bills to Lessee at least thirty (30) days prior to the due date of any installment, unless such bills are furnished directly to Lessee by the appropriate authorities. Upon receipt of a Notice from Lessor requesting same, Lessee shall furnish to Lessor receipts indicating payment, the certification of Lessee's chief financial officer, or other satisfactory proof that the Taxes have been paid as herein provided. Lessor shall also furnish to Lessee, within ten (10) days of receipt by Lessor, a copy of any notice of reassessment, notice of intended reassessment or similar notice evidencing any intention to raise the amount of Taxes attributable to the Premises.

7.2.5 Upon Notice to Lessor, Lessee may contest any assessment or the imposition of any Tax for which Lessee is responsible. Lessor agrees to execute appeals, petitions, suit papers and other documents which may be legally necessary in connection with any such contest and, at no expense to Lessor, to cooperate reasonably in such proceedings. During any such contest, Lessee shall take all steps legally necessary, including payments under protest, to prevent foreclosure and public sale or other divesting of Lessor's title by reason of nonpayment of Taxes. In any event, Lessee shall pay all Taxes prior to the issuance of an execution therefor.

7.2.6 Lessee and Lessor acknowledge that the Land is currently not subject ad valorem taxes, but upon the construction of the Initial Improvements, Lessee will be required to pay any increased tax amounts due as a result of the Initial Improvements.

## ARTICLE VIII

### Use and Maintenance

8.1 Permitted Uses. Lessee may use the Premises only for the operation of a parking facility and for no other purposes, without having first received Lessor's prior written consent, such consent to be given or withheld in Lessor's sole discretion. Notwithstanding the foregoing, Lessor acknowledges and agrees that it shall not unreasonably withhold its consent to one or more proposed alternative uses which, in Lessor's reasonable determination, does not conflict with any local, State, or Federal environmental requirements regarding the Premises.

8.2 Compliance with Laws. Lessee shall obey, perform and comply with any and all Governmental Requirements existing at any time during the Term in any way affecting the Premises, or the use or condition thereof, including the construction, alteration or demolition of the Improvements, or in any other way affecting this Lease. Lessee shall have the right to contest in good faith the validity of any such Governmental Requirements. Lessee shall at its own expense obtain any and all licenses and permits necessary for its use of the Premises. Lessor will join in the applications for any such licenses and permits or otherwise as necessary to comply with the Governmental Requirements where the signature of Lessor as owner of the Land is required, provided Lessee pays all reasonable costs and expenses of Lessor associated therewith.

8.3 Maintenance. Subject to the provisions of this Lease setting forth the rights of Lessee with respect to the condemnation, demolition and damage by casualty, Lessee shall at all times during the Lease Term, maintain the Premises in neat, clean, good and first class condition and repair and sightly in appearance, normal wear and tear excepted. Lessee shall not cause or permit any nuisance on the Premises. Lessor shall not have any responsibility for the maintenance or repair of the Premises.

8.4 Lessor Use of Remaining Portion of Lessor's Property. The use of the Premises by the Lessee shall not adversely impact the use by Lessor of the remaining portion of the property owned by the Lessor, of which the Premises are a part, as a maintenance and storage facility for its Recreation and Parks Department.

## ARTICLE IX

### Improvements

9.1 Initial Improvements. As a material inducement for Lessor to enter into this Lease, Lessee acknowledges and agrees that Lessee shall be obligated to construct the Initial Improvements, as defined below, at sole cost and expense in accordance with the provisions of this Article VIII. Attached hereto as Exhibit "G" is a site plan prepared by Lessee showing the general configuration of the improvements to be constructed by Lessee upon the Premises, including, but not limited to, driveways, entrances and exits, parking areas, curbs and (the

“Initial Improvements”). Lessor hereby approves of Lessee’s site plan as shown on Exhibit “G“, and Lessor agrees to reasonably approve any further modifications to Lessee’s site plan as may occur in connection with the construction of the Initial Improvements. Construction and installation of the Initial Improvements shall be performed by Lessee or its contractors at Lessee’s sole cost and expense. Following the Delivery Date, Lessee shall commence work and shall diligently proceed, using its commercially reasonable best efforts, to complete the Initial Improvements. Lessee and its contractor shall maintain in effect comprehensive general liability insurance in scope and amounts as are reasonably required by Lessor, and Lessee or its contractor shall maintain builder’s risk insurance for the full value of the Initial Improvements.

The Initial Improvements shall be completed by Lessee in a good and workmanlike manner and in accordance with all applicable permits, authorizations and Governmental Requirements.

Lessor shall have the right to enter upon the Leased Premises for the purpose of inspecting construction and progress of the Initial Improvements, provided that Lessor shall not unreasonably interfere with the progress of construction. The Initial Improvements shall be completed in a manner so that the Initial Improvements shall not adversely impact the use by the Lessor of the remaining portion of the property owned by the Lessor, of which the Premises are a part, as a maintenance and storage facility for its Recreation and Parks Department.

9.2 Lessor’s Obligations. Lessor shall cooperate, at no out of pocket costs to Lessor, with Lessee in obtaining any consents or other similar approvals necessary or appropriate to allow Lessee to construct the Initial Improvements.

9.3 Subsequent Improvements, Alterations and Additions. Except for the Initial Improvements, which are shown on Lessee’s site plan attached hereto as Exhibit “G“, and any modifications or alterations thereto which do not materially and adversely affect the value of the Land or conflict with any local, state or federal environmental requirements affecting the Premises, Lessee shall not make any other changes to the Initial Improvements without the prior written approval of Lessor, which written approval will not be unreasonably withheld so long as the proposed modifications or alterations do not conflict with any local, State, or Federal environmental obligations or restrictions regarding the Premises. All work performed by Lessee shall be conducted at Lessee’s sole cost and expense and in a first class, workman-like manner in accordance with all commercially reasonable standards and requirements of Lessor, and in compliance with all Governmental Requirements.

9.4 Mechanic's Liens. Lessee shall pay all costs incurred by Lessee in connection with the construction, alteration, demolition, maintenance and repair of any and all Improvements on the Land. Should a lien or claim of lien be filed against Lessor's interest in the Premises by any contractor, subcontractor, mechanic, laborer, materialman or other Person whomsoever, Lessee shall cause the same to be discharged of record; provided, however, that Lessee shall have the right to contest the amount or validity of any such lien or claim of lien by appropriate proceedings, but in such event Lessee shall promptly bond such lien by a statutory bond to discharge lien with a responsible surety company to prevent foreclosure against either the Lessee's or the Lessor's interest in the Premises under such lien or claim of lien. Lessee shall

prosecute such proceedings with all due diligence and dispatch. Lessor and Lessee acknowledge that no lien may be filed against a publicly owned Property.

9.5 Title to Improvements. Title to any and all Improvements constructed on the Land after the Date of this Lease include, but not limited to, the Initial Improvements, shall be vested in Lessee for so long as this Lease remains in effect, except any utilities that are installed by and owned by any utility provider. All such Improvements shall be real property for all purposes. Upon the Expiration or sooner Termination of this Lease, title to all Improvements, including Lessee's Utilities (as hereinafter defined), then existing on the Premises shall automatically and without further documentation vest in Lessor, and Lessee shall have no right or obligation to remove any of such Improvements. Upon request by Lessor, Lessee shall execute and deliver to Lessor such instruments as may be reasonably required by Lessor in order to evidence Lessor's ownership of the Improvements upon the Expiration or sooner Termination of this Lease. Lessor acknowledges that Lessee shall construct certain utility facilities, such as, without limitation, electricity for lighting Lessee's parking and drainage and detention facilities to accommodate storm water, which shall be constructed to serve the use of the Initial Improvements (said utilities serving the Initial Improvements hereinafter "Lessee's Utilities"). Lessee shall have the right and obligation to fix, access, and maintain Lessee's Utilities as may be required in the ordinary course of Lessee's operation of the Initial Improvements.

9.6 Grant of Necessary Easements. Subject to the terms of this Section 9.6, Lessor hereby agrees to grant to public or private utility companies, public entities or public service corporations, reasonably necessary for the purpose of serving the Premises, easements on or over the Premises for poles, conduits, or underground utility lines, or for telephone, electricity, gas, water, cable television, sanitary sewer, storm sewer, and for other utilities and municipal, county or special district services.

9.7 Cost of Utility Relocation. Except as set forth in Article III, Lessee shall pay the cost associated with the relocation of the following easements on the Premises to the extent required in connection with Lessee's development of the Property:

9.7.1 Lessee shall relocate the two water mains currently running in an easterly and westerly direction across the Land as necessary to accommodate the proposed improvements.

9.7.2 Lessee shall relocate underground those certain overhead electric service power lines running in and easterly and westerly direction across the Land, as necessary to accommodate the proposed improvements.

9.7.3 Lessee shall extend the current storm drain from its current outlet point to beyond the limits of the new fill and existing sanitary sewer aerial crossing in the direction of the Tar River or replace and relocate the existing storm drain located on the Land as necessary to accommodate the proposed improvements.

## ARTICLE X

### Assignments and Subletting

10.1 Generally. Lessee shall have the right to assign this Lease or any interest hereunder. Lessee shall have the right to sublet all or a portion of the Premises without Lessor's consent, provided, however, the use by the Sublessee of the Premises (or a portion thereof) must be a permitted use under Section 8.1. The assignee of Lessee, at the option of Lessor, shall become directly liable to Lessor for all obligations of Lessee hereunder. In the event of any such assignment, upon an express assumption by the assignee, such assignment shall relieve Lessee of any liability hereunder from and after the date of such assignment. In the event Lessee assigns this Lease or sublets all or any portion of the Premises, Lessee shall provide Lessor a copy of the subject assignment document or sublease within ten (10) days of the full execution thereof.

## ARTICLE XI

### Mortgages

The parties hereto shall each have the right to mortgage their respective interests in the Premises in accordance with Exhibit "E" attached hereto.

## ARTICLE XII

### Insurance

Commencing with the Delivery Date and thereafter during the Term, Lessee, at no cost and expense to Lessor, shall maintain in effect the types of insurance coverage described in Exhibit "F" attached hereto.

## ARTICLE XIII

### Damage or Destruction

13.1 Repair or Restoration. If, at any time during the Term, the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, Lessee, at Lessee's sole discretion, may elect to repair, restore, replace and rebuild the Improvements.

13.2 Insurance Proceeds. If the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty, the insurance proceeds with respect to such casualty or other damage or destruction of the Improvements shall be used for such repair, restoration, replacement and rebuilding, subject, however, to the requirements of any Leasehold Mortgage.

13.3 Lessor Not Obligated. Under no circumstances shall Lessor be obligated to make any payment, disbursement or contribution towards or on account of the cost of any repair,

restoration, replacement or rebuilding work to be undertaken as a result of any fire or other casualty to the Improvements except to the extent that the need for such work arises or results as a direct result of the negligent acts or omissions of Lessor.

13.4 Non-Abatement of Rent. In no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent by reason of the partial or total destruction of the Improvements or any part thereof. No such damage or destruction shall affect in any way the obligation of Lessee to pay the Rent, nor release Lessee of or from any obligation imposed upon Lessee under this Lease.

## ARTICLE XIV

### Condemnation

14.1 General. In the event the Premises or any part thereof shall be taken in Condemnation, then:

14.1.1 Separate Awards. The court in such Condemnation proceedings shall, if not prohibited by law, be requested to make separate awards to Lessor and Lessee, the award to Lessor being for its fee simple interest in and to the Land (subject to Lessee's leasehold interest in the Land) or applicable part thereof in accordance with this Lease (including, without limitation, its reversionary interest in Improvements thereon) and the award to Lessee being for its leasehold interest in and to the Land or applicable part thereof in accordance with this Lease as well as its ownership in fee simple of any Improvements thereon (subject to the reversionary interest of Lessor in the Improvements upon the Expiration of this Lease). Lessor and Lessee hereby agree to request such action by such court. This Section 141.1 shall be construed as superseding any statutory provisions now in force or hereafter enacted concerning Condemnation proceedings to the extent permitted by law.

14.1.2 Division of One Award. If such court is prohibited by law from making separate awards to Lessor and Lessee, or declines to do so, then the award in such Condemnation proceedings shall be divided between Lessor and Lessee so that (i) Lessor shall receive that portion of the award made for the fee simple interest in the Land (subject to Lessee's leasehold interest in the Land) including, without limitation, its reversionary interest in the Improvements thereon, and (ii) Lessee shall receive that portion of the award made for its leasehold interest in the Land as well as its ownership in fee simple of the Improvements thereon (subject to the reversionary interest of Lessor in the Improvements upon the Expiration of this Lease). The portions of the Condemnation award as aforesaid shall be determined in accordance with the provisions of Section 14.10.

14.2 Total Taking. If all of the Land and Improvements, or so much thereof that the remainder is unsuitable, in Lessee's reasonable discretion, for use by Lessee for Lessee's uses and purposes, is taken in Condemnation, or if any portion of the Land and/or the Improvements thereon are taken at a time when the remaining term of this Lease is so limited as, in Lessee's reasonable discretion, to render restoration or repair of the remainder uneconomical or unfeasible (any of the foregoing, a "Total Taking"), this Lease shall Terminate; provided, however, that such Termination of this Lease shall not prejudice the rights of Lessor and Lessee with respect to

the awards for such taking as above provided. In the event of such a Total Taking, (i) this Lease shall Terminate effective on the date of title vesting pursuant to such taking, (ii) all Rent payable by Lessee hereunder shall be apportioned and paid through such date of taking, and (iii) the Condemnation award shall be collected and distributed as provided herein. In the event that Lessee does not elect to Terminate this Lease pursuant to this Section 14.2 within ninety (90) days after any such taking, the remainder of the Land and Improvements shall be deemed suitable for use by Lessee for Lessee's uses and purposes and the Lessee shall be deemed to have waived any right to Terminate this Lease pursuant to this Section 14.2 as a result of such taking.

14.3 Partial Taking. If only a part of the Land or Improvements are taken by Condemnation and if the remainder is, in Lessee's reasonable discretion, suitable for use by Lessee for Lessee's uses and purposes and this Lease is not Terminated in accordance with Section 13.2 (a "Partial Taking"), this Lease shall remain in full force and effect as to that portion of the Land and Improvements not taken, but Basic Rent otherwise payable throughout the remainder of the Term of this Lease (including any extension terms) shall be reduced as follows: the Basic Rent otherwise payable pursuant to the terms of this Lease shall be reduced to an amount equal to such Basic Rent multiplied by a fraction, the numerator of which is the value of the Premises (excluding the Improvements) not taken by condemnation, and the denominator of which is the value of the Premises (excluding the Improvements), both such amounts determined immediately prior to such condemnation. Such values shall be determined in accordance with the provisions of Section 14.10.

14.4 Restoration. If the Improvements are damaged by Condemnation and if this Lease is not terminated as a result thereof, Lessee, in its sole discretion, may commence and thereafter diligently proceed to repair, restore, alter, replace or rebuild the remaining part of the damaged Improvements.

14.5 Leasehold Mortgagees. Lessor and Lessee further agree and acknowledge that any right of Lessor in and to Condemnation award applicable to the Improvements or any portion thereof shall be and remain subordinate and inferior to the interests in such proceeds held by any Leasehold Mortgagee. Under no circumstances whatsoever shall Lessor maintain that it has any right or claim of any kind or nature (in and to any Condemnation proceeds applicable to the Improvements or any portion thereof) of equal priority or superior to the interest in such proceeds held by any Leasehold Mortgagee.

14.6 Temporary Taking. If a Condemnation occurs which does not extend beyond the Lease Term so that Lessor's interest is unaffected thereby (such a Condemnation is herein referred to as "Temporary Taking"), the Lease Term shall not be reduced or affected in any way and Lessee shall continue to pay in full Rent, without reduction or abatement, in the manner and at the times herein specified. Except only to the extent that Lessee is prevented (either legally or as a practical matter) from so doing pursuant to the terms of the order of the condemning authority, Lessee shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Lease as though such taking had not occurred. In the event of any such Temporary Taking, Lessee shall be entitled to receive the entire amount of any Condemnation award made for such Temporary Taking whether such award is paid by way of damages, rent or otherwise; provided, however, if the period of temporary use or occupancy shall

extend beyond the date of the expiration of the Lease Term, such Condemnation award shall be prorated between Lessor and Lessee as of such date of expiration.

14.7 Condemnation Proceeding. Lessee, Lessor, and any Mortgagee shall each have the right, at its own expense, to appear in any condemnation proceeding and to participate in any and all negotiations, hearings, trials and appeals therein.

14.8 Notice of Condemnation. In the event Lessor or Lessee shall receive notification of any proposed or pending condemnation proceeding affecting the Premises, the Party receiving such notification shall promptly give Notice thereof to the other Party and to any Registered Mortgagee.

14.9 Non-Abatement of Rent. Except as otherwise provided in Section 14.6, in no event shall Lessee be entitled to any abatement, allowance, reduction or suspension of Rent by reason of the Partial Taking or Temporary Taking of the Premises, or any part or any interest therein. Except as otherwise provided in Section 14.3, no such Partial Taking or Temporary Taking shall affect in any way the obligation of Lessee to pay the Rent, nor release Lessee of or from any obligation imposed upon Lessee under this Lease.

14.10 Disagreement on Basic Rent or Respective Awards. Lessee and Lessor shall seek to agree as to any reduction in Basic Rent pursuant to Section 14.3 and as to the respective distributions of any Condemnation award pursuant to Section 14.1.2. However, if Lessor and Lessee are unable to agree on any such matter, then either Lessor or Lessee shall have the right to submit the matter to Arbitration pursuant to Article XVII.

14.11 Near End of Term. If a Partial Taking or Temporary Taking occurs during the last five (5) years of the Term, Lessee may, at Lessee's option, Terminate this Lease early at any time between the ninetieth (90th) day following the date of such taking and the end of the Term by: (i) serving upon Lessor within ninety (90) days after such Partial Taking or Temporary Taking a Notice setting forth Lessee's election to Terminate this Lease; and (ii) paying Lessor as and when due all Rent payable up to the effective date of such Termination. In such event all Condemnation awards for such taking shall belong to Lessor, except for any portion thereof attributable to Lessee's moving expenses and Lessee's trade fixtures located on the Premises.

## ARTICLE XV

### Default and Remedies

15.1 Events of Default. The occurrence of any of the events, acts or circumstances described in this Section shall be and constitute an Event of Default under this Lease.

15.1.1 Failure in Payment. Failure by Lessee to pay in full any Rent payable under this Lease when due, and the continuance of such failure for five (5) days after Notice to Lessee and all Registered Mortgagees of such failure.

15.1.2 Failure in Other Performance. Failure by Lessee to observe, perform or comply with any of the terms, covenants, agreements or conditions contained in this Lease (other than as specified in Section 15.1.1), and the continuance of such failure for thirty (30) days after

Notice to Lessee and all Registered Mortgagees of such failure, or, when the cure reasonably requires more than thirty (30) days, the failure of Lessee to commence to cure such failure within such period of thirty (30) days and to thereafter diligently and continuously prosecute it to completion.

15.2 Remedies. Upon the occurrence of an Event of Default, Lessor may, at its option, at any time after such occurrence, but only during the continuance of such Event of Default, to the extent not prohibited by law, take any one or more of the remedial steps described in this Section in addition to any and all other rights and remedies it may have at law or in equity, subject to the protections afforded to a Registered Mortgagee pursuant to Exhibit "E".

15.2.1 Termination. Lessor may terminate this Lease, exclude Lessee from possession of the Premises, and hold Lessee liable for damages (which damages shall include any amounts owing by Lessee to Lessor under Section 15.6).

15.2.2 Reletting. Lessor, as Lessee's agent, with or without terminating this Lease may enter upon and relet the Premises, in whole or in part, at the best price obtainable by reasonable effort, without advertisement and by private negotiations and for any term Lessor deems proper, with Lessee being liable to Lessor for the deficiency, if any, between Lessee's rent hereunder and the price obtained by Lessor on reletting and Lessee shall reimburse Lessor upon demand for any commercially reasonable expenses incurred by Lessor to remodel or repair the Premises in order to relet so the Premises, and for all other reasonable expenses incurred in connection with such reletting, provided, however, that Lessor shall be under any duty by reason of this provision to take any reasonable action to mitigate damages by reason of Lessee's default.

15.2.3 Enforcement. Lessor may take any and all actions at law or in equity to collect the Rent then due and thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of Lessee under this Lease, and in connection with either, to recover any or all damages to Lessor for Lessee's violation or breach of this Lease.

15.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity or by statute. To the extent allowable by law, Lessee's obligation to pay Rent hereunder shall survive the expiration or earlier termination of this Lease.

15.4 Holding Over. Lessee hereby agrees to surrender possession of the Premises to Lessor upon the termination or expiration of the Term. Lessor may thereupon enter upon, reenter, possess and repossess the Premises; may dispossess and remove Lessee; and may have, hold and enjoy the Premises and the right to receive all rental and other income therefrom, free of any right, title, estate, interest or claim of Lessee; but should Lessee, in breach of such covenant, refuse to surrender possession and instead hold over, Lessee shall be only a tenant at sufferance and not a tenant at will. The inclusion of the preceding sentence shall not be construed as Lessor's consent for Lessee to hold over. There shall be no renewal or extension of this Lease beyond the Term by operation of law.

15.5 Lessor's Performance of Lessee's Obligations. If Lessee has failed to perform an obligation under this Lease and if an Event of Default has resulted therefrom, in addition to the other rights of Lessor hereunder, Lessor shall have the right, but not the obligation, to perform such obligation. Upon receipt of Notice demanding same, Lessee shall reimburse Lessor for the cost of any such performance by Lessor (including reasonable attorney's fees actually incurred by Lessor in such performance and in enforcing this Section 15.5) plus interest thereon at the Default Rate from the tenth (10th) day after the date any such cost was incurred by Lessor until the date of repayment by Lessee. The amount of such reimbursement shall be deemed Rent hereunder.

15.6 Effect of Termination of Lease. Upon any Termination of this Lease by Lessor as a result of an Event of Default, Lessee shall remain liable to Lessor for Rent and all other obligations under this Lease which have accrued through the date of such Termination, including Section 18.4, and, in addition, shall be liable to Lessor for any damages suffered by Lessor as a result thereof. In addition, in the event of any termination of this Lease through operation of law, dispossession proceeding or otherwise, Tenant's liability under this Lease for any and all amounts payable hereunder with respect to subsequent periods shall, to the extent allowable by law, remain unimpaired.

15.7 Lessee's Rights in the Event of Default by Lessor under Section 3.1. In the event of default under Section 3.1 and notwithstanding Article XVIII, Lessee shall have the right to file suit against Lessor for specific performance of Lessor's obligations, specifically, that Lessor complete Lessor's Environmental Obligations. Lessee shall have the right to enforce Lessor's Environmental Obligations by restraining order, and by temporary or permanent injunction, or such other equitable remedy as may be necessary to enforce Lessor's obligations hereunder. Such equitable remedies shall be obtainable by Lessees upon proof of the existence of this default by Lessor without the necessity of proof of inadequacy of legal remedies or irreparable harm.

## ARTICLE XVI

### Lessor's Representations and Covenants

As an inducement to Lessee to enter into this Lease, Lessor warrants and represents to, and covenants with, Lessee as follows:

16.1 Authorization. (a) Lessor is duly organized and validly existing in good standing under the laws of the State of North Carolina and is qualified to conduct business in the State and Lessor has all necessary power and authority to execute, deliver and perform this Lease; (b) neither the execution, delivery nor performance of this Lease, with or without notice, the passage of time, or both, will constitute or result in a violation or breach by Lessor of any judgment, order, writ, injunction, or decree issued against or imposed on Lessor.

16.2 No Notice of Condemnation. Except as disclosed in the Permitted Title Exceptions, Lessor has not received any notice, nor, to the best of Lessor's actual knowledge, is there any pending or threatened action by any governmental authority or agency having the

power of eminent domain, which might result in any part of the Premises being taken by condemnation or conveyed in lieu thereof.

16.3 No Assessments. To the best of Lessor's actual knowledge, no governmental assessments have been made against any portion of the Premises which are unpaid (except ad valorem taxes for the current year that are not currently due and payable), whether or not they have become liens.

16.4 Litigation. To the best of Lessor's actual knowledge, there are no actions, suits or proceedings pending or threatened before or by any judicial, administrative or union body or any arbiter or any governmental authority, against the Premises.

16.5 Non-Foreign Status. Lessor is not a "foreign person" as that term is defined in the Internal Revenue Code of 1986, as amended, and the Regulations promulgated pursuant thereto, and Lessee has no obligation under Internal Revenue Code § 1445 to withhold and pay over to the Internal Revenue Service any part of the "amount realized" by Lessor in the transaction contemplated hereby (as such term is defined in the Regulations issued under Internal Revenue Code § 1445).

16.6 Hazardous Substances. The only environmental study conducted by Lessor with respect to the Land are those certain environmental reports listed on Exhibit "I" attached hereto (the "Environmental Reports") and other than as disclosed in the Environmental Reports, (i) to the best of Lessor's actual knowledge no areas on the Land exist where Hazardous Substances have been generated, disposed of, released or found, (ii) to the best of Lessor's actual knowledge there are no storage tanks located on the Land, either above or below ground, or any underground pipes or lines on the Land other than standard water and sewer lines, and (iii) to the best of Lessor's actual knowledge the Land previously has not been used as a land fill or as a dump for garbage or refuse. Lessor has not received any written notice from any Governmental Authority that there are any violations of any Governmental Requirements affecting or pertaining to the Land. Lessor shall and does hereby Hold Harmless Lessee with respect to, or as a direct or indirect result of, the breach by Lessor of any of its warranties or representations set forth in this Section 16.6 (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), any so-called federal, state or local "Superfund" or "Superlien" laws or any other environmental law).

## ARTICLE XVII

### Lessee's Representations and Covenants

As an inducement to Lessor to enter into this Lease, Lessee warrants and represents to, and covenants with, Lessor as follows:

17.1 Authorization. (a) Lessee is a Georgia resident and is qualified to conduct business in the State of North Carolina and Lessee has all necessary power and authority to execute, deliver and perform this Lease; (b) neither the execution, delivery nor performance of

this Lease or any of the related documents, with or without notice, the passage of time, or both, (i) will constitute or result in a violation or breach by Lessee of any judgment, order, writ, injunction, or decree issued against or imposed on Lessee, (ii) will result in a violation of any legal requirement or private covenant to which Lessee is a party or by which Lessee is bound, or (iii) will give any person any right to accelerate any debts of Lessee; and (c) any and all consents to Lessee's execution, delivery or performance of this Lease required from any Person, have been obtained in writing.

17.2 Hazardous Substances. Lessee hereby covenants and agrees that Lessee shall not cause or permit any Hazardous Substances to be generated, placed, held, stored, used, located or disposed of at the Premises or any part thereof, except for Hazardous Substances as are commonly and legally used or stored as a consequence of using the Premises for the uses permitted hereunder, but only so long as the quantities thereof do not pose a threat to public health or to the environment or would necessitate a "response action", as that term is defined in CERCLA (as hereinafter defined), and so long as Lessee complies or causes compliance with all applicable governmental rules and regulations concerning the use or production of such Hazardous Substances. Lessee shall and does hereby Hold Harmless Lessor with respect to, or as a direct or indirect result of, the presence in, or the escape, leakage, spillage, discharge, emission or release from, the Premises of any Hazardous Substances by Lessee or any of its affiliates or any of their respective employees, agents or independent contractors (including, without limitation, any losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), any so-called federal, state or local "Superfund" or "Superlien" laws or any other environmental law). Lessee shall assume on behalf of Lessor and conduct with due diligence and in good faith the defense of all such claims, suits, actions and proceedings against Lessor whether or not Lessee is joined therein, and shall bear the costs and expenses thereof, including the amount of any judgments and settlements in connection therewith. Lessee shall have the right to contest the validity of any and all claims and to defend, settle and compromise such claims in the name of Lessor, as Lessee may deem necessary, provided that the costs and expenses, including the amount of any judgment and settlements, are paid by Lessee.

## ARTICLE XVIII

### Arbitration

18.1 In the event of a dispute between the Parties which the Parties are unable to resolve, the Parties shall submit their dispute to non-binding mediation before a mutually agreeable mediator prior to initiating litigation. If the Parties are unable to agree upon a mediator within thirty (30) days after failing to resolve the dispute, either Party may petition a Court of competent jurisdiction for the designation of a qualified mediator for these purposes. Each Party shall bear its own costs and expenses of participating in the mediation (including, without limitation, reasonable attorneys' fees), and each Party shall bear one-half (1/2) of the costs and expenses of the mediator. Unless otherwise agreed, the Parties will hold mediation in Greenville, North Carolina. The matters discussed or revealed in the mediation session shall not be revealed in any subsequent litigation.

18.2 In the event the matter is not resolved in mediation, either Party may request arbitration. The Parties shall jointly select an Arbitrator, and shall be bound by the decision of the Arbitrator with respect to any dispute between the parties with respect to this Agreement. If the parties are unable to mutually agree upon an Arbitrator, the Parties shall each select an Arbitrator, and the two Arbitrators so selected shall select a third Arbitrator, and the decision of the majority of the Arbitrators shall be conclusive and binding upon the Parties. The Parties at all times agree to equally split the costs of any Arbitrator(s) selected in an effort to resolve the dispute between the Parties. Any party desiring to resolve a dispute under the terms of this Agreement shall notify the other Party in writing, and the Parties shall seek to agree upon a mutually agreed-upon Arbitrator within a period of ten (10) days from the date of such written demand. If the Parties are unable to agree within such ten (10) day period, the Parties shall each select an Arbitrator, and the two (2) Arbitrators so selected shall select a third Arbitrator within fifteen (15) days from the date of the written demand for arbitration, and a decision shall be rendered by the Arbitrator(s) so selected within five (5) days after such Arbitrator(s) is selected.

18.3 Unenforceability of Arbitration. If the decision of the arbitrators under this Article XVII shall be held by a court of competent jurisdiction to be unenforceable for any reason (Lessor and Lessee hereby affirmatively stating it is their intent and agreement that the decision of the arbitrators will be legally enforceable as to them and that they will not dispute, contest or appeal such a decision or encourage or participate in the same), then the matters submitted to arbitration shall be subject to litigation in any federal or state court of competent jurisdiction.

## ARTICLE XIX

### Miscellaneous

19.1 Recording. A memorandum of this Lease and any modifications, amendments or supplements hereto or hereof, duly executed by Lessor and Lessee, shall be recorded at Lessee's sole cost and expense in the official land records of Pitt County, North Carolina. The Memorandum of Lease shall recite the parties hereto, the Date of this Lease, the Rental Commencement Date and the expiration date of the Lease and the addresses at which either the Lessor or the Lessee can be contacted, and such other matters as Lessee may deem reasonably appropriate. Lessee agrees at any Expiration or Termination of this Lease to execute and deliver a quitclaim deed releasing the Premises from the encumbrance created hereby.

19.2 Lessor's Rights of Access. Lessor and Lessor's Authorized Representatives shall have the right at all reasonable times during normal business hours, to enter upon the Premises and to examine and inspect the same, including such rights of access to the Improvements as may be reasonably necessary for the proper maintenance of the Improvements in the event of failure by Lessee to perform Lessee's obligations under this Lease.

19.3 Notices. Any Notice required or permitted to be given hereunder shall be in writing and shall be (i) delivered by hand, or (ii) delivered by reputable national or local courier (such as United Parcel Service or Federal Express). Any Notice shall be addressed to each Party at its address as set forth below. Any such Notice shall be considered given on the date of such hand delivery or deposit with such courier for same day or next business day delivery, and the

time period (if any is provided herein) in which to respond to such Notice shall commence on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice. By giving to the other Party at least ten (10) days' Notice thereof, any Party shall have the right from time to time during the Term to change the addresses thereof and to specify up to two (2) additional addresses within the United States of America to which copies of Notices to it shall be sent. Any Leasehold Mortgagee of the Leasehold shall be entitled to give any Notice for and on behalf of Lessee, if permitted under the terms of the applicable Mortgage. Notice may be given on behalf of any Party by such Party's counsel.

19.3.1 Notice to Lessee. Each Notice to Lessee shall be addressed as follows:

Place Acquisition, LLC  
3445 Peachtree Road, N.E.  
Suite 1400  
Atlanta, Georgia 30326  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

With a copy to:

Smith, Gambrell & Russell, LLP  
1230 Peachtree Street, N.E.  
Suite 3100, Promenade II  
Atlanta, Georgia 30309-3592  
Attention: Malcolm D. Young, Esq.  
Facsimile: 404-685-7074

19.3.2 Notice to Lessor. Each Notice to Lessor shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19.4 Representation and Warranty Regarding Brokers. Lessor and Lessee each represent and warrant to the other that it has not dealt with any real estate broker and/or salesman in connection with the negotiation or execution of this Lease and that no broker or salesman has been involved in connection with this Lease. Lessor hereto agrees to Hold Harmless Lessee from and against any and all costs, expenses, attorney's fees or liability for any compensation, commissions and charges claimed by any real estate broker and/or salesman due to acts of Lessor or Lessor's Authorized Representatives. Lessee agrees to Hold Harmless Lessor from and against any and all costs, expenses, attorney's fees or liability for any compensation, commissions and charges claimed by any real estate broker and/or salesman due to the acts of Lessee or Lessee's Authorized Representatives.

19.5 Waiver. No consent or waiver, express or implied, by Lessor or Lessee to or of any breach or default by the other Party in the performance by such other Party of the obligations

thereof under this Lease shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party under this Lease. Failure on the part of either Lessor or Lessee to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of such default or any of its rights under this Lease. No provision of this Lease shall be deemed to have been waived by either Party unless such waiver shall be in writing, signed by Lessor or Lessee and addressed to the other Party, nor shall any custom or practice which may evolve between the parties in the administration of the terms hereof be construed to waive or lessen the right of Lessor or Lessee to insist upon the performance by the other Party in strict accordance with the terms hereof.

19.6 Severability. If any provision of this Lease or the application thereof to any Person or circumstance should be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provisions to any other Person or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

19.7 Estoppel Certificates. Recognizing that Lessor and Lessee may find it necessary from time to time to establish to other Persons such as accountants, banks, purchasers, mortgagees, assignees or the like, the then current status of this Lease and/or the performance of the Parties hereunder, Lessor and Lessee each agree, upon the written request of the other Party from time to time by Notice, to furnish within ten (10) days after receipt of written request therefor a written statement (in recordable form, if requested) on the status of any matter pertaining to this Lease. Such certificate shall be in a form reasonably satisfactory to a prospective purchaser from, or assignee or sublessee of, or holder of a security instrument executed by, Lessor or Lessee, as the case may be. In addition to any other matters required, such certificate shall certify whether or not this Lease is in full force and effect; whether or not this Lease has been amended or modified, and if so, in what manner; the date through which Basic Rent payments have been made; whether or not there are any set-offs against or defenses to the enforcement of the terms and conditions of this Lease and if so, specifying the particulars of such set-offs or defenses.

19.8 Amendments. Neither this Lease nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought.

19.9 Terminology. All personal pronouns used in this Lease, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of articles, sections or paragraphs of this Lease are for convenience only, and neither limit nor amplify the provisions of this Lease.

19.10 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

19.11 Binding Effect. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and their respective heirs, executors, legal representatives, successors,

successors-in-title, and assigns. Even though this Lease is binding as set forth above and shall and does run with the land, the definitions of Lessor and Lessee herein refer to the lessor and lessee at the time in question. Except as expressly set forth herein to the contrary, the Parties shall have with respect to this Lease only their respective rights, obligations and duties which accrue while they remain Lessor and Lessee, as the case may be.

19.12 Interpretation. No provision of this Lease shall be construed against or interpreted to the disadvantage of either Lessor or Lessee by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have structured, written, drafted, or dictated such provision.

19.13 Unavoidable Delays. Lessor and Lessee shall be excused from performing any of their obligations or undertakings provided in this Lease, except any Party's obligations to pay any sums of money hereunder, so long as the performance of such obligation or undertaking is prevented or delayed by Unavoidable Delays.

19.14 Exhibits. The exhibits identified in this Lease and attached hereto or otherwise identified by the signing or initialing of the Parties, are incorporated herein and made a part hereof by this reference.

19.15 Joint and Several. If either Lessor or Lessee at any time consists of more than one Person, the obligations of all such Persons under this Lease are joint and several.

**19.16 LIMITATION ON LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, THE LIABILITY OF LESSOR TO LESSEE UNDER THIS LEASE SHALL BE LIMITED TO THE INTEREST OF LESSOR IN THE PREMISES AND THE RENTS, ISSUES AND PROFITS THEREOF. IN NO EVENT SHALL LESSOR OR ANY PARTNER, MEMBER, SHAREHOLDER, OR OTHER PRINCIPAL OF LESSOR HAVE ANY PERSONAL LIABILITY TO LESSEE FOR THE PERFORMANCE OF THE OBLIGATIONS OF LESSOR UNDER THIS LEASE, BEYOND ITS INTEREST IN THE PREMISES.**

19.17 No Merger of Estates. The Parties intend that this Lease continue in effect and not be terminated or otherwise affected by the doctrine of merger of estates upon the ownership by the same Person of both the reversion and the leasehold estate under this Lease, except as reflected otherwise by such Person owning both estates in a written and recorded document consented to by all Leasehold Mortgagees.

19.18 Attorneys' Fees. If any Rent owing under this Lease is collected by or through an attorney at law, Lessee agrees to reimburse Lessor for reasonable attorneys' fees and expenses actually incurred by Lessor. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Lease, the prevailing party shall be entitled to reasonable attorney's fees and expenses (to the extent actually incurred by such prevailing party), which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such prevailing party may be entitled.

19.19 Date for Performance. If the time period or date by which any right, option or election provided under this Lease must be exercised, or by which any act required hereunder must be performed, or by which any Notice must be given, expires or occurs on a Saturday, Sunday or legal or bank holiday, then such time period or date shall be automatically extended through the close of business on the next regularly scheduled business day.

19.20 Time Is Of Essence. Time is of the essence of this Lease. Unless provided otherwise, all references to terms of days or months shall be construed as references to calendar days or months, respectively. All time limits stated in this Lease are of the essence of this Lease.

19.21 Applicable Law. This Lease shall be governed, construed, performed and enforced in accordance with the laws of the issue of the State of North Carolina, except as otherwise expressly stated in this Lease.

19.22 Title to the Land and the Obligations of Lessor. Lessor and Lessee acknowledge that fee simple title to the Land is currently held by the City of Greenville (the "City") for the use and benefit of the Greenville Utilities Commission (the "GUC"). By execution hereof, the City agrees to be bound to all of the terms hereof and hereby delegates to the GUC, and the GUC hereby assumes from the City all of the City's rights, duties, and obligations under this Lease. The GUC is hereby irrevocably appointed as representative of the City for all purposes in connection with this Lease. Furthermore, for all purposes under this Lease, Lessee's performance of Lessee's obligations hereunder, including delivery of any notices, consents, documents, or performing any actions which may be required under this lease shall be deemed fully performed to Lessor if delivered and performed to the GUC's approval, and the City shall have no right to object to such performance.

19.23 Insurance and Indemnity to the City. Any (i) insurance policies obtained by Lessee as set forth in Exhibit "F" attached hereto, or (ii) any indemnity or hold harmless provision provided by Lessee to Lessor under this Lease, shall include the City in addition to the GUC.

IN WITNESS WHEREOF, the Parties have executed this Lease under seal as of the day and year first above written.

Signed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

LESSOR:

CITY OF GREENVILLE, for the use and benefit of the GREENVILLE UTILITIES COMMISSION

By: \_\_\_\_\_  
Wayne Bowers, City Manager

[SEAL]

Signed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

GREENVILLE UTILITIES COMMISSION of the CITY OF GREENVILLE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

[SEAL]

Signed and delivered in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

LESSEE:

PLACE ACQUISITION, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

[SEAL]

EXHIBIT "A"

LEGAL DESCRIPTION

BEING PORTION OF THE PROPERTY OWNED BY THE CITY OF GREENVILLE FOR THE USE AND BENEFIT OF THE GREENVILLE UTILITIES COMMISSION, RECORDED IN DEED BOOK A-19 PAGE 306, PITT COUNTY REGISTRY (HEREINAFTER REFERRED TO AS THE GREENVILLE UTILITIES COMMISSION PROPERTY), BOUND ON THE WEST BY THE SEABOARD COASTLINE RAILROAD PROPERTY, ON THE NORTH BY THE TAR RIVER, ON THE EAST BY THE MARVIN K. BLOUNT AND JAN D. BLOUNT PROPERTY AND AN EXISTING CEMETERY AND ON THE SOUTH BY THE GREENVILLE UTILITIES COMMISSION PROPERTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING IRON PIPE, SAID IRON PIPE BEING THE SOUTH WESTERLY PROPERTY CORNER OF THE MARVIN K. BLOUNT AND JAN D. BLOUNT PROPERTY RECORDED IN DEED BOOK. 1074 PG. 451 AND MAP BOOK 15 PAGE 49; THENCE FROM THE POINT OF BEGINNING WITH THE NORTHERLY PROPERTY LINE OF AN EXISTING CEMETERY N 49°09'32" W 165.00 FEET TO AN EXISTING IRON PIPE; THENCE CORNERING WITH THE WESTERLY LINE OF THE EXISTING CEMETERY S 40°20'03" W 293.39 FEET TO A POINT, SAID POINT BEING LOCATED N 40°20'03" E 49.82 FEET FROM AN EXISTING IRON PIPE; CORNERING AND LEAVING THE CEMETERY PROPERTY LINE, CROSSING THE GREENVILLE UTILITES COMMISSION PROPERTY THREE (3) CALLS, (1) N 45°39'08" W 103.98 FEET TO A POINT, (2) S 43°53'23" W 99.44 FEET TO A POINT, (3) N 72°45'07" W 70.83 FEET TO A POINT IN THE EASTERLY LINE OF THE SEABOARD COASTLINE RAILROAD; THENCE CORNERING AND RUNNING WITH THE EASTERLY LINE OF SEABOARD COASTLINE RAILROAD THREE (3) CALLS, (1) N 20°36'55" E 96.93 FEET TO AN IRON PIPE SET, (2) N 45°51'54" E 32.50 FEET TO AN IRON PIPE SET, (3) N 30°36'58" E 485.18 FEET TO AN EXISTING IRON PIPE LOCATED AT THE TOP OF THE BANK OF THE TAR RIVER; THENCE CORNERING AND RUNNING WITH THE TAR RIVER S 68°56'23" E 340.13 FEET TO A SET IRON PIPE IN THE WESTERLY PROPERTY LINE OF THE

MARVIN K. BLOUNT AND JAN D. BLOUNT PROPERTY RECORDED IN DEED BOOK. 1074 PG. 451 AND MAP BOOK 15 PAGE 49; THENCE CORNERING AND RUNNING WITH THE WESTERLY LINE OF MARVIN K. BLOUNT AND JAN D. BLOUNT S 17°00'00" W 329.35 FEET TO AN EXISTING IRON PIPE, THE POINT OF BEGINNING, PASSING THROUGH AN EXISTING IRON PIPE AT 119.33 FEET, BEING A LEASED AREA CONTAINING 3.938 ACRES MORE OR LESS AND BEING SHOWN ON AN ALTA/ACSM LAND TITLE SURVEY PREPARED FOR PLACE ACQUISITIONS, LLC AND FIDELITY NATIONAL TITLE INSURANCE COMPANY BY RIVERS AND ASSOCIATES, DATED MAY 2, 2007, DRAWING NUMBER W-3054-ALT.

## EXHIBIT "B"

### Definitions

1. "Approve or Approval" shall mean an express approval in a written statement signed by the approving Person.
2. "Arbitration" shall mean arbitration as provided in Section 18.1 hereof.
3. "Authorized Representative" shall mean any officer, agent, employee, independent contractor or other authorized representative of a Person acting within the actual or apparent authority granted by the Person.
4. "Basic Rent" shall have the meaning set forth in Section 6.1 hereof.
5. "Condemnation Award" shall mean the aggregate amount of any condemnation award or awards payable with respect to a Taking, whether by agreement or pursuant to a judgment or otherwise, with any interest thereon, including consequential damages to any portion of the Premises not taken, net of any unreimbursed costs and expenses of collecting the same.
6. "Date of this Lease" shall mean the date set forth on the Summary Page.
7. "Default" shall mean an occurrence of an act or omission which, with giving of notice or passage of time or otherwise, may become an Event of Default.
8. "Default Notice" shall mean any notice given by Lessor pursuant to Sections 15.1.1 or 15.1.2 to Lessee and any Registered Mortgagee concerning the existence of a Default by Lessee hereunder.
9. "Default Rate" shall mean and have reference, with respect to each day during any applicable period of time, to a rate per annum equal to the Prime Rate (as hereinafter defined) plus four percent (4.0%). "Prime Rate" shall mean, with respect to each day during any applicable period of time, the rate per annum published as the "PRIME RATE" in the "Money Rates" column of *The Wall Street Journal* edition published on such day (or of the last edition thereof prior to such day if no edition thereof is published on such day); provided, however, that if there shall at any time no longer exist such publication of such rate, "Prime Rate" shall mean, with respect to each day during any applicable period of time, the rate per annum reasonably determined by Lessee to be the base rate on such day for corporate loans posted by three (3) or more major domestic commercial banks with offices in Atlanta, Georgia.
10. "Delivery Date" shall mean the date when Lessor has satisfied the Lessor's Environmental Obligations.
11. "Event of Default" shall mean those events and conditions specified in Section 15.1.

12. "Expire" or "Expiration" shall mean the expiration of the Term of this Lease by reason of lapse of time or the occurrence of a specified event or the exercise of a specified right, as provided herein, and not by reason of any Event of Default.

13. "Governmental Authority" shall mean all federal, state, county, municipal and other governments and all subdivisions, agencies, authorities, departments, courts, commissions, boards, bureaus and instrumentalities of any of them having jurisdiction of the Parties and the Premises or any of them.

14. "Governmental Requirements" shall mean all laws, statutes, codes, acts, constitutions, ordinances, judgments, decrees, injunctions, orders, resolutions, rules, regulations, permits, licenses, authorizations, administrative orders and other requirements of any Governmental Authority.

15. "Ground Lease" or "Lease" shall mean this Ground Lease of the Land from Lessor to Lessee.

16. "Hazardous Substances" or "Hazardous Substance" means petroleum (including gasoline, crude oil or any crude oil fraction), waste, trash, garbage, industrial by-product, and chemical or hazardous substance of any nature, including, without limitation, radioactive materials, PCBS, asbestos, pesticides, herbicides, pesticide or herbicide containers, untreated sewerage, industrial process sludge and any other substance identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA"), as amended, the Superfund Amendment and Reauthorization Act (commonly known as "SARA"), the Resource Conservation and Recovery Act (commonly known as "RCRA"), or any other federal, state, municipality or county legislation or ordinances applicable to the Premises.

17. "Hold Harmless" shall mean to hold harmless from, indemnify and defend against, and pay promptly upon demand therefor, any and all claims, demands, actions, causes of action, losses, expenses (including, without limitation, reasonable attorneys' fees actually incurred at both trial and appellate levels), costs (including, without limitation, court costs at both trial and appellate levels), damages and all liabilities arising out of or incurred in connection with, an identified circumstance, incident, condition, relationship, time period, or other matter.

18. "Impositions" shall mean the Taxes and utility charges to be paid by Lessee pursuant to Article VII.

19. "Improvements" shall mean any and all buildings, structures, utility installations, site work, paving, landscaping and other improvements now or hereafter made to or located on or about the Land, and all fixtures and non-movable equipment located upon the Land.

20. "Land" shall mean that parcel(s) of land described in Exhibit "A" attached hereto and made a part hereof.

21. "Lease Year" means (i) with respect to the first Lease Year, the period commencing on the Delivery Date and ending on the first anniversary of the Delivery Date, and (ii) thereafter, the twelve (12) month period commencing on the day after the last day of the

preceding Lease Year and ending on the first anniversary of the last day of the preceding Lease Year.

22. "Leasehold Mortgage" shall mean a Mortgage encumbering the leasehold estate arising under this Lease.

23. "Leasehold Mortgagee" shall mean the holder of a Leasehold Mortgage.

24. "Lessee" shall mean, initially, Place Acquisition, LLC, as lessee under this Lease, for so long as it remains lessee. From and after the date of any assignment of the leasehold estate in compliance with Article IX, the term "Lessee" shall mean the Person which is then the lessee.

25. "Lessor" shall mean, initially, The City of Greenville, North Carolina for the use and benefit of Greenville Utilities Commission of the City of Greenville, North Carolina, as lessor under this Lease, for so long as it remains lessor. From and after the date of transfer of the reversionary interest of the lessor arising under this Lease, the term "Lessor" shall mean the Person which is then the lessor.

26. "Lessor's Environmental Obligations" shall have the meaning set forth in Section 3.1.

27. "Mortgage" shall mean a deed of trust, mortgage, security agreement or similar agreement creating a lien upon or security interest in or granting security title to the Premises, or any interest therein or part thereof, as security for any debt, together with the promissory note or like instrument evidencing such debt or obligation.

28. "Mortgagee" shall mean the holder of a Mortgage.

29. "Notice" shall mean a written notice, request, demand or other communication pursuant to this Lease, as set forth in Section 19.3.

30. "Partial Taking" shall mean a Taking which is not a Total Taking or a Temporary Taking.

31. "Parties" shall mean Lessor and Lessee.

32. "Party" shall mean a party to this Lease, i.e., either Lessor or Lessee.

33. "Permitted Title Exceptions" shall mean those exceptions to Lessor's title to the Land listed in the Title Commitment or shown on the Survey which are not objected to by Lessor.

34. "Person" shall mean any natural person, corporation, limited or general partnership, tenancy in common, joint venture, association, business trust, real estate investment trust or other entity or organization, and any combination of any of them.

35. "Premises" shall mean the Land, together with the Improvements and any and all easements, hereditaments, tenements and other rights and privileges of any kind appurtenant thereto.

36. "Registered Mortgagee" shall mean any Leasehold Mortgagee who has registered with Lessor pursuant to Section "E-4".

37. "Rent" shall mean the Basic Rent and any and all other payments of money to be paid by Lessee to Lessor under this Lease.

38. "Rental Commencement Date" shall mean the Delivery Date.

39. "State" shall mean the State of North Carolina.

40. "Subleases" shall mean all written or oral leases, rental agreements, licenses, concessions, occupancies and other agreements or arrangements granted by Lessee to Sublessees for the use or occupancy of any portion of the Premises and "Sublease" shall mean any one of the Subleases.

41. "Subrents" shall mean all rentals actually collected from Sublessees.

42. "Sublessee" shall mean a sublessee, lessee, tenant, licensee or concessionaire under a Sublease.

43. "Taking" shall mean any taking or damaging of the Premises, or any portion thereof, interest therein, or right appurtenant thereto, by any governmental or public authority as a result of, in lieu of, in anticipation of, or under threat of the power of condemnation or eminent domain, including severance damage and any change in grade.

44. "Taxes" shall have the meaning set forth in Section 7.2.

45. "Temporary Taking" means a Taking that is not perpetual.

46. "Term" or "Lease Term" shall have the meaning set forth in Section 5.2.

47. "Terminate or Termination" shall mean termination by Lessor of this Lease, prior to its Expiration, pursuant to an Event of Default, as provided in Article XV.

48. "Total Taking" shall mean a Taking, the effect of which is that the portion or portions of the Premises remaining following such Taking cannot, in the sole but reasonable judgment of Lessee, be practically and economically used or converted for use by Lessee for the purposes for which the Premises was being used prior to such Taking.

49. "Unavoidable Delay" shall mean any delay caused by an act of God, fire, earthquake, flood, explosion, war, insurrection, riot, mob violence, sabotage, inability to procure labor, equipment, facilities, materials or supplies, strikes, lockouts, action of labor unions, condemnation, laws, orders of Governmental Authorities, litigation involving a Party relating to zoning, subdivision or other governmental action or inaction pertaining to the Premises or any

portion thereof, inability to obtain government permits or approvals, and other matters not within the control of a Party, but shall not include any delay caused by the financial inability of a Party.

## EXHIBIT "C"

### Inspection Period, Title and Termination Rights

1. Documentation. Within five (5) Business Days after the Date of this Lease, Lessor shall provide Lessee with true, correct, and complete copies of all studies, tests, reports, plans, drawings, surveys, agreements, and documents with respect to the Land, including, without limitation: (i) all title policies, title commitments, title reports, title opinions, title and zoning documents, appraisals, surveys, deeds, easements, deeds of trust or mortgages, declarations and restrictive covenants and other title exceptions; and (ii) all soil, engineering, structural, geotechnical, flood, and environmental studies, tests, reports, documents, and correspondence. Furthermore, Lessor shall deliver any and all correspondence, documents, memoranda or other writings relative to any environmental contamination upon the Premises and the proposed remediation thereof.

2. Testing. Notwithstanding anything set forth in this Lease to the contrary, Lessee shall have the right for ONE HUNDRED AND TWENTY DAYS (120) following the Date of this Lease (the "Inspection Period") in which to: inspect and investigate the Premises and to perform soil, groundwater, and other tests thereon; review and evaluate any governmental regulations, restrictions, zoning requirements, or ordinances applicable to the Premises and the development thereof and the availability and probability of Lessee's receipt of all necessary governmental approvals; obtain surveys and other similar materials; obtain, review, and evaluate any title insurance commitment for the Premises; review and evaluate the availability of utilities and drainage facilities and easements therefor; review and evaluate the economic or other feasibility of constructing and operating any improvements on the Premises; review and evaluate the access to the Premises and matters such as curb cuts, crossovers, traffic signalization and the like; review and evaluate any environmental conditions of the Premises; and review and evaluate any other matter relating to Lessee's anticipated use of the Premises and Lessee's improvements and/or the value, cost, utility or feasibility thereof. Lessee may terminate this Lease for any reason by sending written notice of termination to Lessor on or before 5:00 p.m. Eastern Time of the last day of the Inspection Period, in which event the parties shall have no further rights or liabilities hereunder (except for any that expressly survive termination of this Lease). Lessor shall notify Lessee within five (5) Business Days after the Date of this Lease of any condition on the Premises that might pose a danger, a hazard, or a risk of injury to Lessee, its agents, employees, or contractors during Lessee's inspection of the Premises.

3. Title. Within thirty (30) days after the Date of this Lease, Lessee shall, at Lessee's sole expense, cause the Title Company to deliver to Lessee a commitment for a leasehold title policy (the "Title Commitment") for the Premises and complete, legible copies of all documents referred to in the Title Commitment. On or before the expiration of the Inspection Period, Lessee shall obtain, at Lessee's expense, a survey of the Premises (the "Survey"). Lessee shall notify Lessor of any objections to the requirements or exceptions to title as shown on the Title Commitment or the Survey on or before the expiration of the Inspection Period. Lessor shall have thirty (30) days after receipt of such notice to remove the objectionable requirements or exceptions from the Title Commitment or the Survey. If Lessor is unable or unwilling to remove

such objectionable requirements or exceptions within such 30-day period, Lessee shall have the right to terminate this Lease by giving Lessor written notice thereof within thirty (30) days after expiration of such 30-day period, in which event Lessor shall reimburse Lessee for any out-of-pocket title, engineering, architectural, survey, investigative, and legal costs incurred in connection with this transaction (the "Reimbursable Costs"), this Lease shall become null and void, and neither party shall have any further obligations hereunder (except for any that expressly survive termination of this Lease). Lessor shall be obligated to pay or otherwise satisfy or discharge any encumbrance against the Land which can be paid, satisfied or discharged by the payment of money.

4. Title Commitment Updates. The Title Commitment may be updated on or prior to the date that the Title Policy is issued to the Lessee. If the updated Title Commitment shows additional exceptions or requirements, the procedures for objection, etc. set forth in Section 3 above shall be applicable.

5. Independent Consideration. If Lessee terminates this Lease pursuant to a right to do so contained in this Lease for any reason other than Lessor's default, then Lessee shall pay to Lessor in cash the sum of One Hundred Dollars (\$100.00) as independent consideration for the rights granted to Lessee pursuant to this Lease.

EXHIBIT "D"

BASIC RENT

1. BASIC RENT SCHEDULE. Lessor and Lessee agree that in addition to Lessee's obligations for additional rent and other payments applicable to the Premises as provided for in this Lease, Lessee shall make Basic Rent payments in accordance with the following schedule:

<u>Period</u> <u>(Lease Years)</u>	<u>Annual Basic</u> <u>Rent Rate</u>	<u>Monthly Basic</u> <u>Rent</u>
100	\$15,920.00	\$1,326.67

## EXHIBIT "E"

### Mortgages

1. Mortgages of Lessor's Reversion Only. Lessor shall not be required to subordinate its fee simple interest and estate in the Land to any Leasehold Mortgage, or enter into or join in the execution of any Leasehold Mortgage, but Lessor shall provide Leasehold Mortgagees the protections described in this Exhibit "E". Lessor shall have the right to encumber, from time to time, without the consent or approval of Lessee, its fee simple interest in the Land and Lessor's interest in this Lease with such Mortgages as Lessor, in its sole discretion, deems appropriate; provided, however, that any such Mortgage shall be subject and subordinate to this Lease, the rights of Lessee hereunder, the rights of any Sublessees hereunder, and the rights of any Leasehold Mortgagee arising under or by virtue of this Lease (whether the Leasehold Mortgage was created before or after such Mortgage by Lessor), including without limitation the right, title and estate of any Leasehold Mortgagee under any new lease entered into pursuant to Exhibit "E". The foregoing subordination of any such Mortgage to this Lease, the rights of Lessee hereunder, the rights of any Sublessee, and the rights of any Leasehold Mortgagee shall be self-operative and shall not require any further action by the Parties. Lessee shall, within ten days after receipt of a Notice requesting same, enter into a separate agreement directly with any holder of such Mortgage confirming that the provisions of this Lease, including without limitation the provisions of this Section "E-1", will be honored by and binding upon Lessee, and further shall contain such other terms and conditions as such holder of such Mortgage shall reasonably request, including the agreement of Lessee, to attorn to the holder of such Mortgage in the event such holder succeeds to the interest of Lessor hereunder. Lessor will not, directly or indirectly, create or permit to be created or to remain, and will promptly discharge, at its expense, any Mortgage of or lien of any kind against its interest and estate in the Land or any part thereof or on the Basic Rent or any other sums payable by Lessee hereunder, including any Mortgage existing on the Date of this Lease, unless the holder of such Mortgage or other lien shall enter into such arrangements as may be necessary to subordinate such Mortgage or other lien to this Lease and to all the terms and provisions hereof and unless the obligation secured by such Mortgage is pre-payable at the option of Lessor thought the term thereof.

2. Mortgages of the Leasehold Only. At any time and from time to time during the term of this Lease, Lessee may assign or encumber Lessee's interest in the leasehold estate created by this Lease by one or more Leasehold Mortgages containing such terms and provisions as Lessee may, in its sole discretion, deem fit and proper. If Lessee encumbers its leasehold estate by a Leasehold Mortgage and should Lessor be advised in writing of the name and address of the Leasehold Mortgagee in accordance with Section "E-4", then this Lease shall not be Terminated unless and until Lessor shall comply with the provisions of Section "E-6" hereof. Upon the request of the holder of any Leasehold Mortgage, Lessor shall make reasonable changes and revisions to this Ground Lease as requested by such Leasehold Mortgagee, provided such changes do not materially and adversely impair Lessor's rights hereunder.

3. Agreement With Leasehold Mortgagees. Lessor hereby agrees to enter into an agreement with Leasehold Mortgagees, in form and substance reasonably acceptable to Lessor and to Leasehold Mortgagees, providing that this Lease and the rights and interests of Lessor in

and to the Premises shall survive any foreclosure or deed in lieu of foreclosure under the Leasehold Mortgages and providing for such other matters as they be reasonably requested by Leasehold Mortgagees.

4. Notices to Registered Mortgagees. In the event Lessee shall encumber the Premises or any portion thereof or any interest therein with a Leasehold Mortgage and the Leasehold Mortgagee shall register with Lessor by delivering to Lessor a copy of the Leasehold Mortgage, together with a written notice specifying the name and address of the Leasehold Mortgagee, the pertinent recording data, and the term or duration of the Leasehold Mortgage, then from and after the date of receipt by Lessor of such registration and for the term or duration of said Leasehold Mortgage, upon serving Lessee with any notice under this Lease, Lessor shall, concurrently therewith, serve a copy of such notice to all Registered Mortgagees, the serving of which notice upon each Registered Mortgagee entitled to the receipt thereof shall be a condition precedent to the effectiveness thereof. Upon request, Lessor shall notify any Registered Mortgagee of the identity and address of Lessor's agent, if any, for receipt of notice and payments hereunder and such Registered Mortgagee shall be entitled to rely on such notice until such Registered Mortgagee is delivered a notice from Lessor changing the identity and/or address of such agent, and notices sent and payments made in accordance with such a notice by Lessor shall constitute notice and payment to all parties included within the term "Lessor." Each Registered Mortgagee shall have the right to remedy or cause to be remedied the Default or Event of Default complained of or request made, and Lessor shall accept performance by or at the instigation of any Registered Mortgagee with the same force and effect as if Lessee had performed the action in question. Nothing contained herein shall be construed as imposing any obligation upon any Leasehold Mortgagee so to perform or comply on behalf of Lessee. Lessor shall not accept any surrender of or agree to any termination of this Lease without the prior written consent thereto by all Registered Mortgagees and any attempt to do so without such written consent shall be void and of no force and effect.

5. Limitation on Liability of Leasehold Mortgagees. The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Lessee to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee or transferee within the meaning of Article X, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Lessee to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold. All assignments, however, subsequent to the assignment referenced in the preceding sentence shall be subject to all the terms and provisions of Article X. Any Leasehold Mortgagee or other acquirer of the leasehold pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon acquiring the leasehold, sell and assign the leasehold on such terms and to such Persons as are acceptable to such Leasehold Mortgagee or acquirer, but subject to all the terms and provisions of this Lease including, but not limited to Article X, and thereafter be relieved of all obligations

under this Lease; provided that such assignee has delivered to Lessor its written agreement to be bound by all of the provisions of this Lease arising from and after the date of such assignment.

6. Registered Mortgagee's Right To Cure Default.

(a) Lessor, upon providing Lessee with any Default Notice, shall concurrently transmit a copy of such notice to every Registered Mortgagee. From and after the date of the Default Notice, each Registered Mortgagee shall have the same period as is given to Lessee to remedy, commence remedying, or cause to be remedied the Default specified in any such Default Notice. Lessor shall accept such performance by or at the instigation of any such Registered Mortgagee as if the same had been done by Lessee. Lessee authorizes each Registered Mortgagee to take any such action at such Registered Mortgagee's option and does hereby authorize entry upon the Premises by the Registered Mortgagee(s) for such purposes.

(b) Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Lessor to terminate this Lease, Lessor shall have no right so to terminate this Lease unless, following the expiration of the period of time given Lessee to cure such Default, Lessor shall notify each Registered Mortgagee of Lessor's intent so to terminate ("Notice of Termination") at least fifteen (15) days in advance of the proposed effective date of such termination if such Default is a monetary Event of Default and at least thirty (30) days in advance of the proposed effective date of such termination if such Default is a non-monetary Event of Default. Such termination shall become effective in accordance with such Notice of Termination unless, during such fifteen (15) or thirty (30) day period, any such Registered Mortgagee shall:

(i) notify Lessor of such Registered Mortgagee's desire to nullify such Notice of Termination, and

(ii) pay or cause to be paid all Rent, insurance premiums, and other payments (A) then due and in arrears as specified in the Default Notice delivered to such Registered Mortgagee and (B) falling due during such fifteen (15) or thirty (30) day period, and in addition, agree to pay or cause to be paid all Rent, insurance premiums and other payments which may become due following such fifteen (15) or thirty (30) day period, and

(iii) comply or in good faith, with reasonable diligence and continuity, commence to comply with all non-monetary requirements of this Lease then in Default and reasonably susceptible of being complied with by such Registered Mortgagee; provided, however, that such Registered Mortgagee shall not be required to cure or commence to cure any Default consisting of Lessee's failure to satisfy and discharge any lien or encumbrance against Lessee's interest in this Lease or the Premises junior in priority to the lien of the Mortgage held by such Registered Mortgagee.

(c) If (i) the Default giving rise to the Default Notice shall not have been cured, (ii) Lessor shall elect to terminate this Lease by reason of any Default of Lessee, and (iii) a Registered Mortgagee shall have satisfied all requirements under clause (a), (b), and (c) of

Section “E-6.2”, the specified date for the termination of this Lease as fixed by Lessor in its Notice of Termination shall be extended for a period of one hundred eighty (180) days, provided that such Registered Mortgagee shall, during such one hundred eighty (180) day period:

(i) pay or cause to be paid the Rent, insurance premiums, and other monetary obligations of Lessee under this Lease as the same become due, and continue its good faith efforts to perform all of Lessee’s other obligations under this Lease, excepting past non-monetary obligations then in Default and not reasonably susceptible of being cured by such Registered Mortgagee; and

(ii) if not enjoined or stayed, take steps to acquire or sell Lessee’s interest in this Lease and the Premises by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(d) If at the end of such one hundred eighty (180) day period such Registered Mortgagee is not complying with Section “E-6.3”, this Lease shall terminate. If at the end of such one hundred eighty (180) day period such Registered Mortgagee is complying with Section “E-6.3”, this Lease shall not then terminate, and the time for completion by such Registered Mortgagee of its proceedings necessary to comply with Section “E-6.3(b)” shall continue so long as such Registered Mortgagee is enjoined or stayed and thereafter for so long as such Registered Mortgagee proceeds to complete steps to acquire and sell Lessee’s interest in the Lease and the Premises by foreclosure of the Leasehold Mortgage or by other appropriate means, with reasonable diligence and continuity. Nothing in this Section “E-6”, however, shall be construed to extend this Lease beyond the original term hereof, nor to require a Registered Mortgagee to continue such foreclosure proceedings after the Default has been cured if no additional Event of Default has occurred. If the Default shall be cured and the Registered Mortgagee shall discontinue such foreclosure proceedings and if no additional Event of Default has occurred, this Lease shall continue in full force and effect as if Lessee had not defaulted under this Lease.

(e) In the event of the termination of this Lease for any reason, including, without limitation, any disaffirmance or rejection of this Lease by any trustee of Lessee in bankruptcy, Lessor shall, in addition to providing the applicable Default Notices and Notice of Termination as required by Sections “E-6.1” and “E-6.2” above, provide each Registered Mortgagee with written notice that the Lease has been terminated, together with a statement of all sums which would at that time be due under this Lease but for such termination, and of all other Defaults, if any, then known to Lessor. Lessor agrees to enter into a new lease (“New Lease”) of the Premises with a Registered Mortgagee or its designee for the remainder of the Lease Term, effective as of the date of termination, at the rent, and upon the terms, covenants, and conditions (excluding requirements which, by their terms, are not applicable or which have already been fulfilled) of this Lease, provided:

(i) Such Registered Mortgagee has given or gives written notice to Lessor of its desire to enter into such New Lease as of the effective date of the termination of this Lease prior to the date which is sixty (60) days after receipt by such Registered Mortgagee of Lessor’s Notice of Termination as provided for in

Section “E-6.2” above. Notwithstanding that the Lease may terminate prior to the expiration of the sixty (60) day period provided for in this Section “E-6.5(a)”, Lessor agrees that it will not, during any such thirty (30) day period, enter into any other lease of the Premises or any part thereof so long as such Registered Mortgagee has advised Lessor within ten (10) business days after its receipt of the Notice of Termination that it will pay or reimburse Lessor for all Rent and other amounts which would have been payable under this Lease during such sixty (60) day period if the termination in question had not occurred.

(ii) Such Registered Mortgagee or its designee shall pay or cause to be paid to Lessor at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due or past due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, and Lessor’s reasonable attorneys’ fees which Lessor shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Lessor from Lessee or any other party in interest under Lessee, including, without limitation, the costs of complying with Section “E-6.5(d)” and Lessor’s reasonable attorney’s fees. In the event of a controversy as to the amount to be paid to Lessor pursuant to this Section “E-6.5(b)”, the payment obligation shall be satisfied if (a) Lessor shall be paid the amount not in good faith controversy, (b) the Registered Mortgagee or its designee shall agree to pay any additional sum ultimately determined to be due plus interest at the Default Rate; and (c) such obligation shall be secured to Lessor’s reasonable satisfaction.

(iii) Such Registered Mortgagee or its designee shall agree to remedy any of Lessee’s Defaults of which said Registered Mortgagee was notified by Lessor’s Default Notice(s) or Notice of Termination, except for any non-monetary Event of Defaults which are not reasonably susceptible of being so cured by such Registered Mortgagee or its designee.

(iv) Any New Lease made pursuant to this Section “E-6.5” shall be prior to any mortgage or other lien, charge, or encumbrance on the fee of the Premises, and the lessee under such New Lease shall have the same right, title, and interest in and to the Premises and the buildings and improvements thereon as Lessee had under this Lease. Upon execution of any New Lease, Lessor shall convey to the Lessee, without additional charge therefor, all right, title, and interest which Lessor may have in any buildings or other improvements which may then be located upon the Premises, other than Lessor’s reversionary interest therein upon the expiration or other termination of the New Lease.

(f) If more than one Registered Mortgagee shall request a New Lease pursuant to Section “E-6.5”, Lessor shall enter into such New Lease with the Registered Mortgagee whose mortgage is prior in lien, or with the designee of such Registered Mortgagee.

7. Arbitration. Lessor shall give each Leasehold Mortgagee prompt notice of any arbitration or legal proceedings between Lessor and Lessee involving obligations under this

Lease. Each Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. In the event that any Leasehold Mortgagee shall not elect to intervene or become a party to any such proceedings, Lessor shall give the Leasehold Mortgagee notice of, and a copy of any award or decision made in any such proceedings, which shall be binding on all Leasehold Mortgagees not intervening after receipt of notice of arbitration. In the event Lessee shall fail to appoint an arbitrator after notice from Lessor, a Leasehold Mortgagee (in order of seniority if there be more than one) shall have an additional period of thirty (30) days after notice by Lessor that Lessee has failed to appoint such arbitrator, to make such appointment, and the arbitrator so appointed shall thereupon be recognized in all respects as if he had been appointed by Lessee.

## EXHIBIT "F"

### Insurance

1. Property Insurance. Insurance on the Improvements or any replacements or substitutions therefor against loss or damage by fire and against loss or damage by other risks insured against by "extended coverage" provisions of policies generally in force on similar developments in the metropolitan Greenville, North Carolina area, in amounts sufficient to provide coverage in an amount not less than one hundred percent (100%) of the actual replacement cost of the respective buildings and improvements (excluding foundation and excavation costs, paving, and underground pipes, flues and drains) or any replacements or substitutions therefor, the policy for which insurance shall have a replacement cost endorsement or similar provision.

2. Liability Insurance. General public liability insurance protecting Lessee and Lessor against any and all claims for damages to persons or property or for loss of life or of property occurring upon, in or about the Premises, with a limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence, in such form as determined by Lessee, in Lessee's reasonable discretion. Upon written request from Lessor given not more often than once every two (2) years, Lessee shall review the limits of such public liability insurance and shall increase the limits of such coverage, if necessary, to the limits of coverage which a prudent business person in Lessee's business in the area of the Premises would be expected to carry; provided, however, that so long as there is a bona fide disagreement between Lessor and Lessee on the appropriate amount of such limits, and Lessee carries such insurance with such limits as Lessee deems appropriate in light of the foregoing standard, Lessee shall not be deemed to be in default under this Lease for failure to obtain such higher limits of coverage as Lessor considers appropriate until such time (if any) that an appropriate amount is determined pursuant to the arbitration procedures forth in Section "F-5".

3. Policies. The policies of insurance shall comply with the following requirements.

(a) General Requirements. All of the policies of insurance referred to or provided for in this Lease shall be with reputable companies licensed and authorized to issue such policies in such amounts in the State, acceptable to Lessor in its reasonable discretion. Such required insurance may be carried under blanket policies that include other properties and under so-called "umbrella" policies. Upon request, Lessee shall deliver to Lessor certificates showing such required insurance to be in full force and effect. Such certificates shall be endorsed to show the receipt by the issuer of the premiums therefor or shall be accompanied by other evidence of payment of such premiums. If the premium covers more than one year and may be paid in installments, only an annual installment must be paid in advance. To the extent obtainable, such policies for property loss insurance coverage shall contain express waivers by the insurer of any rights of subrogation against Lessor. The deductible amount for any required insurance coverage shall be in an amount determined by Lessee as being a reasonable deductible amount in light of prevailing market conditions and deductible amounts on insurance policies for similar properties in the same market.

(b) Insureds. All public liability insurance required to be provided by Lessee shall name Lessee as insured and shall name Lessor and any Mortgagee of Lessor (if requested by Lessor) as an additional insured, with respect to the Premises only, all as their respective interests may appear. All insurance required to be provided by Lessee may, at the option of Lessee, name any Mortgagee or any other Persons, all as their respective interests may appear.

(c) Payment of Loss/Use of Insurance Proceeds. All policies of insurance referred to herein, except for the public liability insurance, shall provide for payment of loss to Lessee, and shall be applied by Lessee toward the repair and restoration of the Improvements located on the Premises, subject to the requirements of any Leasehold Mortgage.

(d) Renewal and Cancellation. All such policies shall provide that they may not be canceled by the insurer for nonpayment of premiums until at least thirty (30) days after service of written notice of the proposed cancellation upon Lessor and Lessor's Mortgagee (if any).

4. Waiver of Subrogation. Each Party waives claims arising in any manner in its ("Injured Party's") favor and against the other Party for loss or damage to Injured Party's real or personal property located within or constituting a part or all of the Premises, provided, however, that this waiver applies only to the extent the loss or damage is covered by: (i) the Injured Party's insurance; or (ii) the insurance the Injured Party is required to carry under Section "F-1", whichever is greater. The Injured Party's waiver also applies to the other Party's directors, officers, employees, shareholders, members and agents. If despite Lessee's diligent efforts it cannot find an insurance company meeting the criteria in Section "F-2" that will provide the waiver of subrogation endorsement at commercially reasonable commercial rates with respect to the property insurance described in Section "F-1.1", then it shall give Notice to Lessor to such effect within thirty (30) days after reaching such determination. Lessor shall then have an additional thirty (30) days to find an insurance company meeting the criteria set forth in Section "F-2.1" (and otherwise satisfactory to Lessee in its good faith business judgment) that will issue the waiver of subrogation endorsement at commercially reasonable rates. If Lessor also cannot find such an insurance company, then Lessee shall be released from its obligation to obtain the waiver. If such insurance company is found but it will give the waiver of subrogation endorsement only at rates greater than commercially reasonable rates, then the Parties can agree to pay for the waiver under any agreement they can negotiate. If the parties cannot in good faith negotiate an agreement, then Lessee shall be released from its obligation to obtain the waiver.

5. Indemnity. Lessee shall and does hereby Hold Harmless Lessor from the use and occupation of the Land and the Improvements, the performance or failure thereof by Lessee of the obligations of Lessee under this Lease, except to the extent, if any, that Lessor or its Authorized Representative is responsible for same as hereinafter provided. Lessee shall assume on behalf of Lessor and conduct with due diligence and in good faith the defense of all such claims, suits, actions and proceedings against Lessor whether or not Lessee is joined therein, and shall bear the costs and expenses thereof, including the amount of any judgments and settlements in connection therewith. Lessee shall have the right to contest the validity of any and all claims and to defend, settle and compromise such claims in the name of Lessor, as Lessee may deem

necessary, provided that the costs and expenses, including the amount of any judgment and settlements, are paid by Lessee. Maintenance of the insurance referred to in this Exhibit "F" shall not affect the obligations of Lessee under this Lease, and the limits of such insurance shall not constitute a limit on the liability of Lessee under this Section "F-4". If any claim or other matter is covered by such insurance, the Parties shall look to such insurance to the extent thereof before proceeding under this indemnity, and any insurer shall not be subrogated under this indemnity. Lessee's obligations pursuant to this Section "F-4" shall not impose any liability on Lessee to any particular indemnitee if, and to the extent, the liability in question arises out of any indemnitee's negligence, intentional act, willful misconduct, breach of contract or legal duty or violation of any Governmental Requirements of any Person for whose acts or omissions any such indemnitee is legally liable. In addition, Lessee's indemnification of the indemnitees pursuant to this Section "F-4" shall not extend to any matter related to or arising out of the physical condition of the Premises prior to the Date of this Lease, or other circumstances in respect to the Premises arising or accruing prior to the Date of this Lease, including the environmental condition of the Premises prior to the Date of this Lease; provided, however, the limitation of Lessee's liability set forth in this sentence shall not apply to the extent that such condition has been altered by Lessee. Further, Lessee's indemnification of any indemnitee pursuant to this Section "F-4" shall not extend to any matter related to or arising out of title to the Premises or legal status of the Premises, except to the extent of title matters caused or arising by, through or under Lessee.

6. Arbitration. If Lessor and Lessee are unable to agree as to the appropriate amount of insurance coverage limits as set forth above, Lessor and Lessee agree to submit the dispute to Arbitration pursuant to Article XVII.

7. Lessor shall have the right to obtain proof of the insurance requirements set forth in this Exhibit "F" from time to time by delivering a written request for same to Lessee. Lessee shall deliver proof of insurance to Lessor on or before the expiration of the Inspection Period.

EXHIBIT "G"

Lessee's Proposed Site Plan

EXHIBIT "H"

Re-Use Plan

EXHIBIT "I"

List of Environmental Reports Received by Lessor





# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Presentations by boards and commissions

a. Recreation and Parks Commission

**Explanation:** The Recreation and Parks Commission will make its annual presentation to City Council at the October 8, 2007 meeting.

**Fiscal Note:** None

**Recommendation:** For information only; no action recommended

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# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

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**Title of Item:** Pitt County local option sales tax referendum

**Explanation:** Pitt County Manager Scott Elliott and Schools Superintendent Beverly Reep will present an update on the November 6, 2007 referendum on the local option sales tax for education construction.

Attached is a brochure that provides information concerning the referendum.

**Fiscal Note:** No cost to the City.

**Recommendation:** The City Council hear a presentation on the Pitt County local option sales tax referendum.

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 [County\\_Sales\\_Tax\\_Brochure\\_720666](#)

## POINTS TO REMEMBER

- 
 Proceeds of the 1/4% will be dedicated to addressing construction needs at both Pitt Community College and the Public School System.
- 
 Focus will be on classroom space.
- 
 The 1/4% sales tax will not apply to food and vehicles.
- 
 The total sales tax in Pitt County will be 7%.



# Pitt County Sales Tax for Education Construction

## REMEMBER THE QUESTION

FOR

AGAINST

Local sales and use tax at the rate of one quarter percent (.25%) in addition to all other State and local sales and use taxes.

## Referendum

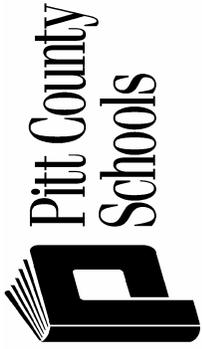
### November 6, 2007

For further information contact:

**Pitt County Manager's Office @ (252)902-2950**

**REMEMBER TO VOTE**

November 6, 2007



### Pitt County School System

- ▬ 22,600 students
- ▬ \$180 million in identified needs
- ▬ Classroom space a priority – 146 temporary classrooms are currently in use across the County
- ▬ Many schools are over capacity due to residential growth patterns within our County
- ▬ Enrollment growth between 2000-2008 of 3,000 students exceeds growth in enrollment experienced between 1970-2000
- ▬ Annual growth creates the need for a new facility EACH year



### Pitt Community College

- ▬ 9,000 curriculum students & 11,800 continuing education students
- ▬ 15% increase in student enrollment over the past 5 years
- ▬ \$89 million in identified facility needs
- ▬ Classroom space is the top priority
- ▬ State lottery funds do not support PCC facilities
- ▬ Ranks last among NC Community Colleges in space per student for over ten years
- ▬ Growth expected to continue and crowding will become more evident



# City of Greenville, North Carolina

Meeting Date: 10/8/2007  
Time: 6:00 PM

**Title of Item:** Painted Pirate Project

**Explanation:** The Greenville-Pitt County Chamber of Commerce and the East Carolina University Alumni Association are sponsoring a public art project similar to those that have been conducted in numerous other cities. The project involves community organizations sponsoring pirate statues that will be painted with different themes by local artists. The pirates are displayed as public art for approximately one year and then auctioned off to raise funds for the two primary sponsoring organizations. More information about the project is attached.

City staff recommends that the City participate in this community art program by sponsoring a pirate for display at City Hall. The arts and crafts coordinator for the Recreation and Parks Department will be responsible for painting the pirate.

**Fiscal Note:** The cost to sponsor a pirate is \$2,500. Funds are available in the general fund contingency account.

**Recommendation:** The City Council approve sponsoring a pirate.

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 [Painted Pirate Project](#)



Taylor-Slaughter Alumni Center  
901 East Fifth Street  
Greenville, NC 27858  
252-328-6072 | 800-ECU-GRAD

## SPONSOR A PAINTED PIRATE TO PROMOTE COMMUNITY SPIRIT AND BEAUTIFICATION

Life-sized Pirate statues will don the streets and business properties of Pitt's cities and towns and celebrate our community's Pirate heritage through an impressive public art display of Pirate statues

Sponsors will choose designs from those submitted by artists and approved by the Pirate Project Committee. Sponsors may also commission their own artist and consult on their artist's design. All designs must be reviewed and approved by the Pirate Project Committee.

Painted Pirates will be unveiled during PirateFest in April 2008. Following the unveiling, the 6-foot-tall Pirate statues will be on display for approximately one year. In 2009, a Pirate Gala will be held at which the sculptures will be auctioned.

### PIRATE SPONSORSHIP - \$2,500

Pirate will be placed in a public display area of the sponsors choice (must be approved by committee) for approximately one year. After that time, the pirate statue will become property of the Pirate Project Committee and will be auctioned at the Pirate Gala.

### PROCEEDS

All proceeds will benefit the Historic Fleming House Renovation Fund and the East Carolina Alumni Association Scholarship Fund.

### SPONSOR BENEFITS

Sponsors will be recognized in promotions throughout the year associated with the Painted Pirate Project.

Benefits include but are not limited to:

- Engraved plaque (approximately 12"x12" in size) on the base of the Pirate with sponsor's name or business name
- Recognition in Greenville-Pitt County Chamber of Commerce promotions
  - The Business Partner newsletter (22,000 circulation)
  - Chamber web site - [www.greenvillenc.org](http://www.greenvillenc.org)
  - Business Beat television program
  - ChamberGram e-mail communication
- Recognition in East Carolina Alumni Association promotions
  - SERVIRE – the magazine of the East Carolina Alumni Association (20,000 circulation)
  - Special blast e-mail to all Alumni Association members (36,000 circulation)
  - PiratePulse e-newsletter (36,000 circulation)
  - Logo on Painted Pirate web page on [PirateAlumni.com](http://PirateAlumni.com)
  - "A Pirates Life for Me!" radio show
- Additional Exposure may be provided by local news coverage of the Painted Pirate Project.



East Carolina University

