

**City of Graham City Council
Regular Meeting Agenda
October 12, 2021
6:00 p.m.**



CALL TO ORDER: Mayor Jerry Peterman

INVOCATION & PLEDGE OF ALLEGIANCE

OATH OF OFFICE: Darby Terrell

CODE OF ETHICS DISCLOSING CONFLICTS OF INTEREST: Darby Terrell, City Clerk

WASTE WATER TREATMENT PLANT- PROJECT UPDATE: Hazen & Sawyer

CONSENT AGENDA:

- a. To approve the minutes of the September 14, 2021, City Council regular session meeting.
- b. To approve an Engineering Contract #2 by Alley, Williams, Carmen & King, in the amount of \$340,500, which are fully reimbursable through the NCDEQ State Loan and Water Infrastructure Fund Grant, for the Boyd Creek Pump Station.
- c. To approve administrative edits the Development Ordinance pursuant to Sections 10.4(A) and (B) to correct grammar, spelling, punctuation, numbering, capitalization, and other non-substantive changes to. These changes are non-substantive and do not change the meaning of the ordinance. (To view the updated Development Ordinance follow the link <https://www.cityofgraham.com/ordinances/>)
- d. To approve a Sewer Disconnection Policy for delinquent “sewer only” accounts.
- e. To award a contract, in the amount of \$275,000, to Stewart-Cooper-Newell Architects for design services for the proposed fire station project.
- f. To approve a Sanitary Sewer Permitting Policy to limit the accumulation of wastewater permitted at State mandated flows per bedroom (Paper Flow) which impacts available wastewater treatment and pump station capacity in order to maintain capacity for future projects.
- g. To approve Water and Wastewater System Extension and Connection policy to extend its water and wastewater systems to better serve the needs of the citizens of Graham as well as those who desire to connect to the City’s water and wastewater system.

- h. To approve the following tax releases in the amount of \$2,580.33:

CITY OF GRAHAM RELEASE ACCOUNTS				
OCTOBER				
ACCT #	YEAR	NAME	REASON FOR RELEASE	AMOUNT RELEASED
11892	2021	KEYSTONE GROUP INC	DISCOVERED NEW 2021 OWNER, RELEASE BUILDER	\$1,074.40
469640	2021	COBLE, REVOCABLE LIVING TRUST	QUALIFIED FOR HOMESTEAD EXEMPTION	\$180.71
684791	2021	GRANGER, CHARLES H	QUALIFIED FOR HOMESTEAD EXEMPTION	\$356.07
697205	2021	MABE, STEPHEN GLENN	BOAT LOCATED IN BURLINGTON	\$9.38
699210	2021	STUDION ELM INC	BUSINESS LOCATED IN SAXAPAHAW	\$104.52
700133	2021	GRAHAM EXPRESS WASH LLC	TAX DOUBLE BILLED	\$855.25
TOTAL RELEASES				\$2,580.33

OLD BUSINESS:

1. A public hearing has been continued to consider an application by Ben Green Hyconic Holdings LLC, to rezone 38 acres on E. Gilbreath Street from I-1, (Light Industrial) and R-G, (General Residential) to C-MXR, (Conditional Mixed Use Residential) to allow for 453 dwelling units, including 396 apartments and 57 townhomes (GPIN 8883885270, 8883872722, 8883886903). *(Continued from the September 14, 2021, City Council Meeting.)* (CR2101) **(Due to the extent of changes to the original proposal, the Planning Board has requested this item be tabled to the November 9, 2021, City Council meeting.)**
2. A public hearing has been continued to consider a text amendment to the Development Ordinance: Special Use Permits. Development Ordinance Amendments as recommended by City Council regarding Special Use Permits - Hearings before the Board of Adjustment, Article 4, Division 7 (Sections 10.137 to 10.148). *(Continued from the September 14, 2021, City Council Meeting.)* (AM2102) **(Planning Board has requested this item be tabled to the November 9, 2021, City Council Meeting.)**

PUBLIC COMMENT PERIOD

CITY COUNCIL COMMENTS

CITY STAFF COMMENTS

CLOSED SESSION

City Council will consider a Closed Session pursuant to the Terms of N.C.G.S. §. 143-318-11 (a) (6), to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee.

ADJOURN

CITY OF GRAHAM
CITY COUNCIL MEETING MINUTES
TUESDAY, SEPTEMBER 14, 2021

The City Council of the City of Graham held a regularly scheduled meeting beginning at 6:00 p.m. on September 14, 2021, in the Council Chamber of the Municipal Building located at 201 South Main Street, Graham, NC.

Council Members Present:

Mayor Jerry Peterman
Mayor Pro Tem Chip Turner
Council Member Melody Wiggins
Council Member Jennifer Talley
Council Member Ricky Hall

Staff Present:

Aaron Holland, Interim City Manager
Renee Ward, Interim City Clerk - *Absent*
Bryan Coleman, City Attorney
Bob Ward, City Attorney - *Absent*
Justin Snyder, Planning Director
Mary Faucette, Downtown Development

CALL TO ORDER:

Mayor Jerry Peterman called the meeting to order and presided at 6:00 p.m. Mayor Peterman asked former City Councilman Jim Albright to give the invocation and everyone stood to recite the Pledge of Allegiance.

Mayor Peterman requested prayers for the family of Tim Allbritton & Michael Vaughn.

CODE OF ETHICS DISCLOSING CONFLICTS OF INTEREST: Downtown Development Coordinator, Mary Faucette

There were no conflicts of interested reported.

CONSENT AGENDA:

- a. To approve the minutes of the City Council regular session meeting held on August 10, 2021.
- b. To approve a speed limit change from 45 mph to 35 mph for a portion of Jimmie Kerr Road from the southern corporate limit of Graham to the northern corporate limit of Graham.
- c. To approve the following tax releases in the amount of \$2,312.06:

CITY OF GRAHAM RELEASE ACCOUNTS				
SEPTEMBER				
<u>ACCT#</u>	<u>YEAR</u>	<u>NAME</u>	<u>REASON FOR RELEASE</u>	<u>AMOUNT RELEASED</u>
701830	2021	LONG, JOYCE ALLENE	BILLED TO WRONG TAXPAYER	\$1,205.49
0	2021	UNKNOWN	BILLING ERROR TO UNKNOWN ACCOUNT	\$666.27
608275	2021	CRESO CAPITAL INC	SOLD 2016 FREIGHTLINER 12-29-20	\$330.73
688177	2021	BERGER, DARREN	TRAILER NOT IN CITY OF GRAHAM	\$18.20
686544	2021	BALDWIN, DON	BOATS/JET SKIS NOT IN THE CITY OF GRAHAM	\$11.46
700151	2021	STRATEGIC INTERVENTIONS	IN CITY OF BURLINGTON, NOT GRAHAM	\$6.66
669865	2021	SHARPE, CLINTON POWELL	SOLD BOAT	\$17.46
700583	2021	COBLE, JAMES MICHAEL	ANTIQUE CARS NOT IN THE CITY OF GRAHAM	\$31.31
576158	2021	KICHMAN, RICHARD LEROY JR	BOAT NOT IN THE CITY OF GRAHAM	\$1.24
558965	2021	LOWDER, MELISSA DEE	OVER VALUED BOAT	\$23.24
TOTAL RELEASES				\$2,312.06

- d. To approve the appointment of Planning Director Justin Snyder as a Plat Review Officer and to remove former Planning Director Nathan Page.
- e. To approve a resolution authorizing application for CDBG assistance from the State of North Carolina to construct a drinking water distribution project for the replacement of aging and undersized waterlines, water services and fire hydrants in the NW section of the City of Graham.

RESOLUTION BY GOVERNING BODY OF APPLICANT

WHEREAS, Title I of the Federal Housing and Community Development Act of 1974, as amended, has established the U.S. Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, and has authorized the making of grants to aid eligible units of government in funding the cost of construction, replacement, or rehabilitation of water and wastewater infrastructure, and that the North Carolina Department of Environmental Quality (NCDEQ) Division of Water Infrastructure (DWI) was delegated the authority by the state legislature to administer the water and wastewater infrastructure portion of the state grant monies received from the U.S. HUD CDBG program by Session Law 2013-360, Section 15.15(a) as amended by Section 5.3 of Session Law 2013-363, and

WHEREAS, The City of Graham has need for and intends to construct a drinking water distribution project described as replacement of aging and undersized waterlines, water services and fire hydrants in the NW section of the City of Graham, and

WHEREAS, The City of Graham intends to request state grant assistance for the project.

NOW THEREFORE BE IT RESOLVED, BY THE GRAHAM CITY COUNCIL OF THE (CITY OF GRAHAM):

That City of Graham, the **Applicant**, will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Aaron T. Holland, Interim City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a grant to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the **14th Day of September 2021** at City of Graham Municipal Building, North Carolina.

- f. To approve a resolution authorizing an application for Loan Assistance from the State of North Carolina for a drinking water replacement project described as approximately 28,000 linear feet of new ductile iron waterline with service connections, fire hydrant replacement and water service connections.

RESOLUTION BY GOVERNING BODY OF APPLICANT

- WHEREAS,** The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of drinking water replacement project, and
- WHEREAS,** The City of Graham has need for and intends to construct a drinking water replacement project described as approximately 28,000 linear feet of new ductile iron waterline with service connections and fire hydrant replacement and water service connections.
- WHEREAS,** The City of Graham intends to request state loan assistance for the project.

NOW THEREFORE BE IT RESOLVED, BY THE (GRAHAM CITY COUNCIL) OF THE (CITY OF GRAHAM):

That City of Graham, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Graham to make scheduled repayment of the loan, to withhold from the City of Graham any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Aaron T. Holland, Interim City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 14th day of September 2021, at City of Graham Municipal Building, North Carolina.

- g. To approve a resolution authorizing application for Loan Assistance from the State of North Carolina for the replacement of the Cooper Road Pump Station.

RESOLUTION BY GOVERNING BODY OF APPLICANT

- WHEREAS,** The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of (state whether a wastewater treatment works, wastewater collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other “green” project), and
- WHEREAS,** The City of Graham has need for and intends to construct a wastewater collection system project described as the replacement of the Cooper Road Pump Station, and
- WHEREAS,** The City of Graham intends to request state loan assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE (GRAHAM CITY COUNCIL) OF THE (CITY OF GRAHAM):

That City of Graham, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Graham to make scheduled repayment of the loan, to withhold from the City of Graham any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Aaron T. Holland, Interim City Manager, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a (loan or grant) to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 14th day of September 2021, at City of Graham Municipal Building, North Carolina.

- h.** To approve a resolution authorizing application for Grant and Loan Assistance from the State of North Carolina for construction of Wastewater Treatment Plant Improvements and Expansion.

RESOLUTION BY GOVERNING BODY OF APPLICANT

WHEREAS, The Federal Clean Water Act Amendments of 1987 and the North Carolina the Water Infrastructure Act of 2005 (NCGS 159G) have authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of (state whether a wastewater treatment works, wastewater collection system, stream restoration, stormwater treatment, drinking water treatment works, and/or drinking water distribution system or other “green” project), and

WHEREAS, The City of Graham has need for and intends to construct a wastewater treatment works project described as the Graham Wastewater Treatment Plant Improvements and Expansion Project and

WHEREAS, The City of Graham intends to request state loan or grant assistance for the project,

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

That the City of Graham, the **Applicant**, will arrange financing for all remaining costs of the project, if approved for a State loan or grant award.

That the **Applicant** will adopt and place into effect on or before completion of the project a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system and the repayment of all principal and interest on the debt.

That the governing body of the **Applicant** agrees to include in the loan agreement a provision authorizing the State Treasurer, upon failure of the City of Graham to make scheduled repayment of the loan, to withhold from the City of Graham any State funds that would otherwise be distributed to the local government unit in an amount sufficient to pay all sums then due and payable to the State as a repayment of the loan.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Aaron Holland, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a loan or grant to aid in the construction of the project described above.

That the **Authorized Official**, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project: to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the **14th day of September 2021**, at Graham, North Carolina.

Upon motion by Councilmember Hall, seconded by Mayor Pro Tem Turner, it was resolved unanimously to approve the foregoing consent agenda.

PUBLIC HEARINGS:

ITEM 1: VOLUNTARY CONTIGUOUS ANNEXTION – PARHAM DRIVE AND WILDWOOD LANE

A public hearing was held to consider an Annexation Ordinance for a voluntary contiguous annexation to extend the corporate limits of the City of Graham of 52-acres located off Parham Drive and Wildwood Lane as referenced by Alamance County tax identification numbers (GPIN 8883202217, 8883216464, 8883219007, 8883312515). (AN2102)

Interim City Manager Aaron Holland explained the petition requesting an extension of water lines and the desire to tie onto the City of Graham's water lines.

Mayor Peterman opened the public hearing to the public. The public hearing was closed and no one requested to speak on the item. Additionally, there were no further questions from the Council.

Upon motion by Councilmember Wiggins, seconded by Mayor Pro Tem Turner, it was resolved to approve the voluntary contiguous annexation to extend the corporate limits of the City of Graham by 52-acres located off Parham Drive and Wildwood Lane. Motion passed 4:1, Noes, Councilmember Talley.

**ANNEXATION ORDINANCE
TO EXTEND THE CORPORATE LIMITS
OF THE
CITY OF GRAHAM, NORTH CAROLINA
FOR 52 ACRES LOCATED OFF PARHAM DRIVE AND WILDWOOD LANE (AN2102)**

WHEREAS, the Graham City Council has been petitioned under G.S. 160A-31 to annex the area described below; and

WHEREAS, the Graham City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question of this annexation was held at City Hall, 201 South Main Street, Graham at 6:00 P.M. on August 10, 2021, after due notice by publication August 26, 2021; and

WHEREAS, the Graham City Council finds that the petition meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Graham, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Graham as of September 30, 2021:

Beginning at an existing buried stone in the recorded eastern margin of Broadway Drive as shown on a map entitled "Luther R. Shoffner" and recorded in Plat Book 68, Page 85 in the Office of the Register of Deeds of Alamance County, N.C., said point being the recorded northwestern property corner of Grantor (now or formerly) Foust Family Properties, LLC as described and recorded in Deed Book 3520, Page 846 and being Lot 2 as shown on a map entitled "T. Howell Foust" and recorded in said Plat Book 62, Page 71 in said Alamance County Registry), said stone also being the recorded southwestern lot corner of Lot 133 as shown on a map entitled "Broad Acres, Section Seven" and recorded in Plat Book 50, Page 5 in said Alamance County Registry; thence, from said point of beginning, along Grantor's recorded northern property line, said southern lot line of said Lot 133, North 68°26'47" East 290.90 feet to a computed point, said point being the recorded southwestern property corner of (now or formerly) Martin L. Shoffner as described and recorded in Deed Book 3440, Page 381 in said Alamance County Registry and also being the recorded southeastern corner of said Lot 133; thence, along said Shoffners western property line and the recorded eastern line of Lots 133, 132A, 90A, 89A and 86A as shown on several maps entitled "Broad Acres, Plat Book 50, Page 5, Plat Book 46, Page 44, Plat Book 23, Page 80 & Plat Book 60, Page 40" in said Alamance County Registry the following seven (7) bearing and distances: 1) North 03°30'29" West 121.69 feet to a point; 2) North 03°31'56" West 110.19 feet to a point; 3) North 01°58'58" East 80.47 feet to a point; 4) North 18°01'03" West 20.92 feet to a point; 5) North 03°21'56" West 100.08 feet to a point; 6) North 02°36'52" West 155.77 feet to a point on the recorded southern margin of Wildwood Drive; 7) thence along the recorded eastern margin of Wildwood Drive North 08°58'27" West 50.49 feet to a point on the recorded northern margin of Wildwood Drive, said point being the recorded northwestern corner of said Martin L. Shoffner and also being a point on the recorded southern property line of (now or formerly) Fields Family Irrevocable Trust, Linnie Fields Jr. & Frances, Trust as described and recorded in Deed Book 2658, Page 823 in said Alamance County Registry; thence, along the recorded northern property line of said Shoffner and the recorded southern property line of said Field Family, with a curve to the right, having a radius of 426.31 feet and a chord bearing and distance of South 63°22'23" East 99.77 feet to a new iron pipe; thence, along the recorded western property line of said Shoffner and recorded eastern property line of said Fields the following three (3) bearing and distances: 1) North 10°01'12" East 195.04 feet to a point; 1) North 63°42'26" West 35.51 feet to a point; 3) North 05°20'12" West 218.32 feet to a new iron pipe, said pipe being the recorded northwestern property corner of said Shoffner, the recorded northeastern property corner of said Fields and pipe also being located on the recorded southern property line of (now or formerly) Michael R. Allen as described and recorded in Deed Book 1336, Page 253 in said Alamance County Registry; thence, along the recorded northern property line of said Shoffner and the recorded southern property line of said Allen the following five (5) bearing and distances: 1) South 87°33'42" East 167.35 feet to a point; 2) South 87°34'11" East 222.16 feet to a point; 3) South 87°30'54" East 701.29 feet to an existing iron pipe; 4) South

88°12'03" East 58.80 feet to an bent existing iron pipe; 5) South 88°06'57" East 160.00 feet to a new iron pipe, said pipe being the recorded northeastern property corner of said Shoffner and a pipe on the recorded southern property line of (now or formerly) Brian Reid as described and recorded in Deed Book 3674, Page 424 in said Alamance County Registry and also being located on the recorded northern lot line of Lot 16 as shown on a map entitled "B.V. May Property" and recorded in Plat Book 1, Page 117 in said Alamance County Registry; thence, with a new proposed property line for said Shoffner (recorded in Deed Book 3440, Page 381 and Deed Book 2974, Page 539) the following five (5) bearing and distances: 1) South 18°17'26" West 510.28 feet to a new iron pipe, said pipe being located on the recorded northern property corner of (now or formerly) Randy C. Williamson & Theresa P. Williamson as described and recorded in Deed Book 3827, Page 810 and also located on the recorded southern property line of said Shoffner (Deed Book 3440, Page 381 in said Alamance County Registry; 2) South 32°07'09" West 404.33 feet to a new iron pipe, said pipe being located on the southern property line of said Williamson and also being located on the recorded northern property line of said Foust Family Properties, LLC; 3) South 25°03'03" West 400.22 feet to a new iron pipe; 4) South 17°47'19" West 268.10 feet to a new iron pipe; 5) South 20°17'47" West 273.29 feet to an existing iron pipe, said pipe being the recorded northwestern property corner of (now or formerly) Jean Monnett Ross as described and recorded in Deed Book 3618, Page 103 and also known as the recorded northwestern lot corner of Lot 1 as shown on a map entitled "Jean Monnett Ross" and recorded in Plat Book 78, Page 59 in said Alamance County Registry; thence, along with the recorded eastern property line of said Foust Family Properties, LLC and the recorded western property line of said Ross South 16°13'38" East 336.58 feet to a computed point, said point being the recorded southwestern property corner of said Ross, one of the recorded southeastern property corners of said Foust Family Properties, LLC and also being one of the recorded northeastern property corner of (now or formerly) Ivey Thomas Foust & ETAL as described and recorded in Deed Book 1583, Page 353 in said Alamance County Registry; thence, along with the recorded southern property line of said Foust Family Properties, LLC and the recorded northern property line of said Ivey Thomas Foust & ETAL the following seven (7) bearing and distances as it meanders and bends along the Little Alamance Creek: 1) South 49°35'52" West 102.11 feet to a point; 2) North 74°54'08" West 405.00 feet to a point; 3) North 56°07'08" West 290.00 feet to a point; 4) South 78°20'52" West 184.00 feet to a point; 5) South 68°32'52" West 325.00 feet to a point; 6) South 82°37'52" West 90.00 feet to a point; 5) North 51°51'33" West 50.13 feet to an existing iron pipe tack, said pipe being the recorded southwestern property corner of said Foust Family Properties, LLC and one of the recorded southeastern property corners of (now or formerly) Martin L. Shoffner as described and recorded in Deed Book 3440, Page 381 in said Alamance County Registry; thence, along the recorded western property line of said Foust Family Properties, LLC and the recorded eastern property line of said Martin L. Shoffner the following five (5) bearing and distances: 1) North 19°52'02" East 666.29 feet to an existing iron pipe; 2) North 19°48'21" East 185.10 feet to an existing iron pipe; 3) North 02°46'16" East 40.69 feet to an existing iron pipe; 4) with a curve to the left, having a radius of 49.40 feet and a chord bearing and distance of North 41°29'22" East 32.35 feet to a new iron pipe; 5) North 19°49'50" East 25.35 feet to the point of beginning, containing an area of 52.172 acres, more or less.

Being all the same property located in the City of Graham, recorded in the Alamance Country Register of Deeds at Plat Book _____, Page _____.

Section 2. Upon and after September 30, 2021, the above-described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Graham and shall be entitled to the same privileges and benefits as other parts of the City of Graham. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Graham shall cause to be recorded in the office of the Register of Deeds of Alamance County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the

annexed territory described in Section 1 above, together with a duly certified copy of this Ordinance. Such a map shall also be delivered to the Alamance County Board of Elections, as required by G.S. 163-288.1.

Adopted this, the 14th day of September 2021.

ITEM 2: REZONING – TRUBY DRIVE

A public hearing had been continued to consider an application by Second Partners, LLC, to rezone approximately 51.79 acres located on Truby Drive from I-1, (Light Industrial) to C-MXR, (Conditional Mixed Use Residential) to allow the construction of 528 apartment units (GPIN 8894453334). *(Continued from the August 10, 2021, City Council Meeting.)* (CR2006) **(Petitioner requested this item be withdrawn)**

Interim City Manager Aaron Holland explained that the petitioner requested that this item be withdrawn.

Mr. Tom Boney, Alamance News, asked if this item was being continued or totally withdrawn. Mayor Peterman stated that it was being totally withdrawn.

Upon motion by Councilmember Hall, seconded by Councilmember Talley, it was resolved unanimously to withdraw the item from consideration.

ITEM 3: REZONING – JIMMIE KERR ROAD

A public hearing had been continued to consider an application by Travers Webb to rezone approximately 11 acres on Jimmie Kerr Road from I-1, (Light Industrial) to R-MF, (Multifamily Residential) to allow for the construction of apartments at a density of 3 to 6 units per acre (GPIN 8894469497 & 8894469816). *(Continued from the August 10, 2021, City Council Meeting.)* (RZ2104)

Interim City Manager Aaron Holland stated that this request had been tabled for several months. He stated that this request was to rezone property from I-1 to R-MF (residential multi-family). He stated that the property was currently vacant and was surrounded by general business and industrial districts, including a hotel, truck stop, packaging facility and the latter two of which signal frequent semi-truck traffic along this portion of Jimmie Kerr Road. He stated that Attorney Lawson Brown was present to represent the petitioner.

Councilmember Talley asked why staff did not support the request.

Interim City Manager Holland explained that staff had suggested that a conditional zoning was a better avenue to take than to move forward than as a straight zoning.

Mayor Peterman opened the public hearing and the following spoke:

Tom Boney, Alamance News, asked if this item had already been voted on.

Mayor Peterman stated it had not been voted on and that Council voted to table this item to the next Council meeting.

Mr. Lawson Brown, Vernon Law Firm, representing Travers Webb, stated that Mr. Webb was unable to attend tonight due to minor surgery. He stated that his son was present tonight should Council have any questions. He stated that the major concern, after conversations with City Staff, was over public utilities (sewer) that was currently not available. He stated that no matter how this property was rezoned it would need sewer services. He stated that the remedy would be to make a request for public sewer with the Town of Haw River and to request the same zoning for the remainder of the property in Haw River city limits. This would allow for the entire 44-acres to be zoned as multi-family. Mr. Brown asked if Council would consider taking action tonight due to the petitioner being under a contract dead-line to purchase the property.

Mr. Brown shared that the Town of Haw River had just approved a rezoning for the Burton Brothers for property adjacent to his clients property. He stated that this property was a prime location for development and that this rezoning was the highest and best use of the property.

Mr. Brown further stated that the City would be protected since this property would not be annexed and you would not have to annex if all the pieces of the puzzle do not come together. The other pieces would be the multi-family zoning so that the entire 44-acres would be available for an apartment community. He stated that the property would allow for 400-500 apartments. The entrance would be immediately across from the new school and that NCDOT would dictate the transportation needs at the appropriate time.

Mr. Brown asked Council to approve the rezoning for the first 10-acres to Multi-family which would allow them to proceed to the Town of Haw River to work towards a water/sewer solution.

Councilmember Talley asked how many apartments were projected to be built.

Mr. Lawson stated 400 were projected.

Councilmember Talley asked the reason for not requesting a conditional rezoning.

Mr. Brown stated that he was just hired last week and that it could be requested as conditional, but if the main concern of Council was to protect Graham from annexation, the City would be protected, due to not being able to provide sewer services. Mr. Brown stated that the goal was to work with the builder with an agreement that was satisfactory to this Council and to the Town of Haw River.

Councilmember Talley voiced concern that there were no Multi-Family zoning around this property. She also voiced concerns about the school, tractor trailers constantly using this road and the condition of the road. She stated there were no walkways and crosswalks. She stated if this was a more well thought out plan she would be in favor.

Mr. Brown stated that there was a contiguous parcel to the northwest zoned Multi-family in Haw River. Again, this is the first step in the process and that all of this could be worked out as we move forward.

Councilmember Wiggins voiced concern if the rezoning was approved and the developer sold this property in the next two months, it needed to go with the understanding that there was no sewer capacity. She stated that if we approve the rezoning, that this property was still not suitable to be developed.

Mr. Brown stated that Mr. Webb would be advised and made clear to any purchaser.

Mayor Peterman asked if a rider should be added to protect the City from any kind of misconception that the City would put water/sewer on the property.

Mr. Brown stated that they would be agreeable to a condition and would record a document to City Attorney Colman's satisfaction that would state the property did not currently have water/sewer and anyone who intends to develop the property would need to come back to the City of Graham to get approval.

Mr. George Webb, IV, 129 Hudson Street, Asheville, NC, stated that he had been dealing with a lot of potential buyers and the first question was water, sewer and traffic. He stated that attaching a rider was a great idea.

Mr. Brown stated for clarification that the number of units would be 350 not 400-500 as previously stated.

The public hearing was closed.

After a brief discussion about how to state the motion to include a rider since this was a straight rezoning and not a conditional rezoning, Council asked that for the record, the following statement by Mr. Brown be made part of the minutes:

Mr. Brown stated that he would prepare a notice that there was no sewer service and present it to the City and if Council was not satisfied then you could always change the zoning back to I-1, but understand that the whole 44-acres would have to be purchased to make this project work and could later work out the sewer issue.

Councilmember Talley reminded Council of the contents in Comprehensive Land Use Plan and that it needed to be considered. She stated that the traffic and safety issues of residential units in the middle of an industrial park was not the proper use of zoning. She stated that she would be much more inclined to move to a conditional rezoning.

Upon motion by Councilmember Talley, seconded by Councilmember Hall, to deny the rezoning request based on the application not being fully consistent with Graham's 2035 Comprehensive Plan, 4.3.1 Land Use Patterns regarding the promotion and development of efficient land use patterns to allow continued quality and efficiency of water systems. Discourage the extension of water service into areas that are not most suitable for development. Also, to include 3.3.5, Safety, provide for pedestrian safety at all street crossings including cross walks and signage and 2.4.2, encourage the reinvestment intensification of existing industrial sites. The motion failed by vote of 2:3; Ayes: Councilmember Talley and Councilmember Hall. Nays: Mayor Peterman, Mayor Pro Tem Turner and Councilmember Wiggins.

Upon motion by Councilmember Wiggins, seconded by Mayor Pro Tem Turner, it was resolved to approve the rezoning request due to the application being consistent with the 2035 Comprehensive Plan and that the action is resemble and within public interest for the following reasons: Strategy 2.3.1, Facilitate Focused Development and Policy 5.1.1, Housing Variety. Motion carried with a vote of 3:2. Ayes: Mayor Peterman, Mayor Pro Tem Turner and Councilmember Wiggins. Nays: Councilmember Talley and Councilmember Hall.

ITEM 4: REZONING – E. GILBREATH STREET

A public hearing had been continued to consider an application by Ben Green Hyconic Holdings LLC, to rezone 38 acres on E. Gilbreath Street from I-1, (Light Industrial) and R-G, (General Residential) to C-MXR, (Conditional Mixed Use Residential) to allow for 453 dwelling units, including 396 apartments and 57 townhomes (GPIN 8883885270, 8883872722, 8883886903). *(Continued from the August 10, 2021, City Council Meeting.)* (CR2101) **(9/3/21-Petitioner request item to be tabled)**

Interim City Manager Aaron Holland stated that the petitioner had requested that consideration of the requested rezoning be continued to the next meeting.

Upon motion by Councilmember Hall, seconded by Councilmember Talley, it was resolved unanimously to table the rezoning request to the October 12, 2021, City Council meeting.

ITEM 5: SPECIAL USE PERMITS – TEXT AMENDMENT TO DEVELOPMENT ORDINANCE

A public hearing had been continued to consider a text amendment to the Development Ordinance: Special Use Permits. Development Ordinance Amendments as recommended by City Council regarding Special Use Permits - Hearings before the Board of Adjustment, Article 4, Division 7 (Sections 10.137 to 10.148). *(Continued from the August 10, 2021, City Council Meeting.)* (AM2102)

Interim City Manager Aaron Holland stated that Planning and Zoning had requested this item be continued to the next Council meeting.

Upon motion by Councilmember Hall, seconded by Councilmember Talley, it was resolved unanimously to table the request for a text amendment regarding Special Use Permits to the October 12, 2021, City Council meeting

PUBLIC COMMENT PERIOD

Jim Albright, 404 SW Maynard Road, Cary, NC, Coralys Pichardo Nunez, Graham, NC, and Sophia (Student) shared the following about observing National Hispanic Heritage Month to be held on September 15 to October 15, 2021:

Each year, Americans observe National Hispanic Heritage Month from September 15th to October 15th, by celebrating the histories, cultures and contributions of American residents whose ancestors came from Spain, Mexico, the Caribbean and Central and South America.

The observation started in 1968 as Hispanic Heritage Week under President Lyndon Johnson and was expanded by President Ronald Reagan in 1988 to cover a 30-day period starting on September 15th and ending on October 15th. It was enacted into law on August 17th, 1988.

The day of September 15th is significant because it is the anniversary of independence for Latin American countries Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. In addition, Mexico and Chile

celebrate their independence days on September 16 and September 18, respectively. Also, Columbus Day or Día de la Raza, which is October 12th, falls within this 30-day period.

Alamance Citizens for A Drug-Free Community, Alamance Arts and Glen Raven are pleased to announce we will be sponsoring the First Annual Alamance Hispanic Heritage Festival on Saturday, September 25 at the Captain White House from 12 Noon until 8:00 PM. This event is aimed at celebrating Alamance County residents, who have come here from various Latin American countries, which is approximately 13.1 % of our population. Admission is free. There will be food, entertainment, informational resource tables, arts and crafts, vendors, a parade and even a mechanical bull. Please come if you can!

NOTE: 48% of students at Graham High School are Hispanic.

Sophia, read the prepared statement above about the Hispanic Heritage day in Spanish.

Carlos Vuilera, 1700 Rooly Drive, Burlington, NC, teacher at Cummings ABSS Newcomers E-Specialists. Mr. Vuilera had been working over the past year to develop a newcomers program at ABSS. This program was to help students who speak other languages, and Sophia had been through this program. Sophia started the program almost two years ago, and had graduated from the program. Mr. Vuilera explained that he was first hired at Ray Street to implement this program. Mr. Vuilera explained that he understood that most of the Council and those attending didn't understand what Sophia read in Spanish. He explained this is how students in the newcomers program feel when they sit in a classroom, not understanding completely the new second language they have to learn. He thanked Jim Albright, and explained that we have diversity here in our City which brings new culture and new things to our community. Mr. Vuilera explained his vision for the future to have a newcomer's center for the people and students to have a central location to gather.

Keith Westbrooks, 605 Track Wilder Ct, Graham, NC, spoke in reference to littering in along the front of Graham High School. Before discussing the littering issue, Mr. Westbrooks thanked Mr. Holland, Interim City Manager, for requesting City staff to trim overhanging limbs that were a hazard. Mr. Westbrooks was impressed how quickly Mr. Holland was able to get the limbs trimmed after unsuccessful attempts with North Carolina DOT. Mr. Westbrook asked Council what their position on litter as a City would be and if they had a solution. Mr. Westbrook suggested the City put up signs where littering occurs often.

CITY COUNCIL COMMENTS

Mayor Pro Temp Chip Turner thanked everyone who helped care for him and prayed for his recovery.

Councilmember Tally asked if the West Elm pipe project was still underway and what date would it be finished. Staff confirmed with Tonya Mann, Public Utilities Director, that it was still underway. Mr. Holland said he would ask Mr. Robertson, Public Works Director to confirm a date and get back with Council Member Tally.

Councilmember Tally shared upcoming events; Dockdogs event that would be held on September 17 through September 19, 2021. This event was a National Dog Agility Competition. It is the largest fundraiser for the local Veterans group in Alamance County called ALCOVETS. Councilmember Tally encouraged everyone to come out to the event. Bands are prepared to play both Friday and Saturday. Councilmember

Tally also informed everyone about a car show for the Family Abuse Services that would be on October 9, 2021.

Councilmember Tally asked for input from Council on how to best memorialize Jeanne Robertson due to her popularity locally and beyond. Councilmember Tally suggested using the next naming opportunity or some kind of signage (Graham Home of Jeanne Robertson). Councilmember Tally also mentioned Jane Albright, a local celebrity, and wanting to do something for her as well.

Mayor Peterman agreed that something should be done, and we should honor our local people who have made a national impact.

Councilmember Wiggins mentioned that the Historical Museum was working on some type of memorial for both of them. She mentioned that Jane Albright had been inducted into the Sports Hall of Fame, which would be used in the museum.

CITY STAFF COMMENTS

Mary Faucette, Economic Development Coordinator, wanted to commend the first ever Annual 9/11 Commemorative event, that was collaborated between the City's Fire, Police, and Recreation Departments. There were over 200 participants and there were positive comments received. She also shared that the Recreation Department would be holding their "Movies in the Park" in the evenings all month long.

Fire Chief Tommy Cole shared Swepsonville's Fire Chief Tim Allbritton's memorial service; Friday night at Bethel Baptist. The burial will be at Graham Memorial on Saturday at 11:00 am.

Aaron Holland, Interim City Manager, wanted to thank Mr. Westbrook for the kind words, but he could not take credit for the quick action because Graham's staff was second to none.

Mr. Holland welcomed the City's new Planning Director, Justin Snyder and stated that Mr. Snyder had quite a bit of experience and staff was glad to have him on the team. Mr. Holland mentioned discussions with Council regarding staff retention. He shared that with the economy like it is, recruitment and retention were difficult tasks for all local government. He suggested that Council allow staff to look into ARP funds for essential workers and that more information would be provided to Council.

ADJOURN:

Upon motion Councilmember Hall, seconded by Councilmember Talley, and it resolved unanimously to adjourn. (7:17pm)

Renee M. Ward, CMC
Interim City Clerk



STAFF REPORT

SUBJECT:	ENGINEERING CONTRACT
PREPARED BY:	JULIANNE CORDON, FINANCE OFFICER

REQUESTED ACTION:

Approve AWCK Engineering Contract #2 for the Division of Water Infrastructure funded Boyd Creek Pump Station replacement.

BACKGROUND/SUMMARY:

The Boyd Creek Pump Station Project is actually two projects in one. The first, and most significant, being the replacement of the Boyd Creek Pump Station that was originally constructed in 1959. The pump station serves a significant amount of wastewater generated by the northwest section of the City. The age of the pump station, its susceptibility to flooding and the inability to find replacement parts serves as a great risk to the City's collection system. The second, and smaller part of the project, is an upgrade to the Back Creek #2 pump station. It is proposed to replace the pumps, guide rails, access hatch and blower. Project also includes a standby generator, shelter, and a platform to access the station control equipment.

The City is required to engage in a qualification process to select an engineering firm for projects of this size as opposed to using the standing engineering contract we have with AWCK. The City received a single response from AWCK. The original engineering contract was for the 2015 design for 700 GPM. In 2017, the City applied for and was funded for a 1000 GPM pump station that included additional design elements and a larger project. As a result, the engineering fees for the 2017 project were more than the 2015 contract. The actual fees generated for the contract are fully reimbursable for the project, but DWI requires an updated signed and approved contract.

FISCAL IMPACT:

The engineering costs for the pump station projects are \$340,500, which are fully reimbursable through the NCDEQ State loan and Water Infrastructure Fund grant.

STAFF RECOMMENDATION:

Approval.

SUGGESTED MOTION(S):

I move we approve engineering contract #2 for Boyd Creek Pump Station Projects to Alley, Williams, Carmen & King.



Exhibit B.

Boyd Creek San. Sewer Lift Station Replacement - Estimate of Probable Cost

Construction	Estimated Cost
New 18" Gravity Sewer and 10" Force Main	\$ 80,000.00
Mobilization, Grading , Site Work, and Access Road	\$ 200,000.00
700 GPM Pump Station (2 Pumps), piping and precast structures	\$ 625,000.00
Shelter and Electrical	\$ 150,000.00
Relocate Standby Generator	\$ 20,000.00
Select Backfill	\$ 80,000.00
Rock Excavation	\$ 100,000.00
Erosion Control, Seeding, Mulching	\$ 50,000.00
Automatic Bar Screen in Precast vault and Compactor	\$ 200,000.00
New Water Service Line to Pump Station	\$ 70,000.00
Sub-Total	\$ 1,575,000.00
	\$ -
Engineering	\$ -
	\$ -
Final Design	\$ 120,000.00
Bidding Phase	\$ 10,000.00
Construction Phase	\$ 127,500.00
Operations Phase	\$ 6,000.00
Reimbursable Items	\$ 1,500.00
Sub-Total	\$ 265,000.00
	\$ -
Contingency	\$ 160,000.00
	\$ -
	\$ -
Project Total	\$ 2,000,000.00

**STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

STATE OF NORTH CAROLINA

COUNTY OF ALAMANCE

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by and between the **City of Graham**, a North Carolina Municipal Corporation (hereinafter called the "**OWNER**") and **Alley, Williams, Carmen & King, Inc.**, a North Carolina Corporation located in Burlington, North Carolina (hereinafter called the "**ENGINEER**").

WHEREAS, the OWNER intends to secure engineering services related to the design and construction of **Sewer Improvements that include the Replacement of Boyd Creek Pump Station with a new Pump Station and Bar Screen via State Reserve Funding (project E-SRP-W-17-0054)**; hereinafter referred to as the **Project**, and

WHEREAS, the OWNER and ENGINEER in consideration of their mutual covenants, herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1. General

1.1.1. ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2. Engineering/Environmental Report Preparation

1.2.1. Prepare and submit an Engineering Report and separate Environmental Report for review and approval by the appropriate funding agency. These documents shall be prepared in accordance with criteria provided by the funding agency.

1.2.2. Provide responses to comments and revised documents as required by funding agency to obtain separate Engineering Report and Environmental Report Approvals.

1.3. Engineering Design

1.3.1. On the basis of the accepted previously prepared engineering report and environmental documents and the opinion of probable total project costs, prepare for the incorporation in the Contract Documents final drawings to show the general scope, extent and character of the work to be furnished and performed by Contractor(s) (hereinafter call "Drawings") and specifications.

1.3.2. Advise OWNER of any adjustments to the latest opinion of probable Total Project Costs caused by changes in general scope, extent or character or design requirements of the

Project or Construction Costs. Furnish to OWNER a revised opinion of probable Total Project Costs based on the Drawings and Specifications.

- 1.3.3. Prepare for review and approval by OWNER, its legal counsel and other advisors contract agreement forms, general conditions and supplementary conditions and (where appropriate) bid forms, invitations to bid and instructions to bidders and assist in the preparation of other related documents.
- 1.3.4. Furnish copies of the above documents, the Drawings and Specifications and present and review them in person with OWNER or representative.
- 1.3.5. Furnish sewer easement maps for recording (if needed), including all surveying and design relating thereto. Assist owner in acquiring easements (if needed) as directed by Owner.
- 1.3.6. Assist OWNER in advertising for and obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences and receive and process deposits for Bidding Documents.
- 1.3.7. Issue addenda as appropriate to interpret, clarify or expand the Bidding Documents.
- 1.3.8. Consult with and advise OWNER as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the Bidding Documents.
- 1.3.9. Consult with OWNER concerning and determine the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 1.3.10. Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services.

1.4. Permitting

- 1.4.1. Provide technical criteria, written descriptions and design data for OWNER's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project.
- 1.4.2. Aid the OWNER in obtaining all necessary permits from N.C. Department of Environment and Natural Resources.
- 1.4.3. Develop an Erosion Control Plan and aid the OWNER in obtaining the Sedimentation and Erosion Control Permit from N.C. Dept. of Environment and Natural Resources.
- 1.4.4. Advise OWNER if additional data or services are necessary and assist the OWNER in obtaining such data or services. This may include the identification of regulatory wetlands, the preparation of environmental permits, and the preparation of storm water permits.

1.5. Construction Administration / Inspection

- 1.5.1. General Administration of Construction Contract. ENGINEER shall consult with and advise OWNER and act as OWNER's representative as provided in the Standard General Conditions. The extent and limitations of the duties, responsibilities and authority of ENGINEER as assigned in said Standard General Conditions shall not be modified, except as ENGINEER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through ENGINEER who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.
- 1.5.2. Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while work is in progress.
 - 1.5.2.1. ENGINEER shall make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor(s) work. In addition, ENGINEER shall provide the services of an Inspector (and assistants as agreed) at the site to assist ENGINEER and to provide necessary observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work.
 - 1.5.2.2. The Inspector (and any assistants) will be ENGINEER'S agent or employee and under ENGINEER'S supervision.
 - 1.5.2.3. The purpose of ENGINEER's visits to and representation by the Inspector (and assistants, if any) at the site will be to enable ENGINEER to determine if the Contractor's work is in substantial compliance with the Contract Documents. On the other hand, ENGINEER shall not, during such visits or as a result of such observations of Contractor(s)' work have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract documents.
- 1.5.3. Defective Work. During such visits and on the basis of such observations, ENGINEER may disapprove of or reject Contractor(s)' work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms to the Contract Documents or that the defective work will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.
- 1.5.4. Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare work directive changes and change orders as required.
- 1.5.5. Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions), samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the reviews and approvals or other action shall

not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.

1.5.6. Substitutes. ENGINEER shall evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s), but subject to the provision of paragraph 2.2.2.

1.5.6.1. Inspections and Tests. ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testing, and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents.)

1.5.6.2. Disputes between OWNER and Contractor. ENGINEER shall act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work. ENGINEER shall not be liable for the results of any such interpretations or decisions rendered in good faith.

1.5.6.3. Applications for Payment. Based on ENGINEER's on-site observations as an experienced and qualified design professional, on information provided by the Inspector and on review of applications for payment and the accompanying data and schedules:

1.5.6.4. ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, and that, to the best of the ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon the Contract Documents and to any other qualifications stated in the recommendation). In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).

1.5.6.5. By recommending any payment ENGINEER will not thereby be deemed to have represented that exhaustive, continuous or detailed reviews or examinations have been made by ENGINEER to check the quality or quantity of Contractor(s)' work as it is furnished and performed beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. ENGINEER's review of Contractor(s)' work for the purposes of recommending payments will not impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or Contractor(s)' compliance with laws, rules, regulations, ordinances, codes or orders applicable to their furnishing and performing the work. It will also not impose responsibility of ENGINEER to make any examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that there may

not be other matters at issue between OWNER and CONTRACTOR that might affect the amount that should be paid.

- 1.5.7. Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s)' in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals the results certified indicate compliance with, the Contract Documents(s); and shall transmit them to OWNER with written comments.
- 1.5.8. Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor(s)' and may give written notice to OWNER and the Contractor(s)' that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice will be subject to the limitations expressed in paragraph 1.4.6.5.
- 1.5.9. Construction Staking. Engineer shall provide construction staking.
- 1.5.10. Provide assistance in the closing of any financial or related transaction for the Project.
- 1.5.11. Provide assistance in connection with the refining and adjusting of any equipment or system.
- 1.5.12. Prepare a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s)' to ENGINEER and which ENGINEER considers significant.
- 1.5.13. In company with OWNER, visit the Project to observe any apparent defects in the completed construction, assist OWNER in consultations and discussions with Contractor(s)' concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective work.
- 1.5.14. Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor or supplier, or any of the Contractor(s)' or subcontractor(s)' or supplier(s)' agents or employees or any other persons (except ENGINEER's own employees and agents) at the site or otherwise furnishing or performing any of the Contractor(s)' work; however, nothing contained in paragraphs 1.5.1 through 1.5.13 inclusive, shall be construed to release ENGINEER from liability for failure to properly perform duties and responsibilities assumed by ENGINEER in the Contract Documents.

1.6. Grant/Loan Administration

- 1.6.1. Prepare Project Bid Information package in conformance with funding agency requirements. Package shall include Engineer's recommendation of award, resolution of tentative award for approval by the City's Governing Board, Bid Tabulation, Proof of Advertisement, executed MBE/WBE documents of low bidder.
- 1.6.2. Prepare and submit any change orders to funding agency for approval.

- 1.6.3. Prepare regular reimbursement requests to funding agency on behalf of Owner. Reimbursement requests shall not be prepared more than once per month.
- 1.6.4. Ensure compliance with funding agency requirements and coordinate with funding agency for changes to approved plans or project scope.
- 1.6.5. Provide project closeout documents in conformance with funding agency checklist.
- 1.6.6. Assist Owner with preparing Owner's Certification of Completion.
- 1.6.7. Provide Engineer's Certification to funding agency at project completion.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 Services Requiring Authorization in Advance.

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1. through 2.1.12., inclusive. These services are not included as part of Basic Services and these will be paid for by OWNER as indicated in Section 5.

- 2.1.1. Preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- 2.1.2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3. Services resulting from significant changes in the general scope, extent or character of the Project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.
- 2.1.4. Providing renderings or models for OWNER's use.
- 2.1.5. Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.
- 2.1.6. Investigations and studies involving, but not limited to, detailed consideration of operations, maintenance and overhead expenses; providing value engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.
- 2.1.7. Furnishing services of independent professional associates and consultants for other than Basic Services (which include, but are not limited to, customary civil, structural, mechanical and electrical engineering and customary architectural design incidental

thereto). This section includes the services from professionals identifying regulatory wetlands and submitting permits relating thereto.

- 2.1.8. Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.
- 2.1.9. Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- 2.1.10. Preparation of operating, maintenance and staffing manuals.
- 2.1.11. Preparing to serve or serving as a consultant or witness for OWNER in any litigation involving the Project.
- 2.1.12. Additional services in connection with the Project, including services which are to be furnished by OWNER in accordance with Article 3, and services not otherwise provided for in this Agreement.

2.2. Required Additional Services.

When required by the Contract Documents in circumstances beyond ENGINEER's control, ENGINEER shall furnish or obtain from others, as circumstances require during construction and without waiting for specific authorization from OWNER, Additional Services of the types listed in paragraphs 2.2.1. through 2.2.6., inclusive. These services are not included as part of Basic Services. ENGINEER shall advise OWNER promptly after starting any such additional services which will be paid for by OWNER as indicated in Section 5.

- 2.2.1. Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 2.2.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.
- 2.2.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.
- 2.2.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.
- 2.2.5. Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the Project by OWNER prior to Substantial Completion.
- 2.2.6. Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 – OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER.

- 3.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.
- 3.2. Provide all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.3. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 3.4. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 3.5. Examine all studies, reports, sketches, drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deem appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.
- 3.6. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services and OWNER may require or Engineer may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s)', such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s)' are complying with any law, rule, regulation, ordinance, code or other applicable to their furnishing and performing the work.
- 3.7. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the affect thereof on the duties and responsibilities of ENGINEER and the Inspector (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.
- 3.8. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.5 through 3.7, inclusive) so that ENGINEER may make the necessary findings to support opinions of probable total project cost.
- 3.9. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.
- 3.10. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work of any Contractor.

- 3.11. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 2.1. of this Agreement or other services as required.
- 3.12. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 – PERIODS OF SERVICE

- 4.1 The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed upon in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto.
- 4.2. Upon authorization from OWNER, ENGINEER shall proceed with the performance of the service called for in the Engineering Design Phase; and shall deliver Contract Documents and an opinion of probable Total Project Costs for all work of Contractor(s) on the Project.
- 4.3. ENGINEER's services under the Engineering Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the Project.
- 4.4. After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Engineering Design Phase documentation including the most recent opinion of probable Total Project Costs and upon authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s).
- 4.5. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written recommendation by Engineer of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.
- 4.6. If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- 4.7. If OWNER fails to give prompt authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Administration / Inspection Phase has not commenced within 180 calendar days after completion of the Engineering Design Phase, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.
- 4.8. In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the

Engineering Design Phase, develop a schedule for performance of ENGINEER's services during the Engineering Design, Permitting, Construction Administration / Inspection and Grant/Loan Administration Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts.

SECTION 5 – PAYMENTS TO THE ENGINEER

5.1 Methods of Payment for Services and Expenses of ENGINEER.

5.1.1. For all services of ENGINEER under this agreement, payment will be made on an hourly rate basis in accordance with the Hourly Rate Charge Schedule attached hereto. The following is an estimate of fees anticipated under this agreement:

a. Engineering/Environmental Report Preparation	\$ 30,000.00
b. Engineering Design	\$ 152,500.00
c. Permitting	\$ 5,000.00
d. Construction Administration / Inspection	\$ 126,000.00
e. Grant/Loan Administration	\$ 25,000.00
f. Reimbursable items	\$ 2,000.00
TOTAL ESTIMATED FEE	\$ 340,500.00

5.1.2. For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 on an hourly rate basis in accordance with the Hourly Rate Charge Schedule or a mutually agreed to price.

5.1.3. For Reimbursable Expenses. In addition to payments provided for in paragraph 5.1.1, OWNER shall pay ENGINEER the actual costs (except where specifically provided otherwise) of all Reimbursable Expenses incurred in connection with all Basic and Additional Services beyond those estimated in 5.1.1.f.

5.1.4. The terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4.

5.2. Times of Payments.

5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.3. Other Provisions Concerning Payments.

5.3.1. In the event of termination by OWNER under paragraph 7.1 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants

employed by ENGINEER to render Basic Services, and paid for services rendered during that phase on the basis of ENGINEER's Salary Costs times a factor of 2.0 for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project. In the event of any such termination, ENGINEER will be paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

- 5.3.2. Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to OWNER at cost on request prior to final payment for ENGINEER's services.

5.4. Definitions.

- 5.4.1. The Salary Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay and other group benefits.
- 5.4.2. Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants directly or indirectly in connection with the Project, such as expenses for: obtaining bids or proposals from Contractor(s); reproduction of reports, Drawings, Specifications, Bidding Documents and similar Project-related items in addition to those required under Section 1; and if authorized in advance by OWNER, overtime work requiring higher than regular rates. In addition, if authorized in advance by OWNER, Reimbursable Expenses will also include expenses incurred for computer time and other highly specialized equipment, including an appropriate charge for previously established programs and expenses of photographic production techniques times a factor of 1.10.

SECTION 6 – CONSTRUCTION COST AND OPINIONS OF COST

6.1 Construction Cost.

- 6.1.1. The construction cost of the entire Project (herein referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to paragraphs 3.5 through 3.7, inclusive.

6.2. Opinions of Cost.

- 6.2.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of

ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.6.

6.2.2. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement as a condition thereto, the following will apply:

6.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project or Construction Costs in excess of the then established cost limit will constitute a corresponding revision in the Construction Cost limit to the extent indicated in such revised opinion.

SECTION 7 - OTHER

7.1 Termination

7.1.1. The obligation to provide further services under this Agreement may be terminated:

7.1.1.1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

7.1.1.2. Upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER'S responsibilities as a licensed professional; or

7.1.1.3. Upon seven days written notice if the ENGINEER'S services for the Project are delayed or suspended for more than ninety days for reasons beyond ENGINEER'S control.

7.1.1.4. ENGINEER shall have no liability to OWNER on account of such termination.

7.1.1.5. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days or receipt thereof; provided that if and to the extent such substantial failure cannot be reasonably cured with such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

7.1.1.6. *For convenience*, by OWNER effective upon the receipt of notice by ENGINEER.

7.1.2. The terminating party under paragraphs 7.1 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise

be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

7.2. ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

7.3. Controlling Law.

7.3.1. This agreement is to be governed by the law of the STATE OF NORTH CAROLINA.

7.4. Successors and Assigns.

7.4.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 7.4.2. the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.4.2. Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.4.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

7.5. Disputes.

7.5.1. All unresolved claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by the appropriate division of the General Court of Justice unless alternative resolution procedures are mutually agreed to between the Parties.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER:

ENGINEER:

Aaron Holland
Interim City Manager

WITNESS:

Joshua S. Johnson
Vice-President

WITNESS:

Troy S. King, Corporate Secretary



STAFF REPORT

SUBJECT:	ACKNOWLEDGEMENT OF ADMINISTRATIVE EDITS TO THE ORDINANCE TO CORRECT SPELLING, PUNCTUATION, AND OTHER NON-SUBSTANTIVE CHANGES PURSUANT TO SECTIONS 10.4 (A) AND (B) OF THE DEVELOPMENT ORDINANCE.
PREPARED BY:	JUSTIN SNYDER, PLANNING DIRECTOR

REQUESTED ACTION:

Acknowledge the corrections made by staff.

BACKGROUND/SUMMARY:

Staff identified numerous issues with grammar, spelling, punctuation, numbering, capitalization, and other non-substantive changes that needed to be made in the Development Ordinance. By making these changes, the document will appear more professional, and it will be more consistent. These changes are non-substantive and do not change the meaning of any of the Ordinance. The changes are tracked in the agenda packet and are not shown herein due to the length of over 200 pages of changes.

FISCAL IMPACT:

N/A

STAFF RECOMMENDATION:

Approval.

Suggested Motion(s):

1. I move we acknowledge the administrative, non-substantive changes to the Development Ordinance pursuant to Sections 10.4 (A) and (B) of the Development Ordinance.

Page 33 of 58

SUBJECT: Disconnection Policy for Delinquent Sewer Only Accounts	EFFECTIVE DATE:	PAGE 2 OF 2	NO. <i>July 1, 2021</i>
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4. If a shut off valve is not already installed, Utility Department will undertake installation, including requesting line locate.
5. Prior to actual installation, Utility Department will seek confirmation from Billing Clerk that account is still in arrears, and that no payment plan has been established. Notification of shut off shall be provided to Billing Clerk, Utility Director, City Engineer and Alamance County Environmental Health.
6. Utility Department crew disconnects sewer and leave door hanger warning that sewer is plugged. Utility Department may use a subcontractor at City's discretion.
7. Billing staff creates special condition note on customer account that sewer is stopped along with stop date. Utility Department notifies Alamance County Environmental Health and City Engineer that sewer has been cutoff through email.
8. If past due bills are not paid within five business days, Billing Staff sends service order to Utility Department to inspect site. They are to note and report on service request any sign of sewage spill. Report on status is to be provided through email to Billing staff, Alamance County Environmental Health, and City Engineer. If property appears vacant, Billing Clerk is to close tenant account and put in owner's name. If it's already in owner's name, contact Collections Division for further measures as appropriate.
9. When account paid or payment plan set up, Billing staff prepare service order for Utility Department to open valve.
10. If property continues to be occupied, pursue civil penalties through code enforcement and collections through small claims and/or debt set off. Alamance County Environmental Health and City Engineer are to be contacted for health department violations and stormwater violations.

SUGGESTED MOTION(S):

I move to approve the Disconnection Policy for Delinquent Sewer Only Accounts.



STAFF REPORT

SUBJECT:	AWARD CONTRACT FOR FIRE STATION DESIGN SERVICES
PREPARED BY:	AARON HOLLAND, INTERIM CITY MANAGER

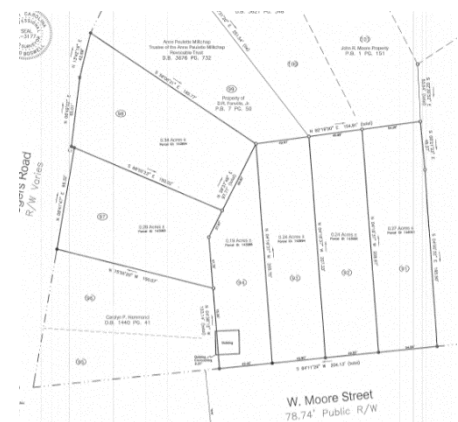
REQUESTED ACTION:

Award contract to Stewart-Cooper-Newell Architects for the design services for the proposed fire station.

BACKGROUND/SUMMARY:

The City of Graham Fire Department recently solicited letters of interest from qualified Architectural Firms to perform professional services including the development of a concept plan, preparation of architectural plans, site plans, surveying, specifications and related documents and construction administration services for a new Fire Station that's to be located on W. Moore Street.

A total of 5 firms submitted a response and select firms were provided an opportunity to present a more detailed scope of work. Based on factors including experience and approach, the firm of Stewart-Cooper-Newell Architects have been recommended by staff to provide the design services for the project.



FISCAL IMPACT:

The City Council approved a budget amount of \$275,000 for FY 21-22 for the design of the project.

STAFF RECOMMENDATION:

Approval. Stewart-Cooper-Newell Architects are a highly reputable firm with extensive experience in design of public safety buildings.

SUGGESTED MOTION(S):

I move we authorize the City Manager and City Attorney to effectuate a contract with Stewart-Cooper-Newell Architects for the designs services for the proposed fire station project.



Stewart · Cooper · Newell Architects

October 5, 2021

Chief Tommy Cole
Graham Fire Dept.
City of Graham
P.O. Box 357
Graham, NC 27253

Re: Design Services Proposal for:
Programming, Conceptual, and Schematic Design of a New Fire Station

Dear Chief Cole,

Thank you for requesting a proposal from Stewart-Cooper-Newell Architects for this exciting project. As you know, we specialize in the study, planning, and design of fire stations and public safety facilities all across the nation, but especially here in our home region of the Carolinas.

We are proposing providing the requested design services in two or more specific phases. The first phase would include Programming, Conceptual, and Schematic design of the new station. The purpose of breaking out this first phase of design is to better determine the exact scope of the project. In other words, this first phase will allow the City to know very specifically the total space needs, along with developed and rendered site plans, floor plans, and exterior elevations of the desired station. Just as important as developing the above documents and drawings, the Schematic design will also include an opinion of probable construction cost for the station cost. Therefore, at the end of this first proposed phase, the City will have a much clearer idea of the project scope and cost.

After the City approves the design and estimates established by this first phase, we can then offer a better, definitive fixed fee proposal for completing the remainder of all design services, through Construction Administration.

To develop our proposed fee for this first design phase, we are using the preliminary projected station scope outlined in the City's RFQ for design services, which estimates a station size of up to 12,000 square feet.

PHASE 1 SCHEMATIC DESIGN FEE PROPOSAL:

Base Lump-Sum Fee: \$76,800, plus travel reimbursements

This proposed fee is based on a scope of the station project with a current estimated size of 10,000 SF to 12,000 SF.

After we perform this first design phase, we will credit the appropriate portions of the fee paid towards the remainder of the project, in the upcoming proposal for the remaining design phases.



If this proposal is acceptable, we will be happy to incorporate it into the appropriate AIA agreement for your review.

We look forward to working with you on this important project. Please let me know if you have any questions regarding this proposal or would like any additional information.

Sincerely,

Ken Newell

Ken Newell, AIA, LEED-AP BD+C

N/Projects/JP/Graham FD/Graham FD SD Prop 100521.doc



CITY of GRAHAM

POLICY STATEMENT	CREATED: <i>September 22, 2021</i>
SUBJECT: Sanitary Sewer Permitting	PAGE 1 OF 2
	EFFECTIVE:
	SUPERSEDES: N/A
	PREPARED BY: Josh Johnson, City Engineer
	ADOPTED BY Council: DATE:

PURPOSE

The City of Graham's growth is substantial enough that permitting of new wastewater connections is limiting available growth to the City's collection system. This in turn, is limiting growth within the City. North Carolina law, administered by NC DEQ, requires specific wastewater flows for specific uses. In many cases these permitted flows are substantially higher than the wastewater actually produced when the project is completed. This is especially true for residential permitting where the permitted flows are 120 gallons per day for a bedroom, which equals 480 gallons per day for a 4 bedroom home. The actual flow produced is approximately 220 gallons per day for a 4 bedroom home.

This policy seeks to implement strategies to limit the accumulation of Paper Flow (wastewater permitted at State mandated flows per bedroom which is approximately 2 times higher than when on line/tributary) which impacts available wastewater treatment and pump station capacity. The intent of the policy is not to slow growth but to maintain capacity for additional projects. Strategies will include the following items.

- A. Wastewater Permitting Implementation.
- B. Plan review and Approval Process.
- C. Service Prioritization and Wastewater Reservation.

GENERAL

1. Applicability: This policy applies to all development prior to and after adoption of this policy.
2. The following are made effective for residential development approved prior to the adoption of this policy.
 - A. Permitting wastewater for multiple phases of a multi-phased residential project at one time will not be allowed.
 - B. Permitting wastewater for additional phases of residential development may be done once a final plat has been approved for the current phase provided that the City Engineer approves the number of lots being platted.
 - C. Sub-phasing of larger phases of residential development once the wastewater is permitted will not be allowed (permit only what the developer intends to plat as a phase).

3. The following strategies are made effective for newly approved residential development after the adoption of this policy.
 - a. Permitting wastewater for multiple phases of a multi-phased project at one time will not be allowed.
 - b. Permitting wastewater for additional phases of development may be done once a final plat has been recorded and construction starts for 50% of the residential units has occurred.
 - c. Sub-phasing of larger phases once the wastewater is permitted will not be allowed (permit only what the developer intends to plat as a phase).
4. The following strategies are made effective for plan review and approval process.
 - a. Prior to moving forward through the plan review and approval process, proposed major sewer users will require review as to the City's ability to provide needed services beyond and including wastewater. Major sewer users are defined as users that will create 100,000 gallons per day per the NC DEQ 2T Rules when fully built out.
 - b. The City may limit development and sewer capacity in areas where paper flow and existing flow combine to exceed 90% of the permitted downstream sewer facilities.
 - c. City plans to begin
5. Other Items
 - A. Policy will be explained and distributed to developers.
 - B. Success of new strategies will be reviewed on an annual basis.
 - C. Policy is subject to change with Council approval.
 - D. Complete a flow reduction study for State review over next two years.

SUGGESTED MOTION(S):

I move to approve the Sanitary Sewer Permitting Policy.



City of Graham

POLICY STATEMENT	CREATED: <i>July 1, 2021</i>
SUBJECT: WATER AND WASTEWATER SYSTEM EXTENSION AND CONNECTION POLICIES	PAGE 1 OF 3
	EFFECTIVE:
	SUPERSEDES: Existing Interpretation.
	PREPARED BY: Josh Johnson, City Engineer
	ADOPTED BY BOARD: DATE:

GENERAL POLICY STATEMENT - EXTENSIONS:

The intent of the following policy is to provide a mechanism by which the City of Graham can plan and extend its water and wastewater systems to serve the needs of the citizens of Graham as well as those who would desire to connect to the City's water and wastewater system. This policy is intended to comply with City Ordinances and provide interpretation as needed.

- A. Extensions will be made to serve the areas in the Corporate Limits, Extraterritorial Zoning Jurisdiction and other areas that may be approved by the Graham City Council.
- B. The Developer of a parcel of land is required by the City to construct all on-site water and/or wastewater facilities and to provide connection of the water and wastewater facilities in its development to the existing utility system of the City. All public facilities will become the property of the City upon completion and acceptance by the City. Public facilities shall be installed per City standards.
- C. The City Council has the right to approve or deny any proposed connection or extension to its water or wastewater system based on the City's best interest.
- D. The Developer/Owner shall petition the City for annexation of its property if such property is outside the corporate limits as a condition for the Developer/Owner to connect to the City's water and/or wastewater system. The City Council has the right to approve or deny any annexation request based on the City's best interest.
- E. Water extensions having the ability to further extended, in the opinion of the City, must be constructed along the entire street frontage of the property. Sewer extensions shall be extended to the uppermost portion of the property, following the natural terrain of the property, to allow adjacent properties to access the installed

sewer. In some cases, water and sewer extensions may be required to multiple adjoining properties.

F. Individual water and sewer service connections shall not cross property lines unless approved by the City Engineer and Utility Director.

G. The extension of water and/or wastewater systems shall be accomplished by one or more of the following methods as recommended by the City Manager and approved by the City Council:

1. **DEVELOPER FUNDED:** This method shall be applicable where the developer pays the entire cost for the water and sewer extensions. Facilities that are to become public facilities installed under this method shall comply with all City standards. The City has the right to approve developer funded private connections and water and sewer extensions on a case by case basis.
2. **DEVELOPER FUNDED - OVERSIZE REIMBURSEMENT:** Under this method the Developer shall be responsible for the full cost of installing water and /or wastewater facilities within its own properties and for the connection of its system to the City's existing utility system. The City shall share in the cost of constructing oversized facilities when larger sizes are required to serve other tracts outside of the tract being developed.

City reimbursement for developer funded facilities shall be made for the difference in cost between facilities required for the development and oversized facilities required by the City of Graham. In no instance shall the City of Graham reimburse for water or wastewater lines eight (8) inches or less in size. Procedures for preparing documentation for oversizing reimbursement is found in the Policy Statement relating to Oversize Reimbursement Requests.

3. **DEVELOPER FUNDED – CITY INCENTIVIZED:** Under this method the City may participate based upon the City's Water and Sewer Master Plan. This method is intended to encourage development of priority water and/or sewer lines that the City has previously identified on a priority infrastructure map. The City has the right, but is not obligated, to approve developer funded private connections and water and sewer extensions on a case by case basis.
4. **OTHER:** Certain water and sewer extensions may be made by the City, County, State or Federal Agencies (or a combination thereof) related to economic or community development projects. These projects are approved and funded on a case by case basis as determined by the City Council.

GENERAL POLICY STATEMENT – CONNECTIONS:

Water and sewer connections to the City's system shall comply with the following specific requirements. The fees and funding of these connections shall be paid for by the developer/owner and are to be based upon the City's adopted fee schedule (as amended).

- A. Water and sewer connections within City limits with access to existing water and/or sewer shall be approved at a staff level with associated fees.
- B. Water and sewer connections within City limits without access to existing water and/or sewer shall be approved at staff level with associated fees and the extension is to be per the above extension policy.
- C. Water and sewer connections within City ETJ but not City Limits with access to water and sewer shall require annexation and Graham City Council approval with associated fees.
- D. Water and sewer connections within City ETJ but not City Limits without access to water and sewer shall require annexation and Graham City Council approval with associated fees and the extension is to be per the above extension policy.
- E. Water and sewer connections outside of City Limits and ETJ with access to water and sewer shall require annexation and Graham City Council approval with associated fees.
- F. Water and sewer connections outside of City Limits and ETJ without access to water and sewer shall require annexation and Graham City Council approval with associated fees and the extension is to be per the above extension policy.
- G. Sewer only connections are required to provide 6 months deposit, a valve for sewer termination is required, and an explanation of why sewer only service is being provided. Sewer only connections are subject to the sewer disconnection policy. All sewer only connections require Graham City Council approval with associated fees and the extension is to be per the above extension policy. Sewer only connection outside of City Limits shall require annexation.

Appeals of this policy are directed to the Board of Adjustment. Any exceptions to this policy shall be subject to additional conditions and based on extenuating circumstances.

SUGGESTED MOTION(S):

I move to approve the Water and Wastewater System Extension and Connection Policies.

**CITY OF GRAHAM
RELEASE ACCOUNTS**

OCTOBER

<u>ACCT #</u>	<u>YEAR</u>	<u>NAME</u>	<u>REASON FOR RELEASE</u>	<u>AMOUNT RELEASED</u>
11892	2021	KEYSTONE GROUP INC	DISCOVERED NEW 2021 OWNER, RELEASE BUILDER	\$1,074.40
469640	2021	COBLE, REVOCABLE LIVING TRUST	QUALIFIED FOR HOMESTEAD EXEMPTION	\$180.71
684791	2021	GRANGER, CHARLES H	QUALIFIED FOR HOMESTEAD EXEMPTION	\$356.07
697205	2021	MABE, STEPHEN GLENN	BOAT LOCATED IN BURLINGTON	\$9.38
699210	2021	STUDION ELM INC	BUSINESS LOCATED IN SAXAPAHAW	\$104.52
700133	2021	GRAHAM EXPRESS WASH LLC	TAX DOUBLE BILLED	\$855.25

TOTAL RELEASES \$2,580.33



The TRC has met for this item, and all TRC notes are relatively minor, but may result in additional loss of density for this parcel.

Conformity to the *Graham 2035 Comprehensive Plan (GCP)* and Other Adopted Plans

Development Type: Suburban Residential

Applicable Policies and Recommendations

Strategy 4.3.1 **Land Use Patterns** Promote development of efficient land use patterns to allow continued quality and efficiency of water systems. Discourage the extension of water service into areas that are not most suitable for development. *Water and sewer services already exist in this area, with sufficient capacity for the proposed development.*

Policy 5.1.1: **Housing variety** Encourage a mix of housing types within Graham to increase choice. These can include single family dwelling units, multifamily dwelling units, small units, pre-fabricated homes, co-housing, and clustered housing. *This development with its mixture of attached and detached housing types will provide additional housing choice for those residing or wishing to reside in Graham.*

Policy 5.2.1 **Diverse Neighborhoods** Encourage a mix of housing types within Graham, including detached, duplex, multifamily, townhomes, and live-work units. *The proposed layout includes a mix of townhomes and single-family detached dwellings to provide additional options for those wishing to reside in Graham.*

Policy 5.2.2 **Multigenerational Housing** Promote buildings and neighborhood designs that serve multiple age groups simultaneously and meet the needs of young people, families, older adults, and people with disabilities, especially in focus areas and in close proximity to services. *The proposed design would have different options for families of various sizes.*

Description of Development Type

Suburban Residential

Development Toolkit Checklist

Located near a major thoroughfare

Predominantly detached single-family homes

Characteristics include porches, sidewalks, street trees, and garages setback from the front of the home

Density of 3-6 DU/acre

New neighborhoods should consider a variety of lot sizes with consistent setbacks along the same street

Staff Recommendation

Because of the extent of changes made to the original application, additional Planning Board review is required at its October 19, 2021, meeting. Therefore, staff recommends **tabling this action until the November 9, 2021, City Council meeting**. The applicant understands and agrees per an e-mail sent September 30, 2021.



Application for REZONING or CONDITIONAL REZONING

RECEIVED

JUN 24 2021

PLANNING DEPT.

P.O. Drawer 357
201 South Main Street
Graham, NC 27253
(336) 570-6705
Fax (336) 570-6703
www.cityofgraham.com

This application is for both general district rezonings and conditional rezonings. Applications are due on the 25th of each month. Applicants are encouraged to consult with the *City of Graham Development Ordinances* and the City Planner.

Site

Street Address: 1054 EAST GILBREATH STREET

Tax Map#: 145232, 145233, 145227 GPIN: 8883885270, 8883672722, 8883666903

Current Zoning District(s):

☐ R-7 ☐ R-9 ☐ R-12 ☐ R-15 ☐ R-18
☐ R-MF ☒ R-G ☐ C-R ☐ C-MXR
☐ B-1 ☐ B-2 ☐ B-3 ☐ C-B ☐ C-MXC
☐ O-I ☐ C-O-I ☒ I-1 ☐ I-2 ☐ C-I

Overlay District, if applicable:

☐ Historic ☐ S Main St/Hwy 87 ☐ E Harden St/Hwy 54

Current Use: VACANT LAND

Total Site Acres: +/-37.87 AC

Property Owner: DGT PROPERTIES, LLC

Mailing Address: 4076 POND ROAD

City, State, Zip: BURLINGTON, NC 27215

Applicant

☐ Property Owner Other PURCHASER

Application for Conditional Rezoning may only be initiated by the owner of a legal interest in all affected property, any person having an interest in the property by reason of written contract with owner, or an agent authorized in writing to act on the owner's behalf. If the applicant for Conditional Rezoning is other than the Property Owner, documentation in compliance with the preceding statement must be provided in order for this application to be complete.

Name: BEN GREEN, CEO, HYCONIC HOLDINGS, LLC

Mailing Address: 415 CEDAR BRIDGE AVENUE, SUITE #6

City, State, Zip: LAKEWOOD, NJ 08701

Phone # (732) 685-3989

Email: bgreen613@gmail.com

I have completed this application truthfully and to the best of my ability.

B. Green 6/7/21
Signature of Applicant Date

Proposed Rezoning or Conditional Rezoning

Proposed Zoning District(s):

☐ R-7 ☐ R-9 ☐ R-12 ☐ R-15 ☐ R-18
☐ R-MF ☐ R-G ☒ C-R ☐ C-MXR
☐ B-1 ☐ B-2 ☐ B-3 ☐ C-B ☐ C-MXC
☐ O-I ☐ C-O-I ☐ I-1 ☐ I-2 ☐ C-I

Describe the purpose of this rezoning request. *For Conditional Rezoning*, also specify the actual use(s) intended for the property (from Sec. 10.135 Table of Permitted Uses) along with other descriptive or pertinent information, such as number of dwelling units, type of multifamily development, square footage and number of buildings:

The purpose of this rezoning request is to rezone 3 existing parcels from their current zoning designation of I-1 and R-G to CZ-R-MF in order to develop a mixed use multi-family development. The development will be comprised of townhomes for purchase and apartments for lease. The proposed development information is the following:

TOWNHOMES (2-story)
21 Buildings
42 - 3 bedroom units @ +/- 1,440 sq ft
79 - 2 bedroom units @ +/- 1,260 sq ft
Total Townhome dwelling units = 112

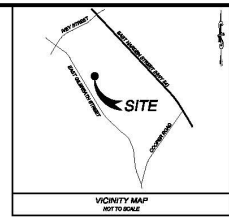
APARTMENTS (3 story)
11 full size buildings @ +/- 28,320 sq each
9 half size buildings @ +/- 14,865 sq each
Total Apartment dwelling units = 372

The project is anticipated to be constructed in phases which will be depicted on the construction drawings for the project pending rezoning and sketch plan approval

For Conditional Rezoning, this application must be accompanied by a Preliminary Site Plan and supporting information specifying the actual use(s) and any rules, regulations or conditions that, in addition to predetermined ordinance requirements, will govern the development and use of the property.

☒ Site Plan Review Application *must be attached to this application for Conditional Rezoning*

Office Use Only. DEVID#



SITE DATA

PARCEL ID:	880808270, 880827222, 880808903
PROPOSED PARCEL AREA:	437.87 AC
EXISTING ZONING:	1-1 (LIGHT INDUSTRIAL) & R-0 (GENERAL RESIDENTIAL DISTRICT)
PROPOSED ZONING:	CZ-RMF (CONDITIONAL ZONING RESIDENTIAL MULTI-FAMILY)
PROPOSED USE:	MIXED USE MULTI-FAMILY (TOWNHOMES & APARTMENTS)
TOTAL UNITS:	TOWNHOMES: 1 BEDROOM UNITS = 22, 2 BEDROOM UNITS = 26, 3 BEDROOM UNITS = 3, TOTAL UNITS = 51 APARTMENTS: 1 BEDROOM UNITS = 80, 2 BEDROOM UNITS = 238, 3 BEDROOM UNITS = 80, TOTAL UNITS = 398
GRAND TOTAL UNITS:	449
REQUIRED BUILDING SETBACKS:	FRONT SETBACK: 25', REAR SETBACK: 25', SIDE SETBACK: 25'
PARKING SPACES REQUIRED:	2 BEDROOM UNIT = 2 SPACES, 1 BEDROOM UNIT = 1.5 SPACES, 3 BEDROOM UNIT = 1.5 SPACES
PARKING SPACES PROVIDED:	TOWNHOME SPACES = 95 SPACES + 2 ADA SPACES = 97 SPACES, APARTMENT SPACES = 178 SPACES + 1 ADA SPACE = 179 SPACES, TOTAL ON-SITE PARKING SPACES PROVIDED = 376 SPACES
LOT COVERAGE (IMPERVIOUS AREA):	BUILDINGS, HARDSCAPE, PAVEMENT, ETC. = 151.71 AC (41.5%)
OPEN SPACE REQUIRED:	10% OF TOTAL PARCEL WITHIN BOUNDARY = 43.79 AC NEEDED
OPEN SPACE PROVIDED:	32.73 AC AMENITY OPEN SPACES, 11.07 AC LANDSCAPE BUFFERS (BMP FIELDS), 45.71 AC FLOOD PLAIN, TOTAL OPEN SPACE PROVIDED = 89.51 AC (20.4%)
PROPOSED STORM SYSTEM:	PRIVATE
PROPOSED WATER SYSTEM:	PUBLIC (CITY OF GRAHAM)
PROPOSED SEWER SYSTEM:	PUBLIC (CITY OF GRAHAM)
PROPOSED POWER SYSTEM:	DUKE ENERGY

NOTES:

1. THE BOUNDARY AND EXISTING TOPOGRAPHIC INFORMATION SHOWN WAS OBTAINED FROM ALABAMA COUNTY GIS DATA SETS.
2. BUILDING FOOTPRINTS ARE PRELIMINARY.
3. THE PROPOSED DEVELOPMENT SHALL COMPLY WITH THE APPLICABLE BUFFER PLANTING REQUIREMENTS FOR THE PROPOSED ZONING. 300' SHALL BE PLACED IN ALL OTHER OPEN SPACE AREAS AS SHOWN.
4. EACH TOWNHOME SHALL HAVE ITS OWN WATER METER AND SEWER SERVICE. THE PROPOSED APARTMENTS SHALL BE SERVED BY ONE MASTER METER AND SHALL BE SUBMITTED TO EACH UNIT.
5. THE PROPOSED DRIVE IN FRONT OF THE LEADING OFFICE SHALL BE A ONEWAY IN AND ONEWAY OUT. THE PROPOSED DRIVE ISLE WIDTH SHALL BE 12 FEET.
6. OPEN SPACE CALCULATIONS REFLECT ALL OPEN SPACE WITHIN DISTRICT BOUNDARY.
7. PROPOSED CONSTRUCTION SHALL COMPLY WITH CITY OF GRAHAM STANDARD DETAILS AND SPECIFICATIONS.
8. THE SITE SHALL COMPLY WITH THE CITY OF GRAHAM'S BUFFER ORDINANCE, STORMWATER ORDINANCE, AND FLOODPLAIN DEVELOPMENT ORDINANCE.
9. THE SITE WILL REQUIRE WATER, SEWER, STORMWATER, BUFFER, AND FLOODPLAIN PERMITS.
10. THE SITE WILL REQUIRE NC DOT ENDORSEMENT AND DRIVEWAY PERMITS.



CDM+R
ENGINEERING - PLLC
SULLIVAN, JAMES
10701 ALABAMA AVE
CHARLOTTE, NC 28277
TEL: 704.366.1011
E: kmcgovern@cdmerr.com
www.cdmerr.com

PROJECT:	1054 EAST GILBREATH STREET
CITY:	GRAHAM, NC
CLIENT:	HYCONIC HOLDINGS, LLC
LOCATION:	SALISBURY, NC

GARDENS AT GRAHAM
SKETCH PLAN

DATE:	01-25-2021
BY:	JAS
CHECKED BY:	JAS
APPROVED BY:	JAS

SKETCH



PLANNING BOARD Recommendation & Statement of Consistency

Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. The Planning Board shall advise and comment on whether the proposed amendment is consistent with "The Graham 2035 Comprehensive Plan" and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.

Gilbreath Multifamily (CR2101)

Type of Request
Conditional Rezoning

Meeting Dates
Planning Board on July 20, 2021
City Council on August 10, 2021

- ☐ I move to **recommend APPROVAL** of the application as presented.
- ☐ I move to **recommend APPROVAL with conditions** of the application.

[insert additional conditions]

- ☒ I move to **recommend DENIAL**.

- ☐ The application is **consistent** with *The Graham 2035 Comprehensive Plan*.
- ☒ The application is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

The action is reasonable and in the public interest for the following reasons:

S.I.1 Not housing variety nor diversity of neighborhood.

This report reflects the recommendation of the Planning Board, this the 20th day of July, 2021.

Attest:

Dean Ward
Dean Ward, Planning Board Chairman

Debbie Jolly
Debbie Jolly, Secretary



City Council Decision & Statement of Consistency

Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. When adopting or rejecting any zoning amendment, the City Council shall also approve a statement describing whether its action is consistent with the "The Graham 2035 Comprehensive Plan" and briefly explaining why the City Council considers the action taken to be reasonable and in the public interest. The Planning Board shall provide a written recommendation to the City Council, but a comment by the Planning Board that a proposed amendment is inconsistent with the "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council. If the City Council approves, this rezoning shall be effective upon written consent to the conditions herein described.

Gilbreath Multifamily (CR2101)

Type of Request
Conditional Rezoning

Meeting Dates
Planning Board on July 20, 2021
City Council on August 10, 2021
City Council September 14, 2021
City Council October 12, 2021

Choose one...

- ☐ I move that the application be **APPROVED**.
- ☐ I move that the application be **APPROVED with the following conditions**.
- [insert additional conditions]
- ☐ I move that the application be **DENIED**.

Choose one...

- ☐ The application is **consistent** with *The Graham 2035 Comprehensive Plan*.
- ☐ The application is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

State reasons...

This action is reasonable and in the public interest for the following reasons:

These conditions voluntarily consented to by the petitioner, this the 12th day of October, 2021.

Ben Green, agent for DGT Properties LLC

This report reflects the decision of the City Council, this the 12th day of October, 2021.

Attest:

Gerald R. Peterman, Mayor

Renee M. Ward, CMC, Interim City Clerk

Cameron West

From: Ben Green <bgreen613@gmail.com>
Sent: Friday, September 3, 2021 10:20 AM
To: Cameron West
Cc: Kevin Williams
Subject: Re: Council Meeting

[**NOTICE:** This message originated outside of the City of Graham, NC mail system -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.]

Cameron,

Thanks for the reminder.

In follow up to our conversation yesterday, I have decided that I feel it's best to table this application until next month.

Please table it one month.

Please let me what date and time this would be rescheduled to. Also, please provide the date and time for the agenda items for that meeting.

Thank you

Ben

On Fri, Sep 3, 2021 at 9:15 AM Cameron West <cwest@cityofgraham.com> wrote:

Good morning Mr. Green,

Just a reminder that agenda items for September 14th Council Meeting are due at 12pm on Tuesday the 7th.

I originally thought it was before the end of the day but seems like I may have misspoke.

No rush! Just sending out a courtesy reminder and update on changes.

Thanks!

Cameron West

City of Graham

Planner

(336)-570-6705

cwest@cityofgraham.com



STAFF REPORT

Prepared by Justin Snyder, Planning Director

Text Amendment for: Special Use

Permits

Type of Request: Text Amendment

Meeting Dates

Planning Board on July 20, 2021

City Council on August 10, 2021

City Council on September 14, 2021

City Council on October 12, 2021

Contact Information

N/A

Project Name
Special Use Permits (AM2102)

Location
city-wide

Current Zoning
not applicable

Proposed Zoning
not applicable

Overlay District
not applicable

Staff Recommendation
Table to the November 9, 2021
meeting

Summary

The City Council has requested the Planning Board evaluate the process for Special Use Permits, with the recommendation that they be sent to the Board of Adjustment to be heard once. Under the current process, the residents of the City have limited input and the City Council has limited discretion for Special Use Permits. In light of this, the current process leaves most residents feeling disconnected from the deliberations regarding these Quasi-Judicial Hearings.

Other jurisdictions in North Carolina have taken the step to evaluate what uses their Table of Permitted Uses has for Special Use Permits, as well as what limitations should be placed upon them (for example, a cell tower may be required to have all property lines as far away as the height of the tower). The Planning Board and Council may remove the requirement for Special Use Permits for all uses without specific standards, or add standards to those uses. For example, Bed and Breakfasts currently require a Special Use Permit in some zones, but have no standards with regards to capacity, parking, etc.

The draft language below places authority to hear and approve or deny the Special Use Permits with the Board of Adjustment, and such hearings only occur once, rather than going before the Planning Board and subsequently the City Council.

Existing Language:

DIVISION 7. SPECIAL USES

Section 10.137 Purpose of special use regulations

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

Section 10.138 Special uses shown in Table of Permitted Uses

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the city council and issued by the zoning enforcement officer.

Section 10.139 Application for a Special Use Permit

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:

- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

Section 10.140 Timing of Submissions

The applicant must submit the required plans and request for a special use permit on or before the 25th day of the month preceding the planning board meeting at which consideration is desired.

Section 10.141 Role of Planning Board

The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the city council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the planning board. The planning board may also recommend modifications of the original plans.

Section 10.142 Role of Historic Resources Commission

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the City Council for consideration along with the Planning Board's recommendations.

Section 10.143 Role of City Council

For each application for a special use permit the City Council shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the City Council shall follow quasi-judicial procedures as required by law. At the public hearing the City Council shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the planning board shall be heard. The City Council may (1) deny the special use permit, or (2) grant the special use permit subject to the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and

to other reasonable conditions the council imposes upon the permit. Subject to S.L 2019-111, Pt. I, the City Council shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Council shall obtain the applicant or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Council's findings of facts and conclusions. No vote greater than a majority vote shall be required for the City Council to issue special use permits. Vacant positions on the City Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the City Council' for calculation of the requisite majority.

(Section 10.143 amended 7/11/2006)

Section 10.144 Findings

In granting a special use permit, the council shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.
- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Section 10.145 Conditions added by Council, Limitations

In granting a Special Use Permit, the Council may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The city council may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.

Section 10.146 Conditions run with land

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the City Council membership shall be required to grant the request.

Section 10.147 Appeal

No appeal may be taken to the board of adjustment from the action of the city council in granting or denying a special use permit. The city council's action on an application for a special use permit, like the council's action on an application for an amendment to the ordinance, shall be reviewable by the courts as provided by law.

Section 10.148 Invalidation

In the event of failure to comply with the plans approved by the city council or with any other condition imposed by the city council upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

Proposed Language:**DIVISION 7. SPECIAL USES****Section 10.137 Purpose of special use regulations**

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

Section 10.138 Special uses shown in Table of Permitted Uses

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the Board of Adjustment and issued by the zoning enforcement officer.

Section 10.139 Application for a Special Use Permit

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:

- a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.
- b. Location, size, and type of all buildings, existing and proposed, on or near the property.
- c. Grading plan.
- d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.
- e. Proposed parking and loading areas.
- f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.
- g. Proposed provision for utilities.
- h. Location, size, height, orientation, and lighting information on all signs.

Section 10.140 Timing of Submissions

The applicant must submit the required plans, documents, and the application for a special use permit on or before the 25th day of the month preceding the planning board meeting at which consideration is desired.

Section 10.141 Reserved

~~Section 10.141 Role of Planning Board~~

~~The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the city council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the planning board. The planning board may also recommend modifications of the original plans.~~

Section 10.142 Role of Historic Resources Commission

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within the boundaries of any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the Board of Adjustment for consideration along with the Planning Board's recommendations.

Section 10.143 Role of Board of Adjustment

For each application for a special use permit the Board of Adjustment, supported by staff and counsel, shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the Board of Adjustment shall follow quasi-judicial procedures as required by law. At the public hearing the Board of Adjustment shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the Historic Resources Commission, if applicable, shall be included as written testimony to the Board of Adjustment. The Board of Adjustment may do any of the following:

- (1) deny the special use permit, or
- (2) grant the special use permit subject to the conditions for individual special uses, or
- (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the Board of Adjustment imposes upon the permit.

Subject to S.L 2019-111, Pt. I, the Board of Adjustment shall not impose conditions on special use permits that the local government does not otherwise have statutory authority to impose. The Board of Adjustment shall obtain the applicant's or land owner's written consent to conditions related to a special use permit to ensure enforceability. There shall be competent, material and substantial evidence in the record to support the Board of Adjustment's findings of facts and conclusions. No vote greater than a majority vote shall be required for the Board of Adjustment to issue special use permits. Vacant positions on the Board of Adjustment and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the Board of Adjustment for calculation of the requisite majority.

(Section 10.143 amended 7/11/2006)

Section 10.144 Findings

In granting a special use permit, the Board of Adjustment shall find that all of the conditions listed below have been met, or it shall be denied.

- (1) That all applicable regulations of the zoning district in which the use is proposed are complied with.
- (2) That conditions specific to each use, identified by this Ordinance are complied with.
- (3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.

- (4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.
- (5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.
- (6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Section 10.145 Conditions added by Board of Adjustment, Limitations

In granting a Special Use Permit, the Board may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion, and other conditions directly related to the land use impact of the use on the area. The Board of Adjustment may modify the original plans or documents to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.

Section 10.146 Conditions run with land

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the Board of Adjustment membership shall be required to grant the request.

Section 10.147 Appeal

No appeal may be taken to the City Council from the action of the Board of Adjustment in granting or denying a special use permit. The Board of Adjustment's action on an application for a special use permit, like the Board's action on an application for an appeal or variance, shall be reviewable by the courts as provided by law.

Section 10.148 Invalidation

In the event of failure to comply with the plans approved by the Board of Adjustment or with any other condition imposed by the Board of Adjustment upon the special use permit, the permit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless substantial construction has commenced during the twenty-four-month period.

Conformity to City of Graham 2035 Comprehensive Plan and Other Adopted Plans

Applicable Planning District Policies and Recommendations

- Not applicable; city-wide.

<u>Planning District</u>
All
<u>Development Type</u>
All

Staff Recommendation

- Staff is supportive of the amendment; however, the Planning Board at its September meeting requested additional training on holding evidentiary hearings and the special use permit process prior to making a recommendation. Staff has sent those resources to the Planning Board and would ask that the Council table this item once again so the Planning Board can discuss these changes.



City Council Decision & Statement of Consistency

Per NCGS 160A-383, zoning regulations shall be made in accordance with an adopted comprehensive plan and any other officially adopted plan that is applicable. When adopting or rejecting any zoning amendment, the City Council shall also approve a statement describing whether its action is consistent with the "The Graham 2035 Comprehensive Plan" and briefly explaining why the City Council considers the action taken to be reasonable and in the public interest. The Planning Board shall provide a written recommendation to the City Council, but a comment by the Planning Board that a proposed amendment is inconsistent with the "The Graham 2035 Comprehensive Plan" shall not preclude consideration or approval of the proposed amendment by the City Council.

Special Use Permits (AM2102)

Type of Request

Text Amendment

Meeting Dates

Planning Board on July 20, 2021

City Council on August 10, 2021

City Council on September 14, 2021

City Council on October 12, 2021

Choose one...

☐ I move that the text amendment be **APPROVED**.

☐ I move that the text amendment be **DENIED**.

Choose one...

☐ The text amendment is **consistent** with *The Graham 2035 Comprehensive Plan*.

☐ The text amendment is **not fully consistent** with *The Graham 2035 Comprehensive Plan*.

State reasons...

This action is reasonable and in the public interest for the following reasons:

This report reflects the decision of the City Council, this the 12th day of October, 2021.

Attest:

Gerald R. Peterman, Mayor

Renee M. Ward, CMC, Interim City Clerk