



FAYETTEVILLE CITY COUNCIL
AGENDA
AUGUST 8, 2011
7:00 P.M.
CITY HALL COUNCIL CHAMBER

1.0 CALL TO ORDER

2.0 INVOCATION

3.0 PLEDGE OF ALLEGIANCE

Reconsideration of Agenda Items - Reconsider Adoption of Resolution to Consider the Paving Without Petition of Certain Soil Streets - Wilma Street

4.0 APPROVAL OF AGENDA

5.0 ANNOUNCEMENTS AND RECOGNITIONS

- (a) Certificate of Achievement for Excellence in Financial Reporting

Presenter: Anthony Chavonne, Mayor

- (b) Appearance Commission Award Recipients

Presenter: Chris Mitchell, Chair, City- County Joint Appearance Commission

6.0 PUBLIC FORUM

Each speaker shall have up to 2 minutes to address Council on issues related to the City of Fayetteville. No time will be yielded to any speaker by another speaker. The Public Forum shall last no longer than 15 minutes. The Mayor shall have the discretion to extend the Public Forum up to 30 minutes.

7.0 CONSENT

7.1 Approve Minutes:

- May 23, 2011 - Regular Meeting
- June 6, 2011 - Work Session
- June 13, 2011 - Regular Meeting
- June 27, 2011 - Dinner & Discussion Meeting

7.2 Phase 5 Annexation Area 11-WS

7.3 Phase 5 Annexation Areas 10 and 11

8.0 PUBLIC HEARINGS

For certain issues, the Fayetteville City Council may sit as a quasi-judicial body that has powers resembling those of a court of law or judge. The Council will hold hearings, investigate facts, weigh evidence and draw conclusions which serve as a basis for its decisions. All persons wishing to appear before the Council should be prepared to give sworn testimony on relevant facts.

8.1 Proposed Transit Service Improvements

Presenter(s): Randall J. Hume, Transit Director

9.0 OTHER ITEMS OF BUSINESS

9.1 Order Authorizing the Issuance and Sale by the City of Fayetteville, North Carolina of a \$10,595,000 Stormwater System Revenue Bond, Series 2011 and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith

Presenter(s): Lisa Smith, Chief Financial Officer

9.2 (a) Fayetteville Cumberland County Chamber of Commerce Economic Development Report

(b) FY 2011 Strategic Plan's Policy and Management Action Agenda Fourth Quarter Report

Presenter(s): Rebecca Rogers Carter, Management Services Manager & Doug Peters, Executive Director, Fayetteville Cumberland County Chamber of Commerce

9.3 Legislative Update on Senate Bill 683 and Its Impact on PROP
Presenter(s): Brian Meyer, Assistant City Attorney

10.0 ADMINISTRATIVE REPORTS

10.1 Settlement for Fiscal Year July 1, 2010 through June 30, 2011

10.2 Levy for 2011-2012 Fiscal Year
Information Only

11.0 ADJOURNMENT

CLOSING REMARKS

POLICY REGARDING NON-PUBLIC HEARING AGENDA ITEMS

Anyone desiring to address the Council on an item that is not a public hearing must present a written request to the City Manager by 10:00 a.m. on the Wednesday preceding the Monday meeting date.

POLICY REGARDING PUBLIC HEARING AGENDA ITEMS

Individuals wishing to speak at a public hearing must register in advance with the City Clerk. The Clerk's Office is located in the Executive Offices, Second Floor, City Hall, 433 Hay Street, and is open during normal business hours. Citizens may also register to speak immediately before the public hearing by signing in with the City Clerk in the Council Chamber between 6:30 p.m. and 7:00 p.m.

POLICY REGARDING CITY COUNCIL MEETING PROCEDURES SPEAKING ON A PUBLIC AND NON-PUBLIC HEARING ITEM

Individuals who have not made a written request to speak on a nonpublic hearing item may submit written materials to the City Council on the subject matter by providing twenty (20) copies of the written materials to the Office of the City Manager before 5:00 p.m. on the day of the Council meeting at which the item is scheduled to be discussed.

**COUNCIL MEETING WILL BE AIRED
AUGUST 8, 2011 - 7:00 PM
COMMUNITY CHANNEL 7**

**COUNCIL MEETING WILL BE RE-AIRED
AUGUST 10, 2011 - 10:00 PM
COMMUNITY CHANNEL 7**

Notice Under the Americans with Disabilities Act (ADA): *The City of Fayetteville will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities. The City will generally, upon request, provide appropriate aids and services leading to effective communication for qualified persons with disabilities so they can participate equally in the City's programs, services, and activities. The City will make all reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all City programs, services, and activities. Any person who requires an auxiliary aid or service for effective communications, or a modification of policies or procedures to participate in any City program, service, or activity, should contact the office of Ron McElrath, ADA Coordinator, at rmcelrath@ci.fay.nc.us, 910-433-1696, or the office of the City Clerk at cityclerk@ci.fay.nc.us, 910-433-1989, as soon as possible but no later than 72 hours before the scheduled event.*

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Karen M. McDonald, City Attorney
DATE: August 8, 2011
RE: **Reconsideration of Agenda Items**

THE QUESTION:

Is the City Council interested in reconsidering the adoption of a resolution to pave Wilma Street.

RELATIONSHIP TO STRATEGIC PLAN:

N/A

BACKGROUND:

At your July 25, 2011, meeting, Council held a public hearing to consider the paving of Wilma Street. At the conclusion of the public hearing, Council declined to adopt the resolution authorizing the paving of Wilma Street. Some Council members have expressed an interest in reconsidering the paving of Wilma Street.

The general process for reconsideration of an item is set forth in Section 2-3(d) of the Fayetteville City Code. This section specifically provides:

Once a meeting has been adjourned, any item on that agenda shall not be reconsidered for at least six months unless approved by a three-fourths vote of all the members of the City Council, which vote shall be taken separately under Subsection (a)(1) (*refers to approval of the agenda*) and there shall be no debate prior to the vote.

The ordinance does not address whether the item is then added to the current agenda or a subsequent agenda. It would seem that if there were the requisite votes to reconsider the item, the item would be placed on a subsequent agenda for consideration in order to give other Council members and staff an opportunity to prepare for the discussion. However, given that this item was discussed at your last meeting, Council could decide to add it to your current agenda.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: City Clerk's Office
DATE: August 8, 2011
RE: **Approve Minutes:**
- **May 23, 2011 - Regular Meeting**
- **June 6, 2011 - Work Session**
- **June 13, 2011 - Regular Meeting**
- **June 27, 2011 - Dinner & Discussion Meeting**

THE QUESTION:

Should City Council approve the draft minutes as the official record of the proceedings and actions of the associated meeting(s)?

RELATIONSHIP TO STRATEGIC PLAN:

Greater Community Unity - Pride in Fayetteville; Objective 2: Goal 5: Better informed citizenry about the City and City government.

BACKGROUND:

The Fayetteville City Council conducted meeting (s) on the referenced date (s) during which they considered items of business as presented in the draft minutes.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

1. Approve the draft minutes as presented.
2. Revise the draft minutes and approve the draft minutes as revised.
3. Do not approve the draft minutes and provide direction to Staff.

RECOMMENDED ACTION:

Approve the draft minutes as presented.

ATTACHMENTS:

May 23, 2011 - Regular Meeting Minutes
June 6, 2011 - Work Session Minutes
June 13, 2011 - Regular Meeting Minutes
June 27, 2011 - Dinner & Discussion Meeting Minutes

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
MAY 23, 2011
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9) (via telephone)

Absent: Council Member Darrell J. Haire (District 4)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Brian Leonard, Assistant City Attorney
Brian Meyer, Assistant City Attorney
Lisa Smith, Chief Financial Officer
Jerry Dietzen, Environmental Services Director
Scott Shuford, Development Services Director
Bart Swanson, Housing and Code Enforcement Division Manager
Karen Hilton, Planning and Zoning Division Manager
Craig Harmon, Planner II
Rebecca Rogers-Carter, Management Services Manager
Jennifer Lowe, Public Information Officer
Douglas Peters, Fayetteville-Cumberland County Chamber of Commerce
Nathan Walls, Public Information Specialist
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Pastor Anthony Carstarphen with the NHEM Rescue Mission.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Boy Scout Troop 776 from Fort Bragg.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Bates moved to approve the agenda.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (9-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Mr. Dale Iman, City Manager, introduced Mr. Scott Shuford, the newly hired Development Services Director.

6.0 CONSENT

MOTION: Council Member Mohn moved to approve the consent agenda with the exception of Item 6.3.
SECOND: Council Member Applewhite
VOTE: UNANIMOUS (9-0)

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6.1 Approve Minutes

- February 4, 2011 - Strategic Planning Retreat
- February 5, 2011 - Strategic Planning Retreat
- February 28, 2011 - Regular Meeting
- March 7, 2011 - Work Session
- March 14, 2011 - Dinner and Discussion Meeting
- March 14, 2011 - Regular Meeting
- March 22, 2011 - Special Budget Meeting
- March 28, 2011 - Regular Meeting
- March 30, 2011 - Strategic Planning Retreat
- April 4, 2011 - Work Session
- April 12, 2011 - Special Meeting
- April 20, 2011 - Agenda Briefing

6.2 Budget Ordinance Amendment 2011-14 (General Fund).

The amendment appropriated \$887,500.00 from the General Fund fund balance to provide additional funding for debris clean-up expenditures related to the April 16, 2011, tornadoes.

6.3 Pulled for discussion by Council Member Mohn.

6.4 Capital Project Ordinance Closeouts 2011-14 through 2011-16 (Park, Recreation, and Sidewalk Projects) and Special Revenue Fund Project Ordinance Closeout 2011-8 (2009 Community Waste Reduction and Recycling Project).

Annually the City closes out several projects that have been completed and are no longer active. The E. E. Miller Recreation Center, Bonnie Doone Park, Sidewalk Construction along and nearby Cliffdale Road, and 2009 Community Waste Reduction and Recycling Project were completed in a previous fiscal year and the revenues and expenditures related to the projects were audited.

6.5 Capital Project Ordinance Amendment 2011-16 (Transit Capital Grant 469), Special Revenue Fund Project Ordinance Amendment 2011-5 (Transit Planning Grant 469), and Budget Ordinance Amendment 2011-13 (General Fund).

Amendments 2011-16 appropriated a \$238,369.00 match and 2011-5 appropriated a \$23,514.00 match from the NCDOT and reduced the General Fund transfer by the same amounts. Amendment 2011-13 reduced the transfer from the General Fund to various Transit Funds by a total of \$193,974.00, and reduced the General Fund fund balance appropriation by the same amount.

6.6 Capital Project Ordinance Amendment 2011-17 (Land for the Transit Multi-Modal Center).

The amendment reduced the original \$500,000.00 budget for the Transit Multi-Modal Transportation Center land project by \$166,231.00.

6.7 Capital Project Ordinance Amendment 2011-18 (Transit Capital Enhancements and Improvements).

The amendment appropriated additional funding for Transit improvements and enhancements resulting from the variance between the original FY 2010 General Fund budgeted transfer and the actual General Fund transfer to the Transit Operating Fund to cover FY 2010 expenditures and year-end encumbrances.

6.8 Local Government Resolution (Governor's Highway Safety Program).

NORTH CAROLINA GOVERNOR'S HIGHWAY SAFETY PROGRAM LOCAL
GOVERNMENTAL RESOLUTION FORM GHSP-02-A. RESOLUTION NO.
R2011-026.

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- 6.9 Adopt a resolution declaring jointly-owned real property surplus and authorizing a quitclaim of the City's interest in order to expedite Cumberland County's sale of property.

RESOLUTION DECLARING PROPERTY EXCESS TO CITY'S NEEDS AND QUITCLAIMING CITY TITLE IN THE PROPERTY TO CUMBERLAND COUNTY. RESOLUTION NO. R2011-027.

- 6.3 Budget Ordinance Amendment 2011-15 (General Fund).

This item was pulled for discussion by Council Member Mohn.

Mr. Doug Hewett, Assistant City Manager, presented this item and stated this was an amendment to provide funding for travel to Kansas City to compete for the All-America City Award. He provided information on the projects selected that would highlight the transformation in Fayetteville and the following proposed draft budget:

Approximate Project Costs	
Air Travel	\$ 17,000.00
Hotel Lodging	15,000.00
Registrations	1,600.00
Per Diem	9,000.00
Post Event Celebration	5,000.00
Miscellaneous (ground transport, Props, etc.)	6,000.00
82nd Airborne All-American Chorus	23,500.00
Follow-Up/Marketing	<u>83,000.00</u>
Subtotal	160,100.00
Paid from City Travel Account	(14,500.00)
Paid from Excess City Council Travel Balance	(12,500.00)
Subtotal	<u>133,100.00</u>
FY 12 Fund Balance Appropriation for Marketing	(83,000.00)
This Year Budget Amendment	50,100.00
To Be Paid from Private Sources	
Chamber/CCSC/Military Reimbursements	(5,600.00)
Fundraising from Private Sources	(25,000.00)
Net to City:	<u>\$ 19,500.00</u>

A question and answer period ensued regarding whether there would be a return on the investment and what was included in the follow-up/marketing category. Mr. Hewett responded it was difficult to capture what the return on the investment would be and stated the amendment would make money available to capitalize on the recognition if the City won the award. He explained the follow-up/marketing category funds would be for a marketing campaign and other activities that were not available at this time. He stated they would present a plan to Council.

MOTION: Council Member Bates moved to approve.
SECOND: Council Member Hurst
VOTE: PASSED by a vote of 8 in favor to 1 in opposition (Council Member Mohn)

7.0 PUBLIC HEARING

- 7.1 Public hearing on the Fiscal Year 2011-2012 Recommended Budget.

Mr. Dale Iman, City Manager, presented this item and reviewed the budget process to date. He advised a budget chronicle was available on the City's website explaining what has transpired throughout the budget process and included the budget questions and answers. He reviewed the highlights of the budget as follows:

General Fund Budget Highlights

- Maintains and enhances levels of service without increasing the tax rate - Recommended tax rate remains 45.6 cents per \$100.00 taxable valuation

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- Enhances transit services
 - Route 9 extension
 - Evening service on routes 8 and 15
 - 3 positions added and 5 intermittent positions upgraded to full-time to support enhancements
- Implements the Probationary Rental Occupancy Program (PROP)
- Funds police enhancements including:
 - Deployment of additional in-car camera systems
 - Upgrade a part-time forensic technician to full-time
- Provides for equipment and operating needs for North Carolina Veterans Park
- Includes funding for the police pay plan and performance pay plan for other eligible employees
- Reflects savings from efficiency improvements in areas including Environmental Services and Police Department

Capital outlay includes:

◦ Vehicle and Equipment Replacements		
Police	\$1,016,500.00	29 units
Environmental Services	1,470,000.00	6 units
Fire	1,377,000.00	3 units
Parks, Recreation and Maintenance	413,500.00	21 units
Engineering and Infrastructure	<u>422,000.00</u>	<u>4 units</u>
	<u>\$4,699,000.00</u>	<u>63 units</u>
◦ Other Capital Items		
Police In-Car Cameras	\$150,000.00	25 units
Equipment for NC Veterans Park	\$84,000.00	4 units
Energy efficient ball field lighting	\$140,000.00	
◦ Transfers to capital project funds for:		
Street resurfacing, including Fort Bragg Road	\$ 3.65M	
Municipal agreement projects	1.19M	
Building maintenance projects	818K	
Computer replacement plan	311K	
Sidewalk improvements	156K	
Ramsey Street project	150K	
Playground improvements	67K	
Parking lot maintenance projects	53K	
Wayfinding signage project	50K	
	<u>\$6.445M</u>	

Other Operating Funds Budget Highlights

- Emergency Telephone System Fund - Significant revenue reductions anticipated from changes in distribution formula by State (\$423,000.00 or 40%)
- Stormwater Fund
 - Maintains combined \$3.00 per month fee
 - Includes funding for debt service to support the issuance of \$10.6 million in debt for projects
- Recycling Fund
 - No fee increase proposed
 - Enhances services with holiday pickup for curbside recycling
- Transit Fund
 - No fare increases proposed
 - Expansion of Route 9 and evening service on Routes 8 and 15

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- o General Fund contribution increased by \$238,000.00 over FY 2011 original budget

Proposed Budget Summary

- General Fund Budget
 - o Total proposed budget - \$138.8 million
 - o 3.4% increase from the original budget for Fiscal Year 2011
- Budget for All Annual Funds
 - o Total proposed budget - \$179.5 million
 - o 3.3% increase from original budget for fiscal year 2011

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Ed Blanchard, Jr., 5444 Summer Duck Road, Fayetteville, NC 28304, appeared in opposition and stated he supported the budget but would like to see more funding for storm water projects.

There being no one further to speak, the public hearing was closed.

- 7.2 Case P11-07F: The remapping of all Zoning Districts within the City to match the appropriate districts adopted within the new Unified Development Ordinance (UDO). This affects all owners of property within the City limits of Fayetteville.

Mr. Craig Harmon, Planner II, presented this item and stated the remapping was the last step in the process. He explained the UDO would increase the user friendliness of the City's documents, streamline procedural efficiency, modernize zoning districts and uses, improve development quality, establish a new downtown district, and incorporate sustainable development practices. He reviewed the UDO process to date and stated the Zoning Commission and staff recommended approval of the remapping of all zoning districts within the City limits as shown on the proposed Official Zoning Map.

Council Member Crisp inquired how the UDO would affect the property taxes and zoning of the properties. Mr. Harmon explained this was a remapping process and not a rezoning. He further explained that the tax rates would not change as they were not changing the use on the properties.

This is the advertised public hearing set for this date and time. The public hearing was opened.

Mr. Ed Blanchard, Jr., 5444 Summer Duck Road, Fayetteville, NC 28304, appeared in opposition and requested that his property at 3530 Boone Trail be heard in June because the zoning would be detrimental to his income. On behalf of the McFayden Lake Homeowners Association, Mr. Blanchard advised they were anxious to go ahead and put the conservation zoning in place for waterways and floodways so they could receive potential tax credits.

Ms. Frances Jackson, representing Kingdom Impact Global Ministries located at 2503 Murchison Road, Fayetteville, NC 28301, appeared in opposition and expressed concern that the proposed zoning would restrict the proposed elderly housing currently planned on the church property and the proposed transitional housing.

Mr. Steve Blanchard, 8768 Coats Road, Linden, NC 28356, representing Westarea Volunteer Fire Department located at 4820 Rosehill Road appeared in opposition and requested the fire department property be omitted and delayed to the next meeting so that he could speak to the Planning Commission.

Ms. Elizabeth Williams, 1100 Clark Street, Fayetteville, NC 28305, appeared in opposition and expressed concern that the UDO would

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restrict the keeping of animals and raising of plants, such as gardening and orchards, where it was previously permitted and recommended the UDO be amended to address this.

Mayor Chavonne requested Ms. Williams to provide the address of her property so that Planning could look into the issue. Ms. Williams responded she did not own property in the City limits at this time but would request that her concern be reviewed.

There being no one further to speak, the public hearing was closed.

Mr. Harmon responded to questions posed by Council regarding the restriction on animals and plants and the church property zoning. He stated an update could be provided on the restriction issue and the church property zoning could be addressed at the June meetings.

MOTION: Council Member Hurst moved to approve the remapping of all zoning districts within the City limits as shown on the proposed Official Zoning Map with the exception of 3530 Boone Trail, 2503 Murchison Road, 4820 Rosehill Road, and the properties listed in the agenda packet.

SECOND: Council Member Applewhite

VOTE: UNANIMOUS (9-0)

8.0 OTHER ITEMS OF BUSINESS

8.1

(a) Fayetteville Cumberland County Chamber of Commerce Economic Development Report.

Mr. Douglas Peters, President/CEO, Fayetteville-Cumberland County Chamber of Commerce, presented this item and provided an update on the quarterly economic development activities. He reviewed a power point highlighting the quarterly investments by industry and commodity, newly created jobs to include direct impact job creations, generated contacts, retention visits (existing industry), and national marketing placements.

Council Member Bates inquired why the job creation breakdown included a business that was not open yet. Mr. Peters responded pursuant to state policy, they were required to provide the number of job creations as soon as the information was available to be included in the report.

Council Member Applewhite inquired if the quarterly goal for investments at \$15 million could be too low as it was being exceeded. Mr. Peters responded this issue was being reviewed and would be re-addressed as they were taking on specific or special projects for the coming year that would be reflected in the ongoing report to Council.

Council Member Applewhite inquired if they market nationally for investors. Mr. Peters responded in the affirmative and explained the process.

(b) FY 2011 Strategic Plan's Policy and Management Action Agenda 3rd Quarter Report

Ms. Rebecca Rogers-Carter, Management Services Manager, presented this item and stated the components of the Fiscal Year 2011 Strategic Plan included a 15-year vision statement, a mission statement, the core values, the 5-year goals, and a 1-year work plan with targets for action. She provided an update on the following targets for action for 2011:

Policy Agenda - Top Priority
Unified Development Ordinance

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Police Staffing
Multi-Family and Commercial Recycling Program
Franklin Street Parking Structure
Bragg Boulevard Corridor Development

Policy Agenda - High Priority

Hospital Area Development Standards
Ramsey Street Corridor Development
Budget and Service Levels Tax Rate Evaluation
Parks and Recreation Master Plan Bond Referendum Planning
Rental Registration and Probationary Rental Occupancy Permit
Sign Ordinance

Management Agenda - Top Priority

Non-Stop Air Service to Washington, D.C.
Multi-Modal Transportation Center Development
Fire Station 19 Development
Hope VI Redevelopment Plan
Tree Preservation Ordinance

Management Agenda - High Priority

Murchison Road Corridor Development
Sidewalk Policy and Plan
Youth Council Development
Military Business Park Development
Downtown Development Plan Review

MOTION: Council Member Hurst moved to accept the reports.

SECOND: Council Member Mohn

VOTE: UNANIMOUS (9-0)

8.2 FY 2011-12 Strategic Plan Presentation

Ms. Rebecca Rogers-Carter, Management Services Manager, presented this item and stated the components of the Fiscal Year 2011-2012 Strategic Plan included a 15-year vision statement, a mission statement, the core values, the 5-year goals, and a 1-year work plan with targets for action. She provided a recap of the action agenda for FY 2011-2012 as follows:

Policy Agenda - Top Priority

Park Bond Referendum
Police Substations Study
F.A.S.T. Improvements - Evening Service
City Funding of Non-Profit Organizations
Sewer Hook Up Acceleration
Building Demolition

Policy Agenda - High Priority

Economic Development Contract with the Chamber of Commerce
Sign Ordinance
Street Lighting Ordinance
Comprehensive Classification and Compensation
Solid Waste Contracting for Services
Fayetteville Beautiful

Management Agenda - Top Priority

Bragg Boulevard Corridor Development (Hay Street to I-295)
Non-Stop Air Service to Washington, D.C.
Reclaiming Neighborhoods Next Project
Hope VI Business Park Redevelopment
City Communications Strategy

Management Agenda - High Priority

Limited English Proficiency and Strategy
Old Days Inn Site Development
Multi-Model Transportation Center
Prince Charles Hotel

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Key Management in Progress

Consolidated 9-1-1 Operations
Residential Rental Occupancy Program (PROP)
North Carolina Veterans Park
Youth Council
Festival Park Plaza Building
Murchison Road Corridor Development

Major Projects

Airport Improvements
Fire Station 19
Storm Water Projects
Cross Creek Linear Park Phase 3B
Sidewalks in Developed Areas
Grove Street Safety Project
North Carolina Veterans Park - Phase I
Cape Fear River Trail - Phase II
Franklin Street Parking Garage
Wayfinding Signs
Russell Street Sidewalk and Streetscape Improvements
Rail Corridor Improvements

Ms. Rogers-Carter announced the tentative dates for the Fiscal Year 2013 strategic planning sessions were January 31 through February 4, 2011, with a follow-up session occurring in March 2012.

- 8.3 Resolution authorizing the execution and delivery of an installment financing agreement, a deed of trust and related documents in connection with the financing of various capital projects for the City of Fayetteville, North Carolina.

Ms. Lisa Smith, Chief Financial Officer, presented this item and provided background information. She stated the final step in the process was the approval of the resolution.

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING AGREEMENT, A DEED OF TRUST AND RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF VARIOUS CAPITAL PROJECTS FOR THE CITY OF FAYETTEVILLE, NORTH CAROLINA. RESOLUTION NO. R2011-028.

MOTION: Council Member Davy moved to adopt.
SECOND: Council Member Bates
VOTE: UNANIMOUS (9-0)

8.4 Uninhabitable structures demolition recommendations:

Mr. Bart Swanson, Housing and Code Enforcement Division Manager, reviewed the following demolition recommendations:

2006 Center Street

Mr. Swanson provided background information and photos and stated the structure was fire damaged. He stated after the item was placed on the agenda, they were approached by the property owner who indicated he had received a check from his insurance company for the fire damage. He stated the property owner and the contractor met with City staff to discuss obtaining permits to rebuild the structure. He stated Section 1 of the demolition ordinance was amended to give the property owner the opportunity to repair the structure. He stated with adoption of the ordinance, if the property owner should fail to comply with the amendment, the City would be in the position to proceed with the demolition of the property.

1018 Ellis Street

Mr. Swanson provided background information and photos and stated the structure was fire damaged. He stated the front portion of the structure was a store and the rear portion was a house. He stated the

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store portion was demolished by the property owners with plans to repair the house. He stated in order for the property owner to repair the house to its original condition, the property owner would be required to rezone the property and obtain a subsequent variance. He stated the property owner obtained the rezoning but failed to file for the required variance. He stated to date, the property has not been repaired or demolished. He stated staff was recommending no action on this property.

703 Pritchett Road

Mr. Swanson provided background information and photos and stated the structure was a blighted property. He stated the property had been vacant since 2006 and was a problem with 911 calls for service and code violations. He stated there was a \$243.50 City assessment for lot cleaning and boarding of the property.

5802 Shenandoah Drive

Mr. Swanson provided background information and photos and stated the structure was fire damaged. He stated the property was brought before Council on January 24, 2011, and Council at that time directed staff to hold off for 90 days on the approval of the demolition ordinance. He stated to date there have been no repairs.

2123 Strickland Bridge Road

Mr. Swanson provided background information and photos and stated the structure was fire damaged. He stated the property was a problem with 911 calls for service and code violations. He stated there was a \$446.32 City assessment for lot cleaning.

A question and answer period ensued regarding the calls for service. Mr. Swanson explained most complaints come from the neighbors. Mr. Dale Iman, City Manager, further explained the calls for service were generally nuisance calls.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (2006 CENTER STREET). ORDINANCE NO. NS2011-003.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (703 PRITCHETT ROAD). ORDINANCE NO. NS2011-004.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (5802 SHENANDOAH DRIVE). ORDINANCE NO. NS2011-005.

AN ORDINANCE OF THE CITY COUNCIL OF FAYETTEVILLE, NORTH CAROLINA, REQUIRING THE CITY BUILDING INSPECTOR TO CORRECT CONDITIONS WITH RESPECT TO, OR TO DEMOLISH AND REMOVE A STRUCTURE PURSUANT TO THE DWELLINGS AND BUILDINGS MINIMUM STANDARDS CODE OF THE CITY (2123 STRICKLAND BRIDGE ROAD). ORDINANCE NO. NS2011-006.

MOTION: Council Member Bates moved to approve the demolition ordinances to include the amended ordinance for 2006 Center Street with the exception of 1018 Ellis Street.

SECOND: Council Member Crisp

VOTE: UNANIMOUS (9-0)

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8.5 Proposed solid waste service standard changes.

Mr. Jerry Dietzen, Environmental Services Director, presented this item and provided background information. He stated with the current ordinance and fee changes, they would be addressing the following items:

1. Trash will only be collected from City issued/approved carts. Should one cart not provide adequate capacity, one additional City brown cart may be used for excess trash. Citizens can also purchase similar grade carts from other vendors that meet the City's standard.
2. Bags or other items outside of the cart shall not be collected.
3. Carts shall be placed within 1 foot of the curb or edge of the pavement and a minimum of 4 feet from anything that may interfere with automated collection.
4. Household generated construction debris will be collected by the City for a fee of \$50.00 or the homeowner may dispose of debris by taking it to the landfill.
5. A "set out" will result in a fee of \$100.00.
6. Multiple bulky collection, more than one in a 90-day period, once per quarter, will result in a fee of \$50.00 for every subsequent pickup.
7. All yard waste must be placed within 5 feet of the curb or the edge of the pavement.
8. Only clear bags should be used for yard waste.

Mr. Dietzen reviewed the proposed amendments and stated adopting the amendments would reduce workplace injuries and associated medical costs, allow staff to operate more safely, offer more sanitary conditions on the roadside, increase our efficiency, and avoid costs. He reviewed the process that would follow after Council's approval to include informing the public of the fee changes and service changes.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AMENDING VARIOUS SECTIONS OF CHAPTER 22, SOLID WASTE, OF THE CODE OF ORDINANCES OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA. ORDINANCE NO. S2011-007.

MOTION: Council Member Applewhite moved to approve the amendments to the ordinance as presented by staff.

SECOND: Council Member Bates

VOTE: PASSED by a vote of 8 in favor to 1 in opposition (Council Member Crisp)

9.0 ADMINISTRATIVE REPORTS

9.1 Monthly statement of taxes for April 2011.

2010 Taxes	\$357,131.85
2010 Vehicle	334,571.84
2010 Revit	906.10
2010 Vehicle Revit	214.49
2010 FVT	41,138.03
2010 Transit	41,138.01
2010 Storm Water	10,526.35
2010 Fay Storm Water...	21,052.72
2010 Fay Recycle Fee	20,640.60
2010 Annex.....	0.00
2009 Taxes	6,943.77

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2009 Vehicle	11,417.87
2009 Revit	11.78
2009 Vehicle Revit	0.88
2009 FVT	2,216.40
2009 Transit	2,216.41
2009 Storm Water	167.30
2009 Fay Storm Water.....	334.60
2009 Fay Recycle Fee	514.02
2009 Annex.....	0.00
2008 Taxes	1,541.22
2008 Vehicle	2,747.83
2008 Revit	0.00
2008 Vehicle Revit	0.00
2008 FVT	400.11
2008 Transit	255.04
2008 Storm Water	65.30
2008 Fay Storm Water.....	106.59
2008 Fay Recycle Fee	247.07
2008 Annex.....	0.00
2007 Taxes	743.11
2007 Vehicle	984.85
2007 Revit	0.00
2007 Vehicle Revit	0.00
2007 FVT	200.00
2007 Storm Water	48.00
2007 Fay Storm Water	96.00
2007 Annex.....	0.00
2006 and Prior Taxes	618.06
2006 and Prior Vehicle	1,599.04
2006 and Prior Revit	0.00
2006 and Prior Vehicle Revit	0.00
2006 and Prior FVT	367.85
2006 and Prior Storm Water	16.02
2006 Annex.....	21.60
Interest	28,326.01
Revit Interest	56.75
Storm Water Interest	487.72
Fay Storm Water Interest	954.83
Annex Interest	2.56
Fay Recycle Interest	1,008.83
Total Tax and Interest	\$892,037.41

10.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
WORK SESSION MINUTES
LAFAYETTE ROOM
JUNE 6, 2011
5:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4) (departed at 6:43 p.m.); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9) (arrived at 5:10 p.m.)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Renner Eberlein, Assistant City Attorney
Tom Bergamine, Chief of Police
Patricia Bradley, Police Attorney
Steven Bates, Police Sergeant
Lisa Smith, Chief Financial Officer
Benjamin Nichols, Fire Chief
Ron McElrath, Human Relations Director
Victor Sharpe, Community Development Director
Sue Byrd, Fayetteville Area Operation Inasmuch
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Mayor Pro Tem Haire.

3.0 APPROVAL OF AGENDA

MOTION: Mayor Chavonne moved to approve the agenda with the addition of Item 4.1(a), update on traffic stop report, with the flexibility to change the order of the items based on availability of staff.

VOTE: UNANIMOUS (10-0)

4.0 OTHER ITEMS OF BUSINESS

4.1 Fayetteville Metropolitan Planning Organization (FAMPO) - Bicycle and Pedestrian Connectivity Study

Ms. Mariza Chapman, Stewart Engineering, presented this item and provided background information. She introduced Mr. Curtis Bridges with Stewart Engineering.

Mr. Curtis Bridges, Stewart Engineering, provided an overview of the study and reviewed the study objectives; study process; public outreach through participation and activities; administration of the online survey; demand for walking and bicycling; ground-truthing to look at what was in other communities; analysis of challenges and opportunities, neighborhood connectivity, safety, and neighborhood routes; comprehensive network; and available resources.

A question and answer period ensued regarding the intent of the public outreach. Mr. Bridges explained the outreach was to gauge interest and obtain feedback from the public on interest.

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4.1(a) Update on Traffic Stop Report

Mr. Tom Bergamine, Chief of Police, presented this item and stated a meeting was held and five matters of concern were raised. He stated a suggestion was made to simplify the complaint process to make it less intimidating to the citizens. He explained complaints were received at the Police Department, on the internet, by telephone, from walk-ins, by contacting an officer, and at the Human Relations Department. He stated another concern raised was whether reports were being timely submitted to the State Bureau of Investigation. He explained by state law they were allowed 60 days to submit the reports and had never missed a deadline. He stated another concern was raised regarding verbal warnings. He explained verbal warnings were no longer being implemented and it was now being required to either do a written warning or a regular citation and cameras were also being installed in the police vehicles. He stated a concern was raised as to improving minority representation in supervisory positions. He explained the promotion process was revamped and that 54 percent of promotions were minorities.

Council Member Applewhite inquired how the promotion process compared to other municipalities. Mr. Bergamine responded there were different processes.

Council Member Davy inquired if the results were open for review. Mr. Bergamine replied in the affirmative and explained the testing procedures were coordinated with the Human Resources Department.

Mr. Bergamine stated a concern was raised regarding the consent forms. He stated the consent form was discontinued when the state developed the traffic stop report form. He explained the officer's rights to request a consent search.

Council Member Massey inquired if there was information available that explained what the consent search request would entail. Mr. Bergamine explained the ticket would already be issued before the search was requested. Mr. Iman responded this information was not available during traffic stops but they could do something like that which could result in lesser amounts of confiscated contraband.

Mr. Steven Bates, Police Sergeant, then provided an overview of the TSR Report Information which contained statistical information on traffic stops from January to April 2011, to include the types of searches by initial reason for stop; types of violations and items found; search types by race and type of item found; alcohol, total weapons, and total money seized by search type; total pounds of drugs seized by search type and by race regardless of search type; time breakdown and items seized; total persons searched; arrests made by race by charge; incident involvement by race; breakdown by race and sex; breakdown by race, sex, and age; and calls for service initiated from citizens that turn into incidents (suspicious activity, disturbance, drugs, larceny/theft, domestic, alarms). He explained all the data came directly from the traffic stop reports.

In response to concerns raised by Council, Ms. Patricia Bradley, Police Attorney, explained there was no probable cause or reasonable suspicion with a consent search. She further explained if there was probable cause for the search, there would be particular facts as to why the vehicle was being searched. She clarified the number assigned to the officer was a public record but the number in correlation to the officer's name was not a public record.

Council Member Crisp expressed there was concern as to why officers were asking to search vehicles.

Mr. Bates continued review of the report. Mr. Bates and Mr. Bergamine responded to questions posed by Council regarding the percentages provided in the report, types of contraband confiscated during stops, racial counts, calls for service, and training.

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4.2 Comprehensive Limited English Proficiency (LEP) Policy

Mr. Ron McElrath, Human Relations Director, presented this item. He provided background information on Title VI of the Civil Rights Act and explained Executive Order 13166 regarding Limited English Proficiency. He stated to meet HUD, FTA, Justice Department and other federal granting agency requirements, the City was clarifying its procedures and revising its policy related to individuals with limited English proficiency. He stated it was being recommended that Council adopt a resolution authorizing the City Manager to implement a City-wide LEP action plan as required by Title VI of the Civil Rights Act, which would include a City-wide policy.

Ms. Renner Eberlein, Assistant City Attorney, explained that in developing the policy, the Four Factor Analysis from the Department of Justice was conducted. She briefly reviewed the four factors considered in the analysis as follows:

1. The number or proportion of LEP persons eligible in the City service area who may be served or who are likely to encounter a City program, activity, or service;
2. The frequency with which LEP individuals generally come in contact with a City representative providing City services;
3. The nature and importance of the program, activity or service provided by the City to the LEP population; and
4. The resources available to the City and overall costs to provide LEP assistance.

Ms. Eberlein stated different language assistance measures would be taken to assist LEP individuals such as oral translation by City employees who speak Spanish and other languages fluently, utilizing "I Speak" cards which were language identification cards, and written interpretations by translating vital documents into Spanish.

A question and answer period ensued regarding the "I Speak" cards being available to all employees and the census determining the threshold for LEP individuals.

Council Member Applewhite inquired if the 2010 census data was available. Ms. Eberlein responded it was not available at this time but they could make it available once published.

Consensus of Council was to move this item forward to the June 13, 2011, meeting.

4.3 Title II Americans with Disabilities Act (ADA) Self-Evaluation and Transition Plan Update and Public Forums

Mr. Ron McElrath, Human Relations Director, presented this item. He provided an update and stated the requirements of Title II of the ADA were to designate a coordinator, provide notice of ADA requirements, establish grievance procedures, conduct a self-evaluation, and develop a transition plan. He stated the transition plan was ongoing and provided updates on signage, accessibility, and audio and video modifications. He stated the estimated completion date for the projects would be December 2012 and other modifications could be necessary if problems were identified in the future.

A question and answer period ensued regarding whether the information would be posted online, the possibility of audio crosswalks, and the timeline for updating parks. Mr. McElrath responded the information would be posted online, audio crosswalks had not been suggested but they could look into that, and that they were looking at all parks for compliance.

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4.4 Tornado Response "After Action" Briefing

Mr. Benjamin Nichols, Fire Chief, presented this item. He provided an update on the activities taken from the tornado event and an overview of the City's mission in response to the tornado.

Discussion ensued regarding FEMA's standard as to whether debris was eligible or ineligible. Mr. Nichols explained a debris contractor and monitor company was hired to ensure all debris was eligible as they did not want any debris to be ineligible.

Mr. Nichols briefly reviewed a timeline of the event and the successes which included interdepartmental cooperation, response implementation, contracting, decision-making, media relations, meeting updates, and identifying the needs of City employees impacted by the tornado. He stated areas for improvement included contracting, internal policies and procedures, internal communication, command and control, training, documentation, and EOC facilities. He provided the following recommendations:

- Ensure all required personnel are NIMS and ICS trained and understand their responsibilities during emergencies and disasters.
- Continue to have departments cooperate, collaborate, and train during annual events.
- Reinstate and support a stand-alone Emergency Manager position.
- Thank public safety, City employees, and citizens for their part in response and ongoing recovery efforts.

Council members expressed appreciation to everyone for all the hard work during and after the recovery from the storm.

Discussion ensued regarding the assistance provided by the military and whether there was a military liaison. Mr. Nichols responded there was a military liaison with the State EOC appointed by the governor and who responded to the governor and coordinated all military access within the state. He explained the state did not have the ability to put a military liaison in every county to coordinate disasters.

A question and answer period ensued regarding making the citizens aware of the practices during disasters. Mr. Nichols responded information was provided at the citizens academy and announcements were made on the radio and TV.

4.5 Unified Development Ordinance (UDO) Update on the Steps to Implement the UDO

Ms. Karen Hilton, Planning and Zoning Division Manager, presented this item and stated a public hearing was scheduled for June 27, 2011. She provided an update on the remapping as well as the status of other activities related to implementation of the adopted standards to include text adjustments and the administrative manual.

A question and answer period ensued regarding how the parcels with concerns would be handled at the public hearing. Ms. Hilton suggested that the parcels with concerns be pulled and set aside in order to clear the remaining parcels and perhaps come back with discussion focused on the concerns.

Ms. Hilton briefly reviewed zoning changes examples. She stated an option that Council could consider was directing staff to come back at a future point with a complete study which they could not do at this time. She explained the administrative manual was the last piece

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and was in the final draft which would be put on the web. She stated they would also set up training sessions with the community.

Mr. Kristoff Bauer, Assistant City Manager, introduced Scott Shuford, the newly hired Chief Development Officer.

4.6 Request from Fayetteville Area Operation Inasmuch to Donate a City-Owned Vacant Lot at 538 Frink Street

Mr. Victor Sharpe, Community Development Director, presented this item and presented background information. He stated the lot at 538 Frink Street was acquired by the City through the Acquisition and Demolition Program and Fayetteville Area Operation Inasmuch (FAOIAM) was requesting donation of the property to their organization. He reviewed the history of the surrounding property and explained that FAOIAM would be moving a modular home with a permanent foundation on the lot that would house five homeless persons, which would be allowed under the current zoning ordinance and UDO. He stated there was concern with the number of transitional housing in the neighborhood as staff had envisioned single-family housing as part of the redevelopment of the area. He stated if Council were to move forward with the donation, staff's recommendation would be that Council allow the City to recapture the funds used to acquire the lot. He reviewed the options available to Council and stated they were looking for guidance from Council.

Discussion ensued regarding the funds used to acquire the lot and the taxes that would be lost if the land were donated. Mr. Sharpe stated another issue would be whether this would be a practice or policy they would be comfortable applying throughout the City. He stated they were sensitive to the needs of the homeless but had concerns with the property as to whether it was in the best interest of the community.

Council Member Crisp inquired if potential builders, developers, or Habitat for Humanity were interested. Mr. Sharpe responded in the negative.

Council Member Crisp suggested a public hearing to hear from the residents in the neighborhood.

Council Member Arp stated they had set a precedent on Frink Street by doing this previously. Mr. Sharpe explained after the donation was made, he found out the goal was to create a "homeless village". He stated it was his opinion it becomes something different when you group it together compared to developing sporadically throughout a neighborhood.

Discussion ensued and concerns were raised regarding the character of the area to include prostitution, breaking and entering, police calls, and blight.

Council Member Davy inquired of Ms. Sue Byrd, Fayetteville Area Operation Inasmuch, if there was a selection process. Ms. Byrd responded there was a strict criteria on who would go into their homes. She explained it would be someone involved in their programs with a good work ethic. She stated it would look different on Frink Street than what was envisioned of single-family homes. She stated it was different but it would work.

Council Member Crisp inquired of Ms. Byrd if there had been any problems with the residents clashing with the residents on Frink Street. Ms. Byrd responded in the negative.

Consensus of Council was to schedule this item for a public hearing on June 27, 2011, to receive public input.

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4.7 Proposed Fund Balance Policy

Ms. Lisa Smith, Chief Financial Officer, presented this item and provided an overview of the proposed Fund Balance Policy as follows and responded to questions posed by Council:

Proposed Fund Balance Policy

- Purpose
 - Formalize current practices/goals
 - Meet expectations of bond rating agencies
 - Address Governmental Accounting Standards Board (GASB) Statement 54
- Identified as a best practice by Government Finance Officers Association
- Consistent with value of stewardship and mission principle to be financially sound

GASB Statement 54

- Purpose is to:
 - Enhance usefulness of fund balance information; and
 - Clarify use of governmental fund types (for example, when to use a special revenue fund or capital project fund)
- Fund balance classifications are generally based on resource use restrictions
- Requires identification of policies related to fund balance
- Current fund balance classifications:
 - Reserved
 - Unreserved
 - Designated
 - Undesignated
- New fund balance classifications:
 - Nonrespendable
 - Restricted
 - Committed
 - Assigned
 - Unassigned
- Nonspendable
 - Not in spendable form
 - Amounts legally or contractually required to remain intact
- Restricted
 - Amounts restricted for a specific purpose by external parties
 - Amounts restricted by law through constitutional provisions of enabling legislation
- Committed - Amounts whose use is constrained by limitations imposed by the governing body (City Council) itself
- Assigned - Amounts intended to be used for specific purposes
- Unassigned - Available for any purpose

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Restated Fund Balance Presentation for FY 2010

Fund Balances (Current Standard) 2010		Fund Balances (New Standard) 2010:	
Reserved		Nonspendable	
By State Statute	12,805,674	Inventories	104,678
For encumbrances	2,597,091	Restricted	
For inventories	104,678	Stabilization by State Statute	15,402,765
For downtown	104,316	Downtown	104,316
For county recreation	2,273,244	County recreation	2,273,244
For JP Riddle Stadium	59,410	JP Riddle Stadium	59,410
For donations	28,115	Donations	28,115
Unreserved		Assigned	
Designated		Subsequent year's expenditures	2,908,969
For subsequent year's expenditures	2,908,969	Special purpose	3,558,494
For special purpose	3,558,494	Capital projects	3,424,312
For special projects	3,424,312	Unassigned	18,724,275
Undesignated	18,724,275	Total fund balances	<u>46,588,578</u>
Total fund balances	<u>46,588,578</u>		

Proposed Fund Balance Policy

- Describes new fund balance categories
- Establishes spending order for restricted and unrestricted funds
- States council authority to commit funds
- Delegates authority to assign funds to City Manager
- Formally establishes minimum unassigned fund balance at 10% of the subsequent year's budget

Ms. Smith stated the next steps would be to obtain feedback from Council and submit proposed fund balance policy to Council for consideration at the June 13, 2011, meeting.

Consensus of Council was to move the item forward to the June 13, 2011, City Council meeting.

5.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

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FAYETTEVILLE CITY COUNCIL
REGULAR MEETING MINUTES
CITY HALL COUNCIL CHAMBER
JUNE 13, 2011
7:00 P.M.

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9)

Others Present: Dale E. Iman, City Manager
Doug Hewett, Assistant City Manager
Kristoff Bauer, Assistant City Manager
Karen M. McDonald, City Attorney
Lisa Smith, Chief Financial Officer
Tracey Broyles, Budget and Evaluation Manager
Victor Sharpe, Community Development Director
John Kuhls, Human Resource Development Director
James Rose, PWC Chief Administrative Officer
Dwight Miller, PWC Chief Finance Officer
Rebecca Rogers-Carter, Management Services Manager
Nathan Walls, Public Information Specialist
Members of the Press

1.0 CALL TO ORDER

Mayor Chavonne called the meeting to order.

2.0 INVOCATION

The invocation was offered by Pastor Apostle Wiley Hughes, Destiny Now World Outreach Ministries.

3.0 PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was recited by those in attendance.

4.0 APPROVAL OF AGENDA

MOTION: Council Member Bates moved to approve the agenda.
SECOND: Council Member Massey
VOTE: UNANIMOUS (10-0)

5.0 ANNOUNCEMENTS AND RECOGNITIONS

Council Member Hurst announced that Fayetteville Beautiful in partnership with the City of Fayetteville and Sustainable Sandhills would be hosting a free electronics waste recycling drive on June 18, 2011, from 9 a.m. to 3 p.m. at the Westwood Shopping Center, in support of North Carolina's legislation prohibiting the disposal of electronics in landfills which would take effect July 1, 2011.

Mayor Chavonne recognized Ms. April Cain Pittman, Agriculture Teacher and Future Farmers of America Advisor (FFA) from Gray's Creek High School. Ms. Pittman came forward and recognized the FAA agriculture students from Gray's Creek High School. She stated they would be part of an Agriculture Issues Forum Team competing in Raleigh on June 22, 2011, at the North Carolina FFA State Convention. She stated the students had to choose an agricultural or environmental issue and chose the environmental issue on whether or not to use trash incinerators for energy. Each student introduced themselves and described the character they would be playing in the skit.

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6.0 PUBLIC FORUM

Mr. Mark Adams, 822 Schley Drive, Fayetteville, NC 28314, spoke regarding a picture posted at the airport that he felt was inappropriate. He stated the picture depicts an African-American slave named Jim that was a character in the book entitled Adventures of Huckleberry Finn and felt there should be a better image of an African-American for persons arriving in Fayetteville by airplane.

Mr. Nero B. Coleman, 2275 George Owen Road, Fayetteville, NC 28302, extended an invitation and announced the Annual Juneteenth Rock the Vote Block Party would be held on June 18, 2001, from 1 p.m. to 7 a.m.

7.0 CONSENT

MOTION: Council Member Bates moved to approve the consent agenda.
SECOND: Council Member Hurst
VOTE: UNANIMOUS (10-0)

7.1 Approve Minutes

- April 26, 2011 - Dinner and Discussion Meeting
- May 2, 2011 - Work Session
- May 9, 2011 - Dinner and Discussion Meeting
- May 9, 2011 - Regular Meeting
- May 11, 2011 - Budget Workshop
- May 18, 2011 - Agenda Briefing
- May 18, 2011- Budget Workshop

7.2 Adoption of City Council Policy No. 115.13, Fund Balance Policy.

Due to an electronic error, this item was omitted from the agenda packet and therefore not available to officially adopt. This item will be placed on an upcoming agenda for adoption.

7.3 Budget Ordinance Amendment 2011-16 (General Fund, Transit Fund, Warranty Vehicle Lease Fund, and City of Fayetteville Finance Corporation).

The amendment adjusted General Fund appropriations for the Fire Department, Police Department, and City Manager's Office, and appropriations for Transit Fund and the City of Fayetteville Finance Corporation based upon mid-year projections, adjusted to ensure sufficient funding for tornado-related expenditures and unexpected expenditures through the fiscal year-end. The financial plan for the Warranty Vehicle Lease fund was adjusted to appropriate available fund balance to transfer to the General Fund to facilitate the closing of the fund in fiscal year 2011.

7.4 Capital Project Ordinance 2011-11 (Storm Water Drainage Improvements).

The ordinance established an initial project budget of \$3,126,007.00 for storm water drainage improvements, including costs for design, construction, and land and right-of-way acquisition.

7.5 Capital Project Ordinance 2011-12 (Purchase of Festival Park Plaza Office Building).

The ordinance appropriated \$6,300,000.00 of proceeds from the planned capital lease financing and a \$100,000.00 General Fund transfer for the acquisition of the Festival Park Plaza Office Building and related debt issuance costs.

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7.6 Capital Project Ordinance Amendment 2011-19 (Downtown Streetscape Project).

The amendment corrected a clerical error on Capital Project Ordinance Amendment 2011-2 adopted June 28, 2010, for the Downtown Streetscape project. The intended General Fund Transfer funding source was listed as Central Business Tax District Fund Transfer.

7.7 Capital Project Ordinance Amendment 2011-20 (Ramsey Street Transportation Improvement Project).

The amendment appropriated an additional \$90,000.00 for the Ramsey Street Transportation Improvement Project to be used for additional utility adjustments and right-of-way costs associated with the project.

7.8 Capital Project Ordinance Amendment 2011-21 (Texfi Property).

The amendment appropriated a \$50,000.00 General Fund transfer for anticipated expenditures to secure the Texfi site, as planned with the Fiscal Year 2012-2016 Capital Improvement Plan.

7.9 Special Revenue Fund Project Ordinance 2011-12 (FY 2011 Youth Education Program).

The ordinance established a \$16,000.00 project budget for the FY 2011 Youth Education Program to provide and/or increase services offered through recreation centers in disciplines such as dance, music, art, visual art, and literature.

7.10 PWC Financial Matters: Budget Amendments

The Public Works Commission requested adoption of (a) PWC Electric, Water/Wastewater and Fleet Maintenance Internal Service Fund Budget Amendment #3 and (b) Capital Project Fund Budget Amendments as follows: (1) Electric Rate Stabilization Fund Amendment #10 for FY 2011, (2) Electric Rate Stabilization Fund Amendment #11 for FY 2012, (3) Water and Wastewater Rate Stabilization Fund Amendment #7 for FY 2011, (4) Water and Wastewater Rate Stabilization Fund Amendment #8 for FY 2012, (5) Annexation Phase V - Areas 8-13, CPF Amendment #1 for FY 2012, and (6) Annexation Phase V Reserve Fund Amendment #4 for FY 2012.

7.11 PWC: For Assessed Property - Modify assessment to waive the interest.

The Public Works Commission requested approval to release and refund \$499.95 back to the property owner for accrued interest on a \$5,000.00 assessment that was paid by the property owner of 1720 Paisley Avenue.

7.12 Bid Recommendation - Purchase of one multi-terrain loader with 72" brush cutter.

The Public Works Commission approved bid award for purchase of one multi-terrain loader with 72" brush cutter (with the option to purchase additional units within a one-year period upon the agreement of both parties) to Southeast Industrial Equipment, Charlotte, NC, lowest responsive bidder, in the total amount of \$89,725.00. Bids were received March 18, 2011, as follows:

- Southeast Industrial Equipment (Charlotte, NC) \$89,725.00
- *Southland Rental & Supply (Fayetteville, NC) \$78,506.38
- *Gregory Poole Equipment Co. (Raleigh, NC) \$83,000.00
- *RW Moore Equipment Co. (Raleigh, NC) \$84,300.00
- *CCS Equipment Sales, LLC (Youngsville, NC) \$84,590.00

*The bid from Southeast Industrial Equipment was the only bid that substantially met the specifications. Southeast Industrial

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Equipment took one minor exception to the provision of a hand throttle, as the unit they were bidding had a foot throttle only. All other bidders took substantial exceptions to the bid specifications to include, but not limited to, ground clearance, track width, pressurized cab, and hydraulic pressure and flow.

7.13 Phase 5 Annexation Area 11-WS.

As the next step in the process of providing utility services to Area 11-WS of the Phase 5 Annexation area, adoption of a Preliminary Assessment Resolution was required for all streets within Area 11-WS where it was anticipated utilities would be installed and for which property owners may be assessed a portion of the utility installation cost.

RESOLUTION AND ORDER TO FILE AND PUBLISH A PRELIMINARY ASSESSMENT RESOLUTION FOR THE EXTENSION OF THE WATER DISTRIBUTION AND SANITARY SEWER COLLECTION SYSTEM IN ALL OR A PORTION OF THE STREETS WITHIN AREA 11-WS OF THE PHASE 5 ANNEXATION LISTED ON EXHIBIT A. RESOLUTION NO. R2011-029.

7.14 Phase 5 Annexation Areas 10 and 11.

As the next step in the process of providing sanitary sewer service to Areas 10 and 11 of the Phase 5 Annexation area, adoption of a Preliminary Assessment Resolution was required for all streets within Areas 10 and 11 where it was anticipated utilities would be installed and for which property owners may be assessed a portion of the utility installation cost.

RESOLUTION AND ORDER TO FILE AND PUBLISH A PRELIMINARY ASSESSMENT RESOLUTION FOR THE EXTENSION OF THE SANITARY SEWER COLLECTION SYSTEM IN ALL OR A PORTION OF THE STREETS WITHIN AREAS 10 AND 11 OF THE PHASE 5 ANNEXATION LISTED ON EXHIBIT A. RESOLUTION NO. R2011-030.

7.15 Municipal Agreement with NCDOT for Grove Street bridge replacement.

7.16 Reimbursement Agreement with NCDOT for salt purchase.

7.17 FY 2011-12 Strategic Plan adoption.

7.18 Tax refunds of greater than \$100.00.

<u>Name</u>	<u>Year</u>	<u>Basis</u>	<u>City Refund</u>
Five Riddles III, Inc.	2009	Over Payment	\$5,637.89
WT Heath	2007-2009	Duplicate Listing	381.33
Total			<u>\$6,019.22</u>

7.19 Comprehensive Limited English Proficiency (LEP) Policy.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE AUTHORIZING THE CITY MANAGER TO IMPLEMENT A CITY LIMITED ENGLISH PROFICIENCY LANGUAGE ACTION PLAN AS REQUIRED BY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND EXECUTIVE ORDER 13166. RESOLUTION NO. R2011-031.

8.0 OTHER ITEMS OF BUSINESS

8.1 Fiscal Year 2011-2012 Budget Ordinance and Fee Schedule, Fiscal Year 2012-2016 Capital Improvement and Information Technology Plans, Capital Project Ordinances 2012-1 through 2012-8, and Special Revenue Fund Project Ordinance Amendment 2012-1.

Mr. Dale Iman, City Manager, presented this item and stated at the advice of City Council and recommendations from himself, they budgeted additional funding for more in-car cameras for the Police Department and for marketing the All American City Award which they

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anticipated bringing home. He stated the budget documents reflected the plans as presented to Council on March 7, 2011, with the following modifications:

- Computer replacement funding for fiscal year 2012 increased by \$45,000.00 to fund replacement of 30 additional mobile data computers for the Police Department.
- Funding for police in-car camera systems increased by \$270,000.00 to fund 45 additional systems.
- Ramsey Street Transportation Project funding increased by \$90,000.00 to fund required utility relocations and right-of-way acquisition.
- Funding for street resurfacing for fiscal year 2012 reduced by \$350,000.00 due to reductions needed to balance the fiscal year 2012 General Fund budget.
- Ballfield lighting and gymnasium resurfacing project funding increased by \$200,000.00 to reflect funding included in the fiscal year 2012 recommended budget
- Stormwater Improvement project funding adjusted based upon current revenue bond funding and feasibility model.

Mr. Iman provided an overview of the budget process to include the timeline and proceeded to review the following budget highlights:

General Fund Budget Highlights

- Maintains and enhances levels of service without increasing the tax rate - Recommended tax rate remains 45.6 cents per \$100.00 taxable valuation
- Enhances transit services
 - Route 9 extension
 - Evening service on routes 8 and 15
 - 3 positions added and 5 intermittent positions upgraded to full-time to support enhancements
- Implements the Probationary Rental Occupancy Program (PROP)
- Funds police enhancements including:
 - Deployment of additional in-car camera systems
 - Upgrade a part-time forensic technician to full-time
- Provides for equipment and operating needs for North Carolina Veterans Park
- Includes funding for the police pay plan and performance pay plan for other eligible employees
- Reflects savings from efficiency improvements in areas including Environmental Services and Police Department

DRAFT

- Capital outlay includes:
 - Vehicle and Equipment Replacements

Police	\$1,016,500	29 units
Environmental Services	1,470,000	6 units
Fire	1,377,000	3 units
Parks, Recreation & Maintenance	413,500	21 units
Engineering & Infrastructure	422,000	4 units
	<u>\$4,699,000</u>	<u>63 units</u>
 - Other Capital Items

Police In-Car Cameras	\$270,000	45 units
Equipment for NC Veterans Park	\$84,000	4 units
Energy efficient ball field lighting	\$140,000	
 - Transfers to capital project funds for:

Street resurfacing, including Fort Bragg Road	\$ 3.65M
Municipal agreement projects	1.19M
Building maintenance projects	818K
Computer replacement plan	311K
Sidewalk improvements	156K
Ramsey Street project	150K
Playground improvements	67K
Parking lot maintenance projects	53K
Wayfinding signage project	50K
	<u>\$6.445M</u>

Other Operating Funds Budget Highlights

- Emergency Telephone System Fund - Significant revenue reductions anticipated from changes in distribution formula by State (\$423,000.00 or 40%)
- Stormwater Fund
 - Maintains combined \$3 per month fee
 - Includes funding for debt service to support the issuance of \$10.6M in debt for projects
- Recycling Fund
 - No fee increase proposed
 - Enhances services with holiday pickup for curbside recycling
- Transit Fund
 - No fare increases proposed
 - Expansion of route 9 and evening service on routes 8 and 15
 - General Fund contribution increased by \$238,000.00 over FY 2011 original budget

Proposed Budget Summary

- General Fund Budget
 - Total proposed budget - \$139.0 million
 - 3.6% increase from the original budget for fiscal year 2011
- Budget for Annual Funds, excluding PWC
 - Total proposed budget - \$179.7 million
 - 3.4% increase from original budget for fiscal year 2011

DRAFT

Council Member Mohn inquired if the \$350,000.00 reduction in street resurfacing to help balance the budget had been distributed to other specific projects or to different areas within the budget. Mr. Iman explained it was a budget balancing measure that was taken to balance the budget and to fund undertakings identified by Council and also stay within the Council's expectations of \$3.5 million.

Council Member Mohn inquired regarding the increase in revenues and the possibility of reducing the tax rate. Mr. Iman explained he could not provide a good time to reduce the tax rate and still perform the way they want to perform as a City and reach the heights and expectations of the citizens. He explained past increases were due to budgeting vacancies from the fund balance. He stated this year the process was changed wherein this would not reoccur in the future.

Mayor Pro Tem Haire inquired on the route of Route No. 9. Mr. Iman responded the route was extending all the way over to Ramsey Street and up Ramsey Street to the new medical center. He stated this route was created when they extended the evening hours on the Murchison Road, Bragg Boulevard, and Ramsey Street routes last year.

Council Member Arp inquired if all police cars would have cameras installed. Mr. Iman responded in the negative and explained cameras would not go in undercover cars and many of the command cars.

Council Member Arp inquired if they would be placing energy efficient lights in all parks and recreation areas. Mr. Iman responded improvements such as lighting were evaluated and if the payback was 7 years or less they would go with energy efficient lighting.

Council Member Massey inquired on how they could increase services and provide employees a raise of 2.5 percent. Mr. Iman explained the overall wages of the City were going down because of people retiring at the top of the scale and being replaced with people coming in at the lower end of the scale. He also explained they were seeing efficiency improvements in different areas of the budget.

MOTION: Council Member Crisp moved to approve the Fiscal Year 2011-2012 Budget Ordinance and Fee Schedule, Fiscal Year 2012-2016 Capital Improvement and Information Technology Plans, Capital Project Ordinances 2012-1 through 2012-8, and Special Revenue Fund Project Ordinance Amendment 2012-1.

SECOND: Mayor Pro Tem Haire

VOTE: PASSED by a vote of 9 in favor to 1 in opposition (Council Member Mohn)

9.0 ADJOURNMENT

There being no further business, the meeting adjourned.

Respectfully submitted,

JENNIFER PENFIELD
Deputy City Clerk

ANTHONY G. CHAVONNE
Mayor

061311

DRAFT

**FAYETTEVILLE CITY COUNCIL
DINNER AND DISCUSSION MEETING MINUTES
EXECUTIVE CONFERENCE ROOM
JUNE 27, 2011
6:00 P.M.**

Present: Mayor Anthony G. Chavonne

Council Members Keith Bates, Sr. (District 1); Kady-Ann Davy (District 2); Robert A. Massey, Jr. (District 3); Darrell J. Haire (District 4); Bobby Hurst (District 5); William J. L. Crisp (District 6); Valencia A. Applewhite (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9)

Others Present: Kristoff Bauer, Assistant City Manager
Doug Hewett, Assistant City Manager
Karen McDonald, City Attorney
Scott Shuford, Development Services Director
Benny Nichols, Fire Chief
Craig Hampton, Special Projects Director

Mayor Chavonne called the meeting to order.

Closed session for consultation with the attorney regarding an attorney-client privileged matter.

MOTION: Mayor Pro Tem Haire moved to go into closed session for consultation with the attorney regarding an attorney-client privileged matter.
SECOND: Council Member Bates
VOTE: UNANIMOUS (10-0)

The regular session recessed at 6:00 p.m. The regular session reconvened at 6:40 p.m.

MOTION: Council Member Mohn moved to go into open session.
SECOND: Council Member Massey
VOTE: UNANIMOUS (10-0)

Mr. Craig Hampton, Special Projects Director, provided an update on the Veteran's Park.

Mr. Kristoff Bauer, Assistant City Manager, explained Item 8.6, consideration of sponsorship request from Extreme Makeover, Home Edition, would be added to the agenda.

Council Member Hurst requested to be recognized during the meeting for an announcement regarding an electronics waste recycling drive.

There being no further business, the meeting adjourned at 6:55 p.m.

Respectfully submitted,

KAREN M. MCDONALD
City Attorney

ANTHONY G. CHAVONNE
Mayor

062711

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: James Rose, PWC Chief Administrative Officer
DATE: August 8, 2011
RE: **Phase 5 Annexation Area 11-WS**

THE QUESTION:

Providing water and sanitary sewer service to Area 11-WS of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Efficient City Government - Cost-Effective Service Delivery

BACKGROUND:

As part of the statutory requirements for annexation procedures, City Council approved Resolution Number R2011-029 in their meeting on June 13, 2011. A public hearing was held on July 25, 2011 to hear public comment regarding the project. The next step is to adopt the Resolution Directing Project be Undertaken.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

Staff recommend that Council move to adopt Resolution R2011-029: Directing the Phase V Annexation Area 11-WS Utility Improvement Project be Undertaken.

ATTACHMENTS:

Resolution Directing the Project be Undertaken

RESOLUTION DIRECTING CONSTRUCTION OF AREA 11-WS OF THE PHASE 5 ANNEXATION UTILITY IMPROVEMENT PROJECT BE UNDERTAKEN

WHEREAS, on the 13th day of June, 2011, the City Council of the City of Fayetteville, North Carolina, adopted a Preliminary Assessment Resolution Providing for the Extension of the Water Distribution System and Sanitary Sewer Collection System in All or Portions of the Streets Within Area 11-WS of the Phase 5 Annexation Listed on Exhibit “A”.

WHEREAS, the required public hearing has been held after due notice to the public and to the owners of the affected real property.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, North Carolina that after careful study and consideration of the matter and of all pertinent facts and circumstances, including engineering and planning studies and advice, and in the exercise of its best legislative judgment, the City Council of Fayetteville, North Carolina finds as fact that:

1. The public interest, safety, convenience, and general welfare requires the extension of the sanitary sewer collection system and, where necessary, a water distribution system into all or a portion of those streets as described on Exhibit “A”;
2. The resolution and order adopted at its meeting on the 13th day of June, 2011 by the City Council of the City of Fayetteville, North Carolina having been duly published on the 20th day of June, 2011 in the Fayetteville Observer, a newspaper published in the City of Fayetteville, North Carolina, giving notice of a meeting of the City Council to be held in Council Chambers of City Hall at 7 p.m., on the 11th day of July, 2011 and subsequently changed to the 25th day of July, 2011 when all objections to the legality of making the proposed improvements were to be made in writing, signed in person or by attorney, filed with the Clerk of the City of Fayetteville at or before said time, and that any objections not so made would be waived and objections to the legality as well as to the policy or expediency of the making of said improvements have not been filed or made (or having been filed or made which objections were duly considered by said City Council and none of said objections were sustained);

3. The property abutting said streets will be benefitted by the extension of such water distribution system and sanitary sewer collection system to the extent of the part of the cost thereof to be assessed as stated below against such abutting property.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, DOES ORDER THAT:

The water distribution system and sanitary sewer collection system shall be installed in all of the aforementioned street portions to be specifically assessed upon the property receiving benefit of the water and sanitary sewer extension in the amount of \$5,000 for what is described as single family residential parcels requiring one water and sewer service lateral with remaining property being assessed at an equal rate of \$55.56 per foot of road frontage but not less than ninety (90) feet plus the average cost for water and sewer service laterals as may be installed for the benefit of the non-single family residential parcels. Said assessments to be paid after completion of such work and within thirty (30) days after notice of the assessments in cash with no interest or in equal annual installments over a term of ten (10) years bearing annual interest at a rate not to exceed eight percent (8%) payable annually.

ADOPTED this 8th day of August, 2011 by the City of Fayetteville, North Carolina.

CITY OF FAYETTEVILLE

Anthony G. Chavonne, Mayor

Jennifer Penfield, Deputy City Clerk

The following City Council members voted for passage of the above Resolution:

The following City Council members voted against the above Resolution:

EXHIBIT "A"

Construction Area 11-WS

Street Names	From Intersection	To Intersection
Arran Circle	Raeford Road southwardly	To street end
Bingham Place	Bunce Road Extension eastwardly	To street end

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: James Rose, PWC Chief Administrative Officer
DATE: August 8, 2011
RE: **Phase 5 Annexation Areas 10 and 11**

THE QUESTION:

Providing sanitary sewer service to Areas 10 and 11 of the Phase 5 Annexation.

RELATIONSHIP TO STRATEGIC PLAN:

Goal 4: More Efficient City Government - Cost Effective Service Delivery.

BACKGROUND:

As part of the statutory requirements for annexation procedures, City Council approved Resolution Number R2011-030 in their meeting on June 13, 2011. A public hearing was held on July 25, 2011 to hear public comment regarding the project. The next step is to adopt the Resolution Directing Project be Undertaken.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

Staff recommend that Council move to adopt Resolution R2011-030: Directing the Phase V Annexation Areas 10 and 11 Utility Improvement Projects Be Undertaken.

ATTACHMENTS:

Resolution Directing Project be Undertaken

RESOLUTION DIRECTING CONSTRUCTION OF AREAS 10 AND 11 OF THE PHASE 5 ANNEXATION UTILITY IMPROVEMENT PROJECT BE UNDERTAKEN

WHEREAS, on the 13th day of June, 2011, the City Council of the City of Fayetteville, North Carolina, adopted a Preliminary Assessment Resolution Providing for the Extension of its Sanitary Sewer Collection System in All or Portions of the Streets Within Areas 10 and 11 of the Phase 5 Annexation Listed on Exhibit “A”.

WHEREAS, the required public hearing has been held after due notice to the public and to the owners of the affected real property.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Fayetteville, North Carolina that after careful study and consideration of the matter and of all pertinent facts and circumstances, including engineering and planning studies and advice, and in the exercise of its best legislative judgment, the City Council of Fayetteville, North Carolina finds as fact that:

1. The public interest, safety, convenience, and general welfare requires the extension of the sanitary sewer collection system into all or a portion of the streets as described on Exhibit “A”;
2. The resolution and order adopted at its meeting on the 13th day of June, 2011 by the City Council of the City of Fayetteville, North Carolina having been duly published on the 20th day of June, 2011 in the Fayetteville Observer, a newspaper published in the City of Fayetteville, North Carolina, giving notice of a meeting of the City Council to be held in Council Chambers of City Hall at 7 p.m., on the 11th day of July, 2011 and subsequently changed to the 25th day of July, 2011 when all objections to the legality of making the proposed improvements were to be made in writing, signed in person or by attorney, filed with the Clerk of the City of Fayetteville at or before said time, and that any objections not so made would be waived and objections to the legality as well as to the policy or expediency of the making of said improvements have not been filed or made (or having been filed or made which objections were duly considered by said City Council and none of said objections were sustained);

3. The property abutting said streets will be benefitted by the extension of such sanitary sewer collection system to the extent of the part of the cost thereof to be assessed as stated below against such abutting property.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA, DOES ORDER THAT:

The sanitary sewer collection system shall be installed in all of the street portions to be specifically assessed upon the property receiving benefit of the sanitary sewer extension in the amount of \$5,000 for what is described as single family residential parcels requiring one sewer service lateral with remaining property being assessed at an equal rate of \$55.56 per foot of road frontage but not less than ninety (90) feet plus the average cost for service laterals as may be installed for the benefit of the non-single family residential parcels. Said assessments to be paid after completion of such work and within thirty (30) days after notice of the assessments in cash with no interest or in equal annual installments over a term of ten (10) years bearing annual interest at a rate not to exceed eight percent (8%) payable annually.

ADOPTED this 8th day of August, 2011 by the City of Fayetteville, North Carolina.

CITY OF FAYETTEVILLE

Anthony G. Chavonne, Mayor

Jennifer Penfield, Deputy City Clerk

The following City Council members voted for passage of the above Resolution:

The following City Council members voted against the above Resolution:

EXHIBIT "A"

Construction Area 10

Street Names	From Intersection	To Intersection
Applecross Avenue	Strathdon Avenue westwardly	To Strickland Bridge Road
Ayton Place	Carloway Drive northwardly	To street end
Bailey Lake Road	Strickland Bridge Road eastwardly	To Rockford Drive
Barwick Drive	Rannock Drive eastwardly	To Doncaster Drive
Bostian Drive	Kimory Drive southwardly	To street end
Carloway Drive	Carloway Drive eastwardly	To Strickland Bridge Road
Carloway Place	Carloway Drive northwardly	To street end
Cullen Drive	Carloway Drive southwestwardly	To street end
Dunham Drive	Rannock Drive eastwardly	To Doncaster Drive
Elkins Drive	Strickland Bridge Road westwardly	To street end
Gairloch Drive	Gairloch Drive westwardly	To Strathdon Avenue
Glanis Drive	Glanis Drive southwardly	To Kincross Avenue
Kilmory Drive	Bostian Drive eastwardly	Strickland Bridge Road
Kincross Avenue	Strickland Bridge Road eastwardly	To Berriedale Drive
Larkhall Drive	Larkhall Drive westwardly	To Strathdon Avenue
Norton Drive	Bostian Drive westwardly	To street end
Rannock Court	Rutherglen Drive southwardly	To street end
Rannock Drive	Atwick Drive southwestwardly	To Rannock Court
Rutherglen Drive	Torchie Street westwardly	To Strickland Bridge Road
Strathdon Avenue	Applecross Avenue southwardly	To Rutherglen Drive
Strickland Bridge Road	Raeford Road southwardly	Bailey Lake Road
Torchie Street	Rhemish Drive northwardly	To Rutherglen Drive

Construction Area 11

Street Names	From Intersection	To Intersection
Artesian Court	Artesian Court northwardly	To Marykirk Drive
Atwick Drive	Rannock Drive southwardly	To Rutherglen Drive
Berriedale Drive	Marykirk Drive southwardly	To Rutherglen Drive
Darvel Avenue	Rannock Drive southwardly	To Rutherglen Drive
Doncaster Drive	Barwick Drive southwardly	To Rutherglen Drive
Gairloch Drive	Gairloch Drive eastwardly	To Tarbert Avenue
Glanis Drive	Glanis Drive eastwardly	To Tarbert Avenue
Glanis Place	Glanis Drive northwestwardly	To street end
Kincross Avenue	Berriedale Drive eastwardly	To Rannock Drive
Larkhall Drive	Larkhall Drive eastwardly	To Tarbert Avenue
Marykirk Drive	Berriedale Drive eastwardly	To Bingham Drive
Mathau Court	Mathau Court northwardly	To Marykirk Drive
Rannock Drive	Marykirk Drive southwestwardly	To Atwick Drive
Rutherglen Drive	Rutherglen Drive eastwardly	To Berriedale Drive
Tarbert Avenue	Applecross Avenue southeastwardly	To Berriedale Drive

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Randall J. Hume, Transit Director
DATE: August 8, 2011
RE: **Proposed Transit Service Improvements**

THE QUESTION:

Whether the City Council will authorize implementation of transit system improvements that are included in the Fiscal Year 2012 Operating Budget?

RELATIONSHIP TO STRATEGIC PLAN:

More Efficient Government - FAST Improvements, Evening Service

BACKGROUND:

The Fayetteville Area System of Transit (FAST) has a mission to provide safe, efficient, reliable, courteous and innovative public transportation to the citizens of Fayetteville. In August, 2009, the City Council adopted the Transit Development Plan that provides an outline for phased improvements, including the extension of evening services to more parts of the City. FAST staff worked with the Fayetteville Advisory Committee on Transit (FACT) to develop recommendations for service improvements that were funded in the FY 2012 Operating Budget.

Federal grant guidelines require grantees to provide an opportunity for public comment for all major service changes. Based on adopted policies FAST considers any service change that directly affects 25% or more of the number of route miles on a transit route or 25% or more of the number of revenue miles of a route for the day for which the change is made. The improvements included in the budget meet these criteria.

Notice of this public hearing was published on July 24, 2011. Public notices have also been posted on all buses and at the FAST Transfer Center. Transit staff also held the following community meetings to provide opportunity for the public to learn and comment on the proposed changes: College Lakes Recreation Center Tuesday, August 2, 2011, 5:00 p.m.- 6:30 p.m. Cliffdale Recreation Center Wednesday, August 3, 2011, 2:00 p.m. - 3:30 p.m. The proposed changes include:

- Extend hours on Routes #8 and #15 until 10:25 p.m.
- Extend hours on Route #5 until 8:55 p.m.
- Extend Route #9 on Ramsey Street to Andrews Road
- Reduce hours on Route #9 to end at 9:00 p.m.(currently 10:30 p.m.)
- ADA Paratransit hours and areas will be modified to cover the same as fixed route

Comments from this hearing, the two public meetings, and any written comments or questions received through 5:00 p.m., August 9, 2011 will be considered by staff prior to making a final service recommendation for adoption on August 22, 2011. If Council approves the final service change recommendation at that time; then service improvements would be implemented effective September 26, 2011.

ISSUES:

Upon further review of the schedules and budget allocations, staff is recommending to extend service on Route #5, Ramsey Street, for two additional hours to end at approximately 9:00 p.m. This change will not only add service to the Ramsey Street corridor, but provide more citizens access to the medical facilities near Andrews Road. This can be accomplished by eliminating the last trip on Route #9, which averages about 3 passengers each night. In addition, most services at the Cape Fear Valley North Pavilion end prior to 9:00 p.m.

BUDGET IMPACT:

Funds have been allocated in the FY 2012 Operating Budget.

OPTIONS:

Comment on proposed transit service improvements. Staff will respond to Council comments and questions as part of the final consideration of this item during the August 22nd Regular Council meeting.

RECOMMENDED ACTION:

No Action Required - Conduct the Public Hearing. Council will have an opportunity to provide final direction during the August 22nd Regular Council meeting.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Lisa Smith, Chief Financial Officer
DATE: August 8, 2011
RE: **Order Authorizing the Issuance and Sale by the City of Fayetteville, North Carolina of a \$10,595,000 Stormwater System Revenue Bond, Series 2011 and Authorizing the Execution and Delivery of Certain Documents in Connection Therewith**

THE QUESTION:

Does Council wish to proceed with the issuance of a \$10,595,000 revenue bond for stormwater system improvements?

RELATIONSHIP TO STRATEGIC PLAN:

Goal 3: Growing City, Livable Neighborhoods - A Great Place To Live: Major Projects List - Storm Water Projects

BACKGROUND:

- On June 27, 2011 City Council authorized the filing of an application with the Local Government Commission (LGC) requesting approval of the issuance of the Series 2011 Storm Water Revenue Bond in an amount not to exceed \$11,000,000.
- The LGC approved the application at their August 2, 2011 meeting.
- The last step Council is required to take to issue the revenue bond is adoption of the attached bond order. The bond order, among other things, includes approval of the following: 1) The sale of the \$10,595,000 bond to SunTrust Equipment Finance and Leasing Corp. (SunTrust), 2) the Trust Agreement, First Supplemental Trust Agreement, and Bond Purchase Agreement associated with the financing, and 3) the bond bearing interest at a rate of 3.135% per year at a purchase price equal to 100% of the principal amount of the Series 2011 Bond, less a legal review fee of \$1,500 to be retained by SunTrust.
- The bond order also includes requesting the LGC to sell and award the Series 2011 Bond on behalf of the City and designating the Mayor, City Manager, Chief Financial Officer, and City Clerk/Deputy City Clerk as the individuals authorized to execute the bond documents.
- The City expects to close the bond issue on August 11, 2011.
- Current drafts of the Trust Agreement, First Supplemental Trust Agreement and the Bond Purchase Agreement are attached for your review. Updated drafts of these agreements may be presented at the meeting.

ISSUES:

None

BUDGET IMPACT:

1) Maximum annual debt service for the bond issue is expected to be \$896,200. Debt service for FY2012 is expected to be \$421,850.

OPTIONS:

- 1) Adopt the bond order and proceed with the issuance of the \$10,595,000 bond.
- 2) Do not adopt the bond order and cash fund a portion of the storm water projects to the extent funds are available in the storm water fund.

RECOMMENDED ACTION:

Staff recommends that Council adopt the attached Stormwater Bond Order.

ATTACHMENTS:

Stormwater Bond Order

Trust Agreement

First Supplemental Trust Agreement

Bond Purchase Agreement

The City Council of the City of Fayetteville, North Carolina held a regular meeting in the Council Chambers at City Hall located at 433 Hay Street in Fayetteville, North Carolina, the regular place of meeting, at 7:00 p.m. on August 8, 2011.

Present: Mayor Anthony G. Chavonne, presiding, and Council Members

Absent: Council Members

Also Present: _____

* * * * *

_____ introduced the following order the title of which was read and copies of which had been previously distributed to each Council Member:

ORDER AUTHORIZING THE ISSUANCE AND SALE BY THE CITY OF FAYETTEVILLE, NORTH CAROLINA OF A \$10,595,000 STORMWATER SYSTEM REVENUE BOND, SERIES 2011 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

BE IT ORDERED by the City Council of the City of Fayetteville, North Carolina (the “City”):

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

(a) The City currently owns and operates a natural and structural stormwater and drainage system (the “System”) which provides service to the residents of the City and its environs.

(b) In order to better serve and provide for the future needs of the residents of the City and its environs, the City desires to acquire, construct and equip certain improvements to the System, including, without limitation, erosion control projects, drainage projects, culverts,

outfalls and the acquisition of any related land, rights of way and equipment (collectively, the “Project”).

(c) At a meeting held on June 27, 2011, the City Council authorized the filing of an application with the North Carolina Local Government Commission (the “Commission”) requesting approval of the issuance of not to exceed \$11,000,000 Stormwater System Revenue Bond, Series 2011 (the “Series 2011 Bond”) of the City for the purpose of providing funds, together with any other available funds, to pay (i) the costs of the Project and (ii) certain fees and expenses associated with the issuance and sale of the Series 2011 Bond.

(d) The City, by resolution, also requested the Commission to sell the Series 2011 Bond at private sale without advertisement.

(e) The Commission has approved the application of the City for the issuance of the Series 2011 Bond in the aggregate principal amount not to exceed \$10,600,000 in accordance with G.S. 159-86.

(f) The City has determined to issue the Series 2011 Bond pursuant to a Trust Agreement, to be dated as of August 1, 2011 (the “Trust Agreement”), between the City and Regions Bank, as trustee (the “Trustee”), in the aggregate principal amount of \$10,595,000 for the purpose of providing funds, together with any other available funds, to pay (i) the costs of the Project and (ii) certain costs and expenses incurred in connection with the issuance and sale of the Series 2011 Bond.

(g) The City proposes to sell the Series 2011 Bond to SunTrust Equipment Finance & Leasing Corp. (the “Purchaser”), pursuant to the provisions of a Bond Purchase Agreement (as hereinafter mentioned) at such price determined by the Commission, subject to the approval of the City.

(h) There have been presented to the City Council at this meeting drafts of the following documents relating to the issuance and sale of the Series 2011 Bond:

(1) Trust Agreement;

(2) First Supplemental Trust Agreement, to be dated as of August 1, 2011 (the “First Supplemental Trust Agreement”), between the City and the Trustee, together with the form of the Series 2011 Bond attached as Exhibit A thereto; and

(3) Bond Purchase Agreement, to be dated the date of delivery thereof (the “Bond Purchase Agreement”), among the Purchaser, the Commission and the City.

(i) The City has determined that the issuance and sale of the Series 2011 Bond in the manner provided in this order is in the best interests of the City.

Section 2. Capitalized words and terms used in this order and not defined herein shall have the same meanings given such words and terms in the Trust Agreement and the First Supplemental Trust Agreement.

Section 3. Pursuant to the provisions of The State and Local Government Revenue Bond Act, as amended (the “Act”), particularly G.S. 159-88, the City hereby authorizes the issuance of the Series 2011 Bond in the aggregate principal amount of \$10,595,000 for the purposes set forth in this order. The amount of the Series 2011 Bond has been determined to be sufficient, together with any other available funds, to pay (a) the costs of the Project and (b) certain costs and expenses incurred in connection with the issuance and sale of the Series 2011 Bond. The Series 2011 Bond shall mature at such times and in such amounts as shall be set forth in the Trust Agreement and the First Supplemental Trust Agreement, subject to the provisions of this order.

The Series 2011 Bond shall be initially issued as one fully-registered bond in the principal amount of \$10,595,000 with installment payments of principal being due and payable

on each February 1 and August 1, as the case may be, from February 1, 2012 to August 1, 2026, inclusive, and interest being due and payable on each February 1 and August 1, as the case may be, beginning February 1, 2012, all as set forth in the First Supplemental Trust Agreement.

Section 4. The Series 2011 Bond shall be subject to optional redemption at the times, upon the terms and conditions, and at the redemption prices as shall be set forth in the Trust Agreement and the First Supplemental Trust Agreement.

Section 5. The proceeds of the Series 2011 Bond shall be applied as provided in Section 204 of the First Supplemental Trust Agreement.

Section 6. The Series 2011 Bond and any other obligations secured on a parity therewith pursuant to the provisions of the Trust Agreement, shall be secured on a parity basis by a pledge, charge and lien upon the Net Receipts and the money and Investment Obligations held in the accounts and subaccounts of the Bond Fund in the manner and to the extent provided in the Trust Agreement and the First Supplemental Trust Agreement.

Section 7. The proposal set forth in the Bond Purchase Agreement submitted by the Purchaser offering to purchase the Series 2011 Bond bearing interest at the rate of 3.135% per annum at a purchase price equal to 100% of the principal amount of the Series 2011 Bond, less a legal review fee of \$1,500 to be retained by the Purchaser, subject to the approval thereof by the Commission, is hereby approved. The Local Government Commission is hereby requested to sell and award the Series 2011 Bond to the Purchaser on behalf of the City, subject to the approval of the City, in accordance with the terms of the Bond Purchase Agreement. The Mayor, the City Manager and the Chief Financial Officer of the City are each hereby individually designated to approve on behalf of the City the sale of the Series 2011 Bond to the Purchaser at such interest rate, for such purchase price and upon such terms and conditions as the

officer approving the sale shall determine, subject to the provisions of this order. The Mayor, the City Manager and the Chief Financial Officer of the City are each hereby individually authorized and directed in the name and on behalf of the City to execute and deliver the Bond Purchase Agreement in substantially the form presented, together with such changes, additions and deletions as the officer executing and delivering the agreement, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the form and content thereof.

Section 8. The form, terms and provisions of the Trust Agreement and the First Supplemental Trust Agreement are hereby approved, and the Mayor, the City Manager or the Chief Financial Officer of the City and the City Clerk or any assistant or deputy City Clerk are hereby authorized and directed to execute the Trust Agreement and the First Supplemental Trust Agreement in substantially the forms presented, together with such changes, additions and deletions as the Mayor, the City Manager or the Chief Financial Officer, with the advice of counsel, may deem necessary and appropriate, such execution and delivery to be conclusive evidence of the approval and authorization in all respects of the forms and content thereof.

Section 9. The Mayor, the City Manager, the Chief Financial Officer, the City Clerk and the City Attorney, or any of them or their deputies, are each hereby authorized and directed (without limitation except as may be expressly set forth in this order) to take such action and to execute and deliver such certificates, agreements, instruments, opinions or other documents as they, with the advice of counsel, may deem necessary or appropriate to effect the transactions contemplated by this order, the Trust Agreement, the First Supplemental Trust Agreement or the Bond Purchase Agreement.

The officers of the City and the agents and employees of the City are hereby authorized and directed to do all acts and things required of them by the provisions of this order, the Series 2011 Bond, the Trust Agreement, the First Supplemental Trust Agreement and the Bond Purchase Agreement for the full, punctual and complete performance of the terms, covenants, provisions and agreements of the same.

Section 10. The issuance and sale of the Series 2011 Bond is hereby approved subject to the terms and conditions set forth in this order.

Section 11. This order shall take effect immediately upon its passage.

Upon motion of Council Member _____, seconded by Council Member _____, the foregoing order entitled "ORDER AUTHORIZING THE ISSUANCE AND SALE BY THE CITY OF A \$10,595,000 STORMWATER SYSTEM REVENUE BOND, SERIES 2011 AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH" was adopted by the following vote:

Ayes: _____

Noes: _____

* * * * *

I, Jennifer Penfield, Deputy City Clerk of the City of Fayetteville, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of so much of the proceedings of the City Council of said City at a regular meeting held on August 8, 2011, as relates in any way to the adoption of the foregoing order and that said proceedings are recorded in the minute books of said City Council.

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

WITNESS my hand and the official seal of the City this 8th day of August, 2011.

Deputy City Clerk

[SEAL]

TRUST AGREEMENT

Dated as of August 1, 2011

Between

CITY OF FAYETTEVILLE, NORTH CAROLINA

and

REGIONS BANK
Trustee

Authorizing and Securing

City of Fayetteville, North Carolina
Stormwater System Revenue Bonds

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TRUST AGREEMENT

This TRUST AGREEMENT, dated as of August 1, 2011, between the CITY OF FAYETTEVILLE, NORTH CAROLINA, a municipal corporation duly organized and existing under the laws of the State of North Carolina (the “City”), and Regions Bank, a state banking corporation duly organized and existing under the laws of the State of Alabama and having a designated corporate trust office in Raleigh, North Carolina, which is authorized under such laws to exercise trust powers (the “Trustee”);

WITNESSETH:

WHEREAS, the City is a municipal corporation duly organized and existing under the laws of the State of North Carolina, and is authorized under Article 5 of Chapter 159, as amended, of the General Statutes of North Carolina (the “Act”), to issue revenue bonds for the purpose of paying the cost of revenue bond projects (as defined in the Act);

WHEREAS, the City desires to issue revenue bonds pursuant to the Act to pay or reimburse the costs of the Initial Project (hereinafter defined);

WHEREAS, the Bonds (hereinafter defined) issued under this Trust Agreement and any Parity Debt (hereinafter defined) will be secured by a pledge of the Net Receipts (hereinafter defined) of the System (hereinafter defined) of the City;

WHEREAS, pursuant to the Act, the City is entering into this Trust Agreement for the purpose of authorizing the issuance of Bonds and securing the payment thereof and any Parity Debt by assigning its rights, title and interest in and to the Net Receipts;

WHEREAS, under the Constitution and laws of the State of North Carolina, including the Act, the City is authorized to enter into this Trust Agreement, to issue the Bonds as hereinafter provided and to do or cause to be done all the acts and things herein provided or required to be done as hereinafter covenanted;

WHEREAS, all acts, conditions and things required by the Constitution and laws of the State of North Carolina, including the Act, to happen, exist and be performed precedent to and in the execution and delivery of this Trust Agreement have happened, exist and have been performed as so required to make this Trust Agreement a valid and binding trust agreement securing the Bonds and any Parity Debt in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts created by this Trust Agreement and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS TRUST AGREEMENT WITNESSETH that in consideration of the premises, of the acceptance by the Trustee of the trusts hereby created, and of the issuance of Bonds as provided herein, and also for and in consideration of the sum of One Dollar in hand paid by the Trustee at or before the execution and delivery of this Trust Agreement, and for other good and valuable consideration, the receipt and sufficiency whereof is

hereby acknowledged, and for the purpose of fixing and declaring the terms and conditions upon which Bonds are to be issued, authenticated, delivered, secured and accepted by all persons who shall from time to time be or become Owners (hereinafter defined) thereof, and to secure (a) the payment of all Bonds at any time issued and Outstanding (hereinafter defined) under this Trust Agreement and the interest and the redemption premium, if any, thereon according to their tenor, purport and effect, (b) the payment of any Parity Debt and the interest and the redemption premium, if any, thereon according to their tenor, purport and effect and (c) to secure any Derivative Agreement Parity Payments, and to further secure the performance and observance of all the covenants, agreements and conditions, express or implied, therein and herein contained, the City has executed and delivered this Trust Agreement, and by this Trust Agreement has given, granted, bargained, aliened, remised, released, conveyed, transferred, assigned, confirmed, set over, and pledged, and does hereby give, grant, bargain, alien, remise, release, convey, transfer, assign, confirm, set over, and pledge unto the Trustee, and its successor or successors in trust:

1. All Net Receipts of the System; and

2. All money and securities held by or on behalf of the Trustee in all of the funds, accounts or subaccounts established pursuant to this Trust Agreement, except those funds, accounts and subaccounts that are expressly pledged in a Supplemental Agreement as security only for a specified Series of Bonds and a Special Reserve Account (hereinafter defined) created in a Parity Debt Resolution (hereinafter defined) as security only for such Parity Debt.

TO HAVE AND TO HOLD all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended so to be, to the Trustee and its successor or successors in trust and to them and their assigns forever.

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth, for the benefit, security and protection of all and singular the present and future Owners of the Bonds issued or to be issued under and secured by this Trust Agreement and the Holders (hereinafter defined) of any Parity Debt, without preference, priority or distinction as to lien or otherwise, except as may otherwise be provided herein, of any one Bond or Parity Debt over any other Bond or Parity Debt by reason of priority in their issue, sale or otherwise, all as herein provided;

PROVIDED, HOWEVER, that if the City, its successors or assigns, shall well and truly pay, or cause to be paid, or provide for the payment, pursuant to the provisions of this Trust Agreement, of the principal of all Bonds and Parity Debt and the interest and any redemption premium due or to become due thereon and all Derivative Agreement Parity Payments, at the times and in the manner mentioned in the Bonds and Parity Debt and this Trust Agreement, according to the true intent and meaning hereof and thereof, and shall cause the payments to be made into the Bond Fund (hereinafter defined) or otherwise as required under this Trust Agreement, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof and perform all of its other obligations hereunder, then, upon such performance and payments, this Trust Agreement and the rights hereby granted shall cease, determine and become void, as provided in Article XII hereof; otherwise this Trust Agreement to be and remain in full force and effect.

THIS TRUST AGREEMENT FURTHER WITNESSETH and it is expressly declared that all Bonds issued and secured hereunder and any Parity Debt or Derivative Agreement Parity Payments secured hereunder are to be issued, authenticated, delivered and dealt with, and all said property hereby given, granted, bargained, aliened, remised, released, conveyed, transferred, assigned, confirmed, set-over and pledged is to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the City has agreed and covenanted, and does hereby agree and covenant, with the Trustee and with the respective Owners and Holders, from time to time, of Bonds and Parity Debt, or any part hereof, and any counterparty under a Derivative Agreement to which such Derivative Agreement Parity Payments relate as follows:

ARTICLE I

DEFINITIONS; FINDINGS AND DETERMINATIONS

Section 101. Meaning of Words and Terms. In addition to words and terms elsewhere defined in this Trust Agreement, the following words and terms as used in this Trust Agreement shall have the following meanings, unless some other meaning is plainly intended:

“Accreted Amount” means with respect to Capital Appreciation Bonds of any Series, the amount set forth in a Supplemental Agreement as the amount representing the initial public offering price, plus the accumulated and compounded interest on such Capital Appreciation Bonds.

“Act” means The State and Local Government Revenue Bond Act, the same being Article 5 of Chapter 159 of the General Statutes of North Carolina.

“Additional Project” means any addition, acquisition, improvement, betterment or extension of or relating to the System. The term “Additional Project” shall not include any Special Purpose Facilities unless the indebtedness incurred to finance the Special Purpose Facilities has been retired or provision has been made for the payment thereof, and the City Council has determined by resolution to include such Special Purpose Facilities as an Additional Project.

“Annual Budget” means the City’s budget for a Fiscal Year adopted pursuant to the provisions of the Local Government Budget and Fiscal Control Act.

“Authorized Officer” means the City Manager, the Chief Financial Officer or any other person authorized by resolution of the City to perform the duties imposed on an Authorized Officer by this Trust Agreement whose name is filed pursuant to an Officer’s Certificate with the Trustee for such purpose.

“Balloon Long-Term Indebtedness” means fixed or variable rate Long-Term Indebtedness 25% or more of the principal payments of which are due in a single twelve-month period which portion of the principal is not required by the documents pursuant to which such Indebtedness is incurred to be amortized by redemption or prepayment prior to the expiration of such period; provided, however, that Balloon Long-Term Indebtedness shall not include any Revenue Bond Anticipation Notes issued pursuant to Section 211 which shall be treated as being amortized in the manner set forth in Section 211(d).

“Bond” or “Bonds” means the Series 2011 Bonds and any other bonds issued under the provisions of Section 208 and secured on a parity with each other and any Parity Debt by this Trust Agreement.

“Bond Fund” means the fund created and designated the City of Fayetteville Stormwater System Bond Fund by Section 501.

“Bond Insurance Policy” means a municipal bond insurance policy, financial guaranty in insurance policy or similar instrument permitted by the Act and obtained in connection with the incurrence of any Parity Indebtedness or Subordinated Indebtedness.

“Bond Insurer” means the Person providing a Bond Insurance Policy, as designated in the Supplemental Agreement providing for the issuance of Bonds or in the Parity Debt Resolution or Subordinated Indebtedness Resolution providing for the incurrence of Parity Debt or Subordinated Indebtedness.

“Business Day” means a day on which the Trustee and the New York Stock Exchange are open for the purpose of conducting their businesses.

“Capital Appreciation Bonds” means Bonds the interest on which is compounded at the rates and on the dates set forth in a Supplemental Agreement and is payable upon redemption or on the maturity date of such Bonds; provided, however, that nothing in this Trust Agreement shall prohibit the City from designating in the appropriate Supplemental Agreement any such Bonds by a name other than Capital Appreciation Bonds.

“Capital Improvements Budget” for any Fiscal Year means the budget for capital improvements adopted by the City in accordance with Section 705.

“Capitalized Interest Account” means the account in the Bond Fund created and so designated by Section 501.

“Capital Reserve Fund” means the fund created and designated the City of Fayetteville Stormwater System Capital Reserve Fund by Section 501.

“Chief Financial Officer” means the person appointed or employed by the City to perform the duties imposed on the Chief Financial Officer by this Trust Agreement.

“City Attorney” means the attorney or law firm designated by the City from time to time to perform the duties of City Attorney, including any assistant or deputy City Attorney.

“City Clerk” means the person appointed or employed by the City to perform the duties imposed on the City Clerk by this Trust Agreement, including any assistant or deputy City Clerk.

“City Manager” means the person appointed or employed by the City to perform the duties imposed on the City Manager by this Trust Agreement.

“Completion Date” means the date of acquisition or completion of the Initial Project, any Additional Project, or of any segment of the foregoing, as the case may be, as certified by the City pursuant to Section 407.

“Completion Indebtedness” means any Long-Term Indebtedness incurred for the purpose of financing the completion of the Initial Project or any Additional Project for which Long-Term Indebtedness has theretofore been incurred in accordance with the provisions hereof, to the extent necessary to complete such Initial Project or Additional Project, in the manner and scope

contemplated at the time that such Long-Term Indebtedness theretofore incurred was originally incurred, and, to the extent the same shall be applicable, in accordance with the general plans and specifications for such Initial Project or Additional Project, as originally prepared with only such changes as have been made in conformance with the documents pursuant to which such Long-Term Indebtedness theretofore incurred was originally incurred.

“Consultant” means one or more independent certified public accountants or firms or corporations of independent certified public accountants, or architects or architectural firms or corporations, or engineers or engineering firms or corporations, or professional management consultants or firms or corporations of professional management consultants, or such other independent Persons each of which has a favorable repute at the time employed for skill and experience in its respective area of work for which it is employed by the City to perform and carry out the duties imposed on a Consultant by this Trust Agreement.

“Cost,” as applied to the Initial Project or any Additional Project, means, without intending thereby to limit or restrict any proper definition of such word under the provisions of the Act or this Trust Agreement, all items of cost which are set forth in Section 403.

“Credit Facility” means a line of credit, letter of credit, standby bond purchase agreement or similar liquidity or credit facility permitted by the Act (but excluding a Bond Insurance Policy) and established or obtained in connection with the incurrence of any Parity Indebtedness or Subordinated Indebtedness.

“Credit Provider” means the Person providing a Credit Facility, as designated in the Supplemental Agreement providing for the issuance of the Bonds or in the Parity Debt Resolution providing for the incurrence of Parity Debt or in the Subordinated Indebtedness Resolution providing for the incurrence of Subordinated Indebtedness. If and to the extent permitted by law, the City may be a Credit Provider for the sole purpose of providing liquidity support with the approval of the Local Government Commission.

“Current Expenses” means the City’s current expenses for the operation, maintenance and repair of the System as determined in accordance with generally accepted accounting principles, except as modified by this definition, including, without limiting the generality of the foregoing,

- (a) all ordinary and usual expenses of operation, maintenance and repair, which may include expenses not annually recurring,
- (b) administrative expenses,
- (c) salaries and other compensation,
- (d) payments to any pension or retirement plan or plans properly chargeable to the System,
- (e) insurance premiums and expenses,

(f) engineering and architectural expenses relating to the operation, maintenance or repair of the System,

(g) fees and expenses of the Trustee, any Depositary, tender agent or paying agent, legal expenses, Credit Facility fees, remarketing fees and fees of consultants,

(h) penalty fees and fees or interest on late payments, and

(i) any other similar-type current expenses required to be paid by the City under this Trust Agreement or by law;

but Current Expenses shall not include

(a) any reserves for extraordinary replacements or repairs,

(b) any allowance for depreciation or any amortization of financing expense,

(c) any accrued expenses for other post-retirement benefits unless such expenses result from (i) the actual payment of benefits to retirees or (ii) the depositing of funds into an irrevocable trust for the purpose of making future payment of benefits to retirees,

(d) any deposits to any fund, account and subaccount created under this Trust Agreement or any Supplemental Agreement and payments of principal, premium, if any, and interest from such funds, accounts and subaccounts, and

(e) any debt service payments or reserves or deposits for debt service payments in respect of Parity Indebtedness, Subordinated Indebtedness or System G.O. Indebtedness or capital leases, installment financing contracts or similar financing arrangements for any component of the System.

“Current Interest Bonds” means Bonds the interest on which is payable on the Interest Payment Dates provided therefor in any Supplemental Agreement.

“Default” means any Event of Default and any event that, after notice or lapse of time or both, would become an Event of Default.

“Defaulted Interest” means Defaulted Interest as defined in Section 202.

“Defeasance Obligations” means noncallable Government Obligations and noncallable Defeased Municipal Obligations.

“Defeased Municipal Obligations” means obligations of state or local government municipal bond issuers which are rated the highest rating category by S&P, Fitch and Moody’s, respectively, provision for the payment of the principal of, premium, if any, and interest on which shall have been made by deposit with a trustee or escrow agent of Government Obligations, the maturing principal of and interest on which, when due and payable, shall provide sufficient money to pay the principal of, premium, if any, and interest on such

obligations of state or local government municipal bond issuers. References in this definition to state or local government bond issuers shall mean the State of North Carolina and North Carolina local government bond issuers, and, to the extent permitted by law, states other than the State of North Carolina and local government bond issuers other than North Carolina local government bond issuers.

“Depository” means one or more banks or trust companies or other institutions, including the Trustee, duly authorized by law to engage in the banking business and designated by the City as a depository of moneys under this Trust Agreement.

“Derivative Agreement” means an interest rate swap, cap, collar, floor, forward, option, put, call or other agreement, arrangement or security however denominated, entered into in order to hedge interest rate fluctuations on all or a portion of any Indebtedness or to provide debt management by changing payments to be made by the City with respect to all or a portion of any Indebtedness.

“Derivative Agreement Additional Payments” means payments required to be paid by the City under a Derivative Agreement other than Derivative Agreement Scheduled Payments, including termination payments required to be paid in connection with the termination of a Derivative Agreement, whether voluntarily or upon the occurrence of an event of default, termination event or similar event thereunder.

“Derivative Agreement Parity Payments” means Derivative Agreement Scheduled Payments and/or Derivative Agreement Additional Payments that the City determines by resolution of the City Council to be payable on a parity with interest on Parity Indebtedness; provided, however, that the Derivative Indebtedness to which such Derivative Agreement relates must constitute Parity Indebtedness.

“Derivative Agreement Scheduled Payments” means scheduled payments required to be paid by the City under a Derivative Agreement that are based upon a fixed or variable imputed rate on a notional amount set forth in the Derivative Agreement and which are intended by the City to correspond to interest payments on the underlying Derivative Indebtedness.

“Derivative Indebtedness” means the portion of any Indebtedness meeting the requirements set forth in clauses (i) and (ii) below:

(i) in connection with such Indebtedness, the City shall have entered into a Derivative Agreement in respect of all or a portion of such Indebtedness, and

(ii) (A) if such Indebtedness bears interest at a variable rate, such Derivative Agreement provides that during the Derivative Period, the City shall pay to the provider of the Derivative Agreement a fixed rate (the “Synthetic Fixed Rate”) and the provider of the Derivative Agreement shall pay to the City a variable rate on a notional amount equal to all or a portion of the Outstanding principal amount of such Indebtedness, or (B) if such Indebtedness bears interest at a fixed rate, such Derivative Agreement provides that during the Derivative Period, the City shall pay to the provider of the Derivative Agreement a variable rate (the “Synthetic Variable Rate”) and the provider of the

Derivative Agreement shall pay to the City a fixed rate on a notional amount equal to all or a portion of the Outstanding principal amount of such Indebtedness.

“Derivative Period” means the period during which a Derivative Agreement is in effect.

“Eminent Domain” means the eminent domain or condemnation power by which all or any part of the System may be taken for another public use or any agreement that is reached in lieu of proceedings to exercise such power.

“Event of Default” means each of those events of default set forth in Section 802.

“Existing Facilities” means all of the structural and natural stormwater system facilities owned and operated by the City as of the date of issuance of the Series 2011 Bonds.

“Fiscal Year” means the period commencing on the first day of July of any year and ending on the last day of June of the following year.

“Fitch” means Fitch Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

“General Fund” means the existing general fund of the City.

“Government Obligations” means direct obligations of, or obligations the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America in either certificated or book-entry form, including (a) stripped Government Obligations stripped by the United States Treasury itself and (b) interest only portions of obligations issued by the Resolution Funding Corporation.

“Grant Anticipation Notes” means any grant anticipation notes issued by the City in compliance with the provisions of Section 212.

“Holder” means the holder or owner of Parity Debt or Subordinated Indebtedness.

“Income Available for Debt Service” means for any period specified the City’s excess of Revenues over Current Expenses; provided, however, that Income Available for Debt Service shall not take into account any unrealized loss or gain resulting from the valuation of Derivative Agreements.

“Indebtedness” means all obligations incurred or assumed by the City in connection with the ownership or operation of the System:

(a) for payments of principal and interest with respect to borrowed money, including any obligation to repay a Credit Provider for moneys drawn to pay and retire or purchase Indebtedness; and

(b) for payments under leases which are required to be capitalized in accordance with generally accepted accounting principles and under installment or lease purchase or conditional sale contracts;

provided, however, that (i) Indebtedness shall include only such obligations as are secured by Net Receipts, (ii) any obligation to pay a Credit Provider for moneys drawn to purchase, but not pay and retire, Indebtedness shall constitute Indebtedness only to the extent such payments are in excess of any scheduled payments of principal and interest required to be made to such Credit Provider as an Owner or Holder of such Indebtedness and (iii) Indebtedness shall not include System G.O. Indebtedness.

“Initial Project” means the stormwater system improvements financed with the proceeds of the Series 2011 Bonds, as more particularly described in the Supplemental Agreement for the Series 2011 Bonds.

“Insurance and Condemnation Award Fund” means the fund created and designated the City of Fayetteville Stormwater System Insurance and Condemnation Award Fund by Section 501.

“Insurance Consultant” means a Person independent from the City having a favorable reputation in the State for skill and experience in dealing with the insurance requirements of enterprises similar to the System and in performing the duties to be imposed upon the Insurance Consultant by this Trust Agreement, including a Consultant employed by the North Carolina League of Municipalities meeting such requirements.

“Interest Account” means the account in the Bond Fund created and so designated by Section 501.

“Interest Payment Date” means, with respect to any Series of Bonds, each of the interest payment dates provided for in the Supplemental Agreement relating to such Series.

“Investment Obligations” means any investment now or hereafter permitted for investment of funds by the City by Section 159-30 of the General Statutes of North Carolina or any successor statute.

“Local Government Budget and Fiscal Control Act” means Article 3 of Chapter 159 of the General Statutes of North Carolina.

“Local Government Commission” means the Local Government Commission of North Carolina, a division of the Department of State Treasurer, established by Section 159-3 of the General Statutes of North Carolina, and any successor or successors thereto. When the consent or approval of the Local Government Commission is required by the terms of this Trust Agreement, such consent or approval may be obtained from the Local Government Commission, the Executive Committee of the Local Government Commission or any authorized representative of the Local Government Commission.

“Long-Term Debt Service Requirement” means, for any period of twelve (12) consecutive calendar months for which such determination is made, the aggregate of the required deposits to be made in respect of Principal and interest (whether or not separately stated) on Outstanding Long-Term Indebtedness during such period, also taking into account:

(a) with respect to Balloon Long-Term Indebtedness, if so determined by the City, the amount of principal which would be payable in such period if such principal were amortized from the date of incurrence thereof over a period of twenty (20) years (or the actual number of years over which such Balloon Long-Term Indebtedness is being amortized, if greater than twenty (20) years, but in no event greater than thirty (30) years) on a level debt service basis at an interest rate equal to the current market rate for an obligation with such assumed amortization as set forth in an opinion of a banking institution or an investment banking institution knowledgeable in municipal utility finance delivered to the Trustee as the interest rate at which the City could reasonably expect to borrow the same by incurring Indebtedness with the same term as assumed above; provided, however, that if the date of calculation is within twelve (12) calendar months of the actual final maturity date of such Indebtedness, the full amount of principal payable at maturity shall be included in such calculation, unless a binding commitment by an institutional lender or municipal underwriting firm exists, which binding commitment may contain typical and customary conditions, to provide financing to refinance such Indebtedness and such commitment provides for the refinancing of such Indebtedness on terms which would, if such commitment was implemented, constitute Long-Term Indebtedness, then in such case the payment terms contained in such commitment shall be utilized for purposes of calculating the Long-Term Debt Service Requirement with respect to such Balloon Long-Term Indebtedness;

(b) with respect to Long-Term Indebtedness which is Variable Rate Indebtedness, the interest on such Indebtedness shall be calculated at the rate which is equal to the average of the actual interest rates which were in effect (weighted according to the length of the period during which each such interest rate was in effect) for the most recent twelve (12) month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a twelve (12) month period), except that with respect to new Variable Rate Indebtedness proposed to be incurred, the assumed interest rate for such Variable Rate Indebtedness for the initial interest rate period shall be the lower of (i) the rate (as certified by a financial institution or investment banking firm acceptable to the City) which is equal to the average of the actual interest rates which would have been in effect (weighted according to the length of the period during which each such interest rate was in effect) for the most recent twelve (12) month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a twelve (12) month period) and (ii) the initial rate to be borne by such Variable Rate Indebtedness, and thereafter shall be calculated as set forth above;

(c) with respect to Long-Term Indebtedness which is incurred or issued as direct subsidy “Build America Bonds” pursuant to Sections 54AA(g) or 1400U-2 and Section 6431 of the Internal Revenue Code of 1986, as amended (the “Code”), or any successor or similar interest subsidy program established under the Code, any subsidy payments received from the United States with respect to such Long-Term Indebtedness should be credited against the interest paid

on such Long-Term Indebtedness, but only to the extent deposited in any account or subaccount of the Bond Fund or otherwise used to pay interest on Long-Term Indebtedness, and with respect to new Long-Term Indebtedness proposed to be incurred or issued as direct subsidy “Build America Bonds” pursuant to Sections 54AA(g) or 1400U-2 and Section 6431 of the Code, or any successor or similar interest subsidy program established under the Code, the assumed interest rate for such Long-Term Indebtedness shall be determined by subtracting the applicable direct subsidy percentage from the stated interest rate, but only to the extent that the City is or will be required to deposit the interest subsidy payments in any account or subaccount of the Bond Fund or to otherwise use such payments to pay interest on Long-Term Indebtedness;

(d) with respect to any Credit Facility, to the extent that such Credit Facility has not been used or drawn upon, the principal and interest relating to such Credit Facility shall not be included in the Long-Term Debt Service Requirement; and

(e) with respect to Derivative Indebtedness, during any Derivative Period and for so long as the provider of the Derivative Agreement has not defaulted on its payment obligations under the Derivative Agreement, the amount of interest payable on such Derivative Indebtedness shall be calculated as follows:

(1) if such Derivative Indebtedness bears interest at a variable rate, at the Synthetic Fixed Rate; and

(2) if such Derivative Indebtedness bears interest at a fixed rate, at the Synthetic Variable Rate (calculated as provided in subparagraph (b) above);

provided, however, that accrued and capitalized interest shall be excluded from the determination of Long-Term Debt Service Requirement to the extent the same is provided from the proceeds of the Long-Term Indebtedness or otherwise provided so as to be available for deposit into an account for capitalized interest or similar account not later than the date of delivery of and payment for such Long-Term Indebtedness; and provided further that notwithstanding the foregoing, the aggregate of the payments to be made with respect to principal and interest on Outstanding Long-Term Indebtedness shall not include principal or interest payable from Qualified Escrow Funds.

“Long-Term Indebtedness” means all Indebtedness for any of the following:

(a) money borrowed for an original term, or renewable at the option of the City for a period from the date originally incurred, of longer than one year;

(b) leases which are required to be capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the City for a period from the date originally incurred, of longer than one year; and

(c) installment purchase, installment financing or conditional sale contracts having an original term in excess of one year.

Long-Term Indebtedness shall include Short-Term Indebtedness if a Credit Facility exists to provide financing to retire such Short-Term Indebtedness and such Credit Facility provides for the repayment of principal on terms which would, if such commitment were implemented, constitute Long-Term Indebtedness. Long-Term Indebtedness shall also include the current portion of Long-Term Indebtedness. Long-Term Indebtedness shall only include the obligations described in (a), (b) and (c) to the extent that such obligations are Indebtedness, as herein defined.

“Maximum Long-Term Debt Service Requirement” means the highest Long-Term Debt Service Requirement for the present and any succeeding Fiscal Year.

“Moody’s” means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

“Net Eminent Domain Proceeds” means the gross proceeds paid to the City as a final award for the taking by Eminent Domain of any of the System less payment of attorneys’ and other fees and expenses properly incurred in the collection of such gross proceeds.

“Net Insurance Proceeds” means the gross proceeds paid to the City as a result of any casualty insurance policy with respect to the System or as a result of any liability insurance policy less payment of attorneys’ and other fees and expenses properly incurred in the collection of such gross proceeds.

“Net Receipts” for any particular period means the excess, if any, of Receipts after the payment of Current Expenses for such period.

“Officer’s Certificate” means a certificate signed by an Authorized Officer.

“Outstanding” when used with reference to Bonds means, as of a particular date, all Bonds theretofore authenticated and delivered under this Trust Agreement, except:

- (a) Bonds theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Bonds deemed to be no longer Outstanding pursuant to Section 304;
- (c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Trust Agreement;
- (d) Bonds deemed to have been paid in accordance with Article XII; and
- (e) Bonds constituting Put Indebtedness deemed to have been purchased in accordance with the provisions of the applicable Supplemental Agreement in lieu of which other Bonds have been delivered under such Supplemental Agreement.

When used with reference to Parity Debt, “Outstanding” means, as of a particular date, all Parity Debt except:

(a) Parity Debt theretofore canceled by the City;

(b) Parity Debt for the payment or redemption of which money, Defeasance Obligations, or a combination of both, in an amount sufficient to pay on the date when such Parity Debt is to be paid or redeemed the principal amount of or Redemption Price of, and the interest accruing to such date on, the Parity Debt to be paid or redeemed, has been deposited with an escrow agent in trust for the Holders of such Parity Debt; Defeasance Obligations shall be deemed to be sufficient to pay or redeem Parity Debt on a specified date if the principal and the interest on such Defeasance Obligations, when due, together with any money left uninvested, will be sufficient to pay on such date the principal amount of or Redemption Price of, and the interest accruing on, such Parity Debt to such date;

(c) Parity Debt in exchange for or in lieu of which other Parity Debt has been delivered under the documentation securing such Parity Debt;

(d) Parity Debt deemed to have been paid in accordance with the defeasance or like provisions of the Parity Debt Resolution providing for the issuance of the Parity Debt; and

(e) Parity Debt constituting Put Indebtedness deemed to have been purchased in accordance with the provisions of the applicable Parity Debt Resolution in lieu of which other Parity Debt has been incurred under the Parity Debt Resolution.

“Owner” means a Person in whose name a Bond is registered in the registration books provided for in Section 205.

“Parity Debt” means all Indebtedness incurred by the City in respect of the System and not evidenced by Bonds which is secured on a parity (as so designated in the Parity Debt Resolution) with the Bonds by a pledge, charge and lien upon the Net Receipts as provided in this Trust Agreement, including, without limiting the generality of the foregoing, Section 515.

“Parity Debt Resolution” means the resolution and any other documentation adopted or executed and delivered by the City providing for the incurrence of Parity Debt. If Parity Indebtedness is to be the subject of a Credit Facility providing for repayments for draws under the Credit Facility on a parity basis, then the term Parity Debt Resolution shall include any reimbursement agreement or similar repayment agreement executed and delivered by the City in connection with the provision of a Credit Facility for any Series of Bonds or any Parity Debt.

“Parity Indebtedness” means the Bonds and Parity Debt.

“Parity Reserve Account” means the account in the Bond Fund created and so designated by Section 501.

“Parity Reserve Account Requirement” means the lesser of (i) the Maximum Long-Term Debt Service Requirement for all Bonds and Parity Debt secured by the Parity Reserve Account,

(ii) 125% of the average annual Long-Term Debt Service Requirement for all Bonds and Parity Debt secured by the Parity Reserve Account and (iii) 10% of the stated principal amount of all Bonds and Parity Debt secured by the Parity Reserve Account; provided, however, that if any Series of Bonds or Parity Debt secured by the Parity Reserve Account has original issue discount or premium that exceeds 2% of the stated redemption price at maturity plus any original issue premium attributable exclusively to underwriter's compensation, the initial offering prices to the public shall be used in lieu of the stated principal amount for purposes of the 10% limitation. The Parity Reserve Account Requirement may be composed of cash, Investment Obligations or Reserve Alternative Instruments, or any combination of the foregoing, as the City may determine.

“Parity Resolution” means a Supplemental Agreement or a Parity Debt Resolution, or both, as the case may be, authorizing the issuance of a Series of Bonds or the incurrence of Parity Debt.

“Permitted Encumbrances” means in addition to any charge created or permitted by this Trust Agreement upon the System or any part thereof or on the Net Receipts:

(a) liens for taxes or other governmental charges or levies not delinquent or that are being contested in good faith by the City;

(b) (i) covenants, easements, encumbrances, defects of title, reservations, restrictions and conditions existing at the time of delivery of the Series 2011 Bonds and (ii) defects, irregularities, encumbrances, easements, including easements for roads and public utilities and similar easements, rights of way, mineral conveyances, mineral reservations, and clouds on title, none of which materially impairs the use of the property affected thereby for its intended purposes;

(c) mechanics', workers', repairmen's, architects', engineers', surveyors', or carriers' liens or other similar liens provided that the same shall be discharged in the ordinary course of business and without undue delay or the validity of the same shall be contested in good faith with any pending execution thereof appropriately stayed;

(d) other liens, charges and encumbrances that do not prevent or materially impair the use of the System; and

(e) encumbrances on property, plant and equipment comprising a part of the System to the extent permitted by Section 711.

“Person” includes corporations, firms, associations, partnerships, joint ventures, joint stock companies, trusts, unincorporated organizations, and public bodies, as well as natural persons.

“Predecessor Bonds” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by such particular Bond; and, for purposes of this definition, any Bond authenticated and delivered under Section 210 in lieu of a lost, destroyed or stolen Bond shall be deemed to evidence the same debt as the lost, destroyed or stolen Bond.

“Principal” means (a) with respect to any Capital Appreciation Bond, the Accreted Amount thereof (the difference between the stated amount to be paid at maturity and the Accreted Amount being deemed unearned interest) except as used in connection with the authorization and issuance of Bonds and with the order of priority of payments of Bonds after an Event of Default, in which case “Principal” means the initial public offering price of a Capital Appreciation Bond and the difference between the Accreted Amount and the initial public offering price shall be deemed to be interest and (b) with respect to any Current Interest Bond, the principal amount of such Bond payable at maturity or in satisfaction of a Sinking Fund Requirement, if applicable.

“Principal Account” means the account in the Bond Fund created and so designated by Section 501.

“Project Fund” means the fund created and designated the City of Fayetteville Stormwater System Project Fund by Section 401.

“Put Indebtedness” means fixed or variable rate Long-Term Indebtedness 25% or more of the principal of which may, at the option of the Owner or Holder thereof, be tendered to the City, the Trustee, a Depositary or a paying agent or other fiduciary, or an agent of any of the foregoing, for payment or purchase at one time.

“Qualified Escrow Funds” means amounts deposited in a segregated escrow fund or other similar fund or account in connection with the issuance of Long-Term Indebtedness which fund or account is required by the documents establishing such fund or account to be applied toward the City’s payment obligations with respect to principal or interest on (a) the Long-Term Indebtedness which is incurred under the documents establishing such fund or account or (b) Long-Term Indebtedness which is incurred prior to the establishment of such fund or account.

“Receipts” means all receipts, revenues, income, proceeds and money received in any period by or for the City in respect of the System, including, but without limiting the generality of the foregoing,

(a) all payments, proceeds, fees, charges, rents, penalties and all other income derived by or for the City for the use of and for the services and facilities furnished by or from the operation or ownership of the System, and all other income derived by the City from the operation or ownership of the System, and all rights to receive the same, whether in the form of accounts receivable, contract rights or other rights, and the proceeds of such rights whether now owned or held or hereafter coming into existence, and

(b) any proceeds of use and occupancy or business interruption insurance;

(c) developer and impact fees and special assessments unless (i) such amounts are restricted as to use in a manner inconsistent with their use as Receipts under this Trust Agreement or (ii) an Officer’s Certificate is filed with the Trustee stating that, pursuant to a resolution adopted by the City Council, such developer or impact fees or special assessments are not to be included as Receipts for purposes of this Trust Agreement,

but there shall not be included in “Receipts”

(a) the proceeds of any gifts, grants, bequests, contributions or donations,

(b) the proceeds from the sale or disposition of all or any part of the System,

(c) reimbursements received by the City of advances made by it in respect of (i) the Initial Project, (ii) any Additional Project, (iii) any refinancing of Indebtedness and (iv) any capital improvements;

(d) the investment income realized on, and the income and gains realized upon the maturity or sale of, securities held by or on behalf of the City in any funds, accounts and subaccounts established by or pursuant to this Trust Agreement, but only to the extent such income and gains as so realized are required to be deposited to some fund, account or subaccount other than the Revenue Fund or the Bond Fund as may be provided in this Trust Agreement or in any Parity Resolution,

(e) to the extent and for so long as such payments are pledged to secure the financing of the same, debt service or other payments made to the City in respect of Special Purpose Facilities, except to the extent otherwise provided by the City in respect of any such payments,

(f) Net Insurance Proceeds or Net Eminent Domain Proceeds other than the net proceeds of any use and occupancy or business interruption insurance,

(g) the proceeds of any appropriation made by any political subdivision in the State or by the State or any State Agency unless the proceeds of any such appropriation are designated, in whole or in part, as Receipts by the City,

(h) the income from the investment of Qualified Escrow Funds to the extent such income is applied to the payment of the principal of or the interest on Long-Term Indebtedness which is excluded from the determination of the Long-Term Debt Service Requirement,

(i) the proceeds of any security deposits or moneys received to make refunds to users,

(j) the proceeds derived from any Derivative Agreement,

(k) the proceeds of any Indebtedness,

(l) any developer and impact fees and special assessments that are (i) restricted as to use in a manner inconsistent with their use as Receipts under this Trust Agreement or (ii) determined by resolution of the City Council not to be included as Receipts for purposes of this Trust Agreement, as evidenced by an Officer’s Certificate filed with the Trustee, and

(m) any amounts received by the City as direct subsidy payments from the United States on Long-Term Indebtedness issued or incurred as “Build America Bonds” pursuant to Sections 54AA(g) or 1400U-2 and Section 6431 of the Internal Revenue Code of 1986, as amended (the “Code”), or any successor or similar interest subsidy program established under the Code, but

only to the extent deposited in any account or subaccount of the Bond Fund or otherwise used to pay interest on Long-Term Indebtedness.

“Redemption Account” means the account in the Bond Fund created and so designated by Section 501.

“Redemption Price” means, with respect to any Indebtedness or portion thereof, the principal amount of such Indebtedness or portion called for redemption plus the applicable premium, if any, payable upon redemption thereof.

“Regular Record Date” means, with respect to any Series of Bonds, the regular record date, if any, provided for in the Supplemental Agreement relating to such Series.

“Reserve Alternative Instrument” means an unconditional insurance policy or surety bond or irrevocable letter of credit or guaranty deposited in the Parity Reserve Account or a Special Reserve Account in lieu of or in partial substitution for the deposit of cash and Investment Obligations in satisfaction of the Parity Reserve Account Requirement or a Special Reserve Account Requirement. The Reserve Alternative Instrument shall be payable (upon the giving of notice as required thereunder) to remedy any deficiency in the appropriate subaccounts in the Interest Account, the Principal Account and the Sinking Fund Account in order to provide for the timely payment of interest and principal (whether at maturity or pursuant to Sinking Fund Requirements therefor). Subject to the provisions of any Parity Resolution, the provider of a Reserve Alternative Instrument shall at the time of delivery of the Reserve Alternative Instrument be (a) an insurer that has been assigned either (A) one of the two highest policyholder ratings accorded insurers by A. M. Best & Co. or any comparable service or (B) for bonds insured by the provider of the Reserve Alternative Instrument, a rating by at least two of Fitch, Moody’s or S&P in one of the two highest rating categories (without regard to gradations of such categories) or (b) a commercial bank, insurance company or other financial institution the bonds payable or guaranteed by which have been assigned a rating by at least two of Fitch, Moody’s or S&P in one of the two highest rating categories (without regard to gradations of such categories).

“Revenue Bond Anticipation Notes” means any revenue bond anticipation notes issued by the City in compliance with the provisions of Section 211.

“Revenue Fund” means the fund created and designated the City of Fayetteville Stormwater System Revenue Fund by Section 501 which currently comprises the City’s Stormwater Operating Fund.

“Revenues” means revenues of the System, as determined in accordance with generally accepted accounting principles; provided, however, that no determination of Revenues shall take into account any unrealized gain or loss on investments or any gain or loss resulting from either the extinguishment of Indebtedness or the sale, exchange or other disposition of capital assets; and provided further that Revenues shall not include:

- (a) the proceeds of any gifts, grants, bequests, contributions or donations,
- (b) the proceeds from the sale or disposition of all or any part of the System,

(c) reimbursements received by the City of advances made by it in respect of (i) the Initial Project, (ii) any Additional Project, (iii) any refinancing of Indebtedness and (iv) any capital improvements;

(d) the investment income realized on, and the income and gains realized upon the maturity or sale of, securities held by or on behalf of the City in any funds, accounts and subaccounts established by or pursuant to this Trust Agreement, but only to the extent such income and gains as so realized are required to be deposited to some fund, account or subaccount other than the Revenue Fund or the Bond Fund as may be provided in this Trust Agreement or in any Parity Resolution,

(e) to the extent and for so long as such payments are pledged to secure the financing of the same, debt service or other payments made to the City in respect of Special Purpose Facilities, except to the extent otherwise provided by the City in respect of any such payments,

(f) Net Insurance Proceeds or Net Eminent Domain Proceeds other than the net proceeds of any use and occupancy or business interruption insurance,

(g) the proceeds of any appropriation made by any political subdivision in the State or by the State or any State Agency unless the proceeds of any such appropriation are designated, in whole or in part, as Receipts by the City,

(h) the income from the investment of Qualified Escrow Funds to the extent such income is applied to the payment of the principal of or the interest on Long-Term Indebtedness which is excluded from the determination of the Long-Term Debt Service Requirement,

(i) the proceeds of any security deposits or moneys received to make refunds to users,

(j) the proceeds derived from any Derivative Agreement,

(k) the proceeds of any Indebtedness,

(l) any developer and impact fees and special assessments that are (i) restricted as to use in a manner inconsistent with their use as Receipts under this Trust Agreement or (ii) determined by resolution of the City Council not to be included as Receipts for purposes of this Trust Agreement, as evidenced by an Officer's Certificate filed with the Trustee, and

(m) any amounts received by the City as direct subsidy payments from the United States on Long-Term Indebtedness issued or incurred as "Build America Bonds" pursuant to Sections 54AA(g) or 1400U-2 and Section 6431 of the Internal Revenue Code of 1986, as amended (the "Code"), or any successor or similar interest subsidy program established under the Code, but only to the extent deposited in any account or subaccount of the Bond Fund or otherwise used to pay interest on Long-Term Indebtedness.

"S&P" means Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc., and its successors and assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be

deemed to refer to any other nationally recognized securities rating agency designated by the City by notice to the Trustee.

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

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

“Serial Bonds” means the Bonds of any Series that are stated to mature in consecutive annual installments.

“Series”, whenever used herein with respect to Bonds, means all of the Bonds designated as being of the same series

“Series 2011 Bonds” means the City of Fayetteville, North Carolina Stormwater System Revenue Bonds, Series 2011.

“Short-Term Indebtedness” means all Indebtedness incurred for borrowed money other than the current portion of Long-Term Indebtedness for any of the following:

(a) money borrowed for an original term, or renewable at the option of the borrower for a period from the date originally incurred, of one year or less;

(b) leases which are capitalized in accordance with generally accepted accounting principles having an original term, or renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and

(c) installment purchase, installment financing or conditional sale contracts having an original term of one year or less.

“Sinking Fund Account” means the account in the Bond Fund created and so designated by the provisions of Section 501.

“Sinking Fund Requirement” means, with respect to any Series of Bonds, the Sinking Fund Requirement provided in the Supplemental Agreement relating to such Series.

“Special Purpose Facilities” means any additions, acquisitions, improvements, betterments, land, buildings, structures or other facilities, including equipment, acquired or constructed, and the preparation and grading of land, relating to the System which are financed by the issuance of obligations which are issued in compliance with the provisions of Section 715 but are not, directly or indirectly, secured by or payable from Receipts or Net Receipts or issued

under or secured by the provisions of this Trust Agreement, nor is the operation and maintenance of such Special Purpose Facilities payable as a Current Expense.

“Special Record Date” means a date fixed by the Trustee for determining the Owner of Bonds for the payment of Defaulted Interest pursuant to Section 202.

“Special Reserve Account” means a special debt service reserve account, if any, created by a Parity Resolution as a debt service reserve account only for the particular Parity Indebtedness authorized thereby.

“Special Reserve Account Requirement” means the amount required to be placed or maintained in a Special Reserve Account as may be required by the Parity Resolution creating such Account. The Special Reserve Account Requirement may be composed of cash, Investment Obligations or Reserve Alternative Instruments or any combination of the foregoing, as the City may determine.

“State” means the State of North Carolina.

“State Revolving Loan Program” means the program established by the Clean Water Revolving Loan and Grant Act providing for loans to local governments for water, stormwater and wastewater capital projects.

“State Treasurer” means the State Treasurer of the State.

“Subordinated Indebtedness” means all Indebtedness incurred by the City in respect of the System which may be made payable from Net Receipts but only after the payments required by Section 504(a), (b), (c) have been made. Subordinated Indebtedness shall not include any obligations issued in compliance with the provisions of Section 715 to finance Special Purpose Facilities.

The terms of any Subordinated Indebtedness shall provide that it shall be subordinate and junior in right of payment to the prior payment in full of Parity Indebtedness to the extent and in the manner set forth below:

In the event (a) of any insolvency or bankruptcy proceedings, any receivership, liquidation, reorganization, arrangement or other similar proceedings in connection therewith, relative to the City or to the System, or in the event of any proceedings for voluntary liquidation, dissolution or other winding-up of the City or the System whether or not involving insolvency or bankruptcy, (b) any Subordinated Indebtedness is declared or otherwise becomes due and payable before its stated maturity because of the occurrence of an event of default occurring under the documents pursuant to which such Subordinated Indebtedness was incurred, or (c) any Event of Default under this Trust Agreement shall occur and be continuing and (1) written notice of such default shall have been given to the City and (2) judicial proceedings shall be commenced in respect of such Event of Default within 180 days in the case of a default in payment of principal or interest on Parity Indebtedness and within 90 days in the case of any other default after the giving of such notice, then, for so long as any action described in clause (a), (b) or (c)

hereof shall not have been remedied or cured in the opinion of the Trustee, the Holders of Parity Indebtedness shall be entitled to receive payment in full of all principal, premium and interest on all Parity Indebtedness before the Holders of the Subordinated Indebtedness are entitled to receive any payment on account of principal of or interest on the Subordinated Indebtedness, and to that end the owners of Parity Indebtedness shall be entitled to receive for application in payment thereof any payment or distribution of any kind of character, whether in cash or property or securities, which may be payable or deliverable in any such proceedings in respect of the Subordinated Indebtedness after giving effect to any concurrent payment or distribution in respect to such Parity Indebtedness.

“Subordinated Indebtedness Resolution” means the resolution and any other documentation adopted or executed by the City providing for the incurrence of Subordinated Indebtedness. If the Subordinated Indebtedness is to be the subject of a Credit Facility, the Credit Facility must provide for repayments on a subordinated basis and the term Subordinated Indebtedness Resolution shall include any reimbursement agreement or similar repayment agreement executed and delivered by the City in connection with the provision of a Credit Facility for any Subordinated Indebtedness.

“Supplemental Agreement” means an order or resolution of the City authorizing any particular Series of Bonds, together with a supplemental trust agreement executed and delivered by the City in connection with the issuance of such Series of Bonds that is required to be executed and delivered by this Trust Agreement prior to the issuance of any such Series.

“Synthetic Fixed Rate” means Synthetic Fixed Rate as defined in the definition of Derivative Indebtedness.

“Synthetic Variable Rate” means Synthetic Variable Rate as defined in the definition of Derivative Indebtedness.

“System” means the Existing Facilities, the Initial Project and any Additional Project.

“System G.O. Indebtedness” means general obligation indebtedness heretofore and hereafter incurred by the City to finance all or any part of the System or to refinance indebtedness incurred to finance all or any part of the System.

“Term Bonds” means the Bonds of any Series, other than Serial Bonds, that are designated as such in the Supplemental Agreement for such Series.

“Total Operating Revenues” means, as to any period of time, total operating revenues of the System as determined in accordance with generally accepted accounting principles.

“Trust Agreement” means this Trust Agreement and any supplements and amendments hereto permitted hereby.

“Trustee” means the Trustee serving as such under this Trust Agreement, whether original or successor.

“Unrestricted Cash and Investments” means the unrestricted cash and investments of the System as shown in the City’s most recently available audited financial statements under Statement of Net Assets - Proprietary Funds.

“Variable Rate Indebtedness” means any portion of Indebtedness the interest rate on which is not established at the time of incurrence at a fixed or constant rate.

Section 102. Findings and Determinations. The City does hereby find and determine as follows:

(a) The City owns and operates a natural and structural stormwater and drainage system which provides services to the residents of the City and its environs.

(b) The City has determined to provide in this Trust Agreement for the issuance of revenue bonds for financing the cost of revenue bond projects under the Act.

(c) Under the Constitution and laws of the State, particularly the Act, the City is authorized and empowered:

(i) to acquire, construct, reconstruct, extend, improve, maintain, better and operate one or more revenue bond projects, which may include undertakings for the utilities designated above combined under this Trust Agreement into one combined revenue producing facilities system, a revenue bond project being defined by the Act to include any undertakings for one or more of the revenue-producing utility or public service enterprise facilities listed in the Act;

(ii) to establish, maintain, revise, charge and collect rates, fees, rentals, tolls or other charges for the use, services, facilities and commodities of or furnished by any revenue bond project;

(iii) to borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving or otherwise paying the cost of revenue bond projects and to issue its revenue bonds or bond anticipation notes therefor;

(iv) to pledge to the payment of such bonds or notes and interest thereon revenues from one or more revenue bond projects, including revenues from improvements, betterments or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities and properties of the revenue bond projects to be improved, bettered or extended; and

(v) to enter into contracts with any person, firm or corporation, public or private, on such terms as the City may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance or operation of revenue bond projects.

(e) The City has determined to provide in this Trust Agreement for the issuance of revenue bonds for the purpose of financing improvements to the System or to any one or more components of the System as the City may determine from time to time in its discretion.

Section 103. Rules of Construction. (a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number.

(b) References herein to particular articles or sections are references to articles or sections of this Trust Agreement unless some other reference is indicated.

(c) References herein to specific sections or chapters of the General Statutes of North Carolina or to specific legislative acts are intended to be references to these sections, chapters or acts as amended and as they may be amended from time to time by the General Assembly of North Carolina, or any successor statute.

(d) Provisions calling for the redemption of Bonds or Parity Debt or the calling of Bonds or Parity Debt for redemption do not mean or include the payment of Bonds or Parity Debt at a stated maturity or maturities.

(e) Any references to obsolete accounting terminology shall be read to apply to the terminology then currently utilized under generally accepted accounting principles.

ARTICLE II
DETAILS OF BONDS

Section 201. Limitation on Issuance of Bonds. No Bonds may be issued under this Trust Agreement except in accordance with the provisions of this Article. The principal of, the interest on and the redemption premium, if any, on all Bonds issued under the provisions of this Trust Agreement shall be payable solely from the moneys and assets pledged by this Trust Agreement and the respective Supplemental Agreements for their payment. All covenants, agreements and provisions of this Trust Agreement shall be for the benefit and security of all present and future Owners of Bonds and Holders of Parity Debt and counterparties under Derivative Agreements with respect to Derivative Agreement Parity Payments without preference, priority or distinction as to lien or otherwise, except as otherwise hereinafter provided or as provided in any Parity Resolution or Derivative Agreement, of any one Bond, Parity Debt or Derivative Agreement Parity Payment over any other Bond, Parity Debt or Derivative Agreement Parity Payment by reason of priority in the issue, sale or negotiation thereof, or otherwise.

Section 202. Details of Bonds. Bonds authorized hereunder may be issued in one or more Series that may be delivered from time to time. The City shall by Supplemental Agreement authorize such Series and shall specify, to the extent appropriate, (a) the authorized principal amount of such Series, (b) the Initial Project or Additional Project to be financed from the Bonds or the Bonds or other indebtedness to be refunded or refinanced with the proceeds thereof, including costs of issuance; (c) the creation of a debt service reserve fund for such Series, if any; (d) the date and terms of maturity or maturities of the Bonds of such Series, or the dates of payment of the Bonds on the demand of the Owner; (e) the interest rate or rates of the Bonds of such Series, which may include variable, adjustable, convertible or other rates, original issue discount, Capital Appreciation Bonds, municipal multipliers or other deferred interest arrangements and zero interest rate Bonds, provided that the interest cost of such Series shall never exceed for such Series the maximum interest rate, if any, permitted by law in effect at the time such Series is issued; (f) the Interest Payment Dates for such Series of Bonds; (g) the denominations, numbering, lettering and series designation of such Series of Bonds; (h) the place or places of payment of such Bonds; (i) the redemption dates and Redemption Prices for such Series of Bonds and any terms of redemption not inconsistent with the provisions of this Trust Agreement, which may include mandatory redemption at the election of the Owner thereof to the extent permitted by law; (j) the terms of any optional or mandatory tender requirement, if any, for such Series of Bonds; (k) the use to be made of proceeds of such Series of Bonds, including deposits required to be made into the appropriate account or subaccount of the Project Fund, the Interest Account, the Capitalized Interest Account and any debt service reserve fund; and (l) any other terms or provisions applicable to the Series of Bonds not inconsistent with the provisions of this Trust Agreement or the Act. All of the foregoing may be added by Supplemental Agreements adopted at any time or from time to time prior to the issuance of such Series of Bonds.

Each Bond shall bear interest from the Interest Payment Date next preceding the date on which it is authenticated unless it is (a) authenticated upon an Interest Payment Date, in which

event it shall bear interest from such Interest Payment Date, or (b) authenticated prior to the first Interest Payment Date, in which event it shall bear interest from its date or such later date as is specified in the Supplemental Agreement providing for its issuance; provided, however, that if at the time of authentication of any Bond interest is in default, such Bond shall bear interest from the date to which interest has been paid.

Unless provided to the contrary in a Supplemental Agreement, and as permitted by law, the principal of and the interest and premium, if any, on the Bonds shall be payable in any coin or currency of the United States of America that is legal tender for the payment of public and private debts on the respective dates of payment thereof. The payment of interest on each Bond shall be made (a) by the Trustee on each Interest Payment Date to the person appearing on the registration books of the Trustee as the registered owner thereof as of the Regular Record Date by check mailed to the registered owner at his address as it appears on such registration books, or (b) by such additional or alternative means as is provided in any Supplemental Agreement providing for the issuance of such Bond. Unless otherwise provided in a Supplement Agreement, payment of the principal of all Bonds shall be made upon the presentation and surrender of such Bonds at the designated corporate trust office of the Trustee as the same become due and payable (whether at maturity or by redemption, acceleration or otherwise).

Any interest on any Bond of any Series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Owner on the relevant Regular Record Date solely by virtue of such Owner having been such Owner; and such Defaulted Interest may be paid by the City, at its election in each case, as provided in Subsection A or B below:

A. The City may elect to make payment of any Defaulted Interest on the Bonds of any Series to the persons in whose names such Bonds (or their respective Predecessor Bonds) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The City shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and at the same time, the City shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the persons entitled to such Defaulted Interest as in this Subsection provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the City of such Special Record Date and, in the name and at the expense of the City, such expense to be paid solely from Receipts, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Owner at his address as it appears in the registration books maintained under Section 206 not less than ten (10) days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the City, such expense to be paid solely from Receipts, cause a similar notice to be published at least once in (i) a financial journal

distributed in the Borough of Manhattan, City and State of New York, and (ii) a newspaper of general circulation in the County of Cumberland, North Carolina, but such publication shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the persons in whose names the Bonds (or their respective Predecessor Bonds) are registered on such Special Record Date and shall no longer be payable pursuant to the following subsection B below.

B. The City may make payment of any Defaulted Interest on the Bonds of any Series in any other lawful manner not inconsistent with the requirements of any securities exchange on which such Bonds may be listed and upon such notice as may be required by such exchange, if, after notice given by the City to the Trustee of the proposed payment pursuant to this Subsection, such payment shall be deemed practicable by the Trustee.

Subject to the foregoing provisions of this Section, each Bond delivered under this Trust Agreement upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from such date, that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

Section 203. Execution and Form of Bonds. The Bonds shall be signed by, or bear the facsimile signatures of, the Mayor or the City Manager of the City and City Clerk or any deputy or assistant City Clerk and the official seal of the City shall be impressed, or a facsimile thereof imprinted, on the Bonds. In case any officer whose signature or a facsimile of whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature or such facsimile nevertheless shall be valid and sufficient for all purposes the same as if he had remained in office until such delivery, and any Bond may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such Bond are the proper officers to execute such Bond although at the date of such Bond such persons may not have been such officers.

The definitive Bonds are issuable as permitted or required by the respective Supplemental Agreement providing for the issuance of Bonds of any Series. Bonds may be issued under a book-entry system and held by a Securities Depository. All Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to the applicable rules and regulations of any governmental authority or any securities exchange on which the Bonds may be listed or to any requirement of law with respect thereto.

Section 204. Exchange of Bonds. Bonds, upon surrender thereof at the designated corporate trust office of the Trustee, together with an assignment duly executed by the Owner or his attorney or legal representative, or legal representative of his estate if the Owner is deceased, in such form as shall be satisfactory to the Trustee, may, at the option of the Owner thereof, be exchanged for an equal aggregate principal amount of Bonds of the same Series and maturity, of any denomination or denominations authorized by the Supplemental Agreement pursuant to which such Bonds were issued, bearing interest at the same rate and in the same form as the Bonds surrendered for exchange.

The City shall make provision for the exchange of Bonds at the designated corporate trust office of the Trustee.

Section 205. Transfer and Registration of Transfer of Bonds. Unless provided to the contrary in a Supplemental Agreement, and as permitted by law, the Trustee shall keep books for the registration and the registration of transfer of Bonds as provided in this Trust Agreement. The registration books shall be available at all reasonable times for inspection by the City and any Owner of such Bonds and may be copied by either of the foregoing and their agents or representatives.

The Trustee shall evidence acceptance of such duties, responsibilities and obligations under this Trust Agreement and the applicable Supplemental Agreement by the execution of the certificate of authentication on the related Series of Bonds.

The transfer of any Bond may be registered only upon the books kept for the registration and registration of transfer of Bonds upon presentation thereof to the Trustee together with an assignment duly executed by the Owner or his attorney or legal representative, or legal representative of his estate if the Owner is deceased, in such form as shall be satisfactory to the Trustee. No transfer of any Bond shall alter the ownership of such Bond for purposes of this Trust Agreement unless such transfer is registered with the Trustee. Upon any such registration of transfer, the City shall, if necessary, execute and the Trustee shall authenticate and deliver in exchange for such Bond a new Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by the Supplemental Agreement pursuant to which such Bond was issued, in the aggregate principal amount equal to the principal amount of such Bond surrendered or exchanged, of the same maturity and bearing interest at the same rate.

In all cases in which Bonds shall be exchanged or the transfer of Bonds shall be registered hereunder, the City shall, if necessary, execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Trust Agreement. All Bonds surrendered in any such exchange or registration of transfer shall forthwith be canceled by the Trustee. No service charge shall be made for any registration, transfer or exchange of Bonds, but the City and the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds. Unless otherwise required by the applicable Supplemental Agreement, neither the City nor the Trustee shall be required (a) to issue, transfer or exchange Bonds during a period beginning at the opening of business fifteen (15) days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing or (b) to transfer or exchange any Bond so selected for redemption in whole or in part.

Section 206. Ownership of Bonds. The City and the Trustee, and any agent of the City or the Trustee, may treat the person in whose name any Bond is registered, including, without limitation, any Securities Depository Nominee, as the Owner of such Bond for the purpose of receiving payment of principal of and premium, if any, and interest on such Bond, and for all other purposes whatsoever, whether or not such Bond be overdue, and, to the extent permitted by

law, neither the City, the Trustee nor any such agent thereof shall be affected by notice to the contrary.

Section 207. Authentication of Bonds. Only such Bonds as have endorsed thereon a certificate of authentication substantially in the form set forth in the Supplemental Agreement pursuant to which such Bonds are issued, duly executed as provided in the Supplemental Agreement, shall be entitled to any benefit or security under this Trust Agreement. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication on the Bond has been duly executed and dated as provided in the Supplemental Agreement, and such certificate upon any such Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Trust Agreement. The certificate of authentication on any Bond shall be deemed to have been duly executed and dated if signed by an authorized officer of the party authorized under the Supplemental Agreement but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds or any Series thereof that may be issued hereunder at any one time.

Section 208. Terms and Conditions for Issuance of Bonds. Before any Bonds shall be issued, the City shall adopt and execute and deliver a Supplemental Agreement authorizing the issuance of such Bonds, fixing the amount and the details thereof as provided in Section 202 and describing in brief and general terms the purpose for issuing such Bonds. Bonds may be issued for the purpose of providing funds for paying, with any other available funds:

- (a) all or any part of the Cost of the Initial Project or any Additional Project,
- (b) all or any part of completing payment of the Cost of the Initial Project or any Additional Project, and
- (c) the cost (including financing costs) of refunding any Bonds, Parity Debt, Subordinated Indebtedness or System G.O. Indebtedness.

The Supplemental Agreement may determine to use the Parity Reserve Account or to establish a Special Reserve Account for such Series of Bonds and fix the provisions with respect thereto or not to establish any debt service reserve account. Unless named otherwise in the Supplemental Agreement, the Bonds of each Series shall be designated “City of Fayetteville, North Carolina Stormwater System Revenue Bonds, Series _____” (inserting the year such Bonds are issued and any other distinctive letter or number), shall be stated to mature, subject to the right of prior redemption as therein set forth, on the date or dates specified therein, in such year or years not later than forty (40) years from their date, shall bear interest at a rate or rates not exceeding the maximum rate then permitted by law, shall be numbered and shall have such redemption provisions (subject to the provisions of Article III), all as provided in the Supplemental Agreement. Except as to any differences in the maturities thereof or in the rate or rates of interest or the provisions for redemption or the provisions regarding the respective subaccounts within the Interest Account, the Principal Account, the Sinking Fund Account and the Redemption Account, and any provisions with respect to the Parity Reserve Account or a Special Reserve Account, all such Bonds shall be on a parity with each other and any Parity Debt

and shall be entitled to the same benefit and security of this Trust Agreement, including, in particular, the pledge, charge and lien upon the Net Receipts.

The Bonds shall be executed substantially in the form and in the manner hereinabove set forth and shall be deposited with the Trustee for authentication, but before the Bonds shall be authenticated and delivered to the State Treasurer for redelivery to the purchasers thereof, there shall be filed with the Trustee the following:

- (i) an executed copy of this Trust Agreement;
- (ii) an executed copy of the Supplemental Agreement adopted or executed and delivered by the City for the particular Series of Bonds;
- (iii) a copy, certified by the Secretary or any Deputy Secretary of the Local Government Commission, of the resolution of the Local Government Commission approving the issuance of and awarding the particular Series of Bonds;
- (iv) a copy, certified by the City Clerk, of the resolution of the City (which resolution may be incorporated in the Supplemental Agreement for the particular Series of Bonds), approving the award of the Bonds by the Local Government Commission and directing the authentication and delivery of such Bonds to or upon the order of the purchasers therein named upon payment of the purchase price therein set forth plus the accrued interest thereon;
- (v) for any Series of Bonds other than the Series 2011 Bonds, evidence of compliance with the provisions of Section 716 with respect to Parity Indebtedness; and
- (vi) such other documents as are required to be delivered to the Trustee pursuant to the Supplemental Agreement.

When the documents mentioned in subsections (i) to (vi), inclusive, of this Section shall have been filed with the Trustee and when the Bonds shall have been executed and authenticated as required by this Trust Agreement, the Trustee shall deliver the Bonds at one time to the State Treasurer for redelivery to or upon the order of the purchasers named in the resolution mentioned in subsection (iv) of this Section, but only upon payment to the Trustee or such other Person as may be designated in a Supplemental Agreement of the purchase price of the Bonds and the accrued interest, if any, thereon to the date of delivery. The Trustee shall be entitled to rely upon the resolutions and documents mentioned in subsections (i) to (vi) of this Section as to all matters stated therein.

The proceeds (including accrued interest) of the Bonds shall be applied simultaneously with the delivery of the Bonds as provided in the Supplemental Agreement.

Section 209. Temporary Bonds. Until the definitive Bonds of any Series are ready for delivery, there may be executed, and upon direction of the City, the Trustee shall deliver, in lieu of definitive Bonds and subject to the same limitations and conditions, except as to identifying numbers, printed, engraved, lithographed or typewritten temporary Bonds in denominations

permitted by the applicable Supplemental Agreement for the definitive Bonds, substantially of the tenor hereinabove set forth, with such appropriate omissions, insertions and variations as may be required. The City shall cause the definitive Bonds to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it of any temporary Bond, shall cancel the same or cause the same to be canceled and shall authenticate and deliver, in exchange therefor, at the place designated by the Owner, without expense to the Owner, a definitive Bond or Bonds of the same Series and in the same aggregate principal amount, maturing on the same date and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall be entitled to the same benefit of this Trust Agreement, as the definitive Bonds to be issued and authenticated hereunder, including the privilege of registration if so provided. Until definitive Bonds are ready for exchange, interest on temporary Bonds shall be paid when due and notation of such payment shall be endorsed thereon.

Section 210. Mutilated, Destroyed, Lost or Stolen Bonds. The City shall cause to be executed, and the Trustee shall authenticate and deliver a new Bond of like date, number and tenor in exchange and substitution for and upon the cancellation of any mutilated Bond, or in lieu of and in substitution for any destroyed, lost or stolen Bond, and the Owner shall pay the reasonable expenses and charges of the City in connection therewith. Prior to the delivery of a substitute Bond, the Owner of any Bond which was destroyed, lost or stolen shall file with the Trustee evidence satisfactory to it of the destruction, loss or theft of such Bond and of the Owner's ownership thereof and shall furnish to the City and to the Trustee such security or indemnity as may be required by them to save each of them harmless from all risks, however remote.

Every Bond issued pursuant to the provisions of this Section in exchange or substitution for any Bond which is mutilated, destroyed, lost or stolen shall constitute an additional contractual obligation of the City, whether or not the destroyed, lost or stolen Bonds are found at any time or are enforceable by anyone, and shall be entitled to all the benefits and security hereof equally and proportionately with any and all other Bonds of the same Series duly issued under this Trust Agreement.

Section 211. Revenue Bond Anticipation Notes. Revenue Bond Anticipation Notes may be issued by the City from time to time for any purpose for which Bonds may be issued under Section 208. Revenue Bond Anticipation Notes may be issued as Parity Indebtedness or Subordinated Indebtedness and, except to the extent otherwise expressly provided in this Trust Agreement, shall be issued in compliance, to the extent applicable, with the provisions of Section 208 setting forth certain terms and conditions for the issuance of Bonds.

Revenue Bond Anticipation Notes may be issued provided the following conditions are met:

(a) The City shall adopt a resolution authorizing the issuance of such Revenue Bond Anticipation Notes and setting forth the amount and details thereof. The maximum aggregate principal amount of Revenue Bond Anticipation Notes of an issue at any one time Outstanding shall not exceed the aggregate principal amount of Parity Indebtedness or Subordinated Indebtedness allowed by subsection (d) of this Section.

(b) The Revenue Bond Anticipation Notes shall be issued pursuant to the provisions of the Act and, but only to the extent applicable, the provisions of G.S. 159-163.

(c) The interest on and the principal of any such Revenue Bond Anticipation Notes may be made payable from Net Receipts or from the proceeds of other Revenue Bond Anticipation Notes, Parity Indebtedness or other Subordinated Indebtedness, any available moneys in the General Fund or any other legally available source.

(d) Prior to or simultaneously with the delivery of and payment for any such Revenue Bond Anticipation Notes then proposed to be issued, there shall be filed with the Trustee evidence, based on the assumptions hereinafter mentioned in this paragraph, of compliance with the provisions of Section 716 in the case the Revenue Bond Anticipation Notes are issued as Parity Indebtedness or of compliance with the provisions of Section 717 in the case the Revenue Bond Anticipation Notes are issued as Subordinated Indebtedness. In showing compliance with the provisions of Section 716 or Section 717, as the case may be, the principal amount of such assumed Parity Indebtedness or Subordinated Indebtedness shall be deemed to be equal to the principal amount of such Revenue Bond Anticipation Notes being issued, and the City shall be entitled to assume that such Parity Indebtedness or Subordinated Indebtedness will mature at such times and in such principal amounts as if such principal were amortized from the date of incurrence thereof over a period of twenty-five (25) years on a level debt service basis and bear such interest rates as it may in its best judgment determine. The Authorized Officer or the Consultant, as the case may be, shall be entitled in his or her best judgment to make such other assumptions as may be necessary in respect of matters that cannot be otherwise ascertained at such time in order to determine whether or not the assumed Parity Indebtedness or Subordinated Indebtedness could be incurred at such time. Any assumptions made by the Authorized Officer to show compliance with this paragraph shall be set forth in a resolution of the City, shall be made in the sole discretion of the City and shall be deemed to be binding and conclusive upon the Trustee and any Owner of Bonds and Holders of Parity Indebtedness or Subordinated Indebtedness.

Section 212. Grant Anticipation Notes. Grant Anticipation Notes may be issued by the City from time to time for any purpose for which Bonds may be issued under Section 208 in anticipation of the receipt of moneys from firm grant commitments for such purpose from the State or the United States or any agencies of either. Grant Anticipation Notes shall constitute Subordinated Indebtedness and, except to the extent otherwise expressly provided in this Trust Agreement, shall be issued in compliance, to the extent applicable, with the provisions of Section 208 setting forth certain terms and conditions for the issuance of Bonds.

Grant Anticipation Notes may be issued provided the following conditions are met:

(a) The City shall adopt a resolution authorizing the issuance of the Grant Anticipation Notes and setting forth the amount and details thereof.

(b) The Grant Anticipation Notes shall be issued pursuant to the provisions of the Act and, but only to the extent applicable, the provisions of G.S. 159-171.

(c) The interest on and the principal of the Grant Anticipation Notes may be made payable from Net Receipts or from the proceeds of the grant, other Grant Anticipation Notes, Parity Indebtedness or Subordinated Indebtedness, any available moneys in the General Fund or any other legally available source.

(d) The maximum aggregate principal amount of the Grant Anticipation Notes at any time Outstanding shall not exceed the maximum amount of the grant.

(e) Grant Anticipation Notes may be issued without showing compliance with the appropriate provisions of Section 717.

(f) A copy of the resolution of the City authorizing the issuance of the Grant Anticipation Notes shall be filed with the Trustee.

Section 213. Subordinated Indebtedness. Subordinated Indebtedness may be incurred by the City from time to time for any purpose for which Bonds may be issued under Section 208. Except to the extent otherwise expressly provided in this Trust Agreement, Subordinated Indebtedness shall be incurred in compliance, to the extent applicable, with the provisions of Section 208 setting forth certain terms and conditions for the issuance of Bonds.

Subordinated Indebtedness may be incurred provided the following conditions are met:

(a) The City shall adopt a resolution authorizing the incurrence of any such Subordinated Indebtedness and setting forth the amount and details thereof.

(b) Any such Subordinated Indebtedness shall be incurred pursuant to the provisions of the Act.

(c) The interest on and the principal of any such Subordinated Indebtedness may be made payable from Net Receipts, but only after the payments required by Section 504(a), (b) and (c).

(d) There shall be filed with the Trustee evidence of compliance with the appropriate provisions of Section 717.

Section 214. State Revolving Loan Programs. For purposes of this Trust Agreement, obligations or debt instruments executed and delivered to the State as part of the State Revolving Loan Program or any other similar State loan program are deemed to be Subordinated Indebtedness unless required by the State to be Parity Indebtedness. For purposes of complying with Section 716 or Section 717, Subordinated Indebtedness incurred by the City as part of the State Revolving Loan Program or any other similar State loan program shall be deemed to be incurred in the full amount of the obligation or debt instrument delivered to the State on the date of such delivery, notwithstanding that the proceeds of such Indebtedness may be distributed to

the Town over a period of time in accordance with the rules and regulations governing such programs.

Section 215. Additional Restrictions. A Parity Resolution or a Subordinated Indebtedness Resolution may establish restrictions, in addition to those established in this Trust Agreement, including, without limiting the generality of the foregoing, additional restrictions as to the application of Net Receipts after the payments required by Section 504(a), (b) and (c) and additional restrictions on the incurrence of Indebtedness beyond those set forth in Sections 716 and 717.

ARTICLE III

REDEMPTION

Section 301. Redemption Generally. The Bonds of any Series issued under this Trust Agreement may be made subject to redemption, at such times and prices, as may be provided by the Supplemental Agreement authorizing the issuance of such Bonds.

Section 302. Selection of Bonds or Portions Thereof to be Redeemed. The Trustee shall select the Bonds or portions thereof to be redeemed in accordance with the terms and provisions of this Trust Agreement and the Supplemental Agreement relating to such Bonds.

Section 303. Redemption Notice. The requirements for notice of redemption shall be set forth in the Supplemental Agreement for each Series of Bonds.

Section 304. Effect of Calling for Redemption. On or before the date upon which Bonds are to be redeemed, the City shall deposit with the Trustee money or Defeasance Obligations, or a combination of both, that will be sufficient to pay on the redemption date the Redemption Price of and interest accruing on the Bonds to be redeemed on such redemption date.

On the date fixed for redemption, notice having been given in the manner and under the conditions hereinabove provided, the Bonds or portions thereof called for redemption shall be due and payable at the Redemption Price provided therefor, plus accrued interest to such date, and if moneys sufficient to pay the Redemption Price of the Bonds or portions thereof to be redeemed plus accrued interest thereon to the date of redemption are held by the Trustee in trust for the Owners of Bonds to be redeemed, interest on the Bonds or portions thereof called for redemption shall cease to accrue; such Bonds or portions thereof shall cease to be entitled to any benefits or security under this Trust Agreement or to be deemed Outstanding; and the Owners of such Bonds or portions thereof shall have no rights in respect thereof except to receive payment of the Redemption Price thereof, plus accrued interest to the date of redemption.

Bonds and portions of Bonds for which irrevocable instructions to pay on one or more specified dates or to call for redemption on any one or more dates as determined by the City have been given to the Trustee in form satisfactory to it shall not thereafter be deemed to be Outstanding under this Trust Agreement and shall cease to be entitled to the security of or any rights under this Trust Agreement, and the Owners shall have no rights in respect of the same other than to receive payment of the principal or Redemption Price thereof and accrued interest thereon, to be given notice of redemption in the manner provided in Section 303, and to the extent hereinafter provided, to receive Bonds for any unredeemed portions of Bonds if money or Defeasance Obligations (that have maturity dates or redemption dates which, at the option of the holder of such Defeasance Obligations, shall not be later than the date or dates on which moneys will be required to effect such payment or redemption), or a combination of both, sufficient to pay the principal or Redemption Price of such Bonds or portions thereof, together with accrued interest thereon to the date upon which such Bonds are to be paid or redeemed, are held in separate accounts by the Trustee in trust for the Owners of such Bonds.

Any Supplemental Agreement may provide that any notice of redemption, except a notice of redemption in respect of a Sinking Fund Requirement, may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the Bonds to be redeemed, and that if such moneys are not so received, such notice shall be of no force or effect and such Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys or Defeasance Obligations sufficient to pay the Redemption Price and interest on such Bonds are not received by the Trustee on or prior to the redemption date, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. The Supplemental Agreement may also provide for the giving of notice of insufficient money prior to the redemption date and such other provisions as the City may determine.

Section 305. Redemption of a Portion of Bonds. If less than all of an Outstanding Bond is selected for redemption, the Owner thereof or his attorney or legal representative, or legal representative of his estate if the Owner is deceased, shall present and surrender such Bond to the Trustee for payment of the principal amount thereof so called for redemption, and the redemption premium, if any, on such principal amount, and the City shall, if necessary, execute and the Trustee shall authenticate and deliver to or upon the order of such Owner or his attorney or legal representative, without charge, for the unredeemed portion of the principal amount of the Bond so surrendered, a new Bond of the same Series and maturity, bearing interest at the same rate and of any denomination or denominations authorized by Supplemental Agreement for such Bond.

Section 306. Cancellation. Bonds presented and surrendered in accordance with the provisions of this Article shall be canceled upon the surrender thereof.

Section 307. Notice to Local Government Commission. If any Bonds shall be called for redemption at the option of the City, the Trustee shall give notice thereof to the Local Government Commission.

ARTICLE IV
PROJECT FUND

Section 401. Project Fund. A special fund is hereby established with the Trustee and designated the “City of Fayetteville Stormwater System Project Fund.” Unless otherwise provided in a Supplemental Agreement, the proceeds of any Series of Bonds to be used for providing the Initial Project or any Additional Project shall be deposited upon the delivery of such Series of Bonds into a separate account in the Project Fund to be created by the Supplemental Agreement providing for the issuance of the Bonds financing such Additional Project.

The money in the Project Fund shall be held by the Trustee in trust and, pending application to the payment of the refinancing of, the reimbursement for or the Costs of the Initial Project or any Additional Project or transfer as provided herein or in the Supplemental Agreement, shall, to the extent permitted by law, be subject to a lien and charge in favor of the Owners of Bonds issued with respect to such Initial Project or Additional Project and Outstanding under this Trust Agreement and shall be held for the security of such Owners.

Section 402. Payments from Project Fund. Payment of the Costs of the Initial Project or any Additional Project shall be made from the applicable account within the Project Fund. All payments from the Project Fund shall be subject to the provisions and restrictions set forth in this Article, and the City shall not cause or agree to permit to be paid from the Project Fund any sums except in accordance with such provisions and restrictions.

Section 403. Cost of Initial Project and Additional Projects. For the purpose of this Trust Agreement, the Costs of the Initial Project or any Additional Project, as the case may be, shall include such costs as are eligible costs within the purview of the Act, and, without intending to limit or restrict any proper definition of such Cost, shall include the following:

(a) obligations incurred for labor, materials, services provided by contractors, builders and materialmen in connection with the construction, acquisition, and equipping of the Initial Project or Additional Projects, machinery and equipment, for the restoration of property damaged or destroyed in connection with such construction and acquisition, for the demolition, removal or relocation of any structures and for the clearing of lands;

(b) interest accruing upon any Bonds prior to the commencement of and during construction or for any additional period as may be authorized by law and provided in the Supplemental Agreement authorizing the issuance of such Bonds;

(c) the cost of acquiring by purchase, and the amount of any award or final judgment in any proceeding to acquire by Eminent Domain, such land, structures and improvements, property, property rights, rights-of-way, franchises, easements and other interests in lands as may be deemed necessary or convenient in connection with such construction or operation of the System;

(d) expenses of administration properly chargeable to such construction or acquisition, legal, trustee, architectural and engineering expenses and fees, cost of audits and of preparing and issuing the Bonds, fees and expenses of consultants, financing charges, premiums of insurance in connection with construction, bond insurance premiums, the cost of funding any debt service reserve account requirements, and all other items of expense not elsewhere in this Section specified that are incident to the financing, construction or acquisition of the Initial Project or any Additional Project and the placing of the same in operation; and

(e) reimbursement of any obligation or expense incurred by the City for any of the foregoing purposes prior to the date of delivery of the Bonds, including reimbursement to any Persons for advances made to the City, and also including the cost of materials, supplies or equipment furnished by the City in connection with the construction of the Initial Project or any Additional Project and paid for by the City out of funds other than money in the Project Fund.

Section 404. Requisitions from Project Fund. Payments from the Project Fund shall be made in accordance with the provisions of this Section.

Upon receipt of a requisition of the City signed by an Authorized Officer, the Trustee shall pay from the appropriate account or subaccount of the Project Fund to the City at one time or from time to time, a sum or sums aggregating at any point in time not more than \$500,000 (or such greater or lesser amount as shall be specified in the applicable Supplemental Agreement), exclusive of reimbursements as hereinafter authorized in this Section, to be used by the City as a revolving fund for the payment of items of Cost referred to in Section 403 which cannot conveniently be paid as herein otherwise provided in this Section. Such money shall be deemed to be a part of the Project Fund until paid out by the Trustee. The Trustee shall apply money in the Project Fund to reimburse the revolving fund from time to time for items of Cost paid with money in the revolving fund upon receipt of a requisition signed by an Authorized Officer for reimbursement of items of Cost referred to in Section 403, which requisition (1) shall specify the amount and the purpose by general classification of each payment from the revolving fund for which such reimbursement is requested and state that each such item of cost so paid was a necessary item of Cost within Section 403, was not previously requisitioned and was a proper charge against the Project Fund and (2) shall make the certifications required by (f) and (g) below.

Upon request of the City, the Trustee shall pay Costs directly from the Project Fund, but before any payment shall be made there shall be filed with the Trustee a requisition signed by an Authorized Officer, stating:

- (a) the item number of such payment;
- (b) the name of the Person to whom such payment is due;
- (c) the amount to be paid;

(d) the purpose by general classification for which the obligation to be paid was incurred;

(e) that the obligation in the stated amount has been incurred by the City, is presently due and payable and is a proper charge against the Project Fund that has not been paid;

(f) that no notice of any lien, right to lien or attachment upon, or claim affecting the right of any such Person to receive payment of, the amount stated in such requisition and certificate has been filed or attached or, if any of the foregoing has been filed or attached, that the same either has been or will be satisfied or discharged or that provisions have been made (which shall be specified) to protect adequately the Trustee and the Owners from incurring any loss as a result of the same;

(g) that such requisition contains no item representing payment on account of any retainage to which the City is entitled at the date of such requisition;

(h) the account or subaccount from which such Cost shall be paid; and

(i) to the extent so applicable, that such requisition contains no items for the payment of the purchase price or cost of any lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests already constituting a part of the System.

Upon receipt of each requisition, the Trustee shall pay the obligations set forth in such requisition out of money in the applicable account or subaccount in the Project Fund, and each such obligation shall be paid by check signed by one or more officers or employees of the Trustee designated for such purpose by the Trustee. If for any reason the City should decide prior to the payment of any item in a requisition not to pay such item, it shall give written notice of such decision to the Trustee, and thereupon the Trustee shall not make such payment.

A form of sample requisition is attached hereto as Exhibit A.

Section 405. Requisition for Land Costs. If any requisition, including a requisition for reimbursement to the revolving fund, contains any item for the payment of the purchase price or cost of any lands, property, property rights, rights-of-way, easements, franchises, or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests already constituting a part of the System, there shall be attached to such requisition, in addition to the certificate mentioned in Section 404:

(a) an Officer's Certificate stating that such lands, property, property rights, rights-of-way, easements, franchises or interests are being acquired by the City in furtherance of the construction or acquisition of any Additional Project; and

(b) (1) an opinion of the City Attorney to the effect that upon the payment of such item, the City will have title in fee simple to, or perpetual easements or title or rights

sufficient for the needs and purposes of the City in, such lands, free from all liens, encumbrances and defects of title that would have a materially adverse effect upon the City's right to use such lands or properties for the purposes intended or if such liens, encumbrances or defects of title exist that the City is adequately guarded against the same by a bond or other form of indemnity; or (2) if such payment is for an option or contract to purchase, a quit-claim deed or a lease or a release of, or the acquisition of a right or interest in, lands less than a fee simple or a perpetual easement, or if such payment is a partial payment for any such purpose, an Officer's Certificate approving the acquisition of such lesser right or interest or of such part payment.

Section 406. Reliance upon Requisitions. All requisitions and opinions received by the Trustee as conditions of payment from the Project Fund may be relied upon by the Trustee. Such requisitions and opinions shall be retained by the Trustee for so long as the Bonds are Outstanding and shall be subject at all reasonable times to examination by the City and the Owners of Bonds then Outstanding.

Section 407. Completion of Initial Project and any Additional Project and Disposition of Project Fund Balance. The Completion Date for the Initial Project or any Additional Project, or any segment thereof, shall be evidenced to the Trustee by an Officer's Certificate (a) stating that, except for amounts not then due and payable or the liability for the payment of which is being contested or disputed by the City, all costs and expenses incurred in connection with the Initial Project or Additional Project, or such segment, have been paid, and (b) stating that (i) the acquisition, construction and equipping of the Initial Project or Additional Project, or such segment, whichever is applicable, have been completed substantially in accordance with the plans and specifications therefor and the Cost of the same has been paid and (ii) all other facilities necessary in connection with the Initial Project or Additional Project, or such segment, have been acquired, constructed and installed in accordance with the plans and specifications therefor. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties that exist at the date of such certificate or that may subsequently come into being. The City shall supply such certificate within sixty (60) days after the facts justifying such certification exist.

Upon receipt of such certificate, together with an opinion of the City Attorney to the effect that there are no mechanics', workmen's, repairmen's, architects', engineers', surveyors', carriers', laborers', contractors' or materialmen's liens on any property constituting a part of the Initial Project or Additional Project, as the case may be, on file in any public office where the same should be filed to be perfected and that the time within which such liens can be filed has expired or the same has been discharged pursuant to Section 44A-16 of the General Statutes of North Carolina, the Trustee shall withdraw all money then remaining in the relevant account or subaccount in the Project Fund in excess of the amount then needed for completion of the remainder of the Initial Project or Additional Project and apply the same, subject to Section 604, for any capital improvement related to the System which, in the opinion of nationally recognized bond counsel, shall not adversely affect the tax status of interest on the Bonds of the applicable Series. In the event that the City does not deliver an opinion of nationally recognized bond counsel as required by the preceding sentence, the Trustee shall transfer the money in excess of the amount then needed for completion of the Initial Project or Additional Project to the

subaccount or subaccounts of the Bond Fund for such Series of Bonds as specified by an Authorized Officer of the City.

ARTICLE V
RECEIPTS AND FUNDS

Section 501. Establishment of Funds. In addition to the Project Fund, there are hereby established the following funds:

- (a) City of Fayetteville Stormwater System Revenue Fund;
- (b) City of Fayetteville Stormwater System Bond Fund, in which there are established six special accounts to be known as the Capitalized Interest Account, the Interest Account, the Principal Account, the Sinking Fund Account, the Redemption Account and the Parity Reserve Account;
- (c) City of Fayetteville Stormwater System Capital Reserve Fund; and
- (d) City of Fayetteville Stormwater System Insurance and Condemnation Award Fund.

The Bond Fund and the accounts and subaccounts therein and the Insurance and Condemnation Award Fund shall be established with and held by the Trustee. The Revenue Fund and the Capital Reserve Fund shall be established with and held by a Depository selected by the City.

A Parity Resolution may provide for the creation of a Special Reserve Account for the Parity Indebtedness authorized by such Parity Resolution and for the deposit of moneys to and withdrawal of moneys from such Account. Any Special Reserve Account created for any Series of Bonds or Parity Debt shall be held and maintained by the Trustee; provided, however, that if a Series of Bonds or Parity Debt is placed with the purchaser thereof or lender and not publicly offered, then such purchaser, lender or any other Depository may hold such Special Reserve Account as provided for in the Supplemental Agreement authorizing the issuance of such Series of Bonds or the Parity Debt Resolution authorizing such Parity Debt.

A Parity Resolution may also provide for the creation of such other funds and accounts, as the City may determine, for the Parity Indebtedness authorized by such Parity Resolution.

The money in all of the funds, accounts and subaccounts established pursuant to this Article shall be held in trust and applied as hereinafter provided and, pending such application, the money in the Bond Fund and the accounts and subaccounts therein shall be subject to a pledge, charge and lien in favor of the Owners of the respective Series of Bonds issued and Outstanding under this Trust Agreement and for the further security of such Owners, except as otherwise provided herein or in any Supplemental Agreement.

Each Supplemental Agreement shall provide, to the extent applicable, for the creation of a separate subaccount within the Capitalized Interest Account, the Interest Account, the Principal Account, the Redemption Account and the Sinking Fund Account with respect to each Series of

Bonds, which subaccounts shall bear the designation of such Series of Bonds. A Supplemental Agreement may provide that the Bonds authorized thereby may be additionally secured by the Parity Reserve Account or a Special Reserve Account or it may provide that there shall not be any debt service reserve fund in respect of such Series of Bonds. If a Series of Bonds is secured by a Special Reserve Account or is not secured by any debt service reserve fund, such Series of Bonds shall have no claim on the Parity Reserve Account or any other Special Reserve Account.

Each Parity Debt Resolution may provide for the creation of such funds and accounts as it may determine, including, without limiting the generality of the foregoing, an account for the payment of interest as mentioned in Section 504(a), an account or accounts for the payment of principal, whether at maturity or pursuant to an amortization requirement, as mentioned in Section 504(b) or a debt service reserve account, which may be the Parity Reserve Account or a Special Reserve Account, mentioned in Section 504(c). A Parity Debt Resolution may provide that the Parity Debt authorized thereby may be additionally secured by the Parity Reserve Account or a Special Reserve Account or it may provide that there shall not be any debt service reserve account in respect of such Parity Debt. If any Parity Debt is secured by a Special Reserve Account or is not secured by any debt service reserve fund or account, such Parity Debt shall have no claim on the Parity Reserve Account.

Each Parity Debt Resolution shall be filed with the Trustee on or prior to the date of incurrence of any Parity Debt.

Section 502. Receipts Received by the City. At the time of delivery of the Series 2011 Bonds, all funds held in the City's stormwater system enterprise fund shall be deposited in the Revenue Fund. Except as hereinafter provided, all Receipts shall be deposited when received in the Revenue Fund.

In addition, all proceeds received by the City pursuant to any Derivative Agreement shall be deposited in the Revenue Fund.

Section 503. Application of Money in Revenue Fund. (a) Moneys in the Revenue Fund shall be expended and used by the City only in the manner and order specified in this Trust Agreement.

(b) Current Expenses shall be paid by the City from and shall be a first charge and lien against the Revenue Fund. The Current Expenses shall be paid as the same become due and payable in conformity with the applicable budgetary and payment procedures of the City.

(c) At such time or times as are specifically provided for herein or in any Supplemental Agreement, Parity Debt Resolution or Derivative Agreement, the City shall withdraw from the Revenue Fund the amount necessary to make the deposits required by Section 504.

(d) To the extent permitted by law, and except during the continuation of an Event of Default, the City may, in its discretion, transfer in any month any balance remaining in the Revenue Fund at the end of the preceding month after making all deposits or payments required by Section 504, in whole or in part, to the General Fund or any other fund or account designated by the City, provided that (i) an Authorized Officer shall first certify to the Trustee in an

Officer's Certificate that, in his or her opinion, the transfer of such amount will not have a material adverse effect on the City's ability over the next twelve calendar months to pay the Current Expenses, to make all deposits required by Section 504 and to meet all other financial obligations imposed by this Trust Agreement or any Parity Resolution and (ii) the cumulative amount so transferred in any Fiscal Year shall not exceed the total amount budgeted to be transferred from the Revenue Fund in such Fiscal Year as shown in the Annual Budget for such Fiscal Year.

Any funds transferred from the Revenue Fund in accordance with this subsection (d), other than transfers made to any account or subaccount of the Bond Fund, shall no longer be subject to the pledge, charge and lien upon the Net Receipts created by this Trust Agreement.

Section 504. Use of Money for Debt Service, Reserve Funds and Capital Reserve Fund. The amount withdrawn from the Revenue Fund in accordance with Section 503 shall be applied by the City in the following manner and order:

(a) At such time or times as provided in any Parity Resolution or Derivative Agreement, the City shall (1) deliver to the Trustee the amounts required by any Supplemental Agreement for deposit in the appropriate subaccounts of the Interest Account, (2) pay the Person entitled thereto the amounts required by any Parity Debt Resolution for the payment of interest on Parity Debt and (3) pay the Person entitled thereto the amount of any Derivative Agreement Parity Payments required by any Derivative Agreement to be paid by the City, provided that if there shall not be sufficient Net Receipts to satisfy all such deposits and payments, such deposits and payments shall be made to the Trustee and to each appropriate Person designated in such Parity Debt Resolutions or Derivative Agreements ratably according to the amount so required to be deposited or paid.

(b) At such time or times as provided in any Parity Resolution, the City shall (1) deliver to the Trustee the amounts required by any Supplemental Agreement for deposit in the appropriate subaccounts of the Principal Account and the Sinking Fund Account and (2) pay the Person entitled thereto the amounts required by any Parity Debt Resolution for the payment of principal on Parity Debt, whether at maturity or pursuant to an amortization requirement, for deposit with or payment to the appropriate Persons designated in such Parity Debt Resolutions, provided that if there shall not be sufficient Net Receipts to satisfy all such deposits and payments, such deposits and payments shall be made to each such subaccount of the Principal Account and the Sinking Fund Account and to each appropriate Person designated in such Parity Debt Resolutions ratably according to the amount so required to be deposited or paid.

(c) At such time or times as provided in any Parity Resolution, if the amount in the Parity Reserve Account is less than the Parity Reserve Account Requirement or the amount in any Special Reserve Account is less than the applicable Special Reserve Account Requirement, the City shall (1) deliver to the Trustee the amounts required by this Trust Agreement to make up any deficiency in the Parity Reserve Account for deposit in the Parity Reserve Account and (2) deliver to the Trustee or other appropriate

Person the amounts required by any Supplemental Agreement or Parity Debt Resolution to make up any deficiencies in any Special Reserve Account for deposit in such Special Reserve Accounts or payment to the appropriate Persons designated in such Supplemental Agreements or Parity Debt Resolutions, provided that if there shall not be sufficient Net Receipts to satisfy all such deposits and payments, such deposits and payments shall be made to the Parity Reserve Account and each Special Reserve Account ratably according to the amount so required to be deposited or paid. If a deficiency exists in the Parity Reserve Account, it shall be made-up under this subsection in accordance with the provisions of Section 508. If a deficiency exists in any Special Reserve Account, it shall be made-up under this subsection in accordance with the provisions of the Parity Resolution creating such Special Reserve Account.

(d) At such time or times as provided in any Subordinated Indebtedness Resolution or Derivative Agreement, the City shall (1) pay the Person entitled thereto the amounts required by any Subordinated Indebtedness Resolution for the payment of interest on Subordinated Indebtedness and (2) pay the Person entitled thereto the amount payable under any Derivative Agreement relating to Subordinated Indebtedness required by such Derivative Agreement to be paid by the City on a parity with interest payments on Subordinated Indebtedness, provided that if there shall not be sufficient Net Receipts to satisfy all such payments, such payments shall be made to each appropriate Person designated in such Subordinated Indebtedness Resolutions or Derivative Agreements ratably according to the amount so required to be paid.

(e) At such time or times as provided in any Subordinated Indebtedness Resolution, the City shall pay the Person entitled thereto the amounts required by any Subordinated Indebtedness Resolution for the payment of principal on Subordinated Indebtedness, whether at maturity or pursuant to an amortization requirement, for deposit with or payment to the appropriate Person designated in such Subordinated Indebtedness Resolution, provided that if there shall not be sufficient Net Receipts to satisfy all such payments, such payments shall be made to each appropriate Person designated in such Subordinated Indebtedness Resolutions ratably according to the amount so required to be paid.

(f) At such time or times as provided in any Subordinated Indebtedness Resolutions, if the amount on deposit in any debt service reserve fund securing Subordinated Indebtedness is less than the applicable requirement therefor, the City shall deliver to the appropriate Person the amounts required by any Subordinated Indebtedness Resolution to make up any deficiencies in such debt service reserve fund for deposit in such debt service reserve fund, provided that if there shall not be sufficient Net Receipts to satisfy all such payments, such payments shall be made to each Person designated in the Subordinated Indebtedness Resolutions ratably according to the amount so required to be paid.

(g) As long as System G.O. Indebtedness is outstanding, the City, in its sole discretion, may pay interest on and principal of System G.O. Indebtedness as the same become due and payable.

(h) As long as installment purchase, lease purchase, conditional sale or other similar types of indebtedness incurred to finance all or any part of the System are outstanding, the City, in its sole discretion, may pay interest on and principal of such indebtedness, or corresponding installment, lease or other similar type payments, as the same become due and payable.

(i) Beginning on July 25 of each Fiscal Year, and thereafter on the 25th day of each month, the City shall deposit to the credit of the Capital Reserve Fund one-twelfth (1/12) of the total amount, if any, required to be deposited therein in such Fiscal Year as set forth in the Annual Budget.

Notwithstanding anything in this Section to the contrary, failure by the City to make any deposits required by subsections (d) to (i), inclusive, of this Section shall not in and of itself be an Event of Default under this Trust Agreement.

On or before the 45th day next preceding any date on which Serial Bonds are to mature or Term Bonds are to be redeemed pursuant to Sinking Fund Requirements therefor or are to mature, the City may satisfy all or a portion of its obligation to make the payments required by subsections (a)(i) and (b) of this Section by delivering to the Trustee Serial Bonds maturing or Term Bonds maturing or required to be redeemed on such date. The price paid to purchase any such Bond, including accrued interest to the date of purchase, shall not exceed the principal or Redemption Price plus accrued interest to the date of purchase. Upon such delivery, the City shall receive a credit against amounts required to be deposited into the Interest Account and the Principal Account or Sinking Fund Account, as the case may be, on account of such Bonds with respect to all interest payments for the remainder of the Fiscal Year and in the amount of 100% of the principal amount of any such Serial Bonds or Term Bonds so delivered.

On or before the 45th day next preceding any date on which Parity Debt is to mature or is to be redeemed pursuant to an amortization requirement, the City may satisfy all or a portion of its obligation to make the payments required by subsections (a)(i) and (b) of this Section by delivering to the Trustee Parity Debt maturing or required to be so redeemed on such date. The price paid to purchase any such Parity Debt, including accrued interest to the date of purchase, shall not exceed the principal or Redemption Price plus accrued interest to date of purchase. Upon such delivery, the City shall receive a credit against amounts required to be deposited or paid with respect to interest or principal on account of such Parity Debt with respect to all interest payments for the remainder of the Fiscal Year and in the amount of 100% of the principal amount of any such Parity Debt so delivered.

The City shall provide to the Trustee a certified or otherwise authentic copy of each Parity Resolution adopted by the City and each Derivative Agreement entered into by the City, and shall otherwise provide the Trustee with such information and documents as the Trustee shall request to assure that the Trustee is advised of the payments to be made pursuant to this Section.

Section 505. Application of Money in Interest Account and Capitalized Interest Account. On each Interest Payment Date, date for the payment of Defaulted Interest or date upon which

Bonds are to be redeemed, or on such other date as may be specified in the applicable Supplemental Agreement, the Trustee shall withdraw from the applicable subaccount in the Interest Account and remit or otherwise set aside the amounts required for paying interest on the respective Bonds to the Owners on such Interest Payment Date as provided in the respective Bonds and Supplemental Agreements.

Unless otherwise provided by a Supplemental Agreement, on the date of issuance of any Series of Bonds, an Authorized Officer shall deliver to the Trustee a schedule of transfers to be made from the applicable subaccount of the Capitalized Interest Account to the applicable subaccount of the Interest Account. The Trustee shall make such transfers as required by the schedule of an Authorized Officer.

Unless otherwise provided by a Supplemental Agreement, if the City fails to deposit with the Trustee the amounts required to be deposited in the Interest Account as provided in Section 504, or if the balance in the Interest Account on the Business Day next preceding an Interest Payment Date is insufficient to pay interest becoming due on the Bonds on such Interest Payment Date, the Trustee shall notify the City of the amount of the deficiency and request the City to immediately cure such deficiency. Upon failure of the City to cure such deficiency and in any event not later than such Interest Payment Date, the Trustee shall transfer an amount sufficient to cure the same, drawing upon funds in the Parity Reserve Account, if any, securing such Series of Bonds, or in the Special Reserve Account, if any, securing such Series of Bonds.

Section 506. Application of Money in Principal Account. On each principal payment date, the Trustee shall withdraw from the applicable subaccounts in the Principal Account and remit or otherwise set aside the amounts necessary to pay the principal of such Bonds to the Owners at their respective maturities as provided in the respective Bonds and Supplemental Agreements.

If on any date there is money in the Principal Account and no Serial Bonds are then Outstanding or if on any principal payment date money remains therein after the payment of the principal of Serial Bonds then due, the Trustee shall withdraw such money therefrom and shall apply the same in the following order: (a) deposit into the Sinking Fund Account the amount then required to be paid thereto by the City pursuant to Section 504, (b) deposit, if and to the extent determined by the City, into the Parity Reserve Account or in one or more Special Reserve Accounts such amounts as may be determined by the City in order to make the amounts on deposit therein equal to the Parity Reserve Account Requirement or the Special Reserve Account Requirement, as the case may be, and (c) deliver all remaining amounts to the City.

Unless otherwise provided in a Supplemental Agreement, if the City fails to deposit with the Trustee the amounts required to be deposited in the Principal Account as provided in Section 504, or if the balance in the Principal Account on the Business Day next preceding a principal payment date is insufficient to pay principal coming due on the Serial Bonds on such principal payment date, the Trustee shall notify the City of the amount of the deficiency and request the City to immediately cure such deficiency. Upon failure of the City to cure such deficiency and in any event not later than such principal payment date, the Trustee shall transfer an amount sufficient to cure the same, drawing only upon funds in the Parity Reserve Account, if any,

securing such Series of Bonds, or in the Special Reserve Account, if any, securing such Series of Bonds.

Section 507. Application of Money in Sinking Fund Account. Money held for the credit of the subaccounts in the Sinking Fund Account shall be applied to the retirement, purchase, redemption or payment of Term Bonds in the manner provided in the applicable Supplemental Agreement. Unless otherwise provided in a Supplemental Agreement, if the City fails to deposit with the Trustee the amount required to be deposited in the Sinking Fund Account as provided in Section 504, or if the balance in the Sinking Fund Account on the Business Day next preceding a sinking fund payment date is insufficient to retire Term Bonds on such date as required by a Supplemental Agreement, the Trustee shall notify the City of the amount of the deficiency and request the City to immediately cure such deficiency. Upon failure of the City to cure such deficiency and in any event not later than such sinking fund payment date, the Trustee shall transfer an amount sufficient to cure the same, drawing upon funds in the Parity Reserve Account, if any, securing such Series of Bonds, or in the Special Reserve Account, if any, securing such Series of Bonds.

Section 508. Deposit and Application of Money in Parity Reserve Account and any Special Reserve Account; Determination of Deficiencies. (a) If a Parity Resolution provides that the Parity Indebtedness incurred thereunder is to be secured by the Parity Reserve Account, the City must fund, from the proceeds of such Parity Indebtedness or from any other available sources, concurrently with the delivery of and payment for such Parity Indebtedness, the Parity Reserve Account in an amount equal to the Parity Reserve Account Requirement. If a Parity Resolution provides that the Parity Indebtedness incurred thereunder is to be secured by a Special Reserve Account, the City must fund, from the proceeds of such Parity Indebtedness or from any other available sources, at the time or times and in the manner specified in the applicable Parity Resolution, such Special Reserve Account in an amount equal to the Special Reserve Account Requirement for such Parity Indebtedness.

(b) The Trustee shall use amounts in the Parity Reserve Account to make transfers, or use moneys provided under a Reserve Alternative Instrument to make deposits, in the order specified in Section 504, in respect of all Parity Indebtedness secured by the Parity Reserve Account, to the appropriate subaccounts of the Interest Account, the Principal Account and the Sinking Fund Account to remedy any deficiency therein as of any Interest Payment Date, principal payment date or sinking fund payment date (or any earlier date as set forth in a Parity Resolution), or to pay the interest on or the principal of or amortization requirements in respect of any Parity Debt when due, whenever and to the extent the money on deposit for such purposes is insufficient.

(c) The Trustee shall use amounts in any Special Reserve Account held by it to make transfers or use moneys provided under a Reserve Alternative Instrument to make deposits, in the order specified in Section 504, in respect of the particular Parity Indebtedness secured by such Special Reserve Account, to the appropriate subaccounts of the Interest Account, the Principal Account and the Sinking Fund Account to remedy any deficiency therein as of any Interest Payment Date, principal payment date or sinking fund payment date (or any earlier date as set forth in a Parity Resolution) or to pay the interest on or the principal of or amortization

requirement in respect thereof on Parity Debt when due, whenever and to the extent the money on deposit for such purposes is insufficient.

(d) Any deficiency in the Parity Reserve Account resulting from the withdrawal of moneys therein shall be made up over the twelve-month period immediately following the month in which such withdrawal is made by monthly deposits of one-twelfth (1/12) of the amount of such deficiency, such deposits to be made pursuant to Section 504(c). Any deficiency in the Parity Reserve Account resulting from a draw on a Reserve Alternative Instrument shall be made up as provided in such Reserve Alternative Instrument or documentation relating thereto, but any such deficiency must be made up by not later than the final date when such deficiency would have been required to be made up if there had been a withdrawal of moneys from the Parity Reserve Account rather than a draw on a Reserve Alternative Instrument. Deficiencies, whether resulting from withdrawals or draws, may be satisfied through the deposit of additional moneys or the providing of an additional, or increase in a, Reserve Alternative Instrument. Moneys or Investment Obligations on deposit in the Parity Reserve Account shall be used to satisfy deficiencies, as provided in subsection (b) of this Section, prior to any draw on a Reserve Alternative Instrument.

(e) Unless a Reserve Alternative Instrument shall be in effect, if on any date of valuation pursuant to Section 603, the amount on deposit in the Parity Reserve Account is less than 90% of the Parity Reserve Account Requirement, the City shall deposit into the Parity Reserve Account monthly one-twelfth (1/12) of the amount required as of such date to bring the amount then on deposit in the Parity Reserve Account up to the Parity Reserve Account Requirement. Any such deficiency may be satisfied through the deposit of additional moneys or the providing of an additional, or increase in a, Reserve Alternative Instrument.

(f) Any deficiency in a Special Reserve Account resulting from the withdrawal of moneys therein or a draw on a Reserve Alternative Instrument or resulting from a valuation of the Investment Obligations therein pursuant to Section 603 shall be made up as provided in the relevant Parity Resolution.

Section 509. Application of Money in the Redemption Account. The Trustee shall apply money in the Redemption Account to the purchase or redemption of Bonds as follows:

(a) Subject to the provisions of subsection (c) of this Section, and if instructed to do so by an Authorized Officer, the Trustee shall endeavor to purchase and cancel Bonds or portions thereof, whether or not such Bonds or portions thereof are then subject to redemption, at the direction of an Authorized Officer, provided that the purchase price of each Bond, plus accrued interest to the date of purchase, shall not exceed the Redemption Price that would be payable on the next redemption date to the Owners of such Bonds under the provisions of the applicable Supplemental Agreement plus accrued interest to the redemption date if such Bond or such portion thereof were called for redemption on such redemption date from the money in the applicable subaccount of the Redemption Account. The Trustee shall pay the interest accrued on such Bonds or portions thereof to the date of settlement from the applicable subaccount of the Interest Account and the purchase price from the applicable subaccount of the Redemption Account, but no such purchase shall be made by the Trustee from money in the applicable

subaccount of the Redemption Account within the period of forty-five (45) days immediately preceding any date on which such Bonds or portions thereof are to be redeemed except from moneys other than the moneys set aside in the applicable subaccount of the Redemption Account for the redemption of Bonds.

(b) Subject to the provisions of subsection (c) of this Section, the Trustee shall call for redemption on a date permitted by the applicable Supplemental Agreement such amount of Bonds or portions thereof as, with the redemption premium, if any, will exhaust the moneys then held in the applicable subaccount of the Redemption Account as nearly as may be; provided, however, that not less than Fifty Thousand Dollars (\$50,000) principal amount of Bonds shall be called for redemption at any one time unless the Trustee is so instructed by the City. The Trustee shall pay the accrued interest on the Bonds or portions thereof to be redeemed to the date of redemption from the applicable subaccount of the Interest Account and the Redemption Price of such Bonds or portions thereof from the applicable subaccount of the Redemption Account. On or before the redemption date, the Trustee shall withdraw from the Redemption Account and the Interest Account and remit or otherwise set aside for the Owners of the Bonds or portions thereof to be redeemed the respective amounts required to pay the Redemption Price and accrued interest to the redemption date of the Bonds or portions thereof so called for redemption.

(c) Money in the Redemption Account may be applied by the Trustee in each Fiscal Year to the purchase or the redemption of Bonds of any one or more Series then Outstanding in accordance with the latest Officer's Certificate filed with the Trustee (i) designating one or more Series of Bonds to be purchased or redeemed, (ii) if more than one Series of Bonds is so designated, setting forth the aggregate principal amount of Bonds of each Series to be purchased or redeemed, and (iii) unless the Supplemental Agreement relating to the Bonds to be redeemed specifies the order of redemption, designating the Bonds to be redeemed within each Series, and if such Bonds are Term Bonds, the years in which future Sinking Fund Requirements are to be reduced as a result of such redemption and the amount of such reduction in each such year. In the event no such certificate is filed and unless the Supplemental Agreement relating to the Bonds to be redeemed specifies otherwise, (A) the Trustee shall apply such money to the purchase of one or more Series of Bonds as it shall determine or to the redemption of Bonds bearing the highest rate of interest, (B) if Bonds of more than one maturity bear the same interest rate, the Trustee will redeem such Bonds in the inverse order of maturities, and (C) if the Bonds bearing the highest rate of interest are Term Bonds, the Trustee will reduce Sinking Fund Requirements for such Term Bonds in inverse order of the scheduled redemption of such Term Bonds. All Bonds shall be redeemed as provided in the applicable Supplemental Agreement.

Money held for the credit of the subaccounts in the Redemption Account shall be applied to the purchase or redemption of Bonds in the manner provided in the applicable Supplemental Agreement.

Section 510. Deposit and Application of Money in Capital Reserve Fund. Moneys held for the credit of the Capital Reserve Fund shall be used only for the following:

(a) in the City's sole discretion, to pay Current Expenses or to make deposits to the appropriate subaccounts in the Interest Account, the Principal Account and the Sinking Fund

Account to remedy any deficiency therein or to pay interest on or the principal of or amortization requirements in respect of any Parity Debt when due, whenever moneys are insufficient for such purposes; and

(b) to pay all or a portion of the cost of unusual or extraordinary maintenance, repairs, renewals or replacements or capital improvements related to the System in accordance with the applicable procedures used in the payment of Current Expenses or as provided in the Capital Improvements Budget.

Section 511. Insurance and Condemnation Award Fund. The Trustee shall deposit Net Insurance Proceeds or Net Eminent Domain Proceeds into the Insurance and Condemnation Award Fund when and as received by the Trustee from the City, and they shall be disbursed pursuant to the provisions of Section 709.

Section 512. Escheat. All money that the Trustee shall have withdrawn from the Bond Fund or shall have received from any other source and set aside for the purpose of paying any of the Bonds hereby secured, either at maturity or by purchase or call for redemption, shall be held in trust for the respective Owners.

Any money that is so set aside and that remains unclaimed by the Owners for a period of five (5) years after the date on which such Bonds have become payable shall be treated as abandoned property pursuant to the provisions of Section 116B-53 of the General Statutes of North Carolina, and the Trustee shall report and remit this property to the Escheat Fund established by, according to the requirements of Chapter 116B of the General Statutes of North Carolina, and thereafter the Owners shall look only to the Escheat Fund for payment and then only to the extent of the amounts so received, without any interest thereon, and the Trustee and the City shall have no responsibility with respect to such money.

Section 513. Cancellation of Bonds. Upon receipt of the same, the Trustee shall cancel all Bonds paid, redeemed or purchased by the Trustee or purchased by the City and delivered to the Trustee, and all Bonds delivered to the Trustee in exchange for other Bonds or delivered to the Trustee upon the transfer of any Bond if a new Bond is delivered upon such transfer. The Trustee shall certify to the City the details of all Bonds so canceled. All Bonds canceled under any of the provisions of this Trust Agreement either shall be delivered to the City or destroyed by the Trustee, as the City directs. Upon destruction of any Bonds, the Trustee shall execute a certificate in duplicate, describing the Bonds so destroyed; and one executed certificate shall be filed with the City and the other executed certificate shall be retained by the Trustee.

Section 514. Disposition of Fund Balances. After provision is made for the payment of all Outstanding Bonds and Parity Debt, including the interest thereon, and for the payment of all Derivative Agreement Parity Payment and all other obligations, expenses and charges required to be paid under or in connection with this Trust Agreement, and receipt by the Trustee of an Officer's Certificate to the effect that there are no other indentures, resolutions, bond orders, Supplemental Agreements, Parity Debt Resolutions, Subordinated Indebtedness Resolutions or other agreements that impose a continuing lien on the balances hereinafter mentioned, the Trustee shall pay all amounts in any fund, account or subaccount then held by it under this Trust

Agreement to the City. If a continuing lien has been imposed on such balance by another resolution, bond order, any other agreement, by court order or decree, or by law, the Trustee shall pay such balance to such person as is entitled to receive the same by law or under the terms of such resolution, bond order, agreement, court order, or decree.

Section 515. Security for the Bonds and Other Parity Indebtedness and Derivative Agreement Obligations. As security for the payment of the Bonds and any Parity Debt and the interest thereon and any Derivative Agreement Parity Payments as authorized by the Act, the City hereby grants to the Trustee a pledge, charge and lien upon the Net Receipts, subject to the release of the lien upon the Net Receipts as provided in Section 503(d).

In addition, as further security for the payment of each Series of Bonds and the interest thereon, the City hereby grants to the Trustee a pledge, charge and lien upon the money and Investment Obligations in any and all of the related accounts and subaccounts of the Bond Fund and Accounts established under the Supplemental Agreements relating to their issuance.

The pledge, charge and lien shall be effective and operate immediately, and the Trustee shall have the right to collect and receive the Net Receipts in accordance with the provisions hereof at all times during the period from and after the date of delivery of the Series 2011 Bonds issued hereunder until all Bonds and Parity Debt and all Derivative Agreement Parity Payments have been fully paid and discharged, including, without limitation, at all times after the institution and during the pendency of bankruptcy or similar proceedings.

The aforementioned pledge, charge and lien shall not inhibit the sale or disposition of any portion of the System in accordance with this Trust Agreement and shall not impair or restrict the ability of the City to invest in securities and other forms of investment, subject to the provisions of this Trust Agreement.

Section 516. Use of Available Funds. Nothing in this Trust Agreement shall be construed to prevent the City from paying all or any part of the Current Expenses from any moneys available to the City for such purpose, or from depositing in any fund or account created under, or subaccount created pursuant to, the provisions of this Trust Agreement or any fund or account created under or pursuant to a Parity Debt Resolution or a Subordinated Indebtedness Resolution or pursuant to any Derivative Agreement, any moneys available to the City for such deposit or payment, except to the extent the City is prohibited from making such payment or deposit by this Trust Agreement, any Parity Resolution, any Subordinated Indebtedness Resolution or otherwise.

ARTICLE VI

DEPOSITARIES OF MONEY, SECURITY FOR DEPOSITS, INVESTMENT OF FUNDS AND COVENANT AS TO ARBITRAGE

Section 601. Security for Deposits. Any and all money received by the City under the provisions of this Trust Agreement shall be deposited as received with the Trustee or one or more other Depositaries as provided in this Trust Agreement, and all money so deposited with the Trustee shall be trust funds under the terms hereof, and, to the extent permitted by law in the case of the Project Fund, shall not be subject to any lien or attachment by any creditor of the City.

All money deposited with the Trustee or any Depository hereunder in excess of the amount guaranteed by the Federal Deposit Insurance Corporation or other federal agency shall be continuously secured, for the benefit of the City and the Owners and Holders of Bonds and Parity Debt, either (a) by lodging with a bank or trust company chosen by the Trustee or Depository or, if then permitted by law, by setting aside under control of the trust department of the bank or trust company holding such deposit, as collateral security, Government Obligations or other marketable securities eligible as security for the deposit of trust funds under regulations of the Comptroller of the Currency of the United States or applicable State law or regulations, having a market value (exclusive of accrued interest) not less than the amount of such deposit, or (b) if the furnishing of security as provided in clause (a) above is not permitted by applicable law, then in such other manner as may then be required or permitted by applicable State or federal laws and regulations regarding the security for, or granting a preference in the case of, the deposit of trust funds; provided, however, that it shall not be necessary for the Trustee or any Depository to give security for the deposit of any money with it for the payment of the principal of or the redemption premium or the interest on any Bonds, or for the Trustee or any Depository to give security for any money that shall be represented by Investment Obligations purchased under the provisions of this Article as an investment of such money.

All money deposited with the Trustee or any Depository shall be credited to the particular fund, account or subaccount to which such money belongs.

Section 602. Investment of Money. Money held for the credit of all funds, accounts and subaccounts created hereby shall be continuously invested and reinvested by the Trustee or the Depositaries, whichever is applicable, in Investment Obligations or held as cash to the extent investment or reinvestment in Investment Obligations is not practicable. Except as hereinafter provided in this Section with respect to the disposition of investment income, the particular investments to be made and other related matters in respect of investments may, as to each Series of Bonds, be provided in the applicable Supplemental Agreement.

Except as hereinafter provided in this Section with respect to the Parity Reserve Account, Investment Obligations shall mature or be redeemable at the option of the holder thereof not later than the respective dates when the money held for the credit of such funds, accounts and subaccounts will be required for the purposes intended.

Investment Obligations in the Parity Reserve Account shall (a) mature or (b) be redeemable at the option of the holder of such Investment Obligation so that all such Investment Obligations shall have an average life of not more than ten (10) years after the date of such investment.

Notwithstanding the forgoing, no Investment Obligations pertaining to any Series in any fund, account or subaccount shall mature on a date beyond the latest maturity date of the respective Series of Bonds Outstanding at the time such Investment Obligations are deposited. For purposes of this Section, the maturity date of any repurchase agreement shall be deemed to be the stated maturity date of such agreement and not the maturity dates of the underlying obligations.

An Authorized Officer or his designee shall give to the Trustee or any Depository directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Article, and the Trustee or such Depository shall then invest such money as so directed. The Trustee or any Depository may request additional direction or authorization from the Authorized Officer or his designee in writing with respect to the proposed investment of money under the provisions of this Trust Agreement. Upon receipt of such directions, the Trustee or any Depository shall invest, subject to the provisions of this Article, such money in accordance with such directions. If no such directions are given, then any uninvested funds shall be invested by the Trustee in (a) Government Obligations having the shortest maturity available, but in no event exceeding a maturity of thirty (30) days from the date of investment in the case of funds held in the Project Fund, and the date funds are required to be used to pay debt service on Bonds in the case of funds held in the Bond Fund or (b) in Investment Obligations authorized by subparagraph (g) of the definition of Investment Obligations. The Trustee or any Depository shall have no liability for investments made in accordance with this Section.

Investment Obligations acquired with money in or credited to any fund, account or subaccount established under this Trust Agreement shall be deemed at all times to be part of such fund, account or subaccount. Any loss realized upon the disposition or maturity of such Investment Obligations shall be charged against such funds, accounts or subaccounts. The interest accruing on any such Investment Obligations and any profit realized upon the disposition or maturity of such Investment Obligations shall be credited to such funds, accounts or subaccounts as follows:

<u>Funds, accounts or subaccounts</u>	<u>Credited to</u>
Parity Reserve Account	Revenue Fund
Applicable account of Project Fund	Applicable account of Project Fund
All other funds, accounts and subaccounts	Revenue Fund unless otherwise directed by the related Supplemental Agreement

Any such interest accruing and any such profit realized shall not be credited or transferred to the Revenue Fund unless there shall be no deficiency in the respective fund, account or subaccount. If there shall be a deficiency in any fund, account or subaccount, any such interest or profit shall remain in such fund, account or subaccount until such deficiency has been made up.

Any such interest accruing and any such profit realized shall be transferred upon the receipt thereof by the Depositaries or the Trustee, as the case may be, pursuant to the provisions of this Trust Agreement.

The Trustee shall sell or reduce to cash a sufficient amount of such Investment Obligations whenever it is necessary to do so to provide money to make any payment from any such fund, account or subaccount. The Trustee shall not be liable or responsible for any loss resulting from any such action.

Whenever a transfer of money between two or more of the funds, accounts or subaccounts established under this Trust Agreement is permitted or required, such transfer may be made as a whole or in part by transfer of one or more Investment Obligations at a value determined at the time of such transfer in accordance with this Article, provided that the Investment Obligations transferred are those in which money of the receiving fund, account or subaccount could be invested at the date of such transfer.

For purposes of making any investment hereunder, the Trustee or any Depositary may consolidate money held by it in any fund, account or subaccount with money in any other fund, account or subaccount. Transfers from any fund, account or subaccount to the credit of any other fund, account or subaccount provided for in this Trust Agreement may be effectuated on the books and records of the Trustee, the City or any Depositary without any actual transfer of funds or liquidation of investments. Investment Obligations purchased with consolidated funds shall be allocated to each fund, account or subaccount on a pro rata basis in accordance with the initial amount so invested from each such fund, account or subaccount.

Unless otherwise directed by the City, Investment Obligations may be purchased by the Trustee or any Depositary through its own investment division or other bank facilities established for such purpose.

Section 603. Valuation. For the purpose of determining the amount on deposit in any fund, account or subaccount, Investment Obligations in which money in such fund, account or subaccount is invested shall be valued by the Trustee (a) at par value if such Investment Obligations mature within twelve (12) months from the date of valuation thereof and (b) if such Investment Obligations mature more than twelve (12) months after the date of valuation thereof, at the price at which such Investment Obligations are redeemable by the holder at its option, if so redeemable, or, if not so redeemable, at the lesser of (i) the cost of such Investment Obligations minus the amortization of any premium or plus the amortization of any discount thereon and (ii) the market value of such Investment Obligations.

All Investment Obligations in all of the funds, accounts and subaccounts created hereunder, except the Revenue Fund and the Capital Reserve Fund, shall be valued as of the last day of each Fiscal Year. When a valuation is made by the Trustee, the Trustee shall report the result of such valuation to the City within thirty (30) days after such valuation. In addition, Investment Obligations shall be valued at any time requested by the City on reasonable notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value Investment Obligations more than once in any calendar month.

Whenever, following a valuation on the last day of each Fiscal Year as described above, the value of the cash and Investment Obligations in the Parity Reserve Account or a Special Reserve Account held by the Trustee, plus accrued interest to the date of valuation, is less than 90% of the Parity Reserve Account Requirement or the Special Reserve Account Requirement (except as may otherwise be provided in a Parity Resolution in the case of a Special Reserve Account), as the case may be, the Trustee shall compute the amount by which the Parity Reserve Account Requirement or the Special Reserve Account Requirement exceeds the balance in the Parity Reserve Account or such Special Reserve Account, as the case may be, and shall immediately give the City notice of such deficiency and the amount necessary to cure the same in accordance with Section 508. Whenever the value of the cash and Investment Obligations in the Parity Reserve Account or a Special Reserve Account held by the Trustee, plus accrued interest to the date of valuation, is greater than the Parity Reserve Account Requirement or the Special Reserve Account Requirement, the Trustee shall compute the amount by which the balance in the Parity Reserve Account or such Special Reserve Account, as the case may be, exceeds the Parity Reserve Account Requirement or the Special Reserve Account Requirement, as the case may be, and shall transfer the excess to the City for deposit into the Revenue Fund unless otherwise provided in a Parity Resolution.

Section 604. Covenant as to Arbitrage. The City covenants that so long as any of the Bonds remain Outstanding, money on deposit in any fund, account or subaccount maintained in connection with the Bonds, regardless of whether such money was derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner that would cause any of the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), and applicable regulations promulgated from time to time thereunder, except for moneys on deposit in such funds, accounts or subaccounts with respect to any Series of Bonds not intended to be tax-exempt under the provisions of the Code. The City further covenants and agrees to comply with the requirements of Section 148 of the Code and applicable regulations promulgated from time to time thereunder with respect to any Series of Bonds intended to be tax-exempt under the provisions of the Code.

ARTICLE VII

GENERAL COVENANTS AND REPRESENTATIONS

Section 701. Payment of Principal, Interest and Premium. The City shall cause to be paid, when due, the principal of (whether at maturity, by acceleration, by call for redemption or otherwise) and the premium, if any, and interest on the Bonds and Parity Debt at the places, on the dates and in the manner provided herein and in the Bonds and Parity Debt and the documentation securing such Bonds and Parity Debt, according to the true intent and meaning thereof.

The Bonds are special obligations of the City payable solely from the Net Receipts, the City's right to receive the same, and money, Investment Obligations and Reserve Alternative Instruments held in the applicable funds, accounts and subaccounts created hereunder for each such Series of Bonds and the income from Investment Obligations in such funds, accounts and subaccounts. The Bonds shall be secured as provided in Section 515. The Bonds shall not constitute a legal or equitable pledge, charge, lien or encumbrance upon any of the City's property or upon any of its income, receipts or revenues, except as herein or in the applicable Supplemental Agreement provided. Neither the faith and credit nor the taxing power of the City is pledged for the payment of the principal of or interest on the Bonds, and no Owner has the right to compel the exercise of the taxing power by the City or the forfeiture of any of its property in connection with any default thereon except as herein or in the applicable Supplemental Agreement provided.

Section 702. Construction of Initial Project and Additional Projects. The City shall construct the Initial Project and any Additional Project for the construction of which Bonds are issued or for which money repayable from the proceeds of Bonds is advanced by the City. The City covenants to construct the Initial Project and any Additional Project in conformity with applicable law and all other requirements of all governmental authorities having jurisdiction thereover, and that the City will complete such construction with all expedition practicable.

The City shall require each person, firm or corporation with whom it may contract for such construction to (a) furnish a payment and performance bond in the full amount of any contract or (b) deposit with an Authorized Officer marketable securities that are eligible as security for the deposit of trust funds as provided in Section 601 in the full amount of any contract. The proceeds of any such payment or performance bond or securities shall be deposited in the applicable account of the Project Fund and applied toward the completion of the Initial Project or Additional Project in connection with which such payment or performance bond or securities are furnished.

Section 703. Operation of the System. The City shall establish and enforce reasonable rules and regulations governing the operation and use of the System, operate the System in an efficient and economical manner, maintain the properties constituting the System in good repair and in sound operating condition for so long as the same are necessary for the operation of the System, and comply with all valid acts, rules, regulations, orders and directions of any

legislative, executive, administrative or judicial body that are applicable to the System. The City's obligation to maintain and operate the System is an obligation only upon Receipts, and no Owner or Holder of Indebtedness has the right to compel the exercise of the taxing power by the City or the forfeiture of any of their respective property in connection with any such obligation except as herein provided.

The City shall also maintain a capital improvement plan for the System extending over a period of not less than the three following Fiscal Years and shall file the same with the Trustee and the Local Government Commission upon their request.

Section 704. Rate Covenant. (a) The City covenants to fix, charge and collect rates, fees, rentals and charges for the use of and for services furnished or to be furnished by the System, and that from time to time and as often as it shall appear necessary, it shall revise such rates, fees, rentals and charges as may be necessary or appropriate, in order that for the Fiscal Year ending June 30, 2012, and for each Fiscal Year thereafter, the sum of (i) the Income Available for Debt Service for such Fiscal Year and (ii) 15% of the Unrestricted Cash and Investments as of the last day of the immediately preceding Fiscal Year will be not less than 120% of the Long-Term Debt Service Requirement for Parity Indebtedness only for such Fiscal Year.

(b) The City covenants to fix, charge and collect rates, fees, rentals and charges for the use of and for services furnished or to be furnished by the System, and that from time to time and as often as it shall appear necessary, it shall revise such rates, fees, rentals and charges as may be necessary or appropriate, in order that for the Fiscal Year ending June 30, 2012, and for each Fiscal Year thereafter, the Income Available for Debt Service for such Fiscal Year will be not less than 100% of the sum of the Long-Term Debt Service Requirement for Parity Indebtedness and Subordinated Indebtedness and the debt service on System G.O. Indebtedness for such Fiscal Year.

(c) In addition to the covenant set forth in subsections (a) and (b) of this Section, the City also covenants, beginning on the date of issuance of the Series 2011 Bonds, to fix, charge and collect rates, fees, rentals and charges for the use of and for the services furnished or to be furnished by the System, and that from time to time and as often as it shall appear necessary, it shall revise such rates, fees, rentals and charges as may be necessary or appropriate, in order that the Receipts will be sufficient in each Fiscal Year thereafter (i) to pay Current Expenses, (ii) to make the cash deposits in each Fiscal Year required by Section 504(a), (b) and (c) and (iii) to make the cash deposits in each Fiscal Year required by Subordinated Indebtedness Resolutions with respect to the payment of interest on or principal of Subordinated Indebtedness.

(d) The City covenants that all users will pay for services at the rates, fees and charges established by the City from time to time in accordance with the City's customary billing practices and policies.

(e) If the City fails to comply with the covenants set forth in subsections (a), (b) or (c) above, it shall, within thirty (30) days of the receipt by the City of the audit report required by Section 706, request a Consultant to make its recommendations, if any, as to a revision of the City's rates, fees, rentals and charges, its Current Expenses or the method of operation of the

System in order to satisfy the foregoing requirements of this Section. Copies of such request and of the recommendations of the Consultant, if any, shall be filed by the City with the Trustee and the Local Government Commission. Promptly upon its receipt of the recommendations of the Consultant, the City shall, after giving due consideration to the recommendations, revise its rates, fees, rentals and charges or its Current Expenses or alter its methods of operation, which revisions or alterations need not comply with the Consultant's recommendations but which are projected by the City to result in compliance with the covenants set forth in subsections (a), (b) and (c) of this Section. The City and Consultant shall advise the Trustee of the actions taken by the City with respect to the recommendations of the Consultant. If the City shall comply with all of the recommendations of the Consultant, failure to comply with the provisions of subsections (a), (b) and (c) above shall not constitute an Event of Default under the provisions of clause (g) of Section 802. Compliance with all of the recommendations of the Consultant shall have no effect on any Event of Default other than an Event of Default under the provisions of clause (g) of Section 802. In the event of any failure to comply with the provisions of subsections (a), (b) and (c) of this Section and the failure of the City to comply with all of the recommendations of the Consultant, and in addition to the remedies elsewhere provided in this Trust Agreement, the Trustee or the Owners of not less than 25% in aggregate principal amount of the Parity Indebtedness then Outstanding may, and the Trustee shall, upon the request of the Owners of not less than 25% in aggregate principal amount of the Parity Indebtedness then Outstanding and upon being indemnified to its satisfaction, institute and prosecute in a court of competent jurisdiction an appropriate action to compel the City to comply with all of the recommendations of the Consultant in order to satisfy the foregoing requirements of this Section. The City covenants that it will adopt and charge rates, fees, rentals and charges and revise its Current Expenses or the method of operation of the System in compliance with any final order, decree or judgment entered in any such proceeding or modification thereof.

(f) Notwithstanding any of the foregoing provisions of this Section, contracts and agreements for the use of the System, or any component thereof, in effect on the date of issuance of the Series 2011 Bonds shall not be subject to revision for purposes of compliance with the covenants set forth in subsections (a), (b) and (c) of this Section except in accordance with their terms. Subject to the provisions of Section 714, the City may enter into new contracts or agreements or amend or rescind existing contracts or agreements for the use of the System on such terms and for such periods of time as the City shall determine to be proper.

(f) The City also covenants to fix and charge rates, fees, rentals and charges for each component of the System which rates, fees, rentals and charges shall be reasonable and non-discriminatory.

(g) Nothing contained in this Section shall obligate the City to take any action in violation of any applicable requirements imposed by law, including, without limitations Section 160A-314 of the General Statutes of North Carolina.

Section 705. Budgets and Covenant as to Current Expenses. The City shall comply with the Local Government Budget and Fiscal Control Act in adopting its Annual Budget for each Fiscal Year. To the extent possible, the City shall prepare its Annual Budget so that it will be possible to determine from such budget the Current Expenses of the System, the amounts to be

deposited to the credit of the various funds, accounts and subaccounts created by this Trust Agreement and the payments of principal of, premium, if any, and interest on any Parity Debt. In preparing its Annual Budget, the City shall give due consideration to the provisions of Section 704.

The City shall also adopt a Capital Improvements Budget for the System for each Fiscal Year which will show, in addition to such other matters as the City may determine to include, (a) the amounts, if any, to be expended during such Fiscal Year from moneys, if any, deposited to the credit of the Project Fund or the Capital Reserve Fund, together with a statement of the purposes for which such amounts are to be expended in each case and (b) the amount estimated by the City to be necessary for the renovation, extension, improvement, enlargement, renewal or replacement of the System, whether the same are to be commenced, continued or completed during such Fiscal Year or thereafter. The Capital Improvements Budget may be part of the Annual Budget. The City shall file copies of any Capital Improvements Budget and its Annual Budget with the Trustee within thirty (30) days of the beginning of each Fiscal Year..

Section 706. Records, Accounts and Audits. The City shall keep the funds, accounts, subaccounts, money and investments of the System separate from all other funds, accounts, money and investments, if any, of the City and shall keep accurate records and accounts of all items of costs and of all expenditures relating to the System and of the revenues collected and the application of such revenues. Such records and accounts shall be open to the inspection of the Trustee.

The City shall cause its accountant to prepare and deliver to the City within 180 days after the close of each Fiscal Year an audit of the City's books and accounts. Reports of each such audit shall be filed with the Local Government Commission and the Trustee, and copies of each such report shall be mailed by the City to any person requesting the same in writing and shall be made available for inspection at the office of the Chief Financial Officer. Each such audit report shall be accompanied by an opinion of the accountant stating that the examination of the financial statements was conducted in accordance with generally accepted auditing standards and stating whether such financial statements present fairly the financial position of the System and the results of its operations and a statement of cash flows for the period covered by such audit report in conformity with generally accepted accounting principles applied on a consistent basis.

If for any reason beyond its control, the City is unable to obtain the foregoing opinion as to compliance with generally accepted accounting principles, the City shall be deemed to be in compliance with this Section if it is taking all reasonable and feasible action to obtain such opinion in subsequent Fiscal Years, and if, in lieu of a statement as to compliance and conformity, such opinion states the reasons for such noncompliance or non-conformity.

Each audit report shall contain data setting forth in respect of said Fiscal Year the following:

(a) a separate income and expense accounting of the System, showing the Revenues and Current Expenses for such Fiscal Year;

(b) the amounts on deposit at the end of the Fiscal Year in the funds, accounts and subaccounts held by the Trustee and each Depository, and

(c) a calculation to determine compliance with Section 704(a) and (b).

There shall also be filed with the Local Government Commission and the Trustee within sixty (60) days after the end of each Fiscal Year an Officer's Certificate stating to the best of such person's knowledge, (i) whether there existed at the end of the Fiscal Year, any violation of any covenants or agreements herein contained and (ii) whether at any time during the Fiscal Year, any Default occurred, and if so, the nature of such Default.

Section 707. Insurance. (a) The City covenants that it will maintain or cause to be maintained a practical insurance program, with reasonable terms, conditions, provisions and costs, which the City determines (i) will afford adequate protection against loss caused by damage to or destruction of the System or any part thereof and (ii) will include reasonable liability insurance on all of the System for bodily injury and property damage resulting from the construction or operation of the System.

(b) Except as otherwise provided in this Section, all insurance policies shall be carried by a responsible insurance company or companies, whose claims paying ability is rated at least "A" by S&P, authorized and qualified to assume the risks thereof. Alternatively, the City may adopt alternative risk management programs which it determines to be reasonable, including, without limitation, to self-insure in whole or in part, individually or in connection with other units of local government or other institutions, to participate in programs of captive insurance companies, to participate with other units of local government or other institutions in mutual or other cooperative insurance or other risk management programs, to participate in State or federal insurance programs, to take advantage of State or federal laws now or hereafter in existence limiting liability, or to establish or participate in other alternative risk management programs, all as may be reasonable and appropriate risk management by the City and that provide comparable coverages required by this Section. The insurance coverages required by this Section may be maintained under a blanket policy covering other properties of the City.

(c) Any insurance coverage pursuant to this Section may be subject to such deductible limitations as the City shall deem appropriate, or may be pursuant to a program whereby the City self-insures against certain losses up to a stated loss amount, and retains excess coverage from an insurer meeting the requirements of this Section. Notwithstanding any other provision of this Section, if the City's self-insures in whole, or if self-insurance prior to any excess coverage or any deductible limit exceeds \$3,000,000, then at least bi-annually the City shall cause to be delivered to the Trustee a report of an Insurance Consultant stating to the effect that the risks assumed by the City are prudent under the circumstances and that the City has provided adequate reserves for such purpose.

(d) All such policies shall be for the benefit of the City, shall be made payable to the City and shall remain with the City, and the City shall have the sole right to receive the proceeds of such insurance and to collect and receipt for claims thereunder. Net Insurance Proceeds shall be applied as provided in Section 709.

(e) Within 60 days of the end of each Fiscal Year, an Authorized Officer shall file with the Trustee an Officer's Certificate describing the insurance policies or alternative risk management programs required or permitted by this Section in effect as of the date of such Officer's Certificate and stating that such insurance policies or alternative risk management programs are in compliance with the requirements of this Section. The Trustee shall be entitled to rely in good faith upon such Officer's Certificate as to the City's compliance with the requirements of this Section. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance required by this Section.

(f) The City further covenants that it will maintain or cause to be maintained comprehensive public liability insurance on all Special Purpose Facilities for bodily injury and property damage resulting from the construction or operation of such Special Purpose Facilities in such amounts as the City may determine to be reasonable.

(g) Notwithstanding any of the foregoing provisions of this Section, the City shall not be required to amend or otherwise change any of the insurance provisions of its contracts, leases and other agreements in effect on the date of the issuance of the Series 2011 Bonds for the purpose of complying with the provisions of this Section and, with respect to any contract, lease or other agreement entered into by the City after the date of the issuance of the Series 2011 Bonds, the City may provide for policies which are payable to the parties of such contract, lease or other agreement as their interests may appear and may provide that the proceeds be applied in such manner as the City shall, in its opinion, believe to be in the best interest of the City. The City may require evidence of the existence of such policies and notice of cancellation in lieu of the possession of such policies.

Section 708. Notice of Taking; Cooperation of Parties. If any public authority or entity attempts to take all or any part of the System through Eminent Domain proceedings, the City shall take prompt and appropriate measures to protect and enforce its rights and interests and those of the Trustee and the Owners and Holders of Bonds and Parity Debt in connection with such proceedings. Upon receiving notice of the institution of Eminent Domain proceedings by any public instrumentality, body, agency or officer, the City shall deliver written notice thereof to the Trustee.

The Net Eminent Domain Proceeds shall be applied in accordance with the provisions of Section 709.

Section 709. Insurance and Eminent Domain Proceeds. (a) If, as a result of any casualty occurring to any part of the System or as a result of any taking by Eminent Domain of any part of the System, the revenue-producing capabilities of the System will, in the opinion of the City Manager, be materially impaired for a period in excess of one hundred twenty (120) consecutive days, all Net Insurance Proceeds received by the City and all Net Eminent Domain Proceeds received by the City, as the case may be, shall be delivered to the Trustee for deposit in the Insurance and Condemnation Award Fund and shall be applied, to the extent permitted by law, at the election of the City:

(1) to replace, repair, rebuild or restore the System to substantially the same condition as that which existed prior to such damage, destruction or taking, with such alterations and additions as the City may determine and as will not impair or otherwise adversely affect the revenue-producing capability of the System, provided that prior to the commencement of such replacement, repair, rebuilding or restoration, the City shall deliver to the Trustee a report of a licensed architect or engineer employed by the City setting forth (A) an estimate of the total cost of the same, (B) the estimated date upon which such replacement, repair, rebuilding or restoration will be substantially completed, and (C) a statement to the effect that Net Insurance Proceeds or Net Eminent Domain Proceeds, as the case may be, together with other funds made available or to be made available by the City, are projected to be sufficient to pay the costs of the replacement, repair, rebuilding or restoration of the System; or

(2) to the redemption of Bonds or Parity Debt as provided in the Parity Resolutions, provided that Bonds or Parity Debt may be redeemed only if (A) the System has not been restored to substantially the same condition as prior to such damage, destruction or taking or (B) the licensed architect or engineer employed by the City has been unable to make the statement required by subsection (a)(1)(C) of this Section; or

(3) to transfer to the General Fund or any other fund or account designated by the City if the System, as evidenced by a report of a licensed architect or engineer employed by the City, has been restored to substantially the same condition as prior to such damage, destruction or taking with other funds of the City or made available to the City which were not subject to the lien in favor of the Owners and Holders of Bonds and Parity Debt.

(b) All Net Insurance Proceeds and all Net Eminent Domain Proceeds which the City is not required to pay to the Trustee pursuant to the foregoing provisions of this Section 709 shall be applied in such manner as the City believes to be in the best interests of the City.

If the City elects to apply Net Insurance Proceeds or Net Eminent Domain Proceeds, or cause them to be applied, to replace, repair, rebuild, or restore the System, as provided in subsection (a)(1) above, the City shall cause the Trustee to make disbursements from the Insurance and Condemnation Award Fund, to the extent practicable, in accordance with the procedures and requirements set forth in Section 404 for requisitions from the Project Fund. However, to the extent such Net Insurance Proceeds or Net Eminent Domain Proceeds exceed the cost of such replacement, repair, rebuilding or restoration, the same shall be transferred to the General Fund or any other fund or account designated by the City.

If the City elects to redeem Bonds, the City shall direct the Trustee to redeem Bonds in accordance with Article III of this Trust Agreement and the Supplemental Agreement for any such Bonds and to transfer from the Insurance and Condemnation Award Fund to the applicable subaccounts of the Redemption Account an amount sufficient to pay the Redemption Price of the Bonds to be redeemed and to the applicable subaccounts of the Interest Account an amount that, together with amounts then on deposit therein, is sufficient to pay interest accruing on the Bonds to be redeemed to the date fixed for redemption. If the City elects to redeem Parity Debt, the

City shall follow the requirements for such redemption as set forth in the Parity Debt Resolution for such Parity Debt. The provisions of this Section are subject to the provisions of Section 814.

Section 710. Compliance with Applicable Law. So long as any Bond is Outstanding, the City shall comply or cause there to be compliance with all applicable laws, orders, rules, regulations and requirements of any municipal or other governmental authority relating to the construction, use and operation of the System. Nothing contained in this Section shall prevent the City from contesting in good faith the applicability or validity of any law, ordinance, order, rules regulation, or requirement so long as its failure to comply with the same during the period of such contest will not materially impair the operation or revenue-producing capability of the System.

Section 711. Payment of Charges and Covenant Against Encumbrances. Except as otherwise provided in this Trust Agreement, the City shall not create or suffer to be created any lien or charge upon the System or any part thereof, or on the Net Receipts, except for Permitted Encumbrances. The City shall discharge or cause to be discharged, or shall make adequate provision to satisfy and discharge, within sixty (60) days after the same become due and payable, all lawful costs, expenses, liabilities and charges relating to the maintenance, repair, replacement or improvement of the properties constituting the System and the operation of the System and lawful claims and demands for labor, materials, supplies or other objects that might by law become a lien upon the System or Net Receipts if unpaid. Nothing contained in this Section shall require the City to pay or cause to be discharged, or make provision for the payment, satisfaction and discharge of, any lien, charge, cost, liability, claim or demand so long as the validity thereof is contested in good faith and by appropriate legal proceedings.

The City may incur obligations secured by a lien on (a) rolling stock comprising a part of the System without limitation and (b) other property, plant and equipment comprising a part of the System; provided, however, that the principal amount of such obligations outstanding at any one time shall not exceed 10% of “invested in capital assets, net of related debt” of the System (not taking into account any outstanding obligations with respect to rolling stock that is a part of the System) as shown on the audited financial statements of the City for the most recent Fiscal Year for which audited financial statements are available.

Section 712. Covenant Against Sale or Disposition and Exceptions Thereto. The City covenants that, except as permitted in this Section or Section 714, it will not sell, exchange or otherwise dispose of the System or any part thereof.

The City may from time to time sell, exchange or otherwise dispose of any equipment, motor vehicles, machinery, fixtures, apparatus, tools, instruments or other movable property if it determines that such articles are no longer needed or are no longer useful in connection with the System, and the proceeds thereof may be used for any lawful purpose determined by the City.

The City may from time to time sell, exchange or otherwise dispose of (but not lease, contract or agree for the use thereof except as permitted under Section 714) any other property of the System if, in addition to obtaining an opinion of nationally recognized bond counsel to the

effect that such sale, exchange or disposition of property of the System shall not adversely affect the tax status of interest on Bonds, it determines by resolution:

(a) that the sale, exchange or other disposition thereof would not materially adversely affect the operating efficiency of the System and would not materially reduce Net Receipts; or

(b) that the sale, exchange or other disposition thereof would not materially adversely affect the ability of the City to comply with the rate covenant set forth in Section 704(a) and (b) for the current and next succeeding Fiscal Year and there is delivered to the Trustee evidence (including, but not limited to, an Officer's Certificate) reasonably satisfactory to the Trustee that such sale, exchange or disposition would not result in the ratings of any Parity Indebtedness being suspended or downgraded below "investment grade" by Fitch, Moody's or S&P, and provided further that such sale, exchange or disposition would be for a consideration of not less than fair market value; and the proceeds, if any, of any such sale, exchange or disposition shall be applied to the replacement of the properties so sold, exchanged or disposed of or shall be deposited to the credit of the subaccount or subaccounts of the Bond Fund or to pay interest on or principal of Parity Debt as the City may determine.

If the fair market value of any item of real or personal property to be sold, exchanged or otherwise disposed of shall be in excess of 1% of invested in capital assets, net of related debt, of the System calculated in accordance with generally accepted accounting principles, or if the fair market value of any such item together with the fair market value of all other such items so disposed of in such Fiscal Year shall aggregate in excess of 1% of invested in capital assets, net of related debt, of the System calculated in accordance with generally accepted accounting principles, then no such disposal shall be effected without first obtaining the written approval of a Consultant of the determinations to be made by the City with respect to such disposition under the provisions of this Section.

Section 713. Additional Projects; Additions to the System. All buildings, structures and items of personal property that are constructed, placed or installed in or upon the properties constituting the System as an addition or improvement to, as a substitute for, or in renewal, replacement or alteration of, any buildings, structures, and personal property constituting part of the System, and all real property acquired as an addition to, in replacement of, or as a substitute for real property constituting a part of the System shall thereupon become part of the System.

Section 714. Contracts, Leases and Other Agreements. The City may lease, as lessor, all or any part of the System, or contract or agree for the performance by others, of operations or services on or in connection with the System or any part thereof, for any lawful purpose, provided, that:

(a) the City shall remain fully obligated and responsible under this Trust Agreement to the same extent as if such lease, contract or agreement, or any amendment or rescission thereof, had not been executed, and

(b) the obligation of the City under such lease, contract or agreement shall not impair the performance of the City's obligations under this Trust Agreement.

Section 715. Financing of Special Purpose Facilities. Nothing in this Trust Agreement expressed or implied shall be construed as prohibiting the City, if then authorized or permitted by law, from financing the acquisition or construction of any Special Purpose Facilities.

No Special Purpose Facilities shall be financed by the City unless there shall be filed with the City and the Trustee:

(a) an opinion of counsel to the City to the effect that the Special Purpose Facilities or the indebtedness or other obligations incurred to finance such Special Purpose Facilities are not, directly or indirectly, secured by or payable from Receipts or issued under or secured by the provisions of this Trust Agreement and that the financing of the Special Purpose Facilities will not materially conflict with or constitute on the part of the City a breach of or default under any of the covenants or provisions of this Trust Agreement,

(b) a statement, signed by a Consultant, to the effect that in its opinion the acquisition or construction of such Special Purpose Facilities will not materially adversely affect the Income Available for Debt Service or impair the operating efficiency of the System, and

(c) a statement, signed by a Consultant, to the effect that in its opinion the estimated gross revenues to be received from the operation of the Special Purpose Facilities will be sufficient to pay the estimated operating and maintenance expenses of such Special Purpose Facilities, any debt service or reserve requirements with respect thereto and any other necessary related costs and expenses.

If Special Purpose Facilities are financed by the City, the City shall put in place necessary measures in order to account for, and keep separate and apart from Receipts and Current Expenses, the gross revenues received from the operation of such Special Purpose Facilities as well as the operating and maintenance expenses of such Special Purpose Facilities, any debt service or reserve requirements with respect thereto and any other necessary related costs and expenses.

Section 716. Limitation on Parity Indebtedness. Subject to the conditions hereinafter provided, the City shall have the right to incur Parity Indebtedness, subsequent to the issuance of the Series 2011 Bonds, for any purpose for which Bonds may be issued under Section 208, as provided in this Section 716.

(a) Long-Term Indebtedness constituting Parity Indebtedness may be incurred if prior to incurrence one of the conditions set forth in (i), (ii) or (iii) is met.

(i) Long-Term Indebtedness constituting Parity Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee an Officer's Certificate certifying that:

(A) the sum of (1) the Income Available for Debt Service for the most recent Fiscal Year for which audited financial statements are available and (2) 15% of the Unrestricted Cash and Investments as of the last day of such Fiscal Year was not less than 120% of the Maximum Long-Term Debt Service

Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness (excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and the Long-Term Indebtedness proposed to be incurred; and

(B) the Income Available for Debt Service for the most recent Fiscal Year for which audited financial statements are available was not less than the sum of (1) the Maximum Long-Term Debt Service Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness (excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and (2) the maximum amount of debt service in the current or any succeeding Fiscal Year on System G.O. Indebtedness (excluding any System G.O. Indebtedness to be refunded by the Long-Term Indebtedness to be incurred);

provided, however, that if the rates, fees and charges for the use of the System have been revised and such revised rates, fees and charges are or will be in effect prior to or concurrently with the incurrence of such Long-Term Indebtedness, the Authorized Officer may add to the Income Available for Debt Service for the most recent Fiscal Year for which audited financial statements are available an estimate of the additional Income Available for Debt Service, as determined in accordance with the provisions of this Trust Agreement, that would have been included in the calculation of such Income Available for Debt Service, in the judgment of such Authorized Officer, if such rates, fees and charges had been in effect at the beginning of such Fiscal Year.

(ii) Long-Term Indebtedness constituting Parity Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee:

(A) an Officer's Certificate certifying that the City complied with the covenant set forth in Section 704(a) and (b) for the most recent Fiscal Year for which audited financial statements are available; provided, however, that if the City failed to so comply and the rates, fees and charges for the use of the System have been revised and such revised rates, fees and charges are or will be in effect prior to or concurrently with the incurrence of such Long-Term Indebtedness, the Authorized Officer may adjust the amount of Income Available for Debt Service utilized in determining compliance with Section 704(a) and (b) by adding an estimate of the additional Income Available for Debt Service, as determined in accordance with the provisions of this Trust Agreement, that would have been included in the calculation, in the judgment of such Authorized Officer, if such rates, fees and charges had been in effect at the beginning of such Fiscal Year; and

(B) a report of a Consultant showing that for each of the first two complete Fiscal Years next succeeding the date on which capitalized interest provided from the proceeds of the Long-Term Indebtedness is expended, or the date on which such Long-Term Indebtedness is incurred in the event that there is no allowance

for capitalized interest, the sum of (1) the forecasted Income Available for Debt Service and (2) 15% of the forecasted Unrestricted Cash and Investments as of the last day of the immediately preceding Fiscal Year is at least 120% the Long-Term Debt Service Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness (excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and the Long-Term Indebtedness proposed to be incurred for that Fiscal Year; and

(C) a report of a Consultant showing that the forecasted Income Available for Debt Service for the first two complete Fiscal Years next succeeding the date on which capitalized interest provided from the proceeds of the Long-Term Indebtedness is expended, or the date on which such Long-Term Indebtedness is incurred in the event that there is no allowance for capitalized interest, is at least equal to the sum of (1) the Long-Term Debt Service Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness (excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and the Long-Term Indebtedness proposed to be incurred and (2) the debt service on System G.O. Indebtedness for each of such Fiscal Years (excluding any System G.O. Indebtedness to be refunded by the Long-Term Indebtedness to be incurred); or

(iii) Long-Term Indebtedness constituting Parity Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee an Officer's Certificate certifying that for the most recent Fiscal Year for which audited statements are available, such Long-Term Indebtedness, together with any other Long-Term Indebtedness constituting Parity Indebtedness incurred under this paragraph (iii) and then Outstanding, does not exceed 10% of Total Operating Revenues for such Fiscal Year.

(b) Completion Indebtedness constituting Parity Indebtedness may be incurred without limitation; provided, however, that prior to the incurrence of such Completion Indebtedness, the City shall furnish to the Trustee (i) a certificate of a licensed architect or engineer estimating the costs of completing the facilities for which such Completion Indebtedness is to be incurred and (ii) an Officer's Certificate certifying that the amount of such Completion Indebtedness to be incurred will be sufficient, together with other funds, if applicable, to complete construction of the facilities as estimated by the architect or engineer in respect of which such Completion Indebtedness is to be incurred.

(c) Long-Term Indebtedness constituting Parity Indebtedness may be incurred for the purpose of refunding all or any part of any Outstanding Long-Term Indebtedness constituting Parity Indebtedness so as to render it no longer Outstanding if prior to incurrence thereof, an Officer's Certificate is delivered to the Trustee (i) determining that the proceeds of such Long-Term Indebtedness, together with interest earnings on the Defeasance Obligations to be acquired and other available funds, will be sufficient to pay the principal of and interest and any premium on the Long-Term Indebtedness to be refunded to the redemption or maturity date or dates and the expenses incident to the refunding, and (ii) stating that either (A) the Long-Term Debt Service Requirement for any Fiscal Year thereafter on account of all Long-Term Indebtedness

constituting Parity Indebtedness to be Outstanding after the incurrence of such Long-Term Indebtedness to accomplish the refunding and after the refunding of such Long-Term Indebtedness will not be greater by more than 10% than the Long-Term Debt Service Requirement on account of all Long-Term Indebtedness constituting Parity Indebtedness Outstanding immediately prior to the incurrence of such Long-Term Indebtedness to accomplish such refunding, including the Long-Term Indebtedness to be refunded, or (B) the incurrence of such Long-Term Indebtedness to accomplish the refunding will satisfy the requirements of subsection (a) of this Section.

(d) Short-Term Indebtedness constituting Parity Indebtedness may be incurred if, immediately after the incurrence of such Short-Term Indebtedness, the Outstanding principal amount of all Short-Term Indebtedness constituting Parity Indebtedness does not exceed 25% of Unrestricted Cash and Investments as of the end of the most recent Fiscal Year preceding the date of incurrence of such Short-Term Indebtedness for which audited financial statements are available; provided, however, that for a period of twenty (20) consecutive calendar days in each Fiscal Year, no such Short-Term Indebtedness shall be Outstanding.

(e) Put Indebtedness constituting Parity Indebtedness may be incurred if prior to the incurrence of such Put Indebtedness (i) the conditions described in subsections (a), (b) or (c) of this Section are met and (ii) a Credit Facility exists to provide financing sufficient to pay the purchase price or principal of such Put Indebtedness on any date on which the Owner or Holder of such Put Indebtedness may demand payment thereof pursuant to the terms of such Put Indebtedness.

Whenever subsections (a) or (d) of this Section require a certification for the most recent Fiscal Year preceding the date of incurrence of the Parity Indebtedness in question for which audited financial statements are available, the City may, in its discretion, provide a certificate, opinion or report of an independent accountant, in lieu of the audit for such Fiscal Year, on financial statements covering twelve (12) consecutive calendar months of the eighteen (18) full consecutive calendar months preceding the date of incurrence of the Parity Indebtedness in question.

Section 717. Limitation on Subordinated Indebtedness. Subject to the conditions hereinafter provided, the City shall have the right to incur Subordinated Indebtedness, subsequent to the issuance of the Series 2011 Bonds, for any purpose for which Bonds may be issued under Section 208, as provided this Section 717.

(a) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred if prior to incurrence one of the conditions set forth in (i), (ii) or (iii) is met.

(i) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee an Officer's Certificate certifying that the Income Available for Debt Service for the most recent Fiscal Year for which audited financial statements are available was at least equal to the sum of (1) the Maximum Long-Term Debt Service Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness

(excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and (2) the maximum amount of debt service in the current or any succeeding Fiscal Year on System G.O. Indebtedness (excluding any System G.O. Indebtedness to be refunded by the Long-Term Indebtedness to be incurred); provided, however, that if the rates, fees and charges for the use of the System have been revised and such revised rates, fees and charges are or will be in effect prior to or concurrently with the incurrence of such Long-Term Indebtedness, the Authorized Officer may add to the Income Available for Debt Service for the most recent Fiscal Year for which audited financial statements are available an estimate of the additional Income Available for Debt Service, as determined in accordance with the provisions of this Trust Agreement, that would have been included in the calculation of such Income Available for Debt Service, in the judgment of such Authorized Officer, if such rates, fees and charges had been in effect at the beginning of such Fiscal Year.

(ii) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee:

(A) an Officer's Certificate certifying that the Income Available for Debt Service for the most recent Fiscal Year preceding the date of incurrence of the Long-Term Indebtedness constituting Subordinated Indebtedness to be incurred for which audited financial statements are available was at least equal to the Long-Term Debt Service Requirement for such Fiscal Year with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness, excluding the Long-Term Indebtedness to be incurred; provided, however, that if the rates, fees and charges for the use of the System have been revised and such revised rates, fees and charges are or will be in effect prior to or concurrently with the incurrence of such Long-Term Indebtedness, the Authorized Officer may adjust the amount of Income Available for Debt Service by adding an estimate of the additional Income Available for Debt Service, as determined in accordance with the provisions of this Trust Agreement, that would have been included in the calculation, in the judgment of such Authorized Officer, if such rates, fees and charges had been in effect at the beginning of such Fiscal Year; and

(B) an Officer's Certificate showing that the forecasted Income Available for Debt Service for the first two complete Fiscal Years next succeeding (1) the date on which capitalized interest provided from the proceeds of the Long-Term Indebtedness is expended, or (2) the date on which such Long-Term Indebtedness is incurred in the event that there is no allowance for capitalized interest, is at least equal to the Long-Term Debt Service Requirement with respect to all Outstanding Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness (excluding any Long-Term Indebtedness to be refunded by the Long-Term Indebtedness to be incurred) and the Long-Term Indebtedness proposed to be incurred for each of such Fiscal Years.

(iii) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred if prior to incurrence there is delivered to the Trustee an Officer's Certificate certifying that for the most recent Fiscal Year for which audited statements are available, such Long-Term Indebtedness, together with any other Long-Term Indebtedness constituting Subordinated Indebtedness incurred under this paragraph (iii) and then Outstanding, does not exceed 10% of Total Operating Revenues for such Fiscal Year.

(b) Completion Indebtedness constituting Subordinated Indebtedness may be incurred without limitation; provided, however, that prior to the incurrence of such Completion Indebtedness, the City shall furnish to the Trustee (i) a certificate of a licensed architect or engineer estimating the cost of completing the facilities for which such Completion Indebtedness is to be incurred and (ii) an Officer's Certificate certifying that the amount of such Completion Indebtedness to be incurred will be sufficient, together with other funds, if applicable, to complete construction of the facilities in respect of which such Completion Indebtedness is to be incurred.

(c) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred for the purpose of refunding all or any part of any Outstanding Long-Term Indebtedness constituting Subordinated Indebtedness so as to render it no longer Outstanding if prior to incurrence thereof, an Officer's Certificate is delivered to the Trustee (i) determining that the proceeds of such Long-Term Indebtedness, together with interest earnings on the Defeasance Obligations to be acquired and other available funds, will be sufficient to pay the principal of and interest and any redemption premium on the Long-Term Indebtedness to be refunded to the redemption or maturity date or dates and the expenses incident to the refunding, and (ii) stating that either (A) the Long-Term Debt Service Requirement for any Fiscal Year thereafter on account of all Long-Term Indebtedness constituting Subordinated Indebtedness to be Outstanding after the incurrence of such Long-Term Indebtedness to accomplish the refunding and after the refunding of such Long-Term Indebtedness will not be greater by more than 10% than the Long-Term Debt Service Requirement on account of all Long-Term Indebtedness constituting Subordinated Indebtedness Outstanding immediately prior to the incurrence of such Long-Term Indebtedness to accomplish such refunding, including the Long-Term Indebtedness to be refunded or (B) the incurrence of such Long-Term Indebtedness to accomplish the refunding will satisfy the requirements of subsection (a) of this Section; and

(d) Long-Term Indebtedness constituting Subordinated Indebtedness may be incurred for the purpose of refunding all or any part of any Outstanding Long-Term Indebtedness constituting Parity Indebtedness so as to render it no longer Outstanding if prior to incurrence thereof an Officer's Certificate is delivered to the Trustee determining (i) that the proceeds of such Long-Term Indebtedness, together with interest earnings on the Defeasance Obligations to be acquired and other available funds, will be sufficient to pay the principal of and interest and any redemption premium on the Long-Term Indebtedness to be refunded to the redemption or maturity date or dates and the expenses incident to the refunding, and (ii) stating that either (A) the Long-Term Debt Service Requirement for any Fiscal Year thereafter on account of all Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness to be Outstanding after the incurrence of such Long-Term Indebtedness to accomplish the refunding and the refunding of such Long-Term Indebtedness will not be greater by more than 10% than

the Long-Term Debt Service Requirement on account of all Long-Term Indebtedness constituting Parity Indebtedness and Subordinated Indebtedness Outstanding immediately prior to the incurrence of such Long-Term Indebtedness to accomplish such refunding, including the Long-Term Indebtedness to be refunded or (B) the incurrence of such Long-Term Indebtedness to accomplish the refunding will satisfy the requirements of subsection (a) of this Section.

(e) Short-Term Indebtedness constituting Subordinated Indebtedness may be incurred if, immediately after the incurrence of such Short-Term Indebtedness, the Outstanding principal amount of all Short-Term Indebtedness constituting Subordinated Indebtedness does not exceed 25% of Unrestricted Cash and Investments as of the end of the most recent Fiscal Year preceding the date of incurrence of such Short-Term Indebtedness for which audited financial statements are available; provided, however, that for a period of twenty (20) consecutive calendar days in each Fiscal Year, no such Short-Term Indebtedness shall be Outstanding.

(f) Put Indebtedness constituting Subordinated Indebtedness may be incurred if prior to the incurrence of such Put Indebtedness (i) the conditions described in subsections (a), (b), (c) or (d) of this Section are met and (ii) a Credit Facility exists to provide financing sufficient to pay the purchase price or principal of such Put Indebtedness on any date on which the Owner or Holder of such Put Indebtedness may demand payment thereof pursuant to the terms of such Put Indebtedness.

Whenever subsections (a) or (e) of this Section requires a certification for the most recent Fiscal Year preceding the dates of incurrence of the Subordinated Indebtedness in question for which audited financial statements are available, the City may, in its discretion, provide a certificate, opinion or report of an independent accountant, in lieu of the audit for such Fiscal Year, on financial statements covering twelve (12) consecutive calendar months of the eighteen (18) full consecutive calendar months preceding the date of incurrence of the Subordinated Indebtedness in question.

Section 718. Employment of Insurance Consultant and Consultant. For the purpose of performing and carrying out the duties imposed upon an Insurance Consultant under this Trust Agreement, the City shall from time to time employ an Insurance Consultant. A signed copy of any reports of any Insurance Consultant required hereby shall be filed with the City and the Trustee, and copies thereof shall be sent to the Local Government Commission by the City.

For the purpose of causing to be performed and carried out the duties imposed on the Consultant under this Trust Agreement, the City shall employ one or more utility consultants having a favorable repute for skill and experience for such work. Except for any fees and expenses incurred under the provisions of Section 403, the cost of employing the Consultant shall be treated as a part of the cost of operation and maintenance of the System.

The Consultant shall at all times have free access to all properties constituting the System for the purposes of inspection and examination, and the books, public records and accounts of the City relating to the System may be examined by the Consultant at all reasonable times.

Section 719. Further Instruments and Actions. The City shall, from time to time, execute and deliver such further instruments or take such further actions as may be required to carry out the purposes of this Trust Agreement.

Section 720. Use of Receipts and Inconsistent Actions. The City covenants and agrees that, so long as any of the Bonds or Parity Debt secured hereby are Outstanding, none of the Receipts will be used for any purpose other than as provided in this Trust Agreement, and that no contract or contracts will be entered into or any action taken by which the rights of Owners might be impaired or diminished.

ARTICLE VIII

REMEDIES

Section 801. Extension of Interest Payment. If the time for the payment of the interest on any Bond or any Parity Debt is extended, whether or not such extension is by or with the consent of the City, such interest so extended shall not be entitled in case of default hereunder to the benefit or security of this Trust Agreement and in such case the Owner of the Bond or any Parity Debt for which the time for payment of interest was extended shall be entitled only to the payment in full of the principal of all Bonds and Parity Debt then Outstanding and of interest for which the time for payment shall not have been extended. The time for the payment of the interest on any Bond or any Parity Debt shall not be extended in respect of any Bond or any Parity Debt covered by a Bond Insurance Policy or Credit Facility without the consent of the Bond Insurer or the Credit Provider.

Section 802. Events of Default. Each of the following events is hereby declared an Event of Default:

(a) payment of the principal of and the redemption premium, if any, on any of the Bonds is not made when the same are due and payable, either at maturity or by redemption or otherwise;

(b) payment of the interest on any of the Bonds is not made when the same is due and payable;

(c) final judgment for the payment of money in excess of \$1,000,000 is rendered against the City as a result of the ownership, control or operation of the System, and any such judgment is not discharged within one hundred twenty (120) days from the entry thereof or an appeal is not taken therefrom or from the order, decree or process upon which or pursuant to which such judgment shall have been granted or entered, in such manner as to stay the execution of or levy under such judgment, order, decree or process or the enforcement thereof;

(d) the City (i) becomes insolvent or the subject of insolvency proceedings; or (ii) is unable, or admits in writing its inability, to pay its debts as they mature; or (iii) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its property; or (iv) files a petition or other pleading seeking reorganization, composition, readjustment, or liquidation of assets, or requesting similar relief; or (v) applies to a court for the appointment of a receiver for it or for the whole or any part of the System other than Special Purpose Facilities; or (vi) has a receiver or liquidator appointed for it or for the whole or any part of the System other than Special Purpose Facilities (with or without the consent of the City) and such receiver is not discharged within ninety (90) consecutive days after his appointment; or (vii) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code; or (viii) files an answer to a creditor's petition admitting the material allegations thereof for liquidation, reorganization, readjustment or composition or to effect a plan or other arrangement with creditors or fail to have such petition dismissed within sixty (60) consecutive days after the same is filed against the City;

(e) a court of competent jurisdiction assumes custody or control of the City or of the whole or any substantial part of its property under the provisions of any other law for the relief or aid of debtors, and such custody or control is not terminated within ninety (90) days from the date of assumption of such custody or control;

(f) receipt by the Trustee of written notice from the Holder of any Parity Debt that any event of default has occurred and is continuing under such Parity Debt or the Parity Debt Resolution relating to such Parity Debt, including the failure to pay when due and payable the principal of, premium, if any, and interest on such Parity Debt, together with evidence satisfactory to the Trustee that such event of default has so occurred and is continuing; and

(g) the City defaults in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Bonds or this Trust Agreement, including any Supplemental Agreement, and such default continues for thirty (30) days after receipt by the City of a written notice from the Trustee specifying such default and requesting that it be corrected, provided that if prior to the expiration of such 30-day period the City institutes action reasonably designed to cure such default, no "Event of Default" shall be deemed to have occurred upon the expiration of such 30-day period for so long as the City pursues such curative action with reasonable diligence.

Section 803. Acceleration of Maturities. Upon the happening and continuance of any Event of Default specified in Section 802, then and in every case the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of the Bonds then Outstanding shall, by a notice in writing to the City, declare the principal of all the Bonds then Outstanding (if not then due and payable) to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable, anything contained in the Bonds or this Trust Agreement to the contrary notwithstanding; provided, however, that if at any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Trust Agreement, moneys shall have accumulated in the Bond Fund sufficient to pay the principal of all matured Bonds and all arrears of interest, if any, upon all the Bonds then Outstanding (except the principal of any Bonds not then due and payable by their terms and the interest accrued on such Bonds since the last interest payment date) and sufficient to satisfy the sinking fund requirement, if any, for any Term Bonds then Outstanding, for the then current Fiscal Year, and the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and all other amounts then payable by the City hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee, and every other default known to the Trustee in the observance or performance of any covenant, condition, agreement or provision contained in the Bonds or this Trust Agreement (other than a default in the payment of the principal of such Bonds then due and payable only because of a declaration under this Section) shall have been remedied to the satisfaction of the Trustee, then and in every such case the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of the Bonds not then due and payable by their terms and then Outstanding shall, by written notice to the City, rescind and annul such declaration and its

consequences, but no such rescission or annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Notwithstanding the foregoing provisions of this Section, if a Bond Insurer providing a Bond Insurance Policy or a Credit Provider providing a Credit Facility for an entire Series of Bonds has not failed to comply with its respective payment obligations under such Bond Insurance Policy or Credit Facility, any acceleration of such Series of Bonds, or any annulment of such acceleration, shall be subject to the prior written consent of such Bond Insurer or such Credit Provider, but only if the relevant Supplemental Agreement confers such right of prior written consent; provided, however, that failure of such Bond Insurer or Credit Provider to give such consent shall not affect the acceleration, or annulment of acceleration, of any other Series of Bonds in the manner provided in this Section.

Section 804. Remedies. Upon the happening and continuance of any Event of Default specified in Section 802, then and in every such case the Trustee may, and upon the written request of the Owners or Holders of not less than 25% in aggregate principal amount of the Bonds and Parity Debt then Outstanding shall, proceed (subject to the provisions of Section 902) to protect and enforce its rights and the rights of the Owners or Holders of the Bonds and Parity Debt under applicable laws and under this Trust Agreement by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, either for the specific performance of any covenant or agreement contained herein or in aid or execution of any power herein granted or for the enforcement of any proper legal or equitable remedy, as the Trustee, being advised by counsel, chosen by the Trustee, shall deem most effectual to protect and enforce such rights.

In the enforcement of any remedy under this Trust Agreement, the Trustee shall be entitled to sue for, enforce payment of and receive any and all amounts then or during any Event of Default becoming, and at any time remaining, due from the City for principal, interest or otherwise under any of the provisions of this Trust Agreement or of the Bonds and Parity Debt and unpaid, with interest on overdue payments of principal at the rate or rates of interest specified in such Bonds and Parity Debt, together with any and all costs and expenses of collection and of all proceedings hereunder and under such Bonds and Parity Debt, without prejudice to any other right or remedy of the Trustee or of the Owners or Holders of the Bond and Parity Debt, and to recover and enforce any judgment or decree against the City, but solely as provided herein and in such Bonds and Parity Debt, for any portion of such amounts remaining unpaid and interest, costs and expenses as above provided, and to collect (but solely from moneys in the funds and accounts pledged to secure the Bonds and Parity Debt under the provisions of this Trust Agreement and any Supplemental Agreement or Parity Debt Resolution and any other moneys available for such purpose) in any manner provided by law, the moneys adjudged or decreed to be payable.

Whenever there shall have been commenced or shall be pending any litigation, in any court having jurisdiction thereof, to which the City shall be a party, affecting or involving the System or the operation thereof, or the Receipts, or the wrongful performance or failure to perform any of the terms and conditions of this Trust Agreement, including any Supplemental Agreement, and if an Event of Default shall occur or shall have occurred and be continuing, then,

unless the same shall then be prohibited under applicable law, the court having jurisdiction of such litigation may appoint a receiver to administer and operate the System on behalf of the City, with full power to pay and to provide for the payment of principal of and interest on the Parity Indebtedness as the same shall become due, whether at maturity, pursuant to mandatory sinking fund redemption, by acceleration or otherwise, out of the funds and accounts available therefor, and the Current Expenses of the System, to apply Receipts derived from such operation in accordance with the provisions of this Trust Agreement, any Supplemental Agreement and any Parity Debt Resolution, and to take such action to the extent permitted by law to cause to be remedied any Event of Default which shall occur or shall have occurred and be continuing; and with such other powers, subject to the direction of said court, as are accorded to receivers in general equity cases and under the applicable provisions of the laws of North Carolina; provided, that the power of such receiver to make provisions for the payment of principal of and interest on Parity Indebtedness as aforesaid shall not be construed as including the power to pledge the general credit of the City to such payments. Any appointment of a receiver under the foregoing provision shall not, by itself, constitute a separate Event of Default under Section 802.

In addition to any remedies available to the Trustee under this Trust Agreement, as herein provided, and under State and federal law, upon the occurrence of an Event of Default, the Trustee may, and upon the written request of the Owners and Holders of not less than a majority in aggregate principal amount of Parity Indebtedness then Outstanding shall:

(a) require the City to endorse all checks and other negotiable instruments representing Receipts to the order of the Trustee immediately upon the receipt thereof and to deliver such endorsed instruments daily to the Trustee;

(b) notify any or all account debtors of the City to pay any amounts representing Receipts, when due and owing, directly to the Trustee, as Trustee, at the address set forth herein; and

(c) require the City to deliver to the Trustee all money and Investment Obligations held by the City in the Revenue Fund.

The endorsement and delivery requirements and the payment of Receipts directly to the Trustee as hereinbefore set out in this paragraph shall continue until the Event of Default has been cured to the satisfaction of the Trustee.

The disposition of Receipts held by the Trustee pursuant to this Section is subject to the provisions of Section 503 governing the disposition of Receipts to the same extent as if the City had deposited such Receipts in the Revenue Fund. Notwithstanding anything contained herein to the contrary, the disposition of Receipts held by the Trustee pursuant to this Section for the payment of Current Expenses shall be in the Trustee's sole discretion. The provisions of this Section are also subject to the provisions of Section 814.

Section 805. Pro Rata Application of Funds. Anything in this Trust Agreement to the contrary notwithstanding, if at any time the money in the Interest Account, the Principal Account and the Sinking Fund Account is not sufficient to pay the interest on or the principal of the

Bonds as the same become due and payable (either by their terms or by acceleration of maturities under the provisions of Section 803), such money, together with any money then available or thereafter becoming available for such purposes (except for such money that has already been deposited in subaccounts of the Interest Account, Principal Account or Sinking Fund Account for a particular Series of Bonds pursuant to the provisions of Section 504), whether through the exercise of the remedies provided for in this Article or otherwise, shall be applied, after payment of the reasonable fees and expenses of the Trustee in exercising its rights and remedies hereunder, as follows:

(a) if the principal of all Series of Bonds shall not have become or shall not have been declared due and payable, all such money shall be applied as follows:

first: to the payment to the persons entitled thereto of all installments of interest on Bonds then due and payable in the order in which such installments became due and payable and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment, ratably according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in such Bonds;

second: to the payment to the persons entitled thereto of the unpaid principal of any Bonds that shall have become due and payable (other than Bonds deemed to have been paid pursuant to the provisions of Section 1201 of this Trust Agreement), in the order of their due dates, with interest on the overdue principal at a rate equal to the rate on such Bonds, and, if the amount available shall not be sufficient to pay in full all of the amounts due on the Bonds on any date, together with such interest, then to the payment ratably according to the amount of such principal due on such date, to the persons entitled thereto, without any discrimination or preference; and

third: to the payment of the interest on and the principal of Bonds, to the purchase and retirement of Bonds, and to the redemption of Bonds, all in accordance with the provisions of this Trust Agreement.

(b) If the principal of all of the Series of Bonds shall have become or shall have been declared due and payable, all such money shall be applied to the payment of principal and interest then due upon such Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege.

(c) If the principal of all of the Series of Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of Section 803 of this Trust Agreement, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all of the Series of Bonds shall later become due and payable or be declared due and payable, the money then remaining in and thereafter accruing to the Bond Fund shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever money is to be applied by the Trustee pursuant to the provisions of this Section, (a) such money shall be applied by the Trustee at such times and from time to time as the Trustee in its sole discretion shall determine, having due regard for the amount of money available for such application and the likelihood of additional money becoming available for such application in the future, (b) setting aside such money as provided herein in trust for the proper purpose shall constitute proper application by the Trustee and (c) the Trustee shall incur no liability whatsoever to the City, to any Owner or to any other person for any delay in applying any such money so long as the Trustee acts with reasonable diligence, having due regard for the circumstances, and ultimately applies the same in accordance with such provisions of this Trust Agreement as may be applicable at the time of application by the Trustee. Whenever the Trustee exercises such discretion in applying such money, it shall fix the date (which shall be an Interest Payment Date unless the Trustee shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date and shall not be required to make payment to the Owner of any Bond until such Bond is surrendered to the Trustee for appropriate endorsement or for cancellation if fully paid.

The provisions of this Section are subject to the provisions of Section 801 and Section 814.

Section 806. Effect of Discontinuance of Proceedings. If any proceeding taken by the Trustee or Owners or Holders of Bonds and Parity Debt on account of any Event of Default is discontinued or abandoned for any reason, then and in every such case, the City, the Trustee and the Owners and the Holders of Bonds and Parity Debt shall be restored to their former positions and rights hereunder, and all rights, remedies, powers and duties of the Trustee shall continue as though no proceedings had been taken.

Section 807. Control of Proceedings. Anything in this Trust Agreement to the contrary notwithstanding, the Owners or Holders of a majority in aggregate principal amount of Bonds and Parity Debt at any time Outstanding shall have the right, subject to the provisions of Section 902, by an instrument or concurrent instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee hereunder, provided that such direction shall be in accordance with law and the provisions of this Trust Agreement.

Section 808. Restrictions Upon Action. Except as provided in Section 813, no Owner or Holder of Bonds or Parity Debt shall have any right to institute any suit, action or proceeding in equity or at law on any Bond or Parity Debt or for the execution of any trust hereunder or for any other remedy hereunder unless such Owner or Holder of Bonds or Parity Debt previously shall (a) has given to the Trustee written notice of the Event of Default on account of which suit, action or proceeding is to be instituted, (b) has requested the Trustee to take action after the right to exercise such powers or right of action, as the case may be, shall have accrued, (c) has afforded the Trustee a reasonable opportunity either to proceed to exercise the powers hereinabove granted or to institute such action, suit or proceedings in its or their name, and (d) has offered to the Trustee reasonable security and satisfactory indemnity against the costs,

expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are hereby declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Trust Agreement or to any other remedy hereunder. Notwithstanding the foregoing provisions of this Section and without complying therewith, the Owners or Holders of not less than 25% in aggregate principal amount of Bonds and Parity Debt then Outstanding may institute any such suit, action or proceeding in their own names for the benefit of all Owners or Holders of Bonds and Parity Debt. It is understood and intended that, except as otherwise above provided, no one or more Owners or Holders of Bonds or Parity Debt shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security of this Trust Agreement or to enforce any right hereunder except in the manner provided, that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the benefit of all Owners and Holders of Bonds and Parity Debt and that any individual rights of action or other right given to one or more of such Owners or Holders by law are restricted by this Trust Agreement to the rights and remedies herein provided.

Section 809. Enforcement of Rights of Action. All rights of action (including the right to file proof of claim) under this Trust Agreement or under any Bonds and any Parity Debt may be enforced by the Trustee without the possession of any Bonds and any Parity Debt or the production thereof in any proceedings relating thereto, and any such suit or proceedings instituted by the Trustee shall be brought in its name as Trustee, without the necessity of joining as plaintiffs or defendants any Owners or Holders of Bonds or Parity Debt, and any recovery of judgment shall be for the equal benefit of the Owners or Holders of Bonds and Parity Debt, subject to the provisions of Section 801.

Section 810. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Trustee or to the Owners or Holders of Bonds and Parity Debt is intended to be exclusive of any other remedy or remedies herein provided, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity.

Section 811. Delay Not a Waiver. No delay or omission by the Trustee or of any Owner or Holder of Bonds or Parity Debt in the exercise of any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power or remedy given by this Trust Agreement to the Trustee and to the Owners or Holders of Bonds or Parity Debt may be exercised from time to time and as often as may be deemed expedient.

The Trustee may, and upon written request of the Owners or Holder of not less than a majority in principal amount of the Bonds and Parity Debt then Outstanding shall, waive any Event of Default which in its opinion has been remedied before the entry of final judgment or decree in any suit, action or proceeding instituted by it under the provisions of this Trust Agreement or before the completion of the enforcement of any other remedies under this Trust Agreement, but no such waiver shall extend to or affect any other existing or subsequent Event of Default or impair any rights or remedies consequent thereon.

Section 812. Notice of Default. The Trustee shall mail to (a) the Local Government Commission, (b) all Owners at their addresses as they appear on the registration books and (c) all Holders of Parity Debt who shall have filed their name with the Trustee for such purpose, written notice of the occurrence of any Event of Default within thirty (30) days after the Trustee has notice of the same pursuant to the provisions of Section 908 that any such Event of Default shall have occurred; provided, however that, except upon the happening of an Event of Default specified in clauses (a) and (b) of Section 802 of this Trust Agreement, the Trustee may withhold such notice to the Owners and Holders if in its opinion such withholding is in the interest of the Owners and Holders. The Trustee shall not be subject to any liability to any Owner or Holder by reason of its failure to mail any such notice.

Section 813. Right to Enforce Payment of Bonds Unimpaired. Nothing in this Article shall affect or impair the right of any Owner or Holder of Bonds or Parity Debt to enforce the payment of the principal of and interest on his Bonds or Parity Debt or the obligation of the City to pay the principal of and interest on each Bond and Parity Debt to the Owner or Holder thereof at the time and place specified in said Bond or Parity Debt.

Section 814. Allocations for Parity Debt and Derivative Agreement Parity Payments. Notwithstanding any provision of this Trust Agreement or any Supplemental Agreement or Derivative Agreement to the contrary, if at any time there are Bonds Outstanding under the terms hereof and there is also Parity Debt Outstanding under the terms of one or more Parity Debt Resolutions or any Derivative Agreements in effect providing for Derivative Agreement Parity Payments and (a) the City or the Trustee receives Net Insurance Proceeds or Net Eminent Domain Proceeds and the City elects to redeem Bonds with the same pursuant to Section 709, (b) the Trustee is receiving Receipts on a daily basis pursuant to Section 804 or (c) an Event of Default has occurred hereunder and the Trustee is required to apply funds in its possession in accordance with Section 805, then all such Net Insurance Proceeds or Net Eminent Domain Proceeds, Receipts or other funds to be distributed under the terms hereof to Owners shall be allocated among, and distributed by the Trustee to, (a) the Owners of Bonds in the proportion that the principal amount of all Bonds then Outstanding bears to the aggregate principal amount of all Parity Indebtedness then Outstanding and the amount of Derivative Agreement Parity Payments then due and payable, (b) to each Holder of Parity Debt (or to the trustee or any other party on behalf of the Holder of such Parity Debt as shall be specified to the Trustee) in the proportion that the principal amount of such Parity Debt then Outstanding bears to the aggregate principal amount of all Parity Indebtedness then Outstanding and the amount of Derivative Agreement Parity Payments then due and payable and (c) to each counterparty under a Derivative Agreement providing for Derivative Agreement Parity Payments in the proportion that the Derivative Agreement Parity Payments then due and payable bears to the aggregate principal amount of all Parity Indebtedness then Outstanding and the amount of Derivative Agreement Parity Payments then due and payable, unless such an allocation and distribution has been made prior to the receipt by the Trustee of such Net Insurance Proceeds, Net Eminent Domain Proceeds, Receipts or other funds; provided, however, that moneys maintained in funds, accounts, and subaccounts established by a particular Supplemental Agreement which are pledged solely for the payment of a particular Series of Bonds shall not be subject to such allocation and shall instead be applied as provided in such applicable Supplemental Agreement.

ARTICLE IX

THE TRUSTEE

Section 901. Acceptance of Trusts. The Trustee by execution hereof accepts and agrees to fulfill the trusts imposed upon it by this Trust Agreement, but only upon the terms and conditions set forth in this Article and subject to the provisions of this Trust Agreement, to all of which the City, the Trustee and the respective Owners of the Bonds and any Holders of Parity Debt agree. Prior to the occurrence of any Event of Default and after the curing of all such Events of Default that may have occurred, the Trustee shall perform such duties and only such duties of the Trustee as are specifically set forth in this Trust Agreement. Upon the occurrence and during the continuation of any Event of Default, the Trustee shall use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

No provision of this Trust Agreement or any Parity Indebtedness shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(a) prior to any such Event of Default hereunder, and after the curing of any Event of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Trust Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations of the Trustee as are specifically set forth in this Trust Agreement, and no implied covenants or obligations shall be read into this Trust Agreement against the Trustee and no permissive right of the Trustee under this Trust Agreement shall impose any duty on the Trustee to take such action, and

(ii) in the absence of willful misconduct on its part, the Trustee may conclusively rely, as to the accuracy of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to it conforming to the requirements of this Trust Agreement, but in the case of any such certificate or opinion by which any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not on its face it conforms to the requirements of this Trust Agreement; and

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Trustee shall not be liable for any error of judgment made in good faith by a responsible officer or officers of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts, and

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners and Holders of not less than 25% or a majority, as this Trust Agreement shall require, in aggregate principal amount

of the Bonds and Parity Debt then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any power conferred upon the Trustee under this Trust Agreement.

None of the provisions contained in this Trust Agreement shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 902. Indemnification of Trustee as Condition for Remedial Action. The Trustee shall be under no obligation to institute any suit or to take any remedial proceeding (including, but not limited to, the appointment of a receiver or the acceleration of the maturity date of any or all Bonds under this Trust Agreement) or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of any of the trusts hereby created or in the enforcement of any rights and powers hereunder, until it shall be indemnified to its satisfaction against any and all costs and expenses, outlays and counsel fees and other reasonable disbursements, and against all liability. The Trustee nevertheless may begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Trustee, without indemnity, and in such case the City, at the request of the Trustee, shall reimburse the trustee from Receipts for all costs, expenses, outlays and counsel fees and other reasonable disbursements properly incurred in connection therewith. If the City shall fail to make such reimbursement, the Trustee may reimburse itself from any money in its possession under the provisions of this Trust Agreement and shall be entitled to a preference therefor over any Parity Indebtedness Outstanding.

Section 903. Limitations on Obligations and Responsibilities of Trustee. The Trustee shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by the City, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made. Except as to the acceptance of the trusts under this Trust Agreement, the Trustee shall have no responsibility in respect of the validity or sufficiency of this Trust Agreement, or in respect of the validity of Bonds or Parity Debt or the due execution or issuance thereof. The Trustee shall be under no obligation to see that any duties herein imposed upon the City, any consultant, any Depository (other than a Depository in which money shall have been deposited by the Trustee under the provisions of this Trust Agreement) or any party other than itself, or any covenants herein contained on the part of any party other than itself to be performed, shall be done or performed, and the Trustee shall be under no obligation for failure to see that any such duties or covenants are so done or performed.

Section 904. Trustee Not Liable for Failure of City to Act. The Trustee shall not be liable or responsible because of the failure of the City or of any of its employees or agents to make any collections or deposits or to perform any act herein required of the City or because of the loss of any money arising through the insolvency or the act or default or omission of any Depository (other than the Trustee or a Depository in which such money shall have been deposited by the Trustee under the provisions of this Trust Agreement). The Trustee shall not be responsible for the application of any of the proceeds of Bonds or any other money deposited

with it and invested, paid out, withdrawn or transferred hereunder if such application, investment, payment, withdrawal or transfer shall be made in accordance with the provisions of this Trust Agreement. The immunities and exemptions from liability of the Trustee hereunder shall extend to its directors, officers, employees and agents.

Section 905. Compensation and Indemnification of Trustee. Subject to the provisions of any contract between the City and the Trustee relating to the compensation of the Trustee, the City shall pay to the Trustee from Receipts reasonable compensation for all services performed by them hereunder and also all their reasonable expenses, charges and other disbursements and those of their attorneys, agents and employees incurred in and about the administration and the performance of their powers and duties hereunder and, to the extent permitted by law, shall indemnify and save the Trustee harmless against any liabilities that they may incur in the proper exercise and performance of their powers and duties hereunder. If the City shall fail to cause any payment required by this Section to be made, the Trustee may make such payment from any money in its possession under the provisions of this Trust Agreement and shall be entitled to a preference therefor over any Bonds or Parity Debt Outstanding hereunder. The City covenants that it shall promptly deposit or cause to be deposited to the credit of the respective fund or account the amount withdrawn therefrom by the Trustee to make any such payment.

Section 906. Monthly Statements from Trustee. It shall be the duty of the Trustee, on or before the 10th day of each month, to file with the City a statement setting forth in respect of the preceding calendar month:

(a) the amount withdrawn or transferred by it and the amount deposited with it on account of each fund, account or subaccount held by it under the provisions of this Trust Agreement,

(b) the amount on deposit with it at the end of such month in each such fund, account or subaccount,

(c) a brief description of all obligations held by it as an investment of money in each such fund, account or subaccount,

(d) the amount applied to the payment, purchase or redemption of Bonds under the provisions of Article V and a description of the Bonds or portions thereof so paid, purchased or redeemed, and

(e) any other information that the City may reasonably request.

All records and files pertaining to Bonds and Parity Debt and the System in the custody of the Trustee not otherwise restricted or excluded from disclosure by the terms of this Trust Agreement, including, without limitation, Section 1002, shall be open at all reasonable times to the inspection of the City, the Local Government Commission and their agents and representatives.

Section 907. Trustee May Rely on Certificates. If at any time it shall be necessary or desirable for the Trustee to make any investigation respecting any fact preparatory to taking or

not taking any action or doing or not doing anything as such Trustee, and in any case in which this Trust Agreement provides for permitting or taking any action, the Trustee may rely upon any certificate required or permitted to be filed with it under the provisions of this Trust Agreement, and any such certificate shall be evidence of such fact or protect the Trustee in any action that it may or may not take or in respect of anything it may or may not do, in absence of willful misconduct, by reason of the supposed existence of such fact. Except as otherwise provided in this Trust Agreement, any request, notice, certificate or other instrument from the City to the Trustee shall be deemed to have been signed by the proper party or parties if signed by any Authorized Officer, and the Trustee may accept and rely upon a certificate signed by any Authorized Officer as to any action taken by the City.

Section 908. Notice of Default. Except upon the happening of any Event of Default specified in subsections (a), (b) or (f) of Section 802 or the explicit report of an Event of Default pursuant to the final clause of Section 706, the Trustee shall not be obliged to take notice or be deemed to have notice of any Event of Default under this Trust Agreement unless specifically notified in writing of such Event of Default by the City or the Owners and Holders of not less than 25% in aggregate principal amount of Bonds and Parity Debt then Outstanding.

Section 909. Trustee Not Responsible for Recitals. The recitals, statements and representations contained herein and in the Bonds shall be taken and construed as made by and on the part of the City and not by the Trustee, and the Trustee assumes and shall be under no responsibility for the correctness of the same.

Section 910. Trustee Protected in Relying on Certain Documents. The Trustee shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in absence of willful misconduct, reasonably and in according with the terms of this Trust Agreement, upon any resolution, order, notice, request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document that it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper board or person or to have been prepared and furnished pursuant to any of the provisions of this Trust Agreement, or upon the written opinion of any attorney, engineer or accountant believed by the Trustee to be qualified in relation to the subject matter, and the Trustee shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument. The Trustee shall not be under any obligation to see to the recording or filing of this Trust Agreement or otherwise to the giving to any person of notice of the provisions hereof.

Section 911. Trustee May Pay Taxes and Assessments. In case the City shall fail to pay or cause to be paid any lawful tax, assessment or governmental charge or other charge upon any part of the City to the extent, if any, that the City may be deemed by the Trustee liable for same, the Trustee may pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the Owners or Holders of Bonds and Parity Debt arising in consequence of such failure; and any amount at any time so paid under this Section shall be repaid upon demand by the Trustee by the City, but the Trustee shall be under no obligation to make any such payment from sources provided in this Trust Agreement unless it shall have available or be provided with adequate funds for the purpose of such payment.

Section 912. Resignation and Removal of Trustee Subject to Appointment of Successor. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 915.

Section 913. Resignation of Trustee. Subject to the provisions of Section 912, the Trustee may resign and thereby become discharged from the trusts hereby created, by notice in writing given to the City, and mailed, postage prepaid, at the Trustee's expense, to each Owner and Holder of Bonds and Parity Debt, not less than sixty (60) days before such resignation is to take effect, but such resignation shall take effect immediately upon the appointment of a new Trustee hereunder if such new Trustee shall be appointed before the time limited by such notice and shall then accept the trusts hereof.

Section 914. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing, (i) executed by the Owners and Holders of not less than a majority in aggregate principal amount of Bonds and Parity Debt then Outstanding and filed with the City, or (ii) executed by an Authorized Officer, so long as no Event of Default shall have occurred and be continuing and the Local Government Commission shall have given its prior written consent to such removal, in either case not less than sixty (60) days before such removal is to take effect as stated in said instrument of instruments. A photographic copy of any order, instrument or instruments filed with the City under the provisions of this paragraph, duly certified by the City Clerk as having been received by the City, shall be delivered promptly by the City Clerk to the Trustee.

The Trustee may also be removed at any time for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provisions of this Trust Agreement with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the City or the Owners and Holders of not less than 25% in aggregate principal amount of Bonds and Parity Debt then Outstanding.

Section 915. Appointment of Successor Trustee. If at any time hereafter the Trustee shall resign, be removed, be dissolved or otherwise become incapable of acting, or the bank or trust company acting as Trustee shall be taken over by any governmental official, agency, department or board, the positions of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any reason, the City shall appoint a Trustee to fill such vacancy. A successor Trustee shall not be required if the Trustee shall sell or assign substantially all of its trust business and the vendee or assignee shall continue in the trust business, or if a transfer of the trust department of the Trustee is required by operation of law, provided that such vendee, assignee or transferee is (i) a bank or trust company within or without the State which is duly authorized to exercise corporate trust powers and subject to examination by federal or State authority, (ii) of good standing, and (iii) having a combined capital, surplus and undivided profits aggregating not less than One Hundred Million Dollars (\$100,000,000); provided, however, that such vendee, assignee or transferee may have a combined capital, surplus and undivided profits aggregating less than One Hundred Million Dollars (\$100,000,000) if such vendee, assignee or transferee shall be approved by the Local Government Commission to serve as a trustee under

documents similar to this Trust Agreement. The City shall mail notice of any such appointment made by it, postage prepaid, to all Owners and Holders of Bonds and Parity Debt.

At any time within sixty (60) days after any such vacancy shall have occurred, the Owners and Holders of not less than 25% in principal amount of Bonds and Parity Debt then Outstanding, by an instrument or concurrent instruments in writing, executed by such Owners and filed with the City, may nominate a successor Trustee, which the City shall appoint and which shall supersede any Trustee theretofore appointed by the City. Photographic copies, duly certified by the City Clerk as having been received by the City, of each such instrument shall be delivered promptly by the City Clerk to the predecessor Trustee and to the Trustee so appointed by the Owners.

If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, any Owner hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any successor Trustee hereafter appointed shall be (i) a bank or trust company within or without the State which is duly authorized to exercise corporate trust powers and subject to examination by federal or State authority, (ii) of good standing and (iii) having a combined capital, surplus and undivided profits aggregating not less than One Hundred Million Dollars (\$100,000,000); provided, however, that such successor Trustee may have a combined capital, surplus and undivided profits aggregating less than One Hundred Million Dollars (\$100,000,000) if such successor Trustee shall be approved by the Local Government Commission to serve as a trustee under documents similar to this Trust Agreement.

Section 916. Vesting of Duties in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, and also to the City, an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, shall become fully vested with all the rights, immunities and powers, and subject to all the duties and obligations, of its predecessor; but such predecessor shall nevertheless, on the written request of its successor or of the City and upon payment of the expenses, charges and other disbursements of such predecessor that are payable pursuant to the provisions of Section 905, execute and deliver an instrument transferring to such successor Trustee all the rights, immunities and powers of such predecessor hereunder; and every predecessor Trustee shall deliver all property and money held by it hereunder to its successor. Should any instrument in writing from the City be required by any successor Trustee for more fully and certainly vesting in such Trustee the rights, immunities, powers and trusts hereby vested or intended to be vested in the predecessor Trustee, any such instrument in writing shall and will, on request, be executed, acknowledged and delivered by the City.

Section 917. Co-Trustee. At any time, but subject to compliance with all applicable regulations, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the trust estate may at the time be located, the City and the Trustee shall have power to appoint an additional institution or individual as a co-trustee or separate trustee, and upon the request of the Trustee or of 10% in aggregate principal amount of Bonds and Parity Debt then

Outstanding the City shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint such institution or individual to act as co-trustee jointly with the Trustee or as a separate trustee of all or any part of the trust estate, and to vest in such person or institution, in such capacity, such title to the trust estate, or any part thereof, and such rights, powers, duties, trusts or obligations as the City and the Trustee may consider necessary or desirable, subject to the remaining provisions of this Section.

If the City shall not have made such appointment within 30 days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have the power to make such appointment.

The Trustee and the City shall execute, acknowledge and deliver all such instruments as may be reasonably required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Trust Agreement conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Trustee by this Trust Agreement shall be conferred or imposed upon or exercised or performed by the Trustee, or by the Trustee and such co-trustee, or separate trustee jointly, as shall be provided in the instrument appointing such co-trustee or separate trustee, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or separate trustee;

(c) any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-trustee or separate trustee;

(d) any co-trustee or separate trustee to the extent permitted by law may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Trustee at any time by an instrument in writing with the concurrence of the City may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section and in case an event of default shall have occurred and be continuing, the Trustee shall have power to accept the resignation of or remove any such co-trustee or separate trustee without the concurrence of the City, and upon the request of the Trustee, the City shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section;

(f) no Trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Owners and Holders of Bonds and Parity Debt and delivered to the Trustee shall be deemed to have been delivered to each such co-trustee or separate trustee; and

(h) any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment, any such co-trustee or separate trustee shall be vested with such title to the trust estate or any part thereof, and with such rights, powers, duties, trusts or obligations as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Trust Agreement. Every such acceptance shall be filed with the Trustee and the City.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the trust estate and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

ARTICLE X

EXECUTION OF INSTRUMENTS BY OWNERS AND HOLDERS, PROOF OF OWNERSHIP OF BONDS OR PARITY DEBT, AND DETERMINATION OF CONCURRENCE OF OWNERS

Section 1001. Execution of Instruments. Any request, direction, consent or other instrument in writing required or permitted by this Trust Agreement to be signed or executed by any Owners or Holders of Bonds or Parity Debt may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners or Holders or their attorneys or legal representatives or legal representative of his estate if the Owner or Holder is deceased. Proof of the execution of any such instrument and of the ownership of Bonds and Parity Debt shall be sufficient for any purpose of this Trust Agreement and shall be conclusive in favor of the Trustee and the City with regard to any action taken by either under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved by the verification, by any officer in any jurisdiction who by the laws thereof has power to take affidavits within such jurisdictions, to the effect that such instrument was subscribed and sworn to before him or by an affidavit of a witness to such execution. Where such execution is on behalf of a person other than an individual, such verification or affidavit shall also constitute sufficient proof of the authority of the signer thereof.

(b) The ownership of Bonds shall be proved by the registration books kept under the provisions of Section 205. The ownership or holding of Parity Debt shall be proved as provided in the related Parity Debt Resolution.

Nothing contained in this Article shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of the matters herein stated which it may deem sufficient. Any request or consent of any Owner or Holder of Bonds or Parity Debt shall bind every future Owner or Holder of the same Bond or Parity Debt in respect of anything done by the Trustee in pursuance of such request or consent.

Notwithstanding any of the foregoing provisions of this Section, the Trustee shall not be required to recognize any person as an Owner or Holder of Bonds or Parity Debt or to take any action at such an Owner's or Holder's request unless such Bonds or Parity Debt shall be deposited with it.

Section 1002. Preservation of Information; Communications. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Owners as shown on the registration books maintained by the Trustee.

(b) If an Owner which is a Securities Depository Nominee or three or more Owners which are not Securities Depository Nominees (hereinafter collectively referred to as "applicants") apply in writing to the Trustee and furnish reasonable proof that each such applicant has owned a Bond for a period of at least six months preceding the date of such

application, and such application states that the applicants desire to communicate with other Owners with respect to their rights under this Trust Agreement or under the Bonds and such application, at its election, either

(i) afford such applicants access to the information preserved at the time by the Trustee in accordance with subsection (a) of this Section, or

(ii) inform such applicants as to the approximate number of Owners whose names and addresses appear in the information preserved at the time by the Trustee in accordance with sub-section (a) of this Section , and as to the approximate cost of mailing to such Owners the form of communication, if any, specified in such application.

If the Trustee shall elect not to afford such applicants access to such information, the Trustee shall, upon the written request of such applicants, mail to each Owner whose name and address appears in the information preserved at the time by the Trustee in accordance with subsection (a) of this Section a copy of the form of communication which is specified in such request, with reasonable promptness after a tender to the Trustee of the material to be mailed and of payment, or provision for the payment, of the reasonable expenses of mailing.

(c) Every Owner, by receiving and holding one or more Bonds, agrees with the City and the Trustee that neither the City nor the Trustee shall be held accountable by reason of the disclosure of any such information as to the names and addresses of the Owners in accordance with subsection (b) of this Section, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under such subsection.

ARTICLE XI

SUPPLEMENTAL TRUST AGREEMENTS

Section 1101. Supplemental Trust Agreement Without Consent. The City and the Trustee may, from time to time and at any time, execute and deliver supplemental trust agreements hereto (which supplemental trust agreements shall thereafter form a part hereof) as shall be substantially consistent with the terms and provisions of this Trust Agreement and, in the opinion of the Trustee, who may rely upon a written opinion of legal counsel, shall not materially and adversely affect the interest of the Owners and Holders:

(a) to cure any ambiguity or formal defect or omission, to correct or supplement any provision herein that may be inconsistent with any other provision herein, to make any other provisions with respect to matters or questions arising under this Trust Agreement, or to modify, alter, amend, add to or rescind, in any particular, any of the terms or provisions contained in this Trust Agreement, or

(b) to grant or to confer upon the Trustee, for the benefit of the Owners or Holders, any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Owners, the Holders or the Trustee, or

(c) to add to the provisions of this Trust Agreement other conditions, limitations and restrictions thereafter to be observed, or

(d) to add to the covenants and agreements of the City in this Trust Agreement other covenants and agreements thereafter to be observed by the City or to surrender any right or power herein reserved to or conferred upon the City, or

(e) to permit the qualification of this Trust Agreement under any federal statute now or hereafter in effect or under any state blue sky law, and, in connection therewith, if the City so determines, to add to this Trust Agreement or any supplemental trust agreement such other terms, conditions and provisions as may be permitted or required by such federal statute or blue sky law.

At least thirty (30) days prior to the execution and delivery of any supplemental trust agreement for any of the purposes of this Section, the Trustee shall cause a notice of the proposed execution and delivery of such supplemental trust agreement to be mailed, postage prepaid, to the Local Government Commission and to all Owners of Bonds and Holders of Parity Debt. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners and Holders of Bonds and Parity Debt. A failure on the part of the Trustee to mail the notice required by this Section shall not affect the validity of such supplemental trust agreement.

Section 1102. Supplemental Trust Agreement with Consent. Subject to the terms and provisions contained in this Section, and not otherwise, the Owners and Holders of not less than

a majority in aggregate principal amount of the Bonds and Parity Debt then Outstanding that will be affected by a proposed supplemental trust agreement shall have the right, from time to time, anything contained in this Trust Agreement to the contrary notwithstanding, to consent to and approve the execution and delivery of such supplemental trust agreements as are deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Trust Agreement or in any supplemental trust agreement; provided, however, that nothing herein contained shall permit, or be construed as permitting (a) an extension of the maturity of the principal of or the interest on any Bond or Parity Debt without the consent of the Local Government Commission and the Owner of such Bond or the Holder of such Parity Debt, (b) a reduction in the principal amount of any Bond or Parity Debt or the redemption premium or the rate of interest on any Bond or Parity Debt without the consent of the Local Government Commission and the Owner of such Bond or the Holder of such Parity Debt, (c) the creation of a pledge, charge and lien upon the Net Receipts other than the pledge, charge and lien created by this Trust Agreement without the consent of the Local Government Commission and the Owners and Holders of all Bonds and Parity Debt then Outstanding, (d) a preference or priority of any Bond or Parity Debt over any other Bond or Parity Debt without the consent of the Local Government Commission and the Owners and Holders of all Bonds and Parity Debt then Outstanding or (e) a reduction in the aggregate principal amount of the Bonds and Parity Debt required for consent to such supplemental trust agreement without the consent of the Local Government Commission and the Owners and Holders of all Bonds and Parity Debt then Outstanding. Nothing herein contained, however, shall be construed as making necessary the approval by Owners or Holders of Bonds or Parity Debt of the execution and delivery of any supplemental trust agreement as authorized in Section 1101.

If at any time the City and the Trustee determines that it is necessary or desirable to execute and deliver any supplemental trust agreement for any of the purposes of this Section, the Trustee shall cause notice of the proposed supplemental trust agreement to be mailed, postage prepaid, to all Owners at their addresses as they appear on the registration books and to all Holders of Parity Debt in accordance with the related Parity Debt Resolution as of the date of mailing such notice. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by all Owners and Holders of Bonds and Parity Debt. The Trustee shall not, however, be subject to any liability to any Owner or Holder of Bonds or Parity Debt by reason of its failure to cause the notice required by this Section to be mailed, and any such failure to cause the notice required by this Section to be mailed and any such failure shall not affect the validity of such supplemental trust agreement when consented to and approved as provided in this Section.

Whenever, at any time within three (3) years after the date of the mailing of such notice, the City delivers to the Trustee an instrument or instruments in writing purporting to be executed by the Owners or Holders of not less than a majority in aggregate principal amount of Bonds and Parity Debt then Outstanding that are affected by a proposed supplemental trust agreement, which instrument or instruments shall refer to the proposed supplemental trust agreement described in such notice and shall specifically consent to and approve the execution and delivery thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not

otherwise, the City and the Trustee may execute and deliver such supplemental trust agreement in substantially such form, without liability or responsibility to any Owner or Holder of Bonds or Parity Debt whether or not such Owner or Holder shall have consented thereto.

If the Owners or Holders of not less than a majority in aggregate principal amount of Bonds and Parity Debt then Outstanding at the time of the execution and delivery of such supplemental trust agreement and that are affected, as defined in Section 1103, by a proposed supplemental trust agreement have consented to and approved the execution and delivery thereof as herein provided, to the extent permitted by law, no Owner or Holder of Bonds or Parity Debt shall have any right to object to the execution and delivery of such supplemental trust agreement, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the execution and delivery thereof, or to enjoin or restrain the City and the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

Section 1103. Bonds and Parity Debt Affected. For purposes of this Trust Agreement, Bonds and Parity Debt shall be deemed to be “affected” by a supplemental trust agreement if the same adversely affects or diminishes the rights of the Owners or Holders of such Bonds or Parity Debt against the City or the rights of such Owners or Holders in the security for such Bonds and Parity Debt. The Trustee may in its discretion determine whether any Bonds and Parity Debt would be affected by any supplemental trust agreement, and any such determination shall be conclusive upon the Owners and Holders of all Bonds and Parity Debt, whether theretofore or thereafter issued or incurred. The Trustee shall not be liable for any such determination made in good faith.

Section 1104. Supplemental Trust Agreements Part of Trust Agreement. Any supplemental trust agreement executed and delivered in accordance with the provisions of this Article shall thereafter form a part of this Trust Agreement, and this Trust Agreement shall be and be deemed to be modified and amended in accordance therewith. Thereafter the respective rights, duties and obligations under the Trust Agreement of the City, the Trustee and all Owners of Bonds and Holders of Parity Debt then Outstanding shall thereafter be determined, exercised and enforced in all respects under the provisions of this Trust Agreement as so modified and amended. If any supplemental trust agreement is executed and delivered, Bonds issued thereafter and Parity Debt incurred thereafter may contain an express reference to such supplemental trust agreement, if deemed necessary or desirable by the City.

Section 1105. Not a Supplemental Trust Agreement. For purpose of this Article XI, a Supplemental Agreement or Parity Debt Resolution that relates only to a particular Series of Bonds issued hereunder or Parity Debt incurred under a Parity Debt Resolution and that does not purport to alter or amend the rights or security of any Owners of any Bonds of any other Series issued hereunder or any Holder of any Parity Debt of any other series incurred hereunder shall not be deemed or considered to be a supplemental trust agreement for purposes of this Article.

ARTICLE XII
DEFEASANCE

Section 1201. Release of Trust Agreement. When:

(a) the Bonds and any Parity Debt secured hereby shall have become due and payable in accordance with their terms or otherwise as provided in this Trust Agreement, and the whole amount of the principal and the interest and premium, if any, so due and payable upon all Bonds and any Parity Debt shall be paid, and

(b) if the Bonds and any Parity Debt shall not have become due and payable in accordance with their terms, the Trustee shall hold, sufficient (i) money or (ii) Defeasance Obligations or a combination of (i) and (ii) of this clause (b), the principal of and the interest on which, when due and payable, will provide sufficient money to pay the principal of, and the interest and redemption premium, if any, on all Bonds or any Parity Debt then Outstanding to the maturity date or dates of such Bonds or any Parity Debt or to the date or dates specified for the redemption thereof, as verified by a verification agent or independent certified public accountant approved by the Local Government Commission, and

(c) if Bonds or any Parity Debt are to be called for redemption, irrevocable instructions to call the Bonds or Parity Debt for redemption shall have been given by the City to the Trustee, and

(d) sufficient funds shall also have been provided or provision made for paying all other obligations payable hereunder by the City;

then and in that case the right, title and interest of the Trustee in the funds, accounts and subaccounts mentioned in this Trust Agreement shall thereupon cease, determine and become void and, upon being furnished with an opinion, in form and substance satisfactory to the Trustee, of counsel approved by the Trustee, to the effect that all conditions precedent to the release of this Trust Agreement have been satisfied, the Trustee shall release this Trust Agreement and shall execute such documents to evidence such release as may be required by such counsel, and the Trustee shall turn over to the City any surplus in, and all balances remaining in, all funds, accounts and subaccounts other than money held for the redemption or payment of Bonds and any Parity Debt. Otherwise, this Trust Agreement shall be, continue and remain in full force and effect; provided, however, that in the event Defeasance Obligations shall be deposited with and held by the Trustee as hereinabove provided, (i) in addition to the requirements set forth in Article III, the Trustee, within thirty (30) days after such Defeasance Obligations shall have been deposited with it, shall cause a notice signed by the Trustee to be mailed, postage prepaid, to all Owners and to all Holders of Parity Debt, setting forth (a) the date or dates, if any, designated for the redemption of the Bonds and any Parity Debt, (b) a description of the Defeasance Obligations so held by it, and (c) that this Trust Agreement has been released in accordance with the provisions of this Section, and (ii) (a) the Trustee shall nevertheless retain such rights, powers and privileges under this Trust Agreement as may be necessary and convenient in respect of the Bonds and any Parity Debt for the payment of the

principal, interest and any premium for which such Defeasance Obligations have been deposited and (b) the Trustee shall retain such rights, powers and privileges under this Trust Agreement as may be necessary and convenient for the registration, transfer and exchange of Bonds; provided, however, that failure to mail such notice to any Owner or to the Owners, or to any such Holder or to such Holders, or any defect in such notice so mailed, shall not affect the validity of the release of this Trust Agreement.

All money and Defeasance Obligations held by the Trustee pursuant to this Section shall be held in trust and applied to the payment, when due, of the obligations payable therewith.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

Section 1301. Successorship of City. In the event the City for any reason shall be dissolved or its legal existence shall otherwise be terminated, all of the covenants, stipulations, obligations and agreements contained in this Trust Agreement by or on behalf of or for the benefit of the City shall bind or inure to the benefit of the successor or City from time to time and any officer, board, commission, authority, agency or instrumentality to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law, and the term "City" as used in this Trust Agreement shall include such successor or successors.

Section 1302. Successorship of Depository. Any bank or trust company with or into which a Depository may be merged or consolidated, or to which the assets and business of such Depository may be sold, shall be deemed the successor of such Depository for the purposes of this Trust Agreement. If the position of any Depository shall become vacant for any reason, the City shall appoint a bank or trust company to fill such vacancy within 30 days thereafter; provided, however, that if the City shall fail to appoint such Depository within such period, the Trustee shall make such appointment; provided, however, that the Trustee shall not be liable for the failure to make such appointment.

Section 1303. Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the City, the Local Government Commission or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

- (a) As to the City--

City of Fayetteville, North Carolina
433 Hay Street
Fayetteville, North Carolina 28301-5537
Attention: Chief Financial Officer

- (b) As to the Trustee--

Regions Bank
3700 Glenwood Avenue, Suite 200
Raleigh, North Carolina 27612
Attention: Corporate Trust Department

(c) As to the Local Government Commission--

North Carolina Local Government Commission
325 N. Salisbury Street
Raleigh, North Carolina 27603-1385
Attention: Secretary

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, return receipt requested, postage prepaid, to the other parties by the party effecting the change.

All documents received by the Trustee under the provisions of this Trust Agreement, or photographic copies thereof, shall be retained in its possession until this Trust Agreement shall be released under the provisions of Section 1201, subject at all reasonable times to the inspection of the City, the Local Government Commission, any Owner and the agents and representatives thereof.

Section 1304. Substitute Mailing. If, because of the temporary or permanent suspension of postal service, the City, the Local Government Commission or the Trustee shall be unable to mail any notice required to be given by the provisions of this Trust Agreement, the City, the Local Government Commission or the Trustee shall give notice in such other manner as in the judgment of the City, the Local Government Commission or the Trustee shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this Trust Agreement be deemed to be in compliance with the requirement for the mailing thereof.

Section 1305. Parties, Owners and Holders Alone Have Rights under Trust Agreement. Except as herein or in a Supplemental Agreement otherwise expressly provided, nothing in this Trust Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the Trustee, the City, the Owners of Bonds and the Holders of Parity Debt any right, remedy or claim, legal or equitable, under or by reason of this Trust Agreement or any provision being intended to be and being for the sole and exclusive benefit of the Trustee, the City, the Owners of Bonds and the Holders of Parity Debt.

Section 1306. Effect of Partial Invalidity. In case any one or more of the provisions of this Trust Agreement or the Bonds or any Parity Debt shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Trust Agreement or the Bonds or any Parity Debt, but this Trust Agreement and the Bonds and Parity Debt shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds and Parity Debt or this Trust Agreement shall for any reason be held to be in violation of law, then such

covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 1307. Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the City contained in this Trust Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent permitted by the Constitution and laws of the State. This Trust Agreement is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 1308. No Recourse Against Members, Officers or Employees of City or Local Government Commission. No recourse under, or upon, any statement, obligation, covenant or agreement contained in this Trust Agreement, or in any Bond or Parity Debt hereby secured, or in any document or certification whatsoever, or under any judgment obtained against the City or the Local Government Commission, or by the enforcement of any assessment, or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any member, officer or employee of the City or the Local Government Commission, either directly or through the City for the payment for or to, the City or the Local Government Commission or any receiver of either of them, or for, or to, any Owner of Bonds or Holder of Parity Debt or otherwise, of any sum that may be due and unpaid upon any such Bond or Parity Debt. Any and all personal liability of every nature, whether at common law or in equity or by statute or by constitution or otherwise, of any such member, officer or employee to respond by reason of any act or omission on his or her part or otherwise, for the payment for, or to, the City or the Local Government Commission or any receiver of either of them, or for, or to, any Owner of Bonds, Holder of Parity Debt or otherwise, of any sum that may remain due and unpaid upon the Bonds or any Parity Debt hereby secured or any of them, is hereby expressly waived and released as an express condition of, and in consideration for, the adoption of this Trust Agreement and the issuance of the Bonds.

Section 1309. Dealing in Bonds and Parity Debt. The Trustee and its directors, officers, employees or agents, and any officer, employee or agent of the City, may in good faith, buy, sell, own, hold and deal in any Bonds and Parity Debt and may join in any action which any Owner or Holder thereof may be entitled to take with like effects as if such Trustee were not a Trustee under this Trust Agreement or as if such officer, employee or agent of the City did not serve in such capacity.

Section 1310. Certain Transactions Subject to the Approval of the Secretary of the Local Government Commission. The City shall receive the approval of the Secretary of the Local Government Commission prior to (i) providing for a Reserve Alternative Instrument, (ii) entering into a Derivative Agreement or (iii) selecting a successor rating agency to replace Fitch, Moody's or S&P for purposes of this Trust Agreement.

Section 1311. Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Trust Agreement, nor shall they affect its meaning, construction or effect.

Section 1312. Further Authority. The officers of the City, attorneys, engineers and other agents or employees of the City are hereby authorized to do all acts and things required of them by this Trust Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Bonds and this Trust Agreement.

Section 1313. Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Trust Agreement is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this Trust Agreement.

Section 1314. Multiple Counterparts. This Trust Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

[remainder of page left intentionally blank]

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

CITY OF FAYETTEVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

Deputy City Clerk

REGIONS BANK, Trustee

By: _____
Vice President

Requisition No. _____

FORM OF REQUISITION AND CERTIFICATE

_____, 20__

Attention: _____

Dear Sir or Madam:

On behalf of the City of Fayetteville, North Carolina (the "City"), in connection with \$ _____ Stormwater System Revenue Bonds, Series ____ (the "Bonds") issued by the City, I hereby requisition from you funds held in the Series ____ Account of the City of Fayetteville Stormwater System Project Fund (the "Project Fund") in accordance with the Trust Agreement, dated as of August 1, 2011 (the "Trust Agreement"), between the City and yourself, as trustee (the "Trustee) and the _____ Supplemental Trust Agreement, dated as of _____, 20__ (the "Supplemental Agreement"), between the City and the Trustee, the sum of \$ _____ payable to _____ for _____.

[] Check if requisition is to fund or reimburse the revolving fund authorized by Section 404 of the Trust Agreement.

I hereby certify that (a) the obligation to make such payment was incurred by the City in connection with the construction and equipping of the Series ____ Project (as defined in the Supplemental Agreement) or is a cost of issuance relating to the issuance of the Bonds, is presently due and payable, is a proper charge against the Project Fund and has not been the basis for any prior requisition which has been paid; (b) the City has not received written notice of any lien, right to lien or attachment upon, or claim affecting the right of such payee to receive payment of any of the money payable under this requisition to any of the persons, firms or corporations named herein, or if any notice of any such lien, attachment or claim has been received, such lien, attachment or claim has been satisfied or discharged or will be satisfied or discharged upon payment of this requisition or provision made to adequately protect the Trustee and the Owners from incurring any loss as a result of the same; and (c) this requisition contains no items representing payment on account of any retainage which the City is entitled to retain at this date.

[Insert one of the two following paragraphs as applicable]

I hereby further certify that such requisition contains no items for the payment of the purchase price or cost of any lands, property, property rights, rights-of-way, easements, franchises or interests in or relating to lands, other than lands, property, property rights, rights-of-way, easements, franchises or interests already constituting a part of the System.

I hereby further certify that the land, property, property rights, rights of way, easements, franchises or other interest being acquired by the City in connection with this requisition are being acquired by the City in furtherance of the construction or acquisition of the _____ Project.

All capitalized terms not otherwise defined herein shall have the same meaning in the Trust Agreement.

Authorized Officer

[If such item of payment is directly related to the acquisition of interests in land, attach City Attorney opinion required by Section 405(b) of the Trust Agreement.]

FIRST SUPPLEMENTAL TRUST AGREEMENT

Dated as August 1, 2011

Between

CITY OF FAYETTEVILLE, NORTH CAROLINA

and

REGIONS BANK
Trustee

Authorizing and Securing

\$10,595,000
City of Fayetteville, North Carolina
Stormwater System Revenue Bond
Series 2011

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This FIRST SUPPLEMENTAL TRUST AGREEMENT, dated as of August 1, 2011 (the "First Supplemental Agreement"), between the CITY OF FAYETTEVILLE, NORTH CAROLINA, a municipal corporation duly organized and existing under the laws of the State of North Carolina (the "City"), and REGIONS BANK, a state banking corporation duly organized and existing under the laws of the State of Alabama and having a designated corporate trust office in Raleigh, North Carolina, which is authorized under such laws to exercise trust powers (the "Trustee");

WITNESSETH:

WHEREAS, simultaneously with the execution and delivery of this First Supplemental Agreement, the City has executed and delivered a Trust Agreement, dated as of August 1, 2011 (the "Trust Agreement"), between the City and the Trustee, which authorizes the City to issue revenue bonds in accordance with the terms thereof to finance and refinance, among other things, improvements to the System (as defined in the Trust Agreement);

WHEREAS, the City has determined that the issuance of the Series 2011 Bond (hereinafter defined) as provided herein to finance the costs of acquiring, constructing and equipping various improvements to the System will benefit and be in the best interests of the City; and

WHEREAS, on August 8, 2011, the City Council of the City adopted an order authorizing the issuance of the Series 2011 Bond;

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

ARTICLE I
DEFINITIONS

Section 101. Meaning of Words and Terms. Unless otherwise required by the context, capitalized words and terms used herein which are defined in the Trust Agreement shall have the meanings assigned to them therein, and the following words and terms shall have the following meanings:

“Closing” means the delivery of and payment for the Series 2011 Bond.

“Closing Date” means the date of the Closing.

“First Supplemental Agreement” means this First Supplemental Trust Agreement, dated as of August 1, 2011, between the City and the Trustee, as supplemented and amended from time to time as permitted hereby.

“Interest Payment Date” means each February 1 and August 1, as the case may be, beginning February 1, 2012.

“Principal Payment Date” means each February 1 and August 1, as the case may be, beginning February 1, 2012.

“Purchaser” means SunTrust Equipment Finance & Leasing Corp., as the original purchaser of the Series 2011 Bond.

“Regular Record Date” means the day immediately preceding each Interest Payment Date or Principal Payment Date, whether or not a Business Day.

“Series 2011 Bond” means the \$10,595,000 City of Fayetteville, North Carolina Stormwater System Revenue Bond, Series 2011, issued pursuant to the Trust Agreement and this First Supplemental Agreement.

“Series 2011 Project” means the acquisition, construction and equipping of various improvements to the City’s natural and structural stormwater and drainage system, including, without limitation, erosion control projects, drainage projects, culverts, outfalls and the acquisition of any related land, rights of way and equipment.

“Series 2011 Project Account” means the account created and so designated by Section 401.

“Series 2011 Subaccount of the Interest Account” means the subaccount created and so designated by Section 401.

“Series 2011 Subaccount of the Principal Account” means the subaccount created and so designated by Section 401.

“Series 2011 Subaccount of the Redemption Account” means the subaccount created and so designated by Section 401.

“State” means the State of North Carolina.

“Trust Agreement” means the Trust Agreement, dated as of August 1, 2011, between the City and the Trustee, as supplemented and amended from time to time as permitted thereby.

Section 102. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words used herein shall include the plural as well as the singular number. References herein to particular articles or sections are references to articles or sections of this First Supplemental Agreement unless some other reference is indicated.

ARTICLE II

AUTHORIZATION, FORM, ISSUANCE AND DELIVERY OF THE SERIES 2011 BOND

Section 201. Authorization and Issuance of Series 2011 Bond. The City hereby authorizes the issuance of a \$10,595,000 City of Fayetteville, North Carolina Stormwater System Revenue Bond, Series 2011 for the purpose of providing funds, together with other available funds, to (a) pay the costs of the Series 2011 Project and (b) pay the other costs and expenses incurred in connection with the issuance and sale of the Series 2011 Bond. The Series 2011 Bond shall be issued under and pursuant to the Constitution and the laws of the State, including the Act, an order adopted by the City Council of the City on August 8, 2011, the Trust Agreement and this First Supplemental Agreement, subject to the conditions set forth herein and therein.

Section 202. Form of Series 2011 Bond. The definitive Series 2011 Bond shall be initially issued as one fully registered bond without coupons numbered R-1 in the aggregate principal amount of \$10,595,000, and shall be initially registered in the name of the Purchaser. The definitive Series 2011 Bond shall be substantially in the form set forth in Exhibit A attached hereto and made a part hereof, with such appropriate variations, omissions and insertions as are permitted or required by the Trust Agreement or this First Supplemental Agreement. Notwithstanding anything in the Trust Agreement to the contrary, the Series 2011 Bond may be transferred in the manner specified in the Trust Agreement, but may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or this First Supplemental Agreement to the contrary, the Trustee shall not register the transfer of the Series 2011 Bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission. The provisions of this paragraph may not be amended without the prior written consent of the Local Government Commission.

Section 203. Details of Series 2011 Bond. The Series 2011 Bond shall be dated the Closing Date, shall bear interest at a rate of 3.135% per annum (computed on the basis of a 360-day year consisting of twelve 30-day months), such interest being payable on each Interest Payment Date, and shall mature (subject to the right of prior redemption) in principal installments payable on each Principal Payment Date as set forth in the Series 2011 Bond, with the final principal installment being due and payable on August 1, 2026.

Section 204. Terms and Condition for Issuance of Series 2011 Bond. The Series 2011 Bond shall be executed substantially in the form and in the manner herein and in the Trust Agreement set forth and shall be deposited with the Trustee for authentication, but before the Series 2011 Bond shall be authenticated and delivered to the State Treasurer for redelivery to the Purchaser, there shall be filed with the Trustee, in addition to the items required to be delivered to the Trustee pursuant to Section 208 of the Trust Agreement, the following:

(a) fully executed copies of the Trust Agreement and this First Supplemental Agreement;

(b) an opinion of the City Attorney to the effect that (i) the bond order authorizing the issuance of the Series 2011 Bond has been duly adopted by the City Council, and the Trust Agreement and this First Supplemental Agreement have each been duly and validly authorized, executed and delivered by the City, (ii) no provision of the Trust Agreement or this First Supplemental Agreement violates any provisions of the City's charter or, to the best of his knowledge, results in or constitutes a default under any agreement, indenture or other instrument to which the City is a party or by which the City may be bound, (iii) the execution and delivery of the Trust Agreement and this First Supplemental Agreement by the City and the issuance of the Series 2011 Bond by the City are not subject to any authorization, consent, approval or review of any governmental body, public officer or regulatory authority not theretofore obtained or effected, (iv) the form, terms, execution, issuance and delivery of the Series 2011 Bond have been duly and validly authorized by the City and (v) all approvals, consents, authorizations, certifications and other orders of any governmental authority, board, agency or commission having jurisdiction, or filings with any such entities, which would be necessary for the acquisition and construction of the Series 2011 Project, and which are required to have been obtained or to have been filed by the Closing Date, have been obtained or filed; provided, however, that such opinion may except matters pertaining to compliance with federal and State securities laws, The Local Government Finance Act of the State, including, without limitation, the Act, and federal and State taxation;

(c) an opinion of bond counsel to the effect that the Series 2011 Bond has been validly issued in accordance with the provisions of the Trust Agreement and this First Supplemental Agreement; and

(d) such other documentation as may reasonably requested by the Trustee, the Purchaser or bond counsel.

When the documents mentioned in Section 208 of the Trust Agreement and subsections (a) through (d) of this Section shall have been filed with the Trustee, and when the Series 2011 Bond shall have been executed and authenticated as required by this First Supplemental Agreement, the Series 2011 Bond shall be delivered to or upon the order of the State Treasurer for redelivery to or upon the order of the Purchaser, but only upon the payment by the Purchaser of the purchase price in the amount of \$10,593,500 (representing the aggregate par amount of the Series 2011 Bond less a \$1,500 legal review fee retained by the Purchaser). The Trustee shall cause the proceeds of the Series 2011 Bond to be deposited to the credit of the Series 2011 Project Account.

ARTICLE III

REDEMPTION OF SERIES 2011 BOND

Section 301. Redemption of Series 2011 Bond. (a) The principal installments of the Series 2011 Bond shall not be subject to prior redemption except as provided in this Article and in Article III of the Trust Agreement.

(b) The principal installments of the Series 2011 Bond due and payable on or after February 1, 2022 are subject to redemption in whole, but not in part, prior to their stated payment dates, at the option of the City, from any moneys that may be available for such purpose on any date on or after August 1, 2021, at the following Redemption Prices, plus accrued interest, if any, thereon to the redemption date:

<u>Redemption Period (Inclusive)</u>	<u>Redemption Price</u>
August 1, 2021 to July 31, 2022	102%
August 1, 2022 to July 31, 2023	101
August 1, 2023 and thereafter	100

Section 302. Redemption Notice. At least ten (10) days but not more than sixty (60) days prior to the redemption date of the Series 2011 Bond, the Trustee shall cause a notice of such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the Owner of the Series 2011 Bond. A copy of such notice shall also be given by first class mail, postage prepaid, to the Local Government Commission; provided, however, that failure to give such notice to the Local Government Commission or any defect therein shall not affect the sufficiency of the proceedings for redemption.

Such notice shall set forth the designation and date of the Series 2011 Bond, the date fixed for redemption, the principal amount of the Series 2011 Bond to be redeemed, the Redemption Price to be paid, the address and phone number of the Trustee and the date of the redemption notice.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on the Series 2011 Bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and the Series 2011 Bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on the Series 2011 Bond to be redeemed are not received by the Trustee on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

ARTICLE IV

ACCOUNT, SUBACCOUNTS, REVENUES AND FUNDS; OTHER COVENANTS

Section 401. Establishment of Account and Subaccounts. (a) There is hereby established with the Trustee the following subaccounts of the Bond Fund:

- (1) Series 2011 Subaccount of the Interest Account;
- (2) Series 2011 Subaccount of the Principal Account; and
- (3) Series 2011 Subaccount of the Redemption Account.

(b) There is hereby established with the Trustee the “Series 2011 Project Account” of the Project Fund.

The Series 2011 Bond shall not be secured by the Parity Reserve Account or any Special Reserve Account.

Section 402. Revenues Received by the City. The City shall, subject to the provisions of Section 503 and Section 504 of the Trust Agreement, deposit or cause to be deposited with the Trustee, from Receipts held in the Revenue Fund, the following amounts, and the Trustee shall apply such amounts to the various accounts and subaccounts specified herein in the following order:

(a) into the Series 2011 Subaccount of the Interest Account, on the Business Day immediately preceding each Interest Payment Date, the amount required to pay the interest due on the Series 2011 Bond on such Interest Payment Date; and

(b) into the Series 2011 Subaccount of the Principal Account, on the Business Day immediately preceding each Principal Payment Date, the amount required to pay the principal installment of the Series 2011 Bond coming due on such Principal Payment Date.

In addition, the Trustee shall deposit to the Series 2011 Subaccount of the Redemption Account all amounts as shall be delivered to the Trustee by the City from time to time with instructions that such amounts be so deposited.

Section 403. Application of Money in the Series 2011 Project Account. Money deposited in the Series 2011 Project Account in accordance with Section 204 shall be applied to pay the Costs of the Series 2011 Project and the costs and expenses incurred in connection with the issuance of the Series 2011 Bond, all in accordance with Article IV of the Trust Agreement.

Section 404. Application of Money in the Series 2011 Subaccounts of the Principal Account and the Redemption Account. (a) The Trustee shall apply money in the Series 2011

Subaccount of the Principal Account to pay the maturing principal of the Series 2011 Bond as provided in Section 506 of the Trust Agreement.

(b) The Trustee shall apply money in the Series 2011 Subaccount of the Redemption Account to the redemption of Series 2011 Bond as provided in Article III of this First Supplemental Agreement. The Trustee shall pay the accrued interest on the Series 2011 Bond or portions thereof to be redeemed to the date of redemption from the Series 2011 Subaccount of the Interest Account or other available funds of the City and the Redemption Price of the Series 2011 Bond from the Series 2011 Subaccount of the Redemption Account. The expenses incurred by the Trustee in connection with the redemption of the Series 2011 Bond shall be paid by the City from the Revenue Fund or from any other available moneys of the City.

Section 405. Investment of Money. Money held for the credit of all accounts and subaccounts established hereunder on deposit with the Trustee shall be continuously invested and reinvested by the Trustee in Investment Obligations to the extent practicable. Any such Investment Obligations shall mature not later than the respective dates when the money held for the credit of such subaccounts will be required for the purposes intended. No Investment Obligations in any such account or subaccount may mature beyond the final maturity date of the Series 2011 Bond at the time such Investment Obligations are deposited.

Investment Obligations acquired with money in or credited to any account or subaccount established hereunder shall be deemed at all times to be part of such account or subaccount. Any loss realized upon the disposition or maturity of such Investment Obligations shall be charged against such account or subaccount. The interest accruing on any such Investment Obligations and any profit realized upon the disposition or maturity of such Investment Obligations shall be credited to such Accounts or subaccounts as follows:

<u>Funds, Accounts or Subaccounts</u>	<u>Credited to</u>
Series 2011 Subaccount of the Interest Account	Series 2011 Subaccount of the Interest Account
Series 2011 Subaccount of the Principal Account	Series 2011 Subaccount of the Principal Account
Series 2011 Subaccount of the Redemption Account	Series 2011 Subaccount of the Interest Account
Series 2011 Project Account	Series 2011 Project Account

Any such interest accruing and any such profit realized shall be transferred upon the receipt thereof by the City or the Trustee, as the case may be, pursuant to the provisions of the Trust Agreement and this First Supplemental Agreement.

An Authorized Officer shall give to the Trustee written directions respecting the investment of any money required to be invested hereunder, subject, however, to the provisions of this Section, and the Trustee shall then invest such money as so directed. The Trustee may request in writing additional direction or authorization from the Authorized Officer with respect

to the proposed investment of money. Upon receipt of such directions, the Trustee shall invest, subject to the provisions of this Section, such money in accordance with such directions.

The Trustee shall sell or reduce to cash in a commercially reasonable manner a sufficient amount of such Investment Obligations whenever it is necessary to do so in order to provide money to make any payment from any such subaccount. The Trustee shall not be liable or responsible for any loss resulting from any such investment.

Whenever a transfer of money between two or more of the subaccounts is permitted or required, such transfer may be made as a whole or in part by transfer of one or more Investment Obligations at a value determined at the time of such transfer in accordance with Article VI of the Trust Agreement, provided that the Investment Obligations transferred are those in which money of the receiving subaccount could be invested at the date of such transfer.

Section 406. Payment of Principal, Interest and Premium and Pledge of Net Receipts. The City covenants that it shall promptly pay the principal of and interest on the Series 2011 Bond issued under the provisions of this First Supplemental Agreement at the place, on the dates and in the manner provided herein and in said Series 2011 Bond, and any premium required for the retirement of said Series 2011 Bond by purchase or redemption, according to the true intent and meaning thereof. The City further covenants that it shall faithfully perform at all times all of its covenants, undertakings and agreements contained in this First Supplemental Agreement and the Trust Agreement, or in the Series 2011 Bond executed, authenticated and delivered hereunder or in any proceedings of the City pertaining thereto. The City represents and covenants that it is duly authorized under the Constitution and laws of the State, particularly the Act, to issue the Series 2011 Bond authorized hereby and to pledge the Net Receipts in the manner and to the extent herein and in the Trust Agreement set forth; that all action on its part for the issuance of the Series 2011 Bond has been duly and effectively taken; and that such Series 2011 Bond in the hands of the Owners thereof are and will be valid and binding special obligations of the City payable according to their terms. The Series 2011 Bond shall be secured pari passu as to the pledge of Net Receipts and shall be entitled to the same benefit and security under the Trust Agreement as all other Bonds and Parity Debt issued or incurred thereunder.

Section 407. Tax Covenants. The City covenants to do and perform all acts and things permitted by law in order to assure that interest paid on the Series 2011 Bond which was excludable from the gross income of their owners for federal income taxes on the date of their issuance shall continue to be so excludable.

Section 408. Financial Statements. The City shall provide to the Owner of the Series 2011 Bond copies of the audited annual financial statements of the City and any other certificates or information required to be provided by the City pursuant to Section 706 of the Trust Agreement.

ARTICLE V
THE TRUSTEE

Section 501. Acceptance of Duties by Trustee. The Trustee by execution hereof accepts and agrees to fulfill the trusts imposed upon it by this First Supplemental Agreement.

ARTICLE VI

SUPPLEMENTAL TRUST AGREEMENTS

Section 601. Modification of First Supplemental Agreement With Consent of Owner. Subject to the terms and provisions contained in this Section, and not otherwise, the Owner of the Series 2011 Bond shall have the right, from time to time, anything contained in this First Supplemental Agreement to the contrary notwithstanding, to consent to and approve the execution and delivery by the City and the Trustee of such supplemental trust agreement as shall be deemed necessary or desirable by the City for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this First Supplemental Agreement or in any supplemental trust agreement, such consent not to be unreasonably withheld by such Owner; provided, however, that any modification of the principal installments or Principal Payment Dates for the Series 2011 Bond shall require the prior written consent of the Local Government Commission.

The Trustee shall, at the expense of the City, cause notice of the proposed supplemental trust agreement to be mailed, postage prepaid, to the Local Government Commission and the Owner of the Series 2011 Bond as of the date such notice is mailed. Such notice shall briefly set forth the nature of the proposed supplemental trust agreement and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by such Owner.

Whenever, at any time after the date of the mailing of such notice, the City shall deliver to the Trustee an instrument in writing purporting to be executed by the Owner of the Series 2011 Bond, which instrument shall refer to the proposed supplemental trust agreement described in such notice and shall specifically consent to and approve the execution and delivery thereof in substantially the form of the copy thereof referred to in such notice, thereupon, but not otherwise, the City and the Trustee may execute and deliver such supplemental trust agreement in substantially such form, without liability or responsibility to such Owner.

If the Owner of the Series 2011 Bond has consented to and approved the execution and delivery thereof as herein provided, to the extent permitted by law, the Owner shall have no right to object to the execution and delivery of such supplemental trust agreement, to object to any of the terms and provisions contained therein or the operation thereof, to question the propriety of the execution and delivery thereof, or enjoin or restrain the City or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

Upon the execution and delivery of any supplemental trust agreement pursuant to the provisions of this Section, this First Supplemental Agreement shall be and be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this First Supplemental Agreement of the City, the Trustee and the Owner of the Series 2011 Bond shall thereafter be determined, exercised and enforced in all respects pursuant to the provisions of this First Supplemental Agreement, as so modified and amended.

Section 602. Responsibilities of Trustee and City Under this Article. The Trustee and the City shall be entitled to exercise their discretion in determining whether or not any proposed supplemental trust agreement or any term or provision therein contained is desirable, after considering the purposes of such instrument, the needs of the City, the rights and interests of the Owner of the Series 2011 Bond, and the rights, obligations and interests of the Trustee. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of counsel approved by it, who may be bond counsel for the City, as conclusive evidence that any such proposed supplemental trust agreement does or does not comply with the provisions of this First Supplemental Agreement, and that it is or is not proper for it, under the provisions of this Article, to execute and deliver such supplemental trust agreement. The Trustee shall not be obligated to enter into any supplemental trust agreement pursuant to this Article that adversely affects the Trustee's own rights, duties or immunities under this First Supplemental Agreement.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 701. Manner of Giving Notice. All notices, demands and requests to be given to or made hereunder by the City, the Local Government Commission or the Trustee shall be given or made in writing and shall be deemed to be properly given or made if sent by United States registered or certified mail, return receipt requested postage prepaid, addressed as follows:

- (a) As to the City --

City of Fayetteville
433 Hay Street
Fayetteville, North Carolina 28301-5537
Attention: Chief Financial Officer

- (b) As to the Trustee --

Regions Bank
3700 Glenwood Avenue, Suite 200
Raleigh, North Carolina 27612
Attention: Corporate Trust Department

- (c) As to the Local Government Commission --

North Carolina Local Government Commission
325 N. Salisbury Street
Raleigh, North Carolina 27603-1385
Attention: Secretary

Any such notice, demand or request may also be transmitted to the appropriate above-mentioned party by telegram or telephone and shall be deemed to be properly given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing and sent as specified above.

Any of such addresses may be changed at any time upon written notice of such change sent by United States registered or certified mail, postage prepaid, to the other parties by the party effecting the change.

Section 702. Substitute Mailing. If, because of the temporary or permanent suspension of postal service, the City, the Local Government Commission, the Trustee shall be unable to mail any notice required to be given by the provisions of this First Supplemental Agreement, such party shall give notice in such other manner as in the judgment of such party shall most effectively approximate mailing, and the giving of notice in such manner shall for all purposes of this First Supplemental Agreement be deemed to be in compliance with the requirement for the mailing thereof.

Section 703. City, Trustee, Purchaser and Owner Alone Have Rights Under First Supplemental Agreement. Except as herein otherwise expressly provided, including, without limitation, nothing in this First Supplemental Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation, other than the City, the Trustee, the Purchaser and the Owner of the Series 2011 Bond, any right, remedy or claim, legal or equitable, under or by reason of this First Supplemental Agreement or any provision being intended to be and being for the sole and exclusive benefit of the City, the Trustee, the Purchaser and the Owner of the Series 2011 Bond.

Section 704. Effect of Partial Invalidity. In case any one or more of the provisions of this First Supplemental Agreement or the Series 2011 Bond shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this First Supplemental Agreement or the Series 2011 Bond, but this First Supplemental Agreement and the Series 2011 Bond shall be construed and enforced as if such illegal or invalid provisions had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in this First Supplemental Agreement or the Series 2011 Bond shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

Section 705. Effect of Covenants; Governing Law. All covenants, stipulations, obligations and agreements of the City contained in this First Supplemental Agreement shall be deemed to be covenants, stipulations, obligations and agreements of the City to the full extent permitted by the Constitution and laws of the State. This First Supplemental Agreement is executed and delivered with the intent that the laws of the State shall govern this construction.

Section 706. Headings. Any heading preceding the text of the several articles hereof, any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this First Supplemental Agreement, nor shall they affect its meaning, construction or effect.

Section 707. Further Authority. The officers of the City, attorneys and other agents or employees of the City are hereby authorized to do all acts and things required of them by this First Supplemental Agreement for the full, punctual and complete performance of all of the terms, covenants and agreements contained in the Series 2011 Bond and this First Supplemental Agreement.

Section 708. Payment Due on Holidays. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this First Supplemental Agreement is not a Business Day, such payment may be made or act performed or right exercised on the next Business Day with the same force and effect as if done on the date provided in this First Supplemental Agreement.

Section 709. Multiple Counterparts. This First Supplemental Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one and the same instrument.

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

CITY OF FAYETTEVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

Deputy City Clerk

REGIONS BANK, as Trustee

By: _____
Vice President

FORM OF SERIES 2011 BOND

R-1

\$10,595,000

United States of America
State of North Carolina
County of Cumberland

CITY OF FAYETTEVILLE
STORMWATER SYSTEM REVENUE BOND
SERIES 2011

The CITY OF FAYETTEVILLE, NORTH CAROLINA (the “City”), a municipal corporation in Cumberland County, North Carolina, for value received, hereby promises to pay, but solely from the sources and in the manner hereinafter provided, to SUNTRUST EQUIPMENT FINANCE & LEASING CORP., or registered assigns or legal representative, the principal sum of TEN MILLION FIVE HUNDRED NINETY-FIVE THOUSAND DOLLARS (\$10,595,000) in semi-annual installments of principal payable on February 1 and August 1 of each year, beginning February 1, 2012, as set forth in Schedule A attached hereto and made a part hereof (each, a “Principal Payment Date”), and to pay, but solely from said sources, interest from the date hereof on the unpaid portion of said principal sum until payment thereof, (computed on the basis of a 360-day year consisting of twelve 30-day months) at the rate of 3.135% per annum, such interest being payable on February 1 and August 1 of each year, beginning February 1, 2012, as set forth in Schedule A attached hereto (each, an “Interest Payment Date”).

The principal and interest so payable and punctually paid or duly provided for on any Principal Payment Date or Interest Payment Date shall be paid to the person in whose name this bond is registered at the close of business on the Regular Record Date for such payment, which shall be the day immediately preceding each Interest Payment Date or Principal Payment Date, whether or not a Business Day. Any such principal or interest not so punctually paid or duly provided for shall forthwith cease to be payable to the registered owner on such Regular Record Date, and may be paid to the person in whose name this bond is registered at the close of business on a Special Record Date for the payment of such defaulted principal or interest to be fixed by the Trustee (hereinafter mentioned), notice whereof being given to the registered owner not less than ten (10) days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which this bond may be listed and upon such notice as may be required by such exchange, or as more fully provided in the Trust Agreement. Payment of the final installment of principal shall be made only upon the presentation and surrender hereof at the designated corporate trust office of Regions Bank in Raleigh, North Carolina, or its successor (the “Trustee”). All such payments shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

This bond is a duly authorized revenue bond of the City designated “City of Fayetteville, North Carolina Stormwater System Revenue Bond, Series 2011” issued under and pursuant to the Constitution and laws of the State of North Carolina, including the Act, an order of the City adopted on August 8, 2011, authorizing the issuance of this bond, a Trust Agreement, dated as of August 1, 2011 (the “Trust Agreement”), between the City and the Trustee, and a First Supplemental Trust Agreement, dated as of August 1, 2011 (the “First Supplemental Agreement”), between the City and the Trustee. This bond is being issued for the purpose of providing funds, together with any other available funds, to (a) pay the costs of acquiring, constructing and equipping various improvements to the City’s natural and structural stormwater and drainage system and (b) pay the costs and expenses incurred in connection with the issuance and sale of this bond. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Trust Agreement and the First Supplemental Agreement.

This bond is a special obligation of the City secured by a pledge, charge and lien upon Net Receipts on a pari passu basis with the Outstanding Bonds and Parity Debt hereafter issued or incurred pursuant to the Trust Agreement. The City is not obligated to pay the principal of or the interest on this bond except as provided in the Trust Agreement from Net Receipts or certain other monies made available therefor under the Trust Agreement, and neither the faith and credit nor the taxing power of the State of North Carolina or any political subdivision thereof or the City is pledged to the payment of the principal of and the interest on this bond.

The Trust Agreement provides for the issuance or incurrence from time to time under the conditions, limitations and restrictions set forth therein of additional Bonds and Parity Debt secured pari passu as to the pledge of Net Receipts with this bond and any additional bonds or Parity Debt hereafter issued or incurred pursuant to the Trust Agreement.

Reference is made to the Trust Agreement and the First Supplemental Agreement for a more complete statement of the provisions thereof and of the rights of the City, the Trustee and the registered owner of this bond. Copies of the Trust Agreement and the First Supplemental Agreement are available for inspection by the registered owner of this bond at all reasonable times at the designated corporate trust office of the Trustee. By the purchase and acceptance of this bond, the registered owner hereof signifies assent to all of the provisions of the Trust Agreement and the First Supplemental Agreement.

The Trust Agreement provides for the creation of a special fund designated “City of Fayetteville Stormwater System Bond Fund” (the “Bond Fund”). Pursuant to the First Supplemental Agreement, special subaccounts have been created within the various accounts of the Bond Fund with respect to this bond (the “Subaccounts”), which Subaccounts are pledged and charged with the payment of the principal of and the interest on this bond. The First Supplemental Agreement provides for the deposit of Net Receipts to the credit of the Subaccounts to the extent and in the manner provided in the Trust Agreement and the First Supplemental Agreement.

The Trustee shall keep at its designated corporate trust office books for the registration of transfer of this bond. The transfer of this bond may be registered only upon such books and as otherwise provided in the Trust Agreement upon the surrender hereof to the Trustee together

with an assignment duly executed by the registered owner hereof or his attorney or legal representative in such form as shall be satisfactory to the Trustee. Upon any such registration of transfer, the Trustee shall deliver in exchange for this bond a new bond registered in the name of the transferee in an aggregate principal amount equal to the principal amount of this bond, containing the same principal installments and bearing interest at the same rate. This bond may not be exchanged for any denomination other than the outstanding principal amount thereof.

Notwithstanding any other provisions of the Trust Agreement or the First Supplemental Agreement to the contrary, the Trustee shall not register the transfer of this bond to any person other than a bank, insurance company or similar financial institution unless such transfer has been previously approved by the Local Government Commission.

The principal installments of this bond due and payable on or after February 1, 2022 are subject to redemption in whole, but not in part, prior to their stated payment dates, at the option of the City, from any moneys that may be available for such purpose on any date on or after August 1, 2021, at the following Redemption Prices, plus accrued interest, if any, thereon to the redemption date:

<u>Redemption Period (Inclusive)</u>	<u>Redemption Price</u>
August 1, 2021 to July 31, 2022	102%
August 1, 2022 to July 31, 2023	101
August 1, 2023 and thereafter	100

At least ten (10) days but not more than sixty (60) days prior to the redemption date of this bond, the Trustee shall cause a notice of any such redemption signed by the Trustee to be mailed, first class, postage prepaid, to the registered owner of this bond.

Any notice of redemption may state that the redemption to be effected is conditioned upon the receipt by the Trustee on or prior to the redemption date of moneys sufficient to pay the principal of and premium, if any, and interest on this bond to be redeemed and that if such moneys are not so received such notice shall be of no force or effect and this bond shall not be required to be redeemed. In the event that such notice contains such a condition and moneys sufficient to pay the principal of and premium, if any, and interest on this bond to be redeemed are not received by the Trustee on or prior to the redemption date, the redemption shall not be made, and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received.

On the date designated for redemption, notice having been given as aforesaid, this bond shall become due and payable at the Redemption Price provided for redemption of such principal installments on such date plus accrued interest to such date.

The registered owner of this bond shall have no right to enforce the provisions of the Trust Agreement or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Trust Agreement, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Trust Agreement.

Modifications or alterations of the Trust Agreement and the First Supplemental Agreement or in any supplement trust agreement thereto may be made only to the extent and in the circumstances permitted by the Trust Agreement and the First Supplemental Agreement, as the case may be.

This bond, notwithstanding the provisions for registration of transfer stated herein and contained in the Trust Agreement and the First Supplemental Agreement, at all times shall be, and shall be understood to be, an investment security within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code of North Carolina. This bond is issued with the intent that the laws of the State of North Carolina shall govern its construction.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this bond and the execution and delivery of the Trust Agreement and the First Supplemental Agreement have happened, exist and have been performed as so required.

This bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Trust Agreement or the First Supplemental Agreement until it shall have been authenticated by the execution by the Trustee of the certificate of authentication endorsed hereon.

IN WITNESS WHEREOF, the City of Fayetteville, North Carolina, by order duly passed by its City Council, has caused this bond to be manually signed by the City Manager and the Deputy City Clerk and its official seal to be impressed hereon, all as of the ___ day of August, 2011.

City Manager

[SEAL]

Deputy City Clerk

CERTIFICATE OF LOCAL GOVERNMENT COMMISSION

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

Secretary, Local Government Commission

CERTIFICATE OF AUTHENTICATION

This bond is a bond of the series designated therein and issued under the provisions of the within mentioned Trust Agreement and Supplemental Agreement.

REGIONS BANK, as Trustee

By: _____
Authorized Signatory

Date of authentication: _____

ASSIGNMENT

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

PLEASE INSERT SOCIAL SECURITY NUMBER
OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE

the within bond and all right thereunder, and hereby irrevocably constitutes and appoints _____
_____, attorney, to transfer the within bond on the books
kept for registration thereof, with full power of substitution in the premises.

Dated: _____

In the presence of:

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

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

DEBT SERVICE SCHEDULE

[Debt Service Schedule to be Attached]

BOND PURCHASE AGREEMENT

among

City of Fayetteville, North Carolina,

Local Government Commission

and

SunTrust Equipment Finance & Leasing Corp.

concerning

\$10,595,000

City of Fayetteville, North Carolina

Stormwater System Revenue Bond

Series 2011

BOND PURCHASE AGREEMENT

concerning

\$10,595,000

City of Fayetteville, North Carolina
Stormwater System Revenue Bond
Series 2011

August 11, 2011

City of Fayetteville, North Carolina
Fayetteville, North Carolina

Local Government Commission
Raleigh, North Carolina

Ladies and Gentlemen:

SunTrust Equipment Finance & Leasing Corp. (the “Purchaser”) hereby offers to enter into this Bond Purchase Agreement with the Local Government Commission, a division of the Department of State Treasurer of the State of North Carolina (the “LGC”), and the City of Fayetteville, North Carolina (the “City”), which, upon acceptance of this offer by the LGC and approval of this offer and of the LGC’s acceptance thereof by the City, will be binding upon the LGC, the City and the Purchaser.

1. Purchase and Sale of the Bond. Upon the terms and conditions hereof and upon the basis of the representations set forth herein, the Purchaser hereby agrees to purchase, and the LGC and the City hereby agree to sell to the Purchaser, \$10,595,000 aggregate principal amount of the City of Fayetteville, North Carolina Stormwater System Revenue Bond, Series 2011 (the “Bond”). The purchase price for the Bond shall be \$10,593,500, representing the aggregate par amount of the Bond less a \$1,500 legal review fee retained by the Purchaser. The delivery and payment for the Bond and other actions contemplated hereby shall take place at the time thereof being herein sometimes called the “Closing.”

The Bond shall consist of one fully registered bond certificate in the principal amount of \$10,595,000, shall be dated as of the date hereof and shall bear interest from its date, at a rate of 3.135% per annum. The Bond shall be issued and secured under the provisions of a bond order adopted by the City Council of the City (the “City Council”) on August 8, 2011 (the “Order”), a Trust Agreement, dated as of August 1, 2011 (the “Trust Agreement”), between the City and Regions Bank, as trustee (the “Trustee”), and a First Supplemental Trust Agreement, dated as of August 1, 2011 (the “First Supplemental Agreement”), between the City and the Trustee. All capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Trust Agreement and the First Supplemental Agreement.

The proceeds of the Bond are to be used to provide funds, together with any other available funds, to pay (a) the costs of acquiring, constructing and equipping various improvements to the City's natural and structural stormwater and drainage system, including, without limitation, erosion control projects, drainage projects, culverts, outfalls and the acquisition of any related land, rights of way and equipment (the "Series 2011 Project") and (b) certain costs and expenses incidental to the issuance and sale of the Bond.

2. Representations of the Purchaser; Purchase for Account. (a) The Purchaser hereby acknowledges and represents, in respect of the Bond, that:

(i) the Purchaser is familiar with the City;

(ii) the Purchaser has been furnished with all financial and other information about the City, the Bond and the System as requested by the Purchaser; and

(iii) the City has made available to the Purchaser the opportunity to obtain additional information about the City, the Bond and the System.

(b) The Purchaser further acknowledges and represents in respect of the Bond that a part of the Purchaser's business consists of the purchase, holding and sale of obligations of the same general character as the Bond, and the Purchaser has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks inherent in purchasing the Bond. The Purchaser has made such investigation of the Bond and of the financial condition and operations of the City and the System as it deems necessary to evaluate the merits and risks inherent in purchasing the Bond. The Purchaser is aware that there may be no secondary market for the Bond and that it may be required to hold the Bond for an indefinite period. The Purchaser represents that it is purchasing the Bond for its own account with no present intention to resell or distribute the Bond or any interest therein; provided, however, that the Purchaser reserves the right at all times to control the disposition of its assets, including the Bond, and reserves the right to sell, assign and transfer the Bond or fractional interests in the Bond to other banks, insurance companies or similar financial institutions or to any other purchaser if such sale, assignment or transfer is approved in writing by the LGC.

3. Representations and Warranties of the City. The City, by its acceptance hereof, represents and warrants to the Purchaser as follows:

(a) The City is a municipal corporation duly organized and validly existing under the laws of the State of North Carolina, and is authorized and empowered to provide for the acquisition, construction and equipping of the Series 2011 Project by causing the Bond to be issued.

(b) The City has the full legal right, power and authority to adopt the Order, to execute and deliver the Trust Agreement, the First Supplemental Trust Agreement and this Bond Purchase Agreement and to perform its respective obligations hereunder and thereunder.

(c) The Order has been duly adopted by the City Council, is in full force and effect and has not been modified or amended in any manner.

(d) The City has duly authorized (i) the execution and delivery of the Trust Agreement,, the First Supplemental Agreement and this Bond Purchase Agreement, (ii) the issuance and delivery of the Bond and (iii) such action as may be required on the part of the City to consummate the transactions contemplated by such documents.

(e) This Bond Purchase Agreement, the Trust Agreement and the First Supplemental Agreement constitute legal, valid and binding obligations of the City enforceable in accordance with their respective terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles. The Owner of the Series 2011 Bond will be entitled to the security created by the Trust Agreement and the First Supplemental Agreement as provided therein.

(f) The City is not in violation of any applicable constitutional provision, law or administrative rule or regulation of the State of North Carolina or of the United States of America or in default under any agreement, resolution, indenture or instrument to which the City is a party or by which the City or its property is bound, the effect of which violation or default would materially affect the ability of the City to perform its obligations under this Bond Purchase Agreement, the Trust Agreement or the First Supplemental Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a violation or default hereunder or thereunder.

(g) The execution and delivery of this Bond Purchase Agreement, the Trust Agreement and the First Supplemental Agreement, the adoption of the Order and performance of the obligations of the City hereunder or thereunder do not and will not conflict with, result in the creation or imposition of any lien, charge or encumbrance upon any of the assets of the City other than Net Receipts pursuant to the terms of, or constitute a default under, any agreement, indenture or instrument to which the City is a party or by which the City or its property is bound, or result in a violation of any applicable constitutional provision, law or administrative regulation or any order, rule or regulation of any court or governmental agency having jurisdiction over the City or its property, except as provided and permitted by such documents.

(h) Except for any action that may be required by applicable federal or state securities laws, no consent, authorization or order of, or filing or registration with, any court or governmental agency not already obtained or made is required for the execution, delivery and performance of this Bond Purchase Agreement or the consummation of the transactions contemplated hereunder, and any such consent, authorization or order so obtained is in full force and effect.

(i) Any certificate signed by an authorized officer of the City and delivered to the Purchaser shall be deemed a representation and warranty of the City to the Purchaser as to the statements made therein.

(j) To the best knowledge of the City, there is no litigation or any other proceeding before or by any court, public board, agency or body, pending or threatened against or affecting the City or any of the members of the City Council in their respective capacities as such (nor is there any basis therefor), wherein an unfavorable decision, ruling or finding would in any way materially

adversely affect (i) the transactions contemplated by this Bond Purchase Agreement, (ii) the organization, existence or powers of the City or the title to the office of any of the members of the City Council, (iii) the properties or assets or the condition, financial or otherwise, of the City or the System, (iv) the validity or enforceability of this Bond Purchase Agreement, the Order, the Trust Agreement or the First Supplemental Agreement (or any other agreement or instrument of which the City is a party or used or contemplated for use in the consummation of the transactions contemplated hereby) or (v) the exemption from federal or State of North Carolina income taxation of the interest on the Bond.

(k) There has been no material adverse change in the financial condition of the City or the System since June 30, 2010, except as otherwise specified to the Purchaser by the City prior to the date hereof in writing.

4. Representations and Warranties of the LGC. The LGC, by its acceptance hereof, represents and warrants to the Purchaser that:

(a) The LGC is duly organized and validly existing as a division of the Department of the State Treasurer of the State of North Carolina, vested with the rights and powers conferred upon it pursuant to Chapter 159 of the General Statutes of North Carolina, as amended.

(b) The LGC has full power and authority to approve the issuance and provide for the sale of the Bond as provided in this Bond Purchase Agreement, and the LGC has taken or will take all action required by the Act or other applicable laws in connection therewith.

(c) The LGC has duly authorized the execution and delivery of this Bond Purchase Agreement and has taken or will take all action necessary or appropriate to carry out the sale and delivery of the Bond to the Purchaser.

(d) The execution and delivery of this Bond Purchase Agreement and the performance by the LGC of its obligations hereunder are within the powers of the LGC and, to the best of the LGC's knowledge, will not conflict with or constitute a breach or result in a violation of (i) any federal or North Carolina constitutional or statutory provision, (ii) any agreement or other instrument to which the LGC is a party or by which it is bound, or (iii) any order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the LGC.

(e) Except for any action required by applicable federal or state securities laws, no consent, approval, authorization or order of any governmental or regulatory authority, other than the approvals of the City as herein required, is required to be obtained by the LGC as a condition precedent to the issuance or sale of the Bond or the execution and delivery of this Bond Purchase Agreement or the performance by the LGC of its obligations hereunder.

(f) There is no litigation or any other proceeding before any court or governmental body or agency pending or, to the knowledge of the LGC, threatened against or involving the LGC to restrain or enjoin the issuance or delivery of the Bond or the execution or delivery by the LGC of this Bond Purchase Agreement and the performance of its obligations hereunder.

5. Payment and Delivery. At 10:00 a.m., North Carolina time, on August 11, 2011, or at such other time or on such earlier or later date as mutually agreed upon, the City and the LGC will deliver or cause to be delivered the Bond to the Purchaser. Upon such delivery of the Bond, the Purchaser shall pay the purchase price for the Bond as specified in Section 1 hereof to the Trustee in immediately available funds, and the Trustee shall deposit the full purchase price thereof in the manner specified in Section 204 of the First Supplemental Agreement. The Closing on the Bond will be held at the offices of Womble Carlyle Sandridge & Rice, PLLC in Raleigh, North Carolina, or at such other place as the City, the Trustee and the Purchaser may mutually agree upon.

6. Conditions of Closing. The Purchaser has entered into this Bond Purchase Agreement in reliance upon the representations and warranties of the City and the LGC contained herein and to be contained in the documents and instruments to be delivered at Closing and upon the performance by the City and the LGC of their respective obligations hereunder, as of the date hereof. Accordingly, the Purchaser's obligation under this Bond Purchase Agreement to purchase and pay for the Bond shall be subject to the performance by the City and the LGC of their respective obligations to be performed hereunder and under such documents and instruments at or prior to Closing, and shall also be subject to the following conditions:

(a) At the time of Closing (i) the representations and warranties of the City and the LGC, respectively, contained herein shall be true, complete and correct, (ii) the Order, the Trust Agreement, the First Supplemental Agreement and this Bond Purchase Agreement shall be in full force and effect and shall not have been amended, modified or supplemented except as may have been agreed to by the Purchaser and (iii) the City and the LGC shall have duly adopted and there shall be in full force and effect such resolutions as in the opinion of Womble Carlyle Sandridge & Rice, PLLC, Raleigh, North Carolina ("Bond Counsel"), shall be necessary in connection with the transactions contemplated hereby, and such resolutions shall not have been amended, modified or supplemented, except as may have been agreed to by the Purchaser.

(b) On or prior to the date of Closing, the Purchaser shall have received the following documents in form and substance reasonably satisfactory to the Purchaser:

(1) opinion of Bond Counsel, dated as of the date of Closing, addressed to the Purchaser or together with a reliance letter to the Purchaser, in form and substance satisfactory to the Purchaser;

(2) opinion of the City Attorney, dated as of the date of Closing, in form and substance satisfactory to the Purchaser;

(3) executed counterparts or copies of the Trust Agreement, the First Supplemental Agreement and this Bond Purchase Agreement;

(4) certified copies all proceedings of the City relating to approvals or authorizations for the Bond and the execution and delivery of this Bond Purchase Agreement, including the adoption of the Order;

(5) certified copy of approving resolution of the LGC;

(6) tax certificate of the City and Internal Revenue Service Form 8038-G;

(7) certificate of an authorized officer of the City to the effect that the fees of the LGC relating to the Bond have been paid;

(8) copy of the Agreed Upon Procedures Letter prepared by Utility Advisors' Network, Inc. in connection with the issuance of the Bond;

(9) such other documents as may be required to be delivered pursuant to Section 208 of the Trust Agreement or Section 204 of the First Supplemental Agreement; and

(10) such additional certificates (including appropriate incumbency and no-litigation certificates), instruments, opinions or other documents as the Purchaser may reasonably request.

All representations and warranties of the City and the LGC set forth in this Bond Purchase Agreement shall remain operative and in full force and effect regardless of (i) any investigation made by or on behalf of the Purchaser or any person controlling the Purchaser and (ii) acceptance of and payment for the Bond.

7. Limitation of Liability of the Commission. The members, officers and employees of the Commission shall not be personally liable under this Agreement.

8. Counterparts. This Bond Purchase Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

9. Notices. Any notice or other communication to be given under this Bond Purchase Agreement may be given by delivering the same in writing by first-class mail, postage prepaid, to the following addresses:

To the City:

City of Fayetteville, North Carolina
433 Hay Street
Fayetteville, North Carolina 28301-5537
Attention: Chief Financial Officer

To the LGC:

Local Government Commission
325 N. Salisbury Street
Raleigh, North Carolina 27603-1385
Attention: Secretary

To the Purchaser:

SunTrust Equipment Finance & Leasing Corp.
303 Peachtree Street, N.E., 15th Floor
Mail Code GA Atlanta 130
Attention: Dennis M. McDermott, Vice President

10. Governing Law. This Bond Purchase Agreement shall be governed by, and construed in accordance with, the laws of the State of North Carolina.

11. Severability. In the event any provision of this Bond Purchase Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

This Bond Purchase Agreement shall become effective upon the execution of the acceptance hereof by a duly authorized member of the LGC and the City and shall be valid and enforceable as of the time of such acceptance.

SUNTRUST EQUIPMENT FINANCE &
LEASING CORP.

By: _____
Vice President

[Counterpart signature page to Bond Purchase Agreement, dated August 11, 2011, among the City of Fayetteville, North Carolina, the Local Government Commission and SunTrust Equipment Finance & Leasing Corp.]

Accepted:

LOCAL GOVERNMENT COMMISSION

By: _____
Secretary

[Counterpart signature page to Bond Purchase Agreement, dated August 11, 2011, among the City of Fayetteville, North Carolina, the Local Government Commission and SunTrust Equipment Finance & Leasing Corp.]

Approved:

CITY OF FAYETTEVILLE, NORTH CAROLINA

By: _____
City Manager

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Rebecca Rogers Carter, Management Services Manager & Doug Peters, Executive Director, Fayetteville Cumberland County Chamber of Commerce
DATE: August 8, 2011
RE: (a) Fayetteville Cumberland County Chamber of Commerce Economic Development Report
(b) FY 2011 Strategic Plan's Policy and Management Action Agenda Fourth Quarter Report

THE QUESTION:

Has City Council's interest been met in staff's advancement of the policy and management action agenda for the fourth quarter? The attached report is provided to detail progress made during the fourth quarter of this fiscal year, so that City Council members can either concur that the actions meet their interests or direct staff to modify their course.

RELATIONSHIP TO STRATEGIC PLAN:

This report, like previous reports, reinforces and clarifies Council's vision for our community, which is the foundation of the City's Strategic Plan.

BACKGROUND:

The City's Strategic Plan has five main areas:

- A vision statement that describes the type of community the Council would like to facilitate through policy direction and staff's work efforts
- A mission statement that describes our organizational purpose, "making Fayetteville a better place for all"
- A list of core values that describes our standards of performance which is expressed with the acronym statement to "Serve with RESPECT"
- Multi-year goals that provide an intermediate focus for the work of City Council and staff, and further outlines the activities Council believes are necessary to realize the vision
- A one-year action plan that identifies issues that Council wishes to address by providing policy direction and the necessary actions that the City management should complete during the upcoming fiscal year.

ISSUES:

Do the fourth quarter work efforts reflect the overall direction articulated by the City Council in the FY 2011 Strategic Plan? Does the progress highlighted in this report move the community closer to the desired vision previously identified by the City Council?

BUDGET IMPACT:

N/A

OPTIONS:

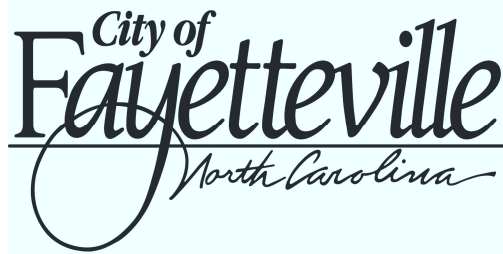
1. Accept the report as provided with guidance to the City Manager on areas of interest.
2. Request additional information on items listed in the report.
3. Clarify interests in report and action agenda.

RECOMMENDED ACTION:

Receive and file this report.

ATTACHMENTS:

FY 2011 Strategic Plan's Policy and Management Action Agenda Fourth Quarter Report



Fiscal Year 2011 Strategic Plan

Policy and Management Agenda

Fourth Quarter Report

THE MISSION

The City government provides service that makes Fayetteville a better place for all.

The City government is financially sound and provides a full range of quality municipal services that are valued by our customers and delivered by a dedicated workforce in a cost effective manner.

The City has well designed and well maintained infrastructure and facilities.

The City engages its citizen and is recognized as a State and regional leader.

VISION 2025

The City of Fayetteville is a great place to live with a choice of desirable neighborhoods, leisure opportunities for all, and beauty by design.

Our City has a vibrant downtown, and vibrant major corridors, the Cape Fear river to enjoy, and a strong local economy.

Our City is a partnership of citizens with a diverse culture and rich heritage.

This creates a sustainable community.



CORE VALUES

R.E.S.P.E.C.T.

We, the Mayor, City Council, Managers, Supervisors and Employees serve with

Responsibility

Ethics

Stewardship

Professionalism

Entrepreneurial Spirit

Commitment

Teamwork

To safeguard and enhance the public trust in City government.

GOALS 2015

Greater Tax Base Diversity

Growing City, Livable Neighborhoods

More Efficient Government

More Attractive City

Greater Community Unity

Revitalized Downtown

The annual work plan for Council and staff identifies "Targets for Action" that are designed to achieve the objectives for the City's Goals 2015.

Targets For Action 2011	Page #
Policy Agenda - Top Priority	
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Multi-Family and Commercial Recycling Program	6
Franklin Street Parking Structure	8
Bragg Boulevard Corridor Development	10
Consolidated 911 Communication Center	12
Policy Agenda - High Priority	
Hospital Area Development Standards	14
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Non-Stop Air Service to Washington, D.C.	23
Multi-Modal Center Development	25
Fire Station 19 Development	27
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Management Agenda - High Priority	
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Youth Council Development	36
Military Business Park Development	38
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Unified Development Ordinance (UDO) Policy Agenda

This target for action will follow the creation of a new Unified Development Ordinance (UDO). Current City regulations are functional, but outdated, hard to use and lacking the internal focus needed to help achieve community goals. A new UDO modernizes the zoning districts, establishes minimum development standards and encourages high-quality physical development. A consultant was hired to develop the document and input from Development Services staff and stakeholders in the community have guided the process. Adoption of the UDO will be brought to Council and staff will work on the citywide zoning map under UDO districts. Staff will also begin preparing rezoning recommendations for certain areas of the City not suitable for direct translation to the districts. Information about that process will be brought to Council for feedback and direction. A new UDO will require significant administrative changes and an administrative manual is being developed.

This target for action is linked to City goal #2: GROWING CITY LIVABLE NEIGHBORHOODS - A Great Place to Live.

- Measure of success: Adoption and implementation of a new Unified Development Code that is more user-friendly and incorporates best practices.

Staff Liaison: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Staff from Development Services, Engineering & Infrastructure, Environmental Services, Parks & Recreation, Administration; Clarion Associates (consultants)

Action Plan	Estimated Completion
Adoption of new Unified Development Ordinance	2 nd Qtr 2011
Adoption of a new citywide zoning map under the UDO districts	3 rd Qtr 2011
Development of administrative manual	3 rd Qtr 2011
Implementation of adopted UDO	3 rd Qtr 2011

First Quarter Update:

- The Planning Commission held two public hearings on the August draft of the UDO (the draft provided to Council)
- Staff met with the Advisory Committee three times in August and September to receive further comment on specific sections of the August UDO draft
- The Planning Commission in October will deliberate on proposed amendments to the UDO coming out of the Advisory Committee meetings to consider recommending adoption of an amended UDO to the City Council by the end of October
- Staff presented to City Council information and research related to some key issues being discussed in the UDO review process during a Work Session
- Staff will present a Planning Commission recommended version of the UDO to the Council in November.

Second Quarter Update:

- The City Council adopted the Unified Development Ordinance on December 13, 2010. The effective date is July 1, 2011 for full implementation although developers may choose to have their projects reviewed under the UDO if advantageous to their projects.

Third Quarter Update:

- City-wide remapping of over 75,000 parcels began with preparation of the proposed new zoning maps, background and quick reference material, and public information materials. Preparation culminated with nearly 60,000 mailed postcard notices
- Three 4-hour community meetings were held to inform the community and respond to questions or concerns. Approximately 140 people attended, and Planning and 1FAY handled over 140 calls
- The UDO was formatted with all amendments incorporated, and readied for VIC coding and City codification. Staff began a tracking system for subsequent clean-up and suggested adjustments
- The Administrative Manual draft was completed and will be ready in early April for review and feedback by such constituents as the UDO Advisory Committee members.

Fourth Quarter Update:

- Completed the Administrative Manual, including all application forms, utilizing members of the Advisory Committee for this task; will continue refinement over coming months
- Working with CSI to coordinate components in the Magnet software program with the UDO processes and revised forms
- Completing the VIC code preparation and addressing codification of the UDO as part of the City Code
- Completed individual meetings, analyses, and staff recommendations for the new zoning map
- In May, the Zoning Commission and City Council approved the translation to the new zoning districts for approximately 75,000 parcels
- In June, the Zoning Commission recommended approval of the staff recommendations for the remaining 390 properties, scheduled for the final hearing by City Council on June 27
- Internal preparations are underway to support administrative processing under the UDO in anticipation of an effective date of July 1, 2011.

Upcoming Activities:

- Staff will continue with the UDO implementation transition (training, publication, VIC coding and guidance for development community, etc.)
- Periodic follow-up meetings with development community for troubleshooting and refinement of code and procedures as necessary
- Close coordination and integration of UDO standards, processes and forms with Magnet will continue.

Police Staffing Policy Agenda

The Police Executive Research Forum (PERF) report identified a need for an additional 37 positions in the Police Department to adequately serve the city. Staff recommended phasing in the 37 positions over three fiscal budget cycles, but the positions were not approved. As an effective alternative, staff will work to stabilize fluctuations in the police officer vacancy rate by using overhires. This proactive technique allows the police department to fill training classes with over hires so that recruits can be prepared to fill vacancies as they occur. Approximately \$178,000 was added to the police department’s personnel budget to cover the cost of 10 overhires. Staff continues to use effective recruiting and retention techniques.

This target for action is linked to City goal #2: GROWING CITY, LIVABLE NEIGHBORHOODS – A Great Place to Live.

- Measure of success: Implement effective use of overhires.

Staff Liaison: Tom Bergamine, Chief of Police

Email Address: tbergamine@ci.fay.nc.us

Phone Number: 910-433-1819

Team Members: Police Staff

Action Plan	Estimated Completion
Authorized the overhire of 10 positions, which enables the Police Department to stay at full strength	Completed
Increase effective recruiting and retention techniques and include results in the weekly report	Continuous

First Quarter Update:

- Utilizing PERF Study guidelines; spending more time on directive cause
- Making progress to reduce number of dispatch calls versus self-initiating. The goal is to encourage more effective policing techniques
- We graduated 16 in the BLET academy this July
- Brought on board five overhires, which contributes to the overall preparedness of the force to fill vacancies in a proactive manner
- A new BLET class started this summer with 24 attendees in house and 9 at FTCC and will graduate in December
- Fully staffed beginning in late May; includes 383 budgeted positions
- Monitoring staff level of retentions and workload assessments to support PERF guidelines.

Second Quarter Update:

- Continue to utilize PERF recommendations seeking to determine directive causes of crime and addressing same, making maximum use of available officer resources
- Police Department graduated 32 new officers Dec. 17 (24 from FPD BLET and 8 from FTCC BLET)
- Processed and recommended 6 new hires to attend the January BLET at FTCC
- Processing 6 lateral hires with recommendations pending final outcome of background investigation
- Currently staffed at 97%.

Third Quarter Update:

- Continue to monitor staffing levels with respect to recruiting and future BLET classes
- Currently have 5 officers in BLET at FTCC and processing applications for non-experienced new hires for a July 2011 BLET
- Have hired 8 lateral officers in the 3rd quarter.

Fourth Quarter Update:

- Continue to closely monitor staffing levels
- 13 cadets to begin BLET Academy at the Police Training Center in July
- 2 cadets to begin BLET at FTCC in July. This will fill two overhire positions
- Stabilized fluctuations in the police officer vacancy rate during FY 2011 with the use of overhires
- During FY 2011 the Police Department hired a total of 49 cadets
- The average vacancy rate was only 2.8%, making it one of the most effective recruitment effort
- As of July 11, 2011, the PD is at 100% strength.

Upcoming Activities:

- Continue to monitor staffing levels
- Continue recruitment of BLET certified/experienced officers.

Multi-Family and Commercial Recycling Program Policy Agenda

Staff will seek to expand our successful curbside recycling program to multi-family and commercial customers. A recent recycling survey indicates that there is a definite interest among multi-family property owners for the program. Staff has been meeting with, and obtaining feedback from, the stakeholders to include Homeowners Association representatives, waste haulers and the Material Recovery Facility manager to discuss service alternatives. The City has partnered with Sustainable Sandhills to assist in working with the stakeholders and to formulate alternate methods of collection. Staff is working to develop program options and cost data and will bring recommendations to receive direction and resources for approved options.

This target for action is linked to City goal #4: MORE ATTRACTIVE CITY – Clean and Beautiful.

- Measure of success: Implement Council approved options.

Staff Liaison: Jerry Dietzen, Environmental Services Director

Email Address: gdietzen@ci.fay.nc.us

Phone Number: 910-433-1984

Team Members: Environmental Services Staff, City Attorney and Sustainable Sandhills

Action Plan	Estimated Completion
Report on survey results	Completed
Develop options for multifamily recycling service	Completed
Receive Council direction to proceed with draft ordinance or set a public hearing	3 rd Qtr 2011
Implement Council approved options	1 st Qtr 2012

First Quarter Update:

- Studying options to synchronize and align single and multi-family housing curbside recycling contracts and options for contractual agreements versus providing in-house service (cost benefit alternative analysis)
- Updated Council on service options at October work session; Council consensus was to follow staff recommendations to develop an ordinance requiring multifamily complexes to provide recycling services for their residents with a target start date of July 2011 and to review the ordinance in two years for its effectiveness and success.

Second Quarter Update:

- Presented options to City Council recommending alternatives for multifamily recycling services
- Updated Council on service options at October 4th work session; Council consensus was to follow staff recommendations to develop an ordinance requiring multifamily complexes to provide recycling services for their residents with a target start date of July 2011 and to review the ordinance in two years for its effectiveness and success.

Third Quarter Update:

- Returned to City Council on January 3, 2011 and presented draft ordinance
- Following direction from Council, the draft was revised and then 3 meetings were held in February with multifamily stakeholders
- Returned to City Council on February 28th at the regular council meeting for a public hearing. Following the public hearing, Council unanimously voted to pass the multifamily ordinance
- The Ordinance has been officially adopted and is scheduled to begin on September 28, 2011.

Fourth Quarter Update:

- Staff developed master contact list of multifamily developments and mobile home parks
- Completed the draft of the Multifamily Recycling Guide Booklet.

Upcoming Activities:

- July 1 through August 28, 2011 City staff finalizes and distributes "Multifamily Recycling Guide Booklet"
- Staff notifies multifamily complexes and local waste haulers of ordinance requirements and provides technical assistance for program start up
- August 28, 2011 - Program startup.

Franklin Street Parking Structure Policy Agenda

In an effort to support revitalization of the downtown area and spur economic development, the construction of a new downtown parking deck was approved by City Council in April. The newly approved parking deck will be located off Franklin Street behind the Robert C. Williams Business Center and will add an additional 210 parking spaces to downtown. A funding agreement between PWC, the County and the City will support this project moving forward. Overall, the project is estimated to cost \$6.2 million.

This target for action is linked to City goal #6: REVITALIZED DOWNTOWN – A Community Focal Point.

- Measure of success: Construction of the parking deck.

Staff Liaison: Rusty Thompson, City Traffic Engineer

Email Address: rthompson@ci.fay.nc.us

Phone Number: 910-433-1153

Team Members: City Manager, Engineering & Infrastructure, Development Services, Finance and County and Chamber representatives

Action Plan	Estimated Completion
Coordinate with partners on development of project	Continuous
Monitor progress	Continuous
Parking Deck Completion	2 nd Qtr 2012

First Quarter Update:

- City was awarded a Recovery Zone Bond through American Recovery and Reinvestment Act to assist in financing for construction of the parking deck
- City, County and PWC reached partnership funding agreement
- Kimley-Horn & Associates selected as design firm
- Public hearing for parking deck was held June 28, 2010; City Council approved City financing agreement
- Staff is seeking prequalification statements and applications from contractors; information is accessible on City website.

Second Quarter Update:

- Parking deck was designed and advertised for bid to seven pre-qualified contractors
- The City received six of seven bids on Nov. 23, 2010
- Staff recommended the lowest bidder, LeChase, from Durham, NC on Dec. 13, 2010
- Total bid was \$6,132,000
- Council approved the bid & authorized construction to begin.

Third Quarter Update:

- Parking deck construction began in Mid February and is progressing on schedule and on budget
- The concrete slab should be installed by the end of April
- A consolidated parking plan for the relocated tenant parking is in place along with new downtown parking signage
- S&ME will be using concrete maturation loggers for the concrete testing. This will speed up form removal and tensioning of the parking deck.

Fourth Quarter Update:

- Early morning concrete work has begun and the first two slabs were poured. Future early morning work will occur once each week
- The first elevated floor is scheduled to be poured the second week of July
- The design and construction teams are working well together and staying on schedule
- Teamwork will continue to be the key in being able to make-up for the weather impact days experienced to date.

Upcoming Activities:

- The contractor will be doing the major concrete pours (parking deck floor work) once a week, early in the morning in an effort to not block vehicles and businesses downtown
- Monitor progress regularly
- Completion estimated November of 2011.

Bragg Boulevard Corridor Development Policy Agenda

This project focuses on the redevelopment of Bragg Boulevard, which is essential to transportation in Fayetteville given its proximity to Ft. Bragg and upcoming roadway projects. The goal is to collaborate with the NCDOT and seek opportunities for promoting redevelopment and reinvestment in this important corridor. Staff will develop this project with finalized cost estimates for an area specific study, provide Council a recommendation and receive direction and resources for approved options.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Staff research and recommendations for the study to receive direction and resources from Council for approved options.

Staff Liaison: Karen Hilton, Chief Development Officer (Acting), Planning & Zoning

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Planning and Engineering and Infrastructure departments.

Action Plan	Estimated Completion
Receive Council direction to proceed with program development	2 nd Qtr 2011
Engage DOT to understand the scope and timing of their plans	2 nd Qtr 2011
Devise scope of project	3 rd Qtr 2011
Development of project and options with final cost estimates	4 th Qtr 2011
City Council approval for consultant	1 st Qtr 2012

First Quarter Update:

- DOT bought right of way to expand road surface and add medians and landscaping
- Construction contracts have been let for improvements
- Construction to remove railway began.

Second Quarter Update:

- Construction to remove railway is on-going.

Third Quarter Update:

- Progress is subject to DOT cooperation and UDO re-mapping.

Fourth Quarter Update:

- In April, the Planning and Traffic Divisions began collaboration on an idea staff titled “Re-imagining and Renewing Bragg Boulevard”. The idea became part of the BRAC RTF (now Ft. Bragg Regional Alliance) region-wide grant request, now at the second level of review by DOD’s Office of Economic Adjustment, which may include funding for consultant for study

- DOT Bragg Boulevard improvements are 26% complete with an estimated completion date of Oct. 2012.

Upcoming Activities:

- Currently the project is primarily a DOT effort to upgrade the roadway and related infrastructure. Economic redevelopment efforts will generally follow completion of infrastructure work
- If the grant proposal to Office of Economic Adjustment continues to include “Re-imaging and Renewing Bragg Boulevard” and it moves to the third round, staff will develop and discuss the detail and possible commitment of a local match with City Council and Management
- This target for action continues in FY12 as a priority in the Management Agenda where staff will continue work in developing scope of study, seek funding for study and select and manage a planning consultant hired to develop detailed plan and implementation tools.

Consolidated 911 Communication Center Policy Agenda

Staff will support lobbying efforts to develop and fund a consolidated communication center. This project received priority and was included in the joint City, County and Chamber FY11 federal legislative agenda. Currently our community has two primary Public Safety Answering Points (PSAP). One is managed by Cumberland County, the other by the City of Fayetteville. The goal is to consolidate both centers into one. This will increase our effectiveness in handling emergency calls for service. The project will need \$5-10 million to fund the construction of a facility large enough to accommodate a combined 911 center. It will also require consensus between all agencies on how to pay for and manage the day-to-day operations of the center.

This target for action is linked to City goal #3: MORE EFFICIENT CITY GOVERNMENT – Cost-Effective Service Delivery.

- Measure of success: Develop the project and support lobbying efforts to fund the project.

Staff Liaison: Tom Bergamine, Chief of Police

Email Address: tbergamine@ci.fay.nc.us

Phone Number: 910-433-1819

Team Members: Team Leader: Captain Brad Chandler- Communications, Fayetteville Police and Fire Departments, Cumberland County Sheriffs' office, The Ferguson Group

Action Plan	Estimated Completion
Both City and County dispatch personnel certified in emergency medical dispatch, emergency police dispatch and emergency fire dispatch	3 rd Qtr 2011
Shared CAD module for calls for service will be operational	4 th Qtr 2011
Formulate one set of operating procedures for both centers	4 th Qtr 2011
Support lobbying efforts to secure grant funding for the construction of the facility	Continuous

First Quarter Update:

- City installed 15 new replacement workstations and new software; new software has three disciplines - emergency police dispatch, emergency fire dispatch and emergency medical dispatch; the changes should equate to efficiencies & faster customer service in the center
- City purchased the software from the same company County used to make the consolidation transition smoother
- Same training standards being implemented by City and County.

Second Quarter Update:

- CAD to CAD between the two 911 centers went live in December 2010
- Agreement was reached between the City and County to spend more time in conducting the assessment phase of the proposed consolidation (April 2011 deadline).

Third Quarter Update:

- Phase one of the consolidation which was CAD to CAD has been operational since November of 2010 and is working
- Phase two of the consolidation which is both agencies working on the same CAD is 95 percent complete
- Phase three which is the actual merger of both agencies still requires more study primarily for the lack of adequate funds.

Fourth Quarter Update:

- The City's Communication Center went operational utilizing Emergency Medical Dispatch the first week of June, which was the final module of three dispatch certifications (previous were Emergency Police Dispatch & Emergency Fire Dispatch)
- "CAD to CAD" was successful and has proven to be an effective resource in streamlining the transfer of calls to the county 911 center
- We continue to work through technical and policy decisions with the county regarding the installation of a shared CAD system, which will alleviate the need of the CAD to CAD module.

Upcoming Activities:

- This item is a key Management In Progress project, which will be highlighted in the FY 12 strategic plan
- Ongoing meetings between City communications center supervisors and their counterparts in the County to discuss operational issues that occur during CAD to CAD calls
- County and City IT, along with OSSI, are meeting to discuss the next phase of consolidation, which is the sharing of one CAD system
- Meetings with the Public Safety Task Force.

Hospital Area Development Standards Policy Agenda

This target for action seeks to establish a land use plan and regulations for the area surrounding the Cape Fear Valley Medical Center which may be the model for other institutional areas. There have been numerous requests for rezoning in that area and a current analysis and plan would guide decisions for development and redevelopment. The Development Services Department, Planning and Zoning Division have assigned a staff person to manage this process through completion. A total of \$70,000 in FY10 budget has been allocated for the study. Glenn Harbeck Associates has been chosen as the consultant for this project.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Developing and implementing the Specific Area Plan.

Staff Liaisons: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Planning, Engineering & Infrastructure, Community Development staff, and a Consultant

Action Plan	Estimated Completion
Solicit proposals from consulting firms for this task and enter into an agreement to proceed	Completed
Work with the consultant to solicit input from stakeholders, evaluate current conditions and complete an appropriate plan	Completed
Final review of the draft and adoption of regulations	3 rd Qtr 2011

First Quarter Update:

- Staff and consultant Glenn Harbeck & Associates held meetings with stakeholders at Mary McArthur Elementary School in July and August to get input on planning
- Planning documents were made available on the City website
- Briefing and presentation at City Council Work Session on Sept. 7 – presented by Glenn Harbeck from Glenn Harbeck & Associates
- Consultant highlighted suggested land use patterns and development standards to guide future zoning changes and redevelopment
- Held update on progress at City agenda briefing Oct. 6.

Second Quarter Update:

- City Council adopted the Hospital Area Plan and Overlay Ordinance on Dec. 13, 2010.

Third Quarter Update:

- The primary project is complete
- Requests for zoning changes that were deferred prior to plan adoption will now be reconsidered as part of the UDO zone map activities over the next 5 months.

Fourth Quarter Update:

- The primary project is complete
- Requests for zoning changes that were deferred prior to plan adoption will now be processed under the approved plan and overlay development standards.

Upcoming Activities:

- Staff will now utilize the new standards for all activities in the target location.

Ramsey Street Corridor Development Policy Agenda

This project focuses on the implementation of a Ramsey Street Corridor Plan which will improve and beautify the corridor, encourage development and make Ramsey Street safer. LandDesign, Inc. of Charlotte was the consultant for this project. The DOT is responsible for the physical roadway improvements and is expected to start construction on medians later in the year. Planning staff will specifically work on a portion of rezoning, streetscape and landscape improvements as part of UDO.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Contribute to implementation of the Ramsey Street Corridor Plan.

Staff Liaison: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Development Services, Engineering & Infrastructure, Parks & Rec. & DOT.

Action Plan	Estimated Completion
DOT goes to let for construction of medians	Completed
Begin work on rezoning	2 nd Qtr 2011
Seek and acquire supplemental funding for utilities and landscaping	3 rd Qtr 2011
DOT begins construction on medians	3 rd Qtr 2011

First Quarter Update:

- Median project has been let; construction due to start at anytime by Highland Paving, a local paving company
- Ramsey Street sidewalk projects in the vicinities of Eastwood Avenue to Sunrise Circle, Jones Street, Williston Street, Cochran Avenue and Facility Drive have been completed
- Sidewalks from Stacy Weaver to 401 Bypass are in design.

Second Quarter Update:

- Median project contract has been awarded to Highland Paving, a local company, with mobilization to take place in early spring.

Third Quarter Update:

- Sidewalks from Stacy Weaver to 401 Bypass installed in the upcoming construction season
- The turn-around insets have been prepared with utility relocation as needed and curb/gutter in place for subsequent median and street repaving.

Fourth Quarter Update:

- DOT project is underway and is approximately 25% complete with an estimated date of completion of Dec. 15, 2011
- Given delays in UDO text approval, challenges in hiring Sr. Planner and adjustments while Development Services Director position was vacant, work on rezoning and engagement with property owners on Murchison or Ramsey have been delayed but will advance during and beyond the City-wide UDO remapping.

Upcoming Activities:

- Sidewalk installation will continue from Summerfield Dr. to Stacy Weaver Rd. EDOC is September 18, 2011
- Landscaping in medians will be part of the activities in the upcoming construction season
- Planning staff will focus on key areas such as the interchange in assessing appropriate overlay zoning recommendations.

Budget and Service Levels Tax Rate Evaluation Policy Agenda

This target for action was completed on June 28, 2010, as Council adopted the FY2011 budget and set the tax rate unchanged at 45.6 cents. The process focused on how service levels will be affected by resource allocation. An analysis was provided to Council on the most effective and efficient methods of providing adequate services for the citizens of Fayetteville. The team developed budget and funding scenarios, received Council feedback at several special budget sessions, and launched a budget website for citizen engagement. Finally, staff worked to provide a financially sound budget recommendation to Council.

This target for action is linked to City goal #3: MORE EFFICIENT CITY GOVERNMENT- Cost-Effective Service Delivery.

- Measure of success: Addressing service needs of citizens and maintaining a balanced budget.

Staff Liaison: Lisa Smith, Chief Financial Officer

Email Address: lsmith@ci.fay.nc.us

Phone Number: 910-433-1682

Team Members: City Manager, Assistant City Managers and Finance Department Staff

Action Plan	Estimated Completion
Hold special budget meetings with the City Council	Completed
Set budget for FY 2010-2011	Completed

First Quarter Update:

- Completed.

Parks & Recreation Master Plan Bond Referendum Planning Policy Agenda

Staff from Fayetteville-Cumberland Parks & Recreation will develop the elements of a potential bond referendum based on the Parks & Recreation Master Plan that will sustain previous park investments, fund tomorrow’s park facilities and ensure enhanced quality of life for current citizens and future generations.

This target for action is linked to City goal #2: GROWING CITY, LIVABLE NEIGHBORHOODS – A Great Place to Live.

- Measure of success: Develop a bond package.

Staff Liaison: Michael Gibson, Director of Parks and Recreation

Email Address: mgibson@ci.fay.nc.us

Phone Number: 910-433-1557

Team Members: Parks & Recreation staff

Action Plan	Estimated Completion
Develop internal stakeholders groups	3 rd Qtr FY11
Develop elements of the bond package, complete first draft and receive direction.	3 rd Qtr FY11

First Quarter Update:

- Bond package outline has been developed.

Second Quarter Update:

- The bond outline was presented to Parks & Recreation Joint Advisory Broad
- The bond was approved to go forward
- A bond outline was presented to a joint meeting of City Council and County Commissioner for preliminary approval
- Staff was instructed to bring back more detailed information.

Third Quarter Update:

- Develop contract for service with an architectural firm.

Fourth Quarter Update:

- \$39 K in FY11 GF budget (jointly funded) for contract to develop the structural plan
- Created internal work groups to gather data for the Structural plan.

Upcoming Activities:

- This item continues as a top priority in FY12 policy agenda.
- Develop proposal for bond referendum
- Call for bond referendum
- Develop advocacy group
- Develop and implement a public information program
- Conduct bond referendum.

Probationary Rental Occupancy Permit (PROP) Policy Agenda

This target for action relates to City Council and staff's desire to identify and better manage any negative impacts of residential rental property citywide. If successful, staff will develop ordinances regarding these programs for Council's adoption by June 30, 2011. Once adopted, programs would have an impact on all residential rental properties, which equal to more than 47 percent of the Fayetteville real estate market, through registration of such properties and greater enforcement options for repeat problem properties.

Staff has researched program alternatives, drafted an ordinance and is soliciting feedback on program design from stakeholders. If adopted by City Council, there is a need for a funding stream to support software/hardware components and staffing to support the program.

This target for action is linked to City goal #2: GROWING CITY LIVABLE NEIGHBORHOODS- A Great Place to Live.

- Measure of success: Develop options for City Council's consideration on residential rental property programs to address community concerns.

Staff Liaison: Doug Hewett, Assistant City Manager

Email Address: dhewett@ci.fay.nc.us

Phone Number: 910-433-1978

Team Members: Development Services, Information Technology, Police and City Attorney

Action Plan	Estimated Completion
Research program alternatives, draft ordinance, solicit feedback	3 rd Qtr 2011
Adoption of ordinances and funding plan	4 th Qtr 2011
Implementation and enforcement of program	2012

First Quarter Update:

- Public meetings were held in August and September to solicit input from stakeholders; meetings were successful in stakeholder engagements and had large turnouts
- City webpage was developed to receive feedback from stakeholders
- Staff briefed Council on programs at October work session; Council voted down rental registration program but voted in favor of probationary permit program; an ordinance must be drafted.

Second Quarter Update:

- During an October 2010 Council meeting, staff was directed to research the details of a PROP program, without a rental registration or rental inspection piece added
- Research and analysis has been completed and during the Jan. 3, 2011 work session meeting, Council was briefed on staff's recommendation of PROP without tracking criminal convictions
- Staff will add the criminal conviction element and brief Council at a future work session.

Third Quarter Update:

- During the March 7, 2011 work session meeting, Council was briefed on the staff's recommendation of PROP
- Council approved the recommendation to move forward with program and ordinance development
- The draft ordinance was finalized and the PROP website was updated
- PROP budget was included in the FY12 budget request.

Fourth Quarter Update:

- City Council approved the PROP ordinance at the April 26, 2011 public hearing
- Staff began program implementation, including a plan for hiring additional staff.

Upcoming Activities:

- Staff review and analysis for passage of Senate Bill 683
- Update to Council on impact of Senate Bill 683 on PROP
- This item will be followed in the FY12 Strategic Plan as a Key Management in Progress.

Sign Ordinance Policy Agenda

This target for action focuses on developing a modernized sign ordinance that is consistent with the new UDO. The Housing and Code Enforcement Division Manager will be assigned to collaborate with Planning and Zoning to assess the progress to date of the sign ordinance project and to devise a strategy going forward. The goal is to make modifications to the sign ordinance and develop a comprehensive approach for the sign code to be presented and considered by the City Council.

This target for action is linked to City goal #4: MORE ATTRACTIVE CITY- Clean and Beautiful.

- Measure of success: Develop options to finalize and implement sign ordinance.

Staff Liaison: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Development Services

Action Plan	Estimated Completion
Assess the scope of the of project and devise strategy	3 rd Qtr 2011
Reinitiate and engage planning commission.	4 th Qtr 2011

First Quarter Update:

- Held work sessions with downtown businesses and Downtown Alliance to discuss signs in the downtown district; comments received regarding the current sign ordinance, which will be taken into consideration in 3rd and 4th quarter work efforts
- Three changes in UDO – primarily procedural and standards.

Second Quarter Update:

- Several changes to the sign code were adopted along with the UDO. They generally pertain to real estate signs, signs on vehicles near the public right-of-way and code enforcement procedures for illegal signs placed in the public right-of-way.

Third Quarter Update:

- No update.

Fourth Quarter Update:

- No update.

Upcoming Activities

- Sign Ordinance: Revision and Direction is included in the FY 12 Strategic Plan as a high priority policy agenda item
- A full review of the existing sign code will be deferred until after adoption of the new zoning maps to coincide with the UDO implementation efforts.

Non-Stop Air Service to Washington, D.C. Management Agenda

A survey to investigate and secure direct air service from Fayetteville/Ft. Bragg to the D.C. area began in FY10. This study is anticipated to provide guidance and recommendations that will support direct air service as well as aiding in the development of negotiations for potential service providers. The study will also look into general aviation alternatives. BRAC RTF agreed to co-sponsor this investigation. The cost of the study is \$50,000 and is being paid for by \$25,000 from BRAC Regional Task Force and \$25,000 from NCDOT Aviation.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Completion of air study and plan of action for acquiring air service.

Staff Liaison: Brad Whited, Airport Director

Email Address: bwhited@ci.fay.nc.us

Phone Number: 910-433-1623

Team Members: Airport staff and BRAC RTF staff

Action Plan	Estimated Completion
Completion of air study	Completed
Alternatives study complete in May 2010 – general aviation alternatives	Completed
Support, evaluate and report on the City’s participation in BRAC Regional Task Force Comprehensive Regional Growth Plan	Continuous

First Quarter Update:

- Small Community Air Service Grant application submitted
- Monitoring airline issues
- Extended contract with InterVISTA Air Service consultant
- Reported findings to Council.

Second Quarter Update:

- Small Community Air Service Grant application was not selected by FAA
- Monitoring airline issues.

Third Quarter Update:

- InterVISTAS is updating data from 2010 air service study
- Monitoring airline issues.

Fourth Quarter Update:

- Engaged major airlines in meetings and discussions to share updated passenger demand information
- Monitoring airline issues.

Upcoming Activities:

- This item is included in the FY 12 Strategic Plan as a top management agenda item
- Follow up with major airlines
- Encourage airlines to sign up for air service opportunity
- This item is included in the FY12 Strategic Plan as a top priority Management Agenda item.

Multi-Modal Center Development Management Agenda

The Multi-Modal Center will house a new FAST bus transfer facility. The Multi-Modal Center will accommodate at least 16 bays, contain a two-story building of about 20,000-square feet and sufficient land area for complimentary commercial and/or retail private development. The first phase, including preliminary engineering and design, began in the summer of 2006. This project is being funded through the FTA, the NCDOT and local funding matches. To date, there is approximately \$1.3 million available for this project to cover preliminary design, engineering and land acquisition. The total project cost is estimated at \$15 million.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Resolve any outstanding issues related to property acquisition and move forward with development of land and construction.

Staff Liaison: Craig Hampton, Special Projects Director, and Ron Macaluso, Transit Director
Email Address: champton@ci.fay.nc.us and rmacaluso@ci.fay.nc.us
Phone Number: 910-433-1786 and 910-433-1011
Team Members: Special Projects and Transit staff

Action Plan	Estimated Completion
Purchase center’s property, secure purchase agreement on all others except current tenants	2 nd Qtr 2011
Resolve any outstanding issues related to property acquisition for remaining properties with tenants	2 nd Qtr 2011
Complete and receive FTA grant applications for funding to purchase remainder of property	3 rd Qtr 2011

First Quarter Update:

- FONSI received. Letters of offer to purchase land have been sent to property owners
- Purchase of Cintas parcel completed; City has assumed ownership; initial mowing and cleaning lot completed; lot will be maintained by City. Posted signage
- Negotiations continue on all remaining properties.

Second Quarter Update:

- Purchase of the Creech/Lloyd parcels (3) and the Smith parcel are completed and City has assumed ownership
- Negotiations continue on the two remaining properties, with a target to complete by fall of 2011.

Third Quarter Update:

- Negotiations continue on the two remaining properties
- Reappraisals completed for final two properties in preparation for final settlement offers
- Continued work with North Carolina Department of Environment and Natural Resources for monitoring soil contamination, demolition restrictions and material disposal.

Fourth Quarter Update:

- Continued work with North Carolina Department of Environment and Natural Resources for monitoring soil contamination, demolition restrictions and material disposal.

Upcoming Activities:

- Demolition of the structures on the acquired properties is targeted for late summer/early fall
- Building design to begin late summer and will take one year to complete
- Complete all property acquisition and relocation of businesses
- This project will continue as a Management Agenda high priority in the FY 12 Strategic Plan
- Begin programming and design process.

Fire Station 19 Development Management Agenda

As part of the approved CIP, this fire station is being built in the northern part of the city on Andrews Road to meet the projected growth and to reduce identified high emergency response times. The new station will provide the required minimum fire personnel on the scene for all emergency incidents in this area and allow for a joint fire and police presence to better serve the entire community. The total estimated for construction, land acquisition, furniture, fixtures and equipment is approximately \$3.1 million. The Fire Department received a Department of Homeland Security sponsored Assistance to Firefighters (SAFER) grant in the amount of \$2.1 million to assist with the personnel cost of the 15 firefighters needed to staff this facility. The firefighters were hired May 4, 2008 and are currently operating out of a temporary facility.

This target for action is linked to City goal #3: MORE EFFICIENT CITY GOVERNMENT- Cost-Effective Service Delivery.

- Measure of success: A built and functioning Fire Station #19.

Staff Liaison: Benny Nichols, Fire Chief

Email Address: bnichols@ci.fay.nc.us

Phone Number: 910-433-1726

Team Members: Fire, Special Projects, Engineering & Infrastructure and Building Maintenance staff, John Koenig, MKR, Stewart, Newell and Cooper, Charlie Averitt and Dennis Southern.

Action Plan	Estimated Completion
Complete the construction of Fire Station #19	2 nd Qtr 2012
Move fire operations from Temporary Fire Sta. #19 into Permanent Fire Station #19	2 nd Qtr 2012

First Quarter Update:

- Provided updates to Council and received permission to open Station #19 in Patriot Park development off Andrews Road next to Pine Forest High School
- Pre-bidding occurred in September; contractors told scope of project
- Project bids released in September
- RFP process occurred
- Development Agreement with River Landing, LLC
- Council approved station on Sept. 27 consent agenda.

Second Quarter Update:

- Bid opening for construction held on Oct. 21, 2010, with 17 bids received
- Bid awarded by Council on Nov. 22, 2010 to DSI, Inc. of Fayetteville for the amount of \$1,795,247
- Development Agreement and construction documents completed and signed
- Notice to proceed issued in December 2010.

Third Quarter Update:

- Continued updates to City staff and management
- Construction schedule developed, with a projected completion date of November 17, 2011
- Monthly construction meetings established on the second Thursday of each month
- Began construction of foundation.

Fourth Quarter Update

- Building material on site and exterior steel studs erected for walls and roof framed
- Exterior sheathing placement is on going
- Exterior concrete masonry unit (CMU) wall construction has begun on the south side of the apparatus bay
- Roofing continuing
- Masons are constructing CMU with full bed mortaring as required
- Contractor to lay out upper wall openings so that additional jamb reinforcing can be placed.

Upcoming Activities:

- Continued monthly construction meetings
- Currently there are no unresolved issues and is due to be completed in the fall.

HOPE VI Redevelopment Plan Management Agenda

This target for action focuses on the Old Wilmington Road HOPE VI Redevelopment Plan and will address the removal of blight, acquisition activities, relocation activities and the redevelopment of the area with infill market rate housing and a business park to provide job opportunities in the area. Market rate housing will be built by private developers. Funding previously allocated from the general fund for the HOPE VI Revitalization Project includes \$1 million for the Business Park and \$523,631 remaining for acquisition for market rate housing. Options for a specific study of the area, including cost estimates, will be brought to Council for consideration early in the fiscal year. As resources will allow, staff will work to acquire additional property, demolish dilapidated housing and work in the community to support development of market rate housing in the area.

This target for action is linked to the city goal #2: GROWING CITY, LIVABLE NEIGHBORHOODS – A Great Place to Live.

- Measure of success: Hire a consultant to assist with completion of project.

Staff Liaison: Victor Sharpe, Community Development Director

Email Address: vsharpe@ci.fay.nc.us

Phone Number: 910-433-1933

Team Members: Community Development, Real Estate and Development Services staff.

Action Plan	Estimated Completion
Hire a consultant and complete redevelopment plan	2 nd Qtr 2011
Acquisition of additional residential property	3 rd Qtr 2011
Demolition of dilapidated housing contributing to blight	4 th Qtr 2011
Acquisition of property for the HOPE VI Business Park – Gillespie/Blount	2 nd Qtr 2012
Completion of Request for Proposal for a developer to create market rate housing	2012

First Quarter Update:

- Reviewed two sites for the Business Park
- Acquired two vacant lots on Cool Spring Street
- Worked with the Real Estate Division to determine additional lots for acquisition.

Second Quarter Update:

- Presented site for HOPE VI Business Park to City Council – Gillespie Street site chosen
- Met with the Real Estate Division to develop a plan for acquisition of property at the Gillespie Street site
- Construction continued on the multi-family and single family housing projects
- Construction began on the Blounts Creek Trail
- Acquired an additional house located at 223 Cool Spring St., which will be demolished
- Prepared closing documents for the Bunce East multi-family project.

Third Quarter Update:

- Sent out letters to property owners regarding the City's interest in acquiring property
- The Real Estate Division began to prepare title searches for the 44 parcels at the proposed HOPE VI Business Park site
- Made offers on 13 properties to date
- 8 offers have been conditionally accepted
- Completed a draft of a Request for Qualifications for a Market Analysis and Feasibility Study for the use of the HOPE VI Business Park.

Fourth Quarter Update:

- Received title searches back for several parcels in the proposed business park
- Acquired 12 parcels in the business park area
- Accepted offers on 2 parcels in the business park area
- One of the parcels acquired is the former home of Dr. E.E. Smith located at 135 Blount Street
- Met with the State Historic Preservation Office to inspect the former E.E. Smith home
- Acquired 2 residential parcels in the HOPE VI area.

Upcoming Activities:

- The Hope VI Business Park Development will be followed as a top priority in the FY 12 Management Agenda
- Continue to complete title searches and negotiate with property owners to make offers on available parcels
- Begin work with the Chamber of Commerce for the development of the sight
- Work with Fayetteville State University and the State Historic Preservation Office regarding the home of E.E. Smith
- The RFP for a consultant to develop market study
- Negotiate development agreement.

Tree Preservation Ordinance Management Agenda

A tree preservation ordinance will help preserve and protect trees in Fayetteville given their importance as natural resources. The drafted tree preservation ordinance was reviewed with UDO stakeholders, including representatives from the building community. Staff took comments and devised a different set of codes. Currently, staff is going through revised codes for tree preservation with the stakeholders. Updates will be shared with Council as staff completes the UDO process.

This target for action is linked to the city goal #4: MORE ATTRACTIVE CITY – Clean and Beautiful.

- Measure of success: Adoption and implementation of tree preservation ordinance.

Staff Liaison: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Development Services and Parks & Recreation

Action Plan	Estimated Completion
Present tree preservation ordinance with UDO to City Council	2 nd Qtr 2011
Implement tree preservation ordinance.	4 th Qtr 2011

First Quarter Update:

- No longer being reported on separately as it has been adopted as part of UDO.

Second Quarter Update:

- No longer being reported on separately as it has been adopted as part of UDO.

Third Quarter Update:

- No longer being reported on separately as it has been adopted as part of UDO.

Fourth Quarter Update:

- No longer being reported on separately as it has been adopted as part of UDO.

Murchison Road Corridor Development Management Agenda

An Implementation Feasibility Analysis Report for the Land Use and Economic Development Plan for the Murchison Road Corridor were approved on May 11, 2009. Murchison Road Redevelopment Plan funding concept was approved on Sept. 28, 2009. Currently, no resources other than staff time are committed to this project. Staff recommends utilizing the following funding sources for catalyst sites 1 & 3: Section 108 Loan Guarantee Funds of \$2,750,000, HOME Investment Partnership Funds of \$2,256,000 and general fund money totaling \$3,270,000.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY – Strong Local Economy.

- Measure of success: Implementation of redevelopment plan and receive HUD Section 108 loan funding.

Staff Liaison: Victor Sharpe, Community Development Director

Email Address: vsharpe@ci.fay.nc.us

Phone Number: 910-433-1933

Team Members: Community Development, Special Projects staff and community partners

Action Plan	Estimated Completion
Completion of redevelopment plan	2 nd Qtr 2011
Completion of HUD Section 108 loan application for funding	2 nd Qtr 2011
Start of acquisition, demolition, clearance and relocation in support of redevelopment plan.	4 th Qtr 2011

First Quarter Update:

- Working with consultant on development of a redevelopment plan
- Will update City Council in 2nd Quarter.

Second Quarter Update:

- Updated City Council on the status of the redevelopment plans for the project
- Provided information to City Council on a project in Catalyst site #2 for the Murchison Road Corridor being pursued by Fayetteville State University for the Washington Dr. Jr. High School project with a HUD HBCU grant
- Worked with Fayetteville State University on obtaining ownership of the Washington Dr. Jr. High School property.

Third Quarter Update:

- Approved the acceptance of the Washington Drive Jr. High School site and a Memorandum of Understanding with Fayetteville State University for the demolition of the property
- Met with Fayetteville State University to discuss the management of the demolition of the school property
- Presented an update to City Council on status of the project.

Fourth Quarter Update:

- Coordinated with Fayetteville State University to complete the requirements for the Environmental Review Record for the demolition of the Washington Drive Jr. High School site.

Upcoming Activities:

- This item will be followed as a Key Management In Progress item in the FY12 Strategic Plan report
- Demolition of the Washington Drive Jr. High School
- Development of a new funding strategy
- Development of a plan to acquire property in the catalyst sites.

Sidewalk Policy and Plan Management Agenda

The Engineering & Infrastructure Dept. is slated to receive approximately \$156,000 for FY 2011 in funding for sidewalk construction. This money will be used to leverage additional funding. These opportunities vary each year including: DOT, FAMPO and Safe Routes for Schools for sidewalk construction. Recently, the City was awarded a Freedom Grant through the Transit Department, which will provide for sidewalk construction that supports ADA access to bus stops. Additionally, staff expects to complete an updated sidewalk inventory by June 30, 2011.

This target for action is linked to City goal #2: GROWING CITY, LIVABLE NEIGHBORHOODS - A Great Place to Live.

- Measure of success: Leverage current funding to acquire additional funding from other organizations to build more sidewalks.

Staff Liaison: Jeffery Brown, Engineering & Infrastructure Director

Email Address: jbrown@ci.fay.nc.us

Phone Number: 910-433-1691

Team Members: Engineering & Infrastructure and Development Services

Action Plan	Estimated Completion
Look for ways to leverage current resources to attain more funding for construction of additional sidewalks	Continuous
Sidewalk inventory complete by June 30, 2011 to include location and condition	4 th Qtr 2011
Update the current list of where sidewalks are needed	4 th Qtr 2011

First Quarter Update:

- City added over four miles of sidewalks along Reilly Road, Ramsey Street and Cliffdale Road; Freedom Trail on Bragg Boulevard is also included; projects address gap areas in existing sidewalks
- Sidewalk upgrades, along Bragg Boulevard from Freedom Memorial Park to Walter Street, have been performed as part of the Freedom Trail Project. Intersection improvements, including handicap ramps and crosswalks, have been constructed at the intersection of Bragg Boulevard and Walter Street
- FAMPO presented the draft Bicycle/Pedestrian Connectivity Plan at August 4th Friday; City partnered with FAMPO on project
- Awarded New Freedom Grant by the U.S. Department of Transportation and Federal Transit Administration to improve access to transit services
- Stimulus funding awarded to FAST will be used to construct sidewalk on Walter Reed Road.

Second Quarter Update:

- The Walter Reed Road sidewalk project that is being funded by Transit has been awarded and is scheduled to start within the next couple of weeks. This project will fill in sidewalk gaps between Melrose Drive and Cape Center Drive
- The City executed a supplemental agreement with NCDOT to include the construction of sidewalk along Reilly Road from Jeffrey Drive to Morganton Road. This is being funded by Surface Transportation Program - Designated Allocation (STPDA) funds as well as funds from the City's sidewalk CIP funding
- FAMPO staff along with City Staff is still continuing efforts to collect data necessary to complete a sidewalk inventory.

Third Quarter Update:

- Applied for two new grants totaling \$522,000 that would require a 20% match from our CIP funds
- Awarded a contract to install sidewalk along Ramsey Street from the South River electric Headquarters to Summerchase Road
- Awarded the contract to construct sidewalk along Reilly Road from Jeffrey Drive to Morganton Road. This is being funded by Surface Transportation Program - Designated Allocation (STPDA) funds as well as funds from the City's sidewalk CIP funding
- Added additional sidewalk at Lake Rim elementary school per the SRTS review and are sending the plans back for final review
- Completed the sidewalk inventory data collection
- Requested \$ 75,000 NCDOT enhancement funding to fill in a couple of sidewalk gaps on Cliffdale Road
- Completing the final planning review to bid the New Freedom grant sidewalk project for Ramsey Street, Sycamore Dairy Road and McPherson Church Road
- Awarded a CIP funded contract for sidewalk along Ramsey Street from Summer Chase Road to Stacey Weaver Drive
- The Walter Reed Road sidewalk project between Melrose Drive and Cape Center Drive is complete.

Fourth Quarter Update:

- Completed sidewalk construction on Ramsey Street from the South River Electric Headquarters to Summerchase Road
- Awarded two new grants totaling \$522,000 that would require a 20% match from our CIP funds. The locations of the two grants are Murchison Road from Pamalee drive (US 401) to north of Shaw Road (\$144,000) and Cliffdale Road from Reilly Road to Raeford Road (\$378,000)
- Began construction on sidewalk along Reilly Road from Jeffrey Drive to Morganton Road. This is being funded by Surface Transportation Program - Designated Allocation (STPDA) funds as well as funds from the City's sidewalk CIP funding
- In final review for Hoke Loop road sidewalk and funding should be released this year
- Completed GIS inventory of all sidewalks located within the City.

Upcoming Activities:

- Bidding the New Freedom Grant that will affect existing bus stops on routes 5 and 14, along Ramsey Street and Sycamore Dairy Road, respectively. Focus areas include senior housing and group homes for individuals with disabilities, the VA Hospital, Department of Social Services, Fayetteville Technical Community College, Methodist University and shopping centers. This project is scheduled to be awarded within the next 3 months
- Implementing a process that will keep the data and map depicting where sidewalks exist up to date.

Youth Council Development Management Agenda

Fayetteville-Cumberland Parks & Recreation will create an environment that enables the youth and young adults of this community to develop the essential knowledge and skills necessary to comprehend and recognize the meaning of local, state and federal government through the development of a youth council program. The intent will be to structure a program that is sustainable and meaningful.

This target for action is linked to City goal #5: GREATER COMMUNITY UNITY – Pride in Fayetteville.

- Measure of success: Establishment of Youth Council.



Staff Liaison: Ron McElrath & Michael Gibson; Human Relations, Parks & Rec. Directors

Email Address: rmcelrath@ci.fay.nc.us, mgibson@ci.fay.nc.us

Phone Number: 910-433-1557

Team Members: Parks & Recreation staff, Human Relations Staff

Action Plan	Estimated Completion
Develop a formal learning plan that includes long & short-term goals and action steps	2 nd Qtr 2011
Identification of young people interested in government countywide	2 nd Qtr 2011
Establish Youth Council	3 rd Qtr 2011

First Quarter Update:

- Held discussion with Council members on restructuring programs for Youth Development program; Youth Development takes into account child’s total development; Youth Council is part of Youth Development.

Second Quarter Update:

- Continued planning for Youth Council development.

Third Quarter Update:

- Partnership with Human Relations formed to develop program
- Human Relations Youth Council proposal accepted by Cumberland County Schools (CCS).

Fourth Quarter Update:

- Committee has engaged school system and is working on reaching out to the community for support
- Draft of application is in review.

Upcoming Activities:

- Selection criteria and application finalized
- Engaging community: Applications will be provided to area schools (private, charter, public, and home schools; etc.)
- Selection of 12 – 15 member Youth Council
- In cooperation with the newly elected youth council members, review and implement the programs and activities of the Youth Council in conjunction with its mission statement:

To provide the youth of Cumberland County with the opportunity to participate in addressing youth issues, promoting existing positive programs and developing positive programs, projects, and activities for the youth in Cumberland County, thereby promoting and encouraging youth to become effective leaders in the community by helping shape the future of our community.

Military Business Park Development Management Agenda

The Military Business Park is a 216-acre privately owned site nestled between Bragg Boulevard, the All-American Freeway, and Sante Fe Drive. The Community Development Department funds a portion of the infrastructure improvements. It is the responsibility of the private property owner to master plan the 216 acre site. Development Services staff will participate in a dialogue on how to maximize the potential of the uniquely located site. Staff will promptly review and comment on plans or proposals the developer may bring forward.

This target for action is linked to City goal #1: GREATER TAX BASE DIVERSITY - Strong Local Economy.

- Measure of success: Assist with the development of the park as much as possible to make it a success.

Staff Liaison: Karen Hilton, Planning and Zoning Division Manager

Email Address: khilton@ci.fay.nc.us

Phone Number: 910-433-1437

Team Members: Development Services, Engineering & Infrastructure, and Community Development

Action Plan	Estimated Completion
Participate in the dialogue on how to maximize the potential of the site	Continuous
Promptly review and comment on plans and proposals the developer may bring forward	Continuous
Continue to seek funding for the core infrastructure/public assets that will be required to implement a thoroughly conceived master plan.	Continuous

First Quarter Update:

- Processed zone classification change as requested by property owner
- Community Development worked on contract amendment to allow additional funding to be spent on public infrastructure providing more flexibility for its use.

Second Quarter Update:

- With the completion of the first private facility in the park, PDI is now operational.

Third Quarter Update:

- With the adoption of the UDO and the citywide remapping, staff is working with the developer to identify the closest new district(s) or procedures to continue development as planned.

Fourth Quarter Update:

- Staff continued discussions to recommend the most appropriate zoning fitting the most likely uses and enabling development to occur in the quickest possible timeframe
- Efforts to facilitate a Development Agreement and agreements regarding coordinated transportation improvements in the area neared completion
- Staff continued to review new plans as additional development proposals moved forward.

Upcoming Activities:

- This is a public/private partnership where the City of Fayetteville and State agencies support activity initiated by the private sector. The Cumberland County Chamber of Commerce will continue to market the facility and as a team the City stands ready to assist as new projects are proposed.

Downtown Development Plan Review Management Agenda

The Downtown Development Manager will focus on preparing a work plan for the review of the Fayetteville Renaissance Plan for the City's downtown. This plan was adopted in 2002 with the assistance of the North Carolina Urban Design Assistance Team. Since that time, many projects have been completed, other accomplishments made and new projects have been introduced. Staff may determine that a consultant may be required to complete the review. At the conclusion of the review process, a presentation will be provided to Council, so that staff can receive feedback and direction.

This target for action is linked to the city goal #6: REVITALIZED DOWNTOWN – A Community Focal Point.

- Measure of success: Update current plan or develop a new plan.

Staff Liaison: Victor Sharpe, Community Development Director

Email Address: vsharpe@ci.fay.nc.us

Phone Number: 910-433-1933

Team Members: Community Development, Special Projects and Development Services

Action Plan	Estimated Completion
Review of goals and accomplishments of the current Fayetteville Renaissance Plan	2nd Qtr 2010
Development of a work plan for updating the plan or the development of a new plan	2 nd Qtr 2010
Hire a consultant to work with the City to develop plan (will need to determine if this action is necessary)	3 rd Qtr 2011
Begin the development of the plan update if needed.	3 rd Qtr 2011

First Quarter Update:

- Reviewed the current downtown plan and new developments in the downtown.

Second Quarter Update:

- Completed the review of the current downtown plan
- Developed a work plan for an update
- Completed research on the use of the Urban Design Assistance Team and the International Downtown Association Advisory Panel to assist in update of the current plan.

Third Quarter Update:

- Submitted request for funding to hire a consult for an update of the plan for next fiscal year.

Fourth Quarter Update:

- \$40,000 has been programmed in FY 12 for a consultant to provide an update for a downtown development plan.

Upcoming Activities:

- Prepare request for proposal for a consultant to prepare the downtown plan update.

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: Brian M. Meyer, Assistant City Attorney
DATE: August 8, 2011
RE: **Legislative Update on Senate Bill 683 and Its Impact on PROP**

THE QUESTION:

Whether PROP can still function as Council intended following the adoption of Senate Bill 683?

RELATIONSHIP TO STRATEGIC PLAN:

Growing City, Livable Neighborhoods - A Great Place to Live

BACKGROUND:

On April 26, 2011, the City Council adopted a Probationary Rental Occupancy Permit (PROP) program. This program is designed to allow the City to more closely monitor and regulate rental properties that are the site of repeated or severe code violations or that are the site of certain criminal acts. The program would require those rental property owners whose property is the site of such violations or crimes to be placed into PROP and as a condition for renting the offending property again, the owner would be required to obtain a permit from the City. This would allow the City greater oversight of problem rental properties. The program was to be implemented July 1, 2011.

On June 18, 2011, Senate Bill 683 was ratified by the Legislature. The purpose of this Bill was to limit the level of local regulation of rental properties as well as limit the use of periodic inspections. Specifically, it prohibits cities from enforcing an ordinance that requires permitting of rental properties unless the property is the site of more than three violations in a 12-month period or is identified as being in the top 10 percent of properties with crime or disorder problems as set forth in a local ordinance. The language regarding the top 10 percent of properties with crime or disorder problems is based on a program currently utilized in Charlotte. This Bill has a direct impact on the functionality and substance of the PROP program.

Upon adoption of Senate Bill 684, the PROP ordinance is no longer enforceable as drafted. Only one of the ten PROP eligible conditions could possibly be enforced as intended and it would still have to be revised. Furthermore, the ability of the City to charge a permit fee for PROP eligible properties under the current ordinance is doubtful.

ISSUES:

Does the Senate Bill 683's impact on PROP prevent the ordinance from addressing Council's interest.

BUDGET IMPACT:

In order to help offset program costs, permit fees were to be required by those rental property owners whose properties were entered into PROP. Senate Bill 683 limits the City's ability to levy such fees.

OPTIONS:

1. Direct staff to revise the PROP ordinance to eliminate those provisions that are inconsistent with Senate Bill 683 and proceed with implementation of the program.
2. Rescind the PROP ordinance and direct staff to develop a program consistent with Senate Bill 683.
3. Provide additional direction to staff.

RECOMMENDED ACTION:

Given the fact that nine of the PROP eligible conditions cannot be enforced, that the remaining one condition must be revised in order to be enforced, and that it is doubtful that the City could charge a permit fee for PROP eligible properties, staff recommends the current Ordinance No. S2011-005 be rescinded and that staff develop a new program consistent with Senate Bill 683.

ATTACHMENTS:

PROP Ordinance (S2011-005)

Charlotte Remedial Action Program Ordinance

Senate Bill 683

ARTICLE V. PROBATIONARY RENTAL OCCUPANCY PERMIT

- Sec. 14-95. Findings and declaration of necessity.
- Sec. 14-96. Definitions.
- Sec. 14-97. Permitting of probationary rental residential dwellings.
- Sec. 14-98. Standards.
- Sec. 14-99. Compliance with provisions.
- Sec. 14-100. Enforcement.
- Sec. 14-101. Appeal.
- Sec. 14-102. Administrative fee and arbitration fee.
- Sec. 14-103. Methods of service.
- Sec. 14-104. Relation to other laws.
- Secs. 14-105—14-130. Reserved.

Sec. 14-95. Findings and declaration of necessity.

(a) *Findings.* Housing in the city consists of owner-occupied and tenant-occupied properties and the two types of housing are in general parity. The substantial majority of complaints about and violations of the Code provisions adopted to assure minimum adequate housing arise from tenant-occupied property. State law and this Code impose the responsibility to provide minimally adequate housing for tenants on the property owner. Existing remedial measures in the Code are insufficient to achieve prompt Code compliance resulting in significant adverse impacts on the public health, safety and welfare of the city including the quality of life for tenants, affected neighborhoods, and the city to expedite compliance with the Code at such properties and thereby assure better quality housing for tenants and the neighborhood, the city council finds it necessary to adopt additional remedial measures for more effective compliance with the Code at such properties.

(b) *Declaration of necessity.* It is deemed necessary in order to promote public health, welfare, good order and safety of the city and its residents that persons renting residential properties where there exist certain unsafe building, minimum housing, zoning or nuisance code violations should be subject to a permitting system. Permitting will:

- (1) Reduce the likelihood that these residential housing accommodations will become public nuisances in violation of G.S. 19-1(b).
- (2) Promote responsible management of these housing accommodations.
- (3) Assist in providing a safe habitat for residents and neighbors of these facilities.
- (4) Safeguard property values.
- (5) Reduce the likelihood that housing accommodations where such problems most frequently have arisen and which are unfit for human habitation, dangerous, or injurious to the public will exist or be occupied.
- (6) Expedite repair of residential housing accommodations where such problems arise.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-96. Definitions.

Unless the context clearly indicates otherwise, the following words and phrases as used in this article shall have the following meanings:

- (a) *Business affiliate.* A person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, the owner of a probationary residential rental dwelling of any property. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more.
- (b) *Dwelling.* A dwelling unit used for residential purposes other than a dwelling unit in a bed and breakfast inn, hotel or motel, guest house, rest home, rooming house, boarding house, lodging house, or tourist home.
- (c) *Dwelling unit.* One or more rooms physically arranged as to create an independent housekeeping establishment with separate facilities for cooking, sleeping and toilet. A dwelling unit can be occupied by only one family. A dwelling unit can also contain a utility apartment or rented rooms in accordance with the Fayetteville City Code.
- (d) *Fifth degree of kinship.* Collateral kin within five degrees of kinship removed from the owner with the degree of kinship to be computed as provided in G.S. 104A-1.
- (e) *Housing code.* The provisions of the Fayetteville City Code, chapter 14
- (f) *Development services department.* The Development Services Department of the City of Fayetteville.
- (g) *Licensed rental agency.* A rental agency holding a current privilege license issued by the State of North Carolina pursuant to G.S. 10541(a)(8) or (9).
- (h) *Notice of violation.* A city issued list of failures to comply with the City Code at the dwelling included in the notice sent to the owner(s) pursuant to G.S. 160A-428 and 160A-429 and chapters 14, 16, 22, and 30 of the Fayetteville City Code.
- (i) *Owner.* Any person who alone, or jointly, or severally with others:
 - (1) Shall have title to any dwelling or dwelling unit, with or without accompanying actual possession thereof; or
 - (2) Shall have charge, care, or control of any dwelling or dwelling unit, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person thus representing the actual owner shall be bound to comply with the provisions of this article, and of rules and regulations adopted pursuant thereto, to the same extent as if the person were the owner; or
 - (3) For violations of the housing code, shall be a mortgagee of record.

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- (j) *Person.* Associations, corporations, limited liability companies, company, firm, partnerships, joint ventures, public or private institutions, corporations, trusts, estates, utilities, cooperatives, commissions, boards, condominiums, interstate bodies and bodies politic and corporate as well as to individuals or other legal entities.
- (k) *Probationary rental occupancy permit.* A permit issued to the owner of a probationary rental residential dwelling pursuant to this article.
- (l) *Probationary rental residential dwelling.* A dwelling unit, other than a utility apartment, including the premises of the dwelling unit which is the site of:
 - (1) A violation of Fayetteville City Code by re-occupancy of a dwelling previously found unsafe;
 - (2) A violation of Fayetteville City Code by re-occupancy before certification of compliance with the housing code by the development services department;
 - (3) Activities resulting in: (a) a third conviction for violation of sections 17-7 through 17-16 of the Fayetteville City Code, noises ordinances, within the 24-month period following notice of the first conviction; or (b) a third civil penalty for violation of sections 17-7 through 17-16, within the 24-month period following notice from the police department of the first notice of violation;
 - (4) A violation of chapter 14 of the Fayetteville City Code by the failure to repair, vacate, or demolish within the time provided for compliance with the Code in the order issued by the development services department pursuant to G.S. 160A-429;
 - (5) A violation of the Fayetteville City Code section 14-31 by housing more inhabitants than permitted in the dwelling;
 - (6) A zoning vehicle violation by the failure to comply in a timely manner with an order issued by development services department due to the unlawful storage of unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled automotive vehicles on the premises;
 - (7) A second nuisance abatement pursuant to the Fayetteville City Code within a 24-month period;
 - (8) A second citation for violation of sections 6-226 through 6-230 or sections 6-241 through 6-243 of the Fayetteville City Code within a 24-month period;
 - (9) A fourth notice of violation within a 24-month period, when the prior notices of violations were resolved by corrective action and without issuance of any order or mandate for corrective action, of any of the following chapters or sections: chapter 14, section 16-311, sections 16-354 through 16-356, and sections 22-11 through 22-18 of the Fayetteville City Code and upon implementation of the Fayetteville Unified Development Ordinance, article 30-4, section D, subsections 3(h) and 3(s) of the Fayetteville Unified Development Ordinance; and

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- (10) Activities resulting in a third arrest for a criminal activity on the premises of the dwelling following notice from the police department within the 24-month period following notice from the first arrest for a criminal activity on the premises of the dwelling.

- (m) *Public nuisance violation.* A determination by a code enforcement official that any of the nuisances listed in section 22-16 exist at a property which determination is included in a notice sent to the property owner pursuant to section 22-17

- (n) *Violation.* A determination by a code enforcement official or a judge, after a notice of violation of the City Code and an opportunity for response to the noticed alleged failures, that an order or other mandate should issue to the owner or any other person imposing a sanction or requiring further actions to comply with the City Code, including without any limitation the payment of civil penalties or administrative fees, implementation of corrective measures, or cessation of activities which are not authorized by the City Code, or conviction of a criminal code offense for failure to comply with the Code provisions listed in subsection (l) of this section.

- (o) *Zoning vehicle violation.* A determination that unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled automotive vehicles are present on the premises in violation of the zoning code including the provisions at sections 16-354 through 16-356

- (p) *Criminal activity.* Means arrest of a tenant or tenant guest for conduct on the premises of the dwelling under any of the following:
 - (1) G.S. 14-204;
 - (2) G.S. 14-71.1 on the premises;
 - (3) G.S. 18B-300;
 - (4) G.S. 14-409 or G.S. 14-415.1;
 - (5) G.S. 14-292;
 - (6) G.S. 14-288.2; or
 - (7) G.S. 90-95.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-97. Permitting of probationary rental residential dwellings.

(a) Unless compliance with this article is deemed pursuant to section 14-99, it shall be unlawful for an owner to rent, to receive rental income from, or to offer for rent, any probationary rental residential dwelling required to be permitted under this part without first obtaining a permit for the dwelling under this part or when the permit issued under this part is revoked. The owner of a probationary rental residential dwelling shall hold a permit under this part for each probationary rental residential dwelling and shall abide by the standards in section 14-98 in order to be eligible to retain the

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permit. Each probationary rental residential dwelling is a separate dwelling for fee purposes and for the requirement to be permitted. When an apartment house consisting of multiple dwelling units is required to have a probationary rental occupancy permit as a result of a violation which applies to the building as a whole, a single permit will be required for the building as a whole which permit will be issued to the owner of the building, however each dwelling unit within the building which separately qualifies as a probationary rental residential dwelling shall be subject to separate permit fees and the requirement to be permitted. The development services department shall assign violations in common areas of an apartment complex to the apartment house nearest to the common area where the violation occurred.

(b) Every application for the probationary rental occupancy permit prescribed herein, or a permit amendment to add another probationary rental residential dwelling to the permit, shall be upon a form approved by the director of the development services department or his designee and shall be filed with the development services department. Every application shall be made under oath and shall contain the information required to show the owner is eligible for a permit under this article and sufficient information to enable the development services department to determine that the standards of section 14-98 are being, or will be, met at any probationary rental residential dwelling to be permitted. Within 30 days of receipt of a complete application and a nonrefundable application fee of \$200.00, the development services department shall review each application and determine whether the application should be approved. The development services department shall deny any application which does not satisfy the minimum requirements of this article and any application submitted by an owner during a period of permit revocation.

(c) The permit fee shall be \$300.00 for the first year of the permit. The annual fee for subsequent years shall be \$500.00. Such fee shall be due and payable when the permit issues with annual fees for subsequent years due and payable annually.

(d) Any person required to have a probationary rental occupancy permit shall be permitted for two years. If a violation of the permit occurs, the permit requirement is extended for the probationary rental residential dwelling covered by the permit for two years following the date of the violation. To be released from the requirement for a probationary rental occupancy permit, the owner must have had no violation of any of the Code provisions listed in subsection 14-96(1) and the standards in section 14-98 for the two-year period immediately before the permit period ends and the dwelling must be approved as compliant with the Code in a final inspection. Final inspections will be conducted only upon the request of the owner. When the owner fails to request an inspection within 90 days after the date the permit requirement was due to expire, the development services department, after written notice to the owner and tenant, shall inspect the permitted dwelling for compliance with the Code provisions listed in subsection 14-96(l) and the standards in section 14-98

(e) Any person taking title to a permitted probationary rental residential dwelling shall be the holder of the probationary rental occupancy permit. Any person taking title to a probationary rental residential dwelling not previously holding a permit shall apply for a probationary rental occupancy permit. The new owner of the dwelling unit, who is not a prior owner or related by marriage or within the fifth degree of kinship to the seller, may request that the director of the development services department or his designee remove the requirement that the dwelling have a probationary rental occupancy permit. For the request to be eligible for consideration, the new owner must:

- (1) Have paid all outstanding fees and civil penalties for the dwelling;
- (2) Have no violations or pending violations of this article issued to the new owner;

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- (3) Obtain from the development services department a determination that the dwelling complies with the standards in section 14-98; and
- (4) Submit an affidavit which shows proof of title transfer, that the new owner is not a prior owner, not related by marriage or within the fifth degree of kinship to the seller, is not a business affiliate of the prior owner, and that the lease for the dwelling includes a provision making violations of the City Code by the tenant grounds for eviction.

(f) A temporary permit shall be issued by the development services department if the final decision on a complete application is not made at the end of the 30-day review period. The temporary permit will expire 30 days following an inspection which finds the dwelling to be ineligible to hold a permit under this article; upon issuance of the probationary rental occupancy permit for the dwelling; or upon denial of the application for a probationary rental occupancy permit. The development services department shall not charge a fee for a temporary permit.

(g) An application shall be accompanied by a notarized statement from a competent person agreeing to an appointment with a process service agent for receipt of a notice of violation or order from the city for all violations at the dwelling unless each notice of violation or order previously sent from the city to the owner of the dwelling was delivered and no such notices of violation or orders returned to the city. The refusal of service by the process service agent of a notice of violation or order, or a notice of violation or orders returned undelivered, shall be grounds to revoke the permit. When a notice or order under this article is returned undelivered, the development services department may require the appointment of a process service agent as a condition for continuing to hold the permit. Failure by the owner to maintain a duly appointed process service agent, or to appoint a process service agent within 30 days of being so ordered, shall be grounds to revoke the probationary rental occupancy permit.

(h) The development services department shall maintain a list of all dwellings and dwelling units which are probationary rental residential dwellings and subject to the permit requirements of this article. The development services department shall send a copy of the list of probationary rental residential dwellings, which shows whether each listed dwelling is permitted, to the office of the city clerk, for public inspection, at least once every 30 days. The development services department shall use other reasonable means to make the list publicly available including the information systems for public access to city information.

(i) The city council, by ordinance, may add the dwelling to the probationary rental occupancy permit program upon finding that existing remedial provisions have been inadequate to abate the detrimental impact on the tenants, the adjacent properties, the dwelling and the neighborhood.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-98. Standards.

(a) The permittee shall respond to the department making contact, either in person or by telephone within two business days after being contacted at the telephone number provided in the application, to the police department, the fire department, or the development services department. The permittee shall submit to the department making the contact, within three days of the response, written documentation of the response. The permittee may designate a licensed rental agency as the person responsible for responding to calls for assistance from the police department, the fire department, or

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the development services department. The designated agency must have at least one agent located in the city or within 50 miles of the city's planning jurisdiction who is authorized by it to respond to calls. The designation shall be effective only after a notarized statement is submitted to the development services department in which the responsible employee is identified and agrees to accept the duty.

(b) The permittee shall maintain the dwelling so that it does not violate any applicable provision of the zoning code, minimum housing code, or other code provisions listed in the definition of probationary rental residential dwelling at section 14-96

(c) The permittee shall maintain a current list of occupants. Upon request, by city inspectors, police, and fire and emergency response personnel investigating violations or potential violations of this article, the permittee shall present the list of occupants to the investigating personnel.

(d) The permittee shall obtain a section 7-33 certificate of housing code compliance before a vacant probationary rental residential dwelling with an unresolved notice of violation of the housing code is occupied by another tenant.

(e) The permittee shall comply with the requirements of this article.

(f) The public works commission shall not provide water service to a vacant probationary rental residential dwelling which is in violation of the housing code until a certificate of housing code compliance has been issued for the dwelling pursuant to section 7-33, unless the director of the public utilities department determines such service is necessary for public health reasons and will not be used by occupants of the dwelling for residential purposes.

(g) Within 30 days of the designation of a dwelling as probationary residential rental dwelling, the owner shall deliver a written notification, using the form approved by the development services department, to each tenant that the dwelling is a probationary rental residential dwelling. Prior to entering into a rental agreement, whether oral or written, the permittee shall provide written notification, using the form approved by the development services department, to each prospective tenant that the dwelling is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit. The permittee shall provide proof of the delivery to the development services department along with a copy of the notification within ten days of receipt of proof of delivery.

(h) Within 30 days of the designation of a dwelling as probationary residential rental dwelling, the owner of a condominium or a dwelling in a townhouse development, shall deliver a written notification, using the form approved by the development services department, to the association or governing body which controls the property commonly owned and associated with the dwelling, that the dwelling is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit on the common property of the association. The permittee shall provide proof of the delivery to the development services department along with a copy of the notification within ten days of receipt of proof of delivery.

(i) Within 30 days of the designation of an apartment house as probationary residential rental dwelling and when the persons owning the apartment house and the apartment complex are not the same person, the owner of an apartment house shall deliver a written notification, using the form approved by the development services department, to the owner of the apartment project which

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controls the property commonly owned and associated with the apartment house, that the apartment house is a probationary rental residential dwelling. In the notification, the permittee shall explain the possible enforcement actions which can be applied for violations of the probationary rental occupancy permit on the common property of the apartment complex. The permittee shall provide proof of the delivery to the development services department along with a copy of the notification within ten days of receipt of proof of delivery.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-99. Compliance with provisions.

(a) Any person required by this article to have a permit for a probationary rental residential dwelling who files a complete application for any required permit within ten days following notice from the development services department that this article applies to, the dwelling shall be deemed compliant with this article unless and until the application is denied.

(b) It shall be unlawful to rent, to receive rental income from, or to offer for rent a dwelling subject to the permit requirements of this article beginning ten days after service of notice by the development services department that a permit is required under this part unless a complete application for a subsection 14-97(a) permit has been submitted for the dwelling.

(c) Any person who holds a G.S. 105-41(a)(8) or (9) privilege license as a rental agency, and is not the record owner of the probationary rental residential dwelling, shall be deemed compliant with this article upon filing with the development services department an affidavit or other notarized statement that the agency relationship has been terminated and that the failure to comply with the noticed violations was caused by the record owner's refusal to comply with the article.

(d) Any person who has been designated as a process service agent and is not the record owner of the probationary rental residential dwelling shall be deemed compliant with this article upon promptly notifying the development services department that the notice or order delivered for service cannot be delivered to the owner and upon filing with the development services department an affidavit or other notarized statement that the agency relationship has been terminated and that all prior notices and orders were delivered to the owner.

(e) If the activities, violations or abatements which individually or cumulatively could cause a property or dwelling to be deemed a probationary rental residential dwelling are the result of tenant behavior or actions, an owner shall be entitled to relief from any such violation(s) (i.e., the violation(s) shall not be counted as a strike against the owner) by evicting or removing the tenant, so long as the owner can show that the tenant behavior or action is the basis of the eviction or removal of the tenant. No owner may obtain relief for more than two violations in any three-year period per dwelling under this subsection. Any owner who evicted or removed the tenant as a result of the tenant causing such violation(s), whether such removal is the result of a tenant voluntarily vacating the dwelling or as a result of court action, shall be deemed compliant with this article upon filing with the development services department an affidavit or other notarized statement stating that: (1) the tenant cited for the violation no longer resides at the dwelling; or (2) the attached complaint was filed to evict the tenant and listing the actions showing diligence in effecting the eviction and attaching a copy of the signed lease with the required right to evict. An owner shall also be entitled to relief from any subsequent violation(s) that occur while the action to evict the tenant is pending upon a similar showing to the development services department.

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- (1) If the court has denied the owner's diligent pursuit to evict the tenant, it shall be sufficient if the owner does not renew the tenant's lease at the end of the then-current term and instead terminates the lease.
- (2) When an owner shows an inability to access the dwelling for purposes of effecting remedial activity as ordered by the development services department pursuant to chapter 14 due to a court order in an eviction proceeding, the failure to complete the required remedial activity as previously ordered by the development services department is not a violation for purposes of determining whether the dwelling is a probationary rental residential dwelling until 30 days after the expiration of the court order barring access or within such additional time for compliance as is provided by the development services department.

(f) Any mortgagee of record, not otherwise defined as an owner, shall be deemed compliant with this article unless and until the other owners of the probationary rental residential dwelling fail to comply with notices of violations or orders, including for the payment of civil penalties. A mortgagee of record, not otherwise defined as an owner, shall not be liable for civil penalties or administrative fees in excess of the liability of the other owners.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-100. Enforcement.

Enforcement may be by any one or a combination of the following methods, and the institution of an action under any of these methods shall not relieve any party from any civil proceeding prescribed for violations of this article. When a violation continues from day to day without interruption, a new and separate violation occurs when the violation continues after service of the notice or order of the immediately preceding violation for the unlawful activity.

- (1) *Civil penalties.*
 - a. Any person who shall rent, or offer for rent, a probationary rental residential dwelling without first applying for and obtaining a permit as required in section 14-97 or who shall rent, or offer for rent, a probationary rental residential dwelling permitted under this article in violation of this article shall be subject to a civil penalty as follows:
 1. Fifty dollars for a first violation, and each continuing day of noncompliance following written notice thereof shall result in the assessment of an additional civil penalty of \$50.00 per day;
 2. Two hundred fifty dollars for a second violation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$100.00 per day;
 3. Two hundred fifty dollars for a third violation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$250.00 per day;

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4. Five hundred dollars for a violation during a period of revocation, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$500.00 per day;
 5. Five hundred dollars against the owner of common property in a condominium or townhouse development for each violation occurring on the common area of a dwelling subject to this article, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$250.00 per day; and
 6. Five hundred dollars against the owner of an apartment project with common property used by an apartment house for each violation occurring on the common area of an apartment house subject to this article, and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$250.00 per day.
- b. Any duly appointed licensed rental agency employee who, after receiving written notice of a violation by the city, fails to contact the city as stated in the standards found in subsection 14-98(a) shall be subject to a civil penalty of \$100.00. Thereafter, each and every subsequent single violation occurring on the same probationary rental residential dwelling shall be assessed a civil penalty of \$250.00 and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$100.00 per day.
- c. Any duly appointed process service agent who, after receiving written notice of a violation or an order from the city, refuses to accept service of process or delivery of notices of violation or orders from the city in accordance with the agent's notarized statement attached to the application submitted for the dwelling shall be subject to a civil penalty of \$100.00. Thereafter, each and every subsequent single violation occurring on the same probationary rental residential dwelling shall be assessed a civil penalty of \$250.00 and each continuing day of noncompliance following notice thereof shall result in the assessment of an additional civil penalty of \$100.00 per day.
- (2) *Equitable remedies, including injunctions.* As authorized by the city council, the city may apply to the courts for any appropriate equitable remedy to enforce the provisions of this article, including mandatory or prohibitory injunctions commanding the party to correct the unlawful condition or cease the unlawful use of the business.
- (3) *Revocation of permit.*
- a. For each dwelling where a second violation of this article occurs within 24 months of the most recent violation of this article, the development services department shall issue an order revoking the residential rental occupancy permit for a period of two years, or when no permit had been issued the dwelling, making the probationary residential rental dwelling ineligible for a permit for a period of two years.

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- b. For each dwelling where a third violation of this article occurs within 24 months of the most recent violation of this article, the development services department shall issue an order revoking every probationary rental occupancy permit issued to, or held in the name of the owner of the dwelling where the violation occurred, for a period of two years, and making the owner ineligible to hold a probationary rental occupancy permit for a period of two years.
 - c. Ten days following the service on the permittee of a written recommendation by the director of the development services department or his designee which describes the nature of any violation, the director of the development services department or his designee may revoke a permit issued pursuant to section 14-97 if it is determined that the permittee has violated any provision of this article and other means of enforcement have failed to deter the permittee from operating in violation of this article.
- (4) *Probationary status.* Following a determination that a permittee under this article has violated the provisions of this article, the permittee shall be sent a notice that the permit is on a probationary status and will be revoked for a period of 24 months if the permittee commits a second violation during the 24-month period following the first violation. Following a determination that a permittee under this article has violated the provisions of this article a second time within any 24-month period, the permittee shall be sent a notice that the permit is on a probationary status and if the permittee commits a third violation during the 24-month period following the first violation, every probationary rental occupancy permit issued to, or held in the name of the owner where the violation occurred, will be revoked for a period of 24 months.
- (5) *Cancellation of revocation orders.* The director of the development services department or his designee shall cancel an order revoking a probationary rental occupancy permit when the owner requesting cancellation of the revocation order has paid all outstanding fees and civil penalties for the dwelling and the owner has no pending appeals of any notices or orders and:
- a. Within five working days of the service of the order, the owner obtains approval from the development services department of a management plan for the dwelling to achieve full compliance with the standards in section 14-98 within the time otherwise provided by the Fayetteville City Code, or such time as the development services department finds reasonable; and
 - b. The owner by power of attorney appoints a licensed rental agency to manage the property for the two-year period following the approval; or
 - c. Within 15 days of the service of the order, the new owner of the dwelling unit, who is not a prior owner, not related by marriage or within the fifth degree of kinship to the seller, is not a business affiliate of the prior owner, submits an affidavit so attesting along with proof of title transfer, pays all outstanding fees and civil penalties, and shows the development services department that the dwelling complies with the standards in section 14-98

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-101. Appeal.

Any permittee, owner or other person served with notice or an order under the provisions of this article, including denial of a request pursuant to subsection 14-97(e), may appeal the notice or order in the following manner:

- (1) An appeal must be filed in writing with the director of the development services department or his designee within 30 days after service of the written notice or order of the director of the development services department or his designee on the petitioner. The written appeal shall identify the application of the article at issue and provide the reasons the petitioner contends that it was wrongly applied and any supporting documentation. An appeal challenging a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9) may include an appeal of the basis for the citations resulting in the determination that the dwelling is qualified as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9).
- (2) Unless the director of development services or his designee decides to allow the requested relief based on the appeal request, the director of the development services department or his designee, which shall send each appeal request to the board of appeals on dwellings and buildings, shall consider both the applicable code provisions and equitable factors in resolving the appeal. If the person who files an appeal of a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9) shows that the owner did not cause and, with the use of reasonable measures, could not have prevented the actions or activities leading to the citations which qualified the dwelling as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9) the board of appeals on dwellings and buildings may reverse the order.
- (3) An appeal may be taken from any decision of the board of appeals on dwellings and buildings to arbitration by giving notice of appeal to the city council within 30 days after service of the written decision of the board of appeals on dwellings and buildings. Notice of appeal shall be given by delivery of a written statement to the city clerk stating the grounds for the appeal and providing the city clerk with a copy of the written decision of the board of appeals on dwellings and buildings. The written appeal shall identify the application of the article at issue and provide the reasons the petitioner contends that it was wrongly applied. The director of the development services department or his designee and the appealing party shall select an arbitrator from the Cumberland County District Court list of arbitrators. The arbitration shall be conducted, to the extent practicable, in accordance with the supreme court rules for court-ordered arbitration in North Carolina. The arbitrator shall be paid a fee equal to the maximum fee specified in such rules. The arbitrator shall consider both the applicable code provisions and equitable factors in resolving the appeal if the person who files an appeal of a notice that a dwelling is qualified as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9) shows that the owner did not cause and, with the use of reasonable measures, could not have prevented the actions or activities leading to the citations which qualified the dwelling as a "probationary rental residential dwelling" pursuant to subsection 14-96(l)(9), the arbitrator may reverse the order.

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- (4) All decisions of the director of the development services department or his designee, the board of appeals of housing and dwellings and the arbitrator shall be served on the petitioner.
- (5) The enforcement of an order issued by the development services department which includes the revocation of a residential rental occupancy permit shall be stayed upon the filing of an appeal and until a final order is issued by the director of the development services department or his designee or the arbitrator.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-102. Administrative fee and arbitration fee.

(a) *Fee for each violation.* Any person who violates this article shall pay an administrative fee of \$200.00 per violation and the costs to the city of service of orders and notices.

(b) *Fee for arbitration.* Any person who files an appeal shall pay an administrative fee of \$145.00 to the city at the time the appeal request is made. Failure to pay the administrative fee shall cause the appeal to be denied. The person who filed the appeal shall be responsible for paying one-half of the costs of the arbitration fee. If the person who appeals is the prevailing party, the administrative fee and the portion of the arbitration fee shall be reimbursed.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-103. Methods of service.

(a) Unless otherwise provided, notices, orders or other documents issued pursuant to this article shall be served upon persons either personally or by registered or certified mail. When service is made by registered or certified mail, a copy of the notices, orders or other documents may also be sent by regular mail service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within ten days after the mailing. If regular mail is used, a notice of the pending proceedings shall be posted in a conspicuous place on the premises affected.

(b) If the identities of any owners or whereabouts of persons are unknown and the same cannot be ascertained by the development services department or the probationary rental occupancy permit team of the police department in the exercise of reasonable diligence, or if the owners are known but have refused to accept service by registered or certified mail, and the development services department shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order upon such owners or persons may be made by publication in a newspaper having general circulation in the city at least once no later than time at which personal service would be required under this article. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

(c) In order to assist the development services department and the police department with the service of notices, orders and other documents pursuant to this article, an owner who submits an affidavit showing a failure to receive a notice of violation and who affirms in the affidavit submitted to the development services department or the probationary rental occupancy permit team of the police department that the address listed in the Cumberland County tax records has been changed to the

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correct address at which the owner can receive further notices, shall have the prior violation removed from consideration for the probationary rental residential dwelling determination so long as the owner continues to maintain a correct address with the Cumberland County tax records and does not refuse to accept service of any notice at the address listed with the Cumberland County tax records.

(d) In order to assist owners who desire to better monitor activities at their properties, the police department shall notify an owner as provided in subsection (a) of this section within ten business days of an activity at the property by a tenant or a guest of a tenant that can or will cause the property to be qualified as a probationary rental residential dwelling. In addition and to the extent practicable, a notice to the owner shall be provided in the most expeditious manner available, including notice sent by electronic mail or facsimile to the locations provided in the rental registration. Failure to send or deliver the more expeditious notice shall not impede the enforcement of the probationary rental occupancy permit program against the owner.

(Ord. No. S2011-005, § 1, 4-26-2011)

Sec. 14-104. Relation to other laws.

Nothing in this article shall authorize or condone any violation of federal, state, and city fair housing laws and state landlord and tenant laws. This article shall not diminish any private right of action of any person.

(Ord. No. S2011-005, § 1, 4-26-2011)

Secs. 14-105—14-130. Reserved.

ARTICLE XII. RESIDENTIAL RENTAL REMEDIAL ACTION PROGRAM

- Sec. 6-580. Purpose.
- Sec. 6-581. Definitions.
- Sec. 6-582. Registration of residential rental property.
- Sec. 6-583. Disorder risk threshold and disorder activity count.
- Sec. 6-584. Notification of mandatory meeting.
- Sec. 6-585. Mandatory initial meeting.
- Sec. 6-586. Remedial action plan and review.
- Sec. 6-587. Additional grounds for revocation of rental registration.
- Sec. 6-588. Notice of revocation.
- Sec. 6-589. Transition plan and notification of tenants.
- Sec. 6-590. Residential rental property review board.
- Sec. 6-591. Duties and responsibilities of the residential rental property review board.
- Sec. 6-592. Notice of appeal of revocation.
- Sec. 6-593. Hearing procedure and appeal of board's findings.
- Sec. 6-594. INRA designation binding on subsequent owner.
- Sec. 6-595. Enforcement, remedies and penalties.
- Sec. 6-596. Adoption of remedial action plan manual.

Sec. 6-580. Purpose.

The purpose of this article is to establish a requirement that owners of residential rental property whose property is within the disorder risk threshold as established by this article must register with the city sufficient identification information so that the city may expeditiously identify and contact the owner when excessive levels of disorder activity have occurred on or in the property. In addition, the city desires to establish a method to hold owners of residential rental property accountable for failing to use effective methods to reduce disorder activity on their property. It is not the intent of this article to determine the rights and liabilities of persons under agreements to which the city is not a party. This article shall not be construed to alter the terms of any lease or other agreement between a landlord and a tenant or others relating to property that is the subject of this article; provided that no provision of any lease or other agreement shall be construed to excuse compliance with this article. Additionally, a violation of this article shall not in and of itself create a negligence per se standard or otherwise expand existing liability in tort for either a landlord or a tenant.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-581. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

Disorder activity means activity occurring on or in a residential rental property categorized as either reported violent crimes, reported property crimes, and certain types of disorder-related, person-initiated requests for police service only as listed in the appendix of the ordinance from which this article derives entitled "Appendix A—Disorder Activity." A domestic violence call for service is not a disorder activity.

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Disorder activity count means a number assigned to a residential rental property that represents the amount of disorder activity occurring within a specified time period in or on the property. For purposes of determining a disorder activity count, the number of violent crimes is multiplied by 1, the number of property crimes is multiplied by 0.25, and the number of disorder calls for service is multiplied by 0.10.

Disorder risk threshold means, for each residential rental property category, the disorder activity count for the residential rental property that is at the 96th percentile of residential rental properties within the residential rental property category.

In need of remedial action (INRA) means a designation by the police official that a residential rental property has been identified for enforcement action under this article.

Manager means the person, persons or legal entity appointed or hired by the owner to be responsible for the daily operation of the residential rental property.

Owner means the person, persons or legal entity that holds legal title to a residential rental property.

Police official means a person designated by the chief of police who is primarily responsible for the administration of this article.

Registered agent means the person identified by the owner of the residential rental property in the registration filed pursuant to this article who is authorized to receive legal process and/or notice required or provided for in this article.

Remedial action plan means a written plan agreed upon and signed by both the police official and owner whereby the owner agrees to implement remedial measures on a residential rental property whose disorder activity count exceeds the disorder risk threshold for its residential rental property category.

Remedial measures means mandatory and voluntary measures as stated within the remedial action plan manual, a copy of which is on file at the city clerk's office.

Residential rental property means property that contains a single-family rental dwelling unit or multi-family rental dwelling units for use by residential tenants including but not limited to the following: mobile homes, mobile home spaces, townhomes, and condominium unit(s).

Residential rental property category. Residential rental properties will be categorized by the number of residential units contained in the property as follows:

- Category 1 - One unit
- Category 2 - Two to nine units
- Category 3 - Ten to 49 units
- Category 4 - 50 to 99 units
- Category 5 - 100 to 149 units
- Category 6 - 150 to 199 units
- Category 7 - 200 to 249 units
- Category 8 - 250 to 299 units
- Category 9 - 300 or more units

Residential rental property review board means the board created pursuant to this article.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-582. Registration of residential rental property.

(a) Each owner of residential rental property that falls at or above the disorder risk threshold for its residential rental property category shall register by providing the following information at the initial mandatory meeting:

- (1) The address(s) for the residential rental property which shall include the street name(s), number(s) and zip code;
- (2) The name(s), business or personal address, telephone number, and email address of the owner;
 - a. If the property is owned by multiple natural persons, then the required information shall be that of one person who has legal authority to act on behalf of the other owners.
 - b. If the property is owned by a corporation, whether foreign or domestic, then the required information shall be that of a registered agent and of an officer who has authority to act on behalf of the corporation.
 - c. If the property is owned by a partnership, then the required information shall be that of the managing partner and one alternate who have legal authority to act on behalf of the partnership.
 - d. If the property is owned by an unincorporated association or any other legal entity not mentioned above, then the required information shall be that of a person who has legal authority to act on behalf of that association or entity.

(3) The number of units located on the residential property.

(b) The address(s) required in subsection (a)(2) shall not be a public or private post office box or other similar address.

(c) An owner that is required to register under this article who sells the property shall notify the police official of all purchaser information within 30 days from the date of change of ownership. Purchaser information shall include the name, address, phone number and e-mail address for the purchaser.

(d) An owner that is required to register under this article shall post proof of registration as provided by the city in the business office of the property or in a common area or other conspicuous place accessible at all times to the tenant(s).

(e) Each residential rental property parcel shall be registered separately.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-583. Disorder risk threshold and disorder activity count.

By June 1 of each year, the police official shall determine the disorder activity count for each residential rental property and the disorder risk threshold for each residential rental property category. These determinations shall be made using disorder activity during the previous calendar year for each year.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-584. Notification of mandatory meeting.

(a) The owner of residential rental property that falls at or above the disorder risk threshold shall be sent a notice by certified mail to the name and address listed with the Mecklenburg County's Office of Tax Assessor.

- (b) The notice shall include the following information:
 - (1) The date, time and location for the mandatory initial meeting between the police official and the owner;
 - (2) The disorder activity count for the residential rental property;
 - (3) A statement that the owner may provide additional evidence at the initial mandatory meeting to be considered by the police official; and
 - (4) A detailed summary of the disorder activity that has occurred on or in the property.
 - (5) The amount of the registration fee.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-585. - Mandatory initial meeting.

(a) Unless otherwise agreed to by the owner and police official, within 30 days after notice has been provided to the owner that a property falls at or above the disorder risk threshold, a mandatory initial meeting shall be held between the owner and the police official. The initial meeting may be held in person or by telephone. In the event there are multiple property owners, the owner attending the initial meeting must have power of attorney to execute the remedial action plan on behalf of the other owners.

(b) At the mandatory initial meeting, the police official and the owner shall, at a minimum, review the following:

- (1) The data that established the disorder activity count for that property; and
- (2) Any relevant evidence provided by the owner that may establish that the property does not fall at or above the disorder risk threshold.

(c) After reviewing all the evidence, any previously identified disorder activity that is found to either not have occurred on or in the property or does not clearly meet the definition of a disorder

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activity shall be discounted and an adjusted disorder activity count shall be determined. In the event that the adjusted disorder activity count for the property falls at or above the disorder risk threshold, then the owner and police official shall develop and sign a remedial action plan and the property will be set for a six-month review date pursuant to section 6-586. In the event the adjusted disorder activity count is below the disorder risk threshold, then no further action shall be taken by the police official.

(d) In the event the owner fails to attend the initial meeting without just cause, the police official shall review all the evidence concerning the property pursuant to subsections (b) and (c). Upon a finding that the adjusted disorder activity count for the property is at or above the disorder risk threshold, the police official shall refer the property to the city attorney's office for determination of whether a public nuisance action or any other legal or equitable remedy is warranted.

(e) The owner of residential rental property that is required to register under this article shall pay a registration fee on or before the mandatory meeting in the amount established pursuant to section 2-1

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-586. Remedial action plan and review.

(a) At the first six-month review, the owner and police official shall review the disorder activity in or on the property since the date of the remedial action plan and determine the disorder activity count for the property during that time period. If the disorder activity count is no longer at or above the disorder risk threshold, then no further action will be taken. If the disorder activity count continues to fall at or above the disorder risk threshold, then the property will be designated in need of remedial action (INRA) and the police official and the owner shall amend and sign the remedial action plan and a second six-month review date will be set.

(b) At the second six-month review, the owner and police official shall review the disorder activity in or on the property since the date of the amended remedial action plan and determine the disorder activity count for the property during that time period. If the disorder activity count is no longer at or above the disorder risk threshold, then no further action will be taken. If the disorder activity count continues to fall at or above the disorder risk threshold, then the property will be designated in need of remedial action (INRA) and the police official and the owner shall amend and sign the remedial action plan and a third six-month review date will be set.

(c) At the third six-month review, the owner and police official shall review the disorder activity in or on the property since the date of the amended remedial action plan and determine the disorder activity count for the property during that time period. If the disorder activity count is not longer at or above the disorder risk threshold, then no further action will be taken. If the disorder activity count continues to fall at or above the disorder risk threshold, then the police official shall revoke the rental registration for the property unless it is determined that the owner has complied in good faith with the remedial action plans.

- (1) In determining whether the owner has acted in good faith, the police official shall weight the following factors:
- a. Whether the owner has regularly met with the police official; and

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- b. Whether the owner has exhausted all resources reasonably available to the owner in order to comply with the terms of the remedial action plans; and
 - c. Whether the owner has intentionally ignored a term of a remedial action plan; and
 - d. Whether the disorder activity on the property constitutes a public nuisance.
- (2) If the owner has been found to have acted in good faith, then the police official may remove the designation of INRA and continue to work with the owner. A property that continues to fall at or above the disorder risk threshold for a second year will be referred to the city attorney's office for determination as to whether a public nuisance action or any other legal or equitable remedy is warranted.

(d) All remedial action plans will be based on the procedures and practices set forth in the CMPD Remedial Action Plan Manual; A Guide to Managing Rental Properties to Prevent Crime.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-587. Additional grounds for revocation of rental registration.

In addition to the grounds stated in subsection 6-586(c), the police official may revoke the owner's rental registration based on a determination that:

- (1) The owner provided materially false or misleading information during the registration process.
- (2) The owner refused to meet with the police official and/or develop a remedial action plan as required under section 6-586 without just cause.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-588. Notice of revocation.

A notice of revocation shall be sent by certified mail or delivered in person to the address listed on the rental registration.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-589. Transition plan and notification of tenants.

Upon revoking a rental registration, the police official shall develop a transition plan for the owner's lawful disengagement from the operation and management of the rental property. The transition plan may include a referral to the city attorney for the evaluation of the property as a public nuisance or for any other legal or equitable remedy available under law necessary to fairly assist in the disengagement process. Upon revocation and issuance of a transition plan, the police official shall take reasonable steps to notify the residents of the property.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-590. Residential rental property review board.

(a) A residential rental property review board (hereinafter "board") is hereby established, to be composed of seven members: four members to be appointed by the city council, two members to be appointed by the mayor and one to be appointed by the city manager. The appointing authorities shall ensure that the members of the board are representative of the residential rental, tenant and homeowner community.

(b) One member from the Charlotte-Mecklenburg Police Department who has obtained the rank of captain or above and one employee of the city's neighborhood and business services department who has the authority to investigate code violations will sit on the board as advisors only.

(c) Individuals with a felony conviction within the last ten years shall not be eligible to serve on the board. Further, conviction of or a plea of nolo contendere to a felony during the term of office shall automatically terminate membership on the board, irrespective of any appeals. Board members charged with a felony during a term of office shall be automatically suspended until disposition of the charge, and a quorum shall be established from the remaining membership.

(d) Board members shall keep all information about criminal investigations confidential.

(e) The board shall elect a chairperson and vice-chairperson from its membership.

(f) All members of the board serve without compensation.

(g) The terms of office shall be for three years with no member serving more than two consecutive full terms. The terms of one-third of the board shall expire each year. If a vacancy occurs, the original appointing authority shall appoint a person to serve for the unexpired term of the vacant position.

(h) Five voting members shall constitute a quorum. Members are required to attend all business meetings and hearings in accordance with the attendance policies promulgated by the city council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filed as provided in this section.

(i) Members shall be subject to removal from the board with or without cause by the appointing authority.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-591. Duties and responsibilities of the residential rental property review board.

The board shall hear appeals from an owner of residential rental property whose registration has been revoked.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-592. Notice of appeal of revocation.

A residential rental property owner may appeal a notice of revocation of rental registration to the board. All revocation appeals to the board must be filed in writing with the city clerk's office within ten

calendar days of the date the notice of revocation is served on the owner. The owner shall provide a valid current address for the purpose of all notifications required to be made pursuant to this article. The request must state the reason for the appeal.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-593. Hearing procedure and appeal of board's findings.

(a) The city clerk shall forward an appeal of revocation of rental registration to the police official and to the chair of the board. The police official shall prepare a summary of the case, including all relevant data. The summary shall be provided to the board and the owner at least five working days before the hearing.

(b) Unless a quorum cannot be obtained or as otherwise agreed to by the owner and police official, the board shall hold a hearing within 30 calendar days of the date the appeal is received by the city clerk. Should the owner or the police official desire a hearing date other than that set by the board, the owner or the police official shall submit a written request for a change of the hearing date, stating the reason for the request. The chair shall approve or disapprove such request, provided that such request is received by the Board at least seven calendar days prior to the date of the hearing. For good cause, the chair may continue the hearing from time to time. The hearing shall be conducted with at least five voting members of the board present.

(c) The owner shall appear at the hearing in person and shall have the right to representation by a person of his or her choice. The North Carolina Rules of Evidence, G.S. ch. 8C, shall not strictly apply to the hearing, but all parties shall have an opportunity to offer evidence, cross-examine witnesses, and inspect documents. Only sworn testimony shall be accepted. The chair of the board, as well as any board member designated by the chair, shall have the authority to administer the oath as set forth for witnesses in a civil matter by G.S. § 11-11. All hearings before the board shall be de novo and recorded. The board has the authority to develop rules and regulations consistent with this article to facilitate the hearing process.

(d) The city shall have the burden of proof and must establish by the preponderance of the evidence that the owner's property is in need of remedial action and the owner has failed to act in good faith to comply with the remedial action plan. After reviewing the evidence and hearing testimony from the witnesses, the board shall issue findings of fact and conclusions of law and issue an order either affirming or reversing the decision of the police official.

(e) An owner has the right to appeal the board's decision to the city council by filing a notice of appeal with the city clerk within ten days after the board issues its written decision. When feasible, the matter will be set for review by the city council at the next regularly scheduled business meeting. The city council shall make its decision based on the record below, and no additional evidence will be considered. A majority vote by the city council in favor of the board's decision is required to uphold the board's decision to revoke the owner's registration. An appeal to city council will stay the proceedings until it completes its review.

(f) If the city council upholds the board's decision, the owner shall have the right to seek judicial review of the board's decision in a proceeding in the nature of certiorari instituted in the Superior Court of the county within 30 days after the city council votes to uphold the board's decision. Judicial review shall not automatically stay the revocation.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-594. INRA designation binding on subsequent owner.

The designation of a property as INRA and the application of the procedures set forth in this article shall be binding upon all subsequent owners or other transferees of an ownership interest in the rental residential property. However, the revocation may be stayed during the implementation of a transition plan.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-595. Enforcement, remedies and penalties.

(a) The remedies provided herein are not exclusive and may be exercised singly, simultaneously, or cumulatively. In addition, the remedies provided herein may be combined with any other remedies authorized by law and exercised in any order. This article may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction.

(b) It shall be a civil violation of this article for any owner of residential rental property or person or entity on behalf of that owner to commit any of the following acts:

- (1) Lease or rent residential rental property to another person or entity when the rental registration for that property has been revoked except pursuant to a transition plan as set forth in section 6-589
- (2) Lease or rent residential rental property to another person or entity after the owner has been served with notice of the mandatory meeting and fails to attend the meeting without just cause as set forth in section 6-585

(c) Notwithstanding that the owner's property registration has been revoked or the owner has failed to attend the mandatory meeting as set forth in section 6-585, the owner shall not commit the following acts:

- (1) Refuse or fail to comply with any order of the city to repair a dwelling pursuant to section 11-38 of the housing code, or
- (2) Terminate the utility services of any occupants or otherwise violate the rights of residential tenants under G.S. ch. 42, arts. 2A, 5, or 6.

(d) Notwithstanding that the owner's property registration has been revoked, the owner's compliance with its obligations in subsection (c)(1) and (2) hereinabove shall not be deemed as offenses under subsection (e).

PART II - CODE OF ORDINANCES
Chapter 6 - BUSINESSES AND TRADES
ARTICLE XII. - RESIDENTIAL RENTAL REMEDIAL ACTION PROGRAM

(e) Failure to comply with the provisions of this section shall subject the offender to a civil penalty of \$50.00 a day for the first 30 days, \$100.00 a day for the next 30 days, and \$500.00 a day for each subsequent day.

(f) A civil penalty that is assessed under this article may be recovered by the city in a civil action in the nature of a debt if the owner does not pay the penalty fee within 30 days after a notice of the penalty is issued by the police official.

(Ord. No. 4307, § 1, 11-9-2009)

Sec. 6-596. Adoption of remedial action plan manual.

The remedial action plan manual, a copy of which is on file in the office of the city clerk, is hereby adopted. The city council hereby finds and determines the remediation strategies set out therein to be reasonable and appropriate to address the public health, safety and welfare issues addressed by this article entitled the "Remedial Action Plan Manual; A Guide to Managing Rental Properties to Prevent Crime." The chief of police or his designee is hereby authorized to amend the remedial action plan manual.

(Ord. No. 4307, § 1, 11-9-2009)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SENATE BILL 683
RATIFIED BILL

AN ACT REQUIRING COUNTIES AND CITIES TO HAVE REASONABLE CAUSE
BEFORE INSPECTING RESIDENTIAL BUILDINGS OR STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 153A-364 reads as rewritten:

"§ 153A-364. Periodic inspections for hazardous or unlawful conditions.

(a) The inspection department ~~shall~~may make periodic inspections, subject to the board of commissioners' directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make any necessary inspections when it has reason to believe that such conditions may exist in a particular building. In exercising these powers, each member of the inspection department has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A county may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the county commissioners. The county shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a county do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the county to lease or rent residential real property, except for those rental units that have more than three verified violations of housing ordinances or codes in a 12-month period or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

(d) A county may levy a fee for residential rental property registration under subsection (c) of this section for those rental units which have been found with more than two verified violations of housing ordinances or codes within the previous 12 months or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance. The fee shall be an amount that covers the cost of operating a residential



registration program and shall not be used to supplant revenue in other areas. Counties using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:

- (1) For properties with 20 or more residential rental units, the fee shall be no more than fifty dollars (\$50.00) per year.
- (2) For properties with fewer than 20 but more than three residential rental units, the fee shall be no more than twenty-five dollars (\$25.00) per year.
- (3) For properties with three or fewer residential rental units, the fee shall be no more than fifteen dollars (\$15.00) per year."

SECTION 2. G.S. 160A-424 reads as rewritten:

"§ 160A-424. Periodic inspections.

(a) The inspection department shall may make periodic inspections, subject to the council's directions, for unsafe, unsanitary, or otherwise hazardous and unlawful conditions in buildings or structures within its territorial jurisdiction. Except as provided in subsection (b) of this section, the inspection department may make periodic inspections only when there is reasonable cause to believe that unsafe, unsanitary, or otherwise hazardous or unlawful conditions may exist in a residential building or structure. For purposes of this section, the term 'reasonable cause' means any of the following: (i) the landlord or owner has a history of more than two verified violations of the housing ordinances or codes within a 12-month period; (ii) there has been a complaint that substandard conditions exist within the building or there has been a request that the building be inspected; (iii) the inspection department has actual knowledge of an unsafe condition within the building; or (iv) violations of the local ordinances or codes are visible from the outside of the property. In conducting inspections authorized under this section, the inspection department shall not discriminate between single-family and multifamily buildings. In addition, it shall make inspections when it has reason to believe that such conditions may exist in a particular structure. In exercising this power, members of the department shall have a right to enter on any premises within the jurisdiction of the department at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials. Nothing in this section shall be construed to prohibit periodic inspections in accordance with State fire prevention code or as otherwise required by State law.

(b) A city may require periodic inspections as part of a targeted effort within a geographic area that has been designated by the city council. The municipality shall not discriminate in its selection of areas or housing types to be targeted and shall (i) provide notice to all owners and residents of properties in the affected area about the periodic inspections plan and information regarding a public hearing regarding the plan; (ii) hold a public hearing regarding the plan; and (iii) establish a plan to address the ability of low-income residential property owners to comply with minimum housing code standards.

(c) In no event may a city do any of the following: (i) adopt or enforce any ordinance that would require any owner or manager of rental property to obtain any permit or permission from the city to lease or rent residential real property, except for those properties that have more than three verified violations in a 12-month period or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance; (ii) require that an owner or manager of residential rental property enroll or participate in any governmental program as a condition of obtaining a certificate of occupancy; or (iii) except as provided in subsection (d) of this section, levy a special fee or tax on residential rental property that is not also levied against other commercial and residential properties.

(d) A city may levy a fee for residential rental property registration under subsection (c) of this section for those rental units which have been found with more than two verified violations of local ordinances within the previous 12 months or upon the property being identified within the top 10% of properties with crime or disorder problems as set forth in a local ordinance. The fee shall be an amount that covers the cost of operating a residential registration program and shall not be used to supplant revenue in other areas. Cities using registration programs that charge registration fees for all residential rental properties as of June 1, 2011, may continue levying a fee on all residential rental properties as follows:

- (1) For properties with 20 or more residential rental units, the fee shall be no more than fifty dollars (\$50.00) per year.

(2) For properties with fewer than 20 but more than three residential rental units, the fee shall be no more than twenty-five dollars (\$25.00) per year.

(3) For properties with three or fewer residential rental units, the fee shall be no more than fifteen dollars (\$15.00) per year."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2011.

Philip E. Berger
President Pro Tempore of the Senate

Thom Tillis
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2011

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: City Clerk's Office
DATE: August 8, 2011
RE: **Settlement for Fiscal Year July 1, 2010 through June 30, 2011**

THE QUESTION:

For Information Only

RELATIONSHIP TO STRATEGIC PLAN:

Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:

Attached is the report that has been furnished to the Mayor and City Council by the Cumberland County Tax Administrator of the settlement for fiscal year July 1, 2010 through June 30, 2011.

ISSUES:

N/A

BUDGET IMPACT:

N/A

OPTIONS:

N/A

RECOMMENDED ACTION:

For Information Only

ATTACHMENTS:

Settlement for Fiscal Year July 1, 2010 through June 30, 2011



OFFICE OF THE TAX ADMINISTRATOR

117 Dick Street, 5th Floor, New Courthouse • PO Box 449 • Fayetteville, North Carolina • 28302
Phone: 910-678-7507 • Fax: 910-678-7582 • www.co.cumberland.nc.us

July 21, 2011

Mr. Anthony Chavonne, Mayor
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

Dear Mr. Chavonne:

Please find enclosed a copy of the settlement for fiscal year July 1, 2010 through June 30, 2011 for the City of Fayetteville. As required by North Carolina General Statute Section 105-373, a copy is on file with the Board of County Commissioners.

If you have any questions, please contact Sandra Napier at (910) 678-7575.

Sincerely,

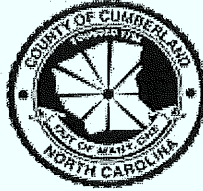
A handwritten signature in cursive script that reads "Aaron Donaldson".

Aaron Donaldson
Tax Administrator

cc: Dale Iman, City Manager
Elizabeth Somerindyke, Internal Auditor
Finance Manager
City Clerk

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June 30, 2011

Mr. Tony G. Chavonne, Mayor
City of Fayetteville
433 Hay Street
Fayetteville, NC 28301

This settlement is required under the provisions of General Statute #105-373 (a) (3). This covers the period from July 1, 2010 through June 30, 2011.

Charge:

Real & Personal Charge 2010	\$	53,707,184.10
Storm Water Charge 2010	\$	1,714,855.20
Fayetteville Storm Water Charge 2010	\$	3,429,710.40
Vehicles Charge 2010	\$	6,969,584.82
2005 Annexation in 2010 Charge	\$	-
Curbside Recycle Charge 2010	\$	2,264,838.00
Added Charge Real & Personal 2010	\$	416,649.31
Added Charge Storm Water 2010	\$	60.00
Added Charge Fayetteville Storm Water 2010	\$	96.00
Added Charge Vehicles 2010	\$	10,896.18
Added Charge Annexation 2010	\$	295.04
Added Charge Curbside Recycle 2010	\$	2,014.00
Fayetteville Gross Receipts Vehicle Tax Current Year 2010	\$	486,230.51
Fayetteville Gross Receipts Vehicle Tax Current Year 2010 Penalty	\$	13.01
Fayetteville Heavy Equipment Gross Receipts 2010	\$	76,670.60
Fayetteville Heavy Equipment Gross Receipts 2010 Penalty	\$	-
Total Interest Collected	\$	375,561.02
Total Charge:	\$	69,454,658.19

Credits:

Deposited with Finance Real & Personal 2010	\$	53,472,193.53
Deposited with Finance Vehicles 2010	\$	5,087,912.85
Deposited with Finance Annexation Taxes 2010	\$	258.81
Deposited with Finance Storm Water 2010	\$	1,703,658.36
Deposited with Finance Fayetteville Storm Water 2010	\$	3,407,292.71
Deposited with Finance Curbside Recycle 2010	\$	2,240,817.72
Fayetteville Gross Receipts Vehicle Tax Current Year 2010 & Penalty	\$	486,243.52
Fayetteville Heavy Equipment Gross Receipts 2010 & Penalty	\$	76,670.60
Interest Deposited with Finance	\$	375,561.02
	\$	66,850,609.12

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Releases Real/Personal Allowed 2010	\$	179,304.54
Releases Vehicles Allowed 2010	\$	684,991.63
Storm Water Releases Allowed 2010	\$	120.00
Fayetteville Storm Water Releases Allowed 2010	\$	240.00
Annexation Releases Allowed 2010	\$	0.73
Curbside Recycle Releases Allowed 2010	\$	722.00
Real/Personal Balance 2010	\$	472,335.34
Vehicles Balance 2010	\$	1,207,576.52
Storm Water Balance 2010	\$	11,136.84
Fayetteville Storm Water Balance 2010	\$	22,273.69
Annexation Balance 2010	\$	35.50
Curbside Recycle Balance 2010	\$	25,312.28
	\$	<hr/> 2,604,049.07

Total Credits:

\$ 69,454,658.19

Charge:

Real & Personal 2009	\$	341,785.11
Vehicles 2009	\$	1,244,477.55
2005 Annexation in 2009 Charge	\$	341.77
Storm Water 2009	\$	10,188.06
Fayetteville Storm Water 2009	\$	20,376.03
Curbside Recycle 2009	\$	21,201.60
Real & Personal 2008	\$	81,667.42
Vehicles 2008	\$	331,873.93
2005 Annexation in 2008 Charge	\$	49.74
Storm Water 2008	\$	5,648.75
Fayetteville Storm Water 2008	\$	6,962.24
Curbside Recycle 2008	\$	5,185.26
Real & Personal 2007 & Prior	\$	338,223.04
Vehicles 2007 & Prior	\$	1,448,848.68
2005 Annexation in 2007 Charge	\$	4,478.41
Storm Water 2007 & Prior	\$	20,988.12
Fayetteville Storm Water 2007 & Prior	\$	5,435.02
	\$	<hr/> 3,887,730.73

Total Charge:

\$ 3,887,730.73

Barred by Statute: 2000

Barred by Statute - Real/Personal	\$	16,458.06
Barred by Statute - Vehicles	\$	141,202.97
Barred by Statute - Storm Water	\$	324.00
	\$	<hr/> 157,985.03

Credits:

Real & Personal Collections 2009	\$	243,908.17
Vehicle Collections 2009	\$	807,294.78
2005 Annexation in 2009 Charge Collections	\$	47.05
Storm Water 2009 Collections	\$	8,327.49
Fayetteville Storm Water 2009 Collections	\$	16,654.87
Curbside Recycle 2009 Collections	\$	15,897.69
Real & Personal Collections 2008	\$	29,413.68
Vehicle Collections 2008	\$	54,786.81
2005 Annexation in 2008 Charge Collections	\$	7.20
Storm Water 2008 Collections	\$	3,721.26
Fayetteville Storm Water 2008 Collections	\$	5,221.02
Curbside Recycle 2008 Collections	\$	2,474.14
Real & Personal 2007 & Prior Collections	\$	85,794.60
Vehicle 2007 & Prior Collections	\$	55,998.75
2005 Annexation in 2007 & Prior Collections	\$	976.82
Storm Water 2007 & Prior Collections	\$	15,084.94
Fayetteville Storm Water 2007 & Prior Collections	\$	4,401.92
Real & Personal Releases Allowed 2009	\$	4,994.86
Vehicles Releases Allowed 2009	\$	124,627.13
2005 Annexation in 2009 Releases Allowed	\$	-
Storm Water Releases Allowed 2009	\$	-
Fayetteville Storm Water Releases Allowed 2009	\$	-
Curbside Recycle Releases Allowed 2009	\$	-
Real & Personal Releases Allowed 2008	\$	72.25
Vehicles Releases Allowed 2008	\$	16,067.17
2005 Annexation in 2008 Releases Allowed	\$	-
Storm Water Releases Allowed 2008	\$	-
Fayetteville Storm Water Releases Allowed 2008	\$	-
Curbside Releases Allowed 2008	\$	-
Real & Personal Releases Allowed 2007 & Prior	\$	458.65
Vehicles Releases Allowed 2007 & Prior	\$	11,887.51
2005 Annexation in 2007 & Prior Releases Allowed	\$	-
Storm Water Releases Allowed 2007 & Prior	\$	-
Fayetteville Storm Water Releases Allowed 2007 & Prior	\$	-
Real & Personal Balance 2009	\$	92,882.08
Vehicles Balance 2009	\$	312,555.64
2005 Annexation in 2009 Balance	\$	294.72
Storm Water Balance 2009	\$	1,860.57
Fayetteville Storm Water Balance 2009	\$	3,721.16
Curbside Recycle Balance 2009	\$	5,303.91
Real & Personal Balance 2008	\$	52,181.49
Vehicles Balance 2008	\$	261,019.95
2005 Annexation in 2008 Balance	\$	42.54
Storm Water Balance 2008	\$	1,927.49
Fayetteville Storm Water Balance 2008	\$	1,741.22
Curbside Recycle Balance 2008	\$	2,711.12
Real & Personal Balance 2007 & Prior	\$	235,511.73
Vehicles Balance 2007 & Prior	\$	1,239,759.45
2005 Annexation in 2007 & Prior Balance	\$	3,501.59
Storm Water Balance 2007 & Prior	\$	5,579.18
Fayetteville Storm Water Balance 2007 & Prior	\$	1,033.10
Adjustment	\$	-
Total:	\$	3,729,745.70

Total Credits:

\$ 3,887,730.73



OFFICE OF THE TAX ADMINISTRATOR
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CITY OF FAYETTEVILLE

Verification of Tax Funds for Fiscal Year Ended June 30, 2011

	<u>General Fund</u>	<u>CBDT</u>	<u>Annexation</u>
1. Current Year Original Levy (Real and Personal)			
Total Property Valuation	11,741,821,421	128,148,590	-
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	53,542,705.68	128,148.59	-
Late Listings	36,065.43	264.40	
2. Discoveries and Releases			
Discoveries			
Total Property Valuation	75,256,879	1,361,130	46,891
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	343,171.37	1,361.13	186.39
Late Listings	71,800.97	315.84	108.65
Releases			
Total Property Valuation	(33,308,732)	(1,035,250)	-
Tax Rate Per \$100	0.456	0.10	0.3975
Amount of the Levy	(151,887.82)	(1,035.25)	-
Late Listings	(26,286.55)	(94.92)	(0.73)
3. Taxes remitted to the City for Tax Years:			
2010	53,346,032.60	126,160.93	258.81
2009	242,453.32	1,454.85	47.05
2008	29,408.92	4.76	7.20
2007 & prior	85,793.28	1.32	976.82
4. Interest	195,312.13	755.48	213.74
5. Balance due the City at June 30, 2010 for:			
2010	469,536.48	2,798.86	35.50
2009	92,709.29	172.79	294.72
2008	52,162.23	19.26	42.54
2007 & prior	251,809.54	160.25	3,501.59

	<u>General Fund Vehicles</u>	<u>CBDT Vehicles</u>	<u>Vehicle License Tax</u>	<u>Transportation Fee</u>
1. Current Year Original Levy (Vehicles)				
Total Property Valuation	1,222,009,901	4,439,670		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	5,572,365.15	4,439.67	696,390.00	696,390.00
2. Discoveries and Releases				
Discoveries				
Total Property Valuation	2,049,434	5,760		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	9,345.42	5.76	770.00	775.00
Releases				
Total Property Valuation	(131,876,230)	(246,020)		
Tax Rate Per \$100	0.456	0.10		
Amount of the Levy	(601,355.61)	(246.02)	(41,695.00)	(41,695.00)
3. Taxes remitted to the City for Tax Years:				
2010	4,060,466.72	3,994.62	511,725.69	511,725.82
2009	616,681.25	119.71	95,251.96	95,241.86
2008	41,069.16	64.80	7,740.46	5,912.39
2007 & prior	46,109.40	16.75	9,872.60	0.00
4. Interest	145,753.92	59.43	-	-
5. Balance due the City at June 30, 2010 for:				
2010	919,888.24	204.79	143,739.31	143,744.18
2009	228,080.87	116.72	42,179.08	42,178.97
2008	206,770.98	53.43	32,704.20	21,491.34
2007 & prior	1,197,088.92	302.61	183,570.89	0.00

	Storm Water Management	Fayetteville Storm Water Management	Curbside Recycling
1. Current Year Original Levy (Real and Personal)			
Total Property Valuation			
Tax Rate Per \$100			
Amount of the Levy	1,714,855.20	3,429,710.40	2,264,838.00
2. Discoveries and Releases			
Discoveries			
Total Property Valuation			
Tax Rate Per \$100			
Amount of the Levy	60.00	96.00	2,014.00
Releases			
Total Property Valuation			
Tax Rate Per \$100			
Amount of the Levy	(120.00)	(240.00)	(722.00)
3. Taxes remitted to the City for Tax Years:			
2010	1,703,658.36	3,407,292.71	2,240,817.72
2009	8,327.49	16,654.87	15,897.69
2008	3,721.26	5,221.02	2,474.14
2007 & prior	15,084.94	4,401.92	-
4. Interest	13,520.25	11,614.87	8,331.20
5. Balance due the City at June 30, 2010 for:			
2010	11,136.84	22,273.69	25,312.28
2009	1,860.57	3,721.16	5,303.91
2008	1,927.49	1,741.22	2,711.12
2007 & prior	5,903.18	1,033.10	-



OFFICE OF THE TAX ADMINISTRATOR

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Summary of 2000 Real/Personal & Vehicles Taxes to be Barred

	Vehicles	Personal	Real	Public Service	Fees	Total
County	445,549.36	74,297.20	13,755.97	-		533,602.53
County Pets		789.72			0.00	789.72
Fayetteville	122,180.69	14,930.25	1,513.35	-		138,624.29
Revit	49.57		14.46			64.03
Fayetteville Vehicle Fee	18,972.71					18,972.71
Hope Mills	6,669.96	2,341.54	13.55	-		9,025.05
Hope Mills Vehicle Fee	1,675.00					1,675.00
Hope Mills Pets					30.00	30.00
Spring Lake	11,797.37	-	1,358.36	-		13,155.73
Stedman	327.03	-	-	-		327.03
Stedman Vehicle Fee	90.00					90.00
Godwin	77.86	-	-	-		77.86
Wade	177.53	-	89.85	-		267.38
Falcon	54.82	-	-	-		54.82
Linden	49.84	20.82	-	-		70.66
Solid Waste User Fee					1,200.00	1,200.00
Storm Water Fee					324.00	324.00
Advertising Fee					601.21	601.21
Total	<u>607,671.74</u>	<u>92,379.53</u>	<u>16,745.54</u>	<u>0.00</u>	<u>2,155.21</u>	<u>718,952.02</u>
TA500 MR VEHICLES	607,671.74					
TA500 MR CC	111,280.28					
TA500 MR PS	0.00					
	<u>718,952.02</u>					

Celebrating Our Past...Embracing Our Future

EASTOVER - FALCON - FAYETTEVILLE - GODWIN - HOPE MILLS - LINDEN - SPRING LAKE - STEDMAN - WADE

CITY COUNCIL ACTION MEMO

TO: Mayor and Members of City Council
FROM: City Clerk's Office
DATE: August 8, 2011
RE: **Levy for 2011-2012 Fiscal Year
Information Only**

THE QUESTION:
Information Only

RELATIONSHIP TO STRATEGIC PLAN:
Greater Tax Base Diversity - Strong Local Economy

BACKGROUND:
Attached is the report that has been furnished to the Mayor and City Council by the Cumberland County Tax Administrator for for 2011-2012 Fiscal Year.

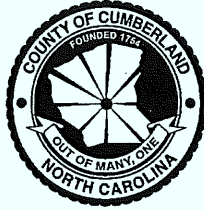
ISSUES:
N/A

BUDGET IMPACT:
N/A

OPTIONS:
N/A

RECOMMENDED ACTION:
For information only

ATTACHMENTS:
Levy for 2011-2012 Fiscal Year



OFFICE OF THE TAX ADMINISTRATOR

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July 21, 2011

Mr. Anthony Chavonne
Mayor of Fayetteville
433 Hay Street
Fayetteville, NC 28301

RE: City of Fayetteville
Levy for 2011-2012 Fiscal Year

Dear Mr. Chavonne:

Enclosed is a copy of the 2011-2012 levy for the City of Fayetteville. The Public Service levy will be added in October, 2011.

If you have any questions regarding this information, please call Sandra Napier at 678-7587.

Sincerely,

Aaron Donaldson
Tax Administrator

cc: Dale Iman, City Manager
Elizabeth Somerindyke, Internal Auditor
Finance Manager
City Clerk

Enclosure

Celebrating Our Past...Embracing Our Future

EASTOVER - FALCON - FAYETTEVILLE - GODWIN - HOPE MILLS - LINDEN - SPRING LAKE - STEDMAN - WADE

CITY OF FAYETTEVILLE

2011-2012 TAX LEVY

City of Fayetteville:	No. of Accts.	Real Value	Personal Value	**Exempt Value	Taxable Value
Real Property w/Personal	92,859	11,420,755,897	551,300,343	189,244,798	11,782,811,442
*Public Service					0
Total:	92,859	11,420,755,897	551,300,343	189,244,798	11,782,811,442
Description:	Rate:	Taxes	Late List	Total:	
Real Property w/Personal	0.456	53,727,826.50	36,254.53	53,764,081.03	
*Public Service				0.00	
Total:		53,727,826.50	36,254.53	53,764,081.03	

Revitalization:	No. of Accts.	Real Value	Personal Value	***Exempt Value	Taxable Value
Real Property w/Personal	829	111,539,308	13,320,423	0	124,859,731
*Public Service			0	0	0
Total:	829	111,539,308	13,320,423	0	124,859,731
Description:	Rate	Taxes	Late List	Total:	
Real Property w/Personal	0.10	124,860.18	190.19	125,050.37	
*Public Service				0.00	
Total:		124,860.18	190.19	125,050.37	

Exempt Value:	
Real	187,231,302
Personal	2,013,496
Total:	189,244,798

Revit Exempt Value:	
Real	0
Personal	0
Total:	0

Fayetteville Storm Water:	3,441,667.20
Fayetteville Recycling:	2,276,390.00
Storm Water:	1,720,833.60

Prepared by:
 Cumberland County Tax Administration
 PO Box 449
 Fayetteville, NC 28302-0449

***Public Service to be added October , 2011**