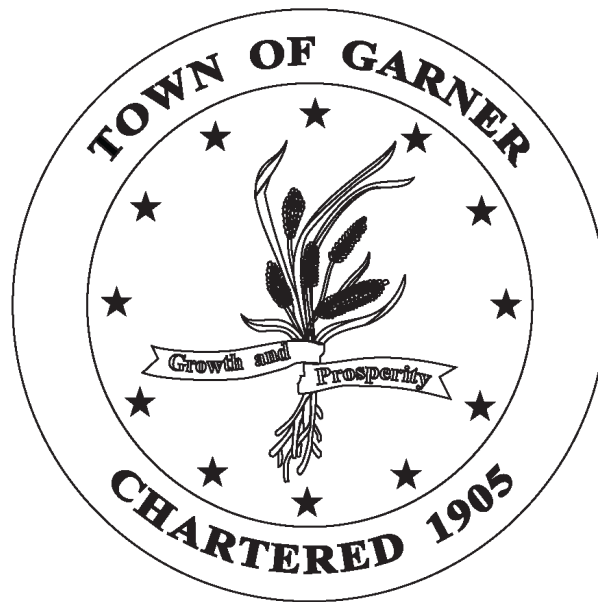


TOWN OF GARNER



TOWN COUNCIL WORK SESSION

October 29, 2019
6:00 P.M.

Garner Town Hall
900 7th Avenue
Garner, NC 27529

**Town of Garner
Work Session Agenda
October 29, 2019**

Dinner will be served for town officials in the Conference Room at 5:15 p.m.

The Council will meet in a Work Session at 6:00 p.m. in the Council Chambers located at 900 7th Avenue.

A. CALL MEETING TO ORDER/ROLL CALL

B. ADOPTION OF AGENDA

C. REPORTS/DISCUSSION

1. Overview of Wake County Room Occupancy and Prepared Food and Beverage Taxes Page 2
Presenter: Matt Roylance, Asst. Town Manager-Operations

Staff from Wake County will present an overview of the Room Occupancy and Prepared Food and Beverage taxes. Specific topics include the history of the tax and the enabling legislation that governs it, how the funds are managed, revenue growth, and financial modeling.

2. Update on R-2828 Bicycle and Pedestrian Betterments for Future NC 540 Page 29
Presenter: Gaby Lontos-Lawlor, Senior Planner-Transportation

Staff from the Planning Department will provide Town Council with an update about the planned bicycle and pedestrian improvements that will be included as part of NCDOT's R-2828 (Future NC 540, east of US 401 to east of I-40). The update includes an overview of the Town of Garner's cost share requirements.

3. UDO Re-Write - Draft Contract Presentation Page 37
Presenter: Jeff Triezenberg, Planning Director

Presentation and discussion of draft contract with Stewart for a re-write of the Town's Unified Development Ordinance as recommended by the Garner Forward Comprehensive Plan.

Action: Consider placing on November 4 agenda

D. MANAGER REPORTS

E. COUNCIL REPORTS

F. ADJOURNMENT

Town of Garner
Town Council Meeting
Agenda Form

| | | |
|---|---------------------------------|---|
| Meeting Date: October 29, 2019 | | |
| Subject: Overview of Wake County Room Occupancy and Prepared Food & Beverage Taxes | | |
| Location on Agenda: Discussion | | |
| Department: Administration | | |
| Contact: Matt Roylance, Assistant Town Manager - Operations | | |
| Presenter: Matt Roylance, Assistant Town Manager - Operations | | |
| <p>Brief Summary:</p> <p>Staff from Wake County will present an overview of the Room Occupancy and Prepared Food and Beverage taxes. Specific topics include the history of the tax and the enabling legislation that governs it, how the funds are managed, revenue growth, and financial modeling.</p> | | |
| <p>Recommended Motion and/or Requested Action:</p> <p>Information only - no action required.</p> | | |
| <p>Detailed Notes:</p> <p>In 1991 Wake County was authorized to levy a countywide 6% Room Occupancy and a countywide 1% Prepared Food and Beverage tax. The revenue supports arts, culture, sports and convention facilities in Wake County. These funds are governed through interlocal agreements between the Wake County Board of Commissioners and the Raleigh City Council. More information is available at http://www.wakegov.com/roomfoodtax.</p> | | |
| <p>Funding Source:</p> <p>N/A</p> | | |
| Cost: | One Time: <input type="radio"/> | Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/> |
| <p>Manager's Comments and Recommendations:</p> | | |
| <p>Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/></p> | | |
| Agenda Form Reviewed by: | Initials: | Comments: |
| Department Head: | MR | |
| Finance Director: | | |
| Town Attorney: | | |
| Town Manager: | RD | |
| Town Clerk: | | |

Overview of Occupancy and Prepared Food and Beverage Taxes and Interlocal Agreements

Garner Town Council Meeting

October 29, 2019



Today's Presentation

- History of tax authorization and oversight
- Financial performance
- Financial models
- Next steps

Wake County Hospitality Taxes

- State legislation approved in 1991 and amended in 1995 levies 6% on occupancy stays and 1% on prepared food and beverage countywide
- Wake County and City of Raleigh are responsible for oversight and approval for uses of revenues
- Revenues must be used for projects supporting arts, cultural, sports or convention
- Revenues in FY1995 = ~ \$12 million
- Revenues in FY2019 = ~ \$60 million

Historic Yates Mill Park



Raleigh Convention Center



PNC Arena



Cricket Field Lights



Ting Park



Performing Arts



Art Museum



Cary Soccer Park



Operating Principles

Operating Principles developed to articulate the values of the community and stakeholders as it relates to the uses and governance of hospitality taxes in Wake County.

(Included as attachment)

Wake County Room Occupancy and Prepared Food and Beverage Operating Principles

Purpose of Principles: The Operating Principles are established to articulate the values of the community and stakeholders related to use of Wake County Room Occupancy and Prepared Food and Beverage Revenues. These Principles were developed by community stakeholders in March 2017. The stakeholders identified all of the listed Principles as important and therefore, the Principles are not listed in any rank or order.

- A. Prioritize use of funds for projects that drive measurable, regular overnight visitation or positive return on investment (ROI)
- B. Support and promote the on-going capital expenditure program and expansion of existing investments in major facilities to keep them current, relevant and competitive in market
- C. Comply with all requirements of the existing enabling legislation
- D. Ensure project investments are secured by solid long-term plans, both operational and financial, that demonstrate viability and sustainability
- E. Utilize high standards of fiscal accountability in planning and managing the use of tax revenues:
 - a. Fulfill existing obligations before entering into significant new financial commitments
 - b. Maintain long-term, conservative financial forecasting
- F. Support investments that complement economic development efforts and enhance quality of life experiences for visitors, newcomers and long-time residents
- G. Create sports, arts and cultural opportunities, through leveraging community investments and partnerships, that benefit residents and enhance tourism offerings
- H. Support a project investment mix that considers location and types of uses (sports, cultural, arts, convention, etc.)
- I. Engage stakeholders representing varying entities, jurisdictions and uses
- J. Ensure that investments support the long-term vision of Wake County and its cities and towns as a tourism destination
- K. Provide a regular funding source for eligible projects that require a smaller scale investment
- L. Support investments that consider emerging arts, sports and cultural experiences and unmet needs

Operating Practices

- Summarizes the procedures and standards that guide the administration of uses of the Wake County Room Occupancy and Prepared Food and Beverage Taxes in accordance with the enabling legislation, Interlocal Agreements and Amendments and approved Guiding Principles

Room Occupancy/Prepared Food And Beverage Taxes Operating Practices Summary

Purpose of Operating Practices: The following Operating Practices represent standards intended as a guide in administering uses of the Wake County Room Occupancy and Prepared Food and Beverage Taxes in accordance with the enabling legislation, Interlocal Agreements and Amendments and approved Guiding Principles. Executive direction over these Practices is provided by the Wake County and City of Raleigh. These operating practices reflect decisions by the Raleigh City Council and Commissioners through the 20th Amendment to the Interlocal Agreements.

Guiding Principles: See separate document. Practices to be consistent with the following principles.

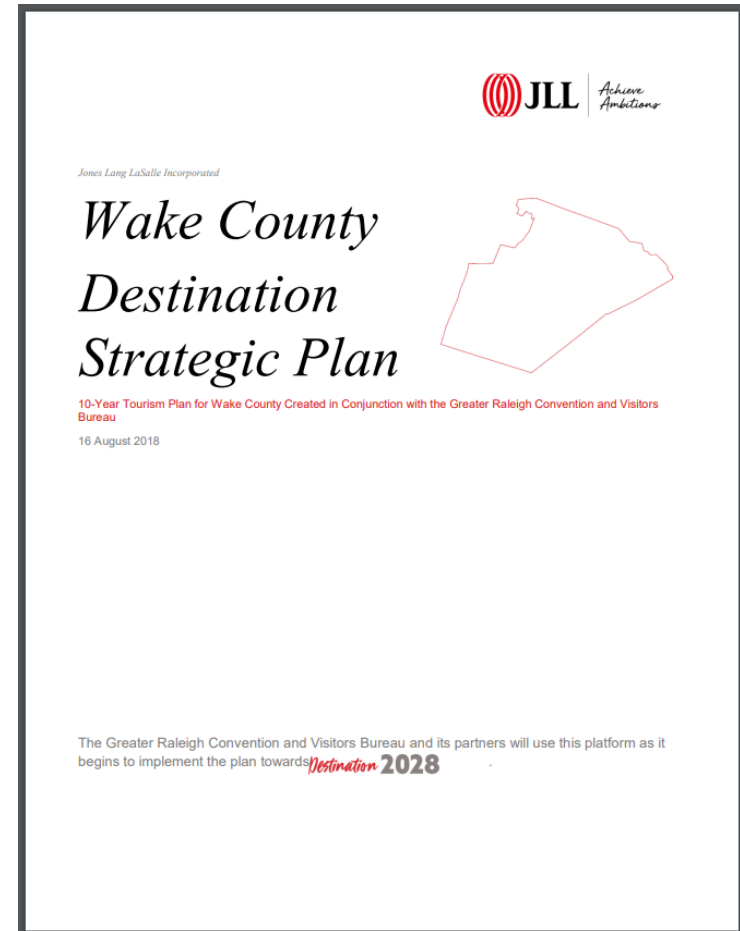
General Operating Practices:

Based on the 1991 bill of the North Carolina General Assembly entitled *An Act to Amend the Constitution of the State of North Carolina to Authorize the Wake County to Levy a Room Occupancy Tax and a Prepared Food and Beverage Tax and to Amend the Interlocal Agreement Between Wake County and the City of Raleigh for the Implementation of Countywide Room Occupancy and Prepared Food and Beverage Taxes*, the authority for setting of projects to be funded by such taxes as well as administrative matters rests with the governing bodies of Wake County and Raleigh.

1. Responsibility for the accountability and administration of Interlocal Tax

Destination Strategic Plan

- Completed by GRCVB in 2018
- Provides roadmap for increasing overnight visitation with strategies focused on:
 - Meetings & Conventions
 - Sports
 - Events
 - Individual Leisure
 - Key Attractors
 - Destination Development
 - Regional Demand Drivers
 - Quality of Place



Staff Review Team

- Operating Principles established a staff review team to assist City and County managers to help plan, review model scenarios and advise on the distribution of tax revenues
- Review Team:
 - Centennial Authority
 - City of Raleigh
 - Greater Raleigh Convention and Visitors Bureau
 - Town of Cary
 - Town of Knightdale
 - Town of Morrisville
 - Wake County
 - Wake County Hospitality Alliance

Interlocal Reviews

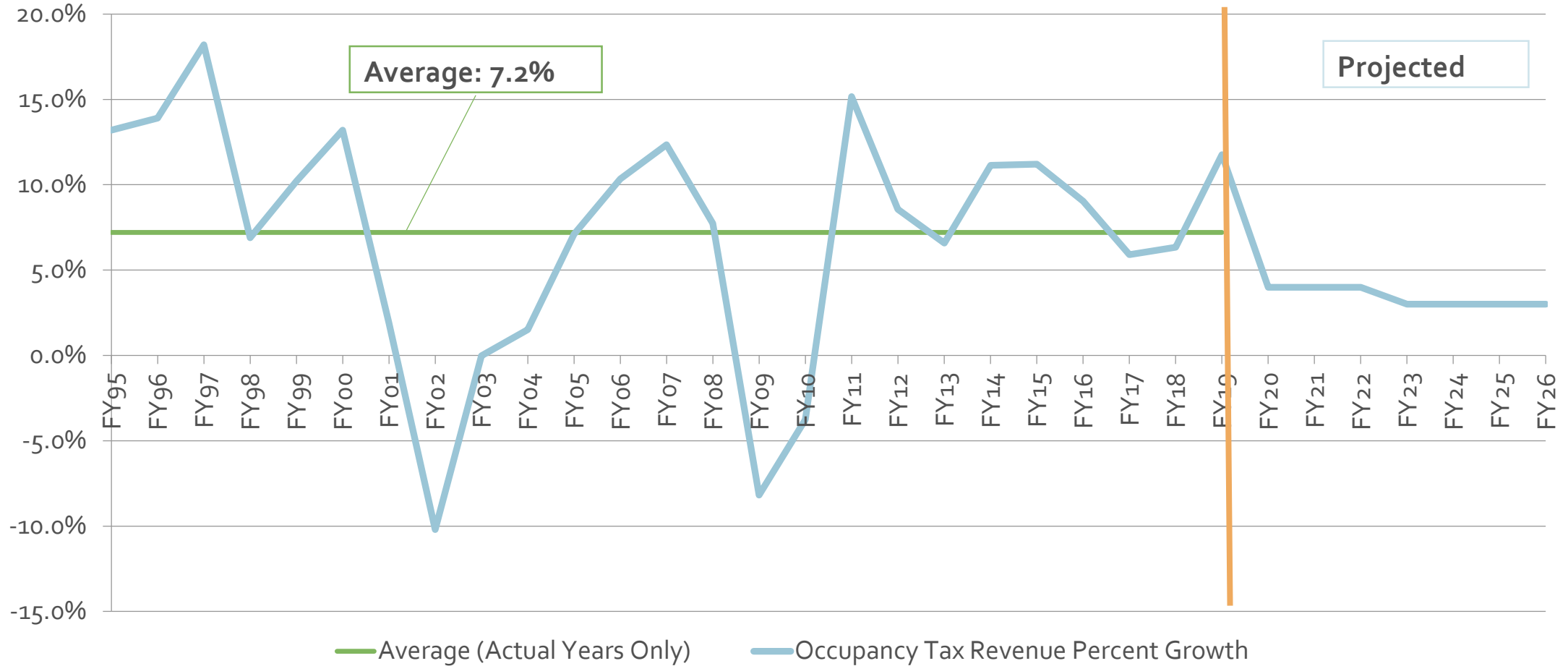
- An interlocal agreement between the City of Raleigh and Wake County along with 21 amendments articulate the oversight and uses of the revenues
- 20th Amendment called for a public review
 - Review Financial Models
 - Current Projections and Forecast
 - Review PNC Capital Plan
 - Review Convention Center Capital Plan
 - Inclusive of stakeholders
 - Complete by January 1, 2020



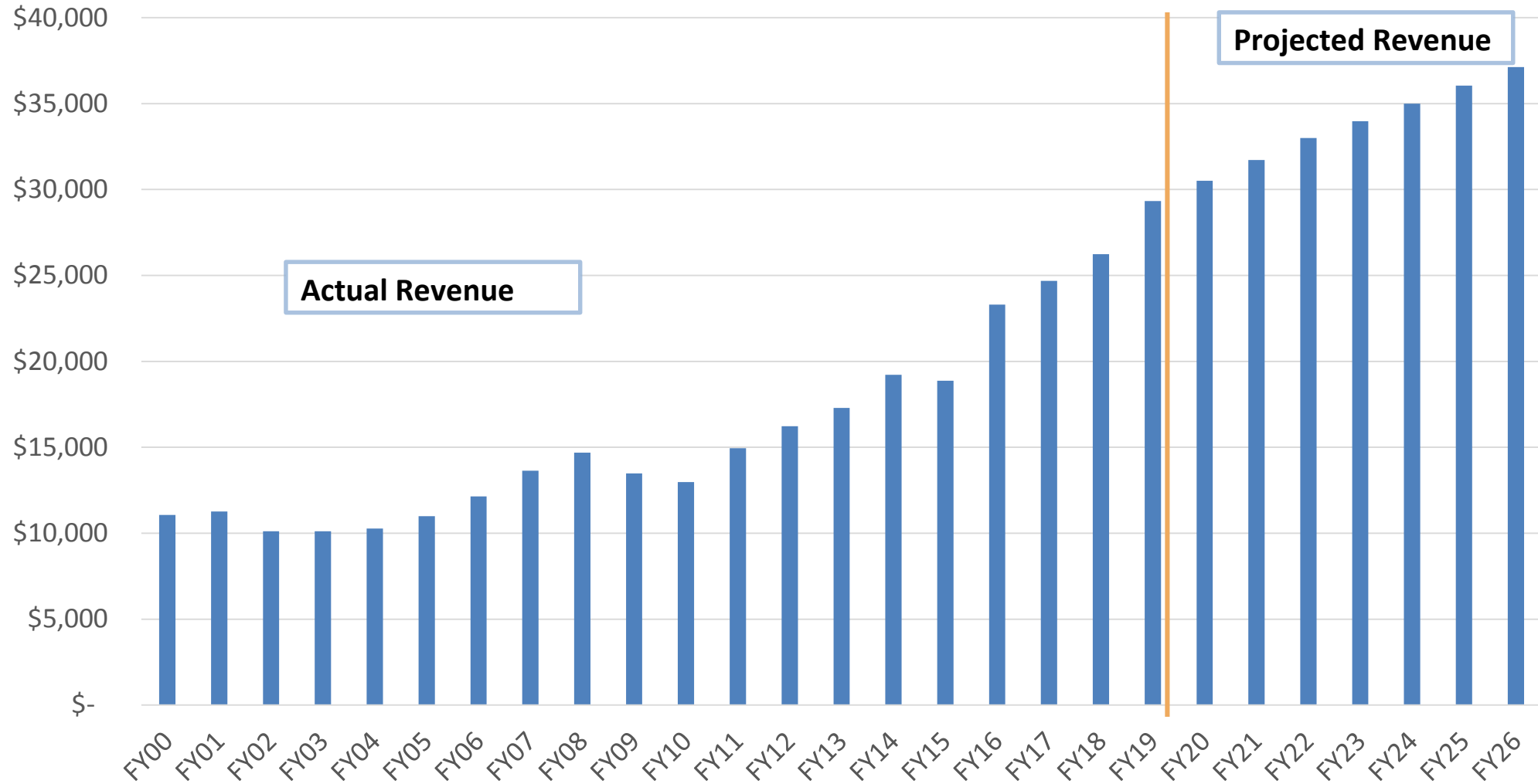
Financial Performance

Occupancy Tax Revenue

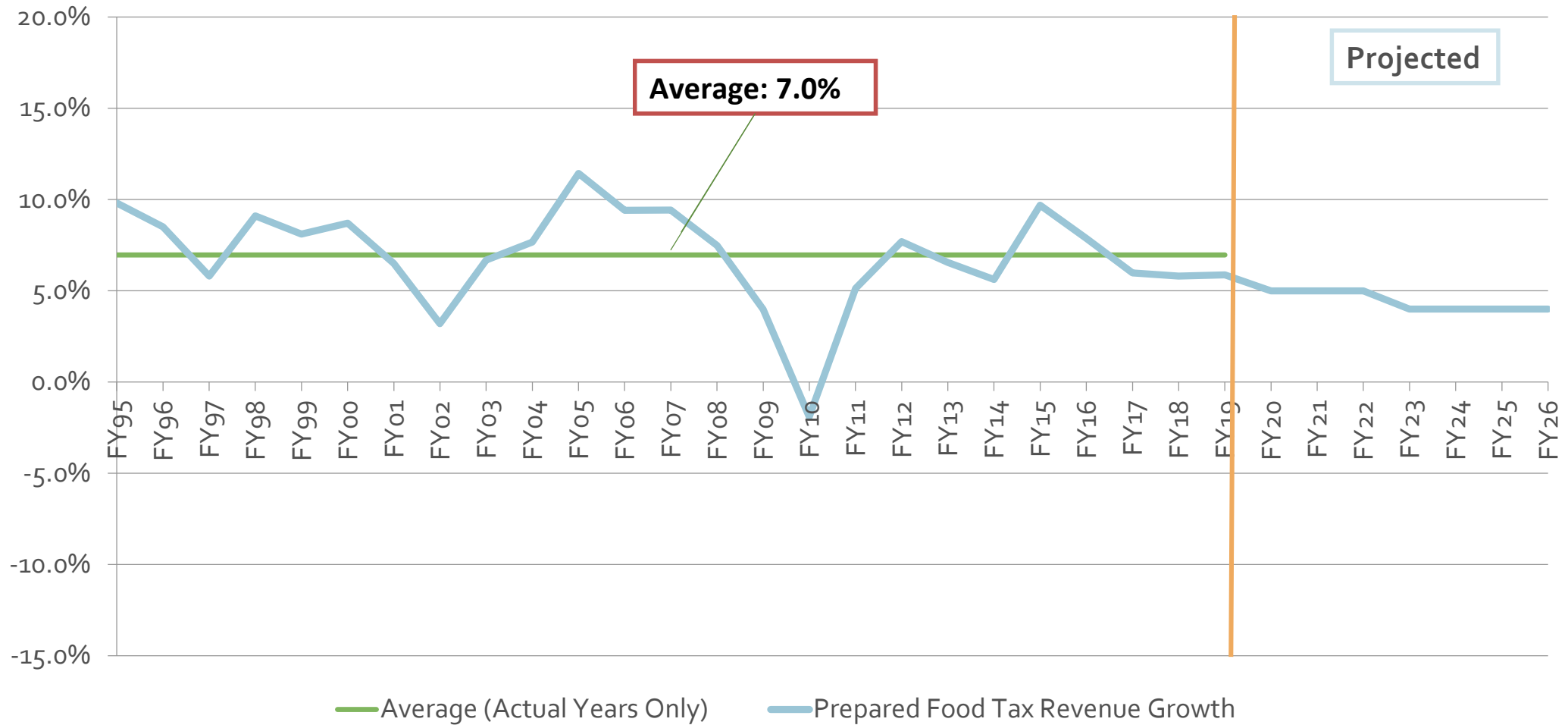
Occupancy Tax Revenue - Percent Change Year to Year



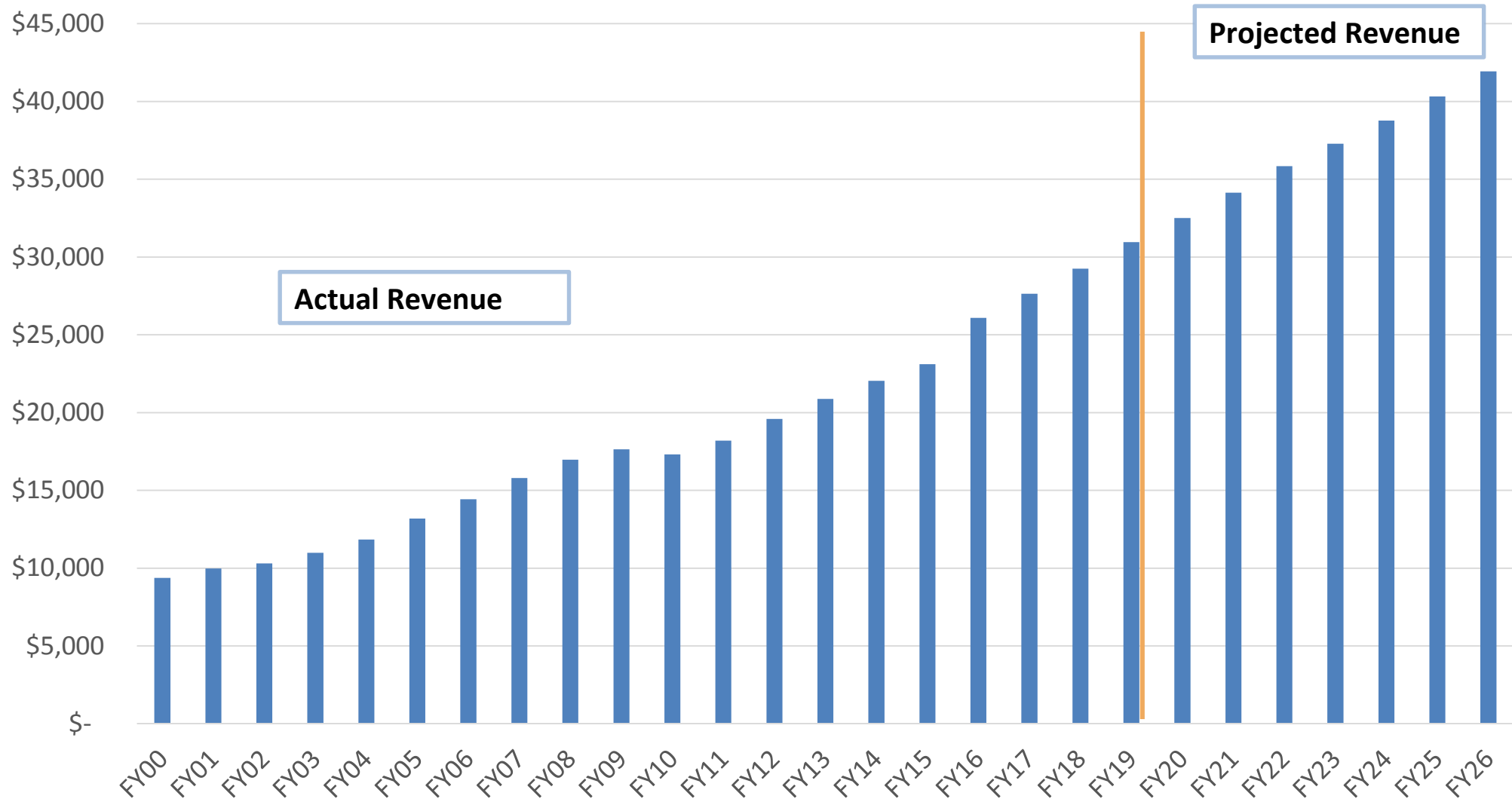
Occupancy Tax Revenue



Prepared Food Tax Revenue



Prepared Food Tax Revenue





Financial Models

Financial Planning Models

- County serves as fiscal agent
- Financial models jointly maintained
 - Major Facilities Cash Flow Model – Wake County
 - Convention Center Complex Financing Plan - City of Raleigh
- Consider long-term expenditure commitments within a model sensitivity analysis to minimize project and financing risk with debt repayment the highest priority
- Maintain fund balance targets that provide adequate margin of error to minimize financing risk should revenue estimates fall short of projections

A Quick Primer on the “Major Facilities” Model

Section 1:

- First dollars out – per legislation, specific entities get money before any projects are funded
- Debt payments committed to specific projects

Section 2:

85% of all net revenue dedicated to the Convention Center (after Section 1 distributions)

Section 3:

15% of remaining net revenue available for other qualifying uses

FY 2021 PROPOSED MAJOR FACILITIES FUND

Occupancy Tax Revenue

Prepared Food & Beverage Tax Revenue



**Major Facilities Fund
\$65,856,000**

Section 1: Administration and Holdbacks

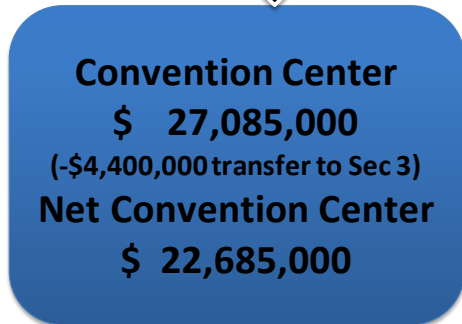
- \$ 1,400,000 Administration and Collection
- \$ 1,554,000 Cary Hold Harmless
- \$ 680,000 Raleigh Hold Back
- \$ 8,015,000 Greater Raleigh Convention & Visitors Bureau
- \$ 3,842,000 Centennial Authority
- \$ 2,000,000 PNC Maintenance
- \$ 9,000,000 PNC Arena Debt Service
- \$ 1,000,000 Raleigh \$1.0 million
- \$ 1,000,000 Wake County \$1.0 million
- \$ 2,360,000 Indoor Sports Complex
- \$ 3,140,000 Medium Competitive Projects Cash Funding
- \$ 33,991,000 Administration & Holdbacks**



**\$31,865,000
Uncommitted Funds**

Section 2:
85% Projects

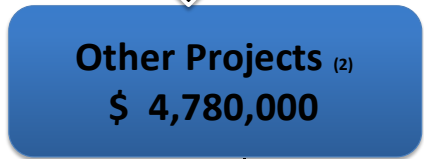
~85%



**Convention Center
\$ 27,085,000
(-\$4,400,000 transfer to Sec 3)
Net Convention Center
\$ 22,685,000**

Section 3:
15% Projects

~15%



**Other Projects ⁽²⁾
\$ 4,780,000**

- \$ 3,000,000 Cary Sports Facilities
- \$ 2,000,000 Small Competitive Projects
- \$ 4,400,000 Medium Competitive Projects (from transfer)
- \$ (157,000) Contribution (Use Of) to Fund Balance

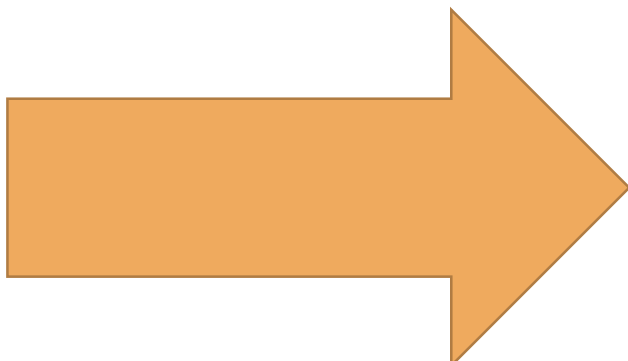
Financial Models on Website

www.wakegov.com/roomfoodtax

Wake County Room Occupancy and Prepared Food & Beverage Taxes

In 1991 Wake County was authorized to levy a countywide 6% Room Occupancy and a countywide 1% Prepared Food and Beverage tax. The revenue supports arts, culture, sports and convention facilities in Wake County. These funds are governed through interlocal agreements between the Wake County Board of Commissioners and the Raleigh City Council.

| | | |
|----------------------|------------------------------|------------------------------------|
| ENABLING LEGISLATION | ILAS & AMENDMENTS | OPERATING PRINCIPLES & PRACTICES |
| FINANCIAL MODELS | 2016/2017 STAKEHOLDER REVIEW | SMALL PROJECTS COMPETITIVE PROCESS |





Next Steps

Conduct competitive processes as approved in 21st Amendment

Indoor Sports Complex

\$2.36M/year for 25 years

October

RFP Released

January

Proposals Due

February

City/County Decision

Medium (Projects \$20M +)

\$46.6 million total

December

Release RFP

February

Proposals Due

March/April

City/County Decision

Small (Projects \$100k +)

~ \$6 million

May

Release RFP

August

Proposals Due

September

County Decision

Additional Next Steps

- Monitor performance of revenues
- Monitor funding commitments and project performance
- Conduct next review by June 30, 2022



For more information, please visit:

www.wakegov.com/roomfoodtax

For more information, contact:

Denise Foreman

Assistant County Manager

919-856-5578

denise.foreman@wakegov.com

Wake County Room Occupancy and Prepared Food and Beverage Operating Principles

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 - b. Maintain long-term, conservative financial forecasting
- F. Support investments that complement economic development efforts and enhance quality of life experiences for visitors, newcomers and long-time residents
- G. Create sports, arts and cultural opportunities, through leveraging community investments and partnerships, that benefit residents and enhance tourism offerings
- H. Support a project investment mix that considers location and types of uses (sports, cultural, arts, convention, etc.)
- I. Engage stakeholders representing varying entities, jurisdictions and uses
- J. Ensure that investments support the long-term vision of Wake County and its cities and towns as a tourism destination
- K. Provide a regular funding source for eligible projects that require a smaller scale investment
- L. Support investments that consider emerging arts, sports and cultural experiences and unmet needs

| FY2016 | Occupancy | Prepared Food | Total | |
|---------------|-------------------|----------------------|-------------------|---------------|
| Apex | 341,776 | 924,207 | 1,265,983 | 2.6% |
| Cary | 6,098,491 | 4,236,410 | 10,334,901 | 21.1% |
| F-V | 104,787 | 740,240 | 845,027 | 1.7% |
| Garner | 386,103 | 1,221,450 | 1,607,553 | 3.3% |
| Holly Springs | 190,344 | 518,707 | 709,051 | 1.4% |
| Knightdale | 36,421 | 592,732 | 629,153 | 1.3% |
| Morrisville | 1,549,093 | 1,009,890 | 2,558,983 | 5.2% |
| Raleigh | 14,386,708 | 14,278,111 | 28,664,819 | 58.6% |
| Rolesville | - | - | - | 0.0% |
| Wake Forest | 382,833 | 1,128,954 | 1,511,787 | 3.1% |
| Wendell | * | - | - | 0.0% |
| Zebulon | - | 323,524 | 323,524 | 0.7% |
| Wake County | 34,274 | 429,032 | 463,306 | 0.9% |
| Total | 23,510,830 | 25,403,256 | 48,914,086 | 100.0% |

* not enough to disclose

| FY2017 | Occupancy | Prepared Food | Total | |
|---------------|-------------------|----------------------|-------------------|---------------|
| Apex | 348,010 | 1,050,945 | 1,398,955 | 2.7% |
| Cary | 6,383,526 | 4,484,332 | 10,867,858 | 20.9% |
| F-V | 115,809 | 844,113 | 959,922 | 1.8% |
| Garner | 407,213 | 1,356,180 | 1,763,393 | 3.4% |
| Holly Springs | 203,264 | 596,063 | 799,327 | 1.5% |
| Knightdale | 41,266 | 620,839 | 662,105 | 1.3% |
| Morrisville | 1,473,171 | 1,039,907 | 2,513,078 | 4.8% |
| Raleigh | 15,226,910 | 14,702,798 | 29,929,708 | 57.6% |
| Rolesville | - | 108,648 | 108,648 | 0.2% |
| Wake Forest | 391,833 | 1,237,375 | 1,629,208 | 3.1% |
| Wendell | * | 85,047 | 85,047 | 0.2% |
| Zebulon | - | 342,728 | 342,728 | 0.7% |
| Wake County | 11,947 | 902,845 | 914,792 | 1.8% |
| Total | 24,603,000 | 27,382,000 | 51,985,000 | 100.0% |

* not enough to disclose

| FY2018 | Occupancy | Prepared Food | Total | |
|---------------|------------------|----------------------|--------------|-------|
| Apex | 335,523 | 1,157,787 | 1,493,310 | 2.7% |
| Cary | 6,435,826 | 4,648,824 | 11,084,650 | 20.3% |
| F-V | 122,648 | 855,888 | 978,536 | 1.8% |
| Garner | 415,827 | 1,392,134 | 1,807,961 | 3.3% |
| Holly Springs | 226,407 | 709,996 | 936,403 | 1.7% |
| Knightdale | 96,852 | 664,251 | 761,103 | 1.4% |
| Morrisville | 1,529,889 | 1,047,782 | 2,577,671 | 4.7% |
| Raleigh | 16,214,485 | 15,442,668 | 31,657,153 | 58.0% |
| Rolesville | - | 116,862 | 116,862 | 0.2% |

| | | | | |
|--------------|-------------------|-------------------|-------------------|---------------|
| Wake Forest | 379,090 | 1,361,797 | 1,740,887 | 3.2% |
| Wendell | * | 96,982 | 96,982 | 0.2% |
| Zebulon | - | 340,013 | 340,013 | 0.6% |
| Wake County | 15,918 | 981,319 | 997,237 | 1.8% |
| Total | 25,772,465 | 28,816,303 | 54,588,768 | 100.0% |

* not enough to disclose

| FY2019 | Occupancy | Prepared Food | Total | |
|---------------|-------------------|----------------------|-------------------|---------------|
| Angier | | * | | |
| Apex | 356,708 | 1,243,402 | 1,600,110 | 2.7% |
| Cary | 7,195,888 | 4,887,889 | 12,083,777 | 20.2% |
| Durham | | 77,557 | 77,557 | 0.1% |
| F-V | 140,400 | 906,221 | 1,046,621 | 1.7% |
| Garner | 441,179 | 1,461,494 | 1,902,673 | 3.2% |
| Holly Springs | 244,621 | 817,396 | 1,062,017 | 1.8% |
| Knightdale | 235,236 | 715,780 | 951,016 | 1.6% |
| Morrisville | 1,700,807 | 1,097,448 | 2,798,255 | 4.7% |
| Raleigh | 18,300,280 | 16,408,738 | 34,709,018 | 58.0% |
| Rolesville | - | 117,593 | 117,593 | 0.2% |
| Wake Forest | 396,000 | 1,538,293 | 1,934,293 | 3.2% |
| Wendell | * | 102,834 | 102,834 | 0.2% |
| Zebulon | - | 368,015 | 368,015 | 0.6% |
| Wake County | 25,569 | 1,057,317 | 1,082,886 | 1.8% |
| Total | 29,036,688 | 30,799,977 | 59,836,665 | 100.0% |

* not enough to disclose

Town of Garner
Town Council Meeting
Agenda Form

| | | |
|---|--|--|
| Meeting Date: October 29, 2019 | | |
| Subject: 540 Bicycle and Pedestrian Betterments | | |
| Location on Agenda: Discussion | | |
| Department: Planning | | |
| Contact: Gaby Lontos-Lawlor, AICP; Senior Planner - Transportation | | |
| Presenter: Gaby Lontos-Lawlor, AICP; Senior Planner - Transportation | | |
| <p>Brief Summary:</p> <p>Staff from the Planning Department will provide Town Council with an update about the planned bicycle and pedestrian improvements that will be included as part of NCDOT's R-2828 (Future NC 540, east of US 401 to east of I-40). The update includes an overview of the Town of Garner's cost share requirements.</p> | | |
| <p>Recommended Motion and/or Requested Action:</p> <p>Motion to place on November 4, 2019 agenda for approval.</p> | | |
| <p>Detailed Notes:</p> <p>See attached cost estimate, plans, and staff report.</p> | | |
| Funding Source: | | |
| Cost: \$154,616.59 | One Time: <input checked="" type="radio"/> | Annual: <input type="radio"/> No Cost: <input type="radio"/> |
| Manager's Comments and Recommendations: | | |
| Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/> | | |
| Agenda Form Reviewed by: | Initials: | Comments: |
| Department Head: | JST | |
| Finance Director: | | |
| Town Attorney: | | |
| Town Manager: | RD | |
| Town Clerk: | | |

540 Bicycle and Pedestrian Betterments

Town Council Work Session
October 29, 2019

Background/Introduction

- R-2828 consists of the Triangle Expressway (NC 540) Southeast Extension, from east of US 401 to east of I-40

540 Bike Ped Betterments

- Town of Garner requested that the North Carolina Department of Transportation (NCDOT) include provisions for bicyclists/pedestrians along overpasses
- Old Stage Road
 - Sidewalk on west Side, multi-use path on east side
- NC 50
 - Sidewalks on west and east side

Cost Share

- Municipal agreement required for betterments
 - Town of Garner is responsible for 30% of total - \$154,616.59
 - Payment within 60 days of invoicing
- Funding source options
 - Program into operational budget
 - Commit fund balance

Next Steps

- Seeking Council's funding source recommendation
- Execute municipal agreement

Planning Department Memorandum

TO: Mayor and Members of the Town Council

FROM: Gaby Lontos-Lawlor, AICP; Senior Planner - Transportation

SUBJECT: *540 Bicycle & Pedestrian Betterments*

DATE: October 29, 2019

INTRODUCTION

The purpose of this memorandum is to provide a summary of the bicycle and pedestrian betterments to be completed as part of the North Carolina Department of Transportation's (NCDOT's) project R-2828 and to get Council's recommendation for how the Town's cost share should be funded.

BETTERMENTS

Earlier this year, a coordination meeting was held with the NCDOT and the Turnpike Authority, where the Town of Garner expressed the need for bicycle and pedestrian accommodations on the overpasses over 540. Most of the planned overpasses have a typical section that can accommodate the requested betterments, and thus do not pose a cost to the Town. However, the overpass at Old Stage Road and at NC 50 will require a wider cross-section than what was originally planned, in order to include the following requested betterments (displayed in the attached Right of Way plans):

- Old Stage Road: sidewalk on the west side and a multi-use path on the east side
- NC 50: sidewalk on both the east and west wide

COST SHARE

A municipal agreement needs to be put in place so that these betterments may be included as part of R-2828. Per the agreement, the Town of Garner is required to pay 30% of the total cost, which has been calculated as \$154,616.59 (shown in the attachments). The municipal agreement has been drafted to require payment within 60 days of invoicing. This stipulation indicates that the Town can either (1) commit fund balance and receive the invoice January 1st or, (2) wait until after this cost has been programmed into the operational budget for the upcoming fiscal year and receive the invoice after July 1st.

ATTACHMENTS

- Cost Estimate
- Right of Way plans with bike ped betterments
- Municipal Agreement with Betterments

Town of Garner
Town Council Meeting
Agenda Form

| | | |
|--|--|--|
| Meeting Date: October 29, 2019 | | |
| Subject: UDO Re-Write - Draft Contract Presentation | | |
| Location on Agenda: Discussion | | |
| Department: Planning | | |
| Contact: Jeff Triezenberg, AICP, GISP; Planning Director | | |
| Presenter: Jeff Triezenberg | | |
| Brief Summary: Presentation and discussion of draft contract with Stewart for a re-write of the Town's Unified Development Ordinance as recommended by the Garner Forward Comprehensive Plan. | | |
| Recommended Motion and/or Requested Action: Motion to place on November 4, 2019 agenda for approval. | | |
| Detailed Notes: The Planning Department received four (4) responses to its Request for Qualifications package. Responding firms included Clarion, CodeWright, Stewart and WithersRavenel. A review panel consisting of representatives from Inspections (1), Engineering (1), Planning (3) and Administration (1) scored the responses with Stewart ranking as the top choice with their team being led by Ms. Cindy Szwarcop, AICP. Planning met with the Stewart team on 10/22 to review and finalize the draft Scope of Work to be included in the contract. Pricing will be presented at the work session. | | |
| Funding Source: Planning Department Multi-Year Operations Budgeted Item (2 of 3 years of budget requests already budgeted). | | |
| Cost: TBD | One Time: <input checked="" type="radio"/> | Annual: <input type="radio"/> No Cost: <input type="radio"/> |
| Manager's Comments and Recommendations: | | |
| Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/> | | |
| Agenda Form Reviewed by: | Initials: | Comments: |
| Department Head: | JST | |
| Finance Director: | | |
| Town Attorney: | | |
| Town Manager: | RD | |
| Town Clerk: | | |



October 4, 2019

Mr. Jeff Triezenberg, AICP, GISP
Planning Director
Town of Garner
900 7th Avenue
Garner, NC 27529

Dear Jeff:

STEWART is very pleased to have been selected to work with the Town of Garner on the Unified Development Ordinance update project. The anticipated UDO and zoning map adoption date is October 19, 2021. The proposed work program is organized into the following five key tasks:

- Phase 1 - Project Initiation
- Phase 2 - Preparation & Composition
- Phase 3 - Remapping & Zoning Map Update
- Phase 4 - Adoption
- Phase 5 - Implementation & Training

The proposed scope of work includes:

- 4 Public Open House/Workshop Meetings
- 13 Steering Committee Meetings
- 5 Joint Planning Commission/Town Council Work Sessions
- 2 Day of Focus Group/Stakeholder Meetings
- 2 Planning Commission Meetings
- 2 Town Council Approval Meetings
- 34 Staff Check-In Meetings (2 per month for 17 months)
- 2 Half-Day UDO Training Sessions

This document may serve as a Client-Consulting Agreement. Included in the agreement are the standard Hourly Rate Schedule and Conditions of Agreement. If this proposal is acceptable, please execute and return a copy of the Agreement to this office.

Do not hesitate to contact us if you have any questions regarding our proposal. Please give us the opportunity to clarify any details or revise the proposal if it appears that we have misunderstood any element of the proposed project.



UNIFIED DEVELOPMENT ORDINANCE UPDATE

Project Understanding

Stewart understands that the Town of Garner is embarking on an important initiative to re-write the Town's Unified Development Ordinance (UDO). Stewart will assist the Town in providing a comprehensive re-write of the current UDO and revise the Town's Zoning Map.

We will work with the Town to update the Unified Development Ordinance in accordance with the published RFQ (dated 08/16/2019) in order to:

- Implement the applicable vision and goals of the Garner Forward Comprehensive & Transportation plans;
- Be reflective of the most current North Carolina State Statutes and case law, including any provisions mandated by Chapter 160D that must be adopted no later than January 1, 2021;
- Be user-friendly with a cohesive set of graphics, tables and illustrations used to supplement written regulations;
- Improve overall document formatting (using Article-Section-Subsection-List-Number format);
- Introduce form- or design-based code elements where applicable – including transit-oriented development requirements supportive of the *Wake Transit Plan*;
- Update sign standards – including conformity with Supreme Court ruling in *Reed v. Town of Gilbert*;
- Update street, access & connectivity standards;
- Provide a standardized use table (LBCS with local amendments) – including guidance for interpretation and clarification on allowances for accessory/secondary/multiple uses;
- Clearly define home occupation standards that are observable, enforceable and defensible;
- Modify existing zoning districts and introduce potential new base and/or overlay districts;
- Simplify the conditional district rezoning process;
- Be consistent with City of Raleigh Public Utility Standards;
- Ensure conformance with state and federal regulations;
- Update development standards (subdivisions, parking, landscaping, lighting, open space, etc.);
- Update applicable development review processes; and
- Remove outdated standards, definitions and terminology.

In addition, Stewart will also work with Staff and the Steering Committee to provide recommendations on the following:

- Workforce housing standards
- Nuisance regulation overlaps
- Subdivision approval process
- Fee-in-Lieu options
- Exempt & minor plat review processes
- Telecommunication facilities
- Change of use and expansion of use standards
- Appeal processes
- ADA compliance
- Temporary uses
- Bona-fide farms and agritourism uses



PHASE 1 | PROJECT INITIATION & ANALYSIS

To facilitate discussion about updating the Town's Unified Development Ordinance, we will research and thoroughly review the Town's existing land development regulations and the Garner Forward Comprehensive & Transportation plans, conduct interview-style focus group/stakeholder meetings, and conduct a kick-off open-house engagement event. During this phase we will also participate in a community tour to see recent successes and opportunities for improvement.

Focus Group/Stakeholder Interviews

The Stewart team will participate in two (2) days of Focus Group/Stakeholder interviews (typically held in 45-minute sessions with 6 to 8 sessions in one day). The purpose of these interviews is to introduce the project and gain initial input about existing regulations and issues that need to be addressed in the UDO update. We will work with Town staff to identify the appropriate categories of stakeholders (local experts on the development process, business interests, community and neighborhood groups, economic development officials, neighborhood leaders, representatives from the environmental community, etc.). The results of these meetings will be summarized in a memorandum to the Town.

Kick-Off Workshop, Public Open House, and Survey

To facilitate education and discussion about the UDO re-write process, we will conduct a kickoff workshop with Town staff and the project Steering Committee. During this meeting we will begin discussions related to schedule, Steering Committee roles and responsibilities, document format (InDesign or Word), document template preferences, and document hosting options.

For the general public, we will facilitate a separate open-house style workshop with daytime and evening hours. We will also administer both online and paper format public surveys to solicit public comment.

Existing Documents Review/Data Gathering

Town staff will provide all relevant background documents for review (in electronic format), including but not limited to:

- Unified Development Ordinance
- Recently Adopted and Proposed Ordinance Amendments
- Garner Forward Comprehensive and Transportation Plans
- Garner Parks, Recreation, Greenways & Open Space Plan
- Garner Strategic Plan
- Town of Garner Code of Ordinances
- Existing Zoning Map GIS Files
- City of Raleigh Utility Manuals, Details and Policies
- Town of Garner Nitrogen Control Plan and NPDES Phase II Permit
- Town of Garner Development Applications
- Other relevant regulatory documents as needed (Improvement Guarantees, Town policy manual, etc.)



Deliverables:

- Meeting and Focus Group Interview Summaries
- Kick-Off Workshop Materials and Slide Decks
- Open House Materials
- On-Line and Paper Format Surveys
- Website Information
- Quarterly Progress Report to Staff

Meetings:

- Project Initiation Meeting with Staff
- Focus Group Interviews
- Community Tour
- Kick-Off Workshop/Steering Committee Meeting #1
- Public Open House/Workshop #1
- Check-in Meetings with Staff (Twice per Month)

Staff Responsibilities:

- Provide existing documents, plans, and GIS files in electronic format;
- Post Stewart supplied information to Town website;
- Coordinate meeting dates, attendees, and locations;
- Facilitate flow of information between Consultant and Garner staff, stakeholders, Steering Committee, Planning Commission, and Town Council;
- Assist in the identification of key focus groups and individuals to represent each of the groups.

PHASE 2 | PREPARATION & COMPOSITION

We will draw upon best practices from around the country in updating the UDO. The revisions will address items of interest noted by the Planning Commission, topics identified during the Town's independent code analysis, and implementation action steps as outlined in the newly adopted comprehensive plan.

We will prepare the UDO revisions under the guidance of staff and the project Steering Committee. As our team crafts the UDO language and graphics, we will test the code sections to ensure that the UDO provides appropriate regulatory guidance.

Our team will prepare drafts of the updated UDO to be delivered via groupings of similar topics allowing staff and the Committee to more easily digest the information. Stewart will first meet with Staff to review each draft article, receive comments, and make one round of revisions prior to review by and meeting with the Steering Committee to discuss the article. Steering Committee comments will be compiled by staff and delivered to Stewart with applicable revisions outlined. It is anticipated that the Stewart team will meet with the Steering Committee ten (10) times during the 17-month duration of Phase 2.

The following is expected to be completed with this phase:

- Prepare UDO page layout to serve as template for the preparation of all drafts;
- Prepare and receive approval of UDO framework;



- Research major topics of the ordinance and provide best practice options, as appropriate;
- Legal review of draft ordinances for compliance with applicable North Carolina General Statutes;
- Address regulatory issues regarding environmental provisions;
- Draft and revise articles in the following ten (10) groupings:
 - Administration, Non-Conformities, Nuisances
 - Development Application Procedures
 - Zoning Districts, Conditional Use Districts, Use Table
 - Overlay Districts, Urban Design and TOD Standards, Workforce Housing
 - Signs
 - Subdivision, Street Standards
 - Site Design, Development Standards
 - Env. Regulations, Open Space Standards, Stormwater
 - Utilities & Infrastructure Details
 - Definitions & Interpretations
- Provide new and updated custom graphics, charts, and illustrations to visually demonstrate the applicable sections of the ordinance. These items will be created using design programs and inserted as .jpg images (minimum 300 dpi) and also supplied as scalable vector graphics (.svg) for use by staff in other media. The use of graphics to duplicate information conveyed in text will be streamlined to reduce redundancy and/or the potential for conflicting interpretations.
- Provide a final layout including all appropriate text, tables, and graphics.
- Ensure that all the language is clear and consistent and that there is a thorough definitions section. All defined words throughout the draft articles will be hyperlinked to said definition. All cross-references will also be hyperlinked.
- We will record all existing text and new text references so changes can be easily tracked.

Joint Planning Commission/Town Council Work Sessions

During Phase 2, the Stewart team will make presentations at five (5) Joint Planning Commission/Town Council Work Sessions. The content of the sessions will be coordinated with Staff, but will generally cover two (2) draft article groupings at a time, and may be more of a high-level concept review rather than a detailed article by article review of the proposed language.

Public Information Meetings

The Stewart team will facilitate three (3) Public Information meetings during Phase 2 to discuss the draft UDO and solicit public comment.

Deliverables:

- Meeting Summaries, Slide Decks, and Printed Materials;
- UDO Framework
- Development of up to two new zoning districts or zoning overlays
- Draft UDO Articles & Recommendations deliverables:
 1. Review per RFQ and staff guidance
 2. Review and revision with Staff
 3. Review and revision with Steering Committee
 4. Revision following public workshop



5. Revision following joint Planning Board / Town Council workshop
 6. Revision based on adoption hearings
- Draft Graphics
 - Website Updates
 - Joint Planning Commission/Town Council Session Presentation
 - Public Open House materials
 - Quarterly Progress Report to Staff

Meetings:

- Steering Committee Meetings #2 through #11
- Joint Planning Commission/Town Council Work Sessions #1 through #5
- Public Open House/Workshop #2 through #4
- Check-In Meetings with Staff (Twice per Month)

Staff Responsibilities:

- Post Stewart supplied information to Town website;
- Coordinate meeting dates and locations;
- Facilitate flow of information between Consultant and Garner staff, Steering Committee, Planning Commission, and Town Council;
- Provide consolidated list of comments/revisions from public, Staff, and Steering Committee.

PHASE 3 | REMAPPING & ZONING MAP UPDATE

Stewart will review the existing zoning map and will prepare a revised seamless zoning map (inclusive of rights-of-way with no polygon overlaps or gaps), as appropriate, that will accompany the updated UDO. Although listed as the third phase of this project, the remapping will have a soft start concurrent with review, interpretations and revisions to the existing zoning districts. This concurrent consideration will involve an interplay between the regulations in the districts and their associated geographic boundaries.

During the update process, it is likely that zoning districts will be deleted, consolidated, or created, including the potential for new or revised overlay districts that may be necessary in order to achieve the goals of the Garner Forward Plan. The process for remapping will be similar to the UDO text revisions as described in Phase 2.

After initial consultation with staff, we will provide a conceptual decision tree and draft GIS zoning map for review by staff and Steering Committee. Stewart will make revisions as necessary and work with staff to initiate the required mailed notice and public review process. The Zoning Map will be crafted to best achieve the goals of the UDO update while avoiding the creation of nonconformities to the greatest extent possible.

Stewart will work with Town staff to create a special mapping website (linked to the Town's webpage) to compare existing and proposed zoning by parcel.



Deliverables:

- Meeting Summaries, Slide Decks, and Printed Materials
- Draft Zoning Map – official print version created within an ArcGIS Desktop / ArcMap layout
- Draft Zoning feature classes organized in a personal geodatabase including attribute fields consistent with ESRI's most current data model(s) and inclusive of field needed to manage the map amendment process
- Public Notification Package for each parcel with a proposed change in zoning designation – Garner to provide postage
- Website Updates + Mapping Website
- Quarterly Progress Report to Staff

Meetings:

- Steering Committee Meetings #12 and #13
- Check-In Meetings with Staff (Twice per Month)
- Public Open House/Workshop #3 and #4

Staff Responsibilities:

- Post Stewart supplied information to Town website
- Coordinate meeting dates and locations
- Facilitate flow of information between Consultant and Garner staff, Steering Committee, Planning Commission, and Town Council
- Public noticing and postage
- Provide consolidated list of comments/revisions from public, Staff, and Steering Committee

PHASE 4 | ADOPTION

Following the final Public Information Meeting, Stewart staff will make requested revisions and prepare the final consolidated UDO document. Stewart, in conjunction with Town staff, will present the UDO at two (2) Planning Commission meetings and two (2) Town Council meetings.

Once the UDO has been adopted, Stewart will make all final revisions/edits, provide the final electronic version of both the document and the map, and provide paper copies of the UDO.

Deliverables:

- Meeting Summaries, Slide Decks, and Printed Materials;
- Final UDO (in selected format - Word or InDesign - and PDF format with hyperlinks by/to Article as necessary and to definitions, and text-searchable functions)
- 24 Bound Print Color Copies of the Final Adopted UDO
- Website update materials
- Final Zoning Map and GIS files (electronic – see deliverables in Phase 3 for further guidance)

Meetings:

- Check-In Meetings with Staff (Twice per Month)
- Up to 4 Public Meetings/Hearing, including:
 - Up to 2 Planning Commission Meetings
 - Up to 2 Town Council Meetings



Staff Responsibilities:

- Post Stewart supplied information to Town website
- Coordinate meeting dates and locations
- Public noticing
- Facilitate flow of information between Consultant and Garner staff, Planning Commission, and Town Council
- Provide consolidated list of comments/revisions from public, Staff, Steering Committee, Planning Commission, and Town Council (as applicable)
- Attend Planning Commission and Town Council Meetings

PHASE 5 | IMPLEMENTATION & TRAINING

Following adoption of the new UDO and associated Zoning Map (during a “grandfather period” in which the existing land development regulations are still in effect), the Stewart team will facilitate a series of training sessions for staff, Planning Commission, and Town Council on the administration, implementation and procedures of the UDO.

Our team will work with staff to develop new or revised applications for any zoning amendments and various permit processes in conformance with the new UDO.

Deliverables:

- UDO Training/Orientation Presentation
- Permit applications in fillable .pdf format

Meetings:

- Check-In Meetings with Staff (Twice per Month)
- Half-Day Training Session (Staff)
- Half-Day Training Session (Planning Commission and Town Council)

Staff Responsibilities:

- Post Stewart supplied information to Town website
- Coordinate meeting dates and locations
- Facilitate flow of information between Consultant and Garner staff, Planning Commission, and Town Council
- Attend Training Sessions

SCHEDULE

According to the project schedule, as proposed in the RFQ, the anticipated Notice to Proceed is November 5, 2019 with UDO/Zoning Map adoption on or before October 19, 2021. Please see the attached schedule for a more detailed summary of tasks and meetings.

ADDITIONAL SERVICES

Any item not contained in this Scope of Services or approved as an ADD-ALTERNATE will be deemed an Additional Service. This includes additional services provided by sub-contractors to Stewart. Additional Services will



STEWART

be provided if requested in writing by the Client for a negotiated lump sum fee or at our Standard Hourly Billing Rates.

CLIENT RESPONSIBILITIES

It shall be the responsibility of the Client to provide the following items:

- Provide notice of scheduled meetings (with reasonable advance notice).
- Provide decisions on critical issues as necessary in a timely manner.
- Payment of all invoices per Conditions of Agreement.

DRAFT

**NORTH CAROLINA
WAKE COUNTY**

CONTRACT FOR PLANNING CONSULTING SERVICES

THIS CONTRACT is entered into by and between Stewart, hereinafter referred to as the “Consultant” and the Town of Garner, a North Carolina municipal corporation, hereinafter referred to as the “Town”.

WITNESSETH

WHEREAS, the Town desires to procure a Consultant to perform services to update their Unified Development Ordinance, and

WHEREAS, the Town has completed necessary steps for retention of professional services under applicable Town policies, and

WHEREAS, the Town has agreed to engage the Consultant and the Consultant has agreed to contract with the Town for performance of services as described herein, and according to the terms and conditions, set forth herein.

NOW THEREFORE, in consideration of sums to be paid to the Consultant, and other good and valuable consideration the Consultant and Town do contract and agree as follows:

1.0 Scope of Services/Description of Project

- 1.1 The Consultant will serve as the Town's professional representative in those tasks of the project to which this contract applies and will give consultation and advice to the Town during the performance of their services.
- 1.2 The Consultant will provide services as described below in Section 1.4.
- 1.3 The Consultant now has or will secure at their expense, including subconsultants, all personnel and facilities required to perform the services to be rendered under this Contract. Such personnel are not employees of, nor have they any direct contractual relationship with the Town. The Consultant is authorized to engage subconsultants to assist in the work included under this Contract to the extent such services are included herein. No subcontract work is authorized for which the Town will incur any costs beyond those agreed upon and set forth in Section 4.0.

1.4 The Scope of Services is as follows:

Insert once finalized with Garner staff

2.0 Services Provided by the Town

It is understood that certain services as required may be performed and/or furnished by the Town. These services may include the following:

- 2.1 Assist the Consultant by placing at their disposal all available information pertinent to the project, including previous reports and other relative data;
- 2.2 Assist in gaining access to and making all provisions for the Consultant to enter upon public and private property as required for performance of their services described herein;
- 2.3 Examine all studies, reports, sketches, drawings, specifications, proposals and other documents prepared by the Consultant, obtaining advice of legal counsel and/or such other consultants as the Town deems appropriate for such examination and rendering in writing decisions pertaining thereto within a reasonable time so as not to delay the service of the Consultant;
- 2.4 Giving prompt written notice to the Consultant whenever the Town observes or otherwise becomes aware of any problems or changed circumstances in the project;
- 2.5 Furnishing the Consultant in a timely manner with copies of pertinent correspondence relating to this project, which would not have otherwise been delivered to the Consultant;
- 2.6 Designate in writing a person to act as the Town's representative with respect to the work to be performed under this Contract, such person(s) shall have complete authority to transmit instructions, receive information, interpret and define Town's policies and decisions with respect to materials, equipment, elements and systems pertinent to the services covered by this Contract;
- 2.7 The Town shall provide to the Consultant such information as is available to the Town for rendering of services hereunder. The Consultant may rely on the sufficiency of such information;
- 2.8 Insofar as any of the above services are necessary for the Consultant's performance of their obligations under this Contract the Town shall be responsible for providing such services in a satisfactory and timely manner so as not to delay the Consultant in their performance thereof.
- 2.9 Post Consultant supplied information to Town website;
- 2.10 Coordinate meeting dates and locations;

- 2.11 Public noticing;
- 2.12 Facilitate flow of information between Consultant and Town staff, Steering Committee, Planning Commission, and Town Council;
- 2.13 Provide consolidated list of comments/revisions from public, Staff, Steering Committee, Planning Commission, and Town Council (as applicable);
- 2.14 Attend Planning Commission and Town Council Meetings.

3.0 Schedule/Time of Performance

- 3.1 The work to be performed and the services rendered under this Contract shall commence as directed by the Town.
- 3.2 According to the project schedule, as proposed in the RFQ, the anticipated completion & adoption date of the UDO/Zoning Map Revisions will be on or before October 19, 2021.
- 3.3 In performing the services described in this Contract, it is mutually agreed that time is of the essence. The Consultant shall commence work upon receipt of written notice to proceed from the Town.
- 3.4 Either party may terminate this contract upon 30-day notice.

4.0 Compensation/Time of Payment

- 4.1 For services to be performed hereunder the Town shall pay the Consultant a lump sum not to exceed \$176,000.
- 4.2 For all expenses rendered in Section 1.0 Scope of Services/Description of Project the Consultant shall be compensated at unit costs not to exceed \$21,000.
- 4.3 Invoices for Consultant's services shall be submitted, at the Consultant's option, either upon completion of any phase of service or on a monthly basis. Invoices shall be payable when rendered and shall be considered PAST DUE if not paid within 30 days after the invoice date.
- 4.4 Any inquiry or questions concerning the substance or content of an invoice shall be made to the Consultant in writing within 15 business days of receipt of the invoice. A failure to notify the Consultant within this period shall constitute an acknowledgment that the service has been provided and is correct.

- 4.5 In the event that any portion of an account remains unpaid 30 days after billing, the Consultant may, without waiving any claim or right against the Town, and without liability whatsoever to the Town, suspend or terminate the performance of all services.

5.0 Standard of Care

The standard of care for all professional services performed or furnished by the Consultant under this Agreement will be the skill and care used by members of the Consultant's profession practicing under similar circumstances at the same time and in the same locality. The Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with the Consultant's services.

6.0 Notices

All notices, requests for payment or other communication arising hereunder shall be sent to the following:

Town of Garner
Attn: Jeff Triezenberg, Planning Director
900 7th Avenue
Garner, NC 27529

Stewart
Attn: Cindy Szwarcokop
223 S. West Street, Suite 1100
Raleigh, NC 27603

7.0 Non-Discrimination

In consideration of the signing of this Contract, the parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Contract, no matter how remote.

8.0 Applicable Law/Forum Mediation

- 8.1 All matters relating to this Contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Contract shall be Wake County Civil Superior Court. Participation in a non-binding mediation is a condition precedent to filing any lawsuit arising out of this Contract.
- 8.2 The Town and the Consultant may endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the North Carolina Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions currently in effect and administered by counsel for the parties.

9. Insurance & Risk Allocation

- 9.1 Consultant agrees to maintain, on a primary basis and at their sole expense, at all times during the life of this Contract the following coverages and limits. The requirements contained herein, as well as Town's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Contract.
- 9.2 The Consultant shall obtain, at its sole expense, all insurance required in the following paragraphs, listed below as A, B, & C and shall not commence services until such insurance is in effect and certification thereof has been received by the Town.
- A. Workers' Compensation Insurance - Coverage for all paid and volunteer workers meeting the statutory requirements of The North Carolina Workers' Compensation Act, North Carolina General Statutes § 97.
 - B. Commercial Automobile Liability – Coverage with limits no less than \$1,000,000 per occurrence for bodily injury and property damage for any vehicle used during performance of contract services, including coverage for owned, hired, and non-owned vehicles. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement.
 - C. Commercial General Liability Insurance - Bodily injury and property damage liability as will protect the Consultant from claims of bodily injury or property damages which arise from operations of this Agreement. The amounts of such insurance coverage shall not be less than \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate coverage.
- 9.3 The Consultant agrees to furnish Town proof of compliance with the insurance coverage requirements of this contract upon request. The Town shall be named as an additional insured on all policies of insurance, except workers' compensation, specified above. The Consultant upon request by Town shall furnish a certificate of insurance from an insurance company, licensed to do business in the State of North Carolina and acceptable to the Town verifying the existence of any insurance coverage required by the Town. The certificate will provide for sixty (60) days advance notice in the event of termination or cancellation of coverage.
- 9.4 Consultant agrees to endorse the Town as an Additional Insured on the Commercial General Liability and any insurance coverage obtained in addition to those set forth herein. The Additional Insured shall read "Town of Garner as its interest may appear."

- 9.5 Consultant agrees to provide the Town a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by the Consultant's insurer. If the Consultant receives a non-renewal or cancellation notice from an insurance earner affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, the Consultant agrees to notify the Town within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

Town of Garner
Town Manager
900 7th Avenue
Garner, NC 27529

- 9.6 The Consultant may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies the Consultant agrees to endorse Town of Garner as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.
- 9.7 Professional Liability - Limits of no less than \$1,000,000 each claim.
- 9.8 All insurance companies must be admitted to do business in North Carolina and be acceptable to the Town of Garner. If the insurance company(s) is a permitted surplus lines insurer, the insurance company name, and NAIC number must be submitted to the Town for approval before commencing work. The Consultant shall be required to provide the Town no less than thirty (30) days' notice of cancellation, or any material change, to any insurance coverage required by this Contract.
- 9.9 A Certificate of Insurance (COI) must be issued by an authorized representative of the insurance carrier(s). Certificates of Insurance must have the Insurance Company name and NAIC number clearly identified. The acceptance of or the review of Certificates of Insurance by the Town of Garner does not relieve the Consultant of any requirements in the contract to provide specific insurance coverage required by the contract, nor does the acceptance of or review of Certificates of Insurance covenant all insurance requirements have been met.

10. Indemnity

- 10.1 The Consultant shall indemnify and hold harmless the Town and its personnel from and against any and all claims, damages, losses, and expenses (including reasonable attorney's fees) to the extent they are caused by the negligent act, error, or omissions by the Consultant's in performance of its services under this Agreement, subject to the provisions in the paragraph below on Risk Allocation.
- 10.2 Sub-Consultant(s) shall indemnify & hold harmless Consultant & Town from and against all claims, losses, damages, and expenses (including attorney's fees and defense costs) to the extent such claims, losses, damages, or expenses are caused by any negligent act, error, or omission of Sub-Consultant or any person or organization for whom the Sub-Consultant is legally liable.

11. Intellectual Property

- 11.1 Any information data, instruments, documents, studies, reports or deliverables given to, exposed to, or prepared or assembled by the Consultant under this Contract shall be kept as confidential proprietary information of the Town and not divulged or made available to any individual or organization without the prior written approval of the Town. Such information, data, instruments, documents, studies, reports or deliverables will be the sole property of the Town and not the Consultant.
- 11.2 The Consultant shall maintain the right of reuse to any drawings or specifications provided or furnished by the Consultant. The Town acknowledges that such drawings or specifications are not intended or represented to be suitable for reuse by the Town or others on extensions of the project or on any other project.
- 11.3 All intellectual property, including, but not limited to, patentable inventions, patentable plans, copyrightable works, mask works, trademarks, service marks, and trade secrets invented, developed, created, or discovered in performance of this Contract shall be the property of the Town.
- 11.4 Copyright in and to any copyrightable work, including, but not limited to, copy, art, negatives, photographic designs, text, software, or documentation created as part of the Consultant's performance of this project shall vest in the Town. Work of authorship and contributions to works of authorship created by the Consultant's performance of this project are hereby agreed to be 'works made for hire' within the meaning of 17 USC 201.

12. Advertising

The Consultant shall not use the existence of this Contract, or the name of the Town of Garner, as part of any advertising.

13. Cancellation

- 13.1 The Town may terminate this Contract at any time by providing thirty (30) days written notice to the Consultant. In addition, if Consultant shall fail to fulfill in timely and proper manner the obligations under this Contract for any reason, including the voluntary or involuntary declaration of bankruptcy, the Town shall have the right to terminate this Contract by giving written notice to the Consultant and termination will be effective upon receipt. Consultant shall cease performance immediately upon receipt of such notice.
- 13.2 In the event of early termination, Consultant shall be entitled to receive just and equitable compensation for costs incurred prior to receipt of notice of termination and for the satisfactory work completed as of the date of termination and delivered to the Town. Notwithstanding the foregoing, in no event will the total amount due to the Consultant under this section exceed the total amount due to the Consultant under this Contract. The Consultant shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract, and the Town may withhold any payment due to the Consultant for the purpose of setoff until such time as the Town can determine the exact amount of damages due the Town because of the breach.
- 13.3 Payment of compensation specified in this Contract, its continuation or any renewal thereof is dependent upon and subject to the allocation or appropriation of funds to the Town for the purpose set forth in this Contract.

14. Laws/Safety Standards

- 14.1 The Consultant shall comply with all laws ordinances codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business including those of Federal, State and local agencies having Jurisdiction and/or authority.
- 14.2 The Consultant must comply with North Carolina Occupational Safety and Health Standards for General Industry, 29 CFR 1910. In addition, the Consultant shall comply with all applicable occupational health and safety and environmental rules and regulations. The Consultant shall effectively manage their safety and health responsibilities including:

- A. Accident Prevention: Prevent injuries and illnesses to their employees and others on or near their job site. The Consultant managers and supervisors shall ensure personnel safety by strict adherence to established safety rules and procedures.
- B. Environmental Protection: Protect the environment on, near, and around their work site by compliance with all applicable environmental regulations.
- C. Employee Education and Training: Provide education and training to all Consultants' employees before they are exposed to potential workplace or other hazards as required by specific OSHA Standards.

15. Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to the Town by the Consultant are subject to the public records laws of the State of North Carolina and it is the responsibility of the Consultant to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the Town. The Consultant understands and agrees that the Town may take any and all actions necessary to comply with federal, state, and local laws and/or Judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

16. Miscellaneous

- 16.1 The Consultant shall be responsible for the proper custody and care of any property furnished or purchased by the Town for use in connection with the performance of this Contract and will reimburse the Town for the replacement value of its loss or damage.
- 16.2 The Consultant shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. The Consultant represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such employees shall not be employees of or have any individual contractual relationship with the Town.
- 16.3 This Contract may be amended only by written agreement of the parties executed by their authorized representatives.

17. Right of Audit and Examination of Records

- 17.1 The Town of Garner may conduct an audit of the Consultant's financial performance and compliance records maintained in connection with the operations and services performed under this Contract. In the event of such an audit, the Consultant agrees to provide the Town with reasonable access to the Consultant's employees and make all such financial performance and compliance records available to the Town. The Town agrees to provide the Consultant with an opportunity to discuss and respond to any findings before a final audit report is issued. Records shall be made available for three (3) years after the final payment.
- 17.2 The Town may conduct an audit of any services performed and fees paid subject to this Contract. The Town, or its designee, may perform such an audit throughout the contract period and for three (3) years after termination thereof or longer if otherwise required by law.
- 17.3 The Consultant and its agents shall maintain all books, documents, papers, accounting records, contract records and such other evidence as may be appropriate to substantiate costs incurred under this Contract. The Town, or its designee, shall have the right to, including but not limited to: review and copy records; interview current and former employees; conduct such other investigation to verify compliance with contract terms; and conduct such other investigation to substantiate costs incurred by this Contract.
- 17.4 "Records" shall be defined as data of every kind and character, including but not limited to books, documents, papers, accounting records, contract documents, information, and materials that, in the Town's sole discretion, relate to matters, rights, duties or obligations of this Contract.
- 17.5 Records and employees shall be available during normal business hours upon advanced written notice. Electronic mail shall constitute written notice for purposes of this section.
- 17.6 The Consultant shall provide the Town or its designee reasonable access to facilities and adequate and appropriate workspace for the conduct of audits.
- 17.7 The rights established under this section shall survive the termination of the Contract, and shall not be deleted, circumvented, limited, confined, or restricted by contract or any other section, clause, addendum, attachment, or the subsequent amendment of this Contract.
- 17.8 The Consultant shall reimburse the Town for any overcharges identified by the audit within ninety (90) days of written notice of the Town's findings.

18. E – Verify

The Consultant's understands that E-Verify is the federal program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with §64-25(5) of the North Carolina General Statutes. Provided that the Consultant's is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State, then the Consultant's understands and certifies that they shall verify the work authorization of the employee through E-Verify in accordance with §64-26(a) of the North Carolina General Statutes. The Consultant further certifies that their subcontractors comply with E-Verify pursuant to federal law, and the Consultant will ensure compliance with E-Verify by any subcontractors subsequently hired by the Consultant.

19. Iran Divestment Act Certification

The Consultant certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C.G.S. § 147-86.55, et seq. In compliance with the requirements of the Iran Divestment Act and N.C.G.S. § 147-86.59, the Consultant shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

20. Companies Boycotting Israel Divestment Act Certification

The Consultant certifies that it has not been designated by the North Carolina State Treasurer as a company engaged in the boycott of Israel pursuant to N.C.G.S. 147-86.81.

21. Force Majeure

Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Contract, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Contract must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Contract by this provision.

22. Assignment

Neither the Town nor the Consultant will assign, sublet, or transfer their interest, duties, or obligations hereunder without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public

body which may be a party hereto, nor shall it create any rights or benefits to parties other than the Town and the Consultant, except such other rights as may be specifically called for herein.

23. Incorporation of Documents/Complete Agreement

This Contract, and any documents incorporated below, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts. Specifically incorporated into this Contract are the following attachments, or if not physically attached, are incorporated fully herein by reference:

- Scope of Services
- Schedule of Fees
- Certificate of Insurance

In cases of conflict between this Contract and any of the above incorporated attachments or references, the terms of this Contract shall prevail.

THIS CONTRACT is entered into this _____ day of _____, 20_____.

DRAFT

IN WITNESS WHEREOF, the Consultant has executed the foregoing with the signature(s) of its duly authorized officer(s). under seal, and the Town has executed with the signature of its Town Manager, attested by its (Assistant/Deputy) Clerk, with the official seal affixed, the day and year first above written.

STEWART (“CONSULTANT”)

By:

Name
Title

(If corporate)

ATTEST:

By:

Name
Title

(Affix Corporate Seal)

TOWN (“TOWN OF GARNER”)

By:

Rodney Dickerson
Town Manager

ATTEST:

By:

Stella Gibson
Town Clerk

THIS INSTRUMENT APPROVED
AS TO FORM

Town Attorney

(Affix Town Seal)