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RESOLUTION NO. 12-124

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH PATTON CONSTRUCTION GROUP, INC., FOR THE CHALLEDON SUBDIVISION WATERLINE REPLACEMENT PROJECT.

WHEREAS, the City of Asheville has authority pursuant to Article 2 of Chapter 160A of the North Carolina General Statutes to enter into contracts for services with other entities; and

WHEREAS, pursuant to N.C.G.S. § 143-129, bids were solicited for the project known as the Challedon Subdivision Waterline Replacement Project; and

WHEREAS Patton Construction Group, Inc., of Arden, NC, was the lowest responsible bidder for the project, in the amount of $314,360.00, with the bid tabulation attached hereto as Exhibit "A"; and

WHEREAS, the Project involves the construction and installation of approximately 5,300 linear feet of 6-inch ductile iron pipe Class 350 with related appurtenances, and other work and materials required in order to complete the project; and

WHEREAS, , the bids have been reviewed by the Water Resources Department and the City's Office of Economic Development (Minority Business Plan Compliance) with all officers recommending approval of the bid.

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

1. The Bid Tabulation attached hereto as Exhibit "A" be recorded in the minutes of the City Council as required by N.C. Gen. Stat. § 143-129.

2. The City Manager is hereby authorized to execute the construction agreement with Patton Construction Group, Inc., in the amount of $314,360.00 for the construction of the Challedon Subdivision Waterline Replacement Project and further authorized to execute any change orders to said contract or documents which may arise during construction of said project up to the budgeted amount.

Read, approved and adopted this the 12th day of June, 2012.

Magdalen Bowleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowleson
City Clerk

Exhibit A

Bid Tabulation for the Challedon Subdivision Waterline Replacement Project

Patton Construction Group, Inc.
565 Long Shoals Road, Suite 101
Arden, NC 28704
Total Bid: $314,360.00

Cooper Construction Company, Inc.
761 S. Allen Road
Flat Rock, NC 28731
Total Bid: $329,421.00

Huntley Construction Company, Inc.
121 Charlotte Highway
Asheville, NC 28803
Total Bid: $365,831.28

Cana Construction
PO Drawer 1110
Waynesville, NC 28786
Total Bid: $369,705.50

Carolina Specialties Construction, LLC
PO Box 825
Hendersonville, NC 28793
Total Bid: $373,109.05

Steppe Construction, Inc.
4149 N NC Highway 9
Mill Spring, NC 28756
Total Bid: $388,021.00

T & K Utilities, Inc.
204 Charlotte Highway, Suite G
Asheville, NC 28803
Total Bid: $416,126.00

RESOLUTION NO. 12-125

RESOLUTION CALLING FOR A PUBLIC HEARING ON JUNE 26, 2012, FOR THE ADOPTION OF AN ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY TO DEMOLISH THE DWELLING LOCATED AT 44 LINDEN AVENUE

WHEREAS, proceedings have heretofore been instituted in accordance with the provisions of the City of Asheville Housing Code, as authorized by Article 19, Part 6., Minimum Housing Standards, of Chapter 160A of the North Carolina General Statutes; and

WHEREAS, an administrative housing hearing was held on the 28th day of May 2010, for the purpose of determining: (1) whether that certain dwelling known as 44 Linden Avenue, Asheville, North Carolina is unfit for human habitation; (2) that if same is unfit for human habitation, the fair market value of the dwelling in its present condition; and (3) whether the dwelling can be repaired for less than fifty percent (50%) of the present fair market value so as to render the dwelling fit for human habitation; and

WHEREAS, a Findings of Fact and Order found that the dwelling could not be repaired for less than fifty percent (50%) of its present fair market value; and

WHEREAS, the real property upon which the dwelling is located is described in Deed Book 4644 at page 1320, as recorded in the Buncombe County Register of Deeds Office and further, being more particularly described as being all of Pin Number 9629.63-2393 on the Buncombe County Tax Maps; and

WHEREAS, the June 25, 2010 Order gave the Owner until September 30, 2010 to demolish the dwelling; and by service of the Order on the Owner during the first part of April 2012, the Owner was given additional time to contest the order of demolition; and

WHEREAS, the time period for compliance has expired and the Owner has not complied with said Order in any respect and no improvements are underway or being made upon the property;

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

1. A public hearing will be held on the 26th day of June, 2012 at 5 p.m. in the Council Chambers located on the second floor of the City Hall Building, concerning the adoption of an ordinance directing the Director of Building Safety to proceed with the demolition and removal of the aforementioned dwelling and otherwise comply with the provisions of the City of Asheville Housing Code.

2. The City Clerk is hereby directed to publish notice of the said public hearing in the Asheville Citizen-Times, such notice to be published not less than ten (10) days nor more than thirty (30) days prior to the scheduling of the public hearing. The City Clerk is also directed to secure the publisher's affidavit that such notice was duly published.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowleson
City Clerk

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RESOLUTION NO. 12--126

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH DUKENET COMMUNICATIONS, LLC FOR THE PURPOSES OF INSTALLING AND OPERATING FIBER OPTIC EQUIPMENT ON CITY OWNED REAL PROPERTY AT 166 RESERVOIR ROAD

WHEREAS, the City of Asheville is the owner of real property located at 166 Reservoir Road, Asheville NC 28803, formerly White Fawn Reservoir, identified as PIN #9648-56-7084-00000; and

WHEREAS, DukeNet Communications, LLC has offered to enter into a license agreement in order to install, operate and maintain fiber optic equipment upon the property at 166 Reservoir; and

WHEREAS, N. C. Gen. Stat. sec. 160A-272 authorizes the City to enter into leases of 10 years or less upon resolution of the City Council adopted at a regular meeting after 10 days' public notice; and

WHEREAS, the City Clerk published a Notice of Intent in connection with the proposed license agreement on June 1, 2012, in the Asheville Citizen-Times; and

WHEREAS, the initial term of the license agreement will be for five (5) years with the option to renew for one (1) additional five (5) year period; and

WHEREAS, in consideration for the license agreement, DukeNet will grant the City the right to use twelve (12) unlit fibers within the DukeNet network from S. Charlotte Street to Reservoir Road;

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

Pursuant to North Carolina General Statute sec. 160A-272, the Mayor is hereby authorized to execute the License Agreement between the City of Asheville and DukeNet Communications, LLC for the purposes of installing, operating and maintaining fiber optic equipment at 166 Reservoir Road. In addition, the Mayor be, and is hereby authorized to execute any and all documents necessary to give effect to this resolution, subject to approval by the City Attorney, and compliance with applicable North Carolina law.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bourleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bourleson
City Clerk

RESOLUTION NO. 12-127

RESOLUTION AUTHORIZING THE CITY TO APPLY FOR A FEDERAL TRANSIT ADMINISTRATION (FTA) GRANT TO PAY FOR FUEL COSTS AS A CAPITAL MAINTENANCE EXPENSE AND AUTHORIZING THE MAYOR TO EXECUTE THE APPROPRIATE DOCUMENTS TO EXECUTE THE GRANT IF AWARDED

WHEREAS, the Federal Transit Administration funding for Section 5307 Allocation of Funding Caps for Treating Fuel and Electric Utility Costs for Vehicle Propulsion as a Capital Maintenance Expense is available to transit agencies to pay for fuel costs as a capital expense rather than an operating expense; and

WHEREAS, the City of Asheville's Transit System is applying for the subject grant funding to offset fuel costs; and

WHEREAS, the City has authority, pursuant to N.C.G.S. §160A-17.1, to apply for and receive grants from the Federal government and to enter into contracts for the administration of said grants,

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

City Council authorizes City staff to apply for a Federal Transit Administration (FTA) grant to help pay current transit system fuel costs as a capital maintenance expense instead of an operating expense and if the grant is awarded, authorizes the Mayor to execute the appropriate documents to accept the grant.

Read, approved and adopted this 12th day of June 2012.

Magdalen Bowleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowleson

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RESOLUTION NO. 12-128

RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE NORTH CAROLINA OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE (DOJ) THROUGH THE BULLETPROOF VEST PARTNERSHIP (BVP) PROGRAM

WHEREAS, the City has the authority pursuant to N.C.S.G. 160A-17.1 to receive grants from the State and to enter into contracts for the administration of said grants: and

WHEREAS, the US Department of Justice (DOJ), has awarded the City of Asheville a full grant application in the amount of $16,028 through the BVP program for partial purchase cost of bulletproof vests;

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

The City Manager is hereby authorized to accept and enter into an agreement with the US Department of Justice, for a grant in the amount of $16,028 for the purchase of bulletproof vests.

Read, approved, and adopted this 12th day of June, 2012.

Magdalen Bowleson
CITY CLERK

MAYOR

APPROVED AS TO FORM:

CITY ATTORNEY

Magdalen Bowleson

RESOLUTION NO. 12-129

RESOLUTION MODIFYING THE 2012 CITY COUNCIL MEETING SCHEDULE

WHEREAS, the Asheville City Council is authorized, pursuant to N. C. Gen. Stat. sec. 160A-71, to fix the time and place for its regular meetings;

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

The July 31, 2012, community meeting of the Asheville City Council is hereby cancelled.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowleson
City Clerk

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RESOLUTION NO. 12-130

RESOULTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH OTIS ELEVATOR TO PROVIDE ELEVATOR MAINTENANCE AND REPAIR SERVICE FOR THE OTIS ELEVATORS LOCATED IN MULTIPLE MUNICIPAL BUILDINGS

WHEREAS, the City of Asheville has authority pursuant to NCGS §160A-20.1 to enter into contracts with private entities; and

WHEREAS, there are elevators located inside of various City buildings, including City Hall, the Municipal Building, Stephens Lee Recreation Center and Asheville Fire Station 11, that are Otis elevators; and

WHEREAS, due to the special components of Otis elevators, the Otis Elevator company has been servicing and repairing the elevators under a five year agreement with the City; and

WHEREAS, the cost for service of the Otis elevators is annually budgeted in the City's operating budget for facilities maintenance; and

WHEREAS, the cost of the contract is $64,433.71 and is budgeted in the FY 2012-2013 operating budget for facilities maintenance.

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

The City Manager of the City of Asheville is hereby authorized to execute a five (5) year contract with Otis Elevator Company to provide elevator maintenance and repair services for multiple municipal buildings in an amount not to exceed the annual line item budgeted amount.

Read, approved and adopted this the 12th day of June, 2012.

Magdalen Bowlesson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowlesson

RESOLUTION NO. 12-131

RESOLUTION AMENDING RESOLUTION NO. 12-107 ALLOWING PROVISIONS FOR MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES FOOTBALL GAME

WHEREAS, the Asheville City Council approved Resolution No. 12-107 on May 22, 2012, authorizing the sale of malt beverages and/or unfortified wine at the Asheville Grizzlies football game on Monday, June 18, 2012;

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

Resolution No. 12-107 is hereby amended to change the Monday, June 18, 2012, date to Saturday, June 16, 2012.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bulleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bulleson
CMC

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RESOLUTION NO. 12-132

RESOLUTION ADOPTING THE TERMS FOR A LAND USE INCENTIVE GRANT AGREEMENT FOR 155 GLENN BRIDGE ROAD

WHEREAS, THE City of Asheville has the authority pursuant to the Local Development Act of 1925 (N.C. Gen. Stat. sec. 158-7.1) to make appropriations for economic development and to enter into appropriate agreements setting out the terms and conditions of economic development projects for which appropriations are made; and

WHEREAS, The City Council of Asheville believes it important to support development projects that achieve goals set forth on their annual strategic goals; and

WHEREAS, the 155 Glenn Bridge Road development represents the type of project envisioned for support within those goals; and

WHEREAS, in support of those strategic goals and the Land Use Incentive Grant policy adopted by the City Council the 155 Glenn Bridge Road development will be a multi-family rental development project that is located in proximity to employment opportunities, and will fulfill an important public purpose, in that will provide 70 units of affordable housing (defined as rents that require payment of no more than 30% of gross income for a household with an income at 80% of the area median income) and 88 units of workforce housing (defined as rents that require payment of no more than 30% of gross income for a household with an income at 120% of the area median income), and will achieve certification as an Energy Star ™ development, and

WHEREAS, the developers of the 155 Glenn Bridge Road development have demonstrated to the satisfaction of the City Council that they have substantial and sufficient private equity participation in the project; and

WHEREAS, the developers have requested a waiver of the requirement that the Project be located within 1/4 mile of a designated highway;

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

The City of Asheville be and is hereby authorized to enter into a Land Use Incentive agreement with M Realty, LLC to support the development of the 155 Glenn Bridge Road development, and the Mayor is hereby authorized to execute said agreement for the City, subject to the approval of the City Attorney.

The requirement that the Project be located within 1/4 mile of a major highway is waived.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bullerson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bullerson
City Clerk

RESOLUTION NO. 12-133

RESOLUTION AUTHORIZING AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH NEW BELGIUM BREWING COMPANY, INC.

WHEREAS, the City of Asheville has the authority pursuant to N.C.G.S. 158-7.1 to make appropriations for the purpose of aiding and encouraging economic development in or near the City; and

WHEREAS, New Belgium Brewing Company, Inc., is considering Asheville as the location for a major brewing and distribution facility, with the potential for a substantial financial investment ($175 million) in property and equipment, and the creation of up to 130 new jobs, with a substantial number of those jobs to pay at or above the median average wage in Buncombe County; and

WHEREAS, following a public hearing, the City Council finds and determines that the location of New Belgium in Asheville will increase the population and taxable property in the City, and improve the business prospects of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE ASHEVILLE CITY COUNCIL THAT:

The City is authorized to enter into an economic development incentive agreement with New Belgium Brewing Company, Inc.

Be it further resolved, that the Mayor be, and is hereby authorized to execute said agreement on behalf of the City, together with any and all other instruments necessary to give effect to the agreement.

Read, approved and adopted this the 12th day of June, 2012.

Magdalen Bulleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bulleson
City Clerk

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RESOLUTION NO. 12-134

RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH NEW BELGIUM BREWING COMPANY, INC., REGARDING CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS

WHEREAS, the City of Asheville has the authority pursuant to N.C.G.S. 158-7.1 to make appropriations for the purpose of aiding and encouraging economic development in or near the City; and

WHEREAS, the City is authorized pursuant to N.C.G.S. 158-7.1 to undertake specific activities in furtherance of economic development, including extension of utility services and site preparation work; and

WHEREAS, New Belgium Brewing Company, Inc., is considering Asheville as the location for a major brewing facility with the potential for substantial investment in property and equipment ($175 million) and the creation of up to 130 jobs, with a substantial number of those jobs to pay at or above the median average wage in Buncombe County; and

WHEREAS, following a public hearing, the City Council finds and determines that the location of New Belgium in Asheville will increase the population and taxable property in the City, and improve the business prospects of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE ASHEVILLE CITY COUNCIL THAT:

The City is authorized to enter into a Memorandum of Understanding regarding certain public infrastructure improvements in the vicinity of the proposed location of the New Belgium Brewery, as set out in detail on Exhibit A, attached hereto.

Be it further resolved that the City Manager be, and is hereby authorized to execute said Memorandum of Understanding on behalf of the City and further authorized to execute such other documents as may be necessary to give effect to this resolution.

Read, approved and adopted this the 12th day of June, 2012.

Magdalen Bowlesson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowlesson
City Clerk

ATTACHMENT A

Economic Development Agreement

The City of Asheville, a North Carolina Municipal Corporation (herein "**City**"), a political subdivision of the State of North Carolina, and New Belgium Brewing Company, Inc., a privately held Colorado corporation authorized to do business in North Carolina (herein "**Company**"), enter into this Economic Development Agreement ("**Agreement**") as of June ___, 2012 ("**Effective Date**").

Background. The Company proposes to establish and operate a beverage manufacturing facility on Craven Street in Asheville, North Carolina. The activity will include the acquisition of approximately 20 acres of real property located in the City (herein "**Subject Property**"), as shown on a map attached hereto as **Exhibit A**, the construction of a commercial manufacturing facility and supporting warehouse for raw materials and outbound finished goods, and the acquisition of production equipment (herein "**Project**"). In connection with the development of the Project and as part of its purchase of the Subject Property, the Company expects to invest at least $175 million in the improvements and facilities that will be located on the Subject Property (collectively, the "**Facility**") and to employ at least 130 persons within a period of approximately nine years. Additionally, the Company also expects, that it, in conjunction with the City, will make additional improvements to public infrastructure in the immediate area of the Facility to facilitate the construction and operation of the Project.

Pursuant to the authority of the Local Development Act of 1925, North Carolina General Statutes 158-7.1 *et* seq. ("**Act**"), the City has agreed, after having conducted a public hearing and having made all findings and determinations required by law, to provide certain incentives to the Company as more particularly described in this Agreement, to induce the Company to proceed with the Project and to facilitate the creation of jobs at the Facility.

It is anticipated that the Company's capital investment in the Facility and its operations at the Subject Property will generate significant *ad valorem* property tax revenues to the City. The projected additional revenue and projected creation of jobs constitute a material part of the financial basis for the City's entering into this Agreement. The development of the Project is expected to result in the creation of at least 50 new full-time jobs at the Facility at an average compensation of approximately $50,000 per year beginning in 2015.

The Company acknowledges that the City's providing the economic development grants and other incentives in this Agreement was one of the key decision factors in siting the Facility in the City, to make the associated investments in the City and to enter into this Agreement.

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The Company would not have agreed to locate the Facility in the City at the current cost level without the valuable cost offsets provided in this Agreement because of the remediation work and fill required to raise the site out of the 100 year flood plain and modify the surrounding highway and road access.

The parties agree as follows:

Section1. Definitions. As used in this Agreement the following terms will have the following meanings:

"**Affiliate**" means any entity that the Company controls, that controls the Company, or that is under common control with the Company.

"**Commencement Date**" means the date on which Company begins actual production operations on the Subject Property; after having obtained all applicable governmental approvals, certificates of zoning compliance, and certificates of occupancy. The Commencement Date is anticipated to be not later than December 31, 2015.

"**Company**" means New Belgium Brewing Company, Inc. and includes its successors and assigns.

"**Eligible Property**" means (a) the Subject Property, other real property in the City, and all improvements the Company or an Affiliate of the Company constructs or installs, or causes to be constructed or installed, at the Subject Property or such other real property, including all buildings, building systems, and building improvements, and (b) all Personal Property (defined below) the Company or an Affiliate of the Company purchases or leases and installs at, or relocates to, the Facility or such other real property.

"**Grant**" means an economic development incentive grant the City makes pursuant to **Section 3.**

"**Minimum Investment**" means the Company's making aggregate Qualifying Expenditures of at least $175 million

"**Initial Tax Year**" means the tax year to which the Company elects to have the first Grant apply; **provided** that the Initial Tax Year may not be later than the calendar year 2017.

"**Deadline**" means December 31 of the sixth full, consecutive calendar year starting with the Initial Tax Year. Thus, the Deadline will be no later than December 31, 2022.

"**Person**" means any individual, partnership, trust, estate, association, limited liability company, corporation, custodian, nominee, governmental instrumentality or agency, body politic or any other entity in its own or any representative capacity.

"**Personal Property**" means all personal property the Company or an Affiliate owns or leases and that is located at the Facility, including all (a) machinery and equipment, (b) furniture,

furnishings, and fixtures, (c) property that is capitalized for federal or state income tax purposes, and (d) all additions to or replacements of any of the foregoing.

"**Qualifying Expenditures**" means all expenditures the Company, an Affiliate, or a lessor to the Company or an Affiliate makes for Eligible Property which is subject to Tax in the County and is not subject to an exemption from Tax that the Company uses.

"**State**" means the State of North Carolina.

"**Tax**" or "**Taxes**" means *ad valorem* property tax levied on real or personal property located in the City pursuant to Article 25, Chapter 105 of the North Carolina General Statutes or any successor statute relating to *ad valorem* property tax the City levies on property.

Section 2. Investment and Job Creation.

a) The Company will make the Minimum Investment on or before the Deadline. If the Company does not make 80% of the Minimum Investment ("**Investment Benchmark**") on or before the Deadline (as extended below), the amount of the Grants will be adjusted as provided in **Section 4**.

b) On or before Deadline, at least 130 persons will be employed in full-time positions at the Facility ("**Jobs Minimum**"). The number of full-time positions shall be evidenced by one or more Quarterly Tax and Wage Reports (Form NCUI 101) filed with the N.C. Employment Security Commission. If 80% of the Jobs Minimum ("**Jobs Benchmark**") is not achieved on or before Deadline (as extended below), the amount of the Grants will be adjusted as provided in **Section 4**.

c) Except as set forth in **Section 4** below, the Company's failure to meet the commitments in this **Section 2** will not (i) constitute a breach of this Agreement or result in any obligation to refund any Grant or (ii) relieve the City of its obligation to make any Grant Payment pursuant to this Agreement. The City's sole and exclusive remedies for the Company's breach of any provision in, or failure to meet any commitment in, this **Section 2** are those provided in **Section 4**.

Section 3. Grants. To induce the Company to locate its business on the Subject Property, to make the Minimum Investment, and to achieve the Jobs Minimum at the Facility, the City will make the Grants to the Company pursuant to this **Section 3**.

a) The City will pay to the Company an amount equal to eighty percent (80%) of the Taxes the Company or any other person or entity actually pays on the Eligible Improvements (herein "**Grant Payments**"), commencing with the Initial Tax Year and continuing for six additional years.

b) Company shall apply for each Grant Payment on or before February 15 of the year following the tax year for which the Taxes on Eligible Improvements are paid. The application shall include such documentation, in the form of **Exhibit C** attached to this Agreement, as the City reasonably deems necessary to determine the Company's entitlement to the particular Grant Payment, including confirmation from the Buncombe County Tax Assessors Office that the Company's Taxes for the applicable year, and the Taxes of any other person or entity with respect to the Eligible Property for the applicable year, have been paid in full.

c) The City shall review each application promptly and shall have give the Company written notice of any deficiency in the application within 15 days after the City receives the application. The City will have 30 days following the receipt of an application that complies with the requirements of **Section 3.b** to make the required Grant Payment. If any Grant Payment is denied in full or in part, the City shall provide a written explanation for such denial or partial payment, which shall be pursuant to **Section 4**. If the Company or such other person or entity subsequently cures the deficiency and submits an application that complies with the requirements of **Section 3.b**, the City will promptly make the previously withheld Grant Payment.

d) If the Company is in default on its obligation to pay Taxes to the City, or any other person or entity is in default on its obligation to pay Taxes to the City with respect to the Eligible Property, the City will not be required to make a Grant Payment to the Company until the Company and such other person or entity pay the amount of such Taxes they owe the City, unless the Company or such other person or entity is in a *bona fide* dispute with a governmental taxing authority as to the value of some or all of the Eligible Property.

Section 4. Adjustments to Grant Amounts.

a) If the Company does not achieve the Investment Benchmark or the Jobs Benchmark on or before the latter of the Deadline or the second anniversary of the Deadline (not later than December 31, 2024) ("**Extended Deadline**"), then, as the City's sole and exclusive remedy for any such failure (which failure will not constitute a breach of this Agreement), the Grant Payments for the Initial Tax Year and subsequent tax years will be adjusted as set forth in this **Section 4**. The adjustment formulas described in this **Section 4** are weighted such that 50% is assigned to the Minimum Investment and 50% is assigned to the Jobs Minimum.

b) Minimum Investment. If the Company does not achieve the Investment Benchmark on or before the Extended Deadline, then the amount of the Grant Payment by the City to the Company for the Initial Tax Year and subsequent tax years shall be reduced by an amount equal to (i) the amount of the applicable Grant Payment multiplied by the percentage of the

Investment Benchmark that has not been achieved multiplied by (ii) fifty percent (50%). If the City has already made a Grant Payment to the Company that exceeds such reduced Grant Payment, then the Company will repay the excess to the City within 60 days after receiving the City's correct invoice.

c) Job Creation. If the Company does not achieve the Jobs Benchmark on or before the Extended Deadline, then the amount of the Grant Payment by the City to the Company for the Initial Tax Year and subsequent tax years shall be reduced by an amount equal to (i) the amount of the applicable Grant Payment multiplied by the percentage of the Jobs Benchmark that has not been achieved multiplied by (ii) fifty percent (50%). If the City has already made a Grant Payment to the Company that exceeds such reduced Grant Payment, then the Company will repay the excess to the City within 60 days after receiving the City's correct invoice.

d) Notwithstanding the foregoing, the maximum amount that the Company can be required to repay under this **Section 4** or under **Section 6** (together or separately) under any circumstances is the net amount of the sixth Grant Payment (*i.e.*, the Grant Payment for the sixth consecutive tax year starting with the Initial Tax Year) due to the Company after the application of this **Section 4**.

e) An example of the operation of this **Section 4** is on **Exhibit B**.

Section 5. Reporting and Audit Rights.

a) Designated City officials charged with carrying out this Agreement and having a need to know will have the right, from time to time on reasonable notice at reasonable times and at a reasonable location the Company designates, to examine the Company's records relating to the Project as may be necessary to verify the Company's compliance with **Section 2** of this Agreement. The Company will have the right, on reasonable notice and at reasonable times, to audit the City's Tax records relating to the City's compliance with this Agreement and calculations made in determining the amount of any Grant to which the Company is entitled or which the City pays or any refund which may be due under **Section 4**.

b) The Company at all times maintains its right to dispute the assessed value of the Subject Property or the improvements thereon with appropriate governmental agencies in the manner prescribed by law.

c) Any information the Company provides to the City under this **Section 5** will be confidential trade secrets of the Company governed by **Section 15**.

Section 6. Other Incentives and Assistance/Purchasing and Contracting/Local Preference. The parties have addressed these issues in that certain Memorandum of Understanding and Infrastructure Agreement dated June ___, 2012.

7. Termination. The Company may terminate this Agreement at any time in its sole discretion. Such termination will not constitute an event of default and will be without penalty and without any obligation on the Company to refund any Grant Payments it has received except as set forth in this **Section 7**. If the Company terminates this Agreement on or before the Deadline and the Company has not achieved the Investment Benchmark or the Jobs Benchmark, then it will be required to refund to the City a pro rata percentage (calculated under **Sections 4(b)** and **4(c)** as of the termination date rather than the Deadline) of all Grant payments the City has actually made to the Company through the date of that termination, and that payment will be the City's sole and exclusive remedy.

8. No Pledge of Faith and Credit; Purpose.

a) No provision of this Agreement will be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any constitutional debt limitation. The parties acknowledge that the scope, term and duration of this Agreement are in all events reasonable. No provision of this Agreement will be construed or interpreted as delegating governmental powers or as a donation or a lending of the credit of the City within the meaning of the North Carolina Constitution. No provision of this Agreement will be construed to pledge or to create a lien on any class or source of the City's moneys, nor will any provision of the Agreement restrict to any extent prohibited by law any action or right of action on the part of any future Asheville City Council. The City acknowledges that the commitments will be relied upon by Company and that revoking these commitments for reasons other than cause will be damaging to the Company. To the extent of any conflict between this **Section 8(a)** and any other provision of this Agreement, this **Section 8(a)** will take priority.

b) The Company and the City acknowledge that all monies the City appropriates and expends for economic development incentives, as provided in this Agreement, are for a *bona fide* public purpose and are expended in good faith reliance on the Act. If this Agreement or the Grants are challenged or are threatened to be challenged, (i) the City will promptly notify the Company in writing, (ii) the Company will have the right to participate in the defense of any challenge at its own expense and with counsel of its choosing, and (iii) the City will defend this Agreement and the Grants from those challenges. The Company will provide reasonable assistance (excluding financial assistance) the City requests in connection with any such defense.

c) If the Grants, or any portion of the Grants, are deemed by a court of competent jurisdiction to be *ultra vires* or not authorized by the laws or Constitution of the State of North

Carolina, then the City will use reasonable efforts to provide equivalent incentives to the Company as allowed by law.

9. Assignment; Estoppel.

a) The Company shall have the right to assign this Agreement, and any rights, privileges, or claims under this Agreement, without the consent of the City. If the assignee agrees in writing to assume the Company's obligation under this Agreement, then the Company will be relieved of its obligations under this Agreement. The Company will give the City written notice of any such assignment and assumption.

b) The Company may, without the consent of the City, pledge, mortgage, grant a security interest in, and collaterally assign this Agreement, and any rights, privileges or claims under this Agreement, to any Person, including a collateral agent acting on behalf of lenders providing financing for the Project (collectively, "**Financing Parties**"). The City will cooperate with the Company, its Affiliates, any assignee of this Agreement, and any Financing Parties from time to time, including by entering into a consent to assignment or other agreements in connection with any collateral assignment on such terms as may be customary under the circumstances and shall be reasonably required by such Financing Parties.

10. Disclaimers.

a) The Company acknowledges that the City has not designed the Project, that the City has not created any plans or specifications with respect to the Project, and that the City:

(i) is not a manufacturer of, or dealer in, any of the component parts of the Project or similar facilities;

(ii) has not made any recommendation, given any advice or taken any other action with respect to:

(A) the choice of any contractor, supplier, vendor or designer of, or any other contractor, supplier, vendor or designer of, or any other contractor with respect to, the Project or any component part of the Project or any property or rights relating to the Project; or

(B) any action taken or to be taken with respect to the Project or any component part of the Project or any property or rights relating to the Project at any stage of the construction of the Project.

(iii) has not made any warranty or other representation, express or implied, that the Project or any component part of the Project or any property or rights relating to the Project:

(A) will not result in or cause injury or damage to persons or property;

(B) has been or will be properly designed, or will accomplish the results which the Company intends; or

(C) is safe in any manner or respect.

b) EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER WRITTEN AGREEMENT BETWEEN THE CITY AND THE COMPANY OR ITS AFFILIATES, THE CITY MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION OF ANY KIND WHATSOEVER WITH RESPECT TO THE PROJECT OR ANY COMPONENT PART OF THE PROJECT, INCLUDING WITH RESPECT TO THE MERCHANTABILITY OR THE FITNESS OR SUITABILITY OF THE PROJECT FOR ANY PURPOSE. THE COMPANY WAIVES THE BENEFITS OF ALL IMPLIED WARRANTIES AND REPRESENTATIONS OF THE CITY AS THEY MAY RELATE TO THE FOREGOING.

11. Representations and Warranties.

a) The Company represents and warrants to the City that as of the Effective Date: (i) it is a corporation duly authorized to do business in the State of North Carolina; (ii) it has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement; (iii) this Agreement (A) is the legal, valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, (B) does not violate any order of any court or other agency of government binding on the Company or the charter documents of the Company, and (C) does not conflict with, result in a breach of, or constitute an event of default under any material indenture, agreement or other instrument to which the Company is a party; and (iv) the Company has not received written notice of any action or proceeding that challenges the validity of this Agreement or the Company's right and power to enter into and perform this Agreement.

b) The City represents and warrants to the Company that: (i) the City is a municipal corporation operating pursuant to the laws of the State of North Carolina with power and authority to enter into and perform this Agreement; (ii) the City has taken all action necessary to authorize the execution, delivery and performance of this Agreement; (iii) this Agreement is legal, valid, and binding obligation of the City, enforceable against the City in accordance with its terms; and (iv) the City has not received written notice of any action or proceeding that challenges the validity of this Agreement or the City's right and power to enter into and perform this Agreement.

12. Defaults and Remedies.

a) If the City defaults in the performance of its obligations under this Agreement, and such default continues for a period of 30 or more days after the Company gives the City written

notice of such default, then the Company will have the right to pursue legal action for specific performance and other such rights and remedies as are available in law.

b) If any warranty or representation of a party in **Section 11** shall have knowingly been false or inaccurate in any material respect when made and is not remedied within 30 days following the defaulting party's receiving written notice from the non-defaulting party (or in the case where it is capable of being remedied, but is incapable of being remedied within a period of 30 days, such further period as is reasonable in the circumstances), then the non-defaulting party will have such rights and remedies as may be available in law.

13. Controlling Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of North Carolina, excluding its conflict of law principles. Any action or proceeding relating to this Agreement or its enforcement will be adjudicated in the General Courts of Justice for Buncombe County, North Carolina or the United States District Court for the Western District of North Carolina. The Company and the City consent and submit to the jurisdiction and venue of those courts.

14. Severability. Each provision in this Agreement is severable. If any provision of this Agreement will be determined to be invalid or unenforceable by a Court of competent jurisdiction, then: (a) such determination will not invalidate or render unenforceable any other provision of this Agreement; (b) such provision will be construed as closely as possible to the parties' original intent in order to render such provision valid or enforceable, as applicable; and (c) the remaining terms of this Agreement, together with such reconstructed provision, will constitute the parties' entire agreement.

15. Confidentiality. The parties expressly acknowledge that the City is an entity covered by N.C.G.S. Chapter 132, the Public Records Act, N.C.G.S. 132-1.1 regarding "confidential information." Provided Company complies with N.C.G.S. 132-1.1 regarding the designation of confidential or trade secret information, the City will keep confidential and will not disclose or publish any of the Company's confidential information as defined in N.C.G.S. 132-1.2, will keep all records evidencing such trade secrets marked as "confidential trade secrets", and will keep all such records segregated in the City's files. If the City receives a request, subpoena or court order to disclose any information or records the Company or its representatives have provided or provide in the future relating to this Agreement, or the Project described in this Agreement, the City will give the Company prompt written notice of the request, subpoena or court order and will discuss any proposed disclosure of such information or records with the Company (and, to the extent possible, give the Company the opportunity to contest any disclosure of information or records the Company believes should not be disclosed) before making any such disclosure.

The City will not be liable in damages for the disclosure of any information that is a public record or when such disclosure is pursuant to the order of a court of competent jurisdiction.

16. Notices. Any notice permitted or required under this Agreement from one party to the other must be in writing and will be effective (a) on the date it was actually delivered to the addressee if delivered personally, or sent by a nationally recognized courier (such as FedEx or United Parcel Service) or sent by facsimile, or (b) three days after having been deposited in the United States Mail, if sent by certified mail, return receipt request, in each case to the respective address of the Company and the City listed below, or those other addresses of which either party gives the other party written notice:

If to the Company, to

New Belgium Brewing Company
Attn:_____
500 Linden Street
Fort Collins, CO 80524

With a copy to

George H. Pretty II
Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon Street, Suite 3000
Charlotte, NC 28202

If to the City, to

Gary Jackson
Asheville City Manager
P. O. Box 7148
Asheville, NC 28802
Fax: (828) 259-5604

With a copy to

Robert W. Oast, Jr.
Asheville City Attorney
P. O. Box 7148
Asheville, NC 28802

17. Binding Effect and Certification. Subject to the specific provisions of this Agreement, this Agreement will be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and assigns, notwithstanding changes in corporate or other governance. This Agreement is conditioned upon it being certified as having been pre-audited in order to comply with the budgetary accounting requirements (if any) that apply, under the Local Government Budget and Fiscal Control Act or otherwise. Such certification is set forth at the end of this Agreement, and the Finance Officer for the City must sign it.

18. Liability of Officers and Agents. No official, officer, agent, or employee of the City or the Company will be subject to any personal liability or accountability by reason of the execution or performance of this Agreement or any other documents related to the transactions contemplated by this Agreement. Such officials, officers, agents, or employees will be deemed

to execute such documents in their official capacities only, and not in their individual capacities. This **Section 18** will not relieve any such official, officer, agent or employee from the performance of any official duty provided by law.

19. Publicity. Except as required by law, the City will make no public announcement of the parties' entering into this Agreement or the terms and conditions of this Agreement without the prior written consent of the Company.

20. Miscellaneous. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument. Except as expressly provided in this Agreement, there are no third party beneficiaries of this Agreement. All **Exhibits** attached to this Agreement are incorporated into this Agreement by reference. The terms "include" and "including" in this Agreement will not be construed to be limiting. **Sections 4, 7-10** and **15** will survive the termination of this Agreement for any reason. This Agreement may not be amended except by a written amendment both parties sign. This Agreement is the entire agreement of the parties regarding the subject matter and supersedes all prior and contemporaneous understandings.

(Signatures on next page)

The parties execute this Economic Development Agreement as of the Effective Date.

ATTEST:

_____
_____, Clerk

Asheville City Council

City of Asheville

By:_____
_____

Chairman, Asheville City Council

Date_____

New Belgium Brewing Company, Inc.
a Colorado corporation

By:_____
Name:_____
Title:_____

Date _____

Attest:

By:_____
Name:_____
Title:_____

Date _____

This Economic Development Agreement has been pre-audited to the extent, and in the manner, required by the Local Government Budget and Fiscal Control Act.

_____
City of Asheville Finance Officer, on behalf of the City

_____
Asheville City Attorney

The Asheville City Council approved this Agreement at its meeting duly held on _____, 2012.

_____
Chairman, Asheville City Council

List of Attached Exhibits

Exhibit A	Subject Property Map
Exhibit B	Grant Reduction and Refund Examples
Exhibit C	Documentation Form

Exhibit A

Subject Property Map

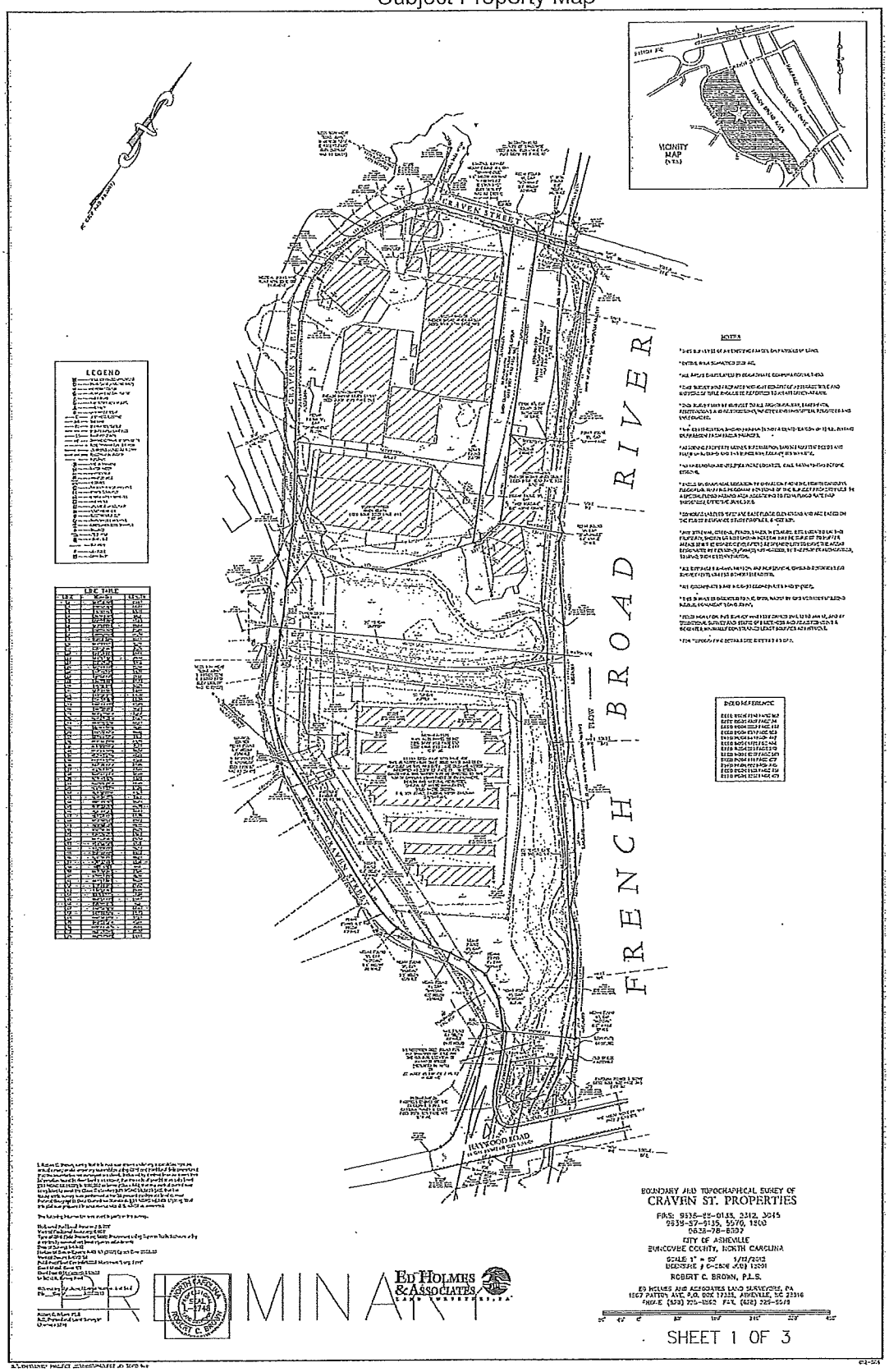


Exhibit B

Grant Reduction and Refund Examples

EXHIBIT B - ADJUSTMENT OF CITY GRANT
* For Illustrative Purposes Only *
Note that this is an example only and does not reflect actual or proposed investment.

Minimum Investment required by 2022 (2024 extended deadline)	$175,000,000							
	2015	2016	2017	2018	2019	2020	2021	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	
Projected tax revenue to City	375,000	375,000	375,000	375,000	375,000	375,000	375,000	
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total
Projected Grant Payments	300,000	300,000	300,000	300,000	300,000	300,000	300,000	2,100,000
Investment Benchmark required @ 2022 (2024 extended deadline)	$140,000,000							
Qualifying Expenditures achieved @ 2022 (2024 extended deadline)	$135,000,000							
Pro rata % investment shortfall	3.57%							
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Total
Actual Grant Payments	300,000	300,000	300,000	300,000	300,000	300,000	300,000	2,100,000
Pro rata reduction to Grant Payments if target capital expenditure of $140 - 175M is not met by 12/31/2024 (calculated as (3.57% * $300,000) * 50%)	5,357	5,357	5,357	5,357	5,357	5,357	5,357	2,062,501

* Exhibit B example calculation assumes that Jobs Minimum requirement is met.

* In no event shall the pro rata reduction be applied or payable before 60 days after the 12/31/2024 extended deadline. In this example, Company would repay $37,499.00 on approximately March 3, 2025, and the total Grant Payments, after that repayment, would be reduced to $2,062,501.

Detailed Scope of Work

The City will complete any and all survey work necessary to obtain easements from New Belgium or any other property owners. They will also be responsible to complete all the surveying work necessary to complete the design, permits acquisition and construction.

All phases of this project must be completed in coordination with the site improvements on the New Belgium site. New Belgium staff and City will be directly involved in all tasks of the project. They will provide input on the design and construction phasing as it relates to the development of the New Belgium property.

Regional Storm-water Mitigation

Craven Street at Waynesville Avenue is the low spot in a large drainage basin that extends up to Haywood Road. This area is urbanized and has degraded storm water quality. The segment just upstream from Craven Street is full of sediment. This task will include cleaning out this area and creating a positive draining flow under Craven Street.

As part of the Craven Street roadway improvements, the storm water pipe under the road will be replaced. The stream from Craven Street to the river will be designed to provide for storm water quality improvements utilizing various best management practices. Generally, the stream will follow the same path through the site to the river.

The stream improvements will be constructed in such a way as to aesthetically enhance the site and provide an amenity to area.

The City will work with the Corp of Engineers and other regulatory agencies to obtain all necessary permits to complete the work. The design and construction must be coordinated with the improvements on the New Belgium site.

Craven Street Multi-Model Roadway Improvements

Craven Street from Haywood Road to Hazel Mill Road is a two lane roadway with no curb and gutter. This task includes making multimodal roadway improvements to Craven Street to include bike lanes, storm-water infrastructure and a sidewalk on Craven Street from Haywood Road to the Craven Street Bridge. A typical cross-section of the proposed improvements to Craven Street is attached as Exhibit D. Again, the design and construction of this component of the project must be coordinated with the improvements on the New Belgium site.

The roadway widening must comply with current City of Asheville standards including the pedestrian and bicycle master plans. National design and operational standards contained in the Manual on Uniform Traffic Control Devices and AASHTO's Policy on Geometric Design

of Highways and Streets shall be met or exceeded. The City will prepare the application and obtain all necessary permits for the road widening project. Consideration must also be given to existing utilities located within the project limits.

Currently there is an existing 4" waterline that runs along Craven Street from Waynesville Avenue to Hazel Mill Road, approximately 1,100 feet in length. This existing 4" waterline connects to an existing 6" waterline at Waynesville Ave but dead ends short of the existing 24" waterline on Hazel Mill Road. The existing 4" waterline is made of cast iron and is at least 50 years old. Because of the size and connectivity issues of the existing waterline it is not capable of providing adequate flows to support fire protection and its age suggest that it is beyond its useful life expectancy. This existing waterline will be replaced with an 8" ductile iron waterline that connects to the existing 6" waterline in Waynesville Avenue and connects to the existing 24" transmission main in Hazel Mill Road. This upgrade replacement will vastly improve flow characteristics on this section of waterline and provide a more redundant and reliable feed for the area. The engineer must design these improvements to meet all City of Asheville standards. The City will be responsible for obtaining all necessary permits to complete this work.

Greenway

The City will construct a greenway on an easement provided to the City by New Belgium. The greenway must be designed to integrate into the New Belgium site with consideration for safety and security of the facility and the public.

The greenway must be a minimum of ten feet in width to accommodate bike and pedestrian traffic. The greenway must be designed to meet all applicable design stands to include the Americans with Disabilities Act.

Off-site Infrastructure Improvements

The City will complete intersection improvements for safer and more efficient travel of truck traffic to and from the site, specifically at the intersection of Haywood Road and I-240 and the intersection known as five-points where Roberts Street, Clingman Avenue, Depot Street and Lyman Street intersect. These improvements must be made to accommodate a WB 67 truck.

The City will coordinate improvements with NCDOT. All improvements must be permitted through NCDOT. The City will be responsible for obtaining these permits.

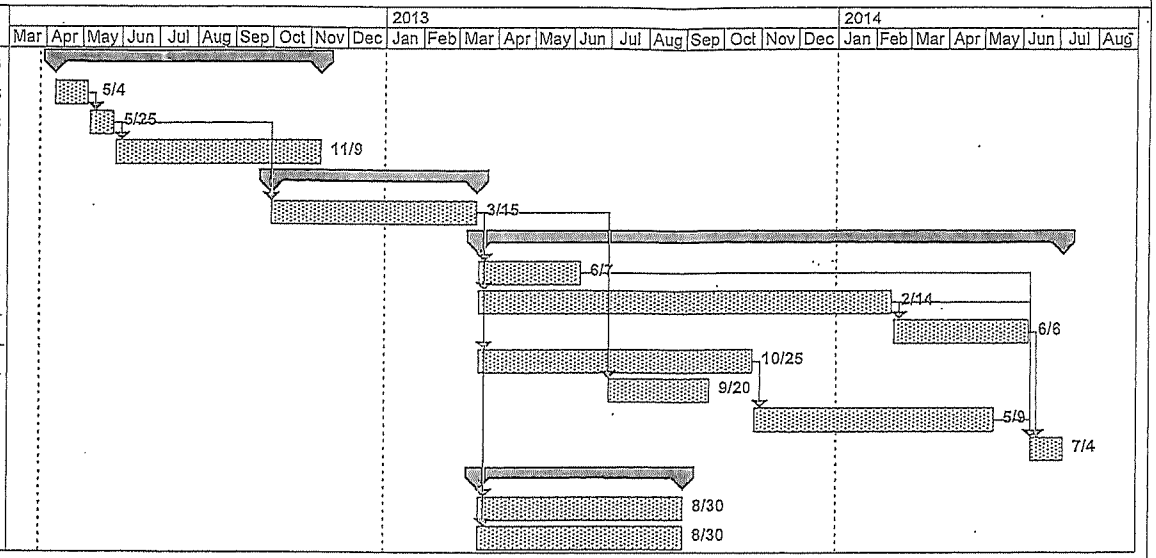
Low Impact Parking Lot

Buncombe County owns a parcel of land to the north of the New Belgium site. The City will coordinate with the County to construct a low impact development parking lot at this location to provide for public parking. The City will utilize low impact design standards and obtain all necessary permits and approvals necessary to perform the work.

USES	Budget Estimate
Craven Street Improvements	
Waterline replacement	86,970
Multi-modal roadway improvements	998,760
LID Parking Area	50,000
Greenway	400,000
Safety improvements	100,000
Stormwater improvements	300,000
Sub-total Craven Street Improvements	1,935,730
Haywood Road Improvements	
14 Roadway improvements	200,000
Sub-total Haywood Road improvements	200,000
Amboy Road Improvements	
Five-points intersection improvements	200,000
Sub-total Amboy Road improvements	200,000
TOTAL USES	$ 2,335,730

Proje

ID	Task Name	Duration
1	**Design**	**155 days**
2	Request Proposals	20 days
3	Select Consultant	15 days
4	Design and Environmental Documents	120 days
5	**Permit**	**120 days**
6	Permit Approval	120 days
7	**Construction**	**340 days**
8	Waterline Replacement	60 days
9	Multi-Model Roadway Improvements	240 days
10	Roadway Safety Improvements	80 days
11	Regional Stormwater Quality Improvements	160 days
12	LID Parking Area	60 days
13	Greenway	140 days
14	Paving	20 days
15	**Off-Site Improvements**	**120 days**
16	Haywood Road Improvements	120 days
17	Amboy/Five Points Intersection Improvements	120 days



Date: Tue 3/27/12

Task	Summary	Rolled Up Progress	Group By Summary		
Critical Task	Rolled Up Task	Split			
Progress	Rolled Up Critical Task	External Tasks			
Milestone	Rolled Up Milestone	Project Summary			

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RESOLUTION NO. 12-135

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH COLEJENEST AND STONE FOR THE PURPOSE OF COMPLETING PROFESSIONAL DESIGN SERVICES FOR THE CRAVEN STREET IMPROVEMENTS

WHEREAS, the City wishes to make improvements to Craven Street from Haywood Road to the Craven Street Bridge to include two vehicular lanes, bike lanes and a sidewalk; and

WHEREAS, the City wishes to construct a greenway along the French Broad River from Haywood Road to the Craven Street of the four bids, Site Development Corporation was deemed by City staff as being the lowest responsible and responsive bidder;

WHEREAS, the City wishes to construct a greenway along the west side of the French Broad River from Haywood Road to the Craven Street Bridge; and,

WHEREAS, the City solicited request for proposal for professional services to complete the design services for the above work and received fourteen proposals; and,

WHEREAS, a selection committee reviewed the proposals and narrowed the list of qualified firms to five and held interviews; and,

WHEREAS, it was determined that ColeJenest and Stone was the most qualified to perform this work.

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

The City Manager is hereby authorized to execute a contract with ColeJenest and Stone in the amount of $514,221 to perform professional services for the project know as Craven Street Improvements. Additionally, the City Manager is authorized to enter into amendments to this contract not to exceed 10% of the contract or $51,422.

Read, approved and adopted this the 12th day of June, 2012.

Magdalen Bowleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowleson
City Clerk

RESOLUTION NO. 12-136

RESOLUTION AUTHORIZING A LICENSE AGREEMENT WITH USCOC OF GREATER NORTH CAROLINA, LLC FOR ANTENNAS AND RELATED EQUIPMENT ON CITY-OWNED REAL PROPERTY AT 57 CRESTWOOD DRIVE, ARDEN, NC

WHEREAS, the City of Asheville is the owner of real property located at 57 Crestwood Drive, Arden. NC, identified as PIN #9654-59-5097-00000; and

WHEREAS, USCOC of Greater North Carolina, LLC, a telecommunications company, has offered to enter into a license agreement in order to operate antennas and related equipment upon the property at 57 Crestwood Drive; and

WHEREAS, N. C. Gen. Stat. sec. 160A-272 authorizes the City to enter into leases of 10 years or less upon resolution of the City Council adopted at a regular meeting after 10 days' public notice; and

WHEREAS, the City Clerk published a Notice of Intent in connection with the proposed license agreement on June 1, 2012, in the Asheville Citizen-Times; and

WHEREAS, the initial term of the license agreement will be for five (5) years with the option to renew for one (1) additional five (5) year period;

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

Pursuant to North Carolina General Statute sec. 160A-272, the Mayor is hereby authorized to execute the License Agreement between the City of Asheville and USCOC of Greater North Carolina, LLC for antennas and related equipment at 57 Crestwood Drive, at an initial license fee rate of $30,000 per year with 3% annual escalations. In addition, the Mayor be, and is hereby authorized to execute any and all documents necessary to give effect to this resolution, subject to approval by the City Attorney, and compliance with applicable North Carolina law.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson — City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bowleson
City Clerk

436

RESOLUTION NUMBER 12-137

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PARTNERSHIP AGREEMENT BETWEEN AC ENTERTAINMENT AND THE US CELLULAR CENTER FOR MOOG FEST 2012

WHEREAS, the City of Asheville has authority pursuant to N.C.G.S. 160A-489 to operate auditoriums, and pursuant to N.C.G.S. 160A-20.1 to enter into contracts; and

WHEREAS, AC Entertainment, in cooperation with the Moog Foundation and Moog Music, annually produces Moog Fest, a multiple-day festival featuring multi-faceted cultural experiences; and

WHEREAS, Moog Fest has been hailed in national and international publications as a world-class destination event; and

WHEREAS, a portion of the proceeds of Moog Fest benefit the Moog Foundation, which is developing a Bob Moog Museum dedicated to the work of the legendary visionary; and

WHEREAS, Moog Fest generates a positive economic activity in the form of sales tax receipts and hotel room nights; and

WHEREAS, AC Entertainment has presented a partnership agreement whereby the US Cellular Center and AC Entertainment would evenly split all event revenues, including the promoter's net profit on the event; and

WHEREAS, this proposal presents an opportunity to potentially enhance the overall financial performance of the event at the U.S. Cellular Center; and

WHEREAS, the City Council's Strategic Operating Plan for the City includes a goal to explore partnership opportunities to diversify revenue sources; and

WHEREAS, the City will evaluate the financial results after the event to determine if this type of partnership is a viable model for the future;

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

The City Manager is authorized to enter into a partnership agreement with AC Entertainment where identified sources of revenue are split evenly between AC Entertainment and the U.S. Cellular Center for Moog Fest 2012.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bulleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bulleson
City Clerk

RESOLUTION NO. 12-138

RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

WHEREAS, Mr. Isaac Savage has resigned from the Sustainable Advisory Committee on Energy & the Environment, thus leaving an unexpired term until December 31, 2013, for a person with demonstrated expertise in the field of energy management;

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

Mr. Timothy Ballard, 466 Windsor Road, Asheville, North Carolina, be and he is hereby appointed as a member to the Sustainable Advisory Committee on Energy & the Environment (member with demonstrated expertise in the field of energy management), to serve a three year term, term to expire December 31, 2013, or until his successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowlesson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowlesson
City Clerk

438

RESOLUTION NO. 12-139

RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS

WHEREAS, the terms of Tommy Wilson, Phil Wilson, Fred Pratt, Gus Sims and Harold Garland, as members on the Board of Electrical Examiners, expire on July 1, 2012;

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

1. Mr. Tommy Wilson, Post Office Box 15156, Asheville, N.C., be and he is hereby reappointed (as the electrical contractor) to serve an additional three year term, term to expire July 1, 2015, or until his successor has been duly appointed.

2. Mr. Phil Wilson, 229 Sheehan Road, Fletcher, N.C., be and he is hereby reappointed (as the journeyman electrician) to serve an additional three year term, term to expire July 1, 2015, or until his successor has been duly appointed.

3. Mr. David Martin, 33 Shirley Drive, Asheville, N.C., be and he is hereby appointed (as the utility representative) to serve a three year term, term to expire July 1, 2015, or until his successor has been duly appointed.

4. Mr. Gus Sims, 7 Northland Road, Asheville, N.C., be and he is hereby reappointed (as a licensed engineer) to serve a three year term, term to expire July 1, 2015, or until his successor has been duly appointed.

5. Mr. Harold Garland, 88 Fenner Avenue, Asheville, N.C., be and he is hereby reappointed (as the layman) to serve an additional three year term, term to expire July 1, 2015, or until his successor has been duly appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowlerson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowlerson
City Clerk

RESOLUTION NO. 12-140

RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

WHEREAS, the terms of Joel Storrow, George Keller and J. Michael Burke, as members on the Civic Center Commission, will expire on June 30, 2012;

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

Mr. Joel Storrow, 199 Forest Hill Drive, Asheville N.C., be and he is hereby reappointed to the Civic Center Commission, to serve a three year term, term to expire June 30, 2015, or until his successor has been appointed.

Mr. J. Michael Burke, 59 Blackwood Road, Asheville , N.C., be and he is hereby reappointed to the Civic Center Commission, to serve an additional three year term, term to expire June 30, 2015, or until his successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowleson
City Clerk

440

RESOLUTION NO. 12- 141

RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION

WHEREAS, the term of Brian Cook, as a member of the Asheville-Buncombe Historic Resources Commission, expires July 1, 2012;

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

Mr. Brian Cook, 3 Enka Pine Street, Candler, North Carolina, be and he is hereby appointed, as a member of the Asheville-Buncombe Historic Resources Commission, to serve a three-year term, term to expire July 1, 2015, or until his successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowleson
City Clerk

RESOLUTION NO. 12-142

RESOLUTION APPOINTING MEMBERS TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

WHEREAS, there currently exists a vacancy on the Homeless Initiative Advisory Committee until November 1, 2013, due to the passing of Mr. Gerald Hixson; and

WHEREAS, the term of Wanda Lanier, as a member on the Homeless Initiative Advisory Committee, expired on November 1, 2011;

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

(1) Mr. Hilliard L. Carlisle, 15 Woodfin Street, Asheville, N.C., be and he is hereby appointed to the Homeless Initiative Advisory Committee to serve the unexpired term of Mr. Hixson, term to expire November 1, 2013, or until his successor has been appointed.

(2) Mr. Jay Lively, 7 Redbo Lane, Asheville, N.C., be and he is hereby appointed to the Homeless Initiative Advisory Committee to serve the unexpired term of Ms. Lanier, term to expire November 1, 2014, or until his successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bullion
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bullion
City Clerk

442

RESOLUTION NO. 12-143

RESOLUTION APPOINTING MEMBERS TO THE NOISE ORDINANCE APPEALS BOARD

WHEREAS, the terms of Mr. James Fink (regular member), Ms. Barbara Hodgson (regular member) and Mr. John Hayes (alternate member) on the Noise Ordinance Appeals Board will expire on July 1, 20012;

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

(1) Mr. Beau Dean, 108 Mount Clare Avenue, Asheville, N.C., be and he is hereby appointed as a Regular member to the Noise Ordinance Appeals Board to serve a three-year term, term to expire July 1, 2015, or until his successor has been appointed.

(2) Mr. John Hayes, 47 Wake Robin Way, Asheville, N.C., be and he is hereby appointed as a Regular member to the Noise Ordinance Appeals Board to serve a three-year term, term to expire July 1, 2015, or until his successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowlson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowlson
City Clerk

RESOLUTION NO. 12-144

RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART & CULTURAL COMMISSION

WHEREAS, the terms of Sharron Trammel, Robert Todd and Honor Moore, as members on the Public Art & Cultural Commission, will expire on June 30, 2012; and

WHEREAS, Ms. Nancy Sokolove has resigned, thus leaving an unexpired term until June 30, 2014;

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

(1) Ms. Sharon Trammel, 405 Windswept Drive, Asheville, N.C., be and she is hereby reappointed, as a member of the Public Art & Cultural Commission, to serve a three-year term, term to expire June 30, 2015, or until her successor has been appointed.

(2) Mr. Robert Todd, 12 S. Lexington Avenue, Asheville, N.C., be and he is hereby reappointed, as a member of the Public Art & Cultural Commission, to serve an additional three-year term, term to expire June 30, 2015, or until his successor has been appointed.

(3) Ms. Honor Moor, 604 Old Toll Road, Asheville, N.C., be and she is hereby reappointed, as a member of the Public Art & Cultural Commission, to serve a three-year term, term to expire June 30, 2015, or until her successor has been appointed.

(4) Ms. Leslie Klingner, 17 Blair Street, Asheville, N.C., be and she is hereby appointed, as a member of the Public Art Board, to serve the unexpired term of Ms. Sokolove, term to expire June 30, 2014, or until her successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bowleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bowleson
City Clerk

444

RESOLUTION NO. 12-145

RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD

WHEREAS, the terms of Wanda Hawthorne, Wayne Wheeler, John Parrish, Hutch Kerns and Mary Ann West, as members on the Recreation Board, will expire on June 30, 2012; and

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

(1) Mr. Wayne Wheeler, 3 Highland Place, , Asheville, N.C., be and he is hereby reappointed, as a member of the Recreation Board, to serve an additional three-year term, term to expire June 30, 2015, or until her successor has been appointed.

(2) Mr. John Paris, 314 Oak Place, Asheville, N.C., be and he is hereby reappointed, as a member of the Recreation Board, to serve a three-year term, term to expire June 30, 2015, or until his successor has been appointed.

(3) Mr. Hutch Kerns, 110 Macon Avenue, Asheville, N.C., be and he is hereby appointed, as a member of the Recreation Board, to serve a three-year term, term to expire June 30, 2015, or until his successor has been appointed.

(4) Mr. Barry Mundt, 175 Windsor Road, Asheville, N.C., be and he is hereby appointed, as a member of the Recreation Board, to serve a three-year term, term to expire June 30, 2015, or until his successor has been appointed.

(5) Ms. Ashley Arrington, 132 Onteora Boulevard, Asheville, N.C., be and she is hereby appointed, as a member of the Recreation Board, to serve a three-year term, term to expire June 30, 2015, or until her successor has been appointed.

Read, approved and adopted this 12th day of June, 2012.

Magdalen Bourleson
CITY CLERK

MAYOR

Approved as to form:

CITY ATTORNEY

Magdalen Bourleson
City Clerk