

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, August 25, 2003

7:00 P.M. Regular Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Ellen W. Reckhow, Vice-Chairman Joe W. Bowser, and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Opening of Regular Session

Chairman Reckhow called the meeting to order with the Pledge of Allegiance. She welcomed everyone to the August 25, 2003 Board of County Commissioners' meeting.

Agenda Adjustments

Chairman Reckhow asked whether anyone wished to make adjustments to the agenda.

County Attorney Chuck Kitchen asked that item No. 5, Public Hearing—Text Amendment—Control of Demolition by Neglect of Historic Landmarks and Historic Overlay Properties (TC03-05), be removed from the agenda.

Commissioner Cousin asked that item No. 11, Resolution on Appointments to Boards and Commissions, be withdrawn from this agenda and placed on the September 2, 2003 Worksession Agenda.

County Manager Mike Ruffin referenced the amended agenda action form and budget ordinance amendment for consent agenda item No. 4(g), Budget Ordinance Amendment No. 04BCC000010—Sheriff's Office, which had been placed at each Commissioner's station.

Chairman Reckhow commended Commissioner Heron for having served on the Board of County Commissioners for over 20 years. Commissioner Heron was recently recognized

at the North Carolina Association of County Commissioners Annual Conference for her years of service.

Chairman Reckhow announced a grant opportunity, the Matching Grants program, designed to assist nonprofit organizations throughout Durham County that are interested in preserving open space or promoting recreational opportunities for citizens. Grant applications are available and are due in the Durham County Budget Office by October 14, 2003. Bill Renfrow, Budget Analyst, Budget Department, is the contact person for additional information (telephone no. 560-0062). Information is also available on the County's website.

Commissioner Heron recognized two Emergency Communications Center (911) personnel who were recently appointed to interim positions. Mr. William Bibby was appointed Acting Emergency Communications Manager; Ms. Tonya Pearce was appointed Acting Assistant Communications Manager/Operations.

Vice-Chairman Bowser announced the first forum of the Durham Voter Coalition to be held at North Carolina Central University's Student Union on August 26, 2003, 7:00 p.m. The forum will give the public an opportunity to obtain information about the 14 candidates vying for three City Council positions and the three candidates vying for the mayoral position. He asked that everyone attend in order to make wise decisions when voting in the November election.

Minutes

Vice-Chairman Bowser moved, seconded by Commissioner Jacobs, to approve the May 29, 2003 Budget Worksession and the July 28, 2003 Regular Session Minutes of the Board as corrected.

The motion carried unanimously.

Presentation of Certificate of Merit

Catherine C. Whisenhunt, Risk Manager, was presented a Certificate of Merit for helping to save a life while at work. The Certificate of Merit is the highest award given by the American Red Cross to an individual or team of individuals who saves or sustains a life by using skills and knowledge learned in an American Red Cross Health and Safety Services course. The certificate bears the signature of the President of the United States who is the honorary chairman of the American Red Cross, and the signature of the chairman of the American Red Cross.

Resource Person(s): Chuck Kitchen, National Chairman, Awards and Recognition Committee, American Red Cross

County Manager's Recommendation: The County Manager recommended that the Board recognize and congratulate Cathy Whisenhunt for her actions in saving the life of a fellow employee.

County Attorney Chuck Kitchen described the actions taken by Ms. Whisenhunt that saved the life of Ms. Gwendolyn Hunt, who has now returned to work and is doing well. Attorney Kitchen read the American Red Cross Certificate of Merit and presented it to Ms. Whisenhunt.

Lynn Sherrill, Chapter Manager of the Central NC Chapter of the American Red Cross, presented the Life-Saving Medal to Ms. Whisenhunt. All persons in attendance gave Ms. Whisenhunt a standing ovation.

Ms. Whisenhunt expressed gratitude to County Attorney Kitchen for teaching her First Aid and CPR, which she has, in turn, taught fellow employees. She also thanked EMS personnel for responding so quickly to the emergency.

Ms. Sherrill thanked Ms. Whisenhunt for her outstanding, heroic service. She also thanked County Attorney Kitchen for leading the training effort. She expressed gratitude to Durham County Government administrators for understanding the importance of life-saving skills and for taking the lead in the community by placing automated external defibrillators in various locations.

Chairman Reckhow recognized County Attorney Kitchen for his recent appointment as National Chairman of the American Red Cross Awards and Recognition Committee.

Chairman Reckhow referenced copies of a letter and an attached report that had been placed at each Commissioner's station. In the letter, Chairman Reckhow thanked Kathi Beratan, Chair, Durham City/County Environmental Affairs Board (EAB) and its members for responding expeditiously to the Commissioners' request for a review of the proposed Concrete Batch Plant on Denfield Street. Subsequently, a site visit was made and Ms. Beratan wrote a thorough report that was shared with the Development Review Board (DRB). She also attended and testified at the DRB meeting on August 22. The meeting resulted in the DRB not granting the permit. Chairman Reckhow expressed that Ms. Beratan had gone above and beyond the call of duty.

Consent Agenda

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the following consent agenda items:

- *(a) Property Tax Releases and Refunds for Fiscal Year 03-04 (accept the property tax release and refund report

for the month of July as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report. These are normal recurring releases and refunds that are presented for the consent agenda);

- * (b) Budget Ordinance Amendment No. 04BCC000004—Public Health—To Recognize Revenue for the Environmental Health Division to Establish a Full-Time Position for a Public Health Nurse II to Support the Health Department’s Bioterrorism Response Efforts (approve the budget ordinance amendment to recognize \$34,653 from the Department of Health and Human Services for the Environmental Health Division);
- * (d) Budget Ordinance Amendment No. 04BCC000006—Public Health—To Recognize Revenue for the General Health Clinic (approve the budget ordinance amendment to recognize \$6,000 from the Department of Health and Human Services for the bioterrorism preparedness program);
- * (f) Budget Ordinance Amendment No. 04BCC000008—Criminal Justice Resource Center, Reentry Program (approve the budget ordinance amendment in the amount of \$50,780 for the Criminal Justice Resource Center);
- * (h) Street Annexation Petition—Vista Del Rio (Riverbend Subdivision) (adopt the resolution to approve the addition of Vista Del Rio to the state’s road maintenance system subject to the certification of eligibility by the appropriate officials of the NC Department of Transportation); and
- * (i) Approve Agreement With Raleigh-Durham Airport Authority Celebrating 100 Years of Powered Flight (approve the agreement).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 03-04 (accept the property tax release and refund report for the month of July as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report. These are normal recurring releases and refunds that are presented for the consent agenda).

Due to property valuation adjustments for over-assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the attached report details releases and refunds for the month of July 2003.

Releases & Refunds for 2003 Taxes:

Real	\$.10
Registered Vehicles	\$	15,438.26
Vehicle Fees	\$	185.00
Solid Waste	\$	<u>65.00</u>
Total for 2003 Taxes and Fees	\$	15,688.36

Prior Years (1999-2002) releases and refunds for July 2003 are in the amount of \$33,314.57.

Total Current Year and Prior Year Releases and Refunds \$49,002.93.

(Recorded in Appendix A in the Permanent Supplement of the August 25, 2003 Regular Session Minutes of the Board.)

Consent Agenda Item No. b. Budget Ordinance Amendment No. 04BCC000004—Public Health—To Recognize Revenue for the Environmental Health Division to Establish a Full-Time Position for a Public Health Nurse II to Support the Health Department’s Bioterrorism Response Efforts (approve the budget ordinance amendment to recognize \$34,653 from the Department of Health and Human Services for the Environmental Health Division).

DURHAM COUNTY, NORTH CAROLINA
 FY 2003-04 Budget Ordinance
 Amendment No. 04BCC000004

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,590,446	\$34,653	\$294,625,099

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$353,932,701	\$34,653	\$353,967,354

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. d. Budget Ordinance Amendment No. 04BCC000006—Public Health—To Recognize Revenue for the General Health Clinic (approve the budget ordinance amendment to recognize \$6,000 from the Department of Health and Human Services for the bioterrorism preparedness program).

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000006

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,678,099	\$ 6,000	\$294,684,099

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$354,020,354	\$ 6,000	\$354,026,354

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. f. Budget Ordinance Amendment No. 04BCC000008—Criminal Justice Resource Center, Reentry Program (approve the budget ordinance amendment in the amount of \$50,780 for the Criminal Justice Resource Center).

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000008

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,733,918	\$50,780	\$294,784,698

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 35,379,748	\$50,780	\$ 35,430,528

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. h. Street Annexation Petition—Vista Del Rio (Riverbend Subdivision) (adopt the resolution to approve the addition of Vista Del Rio to the state's road maintenance system subject to the certification of eligibility by the appropriate officials of the NC Department of Transportation).

NORTH CAROLINA STATE DEPARTMENT OF TRANSPORTATION
REQUEST FOR ADDITION OF STATE MAINTAINED
SECONDARY ROAD SYSTEM

North Carolina
County of Durham

Road Description: Vista Del Rio (Riverbend Subdivision): .2 miles; 6 homes; 1.3 miles east of the intersection of Route NC 157 and Route SR 1461.

WHEREAS, the attached petition has been filed with the Durham Board of County Commissioners requesting that the above described road, the location of which has been indicated in red on the attached map,* be added to the secondary road system; and

WHEREAS, the Board of County Commissioners is of the opinion that the above described road should be added to the secondary road system, if the road meets minimum standards and criteria established by the Division of Highways of the Department of Transportation for the addition of roads to the system:

NOW, THEREFORE, BE IT RESOLVED by the Durham Board of County Commissioners that the Division of Highways is hereby requested to review the above-described road, and to take over the road for maintenance if it meets established standards and criteria.

CERTIFICATE

The Durham Board of County Commissioners duly adopted the foregoing resolution at a meeting on the 25th day of August, 2003.

Witness my hand and official seal this the 26th day of August, 2003.

/s/ Garry E. Umstead
Clerk, Board of Commissioners
County of Durham

*In the office of the Clerk to the Board.

Consent Agenda Item No. i. Approve Agreement With Raleigh-Durham Airport Authority Celebrating 100 Years of Powered Flight (approve the agreement).

The agreement follows:

AGREEMENT BETWEEN COUNTY OF DURHAM
AND RALEIGH-DURHAM AIRPORT AUTHORITY REGARDING
CELEBRATING 100 YEARS OF POWERED FLIGHT

THIS AGREEMENT is entered into this, the 25th day of August 2003, by and between the County of Durham (hereinafter "Durham County") and the Raleigh-Durham Airport Authority (hereinafter the "Authority").

W I T N E S S E T H:

THAT WHEREAS: On December 17, 1903, the brothers Orville and Wilbur Wright made the First Powered Flight at Kitty Hawk, North Carolina; and

WHEREAS: On December 17, 2003, the 100th Anniversary of man's First Powered Flight will be celebrated; and

WHEREAS: Raleigh-Durham International Airport (hereinafter, the "Airport") is the closest international airport in North Carolina to the site of the First Powered Flight over the shores of Dare County; and

WHEREAS: The 100th Anniversary event will be viewed and celebrated worldwide – a major media event that will show North Carolina to the world; and

WHEREAS: This event signals the entry of the world into the next century of technology, as the First Powered Flight signaled the world's entry into the preceding century of major technological advances; and

WHEREAS: This event should be celebrated by all of the people of North Carolina, especially its youth, who are now studying the state's history in school and looking forward to its future; and

WHEREAS: It is important that the citizens of the Triangle Region, who are represented by the units of local government that make up the Authority, be a part of this event.

NOW, THEREFORE, We, Durham County, agree to participate equally with the City of Durham (hereinafter "Durham"), the City of Raleigh (hereinafter "Raleigh") and the County of Wake (hereinafter "Wake County") in providing a total of \$400,000 to be used to create and erect a monument, to be located in a position of prominence on the Airport selected by the Authority and unveiled on December 17, 2003, to celebrate the 100th Anniversary of the First Powered Flight and to challenge future generations to continue the entrepreneurial and technological spirit of Orville and Wilbur Wright; and

We agree that the funds provided by Durham County, in company with the funds provided by Durham, Raleigh and Wake County, shall be employed only to prepare and equip the site for, and design, fabricate and install, the First Flight Monument under the conditions enumerated below; and

We agree to participate on the basis and with the understanding that Durham, Durham County, Raleigh and Wake County each will appropriate and furnish the sum of \$100,000 for the project to be used for design, fabrication and installation of the First Flight Monument, including compensating the selected artist, one-half of which will be paid over to the Authority upon presentation of its invoice therefor not later than July 30, 2003 and the other one-half of which will be paid over to the Authority upon presentation of its invoice therefor not later than July 30, 2004; and

We agree that the Authority will fund the costs of preparing and equipping the site for the First Flight Monument, including landscaping, lighting, foundation, sidewalks and other necessary infrastructure, from its own resources, the expense of which is expected to be not less than \$100,000; and

We agree that the Authority will select, commission and contract with the artist of its choice to design, fabricate and install the First Flight Monument, that a committee of the Authority's choosing will select and approve the design of the First Flight Monument

from among the ideas presented by the selected artist, and that the Authority will have complete control over and exercise direction of the project; and

We agree that if all of the funds to be provided by Durham, Durham County, Raleigh and Wake County on or before July 30, 2003 are not provided by that date, the Authority shall be under no further obligation to proceed with prosecution of the project and may thereupon return such funds as have been remitted to the entities remitting the same and cancel the project; and

We agree that should the Authority determine that a satisfactory project cannot be undertaken for the total amount to be contributed by all of the parties, the Authority may request additional equal contributions by Durham, Durham County, Raleigh and Wake County, contribute additional funds itself, seek donations from other parties, or cancel the project and return such funds as have been remitted by parties other than itself.

IN WITNESS WHEREOF, this Agreement is executed the day, month and year first above written pursuant to official resolutions adopted by the governing Boards of the parties hereto at regular meetings thereof.

COUNTY OF DURHAM

RALEIGH-DURHAM AIRPORT AUTHORITY

By: /s/ Mike Ruffin
County Manager

By: /s/ John C. Brantley
Airport Director

Attest: /s/ Garry E. Umstead
Clerk to the Board

Attest: /s/ K. Stephen Zaytoun
Secretary to the Authority Board

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. c. Budget Ordinance Amendment No. 04BCC000005—Public Health—To Recognize Revenue for the Environmental Health Division (approve the budget ordinance amendment to recognize \$53,000 from the Department of Health and Human Services for the childhood lead poisoning prevention program).

Vice-Chairman Bowser removed this item from the consent agenda to ask questions. He stressed the importance of lead poisoning prevention as it relates to educating, testing, and screening all at-risk children in all areas.

Donnie McFall, Environmental Health Director, explained that approval of the budget ordinance amendment was to recognize \$53,000 from the Department of Health and Human Services for the Environmental Health Division. The Durham County Health Department was awarded this grant in collaboration with Durham Affordable Housing Coalition (DAHC). The Health Department would receive \$3,000 to support

investigation and outreach efforts towards childhood lead poisoning prevention. The DAHC, under contract with the Health Department, would receive \$50,000 to support a Bilingual Housing Outreach Coordinator position, travel and training, supplies, and contract services for design and translation of printed materials in their efforts towards childhood lead poisoning prevention for the Hispanic community. However, collaborative efforts involving the Durham Housing Authority, Health Department, and Housing Coalition target all at-risk children in all residential areas.

Commissioner Heron asked whether this is a one-time or ongoing grant.

Mr. McFall responded that this ongoing grant has been awarded for three consecutive years with no assurance that it will be approved from each year. The grant is written and submitted by the Housing Coalition.

Vice-Chairman Bowser asked if the persons who administer the tests are County employees, Housing Coalition employees, or contracted personnel.

Tekola Fisseha, Health Education Director, stated that health educators from the Division of Health Education conduct the testing, but this grant does not support the health educator positions.

Chairman Reckhow clarified that the Bilingual Housing Outreach Coordinator position would be in addition to the existing personnel involved in lead poisoning prevention.

Mr. McFall further explained that the existing program comprises a program specialist in the Environmental Health Division (supported by matching funds), a full-time nurse (supported by a federal grant through the Housing Authority), and three health educators.

Chairman Reckhow directed Mr. McFall to ensure that Vice-Chairman Bowser receives the information he requested regarding lead abatement testing at the Head Start facility.

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve Budget Ordinance Amendment No. 03BCC000005 to recognize \$53,000 from the Department of Health and Human Services for the childhood lead poisoning prevention program.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000005

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,625,099	\$53,000	\$294,678,099

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$353,967,354	\$53,000	\$354,020,354

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. e. Budget Ordinance Amendment No. 04BCC000007—Public Health—To Recognize Revenue for the Health Education Division to Establish a Full-Time Position for a Health Educator I to Assist in Syphilis Elimination Efforts in Durham County (approve the budget ordinance amendment to recognize \$49,819 from the Department of Health and Human Services for the Health Education Division).

Chairman Reckhow removed this consent agenda item as Dr. E. Lavonia Allison wished to make associated comments.

Dr. Lavonia Allison, PO Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People, expressed her opinion that the full-time position is much needed in Durham County. She recommended that the Commissioners request a statistical report regarding STD, monitor the progress of the program, and consider implementing collaborative educational forums involving elementary through high school students.

Vice-Chairman Bowser asked questions relating to the total cost for the salary and fringe benefits to hire a Health Educator I to assist in the syphilis elimination efforts in Durham County. He also asked about the amount of money to cover operating expenses.

Mr. Fisseha responded to the questions.

Vice-Chairman Bowser stated that CARE is desperately attempting to build a relationship with the Durham County Health Department. Written materials to CARE from the Health Department seem to indicate that the Health Department is withdrawing. He asked whether the Health Department operates during evening hours to counsel, treat, and identify people infected with the AIDS virus.

Mr. Fisseha explained Project Straight-Talk, an HIV/STD prevention and education program implemented in 1983. Hours of operation include evenings and weekends. This outstanding program has been viewed as one of the best in the state.

Vice-Chairman Bowser encouraged the Health Department to build a working relationship with CARE to collaboratively assist the AIDS population. He volunteered to become the liaison the Health Department regarding this issue.

Commissioner Jacobs, liaison to the Public Health Board, has had several conversations with Patricia Ameachi, Executive Director, CAARE Incorporated. Commissioner Jacobs assured Ms. Ameachi that this issue will be presented to the Public Health Board and the Public Health Director to determine how to foster the best collaborative effort.

Commissioner Bowser moved, seconded by Commissioner Heron, to approve consent agenda item No. e.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000007

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,684,099	\$49,819	\$294,733,918

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Human Services	\$354,026,354	\$49,819	\$354,076,173

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Commissioner Heron noted that a small area map was not included as an attachment to the street annexation petition in this particular agenda package. She stated that the maps are very helpful and requested that they be included in the future.

Consent Agenda Item No. g. Budget Ordinance Amendment No. 04BCC000010—Sheriff's Office—Recognize Revenue from Durham Public Schools and Appropriate Expenditures for Six School Resource Officers (approve the budget ordinance amendment to recognize \$215,638 in revenue from DPS and requests authorization to create six FTEs for the Sheriff's Office in accordance with the Interlocal Agreement for School Resource Officers).

Dr. Lavonia Allison, PO Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People, was pleased about the increase in the number of School Resource Officers to be stationed in the schools. She had questions regarding the duties of the officers and wished to know the definitive parameters in which they may serve.

Wes Crabtree, Chief Deputy, Sheriff's Office responded to Dr. Allison's question relating to dress code enforcement. Legally, officers can only address issues relative to state laws. The dress code is not a state law. However, officers can make suggestions and be role models for students. Durham Public Schools and the Sheriff's office have agreed upon specific guidelines/responsibilities of the resource officers. Chief Deputy Crabtree would make copies of the guidelines available to the Commissioners through Lt. Greg Brown.

Commissioner Cousin moved, seconded by Commissioner Heron, to approve consent agenda item No. g.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000010

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,906,596	\$236,916	\$295,143,512

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 35,552,426	\$236,916	\$ 35,789,342

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Public Hearing—Budget Ordinance Amendment No. 04BCC000009—Office of the Sheriff—2003 Local Law Enforcement Block Grant Funds

The Office of the Sheriff submitted its on-line application for Durham County's share of the 2003 Local Law Enforcement Block Grant (LLEBG) and received subsequent approval of a \$121,898.00 block grant award from the U.S. Department of Justice—Bureau of Justice Assistance. The purpose of the LLEBG program is to reduce crime and improve public safety. The award can only be used in accordance with the seven purpose areas described in this grant program.

These intergovernmental funds awarded to Durham County will be used for the purchase of equipment for communications and general field deputies.

The Sheriff established an Advisory Board as specified by the grant, which met on August 12, 2003 to recommend the proposed use of these funds. The equipment to be purchased as suggested by the Advisory Board follows: crime analysis printer, 12 radios and multi-charger, two Livescan (digital fingerprinting analysis machine) and associated computer equipment, boat team equipment, and two K-9s and associated equipment. Such equipment and technology will enhance and improve law enforcement abilities of the Sheriff's Office and the County of Durham.

One of the special conditions of this grant award program is to conduct a public hearing to receive public comment as to the use of these funds. This public hearing was

advertised in the Durham Herald-Sun on August 17, 2003 and August 24, 2003 to give proper notification.

No additional County funding is required and no subsequent year budget impact is anticipated. The Office of the Sheriff will provide the required grantee local cash match of \$13,544.00 from its current budget. The total appropriation is for \$135,442.00; the expenditures and revenue recognized is for \$121,898.00 from the grant award.

The Sheriff's Office has traditionally used the LLEBG funds received the last six years for improving and upgrading the agency's equipment and technological infrastructure.

Resource Person(s): Marcia Margotta, Comptroller, Sheriff's Office, and Chief Deputy C. Wes Crabtree, Sheriff's Office

County Manager's Recommendation: The County Manager recommended that the Board conduct the public hearing to receive public comment, approve the Advisory Board's recommendation for the proposed use of the 2002 LLEBG award funds, and approve the budget ordinance amendment to accept grant funding and appropriate program spending. Congratulate the Sheriff on applying for and receiving another Local Law Enforcement Block Grant to continue these traditional improvements.

Chairman Reckhow opened the public hearing that was properly advertised. As no one signed to speak, Chairman Reckhow closed the public hearing and referred the matter to the Board.

Commissioner Heron moved, seconded by Vice-Chairman Bowser, to approve the proposed use of the 2002 LLEBG award funds, and approve the budget ordinance amendment to accept grant funding and appropriate program spending.

The motion carried unanimously.

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2003-04 Budget Ordinance
Amendment No. 04BCC000009

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2003-04 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$294,784,698	\$121,898	\$294,906,596

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 35,430,528	\$121,898	\$ 35,552,426

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 25th day of August, 2003.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Resolution Providing for Four-Year Terms of Office

At the August 4, 2003 Worksession, the Commissioners directed that a resolution be prepared which provides for the Board of County Commissioners to be elected to four-year terms of office. The resolution provides for this alteration and calls for a referendum on this proposed alteration. If approved by the voters, the four-year terms would be effective for the 2004 primary and general election.

Durham is only one of three counties which has two-year terms for its board of commission members. Mecklenburg County is the only other urban county that has two-year terms, and Mecklenburg does not elect all of its members at-large.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: The County Manager recommended that the Commissioners approve the resolution to give the voters an opportunity to vote on four-year terms of office for the Board of County Commissioners.

Commissioner Jacobs mentioned an issue regarding the resolution. Only 12 counties, including Durham County, do not elect their county commissioners on a staggered-term basis. Staggered terms eliminate the possibility of the entire board being replaced in one election.

Dr. Lavonia Allison, PO Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People, expressed her concern that information regarding the resolution had not been provided to the public. There should be an opportunity for all the questions to be answered before the resolution is approved.

Vice-Chairman Bowser answered Dr. Allison's concern by stating that four-year terms have been an unresolved issue for several years. This is not a new item. Furthermore, Vice-Chairman Bowser brought this item before the Board at the August 11, 2003 Regular Session. At that meeting, the County Attorney was directed to prepare a resolution for the voters of Durham County to decide in November 2003 whether the County Commissioners would become elected to four-year terms or continue to be elected to two-year terms. The News & Observer and the Herald-Sun have published articles about this issue. The public has been well informed. He encouraged Dr. Allison and Commissioner Jacobs to bring the staggered term issue before the Board at a subsequent meeting.

Commissioner Heron endorsed Vice-Chairman Bowser's remarks.

Chairman Reckhow noted that the Durham Board of County Commissioners has a relatively small number of members. Staggered terms would make more sense if the board had more members. There has been incredible stability on this Board, and the chance that the entire Board would turn over is not likely.

Chairman Reckhow recommended that the Board approve the resolution drafted by the County Attorney. She read the actual question that would be placed as a special referendum item on the ballot:

"STRUCTURE OF BOARD OF COMMISSIONERS

Shall the structure of the board of commissioners be altered to provide that the members shall be elected for four-year terms of office?"

Vice-Chairman Bowser moved, seconded by Commissioner Heron, to approve the resolution as drafted.

The motion carried unanimously.

RESOLUTION ALTERING THE STRUCTURE
OF THE BOARD OF COMMISSIONERS
AND CALLING A SPECIAL
REFERENDUM THEREON

WHEREAS, N.C.G.S. § 153A-58 authorizes the alteration of the structure of the board of commissioners of the several counties; and

WHEREAS, the Board of Commissioners has determined that it is desirable and expedient to alter the structure of the Durham County Board of Commissioners in order to permit the more efficient functioning of county government; and

WHEREAS, extending the terms of the Board of Commissioners will reduce the cost of running for office, and thereby increase the number of persons who are financially able to run for this office:

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOETH RESOLVE:

Section 1. The structure of the Board of Commissioners for the County of Durham is hereby altered to provide that the members of said board shall be elected to four-year terms of office.

Section 2. The election of the members of said board shall remain at large with the chairman selected pursuant to N.C.G.S. § 153A-39.

Section 3. This alteration in the structure of the Board of Commissioners shall be effective if approved by the voters at a referendum as provided below, and shall be the basis for nominating and electing the members of the Board of Commissioners at the primary and general election in 2004. The alteration, if approved by the voters, shall then take place on the first Monday in December, 2004.

Section 4. A special referendum is hereby called to be held between 6:30 A.M. and 7:30 P.M., on Tuesday, November 4, 2003, at which there shall be submitted to the qualified voters of the County of Durham the following question:

STRUCTURE OF BOARD OF COMMISSIONERS

Shall the structure of the board of commissioners be altered to provide that the members shall be elected for four-year terms of office?

- YES
- NO

Section 5. For said referendum, (i) the regular registration books for elections in Durham County shall be used and the registration books, process or records shall be open for the registration of qualified persons and for public inspection in the manner, under the conditions and at the times and places as provided in Section 6 of this resolution, (ii) the chief judges, judges and other officers of election appointed by the Durham County Board of Elections for the precincts and voting places in said County shall be the election officers for such precincts and voting places and (iii) the precincts and voting places for said referendum shall be those fixed by the Durham County Board of Elections as provided in Section 6 of this resolution, subject to change as provided by law. The Durham County Board of Elections is hereby requested to conduct said referendum and to take all necessary steps to that end in accordance with the provisions of this section.

Section 6. For said referendum the regular registration books for elections in the County of Durham will be used and the registration books, process or records will continue to be open for the acceptance of registration applications and the registration of qualified persons from 8:30 A.M. until 5:00 P.M. on Monday to Friday, inclusive, of each week at the office of the Durham County Board of Elections located at 706 West Corporation Street, in Durham, North Carolina.

For said referendum registration applications will be accepted and qualified persons may register also at any Drivers License Examining Station located in the State of North Carolina (the "State") during normal business hours when applying for, renewing or correcting driver licenses. Moreover, registration applications will be accepted and qualified persons may register at every office in the State which accepts claims for benefits under the Employment Security Law or applications for a program of public assistance under Article 2 of Chapter 108A or Article 13 of Chapter 130A of the General Statutes of North Carolina and at every office in the State designated by the State Board of Elections which accepts applications for State-funded State or local government programs primarily engaged in providing services to persons with disabilities. Such programs include Medicaid, Aid to Families with Dependent Children, Food Stamps, Women, Infants and Children and programs of the Division of Mental Health and the Division of Services for the Blind.

Qualified persons may also register by mail on forms to be available at the above-mentioned places and otherwise as provided in Article 7A of Chapter 163 of the General Statutes of North Carolina.

Furthermore, certain persons in the armed forces and their spouses, certain veterans, certain civilians working with the armed forces, and members of the Peace Corps may register by mail at any time prior to said referendum in the manner provided in Article 21 of Chapter 163 of the General Statutes of North Carolina and in person at any time, including the day of said referendum.

The last day for new registration of those not now registered under Durham County's permanent registration system and who wish to register for said referendum is Friday, October 10, 2003, except as otherwise provided in Article 7A of Chapter 163 of the General Statutes of North Carolina.

The last day on which registered voters who have changed residence may notify the Durham County Board of Elections of their changes of address in order to be registered for said referendum is Friday, October 10, 2003, except as otherwise provided in Article 7A of Chapter 163 of the General Statutes of North Carolina.

Any qualified voter of the County who is qualified to vote by absentee ballot in said special bond referendum may apply to the Durham County Board of Elections for an absentee ballot. Any qualified voter who is qualified to vote by military absentee ballot pursuant to Section 163-245 of the General Statutes of North Carolina may also apply for an absentee ballot as provided by Section 163-247 of the General Statutes of North Carolina. Any such qualified voter may vote an absentee ballot in person at the time of applying for it or by mail or otherwise as provided in Article 20 and Article 21 of the General Statutes of North Carolina. Persons who are not certain whether they are registered to vote or qualified to vote or who desire further information concerning the registration process or said referendum should contact the Durham County Board of Elections at the office of said Board mentioned above, telephone number (919) 560-0700, or by visiting its website, www.co.durham.nc.us/elec/, or by e-mailing it at elections@co.durham.nc.us.

The registration books for elections in Durham County will be open to inspection by any registered voter of the County during the normal business hours of the Durham County Board of Elections on the days when the office of said Board is open, and such days are challenge days. The chief judges, judges and other officers of election appointed by the Durham County Board of Elections will serve as the election officers for said referendum.

The Durham County Board of Elections will conduct said referendum.

The precincts and voting places for said referendum, subject to change as provided by law, are as follows:

<u>Precinct</u>	<u>Voting Place</u>
1	Brogden Middle School 1101 Leon St.
2	Watts Street School 700 Watts St.
3	E.K. Powe School 913 Ninth St.
4	N.C. School of Math & Science 1912 W. Club Blvd.
5	W. I. Patterson Rec. Center 2000 Crest St.
6	Lakewood School 2520 Vesson Ave.
7	Durham School of the Arts 400 N. Duke St.
8	Morehead School 909 Cobb St.

- 9 Forest Hills Club House
1639 University Dr.
- 10 C.C. Spaulding School
1531 S. Roxboro Rd.
- 11 Weaver St. Community Center
3000 Weaver St.
- 12 Pearson School
600 E. Umstead St.
- 13 Burton School
1200 Mathison St.
- 14 Y.E. Smith School
2410 E. Main St.
- 15 Mt. Calvary Holy Church Gym
500 No. Driver St.
- 16 Holy Infant Catholic Church
5000 Southpark Drive at Highway 54
- 17 Durham County Main Library
300 N. Roxboro St.
- 18 First United Antioch Baptist Church
1415 Holloway St.
- 19 American Legion Post #7
406 E. Trinity Ave.
- 20 Agricultural Building
721 Foster St.
- 21 Club Boulevard School
400 W. Club Blvd.
- 22 VFW Post 2740
3705 Dearborn Dr.
- 23 Homestead Heights Baptist Gym
4007 Holt School Rd.

- 24 Hillandale Learning Center
2107 Hillandale Rd.
- 25 Northern High School
117 Tom Wilkinson Rd.
- 26 Bahama Vol. Fire-Rougemont Station
11821 N. Roxboro Rd.
- 27 Resurrection United Methodist Church
4705 Old Chapel Hill Rd.
- 28 Bahama Ruritan Club
8202 Stagville Rd.
Bahama, NC
- 29 Gorman Ruritan Club
2400 E. Geer St.
- 30 Oak Grove School
3810 Wake Forest Rd.
- 31 Bethesda Ruritan Club
1714 S. Miami Blvd.
- 32 Neal Middle School
201 Baptist Rd. (WF Hwy)
- 33 Nelson Community Center
4700 Old Page Rd.
- 34 Pearsontown School
4915 Barbee Rd.
- 35 Crown of Righteousness Community Church
5110 Revere Rd.
- 36 Yates Baptist Church
2819 Chapel Hill Rd.
- 37 Cole Mill Rd. Church of Christ
1617 Cold Mill Rd. (Berini)

- 38 Hope Valley Baptist Church
6900 Garrett Rd.
- 39 Parish Hall, St. Stephens Church
82 Kimberly Dr.
- 40 Rogers-Herr Middle School
911 Cornwallis Rd.
- 41 White Rock Baptist Church
3400 Fayetteville Rd.
- 42 Shepard Middle School
2401 Dakota St.
- 43 Forest View Elementary School
3007 Mt. Sinai Rd. (Erwin)
- 44 Carrington Middle School
227 Milton Rd.
- 45 Eno Valley-Holt Athletic Gym
117 Milton Rd.
- 46 Edison Johnson Community Ctr.
600 W. Murray Ave.
- 47 Irwin R. Holmes Sr. Rec. Ctr.
2000 S. Alston Ave.
- 48 Christ the King Moravian Church
4405 Hope Valley Rd.
- 49 James E. Shepard Memorial Library
1801 Fayetteville St.
- 50 McMannen United Methodist Church
4102 Neal Rd.
- 51 Southwest Elementary School
2320 Cook Rd.
- 52 Evangel Assembly of God
1011 Lynn Rd.

- 53 Triangle Presbyterian Church
5001 Tudor Pl. (Hwy. 54)
- 54 Christus Victor Lutheran Church
1615 Highway 54

Section 7. The form of the question to appear in the ballots and in the instructions to voters for said referendum shall be substantially as follows:

.....
STRUCTURE OF BOARD OF COMMISSIONERS
.....

Shall the structure of the board of commissioners be altered to provide that the members shall be elected for four-year terms of office?

- YES
 - NO
-

Section 8. The Clerk to the Board of Commissioners is hereby directed to mail or deliver a certified copy of this resolution to the Durham County Board of Elections within three days after the passage hereof. The Clerk to the Board of Commissioners shall further cause this Resolution to be published once in The Herald-Sun.

Section 9. This resolution shall take effect upon its passage.

This the 25th day of August, 2003.

Contract with Applied Systems Technology Inc. for an Integrated Security and Control System

The Board was requested to authorize the County Manager to enter into a contract with Applied Systems Technology to complete the final phase (Phase Two) of the security/surveillance project at the Durham County Detention Center, not to exceed

\$926,245. Phase One was approved on May 29, 2003. The total project cost is \$1,273,750.

Phase Two will address the detention pod cell doors, intercom system, all video cameras, video recording system, watch tour system, associated consoles, and access control system. Currently, Phase One is not complete but is progressing well and is on schedule. This request is to authorize the current contractor to complete the full system as outlined at the 29 May meeting. The timeline is projected to be an additional 6-month period beginning at the end of Phase One.

The Durham County Detention Facility was originally built in the mid 1990s. Every automated system in the Detention Facility is crucial to the safety of the Durham County Detention staff, visitors, and inmates. These systems are failing at an alarming rate due largely to outdated hardware and software corruption. The automated systems are integrated in such a way that prohibits short-term repairs. Liability regarding the safety of the inmates, primarily fire hazards, is a major concern with the automated system in its present state.

Durham County bid this project out on two separate occasions with no response. Since the last bid, the automated systems continued to fail to the point that safety of the inmates was in jeopardy. Pursuant to N.C.G.S. 143-129(e)(2), the Board of Commissioners declared that a special emergency involving the health and safety of the people and their property existed at the Detention Facility, and due to such circumstances, the requirements of the County's bidding policies and state statutes related to bidding were therefore inapplicable.

Applied Systems Technology Inc., based in Morrisville, provided a Phase One proposal for the installation of an integrated security and control system in the Detention Facility. Its system was designed to provide the following functions: (i) engineering; (ii) detention and door control for 12-cell pod sally-port doors, fire escape doors, and movement sally-port doors; and (iii) the network backbone (which included the central database server for the workstations and network controllers). The work and associated costs described in Applied System Technology's proposal included engineering, programming, installation labor, installation materials, automation panels, start-up, and owner training as necessary. This project will provide the County an immediate, long-term cure for the jail safety failures that are occurring at this time.

This project is a large-scale renovation and upgrade of the automated door control and security/surveillance system and was included in the Manager's FY 2003/04 Budget. The funding is allocated in the General Services, Jail M&R line item. The time line for Phase One was approximately three months at a cost not to exceed \$347,505, which came from the general fund balance. Only the emergency needs were addressed due to the budget constraints.

Resource Person(s): Don Hasselbach, General Services; Rudy Clark, ARAMARK; Wes Crabtree, Chief Deputy; and Carolyn Titus, Deputy County Manager

County Manager's Recommendation: Authorize the County Manager to enter into a contract with Applied Systems Technology Inc. for Phase Two of the security/surveillance project in an amount not to exceed \$926,245 from available funding in General Services' Maintenance & Repair Jail budget.

Don Hasselbach, Assistant Director of General Services, gave an oral review of the project.

Commissioner Heron asked questions about the time-line for project completion and stressed that the Board must be notified immediately if the project does not progress according to schedule. She was concerned about the amount of money being spent on additional detention staff to provide control and security during the installation process.

Chairman Reckhow noted that she had spoken with County Attorney Kitchen regarding the term of the contract, which establishes the completion date as March 1, 2004.

Commissioner Jacobs moved, seconded by Vice-Chairman Bowser, to authorize the County Manager to enter into a contract with Applied Systems Technology Inc. for Phase Two of the security/surveillance project in an amount not to exceed \$926,245 from available funding in General Services' Maintenance & Repair Jail budget.

The motion carried unanimously.

Sewer Use Ordinance Amendments

Glen Whisler, County Engineer, gave the Board a brief overview of the agenda item. The Board was requested to approve amendments to the Sewer Use Ordinance, which was adopted by Durham County in 1994 and amended in 1995. It is contained in the Durham County Code of Ordinances, Chapter 26, Section IV. As stated in the Purpose and Policy, Section 26-81, the Sewer Use Ordinance "sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the County and enables the County to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403)."

The proposed amendments include:

- establishment of a local limit for mercury;
- monitoring charge revisions related to mercury testing (EPA Method 1631);

- increase the maximum daily civil penalty;
- revisions to the adjudicatory hearing process; and
- a revised definition of “Director”.

The proposed effective date is September 1, 2003, to correspond with a new mercury testing method required by the Division of Water Quality.

Resource Person(s): Glen Whisler, P.E., County Engineer; Lowell Siler, Deputy County Attorney; Chuck Hill, P.E., Utility Division Manager; and Bruce Nicholson, Senior Regulatory Specialist, Woodard & Curran

County Manager’s Recommendation: The County Manager recommended that the Board approve the proposed amendments to the Sewer Use Ordinance.

Mr. Whisler stated that the proposed revisions to the Durham County Sewer Use Ordinance are the result of a two-year collaborative effort to address mercury-related issues at the Triangle Wastewater Treatment Plant. He introduced the people and organizations involved in the effort.

Mr. Whisler asked Mr. Nicholson to present a review on the background of the mercury issue at the Treatment Plant and the process through which local limits for mercury were developed.

Mr. Nicholson stated that he had been working on this project for approximately one and one-half years. He explained the following key points:

1. The need to establish a local limit for mercury to prevent future passthrough events (discharge of mercury from County’s Treatment Plant outfall into waters of the state). Two passthrough incidences occurred in 2001 which violated the County’s permit limit of 12 parts per trillion.
2. How the local limit was established.
3. The County’s ability to control mercury at the Treatment Plant and meet its permit limit issued under the Clean Water Act.
4. The collaboration effort between the State, the industrial users in the Research Triangle Park, the County, and Woodard and Curran.

Mr. Nicholson described the project and gave an historical overview. This request for approval of the amendments to the Sewer Use Ordinance is the last stage of the project and will establish the local limit for mercury.

Mr. Whisler stated that the Sewer Use Ordinance was adopted by Durham County in 1994 and has not been revised since 1995. In reviewing the ordinance to address the mercury issues at the Treatment Plant, he realized additional amendments were needed regarding the following administrative issues.

1. Amend the table of charges for sampling and testing of mercury to allow recovery of the actual cost (included in Appendix A of the ordinance).
2. Increase the maximum daily civil penalty from \$10,000 to \$25,000 as allowed by state law in House Bill 1160.
3. Revise the appeal hearing process such that the County Manager conducts the initial hearing rather than a hearing officer. Appeals of the County Manager's decision would be subject to judicial review.
4. Change the definition of the Publicly-Owned Treatment Works (POTW) Director to County Engineer, which is consistent with the current County organizational structure.

Vice-Chairman Bowser asked why the County Commissioners would be eliminated in the appeals process.

County Manager Ruffin answered that this burdensome responsibility has typically been delegated to staff. He had no objections to the Board continuing with that responsibility.

Commissioner Heron asked Mr. Whisler how to determine which industries are discharging the mercury.

Mr. Whisler answered that the permitted industrial users are required to monitor the mercury levels in two ways: (1) self-monitoring; and (2) the County's publicly-owned treatment works monitors the discharge. An extensive monitoring program is in place for industries that are permitted industrial dischargers.

Commissioner Heron pointed out an error on page 7, Section 26-132, No. c(4) of the draft ordinance (strikethrough "~~board of~~").

Commissioner Heron moved, seconded by Commissioner Cousin, to approve the proposed amendments to the Sewer Use Ordinance.

The motion carried unanimously.

Chairman Reckhow thanked all involved in the project for their hard work. She stated that the outreach to the industries was excellent.

Mr. Whisler announced that the State has invited the department to participate in various workshops. The State views Durham as having one of the leading wastewater utilities relative to addressing mercury issues. Also, staff would distribute to each Commissioner a publication regarding mercury concerns, which had been prepared for its customers.

The ordinance amendment follows:

ORDINANCE AMENDING THE SEWER USE ORDINANCE
(DURHAM COUNTY CODE OF ORDINANCES,
CHAPTER 26, ARTICLE IV)

WHEREAS, it has become necessary to establish a local limit for mercury based on the Triangle Wastewater Treatment Plant Headworks Analysis; and

WHEREAS, the North Carolina Department of Natural Resources, Division of Water Quality is requiring a change in the sampling and testing methods for mercury; and

WHEREAS, the County's management structure has changed to contain an Engineering Department instead of a Project Management Office; and

WHEREAS, the State of North Carolina has increased the maximum allowable civil penalty charged by a Publicly Owned Treatment Works; and

WHEREAS, it is necessary to revise the adjudicatory hearing process to expedite the resolution of appeals:

NOW THEREFORE BE IT ORDAINED THAT:

1. The Durham County Code of Ordinances, Chapter 26, Section 26-82 is hereby amended as follows:

Sec. 26-82. Definitions and abbreviations.

Delete the entry and definition for "POTW Director" in its entirety and replace with the following:

POTW director. The County Engineer.

2. The Durham County Code of Ordinances, Chapter 26, Section 26-96 is hereby amended as follows:

Sec. 26-96. Prohibited discharge standards.

Insert the following in subsection (c), after subparagraph (13):

- (14) Any wastewater containing mercury in concentrations greater than one hundred and forty-two (142) ng/l as measured by EPA Test Method 1631 and sampled by EPA Method 1669.

3. The Durham County Code of Ordinances, Chapter 26, Section 26-132 is hereby amended as follows:

Sec. 26-132. Wastewater permits.

Delete subsection (8) in its entirety and replace with the following:

- (8) *Hearings.*
- a. *Initial adjudicatory hearing.* An applicant whose permit is denied, or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 26-192, or one issued a notification of violation or an administrative order under section 26-191 shall have the right to an adjudicatory hearing before the Durham County Manager or his designee upon making written demand, identifying the specific issues to be contested, to the POTW director within 30 days following receipt of the significant industrial user permit, civil penalty assessment or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding. The County Manager shall make a final decision on the contested permit, penalty or order within 45 days of the receipt of the written demand for a hearing. The POTW director shall transmit a copy of the County Manager's decision by registered or certified mail.
1. *New permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
2. *Renewed permits.* Upon appeal, including judicial review in the general courts of justice, of the terms or conditions of a renewed permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
- b. deleted
- c. *Official record.* When a final decision is issued under section 26-132(8)a. above, the Director shall prepare an official record of the case that includes:
1. All notices, motions and other like pleadings.
2. A copy of all documentary evidence introduced.

3. A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken.
 4. A copy of the final decision of the County Manager.
- d. *Judicial review.* Any person against whom a final order or decision of the County Manager is entered, pursuant to the hearing conducted under section 26-132(8)a. above, may seek judicial review of the order or decision by filing a written petition within 30 days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, with the superior court of the county along with a copy to the Director. Within 30 days after receipt of the copy of the petition of judicial review, the Director shall transmit to the reviewing court the original or a certified copy of the official record.
4. The Durham County Code of Ordinances, Chapter 26, Section 26-202 is hereby amended as follows:

Sec. 26-202. Civil penalties.

Delete subparagraph (a) in its entirety and replace with the following:

- (a) Any user who is found to have failed to comply with any provision of this article, or the orders, rules, regulations and permits issued hereunder, may be fined up to \$25,000.00 per day per violation.
5. The Durham County Code of Ordinances, Chapter 26, Appendix A is hereby amended as follows:

Appendix A

Delete the table entitled "Monitoring Charges" in its entirety and replace with the following:

Monitoring Charges	
Monitoring Activity:	Fees:
Sampling (per event excluding Mercury by Method 1669)	\$55.00
Sampling (per event for Mercury By Method 1669)	\$175.00

Lab testing (per event):	
pH	6.00
BOD	29.00
TSS	14.00
Aluminum	18.00
Cadmium	18.00
Chloride	14.00
Chromium	18.00
Copper	18.00
Cyanide	43.00
Fluoride	22.00
Hydrofluoric Acid	20.00
Lead	29.00
Mercury (Method 245.1)	43.00
Mercury (Method 1631)	200.00
Nickel	18.00
Silver	18.00
Zinc	18.00

6. This ordinance shall be in full force and effect on and after September 1, 2003.

Durham City/County Interlocal Cooperation Agreement for Planning

The Interlocal Cooperation Agreement between the City and County for planning functions has been revised. The revisions reflect the changes agreed upon by the Joint City-County Committee members at their June 24 meeting.

The Planning Department recommended that the Board approve the Interlocal Cooperation Agreement for Planning.

Resource Person(s): Frank M. Duke, AICP, Durham City-County Planning Director

County Manager's Recommendation: The County Manager recommended that the Board approve the Interlocal Cooperation Agreement for Planning.

Chairman Reckhow stated that in June 2003, the Joint City-County Committee discussed proposed revisions to the interlocal agreement and compromised on the language reflected in the draft.

Mr. Duke pointed out that an additional change was directed resulting from a request by the Planning Commission Chairman at the Joint City-County Planning Committee meeting.

Commissioner Jacobs referenced an email the Commissioners received from a citizen regarding concerns with the Zoning Committee. She asked whether these issues had been addressed in the revised interlocal.

Chairman Reckhow answered that the main thrust of the email expressed concerns about selectively choosing members to the Planning Commission subcommittees. This has been addressed, as the Commission subcommittees will be dissolved. Chairman Reckhow conveyed this information to the citizen, who then informed her that this interlocal would not become effective until UDO adoption. Currently, no interlocal agreement for planning is in place, as the past interlocal has expired. She asked for clarity from Mr. Duke.

Mr. Duke responded that the Zoning Ordinance explicitly directs that the Chair of the Planning Commission appoint seven members to a Zoning Committee and seven to a Planning Committee. Until the ordinance is changed, this law governs the Planning Commission.

Much discussion ensued relating to the timeline involved in amending the Zoning Ordinance.

Chairman Reckhow stated that the agreement could be approved at tonight's meeting but will not become fully operational until amendments are made to the Zoning Ordinance. She directed that the Planning Director bring forward the appropriate amendments to the ordinance to delete the wording relative to the Zoning and Planning Committees.

Commissioner Jacobs moved, seconded by Commissioner Heron, to approve the Interlocal Cooperation Agreement for Planning.

The motion carried unanimously.

The interlocal agreement follows:

STATE OF NORTH CAROLINA, COUNTY OF DURHAM
INTERLOCAL COOPERATION AGREEMENT

This is an Interlocal Cooperation Agreement between the CITY OF DURHAM, a North Carolina municipal corporation, and the COUNTY OF DURHAM, a political subdivision of the State of North Carolina. This agreement is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes. The date of this agreement is August XXX, 2003. The agreement replaces, and carries forward, most of the substantive provisions of the initial City-County Interlocal Planning Agreement of June 20, 1988, as amended October 19, 1990, and December, 1992.

The City and County agree as follows:

SECTION I. POLICY

- A. The Governing Bodies hereby find and declare that interlocal cooperation for comprehensive planning and plan implementation is a necessity: Such planning allows for more orderly and coordinated growth, provides a mechanism for consistent analysis of planning issues across political boundaries and therefore gives a more sound basis for policy decisions which affect both political entities. The Governing Bodies recognize that comprehensive planning and its implementation are vital to the public interest. Therefore, it is found that such activities as planning investigations and surveys, formulation of development goals and objectives, and development or means to carry out plans in a cooperative, coordinated and efficient manner are necessary in order that the two governments may more competently perform their duties, and in order that the citizens of the respective jurisdictions may have a better understanding of planning issues and be better able to participate in decision-making.
- B. The purpose of this Agreement is to establish a joint planning endeavor and to provide for the organization and administration necessary to effectuate that endeavor.

SECTION II. DEFINITIONS

The words defined in this section shall have the following meanings when used in this Interlocal Cooperation Agreement, unless otherwise defined or explained hereafter:

- A. "Annual Budget" means the listing of anticipated annual expenditures of the Planning Agency, submitted to and approved by the Governing Bodies pursuant to Section V of this agreement.
- B. "Board" shall mean the Board of County Commissioners of Durham County.
- C. "BOA" shall mean the Board of Adjustment.
- D. "City" means the City of Durham,
- E. "Comprehensive Plan" is a generalized plan for an area which recognizes the relationship between various social, economic and physical factors as they affect that area and establishes policies and programs which may have positive social, economic and physical effects. A Comprehensive

Plan may also be a collection of more detailed plans which, taken as a whole, recognize geographic or functional interrelationships and may have positive social, economic and physical effects for an area.

- F. "Council" shall mean the Durham City Council.
- G. "County" shall mean County of Durham.
- H. "Durham City/County Planning Jurisdiction" means the combined geographic area in which the City and County exercise planning and zoning authority.
- I. "Governing Bodies" means the Council and the Board.
- J. "Joint City-County Planning Committee" ("JCCPC") is the advisory committee established pursuant to Section VI of this Agreement.
- K. "Plan" means policies, strategies and programs designed to improve an existing physical condition or to positively affect future physical development.
- L. "Plan Implementation" means those measures used to carry out plans, including ordinances, regulations, technical assistance, public improvements or financing, incentives and other actions.
- M. "Planning" means the process and procedures undertaken to produce a plan, including collection and analysis of alternatives; selection, refinement and adoption of plan; implementation; and evaluation.
- N. "Planning Agency" means the administrative organization responsible for carrying out planning and implementation activities as specified in Section V of this Agreement.
- O. "Planning Commission" means the Durham Planning Commission as herein established pursuant to Section III of this Agreement.
- P. "Unit or Units of Local Government" means a county, city, consolidated city-county or other local political subdivision, or agency of local government.
- Q. "Work Program" means a listing of the anticipated planning projects and other significant work activities to be carried out on an annual basis by the Planning Agency.

SECTION III. PLANNING COMMISSION

A. Establishment of Durham Planning Commission

There is hereby established a joint commission to be known as the Durham Planning Commission. The Planning Commission is designated as the planning advisory body to the City and the County, and shall have the powers and duties described in this Agreement.

B. Appointments by Governing Bodies

1. Number; Composition. The Planning Commission shall consist of fourteen (14) members, of whom seven (7) shall be appointed by the Board and seven (7) shall be appointed by the Council. Seven (7) persons who reside within Durham City limits at the time of their appointment shall be appointed for three (3) year staggered terms by the Council, and seven (7) persons, at least three (3) of whom shall reside within the Durham City limits at the time of their appointment and at least three (3) of whom shall reside outside of the Durham City limits at the time of their appointment, shall be appointed for three (3) year staggered terms by the Board.
2. Subsequent Appointments. Appointments made to fill Commission vacancies shall be made by the Governing Body that made the initial appointment, and shall be for three (3) year terms except for appointments to replace members who have become disqualified, or have been removed, which shall be for the remainder of the replaced member's term. New appointments should be made by the Governing Bodies at least 90 days prior to the expiration of a term to ensure that the newly appointed member is afforded ample opportunity to observe Planning Commission meetings prior to assuming office.
3. District Representation. The Council and the Board shall use district representation plans adopted by each body for appointments to the Commission. As the Council and Board deem necessary, these plans may be revised to reflect population changes and to maintain geographic and population balance. A map indicating the current district representation plan shall be kept in each respective Clerk's office, and shall be utilized in advertising Commission vacancies. When a vacancy cannot be filled by a resident of a district after the position has been advertised twice, the Governing Body making the appointment may appoint a representative from outside the district. Districts that are not represented on the Commission shall be given first priority when the Governing Bodies fill vacancies.

4. Property Taxes. County and City taxes must not reflect any delinquencies before an application is submitted. Property taxes must be current both prior to appointment and during the term of the appointment. As further described below.
 5. Vacancies/Removal Prior to Expiration of Term. Upon resignation, permanent disqualification or removal of any member of the Planning Commission for nonpayment of taxes or any other cause, the Governing Body which appointed that member shall appoint a successor to fill the unexpired term. The Governing Bodies may only remove members for cause, which shall be defined as failure to meet the obligations set forth in Requirements for Membership, below. If a member is removed by the appointing Governing Body, the effective date of the action must be explicitly noted by the appointing Governing Body.
 6. Optional Replacement of Members Who Move within County. The Governing Bodies may replace Commission members who move during their tenure if they no longer are within the representation district they previously resided in, or do not meet the in-city or out-of-city appointment requirements they met when appointed. Notification of changes in residency shall be made as part of the Commission's annual report to the Governing Bodies, and shall be presented along with a breakdown of residency information about all current Commission members.
- C. Requirements for Membership on the Durham Planning Commission; Compensation
1. Term. The term of office of a member of the Planning Commission, except for persons appointed to fill unexpired terms, shall be three (3) years and shall expire on June 30 of the final year of service. If a successor has not been appointed by the respective Governing Body, however, a member's term shall continue until such appointment is made. No person shall serve consecutively more than two full terms. An individual appointed to a two-year term shall be deemed to have served a full term.
 2. Residency Requirements. Members of the Planning Commission shall be residents of the County. Prior to any change in residency, members shall notify the Clerk to the Commission of the prospective change and the date of the move. A member who ceases to be a resident of the

Durham City/County Planning Jurisdiction shall become disqualified immediately upon the change in residency, and the Governing Body that made the appointment shall be notified. Changes of residency within the County may result in replacement by the Governing Body that made the appointment (see Appointments by Governing Bodies,). Such changes in residency shall be reported to the Governing Bodies in the Commission's yearly report.

3. Payment of Property Taxes. Members must remain non-delinquent in their local property taxes during their term. However, if the members' taxes become delinquent during the term of the appointment, the member shall be allowed up to 30 days to bring the property taxes current. The Clerk of the appointing jurisdiction shall notify the jurisdiction of any noncompliance with this provision.
4. Observance of Adopted Ethics Policy. Commission members shall follow the County Ethics Policy, as adopted in the Commission's Rule of Procedure as such policy may be amended from time to time and annually shall complete the disclosure form provided by the County.
5. Attendance. Members shall attend at least seventy-five (75) percent of the total number of regular meetings of the Planning Commission during any twelve (12) month period, except for excused absence due to illness or other extraordinary circumstances. The Planning Commission shall establish, within its bylaws, conditions which constitute an excused absence, and the case-by-case application of those bylaw provisions shall be the duty of the Chairperson of the Planning Commission. The Chairperson shall immediately report to the appropriate Governing Body the failure of any member appointed by said Governing Body to meet said attendance standard, and the appropriate Governing Body may then remove said member from the Planning Commission.
6. Compensation. Members shall receive such compensation and reimbursement for expenses as the Governing Bodies may prescribe

D. Duties of the Durham Planning Commission

The Planning Commission shall elect its own officers in a manner prescribed in its bylaws. Further, the Planning Commission shall comply with the following:

1. The officers of the Planning Commission shall be a Chairperson and Vice Chairperson., one of whom shall be a City Appointee and one of

whom shall be a County appointee. The positions shall alternate between a City appointee and a County appointee at least every two years. When it is impossible to rotate the position of chair and vice chair because all appointees of the respective jurisdictions have indicated they are unable to serve, the foregoing provision may be waived.

2. The Planning Commission may establish citizen committees or subcommittees to advise the Planning Commission; however, any such committees or subcommittees shall not receive staff support, unless explicitly provided for by the Joint City/County Planning Committee.
3. The Planning Commission shall adopt rules of procedure for the transaction of its business. Such rules shall be consistent with applicable City and County laws, ordinances and regulations and shall be filed with the City and County Clerks. Such rules shall include, but not be limited to, the adoption of the County Ethics Policy as part of the Commission's procedures, and any other relevant provisions concerning conflicts of interest. Any change to the adopted rules or procedure shall be submitted to both Governing Bodies for review and comment.
4. The Planning Commission shall hold regular monthly meetings, and may hold special meetings. The regular meeting may be canceled by the Chairperson, acting in concert with the Planning Director, if a determination is made that there is no business to conduct. All meetings shall be open to the public but the Planning Commission, may hold appropriate closed sessions when allowed or required by law.
5. The Planning Commission may invite and receive suggestions from the public concerning any and all matters within the scope of its duties.
6. The Planning Commission shall keep minutes, which shall record all actions taken by it. Such minutes shall be public records, when required by law.
7. The Planning Commission shall adopt policies and procedures encouraging broad public input on all plans and programs for which the Planning Commission has review responsibility.

E. Operation of the Planning Commission; Voting

1. Quorum. A quorum for the Planning Commission shall consist of eight (8) members present.
2. Duty to Vote: A member of the Planning Commission must vote unless excused by the Chairperson or Commission from voting for conflict of interest or cause as provided below. An individual who wishes to be excused from voting shall publicly inform the Chairperson. The Chairperson may excuse the individual in the case of a conflict of interest. For other cause, a vote of the Commission is required to excuse a member from voting. If a member leaves a meeting without being excused, or physically present but does not vote when required, such member shall be counted as voting "yes" on any vote taken during such unexcused absence or failure to vote.
3. Votes Required for Action; Actions of the Planning Commission shall require a simple majority vote of those present and voting, a quorum being present. Any tie vote shall be considered as a recommendation of denial.
4. Annual Report. The Planning Commission shall submit an annual report to the Governing Bodies summarizing actions taken in the past year and recommendations as to ordinance changes, processing of zoning applications, consideration of land use plans, and other areas in which the Planning Commission has input. The report shall include a breakdown of Commission membership by district and by residency inside and outside the City and shall show any seats for which new members could be sought due to changes in residency, in accordance with the provisions above.

G. Functions of the Planning Commission

1. For the purpose of fulfilling its role as contemplated by this agreement, the Planning Commission is hereby designated as a planning agency pursuant to G.S. 153A-321 and G.S. 160A-361. The Commission may also take on any other planning related functions as delegated, in writing, by the Governing Bodies.
2. Pursuant to Article 19 Chapter 160A and Article 18 Chapter 153A of the North Carolina General Statutes, the Planning Commission shall have the following duties:
 - a. Propose and review policies and procedures for encouraging broad public input on all comprehensive, area, sub-area, neighborhood and functional plans.

- b. Review and make recommendations on the annual Work Program of the Planning Department.
- c. Review committee reports
- d. Review and make recommendations on plans, including land use, transportation, and capital improvements plans, planning policy and planning implementation actions. Such review and recommendations shall be transmitted to the appropriate Governing Bodies for consideration during their deliberation.
- e. The Planning Commission shall coordinate with the City, County and the Planning Agency in order to accommodate Work Program or Annual Budget changes which may result from the application for or receipt of funds by the City or County from the Federal Government and its agencies, the State Government and its agencies, any local government and its agencies, or any private or civic sources.
- f. The Planning Commission shall coordinate with the City, County and the Planning Agency in accommodating Work Program or Annual Budget changes which may result from contracts between the City or County and the State and Federal governments (or their agencies) under which financial assistance for planning and implementation is made available to the City or County.
- g. The Planning Commission shall coordinate with the City, County and the Planning Agency in accommodating any Work Program or Annual Budget changes which may result from the City or County contracting with any other city, county, or regional council or planning agency under which the City or County agrees to furnish technical planning assistance to the other entity.
- h. The Planning Commission may advise and cooperate with units of local government, State government or Federal government on any matter within the Planning Commission's powers and duties.
- i. The Planning Commission shall review and make recommendations to the appropriate Governing Body concerning rezoning and proposed Zoning and Subdivision Ordinance changes.

- j. Members of the Planning Commission may serve, if requested by either Governing Body, as *ex officio* members on other appointive boards, commissions or committees.
- k. The Planning Commission shall execute its role concerning administrative matters as prescribed hereinafter by SECTION V, ADMINISTRATION.
- l. The Planning Commission shall carry out such duties as may from time to time be given or directed by either Governing Body, so long as no conflict exists between the City and County concerning work priorities or use of resources. In such a case where a conflict exists, the Joint City-County Planning Committee shall work out a resolution to the conflict sufficient for the Governing Bodies to agree upon.

SECTION IV. BOARD OF ADJUSTMENT

A. Establishment of the Board of Adjustment (BOA)

There is hereby established a joint BOA which shall exercise all the powers and duties authorized under G.S. 160A-381, G.S. 160A-388, G.S. 153A-340, and G.S. 153A-345, all applicable special enabling legislation including, but not limited to Section 93 of the Durham City Charter, and the City and County zoning ordinances.

B. Structure of BOA; Appointments by Governing Bodies

1. Composition. The BOA shall consist of seven (7) members and three (3) alternates. The Council shall appoint four (4) members and one (1) alternate. All must reside within the City limits at the time of appointment. The Board shall appoint three (3) members and two (2) alternates of whom at least three (3) must reside outside the City limits at the time of appointment.
2. Vacancies and Removal. Upon resignation, permanent disqualification or removal of any member of the BOA for nonpayment of taxes or any other cause, an alternate appointed by the Governing Body that made the original appointment shall fill the subsequent vacancy in that position for the remainder of the previous member's term.
3. Diverse Representation. In making appointments, the Council and the Board shall make a good faith effort to assure urban and rural

representation on the BOA. Alternates shall be given first consideration for nomination to regular positions on the BOA.

C. BOA Membership

1. General/Term. The term of office of members of the BOA shall be three years, except where a member is replacing a member whose term has not ended, and shall expire on June 30 of the final year of membership. Members shall receive such compensation and reimbursement of expenses as the Governing Bodies may prescribe.
2. Membership Requirements. Members of the BOA shall be residents of the County and shall be subject to the following conditions:
 - a. Residency. A member or alternate who ceases to be a resident of the Durham City/County Planning Jurisdiction shall be immediately disqualified from membership upon the change of residency and shall resign from the BOA upon such change.
 - b. Property Taxes. County and City taxes must not reflect any delinquencies before an application is submitted. Property taxes must be current both prior to appointment and during the term of the appointment. However, if the appointee's taxes become delinquent during the term of the appointment, the appointee shall be allowed up to 30 days to bring the property taxes current. The Clerk of the appointing jurisdiction shall notify the jurisdiction of any noncompliance with this provision.
 - c. Attendance. Members have an obligation to attend at least seventy-five (75) percent of the total number of regular meetings of the BOA as further prescribed in the BOA's Rules of Procedures, and may be removed by the appointing Governing Body for failure to meet this standard.

D. Function of the BOA

1. The officers of the BOA shall be a Chairperson and Vice Chairperson. They shall be elected by the BOA in accordance with its Rules of Procedure and shall have such duties as prescribed in the Rules of Procedure.
2. The BOA shall adopt Rules of Procedure concerning the conduct of the business of the BOA and other necessary matters. Votes required

to approve matters before the BOA shall be as authorized by statute, ordinance and such Rules.

3. The BOA shall follow the Ethics Policy of the County, as such may be amended from time to time. Annually, members shall complete the disclosure form provided by the County.
4. The BOA shall furnish an annual report to the City Council and to the Board in which the previous year's work shall be summarized and any recommendations for changes in zoning ordinance or policy shall be made.

E. Legal Representation and Liability

The City Attorney's Office and County Attorney's Office shall provide legal support and representation for the BOA on issues arising from actions taken within and on behalf of their respective jurisdictions and for issues that arise before the BOA involving the respective jurisdictions. The City shall be liable for judgments rendered against the City and for actions within the City and the County shall be liable for judgments against the County and for actions outside the City. When both the City and the County are named in any action against the BOA or neither jurisdiction is named but the BOA itself is named, the jurisdiction on whose behalf the contested action was taken shall be responsible for defense and payment, if any, of the claim, and, where necessary, shall cooperate in allowing dismissal of the other jurisdiction. In any action, the offices of the City and County Attorney shall only be responsible for representing their respective jurisdictions, and the BOA actions involving their jurisdictions.

SECTION V. ADMINISTRATION

- A. Establishment of Durham Planning Agency. There is hereby established the Durham Planning Agency, which shall consist of the Director and such subordinate employees as may be funded in the Annual Budget. The Planning Agency is designated as the administrative body for performing the professional planning functions and providing information, reports, and recommendations to the Planning Commission, City and County Managers and Governing Bodies.
- B. Responsibility of Agency/Selection of Director/Responsibilities. The Planning Agency shall provide such management, regulatory, administrative, and support services as are required or provided for under the approved Work Program and Annual Budget.

1. Director. The administrative head of the Planning Agency shall be the Planning Director. The process for the appointment, evaluation and termination of the Planning Director shall be as follows:
 - a. Appointment of the Planning Director. The Planning Director shall be appointed by the City Manager and the County Manager, acting in concert.
 - b. Evaluation and Supervision of Director. The City and County Managers shall meet at least annually with the Director to evaluate the performance of the Director.
 - c. Termination of Director. The Planning Director may be terminated by the City Manager and County Manager, acting in concert.
2. Duties of Director. Pursuant to and consistent with the provisions of the annual Work Program and Annual Budget, the Planning Director shall perform the following duties:
 - a. Appoint, reappoint, assign and reassign all subordinate employees of the Agency and prescribe their duties:
 - b. Coordinate the activities of the Agency in its functions with other local, State and Federal agencies;
 - c. Represent the Planning Agency, Planning Commission, City or County Manager, or Governing Bodies, before any agency or local government, the State, any other State or the United States with respect to:
 - i. Functions, analysis or recommendations of the Planning Agency;
 - ii. Adopted policies of the Planning Commission or Governing Bodies;
 - iii. Other matters as may be directed to the Planning Director from time to time by the Planning Commission, the City or County Managers, or the Governing Bodies.
 - d. Prepare and submit to the Planning Commission and City and County Managers the Agency's Work Program and Annual Budget. The Planning Director will prepare revisions to the Work Program or Annual Budget, as needed for subsequent action by the

Planning Commission, City and/or County Manger(s), or the Council or Board, as may be required.

- e. Perform professional planning duties as administrative head of the Planning Agency, including but not limited to the following:
 - i. Meet with City and County officials and discuss planning issues, including the development of capital improvement and infrastructure plans, and the development of policy options in response to those issues;
 - ii. Meet and discuss with City and County departments and other public agencies or private groups planning programs in process, under consideration, or established as community objectives.
 - iii. Meet and consult with individuals and groups affected by planning issues, programs, and activities, in order to encourage citizen participation in the planning process;
 - iv. Advise the City and County Managers concerning planning issues and activities of City or County government, which have planning implications;
 - v. Provide management, leadership, and oversight for all planning and implementation activities of the Planning Agency;
 - vi. Facilitate the understanding of planning issues and processes by the Planning Commission, City and County governmental agencies and general public.
 - vii. Perform such other duties as may be prescribed by the Governing Bodies or City or County Managers, or which may be required to carry out the terms of this Agreement
- f. Regularly advise the Planning Commission, City and County Managers and Governing Bodies concerning the activities and program progress of the Durham Planning Agency.
- g. Annually complete the disclosure form provided by the County to ensure compliance with the County Ethics Policy.

C. Applicable Policies and Procedures for Employees

1. Joint Employees. The Planning Department staff shall be considered joint City/County employees.
 2. Policies. In order to facilitate administration of the department, the personnel procedures of the City shall be followed by the Planning Agency regarding the selection, advancement, discipline, and dismissal of employees, with the exception of special provisions specified in this Agreements regarding selection and retention of the Planning Director; compensation and expenses; and affirmative action and equal employment opportunity.
 3. Workers' Compensation. Costs and expenses associated with workers' compensation shall be apportioned as follows:
 - a. Unless otherwise specified in the annual budget of the Department, the City shall be responsible for administering the workers' compensation program, for the handling of legal claims associated with such program, and for all expenses related thereto, except as may be specifically excepted below;
 - b. Notwithstanding the above, the administration, legal defense, and other expenses of workers' compensation claims for any employee funded solely by the County to do County work shall be the responsibility of the County;
 - c. Salary continuation or other expenses associated with workers' compensation that are generally included as part of the Planning Department's budget shall be apportioned between the City and the County in the same manner as all other expenses that are part of the Department's budget, with the exception of expenses associated with employees who are funded solely by the County or by the City. In the case of such employees, the jurisdiction paying the employee's salary shall be responsible for any expenses.
- D. The budget and financial procedures of the City shall be followed by the Planning Agency.
- E. Property. The City shall own, and may sell or otherwise dispose of any, or all real and personal property used by the Planning Agency. If such property is sold, the sale proceeds shall be divided between the City and County in proportion to the share of the City and/or County in the original acquisition cost. For example, the disposition proceeds of property purchased and funded by one government shall revert to that government and the proceeds from the sale of any jointly purchased property shall

revert to the City and County in the same proportion as each contributed to the initial purchase on the property. If the proportion of acquisition costs cannot be determined, the disposition shall be in the same ratio as the respective Governing Bodies assume for the expenses of the Department at the time of sale.

- F. Work Program. The annual Work Program shall be prepared and approved as follows:
1. The annual Work Program shall be prepared by the Planning Director.
 2. The Planning Director shall present the annual Work Program to the City and County Managers and to the Planning Commission.
 3. After recommendations have been made by the Planning Commission and the City and County Managers have approved the Work Program, the Planning Director shall present the Work Program approved by the City and County Managers, together with the Planning Commission recommendation, to the Joint City-County Planning Committee. The recommendations of the Joint City-County Planning Committee shall then be forwarded to the Governing Bodies for their action
- G. The annual budget process shall be coordinated with and related to the development of the Work Program. The Planning Director shall prepare and submit the proposed annual budget to the City and County Managers at the time they are reviewing the proposed annual Work Program. Once the City and County Managers have agreed on their Work Program recommendation to the Governing Bodies, the proposed annual budget shall, if necessary, be revised to be consistent with and reflective of the City and County Managers' recommended Work Program. The proposed Annual Budget shall be prepared in a manner and detail consistent with City departmental budget requests

The Planning Director, after obtaining concurrence from the City and County Managers, shall submit the recommended Annual Budget, together with the recommended annual Work Program, to the Joint City-County Planning Committee for their review and consideration along with the recommendations of the Planning Commission concerning the Work Program. The ultimate authority for approval of the budget shall rest with the Governing Bodies. In the event of a conflict between the Governing Bodies concerning the budget or any expense incurred under this Agreement, the Joint City-County Planning Committee shall propose to the Governing Bodies a resolution to the conflict.

H. Method of Funding; Reimbursement of Budget Expenses

1. The expenses of the approved Annual Budget and all other unanticipated expenses shall be apportioned between the City and County on an equal basis, with each contributing half of the cost of shared functions of the Department.
2. The City shall initially pay any expenses incurred under this Agreement, subject, however, to reimbursement by the County in the manner prescribed in the next paragraph. Such procedure may be varied, however, for contracts or other obligations for planning services that are not included within the approved annual budget, or that are invoiced on a separate basis.
3. The County shall pay to the City on a monthly basis, in advance, an amount equal to (i) one-twelfth (1/12) of the County's portion of the approved Annual Budget (such amount to be determined as provided in paragraph 1. of this Subsection); plus (ii) the County's portion of any unanticipated expense incurred during the immediately preceding month (such proportion also to be determined as prescribed in paragraph 1. of this Subsection). The County's payment shall be made by wire not later than 12:00 noon on the first business day of the month.
4. The expenses to be apportioned between the City and County pursuant to paragraph 1 of this Subsection H shall be net expenses. Net expenses shall be determined by subtracting from total expenses (including unanticipated expenses) all fees, charges and other similar revenues received by the City or County from the general public for any service, function or activity which is jointly funded by the City and County under this agreement. If, for any reason, the amount paid by the County to the City pursuant to paragraph 3 of this Subsection for any fiscal year differs from the amount of net expenses for the fiscal year, then the Director of Finance of the City and County shall meet and determine the amount of such difference. In the event of an overpayment, the City shall refund such overpayment to the County. In the event of an underpayment, the County shall pay the amount of such underpayment to the City. This reconciliation shall be completed on or before October 15th following each fiscal year.
5. Either the City or the County may fund services over and above those approved in the Annual Budget as part of the shared functions of the Department. When such additional services are requested by either the City or County and are performed for the benefit of the requesting

government, then the requesting government shall pay the expenses associated with such service(s).

I. Legal Representation and Liability

The City Attorney's Office and County Attorney's Office, respectively, shall provide legal support and representation for the Planning Department and its employees on issues arising from actions taken within and on behalf of their respective jurisdictions and for issues that arise before the various commissions, agencies, and programs that are staffed and directly supported by the Planning Department. Legal support and compensation for claims against Planning Department employees shall be in accordance with the adopted policies and procedures of the respective jurisdiction regarding defense of employees and payment of claims. For the County, such policy is the Durham County Policy of Uniform Standards for Claims Against Employees, Officers and Officials as amended, and for the City such policy is the Resolution Establishing Uniform Standards Under Which Claims or Civil Judgments Sought or Entered Against City Officers and Employees May be Paid. The City shall be liable for judgments rendered against the City and the County shall be liable for judgments against the County. When both the City and the County are named in any action against the Planning Department and/or an employee or neither jurisdiction is named but the Planning Department itself is named, the jurisdiction on whose behalf the contested action was taken shall be responsible for defense of the claim, consistent with the policies identified above, and, where necessary, shall cooperate in allowing dismissal of the other jurisdiction. In any action, the offices of the City and County Attorney shall only be responsible for representing their respective jurisdictions, and for Department employees acting on behalf of their jurisdictions, as detailed above, and shall not be responsible for representation of the other jurisdiction.

SECTION VI. JOINT CITY-COUNTY PLANNING COMMITTEE

- A. There is hereby established a Joint City-County Planning Committee ("JCCPC"), comprised of three members from each Governing Body, and as *ex officio* members, the Planning Director, the City and County Managers, and the Chairperson of the Planning Commission. Any other member of the Governing Body may serve in the absence of a regular member from that body. *Ex officio* members may also designate an alternate to represent them in their absence from regular meetings. Voting members of the JCCPC shall be the Governing Body members, and any alternate substituting for such member, and the Chair of the Planning Commission, and the alternate substituting for the chair.

The function of this committee is to expedite consideration by the two Governing Bodies of planning issues which affect both governments. The committee is advisory to the two Governing Bodies and has no ultimate decision-making power, but is created to help develop consensus between the City and County concerning planning issues for which coordinated decisions must be made.

- B. The duties of the Committee are as follows:
1. Advise the City and County Managers and Planning Director on the proposed Annual Budget and Work Program, and provide appropriate input to the Governing Bodies concerning those matters.
 2. Review proposed planning policies, programs and regulatory requirements that affect both governments; advise the City and County Managers and Planning Director, and provide appropriate input to the Governing Bodies concerning those matters.
 3. Discuss and propose resolution to any disputes arising between the City and County involving the budget, the planning program, or the policy content of the planning program.
 4. Discuss and make recommendations on any other matters concerning City-County Planning as may be deemed appropriate by the Governing Bodies.
- C. The seven voting members shall each January, elect a Chairperson and a Vice Chairperson, alternating the Chairmanship each year between the City and County. The Planning Director shall confer with the Chairperson concerning the agenda of each meeting.

SECTION VII. GENERAL TERMS OF AGREEMENT

- A. This Agreement may be amended from time to time upon mutual consent of the Governing Bodies expressed in writing. The Governing Bodies shall review this Agreement at least once every two (2) years.
- B. It is the intent of the City and County under this agreement for the City to exercise no planning or zoning authority within an Extraterritorial Area (ETA).
- C. Either the City or County may terminate this Agreement for any reason as follows:

1. Termination: This Agreement can only be terminated as of the beginning of any fiscal year, except as provided under paragraph 2, below. Notice to terminate must be given in writing to the other party on or before January 1 immediately preceding the proposed July 1 termination date.
2. This Agreement may also be terminated by either party upon thirty (30) days prior written notice to the other party in the event the City and County are unable to agree upon an Annual Budget or Annual Work Program.
3. Return to ETA Jurisdiction: If this agreement is terminated, the Extraterritorial Area Jurisdiction of the City established by Resolution adopted by the Durham County Commissioners on June 5, 1972 and by Ordinance adopted by the Durham City Council on July 3, 1972, shall be restored to the City by the County in accordance with applicable General Law.

Request for Funding for Durham Literacy Council

The Durham Literacy Council has renewed its request for \$32,500 to provide Pre-GED and GED instruction and work readiness for 90 out-of-school youth between the ages of 16 and 18. Youth will attend classes and tutoring/computer sessions for a total of 16 hours a week. The program will focus on building reading comprehension and basic math skills in order to complete and pass all five GED tests. Students will also participate in computer literacy and career development workshops.

The structure of the program will require a signed contract by the youth and the custodial parent(s). The contract will impose strict attendance and behavior requirements, as well as incentives for student attendance. Each parent and custodial parent must participate in an orientation and sign the contract together.

All youth enrolled in the Youth GED Program will be required to document academic improvements and also must simultaneously participate in job training, have a job, and/or paid internship.

Resource Person(s): Lucy Haagen, Executive Director, Durham Literacy Council

County Manager's Recommendation: The County Manager recommended that the request be approved.

Commissioner Jacobs clarified that this is a renewed request from the Durham Literacy Council. The Literacy Council was unsuccessful in its attempt to obtain funds from the Workforce Development, thus the reason for the renewed request.

Chairman Reckhow further added that the council requested approximately \$30,000 in Workforce Investment Act monies while only \$15,000 was received. The council requested another grant from the Kiwanis Club; however, this request was denied. The lease expense for space has been donated to the council. Chairman Reckhow and the County Manager were aware that Social Services had received funding from the Workforce Investment Act for youth training and education. County Manager Ruffin spoke with Dan Hudgins, Social Services Director, who indicated a commitment to help support the council's request, if possible.

Chairman Reckhow suggested that the Board authorize funding up to \$32,500. The council will not need the entire amount if Social Services can transfer a portion of its funding.

Vice-Chairman Bowser wished to recognize and commend the efforts of the Literacy Council, operating on a limited budget with a reduced staff. He encouraged the other Commissioners to visit the Literacy Council's headquarters to observe the excellent work that is being done. He enthusiastically supports approving this request.

Dr. Lavonia Allison, PO Box 428, Durham, NC 27702, representing the Durham Committee on the Affairs of Black People, expressed appreciation to all County Commissioners who participated in the 68th Annual Founders Anniversary Banquet. She inquired about the procedure for presenting resolutions to persons who have made significant contributions to Durham County. She also expressed support for the Literacy Council's request.

County Manager Ruffin clarified that the council's request for \$32,500 was submitted last spring in keeping with the rules for nonprofit applications. At that time, the Board suspended review pending a determination of disbursement of Workforce Investment Act funds and information regarding a Housing Authority payment. All questions having been answered, the renewed request for funding was made.

Commissioner Heron expressed the opinion that organizations receiving financial support from Durham County should be willing to offer assistance.

Vice-Chairman Bowser added that the Workforce Investment Act funds are independent of Durham County Government.

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve up to \$32,500 to provide Pre-GED and GED instruction and work readiness for 90 out-of-school youth between the ages of 16 and 18.

The motion carried unanimously.

Closed Session

Commissioner Cousin moved, seconded by Commissioner Heron, to move into closed session pursuant to G.S. 143.318.11(a)(6) to consider a personnel matter.

The motion carried unanimously.

Chairman Reckhow announced that no action was required as a result of the Closed Session.

Adjournment

Chairman Reckhow adjourned the meeting at approximately 9:50 p.m.

Respectfully submitted,

Garry E. Umstead, CMC
Clerk to the Board