

### City Council – Action Request Form

**Date:** July 9, 2013

**To:** The City Manager

**From:** Greg Turner, Assistant City Manager

**Council Action Requested:**

Consideration of an Item to Approve an Interlocal Cooperation Agreement with the North Carolina Department of Environment and Natural Resources Pertaining to Land Use Restrictions at City Yard.

**Summary of Information:**

The City is the owner of certain real property located at Salem Avenue, and identified in two deeds recorded in Deed Book 2985, Page 2139 and in Deed Book 2292, Page 2313 in the Office of the Register of Deeds (hereinafter, collectively, the "Property"). Said Property is contaminated with hazardous substances and is part of an "inactive hazardous substance or waste disposal site", as such term is defined in N.C.G.S. 130A-310 et seq. and in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), both as amended. Said Property is also the subject of a remedial action plan, pursuant to which the North Carolina Department of Environment and Natural Resources ("DENR") will remediate a significant portion of the existing contamination on the Property, in exchange for the City's execution of a declaration of perpetual land use restrictions (the "Declaration"). The purpose of the Declaration will be to impose land use restrictions which will preserve and protect the public health, the environment, and the future integrity of the Property, once DENR has finished remediating the site. The Declaration will include restrictions to the effect that:

- The Property will only be used for open space and stormwater retention ponds.
- Activities necessary to maintain security of the Property, prevent human exposure to contaminants, and to prevent erosion of contaminated soil will be permitted only with prior written approval of DENR's Division of Waste Management, Superfund Section (the "Superfund Section").

**Committee**

**Action**

**For**

**Against**

**Remarks:**

- With certain exceptions for utility maintenance, no surface or subterranean construction or improvements will be permitted without the prior written approval of the Superfund Section.
- Surface and groundwater will not be used for any purpose.
- Groundwater wells and similar devices will not be installed for any purpose, other than groundwater quality monitoring, without the prior written approval of the Superfund Section.
- No surface or subsurface earthen materials will be removed from the Property without prior written approval of the Superfund Section.
- The City will submit an annual update to the Superfund Section to certify continuing compliance with the land use restrictions and that the Property has not been subdivided.
- The City will guarantee access to anyone conducting environmental assessment or remediation on the Property, at the Superfund Section's behest.
- Any conveyance of the Property or an interest, therein, by deed, lease, or other instrument will include a provision requiring the transferee to comply with the Declaration, informing the transferee that the Property has been used as a hazardous substance or waste disposal site, and referencing, by deed book and page, the pertinent Notice of Inactive Hazardous Substance or Waste Disposal Site.

Staff recommends execution of the Declaration, in accordance with the requirements for the execution of an interlocal cooperation agreement, the terms of which will be approved by the City Attorney's Office.