

ATTACHMENT A

AGREEMENT WITH CENTER CITY PARK, LLC, WITH REFERENCE TO MAINTENANCE OF CENTER CITY PARK

This Agreement, dated the _____ day of _____, 2014, between the City of Greensboro, a North Carolina municipal corporation (hereinafter "City") and Center City Park, LLC, a North Carolina Limited Liability Company of which Action Greensboro is the sole member, (hereinafter "Center City"):

WHEREAS, Center City as Lessee by lease agreement dated the 1st day of November, 2003, with Downtown Greensboro Renaissance, LLC, and CFREMF Real Estate Holdings I, LLC, is responsible for maintaining Center City Park; and

WHEREAS, the operation and maintenance of Center City Park is an integral part of developing Downtown Greensboro which will greatly benefit the citizens of Greensboro and Downtown growth; and

WHEREAS, Center City has requested a \$233,106 per year contribution of City funds to help with the annual services, operation and maintenance of Center City Park;

NOW THEREFORE, it is hereby Agreed that:

1. Use of City Funds. The City shall contribute funds for maintenance, operation, and services of the Park. An \$83,106.00 allocation from the City of Greensboro General Fund shall be used for expenses normally associated with other parks within the City. An additional \$150,000.00 allocation shall be made from the Business Improvement District Distribution and shall be used, as necessary, for extraordinary expenses associated with Center City Park such as those associated with the operation and maintenance of the fountain and water features. Any balance of said Sales Tax Distribution funds may be used for normal Park expenses.

2. Compliance Requirements. Center City shall:

(a) Contract with properly licensed professionals and contractors to administer and maintain the Park as appropriate. The maintenance of the Park shall be done in a professional and workmanlike manner.

(b) Warrant that the services for maintenance for the park will be done according to law. In such acts Center City will abide by all local, State and federal laws relevant to Minority/Women's Business Enterprises and comply, with reference to its contracting, services, and employment, without discrimination on the basis of gender, race, color, religion, national origin, age, and disability. Center City, and its

contractors and subcontractors shall comply with all applicable provisions of Section 2-117 of the Greensboro City Code (the Minority and Women Business Enterprises Ordinance), and the City's Minority and Women Business Enterprise Plan for Professional Services, as amended from time to time. The failure of Center City to comply with that Chapter shall be a material breach of this contract which may result in the rescission or termination of this contract or other appropriate remedies in accordance with the provisions of that Chapter, this contract, and State law. The final version of all M/WBE documents and information submitted by the operational and maintenance contractors, and approved by the City of Greensboro are a legal and binding part of this contract.

(c) All maintenance services shall conform to all City Ordinances and Codes including but not limited to the Zoning, Planning and Development Ordinances of the City.

(d) None of the funds provided pursuant to this agreement shall be expended for taxes, assessments, or major construction. None of the said funds shall be used for the acquisition of equipment, supplies, apparatus or materials beyond those necessary for the routine maintenance and management of the Park.

(e) Center City warrants, represents and covenants that all information, papers, statements and representations contained in its requests for funds are true.

(f) Center City in their role as manager of Center City Park on behalf of the owners, will waive the event rental fee and corresponding typical hard costs not to exceed \$1000 for two mutually agreed upon city-sponsored Parks and Recreation arts or cultural events per year. These two events should take into consideration the capacity of the park. The two events will not be held on consecutive dates.

- a. If an event exceeds capacity, Parks and Recreation will supply the additional resources needed to execute the event (for example, additional restroom facilities, traffic control, street closing, etc.)
- b. Parks and Recreation will follow the same application process and advance notice required for other park users.
- c. Events will not exceed an eight-hour time frame, from set up to breakdown and cleanup.

3. Lease of Parking Space. It is further agreed that Center City shall be allowed to lease up to nine (9) parking spaces on the bottom level the Church Street Parking Deck for the storage and security of maintenance and event equipment for the Park and, for Event Staff parking. This lease shall be for one

year and renewable at the end of the term as agreed to by the Parties. The Greensboro Transportation Department shall assign the spaces within the Parking Deck and will develop a separate agreement with Center City which will govern and provide parking space use conditions. The lease rental payment shall be \$1.00 per year.

4. Permits. Center City shall be responsible for acquiring all governmental and environmental permits and requirements which shall be furnished by the City in a timely manner.

5. Duration of Agreement. This contract shall run from the date of execution until June 30, 2015, and may be extended from year to year by agreement of the parties.

6. Payment. Payments from the City to Center City shall be made quarterly in advance at the beginning of each of the City's fiscal quarters. The City, in its sole discretion, and without affecting its other rights and remedies, may delay a portion of any or all payments for failure by Center City to submit any accounting, audit, statement, information, record, documentation or report required by this Agreement. The portion of the payment so delayed shall be made within fifteen (15) working days after receipt by the City of such items when Center City has submitted the missing items. If the City does not delay in one instance, the City shall still have the right to delay portions of payments after any other instance of failure by Center City.

7. Reporting. Center City shall account to the reasonable satisfaction of the Director of Parks and Recreation of the City (hereinafter "Director") for all funds received from the City under this Agreement and all expenditures made from such funds. Such accounting shall be in a form reasonably prescribed by the Director, shall include but not be limited to a complete audit, annually, of all funds, said audit to be performed by a person or firm, who is approved by the Director and the City Internal Audit Director, and, when required by the Director of Parks and Recreation, shall include quarterly financial statements with information specified by the City for all obligations and expenditures related to the Project which statements shall be delivered within thirty (30) days after the end of Center City's fiscal quarter. The annual audit shall comply with all applicable Federal and State regulations and procedures required of the City; Federal and State regulations which the City has adopted as its own; any special City regulations, and any and all other generally accepted accounting principles and standards promulgated by the State or nationally recognized standard setting boards and organizations. Center City shall deliver over to the City a copy of all information delivered to it by the auditor without exception, including any Management Letters within ninety (90) days of the end of Center City's fiscal year. The documentation required under this paragraph are the quarterly accountings, the annual audit and the management letter.

8. Repayment of Funds. Center City shall repay to the City the full amount of any of the City's funds not accounted for as set forth in this Agreement.

9. Indemnification. To the maximum extent allowed by law, Center City agrees to indemnify and hold the City harmless from any and all claims, losses, judgments, and causes of action, including but not limited to reasonable attorneys fees, for personal injury or property damage arising out of its operation or maintenance of the park under this Agreement or the use of the parking spaces in the Church Street Parking Deck for storage of event and maintenance equipment.

10. Insurance. Center City warrants and assures the City that it currently has liability insurance in the minimum amount of \$1,000,000.00 to cover all property damage, personal injury, and death risks involved with the activities of this agreement and that such insurance will remain in full force and effect during the term of the agreement.

11. Termination. The City, in its discretion and for its convenience, may terminate this Agreement at any time by giving thirty (30) days written notice of termination to Center City. If termination is for convenience and not due to a breach of contract by Center City, then the City shall pay to Center City a pro rata share of the annual grant to the date of termination to reflect the portion of the services performed and authorized expenditures incurred, if any, by Center City.

12. Assignment. It is understood and agreed that Center City is contracting with third parties for maintenance of, operation of, and programming for the Park. Otherwise, Center City may not assign, transfer or delegate any of its duties under this Agreement without the prior written consent of the City. It shall be within the sole and reasonable discretion of the City whether to consent to such assignment, transfer or delegation. Nothing in this Agreement, including references to subcontracting and assignment, constitutes such consent.

13. Miscellaneous.

(a) Choice of Law and Forum. This agreement shall be deemed made in Guilford County, North Carolina. This Agreement shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice, in Guilford County. Such actions shall neither be commenced in, nor removed to, federal court.

(b) Waiver. No action or failure to act by the City or by Center City shall constitute a waiver of any of their respective rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach by the City or by Center City, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing Contained in this Agreement shall be deemed or construed to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing,

legislative, governmental, or other powers or functions. By the execution of this Agreement the City is not creating a partnership, nor an agency, relationship with Center City.

(d) Severability. If any provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) No Third Party Rights Created. This Agreement is intended for the benefit of the City and Center City, and not any other person, and no rights whatsoever are hereby created in any third party.

(f) Notice. All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Mary Vigue
Interim Assistant City Manager
City of Greensboro
300 West Washington Street
Greensboro, NC 27401

To Center City Park, LLC

Cecelia Thompson
Executive Director
Action Greensboro, Inc.
203 South Church Street
Greensboro, NC 27401

(g) Modification. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the Mayor, City Manager, or a Deputy or Assistant City Manager, and the City Clerk, according to due authorization, signs it for the City.

(h) Entire Agreement. This Agreement contains the entire Agreement between the parties pertaining to its subject matter. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings between the parties, written or oral, expressed or implied, other than as set forth or referenced in this Agreement.

(i) Headings. All headings that appear after section numbers and section letters in this Agreement are included for convenience only and shall not affect the interpretation of this agreement.

The City and Center City have each authorized this Agreement to be duly executed under seal.

CENTER CITY PARK, LLC

By: Action Greensboro, Inc., Its Sole Member

By: _____

Title: _____

Attest: _____

(Corporate Seal)

Secretary

CITY OF GREENSBORO, N.C.

By: _____

Title: _____

Attest: _____

City Clerk

(Municipal Seal)

Approved as to Form

By: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____

Finance Officer

NORTH CAROLINA

ACKNOWLEDGMENT BY CITY OF GREENSBORO

COUNTY OF GREENSBORO

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Greensboro, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 20_____

Notary Public

My commission expires: _____

STATE OF NORTH CAROLINA

ACKNOWLEDGMENT BY CENTER CITY
PARK, LLC

COUNTY OF GUILFORD

I, a notary public in and for the aforesaid county and state, certify that _____ personally appeared before me this day and stated that he or she is _____ Secretary of Action Greensboro, Inc., a corporation, and sole member of Center City Park, LLC, and that by authority duly given and as the act of the corporation, the foregoing agreement with the City of Greensboro was signed on behalf of center City Park, LLC, in its name by its Executive Director, whose name is April Harris, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 20_____.

Notary Public

My commission expires: _____