



MAY 2, 2011
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval of minutes from April 11, 19, & 25, 2011 **(page 4)**

Approval/Amendments to Agenda

I. Consent Agenda:

- A. Adopt – Budget Ordinance Amendment for Purchase of Water Meters for the Beaufort Pointe Development **(page 23)**
- B. Adopt – Budget Ordinance Amendment E911 **(page 25)**
- C. Approve – Purchase Orders over \$20,000 **(page 29)**
- D. Authorize – City Manager to sign Release, Hold Harmless & Indemnification Agreement with Bridge Harbor, LLC (Fireworks) **(page 35)**

II. Comments from the Public:

III. Public Hearing on Zoning: **6:00 PM**

- A. None

IV. Public Hearing – Other:

- A. Consider – North Academy Street Parking Recommendations **(page 38)**

V. Scheduled Public Appearances:

- A. Gary Ceres –Owner, “I Can’t Believe It’s a Bookstore” – Graffiti downtown area
- B. Beth Byrd – WHDA Pickin’ on the Pamlico Alcohol Request **(page 41)**
- C. Bill Forman – Bay Design Group Big P 2008 Project Presentation



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VI. Correspondence and Special Reports:

- A. Memo – Request for Parking Accommodations – Select Bank & Trust (**page 42**)
- B. Memo – Faith, Love, and Victory Church 605 Park Drive (**page 45**)
- C. Memo - Historic Preservation Month (**page 49**)
- D. Memo – Budget transfer (**page 52**)

VII. Reports from Boards, Commissions and Committees:

- A. Human Relations Council (**page 54**)
- B. Washington Tourism Development Authority (**page 57**)
- C. Financial Reports (**emailed as available**)

VIII. Appointments:

- A. None

IX. Old Business:

- A. Approve & Authorize – Director of Parks and Recreation to execute the Waterfront Docking Agreement with Little Washington Sailing Club **and** to negotiate, enter and execute future Waterfront Docking agreements with Little Washington Sailing Club (**page 58**)
- B. Approve – Civic Center Management Agreement (**page 66**)
- C. Award – Contract for Bucket Truck Purchase **and** Approve Purchase Order (\$173,275) (**page 82**)
- D. Award – Contract for Labor & Equipment for the Lighting Retrofit Project (**page 84**)
- E. Adopt – Ordinance Amendment deleting Chapter 38 – Water and Wastewater **and** Adopt Chapter 38 – Water and Chapter 39 – Wastewater/SUO(**page 88**)



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- F. Approve – Alderbrook Pointe Developer’s Sanitary Sewer Force Main, Service and Easement Agreement (**page 142**)
- G. Adopt – Resolution Authorizing Filing of an Application for Approval of a Financing Agreement (**page 165**)
- H. Approve – Warren Field Airport Fire District agreement with Beaufort County (**page 168**)

- X. New Business:
 - A. Adopt – Resolution supporting the nomination of the North Market Street Historic District to the National Register (NR) (**page 178**)
 - B. Approve – Contract Amendment for Holland Consulting Planners for the administrative services with the FY 09 CDBG HD Grant (\$5,000) (**page 190**)
 - C. Adopt- Grant Project Budget Ordinance for Administrative Services with the FY09 CDBG HD Grant (\$5000) (**page 195**)

- XI. Any Other Items From City Manager:
 - A. None

- XII. Any Other Business from the Mayor or Other Members of Council

- XIII. A. Closed Session – Under § NCGS 143-318.11(a)(6) Personnel

- XIV. Adjourn – Until May 16, 2011 at 5:30 pm, in the Council Chambers at the Municipal Building.

The Washington City Council met in a regular session on Monday, April 11, 2011 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Gil Davis, Councilman; Bobby Roberson, Mayor Pro tem; Pete Connet, Interim City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Gloria Moore, Library Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Mick Reed, Police Chief; Susan Hodges, Human Resources Director; Mike Voss, of the Washington Daily News and Delma Blinson of the Beaufort Observer.

Mayor Jennings called the meeting to order and Councilman Moultrie delivered the invocation.

APPROVAL OF MINUTES

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the minutes of March 8, 14, & 28, 2011 as presented.

APPROVAL/AMENDMENTS TO AGENDA

Mayor Jennings made the following changes to the agenda:

1. Delete: Scheduled Public Appearance: Gary Miller, Temporary Cell Tower
2. Move: North Academy Street Parking Recommendations and hold public hearing during regular May meeting.
3. Move: Budget and Capital Project Budget Ordinance Amendment E911 to April Committee of the Whole meeting.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the agenda as amended.

PRESENTATION – WASHINGTON HIGH SCHOOL ALL-STATE WRESTLING CHAMPION

Mayor Jennings honored wrestler Marquin Hill for winning his second straight NCHSAA 3-A State Heavyweight Championship. Mr. Hill was accompanied by his teammates, WHS Principal Russell Holloman and WHS coach Dan Riggs.

CONSENT AGENDA

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council approved the consent agenda as presented, with Councilman Mercer's clarification regarding T.D. Eure.

- A. Declare – Surplus/Authorize Electronic Auction of Transformers and Miscellaneous Items through GovDeals
- B. Adopt – Declaration of Official Intent to Reimburse itself for expenditures related to the building improvements of Impressions facility project incurred prior to the issuance of debt
(copy attached)
- C. Adopt – Capital Project Ordinance for Impressions Building Improvement Project (copy attached)
(copy attached)

- D. Authorize – Police Chief to proceed with the grant application through North Carolina Governor’s Crime Control Commission (\$9,401) City’s match (\$3,136) (**copy attached**)
- E. Authorize – Re-advertisement of RFP for ARRA lighting retrofit (**copy attached**)
- F. Approve – Purchase Orders over \$20,000

*Purchase Order #46607, Utility Service Co., \$31,259, rehab filter media in eight water softeners. \$100,000 was budgeted this year to replace the media in two filters and a like amount planned for the next three years. Rehabbing the filter media vs. replacing saves \$368,741. Account 30-90-8100-7000.

*Requisition #8803, Bobby Murray Chevrolet, \$19,511.56, Chevrolet Extended Cab to replace vehicle 416, recently out of service 1997 Ford F-150 with 159,734 miles. Account 30-90-8140-7400.

*Requisition #8916, Mark Smith Architect, \$24,950, engineering contract for Phase 2 of Festival Park. Account 62-40-6120-0400.

*Requisition #8931, TD Eure Construction Co., \$354,400, construction contract for water front docks, account 10-40-6124-7400. (Clarification from Councilman Mercer -PO for TD Eure should not have a change order that would increase the cost of the purchase order without Council approval).

*Requisition #8966, WIMCO Corp., \$125,700, construction of Festival Park Project, account 62-40-6120-8000.

COMMENTS FROM THE PUBLIC

Mr. Barry Gutfeld discussed the recent homes sales listed in the newspaper. Of the 44 listed transactions, none of the sales were for homes/property within the City limits.

CATHERINE GLOVER – BEER GARDEN REQUEST

Ms. Catherine Glover stated the Washington-Beaufort County Chamber of Commerce’s Washington Summer Festival Committee is requesting permission from the Washington City Council to sell alcohol as part of a beer garden during the 2011 Summer Festival. We have had a beer garden at the past two Summer Festival’s and it was successful and a great addition. We work very closely with the Washington Police Department to ensure everyone is of age and the garden is a relaxing place for adults. We will locate the beer garden in the same place we have the previous two years. The beer garden will be held in conjunction with the festival on June 10th and June 11th with operating hours of 5:00pm to 10:00pm on Friday and 5:00pm-10:00pm on Saturday. We estimate that we will have 500 participants, close to what we had last year. Like many festivals in surrounding counties, a beer garden is an addition to the festival that not only enhances the enjoyment of the weekend but also is seen as a revenue generator. We plan to sell beer and wine. We will provide various food items under the roped off area and are confident with the garden’s location as it will be surrounded by over forty food vendors at the festival. We will also be providing appropriate signage regarding checking ID’s, taxi cab phone numbers, and staying in the roped off area. We will have the proper amount of liability insurance, as we have the previous years, and will make sure Kristi Hardison has all this information. Please know that

we take the responsibility seriously and we work very closely with Chief Mick Reed to ensure safety. Just like other events in downtown Washington that sell alcohol, we will work with city officials to make sure we follow the proper guidelines and safety precautions.

Mayor Jennings inquired if the beer garden concept has had an impact by keeping the alcohol use corralled. Ms. Glover stated she believed that it did keep it better under control. Councilman Mercer stated that he feels the Summer Festival is a family event that includes children and didn't feel alcohol should be included at this event.

By motion of Councilman Davis, seconded by Councilman Moultrie, Council allowed a beer garden to be included as part of the 2011 Summer Festival. Voting for: Davis, Moultrie & Pitt; Against: Mercer & Roberson. Motion carried 3-2.

STEPHEN CUTLER – TROOP 21 REQUEST ASSISTANCE WITH FLAG POLE LOCATED AT THE CHAMBER OF COMMERCE

Mr. Stephen Cutler came forward representing Boy Scout Troop 21 to discuss his Eagle Scout project with Council. Mr. Cutler plans to repair the flag pole located at the Washington/Beaufort County Chamber of Commerce building. A flag can't safely be flown on this pole. He is requesting assistance from Washington Utilities to help him take the flag pole down and once repaired to place the pole back in its proper place.

Councilman Mercer stated this young man has taken on a project to help beautify the Chamber building and if we can work with him with this project then we should. We should assist him and any other young person with projects such as this. Council agreed to allow Washington Utilities to assist with this project.

GARY MILLER – TEMPORARY CELL TOWER(request removed by applicant)

MEMO – COMPREHENSIVE PLAN

(begin memo) The purpose of a Comprehensive Plan is to anticipate growth and to guide this growth in a manner that will provide a community with a balance of land uses that promote economic growth while retaining a superior quality of life component. A Comprehensive Plan is a guide for all future activities by City Government The Comprehensive Plan is the central statement of public policy of the City, and contains the City's goals, objectives, and operating policies for land use and development. The plan, through its goals, becomes a framework for guiding responsible growth and action by the City.

The current "Comprehensive Plan" was developed as an addendum to the City's 2006 CAMA Land Use Plan. One of the major goals for the Planning Board and the Planning & Development Department is to update the current plan into a "true" comprehensive plan. In November 2010, the Council authorized Planning & Development to proceed with a competitive process to secure a qualified firm to assist with the preparation of a Comprehensive Plan for the City of Washington. The City received bids as follows:

RFP Process

1. Clarion Associates, Chapel Hill, NC \$48,000
2. Wooten Company, Raleigh, NC \$66,000
3. Studio Cascade, Spokane, WA \$70,000
4. URS Corporation, Morrisville, NC (phone) \$90,000
5. Holland Consulting \$37,500 (Late Bid)

Planning & Development had budgeted \$30,000 for the development of a Comprehensive Plan for FY 10-11. With the current bids exceeding the budgeted funds there are several options that may be available to the Planning & Development Department:

1. Reject bids and do the project at a later date.
2. Conduct the project over 2 budget cycles budget additional funds to FY 11-12. If this is a possible option continue with items # 3 & 4.
3. Negotiate with the lowest REP bidder to reduce scope of work and reduce the project costs.
4. Reject all bids and negotiate with the lowest late bidder to reduce scope of work and reduce the project costs.

The Planning & Development Department is seeking a recommendation from City Council on how to proceed with the process of developing a Comprehensive Plan for the City of Washington.(end memo)

Council by consensus agreed to continue this request until budget discussions.

MEMO – LOAD MANAGEMENT DEVICE REPORT

Listed herein is the load management switch installation project (by our contractor) activity through March 2011.

Total Load Management Switch Installations	313
Air Conditioner/Heat Pump Control Installations	263
Auxiliary Heat Strip Control Installations	192
Water Heater Control Installations	197
Total Appliance Control Installations for Project	652

MEMO – GREEN FLEETS POLICY ORDINANCE

(begin memo) In June of 2009 Council adopted a Green Fleets Policy Ordinance (attached) recommended by staff. The purpose of the policy was to qualify the City's fleet for economic stimulus funds and other grants to reduce vehicle emissions, reduce dependency on fossil fuel, and reduce emissions. Our green fleets initiative began with the conversion to bio-diesel and usage of E-85 gasoline in flex fuel vehicles. The highway diesel fuel tank was cleaned and transitioned to B20 bio-diesel and a tank installed for E85 gasoline. Our anticipation was for cost and efficiency of fuel to be equal or better than conventional fuels while reducing emissions and be eligible for grants to defray the cost of migrating to these alternative fuels. Our expectations have not been realized: 1) funding was not available for the improvements made to transition to alternative fuels; 2) bio-diesel is more expensive than conventional diesel; 3) some vehicles are unable to operate on bio-diesel; 4) E-85 mileage/gallon loss more than offset the reduced cost per gallon. As a result we currently use B5 bio-diesel and have discontinued the use of E85. We will likely convert back to diesel with next year's fuel bid award. A Green Fleets Review Committee as outlined in the policy was not established. We will continue purchasing the most fuel/cost efficient vehicles suitable for their use, anti-idling efforts, and use reduction in an effort to reduce our cost and emissions. (end memo)

Councilman Mercer stated staff needs to form the committee and let the committee determine if the policy needs to remain in effect. The committee will consist of staff members as well as one Councilmember.

MEMO – POLICE FACILITY GEOTECHNICAL ENGINEERING REPORT

(begin memo) Terracon Consultants, Inc. (Terracon) has completed the geotechnical engineering services for the above referenced project. This study was performed in general accordance with our proposal P72 100275 dated November 18, 2010. A “Geotechnical Engineering Report” was issued on March 30, 2011, Terracon Project Number 72115009. After the report was issued, we were made aware of several changes that had occurred with respect to the project since our initial proposal. The purpose of this addendum is to address those changes and how they affect our initial recommendations.

1. We understand that the building is now planned to be single-story, metal framed with a brick veneer. The loads used on our original report remain unchanged. This change does not affect our original recommendations.
 2. The building was moved approximately 75 feet towards the west with respect to the drawing initially provided to us. The parking lot footprint has also changed, as has the stormwater structures. Due to the relative consistency of the soils encountered in our borings, this change does not affect our original recommendations. A revised drawing is attached with this addendum letter.
- In the documents provided after our report was issued, we were to provide infiltration testing for the proposed BMP stormwater detention structures. Based on the high water table and the surface zone of clay encountered in the borings, the use of a dry’ pond does not appear feasible and alternatives should be explored. In addition, the soils excavated from detention ponds will likely be wet and difficult to adequately compact without extensive drying of off-site borrow to raise site grades should be planned and specified.(end memo)

Councilman Mercer voiced concerns with having to raise the building 2-3ft and the other areas 1-2ft and the cost of the acceptable fill material to bring the site up to the recommended elevation. Mr. Connet stated he has had discussions with the architect and he reconfirmed the budgeted numbers and the increase in the site prep work would not be a budget buster at this time. Mayor Jennings stated that at a previous meeting Council granted the City Attorney authority to file the FAA Release subject to the favorable geotechnical report. Mr. Holscher stated he was comfortable filing the request with the data presented in the geotechnical report.

MEMO – FUNDING FOR MAIN AND RESPESS PUMP STATION

(being memo)This is in reference to the above subject and discussion of the same at the February 28, 2011 Council meeting, as well as previous meetings in the last two (2) years. As you can tell from the copy of the attached April 1, 2011 letter from Daniel M. Blaisdell, P.E., with the Division of Water Quality, we have been awarded a loan of \$612,000 for the replacement of the sewer pump station near the intersection of Main and Respass Streets. This project was included in our most recent addition of the CIP and is also included in the budget you will receive on April 11. This is just provided for your information at this time. (end memo)

HUMAN RELATIONS COUNCIL

- Update -Multicultural Festival
- Board member Castro reported the following:
 - Turnage not available; therefore will host at the Civic Center
 - Meeting planned with the Cultural Program Director from ECU
 - Following the meeting, will set a date during the month of October
- Update -Conclusion of Ed Peed Commemoration

- Update _Recognition of Honoree's & revisited date _date changed to 3-29-11
- Update _'Hope for the Future'
- Still working on proposal to present to City Council
- Discuss _Appreciation letter to be presented to Mayor and City Council members

WASHINGTON TOURISM DEVELOPMENT AUTHORITY

March-April 2011

Tourism Director Lewis participated in a regional heritage tourism workshop presented by Hanbury Preservation. This is part of a 3-region (Northeastern, East, Southeast) effort to earn the federal designation of National Heritage Area for all of eastern North Carolina. The purpose of the workshop was to describe the project, timeline, and opportunities for involvement from communities and community leaders in the region. If successful, the Heritage Area designation will result in federal funds being used to preserve and protect the heritage tourism assets of the region.

As new members of the Historic Albemarle Tour, Washington is now featured as a destination in the 2011 HAT brochures that are in circulation now.

Advertisements appeared in Southern Living, Our State, and Carolina Country for April and May. Response to Southern Living advertising is very high.

New billboard campaign is in place. The feedback on the new, more visible signage has been great. NCDOT signage is anticipated to be in place by the end of April.

We are in the midst of an end-of-year marketing push to increase bookings at the Civic Center through the end of June. This effort includes direct mail, incentive offers, sales calls, and a revamped website. The effort is directed specifically to local (Beaufort and Pitt County) businesses who may or may not have used the Civic Center for meetings.

Students at the ECU School of Business are developing an operations plan for the Civic Center. The findings of their research will be presented later this month. Recommendations/suggestions will be made based on all aspects of operations (staffing, marketing, signage, energy efficiency, technology).

A committee has been formed to explore the development of an inclusive branding campaign for Washington. Partners in the project are WTDA, Washington Harbor District Alliance, City of Washington, Washington-Beaufort County Chamber of Commerce. The committee is presently exploring offerings of agencies who do this type of work in the hopes of selecting an agency by May to conduct the necessary research and brand development.

The WTDA has secured a stop on the Professional Redfish Series fishing tournament scheduled. This Series is based out of Florida. This is the first year that North Carolina has been involved with the tournament. Tournament officials anticipate more than 250 room nights being booked as a result of the tournament. Dates are August 25-28.

The WTDA will be hosting a familiarization tour for local hotel staff and operators on April 19. The busy hotel and travel season begins in April. This is an effort to showcase the area and its attractions to those working directly with the traveling public.

FINANCIAL REPORTS

Councilman Mercer stated the General Fund Revenues vs. General Fund Expenditures, show we are still spending more than we are taking in. Mr. Rauschenbach explained the property tax and sales taxes will come in close to what we had budgeted and he is keeping a close eye on the numbers.

APPOINTMENT - WASHINGTON HOUSING AUTHORITY AND RECREATION ADVISORY COMMITTEE

Mayor Jennings stated the City Attorney made him aware of a discrepancy between the General Statute and the City Code regarding appointments to the Housing Authority. According to NCGS, the Mayor should make the appointments and the City Code states the Council will make appointments. Mayor Jennings will take the recommendation of the Council and make the appointment to the Housing Authority.

A nomination was made by Councilman Moultrie and seconded by Mayor Pro tem Roberson to recommend that the Mayor appoint Rosalind Bailey to the Washington Housing Authority. Mayor Jennings appointed Rosalind Bailey to the Washington Housing Authority to fill the un-expired term of Melanie Everett, term to expire June 30, 2014.

By motion of Councilman Davis, seconded by Mayor Pro tem Roberson, Council appointed E. J. Pazst, Jr. to the Parks and Recreation Advisory Board to fill the un-expired term of Cindy Cochran, term to expire June 30, 2013

APPROVE – NORTH ACADEMY STREET PARKING RECOMMENDATIONS (item moved to May 2nd for a public hearing)

ADOPT – BUDGET AND CAPITAL PROJECT ORDINANCE AMENDMENT E911 (item moved to April 25th for further explanation and review)

ADOPT – BUDGET SCHEDULE FOR FY 2011-

Budget Schedule 2011 - 2012

Week Of	Scheduled Date	Budget Task
10/25/2010	Complete	CIP template worksheet available on Intranet
11/29/2010	Complete	CIP worksheets due back to Finance
1/10/2011	Complete	CIP reviewed by City Manager with Department Heads
1/10/2011	Complete	Revenue Estimate- Finance
1/17/2011	Complete	CIP document to Council
1/24/2011	Complete	Budgetary & Strategic Planning Retreat
1/24/2011	Complete	Council reviews CIP
1/24/2011	Complete	Fees & Charges Schedules Distributed
1/24/2011	Complete	Budget Packets Distributed to Management Team
1/24/2011	Complete	Budget Goals Provided to Management Team
2/14/2011	Complete	Council approval of CIP
2/14/2011	Complete	External Agency Budget Requests
2/14/2011	Complete	Budgets Submitted to Finance
3/14/2011	Complete	Budget Review with Manager- General Fund
3/7/2011	Complete	Budget Review with Manager- Water/Sewer/Storm Water/Solid Waste/Cemetery Funds
3/14/2011	Complete	Budget Review with Manager- Electric Fund
4/11/2011		Manager's Recommended Budget Presented to Council
4/11/2011		Budget Available for Public Viewing at City Clerk's Office
4/25/2011		Budget Workshop- Electric Fund
5/16/2011		Budget Workshop- Benefits & Pay, General Fund
5/23/2011		Budget Workshop- Water/Sewer/Storm Water/Solid Waste/Cemetery Funds
5/23/2011		Public Hearing
6/13/2011		Budget Adopted (complete budget included, not just workshop changes and budget ordinance)

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APPROVE & AUTHORIZE – CITY MANAGER TO EXECUTE CONTRACT FOR PHASE #2 AT THE “FESTIVAL” PARK WITH MARK SMITH ARCHITECT (\$24,950)

Mr. Philip Mobley advised in a memo to Council that Phase # I construction is well underway in the “Festival” Park. The Park planning team has started its work on Phase # 2 and is recommending the services of Mark Smith, Architect for design, bidding/tabulations and communicating with contractors for phase # 2.

By motion of Mayor Pro tem Roberson, seconded by Councilman Davis, Council approved and authorized the City Manager to execute contract with Mark Smith Architect for Phase #2 at the “Festival” Park in the amount of \$24,950.

(copy attached)

APPROVE & AUTHORIZE – DIRECTOR OF PARKS AND RECREATION OR HIS DESIGNEE TO EXECUTE THE WATERFRONT DOCKING AGREEMENT WITH LITTLE WASHINGTON SAILING CLUB AND TO NEGOTIATE, ENTER AND EXECUTE FUTURE WATERFRONT DOCKING AGREEMENTS WITH LITTLE WASHINGTON SAILING CLUB

Mayor Pro tem Roberson voiced concern with having the Parks and Recreation Director’s designee sign the documents, the documents should be signed and negotiated by the Director only. Mr. Holscher stated the Parks and Recreation staff has requested two minor changes to the agreement: (1) email address and (2) lines for initials on certain areas of the agreement regarding acknowledging the reading of the portion of the charges made by SeaTow (Waterfront Docks contracts with SeaTow to perform duties that the Waterfront Docks are unable to perform).

By motion of Mayor Pro tem Roberson, seconded by Councilman Pitt, Council continued this request until the regular scheduled meeting in May to allow the wording to be amended in the agreement and action form.

ADOPT – BUDGET ORDINANCE AMENDMENT FOR BROWN STREET BRIDGE REPLACEMENT

Allen Lewis, Public Works Director stated the project is nearing the bid process and staff realized that a budget ordinance amendment was necessary to allow for all costs and revenues associated with the project. This project is estimated to cost \$600,000 with eighty percent (80%) being reimbursed by NCDOT, thus the \$480,000 revenue line item. The \$20,000 fund balance appropriated from Powell Bill will be added to the \$100,000 already appropriated to complete the twenty percent (20%) match requirement.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council adopted a budget ordinance amendment to allocate funds for the Brown Street bridge replacement project shown on the attached budget ordinance amendment.

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the Estimated Revenues in the General Fund be increased in the following accounts and amounts:

Account	Description	Amount
10-20-3316-3400	DOT Reimbursement- Brown St.	\$480,000
10-00-3991-9910	FB Appropriated- Powell Bill	20,000

Section 2. That account number 10-20-4511-7300, Property Improvements- Brown St. portion of the General Fund appropriations budget be increased in the amount of \$500,000 to provide funds for the completion of the Brown St. bridge replacement project.

Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 11th day of April, 2011.

s/**Cynthia S. Bennett, CMC**
City Clerk

s/**N. Archie Jennings, III**
Mayor

**ADOPT – ORDINANCE AMENDMENT DELETING CHAPTER 38 – WATER AND
WASTEWATER AND ADOPT CHAPTER 38 – WATER AND CHAPTER 39 –
WASTEWATER/SUO**

Mayor Pro tem Roberson and Councilman Mercer noted there are several changes that need to be made to the ordinance and recommended continuing the item.

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council continued the Ordinance Amendment deleting Chapter 38- Water and Wastewater and adopt Chapter 38- Water and Chapter 39 Wastewater/SUO until the regular May meeting.

AWARD – AUDIT CONTRACT FOR FISCAL YEAR 2010-2011

Mr. Rauschenbach stated, last month, the Finance Department went out on bids for an independent auditor to perform the fiscal year 2010-2011 audit. Bids were received March 28, 2011, with 5 certified accounting firms submitting bids. The Request for Proposal stated that the City intended to continue the relationship with the auditor for 5 years on the basis of annual negotiation after the completion of the first year's audit. The RFP stated that all firms should submit two proposals. Required information in the first proposal was used to assess the firm's educational background, technical qualifications, experience, and audit approach. The top three candidates from the 5 proposals were chosen to have the second part of their proposal opened, which was the cost. As detailed in the attached spreadsheet, Martin Starnes & Associate, CPA, PA submitted the lowest price bid and is well qualified to perform the City's annual audit. Therefore, we are recommending that Council award the audit contract for fiscal year 2010-2011 to Martin Starnes, & Associates, CPA, PA in the amount of \$32,000.

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council awarded the audit contract for fiscal year 2010-2011 to Martin Starnes and Associates, CPA, PA located in Hickory, NC at a cost of \$32,000.

(copy attached)

ADOPT -THE RESOLUTION AUTHORIZING THE PRIVATE SALE OF UNIMPROVED REAL PROPERTIES ON KEYSVILLE ROAD TO METROPOLITAN HOUSING AND COMMUNITY DEVELOPMENT CORPORATION, INC. TO CONSTRUCT SINGLE FAMILY HOMES TO LOW TO MODERATE INCOME HOUSEHOLDS UNDER CDBG PROJECT #05-C-1490

The Council Action item states that in 2006, the City of Washington, in conjunction with Metropolitan Housing and Community Development Corporation, Inc. (Metropolitan), was awarded a \$250,000 Community Development Block Grant (CDBG, Housing Development Grant - 05-C-1490) through the N.C. Department of Commerce's Division of Community Assistance (DCA) to support Metropolitan, a non-profit corporation, in developing a new subdivision, Keys Landing. The subdivision will contain single family homes that Metropolitan will sell to low to moderate income households with assistance from grants and other funding sources. The CDBG grant included \$60,000 to reimburse the City for acquisition of the property to be conveyed to Metropolitan for the subdivision development. The remaining CDBG funds will be used for water, sewer and street installation.

On November 13, 2007, the City purchased property for the site of the future subdivision for the established just compensation of \$64,000 plus closing costs. A preliminary subdivision plat for 12 lots and common areas was approved by City Council on September 21, 2009. On October 12, 2009, City Council held a public hearing on its intent to annex a portion of the property. DCA recently reinstated this CDBG grant with a reduced scope and under certain conditions, which are now referred to collectively as Phase One. North Carolina General Statute § 1 60A-279 authorizes a city to convey real property by private sale to a non-profit entity so long as the city is authorized by law to appropriate money to said non-profit entity and the property to be conveyed was not acquired by the exercise of eminent domain. NCGS § 160A-20.1 authorizes a city to contract with and appropriate money to any private entity to carry out any public purpose that the city is authorized to carry out, including community development programs and activities under NCGS § 160A-456. In order to dispose of property by private sale, NCGS § 160A-267 requires City Council, at a regular council meeting, to adopt a resolution or order authorizing an appropriate city official to dispose of the property by private sale at a negotiated price.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council adopted the resolution authorizing the Mayor to negotiate the private sale of the vacant, unimproved real properties described in the attached Exhibit "A" and to execute all documents necessary to convey title in said properties to Metropolitan Housing and Community Development Corporation, Inc., a non-profit corporation, to carry out the public purpose of constructing and conveying single family homes for low to moderate income families.

RESOLUTION AUTHORIZING THE DISPOSITION OF CERTAIN REAL PROPERTIES BY PRIVATE SALE AND APPROVING THE CONVEYANCE OF SAID PROPERTIES PURSUANT TO NORTH CAROLINA GENERAL STATUTE 160A-279 AND 160A-267

WHEREAS, the City recognizes the need to provide for the health, safety, and welfare of all of

its citizens.

WHEREAS, the City participates in Community Development Block Grant housing programs in order to provide, among other things, decent, safe, and sanitary housing opportunities for its citizens.

WHEREAS, in 2006 the City was awarded a \$250,000 Community Development Block Grant Housing Development Grant (hereinafter referred to as “CDBG” and/or “grant”) through the North Carolina Department of Commerce-Division of Community Assistance (hereinafter referred to as “DCA”), denominated FY05 CDBG # 05-C-1490, for the stated purpose of supporting Metropolitan Housing and Community Development Corporation, Inc. (hereinafter referred to as “Metropolitan”) in the development of a new subdivision of single family homes for low to moderate income households on Keysville Road, to improve the quality of life for the City’s residents.

WHEREAS, said grant reserved \$60,000.00 to reimburse the City for the acquisition of property on Keysville Road in partnership with a Community-Based Development Organization (hereinafter referred to as “CBDO”), with said property to serve as the site for the future subdivision contemplated by the grant.

WHEREAS, Metropolitan is the designated CBDO for the above referenced CDBG program and grant.

WHEREAS, on November 13, 2007, the City, under the terms of said CDBG program and grant, acquired the vacant, unimproved real property as more particularly described hereinbelow for the duly established just compensation of \$64,000.00, said conveyance being recorded in the Beaufort County Public Registry in Deed Book 1616, Page 620.

WHEREAS, North Carolina General Statute § 160A-279 authorizes a city to convey real property by private sale to a non-profit corporation if the city is authorized by law to appropriate money to said non-profit corporation and provided that said property to be conveyed was not acquired by the exercise of eminent domain.

WHEREAS, North Carolina General Statute § 160A-279 further requires a city to attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity.

WHEREAS, North Carolina General Statute § 160A-20. 1 authorizes a city to contract with and appropriate money to any private entity to carry out any purpose that a city is authorized to carry out, and the City is authorized by North Carolina General Statute § 160A-456 to engage in community development programs and activities.

WHEREAS, Metropolitan is a non-profit corporation organized and operating under the laws of the State of North Carolina for the purpose of, among other things, promoting homeownership for low to moderate income households in the City and Beaufort County. Under the terms, provisions, conditions, and requirements of said grant and related agreements, Metropolitan will develop the property described herein as a subdivision, construct single family dwellings in the subdivision, and convey said single family dwellings to low to moderate income households.

WHEREAS, said property is surplus property of the City and its City Council desires to dispose of the same.

WHEREAS, the City Council is convened in a regular meeting.

NOW, THEREFORE, the City Council for the City of Washington resolves that:

1. The Mayor of the City is authorized to execute all documents necessary to convey title to the properties described in Exhibit A, which Exhibit A is attached hereto and incorporated herein by reference as if fully set forth, to Metropolitan under said CDBG grant.
2. The above described property is hereby declared to be surplus to the needs of the City.
3. The Mayor of the City is authorized to dispose of the above described property by private sale at a negotiated price.
4. Further consideration for the conveyance contemplated herein are the mutual promises, obligations, and considerations of the various agreements which relate to said CDBG grant, including but not limited to Metropolitan agreeing to put said property to a public use as that public use is defined by the Legally Binding Commitment City of Washington and Metropolitan Housing and Community Development Corporation, Inc. FY2005 CDBG Housing Development Program entered into as of March 15, 2011 by and between the City and Metropolitan.
5. The City Clerk shall publish a public notice summarizing the contents of this Resolution in accordance with North Carolina General Statute § 1 60A-267.
6. The sale contemplated hereunder may not be consummated earlier than ten (10) days from the date of said publication notice.

Adopted this 11th day of April, 2011.

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

AWARD – NEGOTIATED LOW BID FOR INFRASTRUCTURE IMPROVEMENTS FOR KEYSVILLE ROAD PROJECT(CDBG) AND APPROVE RELATED PROJECT BUDGET ORDINANCE AMENDMENT

Pete Connet, Interim City Manager explained that bids were received on May 11, 2010 for improvements to Phase 1 & 2 of the Keysville Road Project - DCA has only approved funds for Phase 1 at this time. Rivers & Associates have negotiated with the lower bidder and reduced the project scope to Phase 1 only. The negotiated bid is now \$189,936.87. Remaining funds available from the previous project budget are \$188,000. With the bid award and \$6500 in engineering fees associated with project inspections – Staff recommends adding \$10,000 to City share, for the Sewer Line Improvements to the original \$60,000 City share which was not previously appropriated.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council adopted the attached Budget and Grant Project Ordinance Amendment to transfer \$70,000 from the Sewer fund to the Keysville Road Subdivision Grant Project to cover related improvements (Total budget \$320,000).

**AN ORDINANCE TO AMEND THE BUDGET & KEYSVILLE ROAD SUBDIVISION GRANT
PROJECT ORDINANCE OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That account number 32-90-6610-9279, Transfer to Waste Water Capital Fund Project, Miscellaneous Department portion of the Sewer Fund appropriations budget be increased in the amount of \$70,000 to provide for transfer of funds to the Keysville Road Subdivision Grant Project.

Section 2. That account number 32-90-9990-9900 Contingency, Contingency Department portion of the Sewer Fund appropriations budget be decreased in the amount of \$19,678.

Section 3. That the Estimated Revenues in the Sewer Fund be increased in the amount of \$50,332 in account 32-90-9991-9910 Fund Balance Appropriated.

Section 4. That the Estimated Revenues in the Keysville Rd. Subdivision Grant Project be increased in the amount of \$70,000 in account 51-60-3352-0000 Transfer from Sewer Fund.

Section 5. That the following accounts and amounts in the Keysville Road Subdivision Grant Project appropriation budget be increased:

Account	Description	Amount
51-60-4930-0400	Grant Administration	\$37,000
51-60-4930-4502	Sewer Improvements	30,000
51-60-9990-9900	Contingency	3,000

Section 6. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 7. This ordinance shall become effective upon its adoption.

Adopted this the 11th day of April, 2011.

**s/Cynthia S. Bennett, CMC
City Clerk**

**s/N. Archie Jennings, III
Mayor**

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council awarded the negotiated low bid for the infrastructure improvements to Burney & Burney Construction, Inc. in the amount of \$189,936.87 contingent upon DCA/CI approval of the program amendment submitted on 3/14/11.

DELIVERY – PROPOSED BUDGET FOR FY 2011-12

Mr. Connet delivered the proposed budget for FY 2011-12 to City Council for their review.

CHANGE OF MEETING DATE

Mayor Jennings requested Council consider changing the May 9th meeting to May 2nd as he would be out of town on May 9th.

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, Council rescheduled the May 9th meeting to May 2nd at 5:30pm in the City Council Chambers.

CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL; 143-318.11(A)(3) ATTORNEY/CLIENT PRIVILEGE AND 143-318.11 (A)(5) POTENTIAL ACQUISITION OF PROPERTY CONCERNING 117 CHARLOTTE STREET OWNED BY MARK ROBINSON AND DEANNA BURELSON FOR RECREATIONAL USES.

By motion of Councilman Davis, seconded by Councilman Moultrie, Council entered into Closed Session under NCGS 143-318.11 (a)(6) Personnel; 143-318.11(a)(3) Attorney/Client Privilege and 143-318.11(a)(5) Potential acquisition of property located at 117 Charlotte Street owned by Mark Robinson and Deanna Burelson for recreational uses.

By motion of Councilman Moultrie, seconded by Councilman Pitt, Council agreed to come out of closed session at 7:10pm.

Franz Holscher, City Attorney read the following statement into the minutes regarding Robert L. Bryan.

STATEMENT OF ROBERT L. BRYAN SETTLEMENT FOR COUNCIL MINUTES

As required by North Carolina General Statute § 143-318.11(a)(3), and to the extent allowed by North Carolina General Statute § 160A-168, the City of Washington announces the terms of a settlement it has entered with Robert L. Bryan who is a former employee and who was injured while working for the City. In accordance with the specific terms of the Agreement of Final Settlement and Release approved by the North Carolina Industrial Commission, the City reached a financial settlement with Mr. Bryan. In conjunction with that settlement, the City received, among other things, a full release of any and all claims against the City, including but not limited to any and all claims under the North Carolina Worker's Compensation Act. This sum represents the settlement of a disputed matter and is not an admission of liability.

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Davis, Council adjourned the meeting at 7:15pm until April 25, 2011 at 5:30pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

**Cynthia S. Bennett, CMC
City Clerk**

The Washington City Council met in a special session on Tuesday, April 19, 2011 at 8:30am at Brown Library. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Gil Davis, Councilman; Bobby Roberson, Mayor Pro tem; Pete Connet, Interim City Manager and Susan Hodges, Human Resources Director.

Mayor Jennings called the meeting to order and Councilman Moultrie delivered the invocation.

CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL

By motion of Councilman Davis, seconded by Councilman Moultrie, Council entered into Closed Session under NCGS 143-318.11 (a)(6) Personnel.

By motion of Councilman Moultrie, seconded by Councilman Pitt, Council agreed to come out of closed session at 4:30pm.

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council adjourned the meeting at 4pm until April 25, 2011 at 5:30pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

**Cynthia S. Bennett, CMC
City Clerk**

The Washington City Council met in a continued session on Monday, April 25, 2011 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Gil Davis, Councilman; Bobby Roberson, Mayor Pro tem; Pete Connet, Interim City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Gloria Moore, Library Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Mick Reed, Police Chief; Philip Mobley, Parks and Recreation Director; Susan Hodges, Human Resources Director; Mike Voss, of the Washington Daily News.

Mayor Jennings called the meeting to order and Councilman Pitt delivered the invocation.

APPROVAL/AMENDMENTS TO AGENDA

Councilman Mercer added: Discussion of Electric outsourcing to the agenda.

Mayor Jennings made the following additions to the agenda: Presentations by Turnage Theater and Washington Harbor District Alliance.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the agenda as amended.

PRESENTATION: TURNAGE THEATER

Charles Smith, President and Bob Shultz, Treasurer, of Turnage Theater Foundation gave a brief history of the Turnage as well as its financial status. The City of Washington has been providing \$100,000 a year for five years to the foundation, but the five year commitment ended in the FY10-11 budget. Mr. Shultz acknowledge the foundation is trying to pay off a \$3million mortgage with a current balance of \$970,000. Mr. Smith stated the theater has been struggling financially ever since it opened its doors. Mr. Shultz explained the foundation is seeking grants from other foundations as well as other possible financial sources to help fund the theater. Mr. Shultz further explained that he doesn't expect the \$100,000 annual support to continue from the City, but would be grateful for any help the city could provide, possibly by helping with the \$30,000 annual utility bill. The foundation currently has a \$78,000 deficit, but with fundraisers and other donations they have raised \$50,000 towards that deficit.

Council stated this request will be discussed during the council's upcoming work sessions on the proposed 2011-2012 budget for the city.

PRESENTATION: WASHINGTON HARBOR DISTRICT ALLIANCE

Chris Furlough and Joe Blaylock, WHDA discussed the waterfront hotel project using New Markets Tax Credit Investment(NMTC). WHDA is requesting the Council allocate \$17,000 to fund a feasibility study for the development of a downtown hotel. In order to get the study underway promptly, WHDA can reprogram money received from corporate sponsors. These funds are allocated to future events but are available to pay the firm selected to conduct the feasibility study until the City has time to allocate funds. If the hotel project is found to be feasible once a developer is identified, the city will be reimbursed the \$17,000.

The City of Washington and WHDA engaged National Development Council(NDC) to find ways to obtain financing for a hotel in the heart of Washington's downtown. WHDA has facilitated discussions between interested parties including: potential developers, property owners, and NDC acting as a conduit for both equity and debt financing. Discussions have indentified a site on the south side Main Street, which included waterfront views. The WHDA Economic Restructuring sub-committee is working to launch a hotel development project.

Council stated this request will be discussed during the council's upcoming work sessions on the proposed 2011-2012 budget for the city.

MEMO – E911 FUND

(begin memo) PSAP revenue and expenses were not budgeted in the E-911 Surcharge Fund this fiscal year. Eligible expenses for this fund were budgeted in the E-911 Department of the General Fund in anticipation of moving E-911 call answering to the County. The transfer occurred in January and the City has received \$43,385 in PSAP funding this year. To utilize the PSAP funding, approximately \$30,000 of eligible PSAP expenses will be transferred from the E-911 Department of the General Fund to the E-911 Surcharge Fund. The budget in the E-911 Department of the General Fund will be reduced by a like amount and this reduction can be transferred to provide additional funding for the Police Station Capital Project.

The purchase of a console by the County for \$52,000 and funding \$40,000 of County 911 salaries were budgeted in the E-911 Department of the General Fund. The County received funding from the 911 Board for the purchase of the console and \$20,000 will be paid to the County for personnel for half the year. The resulting \$72,000 in budget gains could also be transferred to provide additional funding for the Police Station Capital Project.

Fund Balance of approximately \$36,694 will remain in the E-911 Surcharge fund at the end of this fiscal year. \$14,754 which is 50% of the June 30, 2010 fund balance can be used for any Police public safety need in FY 2011 & 2012. The remaining fund balance of \$21,941 will be transferred to the County. The Police public safety needs amount of \$14,754 could provide additional funds for the Police Station Capital Project as well for a combined total of \$116,754 should Council wish to proceed in this manner. (end memo)

Councilman Mercer suggested moving the appropriate monies in the General Fund budget and discussion of the use of these funds for the Police Station project will be revisited at a later date. We should wait until the end of the budget year and review it then.

OUTSOURCING GRASS MOWING

Mr. Connet explained Council had asked him to meet with Bishop Jones about using his people to replace any part-time folks we use to mow grass for the City. He has looked into this and found out that Public Works only uses 2 part-time men in the fall during leaf season, and Parks and Rec. only use one person to help with grounds maintenance on a part-time basis. We also use and pay BCDC for trash

pickup and weeding in the downtown area on a weekly basis. According to what Matt and Phillip have told me.

At this point in time there is little work for Bishop Jones' crew, to do that would not cost the City additional dollars. Bishop Jones also told me that he didn't have any equipment to do the work and that the City would need to provide this to him or lease it to him. The question then is, who pays for the repair of the equipment if it breaks down.

The mowing of the FEMA/CDBG lots is done under contract at \$30 per lot – with the contractor providing his own equipment. Mr. Connet stated there appears to be no cost savings for the City, if that was the goal. If, on the other hand Council feels we need to spruce up some area of town with additional manpower, then Philip has identified some areas that might be assigned to Bishop Jones to maintain.

Councilman Mercer suggested finding a small parcel that Bishop Jones' staff could mow with possibly a push mower that Bishop Jones could purchase and put some of his people to work. Councilman Moultrie stated that if we give Bishop Jones these jobs then we are taking away jobs from current City employees and he is against that. Mayor Pro tem Roberson explained that if Bishop Jones wants to get involved in grass mowing he needs to be competitive in the open market and he is opposed to allowing them the use of City equipment. Mr. Connet will prepare a specific project description for Bishop Jones' staff.

ELECTRIC OUTSOURCING

Mr. Connet updated Council on the information that needs to be forwarded to Ron Elks, GUC. The information from our staff has been received in outline format and will be forwarded to Mr. Elks on Tuesday. Another meeting will need to be held with City staff and GUC staff to determine what areas of operation need to be reviewed for possible proposals. Councilman Mercer discussed connections and disconnections as well as fee collections should not be included in the proposal.

Mr. Connet also updated Council regarding an item that was discussed at the NCEMPA Mayor's Association meeting in Ayden. Mr. Connet reviewed the merger with Duke and Progress Energy. Some of the cities have questioned selling off their debt and getting out of the generation business. NCEMPA has consultants and engineers that have met with the Federal Energy Regulatory Commission in Washington, DC. The Mayor in New Bern has met with the Chairman of FERC as well as some lawyers from Washington, DC. The Mayor of New Bern is asking five cities to participate at \$60,000 each to pay for his experts advice and opinions. There has to be some adverse affect on the City in order for us to intervene on the merger. Keith Hardt, stated there has to be proven fact that there is a negative effect on us as a utility before they will have a hearing. They will not consider anything pre-merger filing.

BUDGET WORKSHOP – ELECTRIC FUND

Mr. Connet summarized the Electric Fund budget for Council. The total revenue expense for this year Electric Fund budget is \$38,136,962 vs. \$39,884,700 current year estimate. This is a \$1.7 million decrease from the FY10-11 budget year. Purchase power of \$29,064,240 vs. sales of \$36,651,859. Council members reviewed their concerns and received clarification on their questions from staff.

By motion of Councilman Davis, seconded by Councilman Pitt, Council agreed to extend the meeting until 8:00pm.

By consensus, Council agreed to the following amendments to the Electric Fund Budget.

1. Long range plan/Sectionalize plan reduced from \$80,000 to \$10,000
2. Defer Terra Ceia/Hwy 32, Phase II project at \$200,000 one more year
3. WHDA - \$66,000 transfer needs to be from the General Fund
4. 5% reduction for “in town” residential rates

Mr. Rauschenach stated several corrections need to be made:

Pg. 239 acct. 35-90-7250-0701 (401k) should be \$5400 not \$8100

Pg. 242 acct. 35-90-7250-1700 –(maint/repair vehicles) showing five vehicles –staff will verify number

Pg. 245 acct. 35-90-8370-0400 – (professional services) \$0 showing should be \$10,000

pg. 245 acct. 35-90-8370-0400 – (Water/electric services) showing \$2800 should be \$28,000.

By motion of Councilman Davis, seconded by Councilman Pitt, Council agreed to extend the meeting until 8:30pm.

CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL

By motion of Councilman Davis, seconded by Councilman Moultrie, Council entered into Closed Session under NCGS 143-318.11 (a)(6) Personnel at 8:00pm.

By motion of Councilman Moultrie, seconded by Councilman Pitt, Council agreed to come out of closed session at 8:25pm.

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Davis, Council adjourned the meeting at 8:30pm until May 2, 2011 at 5:30pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

**Cynthia S. Bennett, CMC
City Clerk**



City of Washington REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 04-20-11
Subject: Adopt Budget Ordinance Amendment for Purchase of Water Meters for the Beaufort Pointe Development.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council adopt a budget ordinance amendment to allocate funds for the purchase of eighteen (18) water meters for the Beaufort Pointe development.

BACKGROUND AND FINDINGS:

As was required by the developer agreement for the Beaufort Pointe development, the developer paid the City \$17,000 for the purchase of water meters for the home sites in this development. We have had a request for water and sewer services at one site and are thus in need of ordering water meters to be stocked for this development. The attached ordinance will transfer funds from the water capital reserve fund, where the \$17,000 was placed when received earlier this FY, into water meter services non-capitalized purchases to allow for the purchase of eighteen water meters at cost of \$150 each. These meters will be stored and only used for Beaufort Pointe.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

___ Currently Budgeted (Account ___) Requires additional appropriation ___ No Fiscal Impact

SUPPORTING DOCUMENTS

See attached Budget Ordinance Amendment.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: *AL* Concur _____ Recommend Denial _____ No Recommendation 4/27 Date
 May 2, 2011
 Page 23 of 198

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That account number 31-90-3991-9910, Fund Balance Appropriated, portion of the Water Capital Reserve Fund revenue budget be increased in the amount of \$2,700.

Section 2. That account number 31-90-4492-3000, Transfer to Water Fund, portion of the Water Capital Reserve appropriations budget be increased in the amount of \$2,700.

Section 3. That account number 30-90-3980-2100, Transfer from Capital Reserve, portion of the Water Fund revenue budget be increased in the amount of \$2,700.

Section 4. That account number 30-90-7250-7000, Non-capitalized Purchases, portion of the Water Meter Services department of the Water Fund appropriations budget be increased in the amount of \$2,700.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

MAYOR

ATTEST:

CITY CLERK



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 2, 2011
Subject: Budget Ordinance Amendment E911
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Budget Ordinance Amendment for PSAP revenue received, transfer eligible PSAP expenses to the E-911 Surcharge Fund, reduce appropriations for County 911 console purchase and salary, and the resulting budget reductions decreasing fund balance appropriated.

BACKGROUND AND FINDINGS:

PSAP revenue and expenses were not budgeted in the E-911 Surcharge Fund. Eligible expenses for this fund were budgeted in the E-911 Department of the General Fund in anticipation of moving E-911 call answering to the County. The transfer occurred in January and the City has received \$43,385 in PSAP funding. To utilize the PSAP funding, \$36,315 of eligible PSAP expenses will be transferred from the General Fund to the E-911 Surcharge Fund.

The purchase of a console by the County for \$52,000 and funding \$40,000 of County 911 salaries were budgeted in the E-911 Department of the General Fund. The County received funding from the 911 Board for the purchase of the console and \$20,000 will be paid to the County for one half year of salaries.

The \$108,315 General Fund budget decreases will reduce fund balance appropriated and the use of these funds for the Police Station project will be revisited at a later date.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Reduces appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Budget Ordinance Amendment, allowable expenses, Memo- E911

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: May 2, 2011 (if applicable)
City Manager Review: JTC Concur 4/27 Date 4/27 Recommend Denial No Recommendation

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the following accounts and amounts in the E-911 Department portion of the General Fund appropriations budget be decreased for allowable PSAP expenses:

10-10-4311-4500	Contract Services	(\$31,022)
10-10-4311-1100	Telephone	(211)
10-10-4311-1400	Employee Devl.	(534)
	Total	(\$31,767)

Section 2. That the following accounts and amounts in the Police Department portion of the General Fund appropriations budget be decreased for allowable PSAP expenses:

10-10-4310-1100	Telephone	(\$ 211)
10-10-4310-1604	Maint. & Repair	(189)
10-10-4310-7402	Installment Purchases	(4,148)
	Total	(\$ 4,548)

Section 3. That account number 10-10-4311-4500, Contract Services, E-911 Department portion of the General Fund appropriations budget be decreased \$72,000 for the County console purchase and one half year County salary.

Section 4. That account number 10-00-3991-9910, Fund Balance Appropriated, portion of the General Fund revenue budget be decreased in the amount of \$108,315.

Section 5. That the Estimated Revenues in the E-911 Surcharge Fund be increased in the amount of \$43,385 in the account E-911 Surcharge Collections, account number 14-70-3255-8900.

Section 6. That account number 14-70-4310-4501, Contract Services – E-911 System, portion of the E-911 Surcharge Fund appropriations budget be increased in the amount of \$43,385 to provide for payment of eligible expenses.

Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

ATTEST:

CITY CLERK

MAYOR



City of Washington
MEMORANDUM

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: April 25, 2011
Subject: E911 Fund

PSAP revenue and expenses were not budgeted in the E-911 Surcharge Fund this fiscal year. Eligible expenses for this fund were budgeted in the E-911 Department of the General Fund in anticipation of moving E-911 call answering to the County. The transfer occurred in January and the City has received \$43,385 in PSAP funding this year. To utilize the PSAP funding, approximately \$30,000 of eligible PSAP expenses will be transferred from the E-911 Department of the General Fund to the E-911 Surcharge Fund. The budget in the E-911 Department of the General Fund will be reduced by a like amount and this reduction can be transferred to provide additional funding for the Police Station Capital Project.

The purchase of a console by the County for \$52,000 and funding \$40,000 of County 911 salaries were budgeted in the E-911 Department of the General Fund. The County received funding from the 911 Board for the purchase of the console and \$20,000 will be paid to the County for personnel for half the year. The resulting \$72,000 in budget gains could also be transferred to provide additional funding for the Police Station Capital Project.

Fund Balance of approximately \$36,694 will remain in the E-911 Surcharge fund at the end of this fiscal year. \$14,754 which is 50% of the June 30, 2010 fund balance can be used for any Police public safety need in FY 2011 & 2012. The remaining fund balance of \$21,941 will be transferred to the County. The Police public safety needs amount of \$14,754 could provide additional funds for the Police Station Capital Project as well for a combined total of \$116,754 should Council wish to proceed in this manner.

E-911 Allowable Expenses
July 1, 2010 - Jan. 4, 2011

Budgeted allowable expenses:

Line Item: 10-10-4311.4500 CONTRACT SERVICES

381.30	CALL ONE (HEADSETS)
18,621.34	CENTURYLINK (ANI/ALI, SERVICE CONTRACT LIFELINE 100 & POWER 911 SYSTEM)
337.04	LANGUAGE LINE SERVICES (INTERPRETIVE SERVICES)
8,021.00	SOUTHERN SOFTWARE (CAD & AMS SOFTWARE CONTRACTS)
3,660.98	DELL (2 CAD WORK STATIONS)
<hr/>	
31,021.66	TOTAL

Other expenses allowed

210.60	10-10-4310.1100 (1 ADMIN PHONE LINE)
210.60	10-10-4311.1100 (1 ADMIN PHONE LINE)
189.00	10-10-4310.1604 (PO#45689 - DELL MONITOR FOR E-911 DISPATCH REPLACED BROKEN ONE)
534.00	10-10-4311.1400 (ON-LINE SPANISH FOR TELECOMMUNICATORS)
4,147.50	10-10-4310.7402 (50% COST OF 2 CAD/RMS COMPUTER SERVERS, PO #46075)
<hr/>	
5,291.70	TOTAL

36,313.36 TOTAL



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 2, 2011
Subject: Purchase Orders > \$20,000 Approval
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council approve the attached purchase orders.

BACKGROUND AND FINDINGS:

Requisition #9009, Concrete Conservation Inc., \$41,925, line sewer man holes. Account 32-90-8210-4500.

Requisition #9062, T A Loving Co., \$3,800,902, storm water drainage improvements. Account 58-90-5710-4500.

Requisition #9071, EMA Resources., \$47,375, sludge removal. Account 32-90-8220-4500.

Requisition #9077, Ramey Kemp & Assoc., \$58,710, remaining engineering work for Brown St. bridge project. Account 10-20-4511-7300.

Requisition #9099, Petroleum Traders., \$120,000, balance of the year gasoline purchases. Account 10-20-4250-3101.

Requisition #9094, T&D Solutions., \$85,493, DOT reimbursable Hwy 17 utility relocation. Account 35-90-7220-0411.

PREVIOUS LEGISLATIVE ACTION

2010-2011 adopted budget and amended budget, TA Loving bid award 11/8/10

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Requisitions

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: May 2, 2011 (if applicable)
City Manager Review: pr Concur 4/27 Date 4/27 Page 28 of 108 Recommend Denial _____ No Recommendation

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:9009
PO #: Not Assigned
User Name: Frankie Buck

Date: 04/14/2011
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$41,925.00

CONCRETE CONSERVATION, INC.
PO BOX 24354
JACKSONVILLE, FL 32210

Ship To:
CITY OF WASHINGTON WAREHOUSE (PW
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions:CALL FRANKIE BUCK PRIOR TO STARTING WORK (252) 943-4460

Quantity	Description	Job Number	Unit Price	Extended
215	LINING SANITARY SEWER MANHOLES WITH SPECTRASHIELD PER SEWER REHAB. STUDY ON BASIN 17 AREA		\$195.00	\$41,925.00

Sub Total	\$41,925.00
Total Tax	\$0.00
Total	\$41,925.00

Account Number	Account Description	Amount
32-90-8210-4500	CONTRACT SERVICES SEWER REHAB	\$41,925.00
	Total	\$41,925.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:9062
PO #: Not Assigned
User Name: Mike Woodward

Date: 04/20/2011

Approved By:
Approved Code: Awaiting Final Approval

Total Amount: \$3,800,902.00

Ship To:
CITY OF WASHINGTON CITY HALL (PW)
102 EAST SECOND ST.
WASHINGTON, NC 27889

T A LOVING COMPANY
PO DRAWER 919
GOLDSBORO, NC 27533

Vendor Instructions: Public Works Department
Allen Lewis
252-975-9302
Do Not Mail

Quantity	Description	Job Number	Unit Price	Extended
1	Stormwater Drainage Improvements		\$3,800,902.00	\$3,800,902.00
Sub Total				\$3,800,902.00
Total Tax				\$0.00
Total				\$3,800,902.00

Account Number	Account Description	Amount
58-90-5710-4500	CONSTRUCTION	\$3,800,902.00
Total		\$3,800,902.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:9071
PO #: Not Assigned
User Name: Adam Waters

Date: 04/21/2011
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$47,375.00

EMA RESOURCES
755 YADKINVILLE ROAD
MOCKSVILLE, NC 27028

Ship To:
CITY OF WASHINGTON WAREHOUSE (PW)
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions: PUBLIC WORKS
WATER RESOURCES
ADAM WATERS
252-975-9310

Quantity	Description	Job Number	Unit Price	Extended
1014000	HAUL AND LAND APPLY 1,014,000 GALLONS OF CITY BIOSOLIDS @ \$0.0425 PER GALLON		\$0.04	\$43,095.00
44	FUEL SURCHARGE PER LOAD FOR WEEK OF 4/4/11 - 4/10/11		\$26.00	\$1,144.00
	BASED UPON ON-HIGHWAY DIESEL PRICE PER GALLON IN THE LOWER ATLANTIC REGION ACCORDING TO THE DEPARTMENT OF ENERGY.			
112	FUEL SURCHARGE PER LOAD FOR WEEK OF 4/11/11 - 4/17/11		\$28.00	\$3,136.00
	BASED UPON ON-HIGHWAY DIESEL PRICE PER GALLON IN THE LOWER ATLANTIC REGION ACCORDING TO THE DEPARTMENT OF ENERGY			
Sub Total				\$47,375.00
Total Tax				\$0.00
Total				\$47,375.00

Account Number	Account Description	Amount
32-90-8220-4500	CONTRACT FOR SLUDGE	\$47,375.00
Total		\$47,375.00

Approval List

Dept Level Approval:	_____
Department Head:	_____
PO Level Approval:	_____
Purchase Order Prep:	_____

Requisition Form

City Of Washington

P.O BOX 1988

WASHINGTON, NC 27889

Requisition #:9099

PO #: Not Assigned

User Name: Mike Whaley

Date: 04/26/2011

Approved By:

Approved Code: Awaiting Final Approval

Total Amount: \$120,000.00

Ship To:

CITY OF WASHINGTON WAREHOUSE

203 GRIMES ROAD

WASHINGTON, NC 27889

PETROLEUM TRADERS

7110 POINE INVERNESS WAY

FORT WAYNE, IN 46804

Vendor Instructions: Warehouse for Garage, Mike Whaley. 252-975-9308. DO NOT MAIL.

Quantity	Description	Job Number	Unit Price	Extended
1	E10 Gasoline for Tank #1 and Tank #3 for the balance of this budget year. Estimate 4 deliveries.		\$120,000.00	\$120,000.00
Sub Total				\$120,000.00
Total Tax				\$0.00
Total				\$120,000.00

Account Number	Account Description	Amount
10-20-4250-3101	GASOLINE PURCHASES	\$120,000.00
Total		\$120,000.00

Approval List

Dept Level Approval: _____

Department Head: _____

PO Level Approval: _____

Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:9094
PO #: Not Assigned
User Name: Nicole Williams

Date: 04/26/2011
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$85,492.60

T&D SOLUTIONS, LLC
PO BOX 1194
ALEXANDIA, LA 71315

Ship To:
CITY OF WASHINGTON CITY HALL (ELEC)
102 EAST 2ND STREET
WASHINGTON, NC 27889

Vendor Instructions: Electric Department
Nicole Williams
975-9303

Quantity	Description	Job Number	Unit Price	Extended
1	Invoice T19529 US Hwy 17		\$85,492.60	\$85,492.60
Sub Total				\$85,492.60
Total Tax				\$0.00
Total				\$85,492.60

Account Number	Account Description	Amount
35-90-7220-0411	US HWY 17 RELOCATION-2510C	\$85,492.60
Total		\$85,492.60

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Philip Mobley, Director, Parks and Recreation *pm*
Date: May 2, 2011
Subject: Authorize the City Manager to sign Release, Hold harmless and Indemnification Agreement with Bridge Harbor, LLC (Fireworks)
Applicant Presentation: None
Staff Presentation: Philip Mobley

RECOMMENDATION:

I move that City Council authorize the City Manager to sign the Release, Hold Harmless and Indemnification agreement with Bridge Harbor, LLC.

BACKGROUND AND FINDINGS:

On July 4, 2011 the City of Washington will be celebrating the evening on the waterfront with a fireworks show for the public.

Mr. Parker Overton, of Bridge Harbor, LLC, is allowing this property to be used this year for the City's fireworks show for the public.

This agreement is to release, hold harmless and indemnify the Bridge Harbor, LLC.

All City departments in connection with this event have signed off on the location. This is the old location used in past years.

PREVIOUS LEGISLATIVE ACTION

On July 26, 2010 City Council Authorized the City Manager's signature from the Release, Hold Harmless and Indemnification agreement with Bridge Harbor, LLC for the July 4, 2010 fireworks display.

On March 9, 2009 City Council Authorized the City Manager to sign the Release, Hold Harmless and Indemnification agreement with Bridge Harbor, LLC for the July 4, 2009 fireworks display.

On March 17, 2008 City Council Authorized the City Manager to sign the Release, Hold Harmless and Indemnification agreement with Bridge Harbor, LLC for the July 4, 2008 fireworks display.

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: _____ Concur _____ Recommend Denial _____ No Recommendation _____ Date

**NORTH CAROLINA
BEAUFORT COUNTY**

RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

WHEREAS, the City of Washington (“City”) has contracted with East Coast Pyrotechnics, Inc. to provide a fireworks show for the public on July 4, 2011;

WHEREAS, the City has requested Bridge Harbor, LLC to allow its property to be used in conjunction with the above; and

WHEREAS, Bridge Harbor, LLC desires to permit its property to be used in conjunction with the above upon the condition that the City furnish it with this Release, Hold Harmless and Indemnification Agreement (“Release”).

NOW THEREFORE, know all persons by these presents, upon execution of this Release and in consideration of the foregoing, which consideration is acknowledged to be sufficient and legally binding, the City does hereby agree to unconditionally release, hold harmless, indemnify, acquit and forever discharge Bridge Harbor, LLC, and its respective agents, representatives, insurers, successors, and assigns, and each of them, respectively, of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, attorney’s fees, and consequential, general, special, and punitive damages or liabilities, known or unknown, on account of, or in any way related to or growing out of the use of Bridge Harbor, LLC’s property to produce a firework show for the public on July 4, 2011 as more particularly described hereinabove.

IN WITNESS WHEREOF, the City has caused this instrument to be executed in its name by its Interim City Manager, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given.

This the _____ day of _____, 2011.

CITY OF WASHINGTON

By: _____(Seal)
Peter T. Connet, Interim City Manager

ATTEST:

Cynthia S. Bennett, City Clerk

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, _____, a Notary Public of the State and County aforesaid, do hereby certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is the City Clerk of the CITY OF WASHINGTON, a body politic and corporate, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Interim Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and Notarial seal, this the ____ day of _____, 2011.

NOTARY PUBLIC

My Commission expires: _____.



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Peter T. Connet, Interim City Manager
Date: April 27, 2011
Subject: North Academy Street Parking Recommendation
Applicant Presentation: N/A
Staff Presentation: Peter T. Connet, Interim City Manager

RECOMMENDATION:

I move that Council approve the following items to address the parking congestion issues on North Academy Street between East Second Street and East Main Street:

1. Parking on the west side of North Academy Street between East Second and East Main be marked as "no parking" zone.
2. Direct Public Works Department to mark all curbs at the intersections of East Main and North Academy, and East Second and North Academy Street, 25 feet back from the intersecting curb-lines.
3. The yellow curb on south side of East Second Street will be removed, except for that area needed as site distance from its intersection with North Academy.
4. Mark all curbs on North Academy five feet each side of the driveway entrances.
5. Create/mark a new crosswalk on East Second Street from the FCC parking lot to the front entrance area of FCC. Erect Pedestrian Crossing signs as needed on East Second Street.

BACKGROUND AND FINDINGS:

Mr. Connet and staff have received several correspondences from Mr. Tim Prichard and the First Christian Church regarding parking congestion on North Academy Street between East Main and East Second Street. The Public Works Director and Planning Director have met with Mr. Prichard regarding his concerns. The Police & Fire Departments have visited the area to see firsthand the congestion/parking concerns in which Mr. Prichard has brought to the City's attention. Based on written information provided, onsite inspection, and meetings with Mr. Prichard the recommendation dated 3/29/11 from staff are attached and made a part of the action request.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

_____ Currently Budgeted (Account _____) _____ Requires additional appropriation _____ No Fiscal Impact

SUPPORTING DOCUMENTS

1. Memorandum from Interim City Manager to Council dated March 29, 2011
2. Email from Fire/EMS Chief Rose to Manager

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: PRC Concur _____ Recommend Denial _____ No Recommendation 4/27 Date

Copy

April 21, 2011

Peter Conant
Interim City Manager
City of Washington

Dear Mr. Conant,

We would like to propose the following solution to the parking problem on North Academy Street. This is very much along the lines of your proposal to the City Council. In fact, it is almost identical but for a few details more clearly spelled out.

The proposal is as follows:

- a) All on-street parking be eliminated on the west side of North Academy and marked as a 'no parking' zone with the curbing painted yellow from East 2nd Street to Main Street.
- b) All the Handicap parking spots (4 spots) be eliminated from Academy Street and moved to E. 2nd Street in front of the church (3 spots). This would allow approximately 18 public parking spots on the east side of Academy for residents, bed & breakfast, guests and church parking.

This aspect of the proposal is absolutely critical to our support because there are approximately 10 parking spaces on the west side of Academy being lost, and these are heavily used by residents on Academy. Thus, for general parking on Academy, we need all 18 spots on the east side.

- c) Yellow curbs to be marked at east side driveways (5 feet on each side) and at the intersections of E. 2nd Street and Main Street (25 feet from intersections). This allows large vehicles a clear turning radius on to or out of North Academy.
- d) That the yellow 'no parking' designation be removed on E. 2nd Street in front of the church and 3 Handicap parking spaces be put on E. 2nd Street in front at this spot.
- e) In line with your suggestion, painted pedestrian crosswalks be placed across E. 2nd Street in front of the church leading to their parking lot. In looking at the site, 2 crosswalks makes a lot of sense, one leading to their rotunda driveway and one leading to the sidewalk on the west side of the church. This sidewalk leads to the church offices and the Scout room. So it is a busy crossing. The rotunda driveway leads to an entrance and a handicap ramp. Any painted crosswalk should not be placed so as to interfere with the 3 handicap parking places in front of the church.

The above suggestions are very much in agreement with your proposal. Nearly everyone would get a lot of what they want, including the residents, the church, the Fire Chief, Public Works, etc. No one is getting everything they want. But they all can't. The important thing is that this would clear up most of the congestion and make parking and the flow of traffic much better, and the street would be safer.

I have spoken to nearly all the residents of North Academy and all that I have talked to are in complete agreement with this proposal and will support it. I hope it is agreeable to the church.

A map of this proposal is attached.

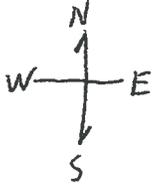
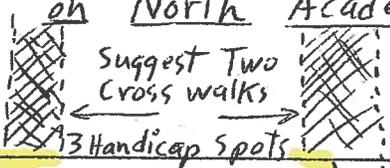
Sincerely,


James Coke and Doris Schneider, 323 E. 2nd Street, corner of North Academy and E. 2nd Street

Proposed Parking Map on North Academy

(Not shown)
(To Scale)

← 2nd Street →



Drive

House

Drive

Drive

House

Drive

Vacant Lot

Drive

House

Drive

House

No parking This side of Academy

→ N Academy Street →
(Two way Traffic)

Public parking (church, Bed + Breakfast, Residents etc)

First Christian Church

Drive

House

Carriage House

Drive

← 18 spots →

Bed + Breakfast

← Main Street →



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Beth Byrd, Director Washington Harbor District Alliance (WHDA)
Date: April 20, 2011
Subject: Pickin' on the Pamlico Alcohol Request
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that Council allow the sale and consumption of alcohol at WHDA's 6th Annual Pickin' on the Pamlico on August 20th, 2011.

BACKGROUND AND FINDINGS:

WHDA is hosting its 6th Annual Pickin' on the Pamlico on Saturday, August 20th. This event is a fundraiser that supports the efforts of WHDA. Last year the Pickin' on the Pamlico infused over \$27,000 into the local economy, of which over \$6,300 was used by WHDA in its efforts to further revitalize Washington's Harbor District.

WHDA requests Council approve the sale and consumption of alcohol at Pickin' on the Pamlico. The organization utilizes trained bartenders and has a controlled area where alcohol is to be served. This is a ticketed event with an anticipated crowd of around 500 people. Generally no children attend, because of the ticket price. A special events permit has been granted through Kristal Hardison at Washington Parks and Recreation.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 4/27 Date Concur , Recommend Denial No Recommendation ATC



City of Washington

P. O. Box 1988, Washington, NC 27889-1988

MEMORANDUM

DATE: April 20, 2011

TO: Mayor and City Council

FROM: Allen Lewis 
Public Works Director

SUBJECT: Request for Parking Accommodations – Select Bank & Trust.

We are in receipt of a letter, copy attached, from Mr. Clyde F. "Sonny" Swanner with Select Bank & Trust located at 155 North Market Street, Suite 103. As you can tell from the letter, Mr. Swanner is primarily requesting some changes in parking in and around their newly opened branch at this location. If the timed parking is something you wish to favorably consider, I would recommend a one (1) hour maximum for the parking along the south of 2nd Street from its intersection with Market Street, eastward for a distance of approximately one-hundred (100) feet. This will more or less mirror the parking on the north side of 2nd Street in front of City Hall. I would recommend the same maximum in the parking lot behind building if you wish to favorably consider that as well.

The request for the handicapped parking space is no longer an issue. The spot he was requesting is already marked for handicapped parking.

We already have plans to restripe the parking lot as he requested. We will try to work this into our schedule by the end of July. As for restriping the intersection and directional arrows at 2nd and Market, this was just done this past fall upon completion the resurfacing of Market Street between 2nd and 3rd. As such, I do not recommend this being redone at this time.

/al

Attachment



P.O. Box 8166 • Greenville, NC 27835
3600 Charles Boulevard • Greenville, NC 27858

April 4, 2011

Mr. Allen Lewis
Public Works Director
City of Washington
102 East Second Street
Washington, N.C. 27889

Dear Mr. Lewis

Re: Consideration of parking accommodations – Select Bank & Trust

Thank you for your time recently in discussing potential parking modifications that might possibly be considered to allow greater convenience and accessibility to our new branch location in Washington, located at 155 North Market Street. While Select Bank & Trust is new to Washington we are a community bank founded with a vision of serving the citizens of Eastern North Carolina through "A Common Sense Approach to Banking". I also grew up in Beaufort County and have been a City resident since 2004. As you may know, this is my home.

There are a few items we would ask you to consider. Our motivation is aimed at promoting ease of parking and accessibility for customers. If possible, we would humbly request consideration of the following items, to the extent that you may be able to help us.

- If possible, consider establishing a 30 minute or 1 hour parking corridor on East Second Street, from the Eastern boundary of the City parking lot up to and possibly through the intersection of Second and North Market Street, with our office being in the Southeast corner the of same intersection (across the street from the City offices).
- Consider establishing perhaps three to four 30 minute to 1 hour parking spaces within the City parking lot among the nearby spaces behind our building
- Relocate a handicapped parking space from the middle row of the City parking lot, near the sidewalk/median next to Second Street, to the line of spaces that back up to our building. This would be directly beside the City payments drop box. It could accommodate a standard vehicle or a handicapped

van, being beneficial not only for bank patrons but also for people doing business at the City offices. It appears that this may have been a handicapped parking space previously.

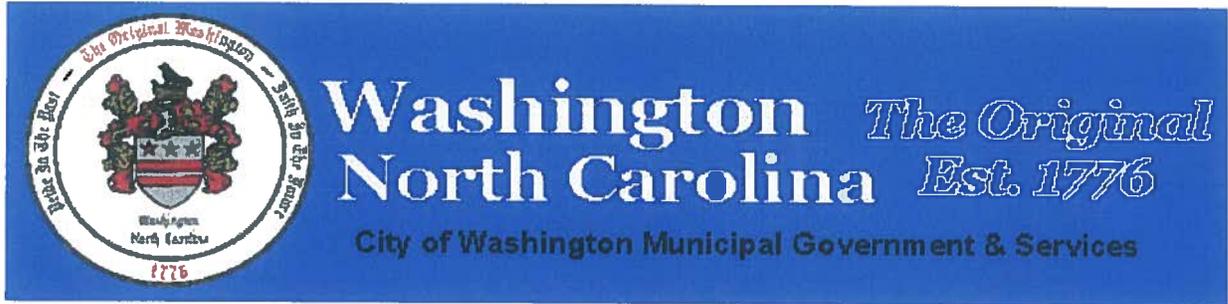
- Consider repainting the crosswalks and directional traffic arrows at the North Market and Second Street intersection, particularly the ones on Second Street.
- Restriping parking lot lines in the City Parking Lot behind the building. This could improve appearance and promote use thereof.

Any assistance that you could render to us in possibly making these improvements would be greatly appreciated. We are excited to be making a commitment to doing business here in Washington and appreciate your help in allowing us to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "Clyde F. Swanner, Jr.", with a large, stylized flourish at the end.

Clyde F. Swanner, Jr.



MEMORANDUM

DATE: April 20, 2011
 TO: Mayor Jennings & Members of City Council
 FROM: John Rodman, Planning & Development
 RE: Faith, Love, and Victory Church
 605 Park Drive

Proper notice of the formal complaint for the conditions of the structure located at 605 Park Drive (the proposed Faith, Love, and Victory Church) has been served and the proof of service has been returned. Based on the conditions of the structure and the findings of fact the said structure has been determined to be unfit for human habitation and deemed dilapidated. An order to remove or demolish the structure and fill materials within sixty (60) days has been served on the property owner. A timeline for the compliance of the structure is as follows:

Complaint	1/30/2011
Notice of hearing	2/1/2011
Proof of service	2/9/11
Hearing	2/15/2011
Order to demolish	3/2/2011 (gave 60 days from date of signature)
Proof of service	3/9/2011
Sixty (60) days expire	5/9/2011

If Faith, Love, and Victory Church fails to comply with the order to demolish within the specified timeframe the Planning and Development Department will submit to City Council at its next regular scheduled meeting an ordinance ordering the City to have said structure brought into compliance with the order. The costs of any removal or demolition done by the City shall constitute a lien against the subject property and shall also constitute a lien on any other real property of the owner within the City limits or within one mile thereof except for the owner's primary residence.

If you have any questions or I may assist you in any way please don't hesitate to let me know.



City of Washington

P. O. Box 1988, Washington, NC 27889-1988

NOTICE OF DECISION FINDINGS OF FACT & ORDER TO DEMOLISH February 15, 2011

Love, Faith and Victory Mission, Interdenominational, Inc.
d/b/a Love, Faith, & Victory, Inc.
PO Box 1475
Washington, NC 27889

COPY

Re: 603 and 605 Park Drive
Parcel No.: 15-004551
PIN No.: 5685-17-2372

This matter coming on to be heard and being heard before the undersigned on February 15, 2011 at 10:00 am at 102 East Second Street in Room 115 and the undersigned, having reviewed the file; carefully inspected the premises; heard the testimony; and reviewed the evidence, arguments, and other matters presented at the hearing, hereby makes the following findings of fact and conclusions.

1. On or about November 2, 2010, the undersigned inspected the structure located on the above referenced property, which structure appeared to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floor, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes and, as a result of said inspection and appearance, found said structure to be unsafe. A notice of the dangerous character of said structure was affixed to a conspicuous place on the property, condemning said structure as unsafe.
2. The owner of the above property and/or structure failed to take prompt corrective action following the posting of said notice of condemnation.
3. Proper notice of the formal complaint dated February 1, 2011 and stating the charges as well as containing a notice of this hearing was served upon the above owners of and parties in interest in the above property.
4. The following persons were present for said hearing on February 15, 2011: Alonzo St. Clair, Catherine St. Clair, Ruth Royster, Terris Thigpen, and Kinney Moore, representing the property owners, and Allen Pittman as well as Clarence Gray, representing the City of Washington.
5. The following conditions currently exist on the subject property, including structure:

- a. Especially dangerous to life because of
 - i. Liability to fire
 - ii. Bad condition of walls
 - iii. Overloaded floors
 - iv. Defective construction
 - v. Decay of structure/walls/flooring/foundation
 - vi. Unsafe wiring or heating system
 - vii. Inadequate means of egress
 - viii. Or other causes: (see below including but not limited to m).
- b. Constitutes a fire or safety hazard.
- c. Dangerous to life, health, or other property.
- d. Is likely to cause or contribute to blight, diseases, vagrancy, or danger to children.
- e. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.
- f. Defects increasing the hazards of accidents or other calamities.
- g. Lack of ventilation, light, or sanitary facilities.
- h. Unsafe, unsanitary, or dangerous conditions.
- i. Attracting insects or rodents.
- j. Conditions creating a fire hazard.
- k. Inadequate means of access.
- l. Dangerous, injurious, or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the people of the City of Washington.
- m. Other: Severe erosion and, based upon a letter dated July 29, 1998 from Frank Pajaro, PE, deficiencies in the structural integrity of the structure now exist.
- n. Imminent danger to life or other property.

ORDER

Based upon the foregoing findings of fact and conclusions, you are hereby ordered, pursuant to North Carolina General Statute § 160A-429, to remove and demolish said structure and fill materials within sixty (60) days.

OTHER

Under North Carolina General Statute § 160A-431, if the owner of a structure fails to comply with an order issued pursuant to North Carolina General Statute § 160A-429, the owner shall be guilty of a class 1 misdemeanor.

In addition, if you fail to comply with this Order within the time specified herein, the City may, pursuant to North Carolina General Statute § 160A-432, cause the structure to be removed or demolished. The amounts incurred by the City in connection with the removal or demolition of the structure shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of Chapter 160A of the North Carolina General Statutes. If the structure is removed or demolished by the City, the City shall sell the usable materials and any personal property, fixtures, or appurtenances found in or attached to the structure. The City shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the

sale shall be deposited with the Clerk of the Superior Court where the property is sold and shall be disbursed by the Court to the person found to be entitled thereto by final order or decree of the Court.

Pursuant to North Carolina General Statute § 160A-432, the amounts incurred by the City in connection with the removal or demolition of the structure shall also be a lien against any other real property owned by the owner of the structure and located within the City limits or within one mile of the City limits, except for the owner's primary residence.

You must obtain all permits and approvals required by the Washington City Code and/or North Carolina state law before commencing the work required hereunder. If you have any questions or if I may assist you in any way, please feel free to contact me.

Respectfully,



Allen Pittman
Senior Building Official
City of Washington
PO Box 1988
Washington, NC 27889
(252) 975-9334

cc: Mr. John Rodman, Director of Planning and Development
Mr. Franz Holscher, City Attorney

File



CITY OF WASHINGTON
DOWNTOWN DEVELOPMENT □ HISTORIC PRESERVATION

MEMORANDUM

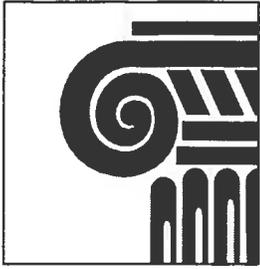
DATE: May 2, 2011
TO: Mayor and City Council
FROM: Bianca Gentile, Community Development Planner
SUBJ: Proclamation: Historic Preservation Month

Citizens in Washington, NC will join thousands of individuals across the country to celebrate National Preservation Month this May. *"Celebrating America's Treasures"* is the theme of the month-long celebration.

Since the National Trust for Historic Preservation created Preservation Week in 1971 to spotlight grassroots preservation efforts in America, it has grown into an annual celebration observed by small towns and big cities with events ranging from architectural and historic tours and award ceremonies, to fundraising events, educational programs and heritage travel opportunities. Due to its overwhelming popularity, in 2005, the National Trust for Historic Preservation extended the celebration to the entire month of May and declared it Preservation Month to provide an even longer opportunity to celebrate the diverse and unique heritage of our country's cities and states and enable more Americans to become involved in the growing preservation movement.

Here in Washington Preservation Month 2011 will be observed with the following actions:

1. Proclamation to declare May Preservation Month by Mayor N. Archie Jennings, III May 2nd at 5pm.
2. Rena K. Terrell award will be presented on a weekly basis to residential or commercial properties in Washington's historic district that reflect the on-going maintenance efforts, a compatible addition, rehabilitation and restoration, and the good neighbor award- reflecting compatibility and harmony with existing neighbors.
3. Preservation briefs and Public Service Announcements aired on public access channel.



CITY OF WASHINGTON
DOWNTOWN DEVELOPMENT □ HISTORIC PRESERVATION

MEMORANDUM

Preservation Month Proclamation

WHEREAS, historic preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and

WHEREAS, historic preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and

WHEREAS, "Celebrating America's Treasures" is the theme for National Preservation Month 2011, cosponsored by City of Washington, Scott Campbell, Century 21 and the National Trust for Historic Preservation.

NOW, THEREFORE, I, Mayor N. Archie Jennings, III, do proclaim May 2011 as National Preservation Month, and call upon the people of Washington, NC to join their fellow citizens across the United States in recognizing and participating in this special observance.

N. Archie Jennings III, Mayor

Attest:

Cynthia S. Bennett, Clerk

The month of May is **National Preservation Month** and this year's theme is

“Celebrating America’s Treasures.”

Historic preservation is recognized as an effective tool for managing growth, revitalizing neighborhoods, fostering local pride and maintaining community character. Washington’s residential and commercial historic districts are integral in how the citizens of Washington and Beaufort County work, recreate and live.

We shop in beautiful, architecturally interesting stores. We work in offices with charm and character, and we walk and stroll down streets that are shaded by trees covered in Spanish moss that are over 100 years old. Our historic districts afford all of our citizens a quality of life that is the envy of many who come to feel part of a lovely southern town.

These important districts also significantly contribute to the atmosphere that draws visitors and tourists, and the positive economic impact that occurs from those visits.

The City of Washington is pleased to recognize and celebrate the contributions made by dedicated owners of residential and commercial properties, as well as municipal properties, in Washington’s Historic District during May, National Preservation Month.

Each week during National Preservation Month, The City of Washington, the Historic Preservation Commission and Scott Campbell, an agent with Century 21 The Realty Group, will choose a residential or commercial property in Washington’s historic district that reflects the on-going maintenance efforts, a compatible addition, rehabilitation and restoration, and the good neighbor award- reflecting compatibility and harmony with existing neighbors.

Property owners will be awarded the Rena K. Terrell cups, dedicated to the memory of a charter member of the Washington Historic District Commission. Mrs. Terrell was active in promoting historic preservation. She was a member of the Historic Preservation Foundation of North Carolina, the National Trust for Historic Preservation and the City’s official representative on the Board of Directors of the Historic Albemarle Tour. The committee feels that it is most appropriate that these awards are made in Rena’s memory since she was devoted to preserving our historic resources and promoting our city. Rena K. Terrell Cup recipients will also be given the choice of a membership to Preservation North Carolina, an organization that promotes and protects the buildings and landscapes of our state’s diverse heritage, or, a contribution to the landscaping stock in one of our public green spaces. Additional contributions are sponsored by REALTOR, Scott Campbell, with Century 21 The Realty Group.

“The City of Washington appreciates the efforts by all homeowners and business owners to maintain their properties,” said John Rodman, Planning and Development Director. “Their commitment to preserving their property or adding to it contributes greatly to the charm and historic character of our community.”



City of Washington
MEMORANDUM

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 2, 2011
Subject: City Hall Maintenance Budget Transfer

The Budget Officer transferred \$11,000 of funding between divisions of the General Fund to complete the maintenance project for the exterior of City Hall. The maintenance includes cleaning and painting exterior metal, pressure washing the building, and painting the balcony.

NC GS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes. Transfer request is attached.

Request for Transfer of Funds

Date: 4/26/2011

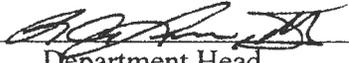
TO: City Manager
FROM: Allen Lewis
SUBJECT: REQUEST FOR TRANSFER OF FUNDS

I hereby request the transfer of funds as set forth below from one account to another, all within the same appropriation fund account, as permitted and authorized by the General Statutes of North Carolina.

	Department	Account Number	Object Classification	Amount
FROM:	10-00	4400	7300	11,000
TO:	10-00	4260	1500	11,000

For the purpose of: transferring building improvement funds from the Miscellaneous Dept. to the Maintenance & Repairs account of the Municipal Building to complete maintenance on the exterior of City Hall.

Supervisor



Department Head

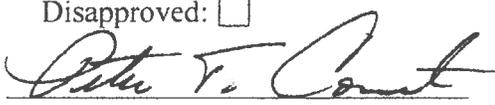
ACTION OF CITY MANAGER OR FINANCE DIRECTOR

Approved: X

Disapproved:

* Request for Transfer of Funds from Department to Department require City Manager's approval.

** Request for Intradepartmental Transfer of Funds require Finance Director approval.



City Manager or Finance Director

April 26, 2011

COUNCIL MEMO ATTACHED



HUMAN RELATIONS COUNCIL

102 East 2nd Street

Washington, NC 27889

Phone: 252-975-1280

Fax: 252-974-6461

Human Relations Council (HRC) Report for the month of April Monday May 2, 2011 City Council Meeting

MISSION STATEMENT

- To promote social and economic equality in the community, working with Local Government and other resources
- To appreciate the cultural and ethnic diversity of the citizens of Washington and Beaufort County
- To encourage citizens to live and work together in harmony and mutual respect

Board member Zapata invited the Latino Community to the meeting with their **complaint** against DMV:

Synopsis:

Conclusion from discussions with the Latino Community—translations by Board members Zapata, Barr and Castro:

1. Latino enters this country with a passport and a visa (some have a working visa while others have tourist visa)
2. First, when someone arrives in this country with a visa and you are going to work here for 8 months, DMV will give you a drive license for eight months but the moment the visa expires your license expires.
3. With a tourist visa you can't work.
4. With a work visa, you can apply for a SSN and a driver license
5. After 3 or more years of working with a work visa you can apply for a permanent resident card.
6. The ones who do not have a visa or work permit to associate with EIN # to work in the State, expired driver license will not be renewed until you can prove you have a visa to stay here.
7. The only thing the Latino's can do at this point is go back to their country and apply to come to the States and it could take 5-10 years.
8. Did not feel they had been treated unfairly (as previously communicated) but the problem was with understanding the laws (laws changed in 2003)

Suggestions given by the Human Relations Council:

1. Could not assist them unless the law changes (Federal law)
2. Please feel free to attend any meeting and the HRC will share any resources we have.

Update – Multicultural Festival

- Date – October 23, 2011
- Time – 3-6 pm
- Place – Civic Center
- ECU Cultural Department committed to the event
- Volunteers
- Sponsors

Discussion – Project in conjunction with Mr. Peralta –

- Finalizing the business plan (Mr. Recko & Mr. Stowe working on the plan)
- Facility St. Peter's Episcopal Church
- Job Link will provide computers

Discussion – 'Fair Housing Forum' – Scheduled for April 28, 2011

FYI – Board Member Barr – Press Release in the Daily Reflector as one of the valuable contributors of the Latino's Community Leader's



Association of Mexicans in North Carolina

"Fostering the Appreciation, Understanding, and Prosperity of the Mexican and Latino Community through Culture, Leadership, Health, and Education"

AWARD CEREMONY HIGHLIGHTS LATINO ACHIEVEMENTS IN EASTERN NORTH CAROLINA

Recognizing the valuable contributions of the Latino community in eastern North Carolina, AMEXCAN would like to honor Dr. Diane Rodríguez and Marisol Barr with awards for their outstanding commitment to the education of Latino youth and contributions to the Latino community.

Dr. Rodríguez is an Associate Professor at East Carolina University who specializes in special and bilingual education. Rodríguez has worked tirelessly to help Latin American youth succeed in their education and prepare for college. She was recently appointed by Governor Bev Perdue to the Advisory Council on Latino Affairs.

Marisol Barr is a member of the NC Domestic Violence Commission Representing Cultural and Linguistic Minority. Barr is being recognized for her dedication to the Latino women who have become victims of domestic violence. She also serves on the Governor's Advisory Council on Hispanic/Latino Affairs.

Both women have dedicated their lives to helping the Latino community. Hundreds are expected to attend the Latino Issue Forum 2011 (El Foro Latino 2011) where they will be presented with their awards at the Greenville Convention Center.

Media is welcome to attend the forum and interview the award recipients and organizers.

What: Ceremony honoring Latino leaders during Latino Issue Forum 2011

Where: Greenville Convention Center
303 SW Greenville Blvd
Greenville, NC 27834

When: Friday & Saturday – April 22 & 23, 2011

Media Contact: Juvencio Rocha Peralta
AMEXCAN President
(252.258.9967)

Washington Tourism Development Authority
March-April 2011

- participated in a regional heritage tourism workshop presented by Hanbury Preservation. This is part of a 3-region effort to earn the federal designation of National Heritage Area for all of eastern North Carolina. The purpose of the workshop was to describe the project, timeline, and opportunities for involvement from communities and community leaders in the region.
- Attended the Historic Albemarle Tour meeting in Columbia
- Attended the Greenville Business Expo. Virginia Finnerty had a booth promoting her business and the Washington Civic Center.
- Met with a representative from a technology company to discuss new instant messaging technology and a way to promote packages and special offers
- Met with Bobby Roberson, Jackie Woolard, Pete Connet and Donna Bailey Taylor (Johnston County CVB) to discuss countywide tourism and how it is done/set up in other counties, and what (if any) action is needed on the part of the City or WTDA.
- Hosted a mini-familiarization tour for hotel operators. Tour stops included the Estuarium, portions of the walking tour, Rocky Hock Playhouse, Washington Civic Center, and local restaurants.
- Toured representatives from the NC Division of Tourism around Bath to assist with development of a Blackbeard Trail intended to attract visitors following the release of the new Pirates of the Caribbean 4 movie in May.
- As new members of the Historic Albemarle Tour, Washington is now featured as a destination in the 2011 HAT brochures that are in circulation now.
- Advertisements appeared in Southern Living, Our State, and Carolina Country for April and May. Response to Southern Living advertising is very high.
- New billboard campaign is in place. The feedback on the new, more visible signage has been great. A recent update from NCDOT indicates their signage along the bypass will be up by mid-May.
- Response has been good relative to the last minute marketing push for the Civic Center. The effort involved direct mail, development of a new website, and personal contact.
- Operations plan being developed by the SBI students at ECU will be presented in late April or early May. I anticipate their report to be very thorough as they have asked a lot of questions to better understand tried the present operations. Recommendations/suggestions will be made based on all aspects of operations (staffing, marketing, signage, energy efficiency, technology).
- A list of possible improvements (both health/safety and aesthetic) is being developed for budgetary purposes. During this process I have been meeting with contractors and other service providers.
- A committee has been formed to explore the development of an inclusive branding campaign for Washington. Partners in the project are WTDA, Washington Harbor District Alliance, City of Washington, Washington-Beaufort County Chamber of Commerce. We have received two proposals and are awaiting a third before making a recommendation about company to use for the process.
- Distributed an RFP to determine if outsourcing visitor services was a possibility to help reduce expenses in the FY2011.



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Philip Mobley, Director of Parks and Recreation
Date: May 2, 2011
Subject: Approve and Authorize Director of Parks and Recreation to Execute Waterfront Dock Agreement with Little Washington Sailing Club

Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

I move that City Council approve and authorize the Director of Parks and Recreation to execute the attached Waterfront Dock Agreement with Little Washington Sailing Club and further authorize the Director of Parks and Recreation to enter and execute future Waterfront Dock Agreements with Little Washington Sailing Club so long as such future Agreements are substantially similar to the Agreement approved hereby and Council receives an annual report concerning the relationship with Little Washington Sailing Club, including a notice regarding the intention to enter for such future Agreements and a request for advance approval from Council prior to any change being incorporated into such future Agreements.

BACKGROUND AND FINDINGS:

Staff and the City Attorney have been working with Little Washington Sailing Club ("Club") to update the Waterfront Dock Agreement with the Club for 2011-2012. The Washington Recreation Advisory Committee has reviewed and approved this proposed updated Waterfront Dock Agreement for Little Washington Sailing Club.

PREVIOUS LEGISLATIVE ACTION

- January 10, 2010 City Council approved the Little Washington Sailing Club to attach their floating dock to a free dock on the waterfront for their program for the 2010 season.
February 8, 2010 City Council authorized the City Manager to sign the Authorized Agent Consent Agreement as the property owner to obtain the Temporary CAMA permit on the waterfront.
February 14, 2011 City Council approved the amendment of the CAMA permit and to allow the enhanced usage of Dock J.

FISCAL IMPACT

___ Currently Budgeted (Account _____) ___ Requires additional appropriation ___ No Fiscal Impact

SUPPORTING DOCUMENTS

Proposed Waterfront Dock Agreement for Little Washington Sailing Club for 2011-2012

City Attorney Review: ___ Date By: ___ (if applicable)
Finance Dept Review: ___ Date By: ___ (if applicable)
City Manager Review: 4/27 Date Concur 5/2/11 Recommend Denial ___ No Recommendation ___

**NORTH CAROLINA
BEAUFORT COUNTY**

WATERFRONT DOCK AGREEMENT

THIS AGREEMENT, is made and entered as of the 1st day of April, 2011, by and between the City of Washington, North Carolina (hereinafter referred to as "Waterfront Docks") and Downtown Washington on the Waterfront, Inc. d/b/a Washington Harbor District Alliance d/b/a The Little Washington Sailing Club (hereinafter referred to as "Club"). For and in consideration of \$1.00 and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein as well as valuable consideration paid and to be paid, Waterfront Docks and Club agree as follows.

1. **GRANT OF LICENSE.** Subject to the satisfaction of the condition contained in Section 1.a. below, Waterfront Docks hereby grants to Club and Club hereby accepts from Waterfront Docks a license to use a certain portion of Waterfront Docks' piers known to Waterfront Docks as Dock J (hereinafter referred to as "Fixed Dock") subject to the terms and conditions set forth herein. It is agreed between the parties that this license is personal to Club and shall not inure to the successors or assigns of Club. Club agrees that it does not possess and shall not claim at any time an interest or estate of any kind or extent whatsoever by virtue of this license or Club's exercise or use hereunder of the same and Waterfront Docks conveys no interest in property, including but not limited to Fixed Dock or pier, to Club by this Agreement.

a. Club shall obtain whatever permission is legally required, including but not limited to a CAMA permit or a modification to the CAMA permit the City currently holds, from the appropriate agency(ies) or entity(ies) that will give Club the legal right and authority (hereinafter referred to as "Permit") to exercise the rights and authority granted and contemplated by this Agreement. Club shall not exercise any of the rights and authority granted and contemplated by this Agreement until Club has received said Permit, provided said Permit to Waterfront Docks, and received approval of the Permit from Waterfront Docks. Upon receipt of approval from Waterfront Docks of said Permit, Club shall exercise its rights and authority hereunder consistent with the terms and conditions of said Permit, as may be amended.

b. **BOAT AND OWNER IDENTIFICATION AND CONTACT INFORMATION.**

Name of Boat: _____ Make: _____ Model: _____
Year: _____ Registration/Documentation # _____ Length: _____ Beam: _____ Draft: _____
Owner's Address: _____ Social Security No.: _____
Work Phone: _____ Home Phone: _____ Emergency Phone: _____ Email: _____
Insurer: _____ Policy #: _____ Insurer's Phone: _____

Contemporaneously with the execution hereof, Club shall provide Waterfront Docks with the above information concerning any and all dinghies, vessels, boats, etc. that Club will utilize in its program and/or locate or berth at the Fixed Dock or Floating Dock. The information provided above is true and accurate. Club agrees that, if any of the above information subsequently changes, Club will provide updated information to Waterfront Docks within fourteen (14) days of such change.

2. **USE OF DOCK.** Notwithstanding anything herein or anything contained in the Rules to the contrary, Waterfront Docks authorizes Club to utilize Fixed Dock in conjunction with its sailing instruction program (herein referred to as "Program"). Club will attach a 20 foot by 40 foot Floating Dock (hereinafter referred to as "Floating Dock") to one-half of Fixed Dock using mooring lines. The Club will attach fixed fenders to the Fixed Dock pilings between said pilings and the Floating Dock to prevent damage to said pilings and Fixed Dock from the Floating Dock. The Club will provide access from Fixed Dock to Floating Dock by installing a ladder (boarding steps) to the Floating Dock that will lead to the Fixed Dock. The Club will utilize said Floating Dock for stowage of and access to sailing dinghies (hereinafter referred to as "Vessels") utilized in the Program. Subject to advance permission from and any related requirements of Waterfront Docks, Club may dock two chase boats at the Floating Dock to be used solely in conjunction with said Program. Said chase boats shall be subject to the same relocation and removal terms and conditions as are applicable to the Floating Dock and Vessels. Club shall not be entitled to berth any other boat at the Fixed Dock or Floating Dock or attach other appurtenances to Fixed Dock, other than as identified above, without the express written consent of Waterfront Docks. Club shall not use the Fixed Dock as rental property, a dwelling, or for any purpose other than the purposes stated herein without prior written consent of Waterfront Docks. Club shall have no interest in the Fixed Dock other than the right to use said space in accordance with the terms and conditions of this Agreement and any rules and regulations as Waterfront Docks may make respecting the use thereof. Club shall coordinate all activities with Waterfront Docks. Club shall perform all activities associated with its Program in such a manner that such activities do not interfere with, hinder, or in any way impair the public's use of the waterfront docks or the use of slips by boat owners. Club agrees to cooperate in all respects with all of the parties, including the public, who presently utilize or may in the future be utilizing the waterfront docks and agrees to coordinate its activities insofar as possible to achieve an orderly, safe, and harmonious joint usage thereof by all parties.

a. Club shall require all students in its Program to execute and return a release and indemnification in a form satisfactory to Waterfront Docks prior to commencement of any activity related to the Program.

3. **TERM.** Club may utilize Fixed Dock for a twelve (12) month term, beginning on the 1st day of April, 2011 and ending on the 31st day of March, 2012. Either party may terminate this Agreement, with or without cause, upon thirty (30) days notice. Upon expiration or termination of this Agreement, Club shall remove said Floating Dock and Vessels from Fixed Dock within ten (10) days. Should Club fail to relocate Floating Dock and Vessels within the time allowed, Waterfront Docks shall have the right to relocate the Floating Dock and Vessels from the Fixed Dock, including but not limited to placing them at anchorage or storing them on land, and receive reimbursement and indemnification from Club for such relocation as more specifically provided for in the attached Rules and Regulations for Washington Waterfront Docking (herein referred to as "Rules") _____.

a. Waterfront Docks waives the two-day maximum stay for use of Dock J in the area known as the free docks by the Club for its Program during the term of this Agreement.

4. **CONDITION OF FIXED DOCK.** Club hereby accepts the condition of the Fixed Dock and common areas of Waterfront Docks "AS IS" and Club acknowledges that Waterfront Docks makes no express or implied warranty as to the condition of the Fixed Dock, the water, the depth of the water, the common areas or any utilities, gangways, fences, doors, locks, or any other aspect of Waterfront Docks. Club covenants to satisfy itself that the Fixed Dock and berthing space is adequate for safe berthing of its Floating Dock and Vessels. Club shall exercise due caution in occupation of the Fixed Dock and shall take good care of the Fixed Dock and, at the expiration or sooner termination of this Agreement, surrender and deliver the Fixed Dock to Washington Docks in as good condition as when received by Club from Washington Docks, reasonable wear and tear excepted. Waterfront Docks may elect to retain or dispose of in any manner Club's personal property not removed from the Fixed Dock or waterfront docks by Club at the expiration or termination of this Agreement. Club waives all claims against Waterfront Docks for any damage to Club resulting from Waterfront Docks' removal of Club's personal property at the expiration or termination of this Agreement. Club shall be liable to Waterfront Docks for Waterfront Docks' costs for storage, removal, or disposal of Club's personal property at prevailing rates.

a. Waterfront Docks, in its discretion, may retain, or require Club to remove, any alteration, addition, or improvement made by the Club to the Fixed Dock or to any common area pursuant to advance written approval of Waterfront Docks. Any such alteration, addition, or improvement retained by Waterfront Dock constitutes further consideration for this Agreement.

b. Club shall keep the waterfront area around the Fixed Dock clean as well as litter free and in a presentable, acceptable and satisfactory condition to the City.

5. **BAILMENT.** It is understood and agreed that this Agreement does not constitute a bailment. Except as otherwise provided herein, Club retains and has exclusive care, custody, control, and access to the Floating Dock, Vessels, chase boats and their respective contents at all times.

6. **GENERAL RESPONSIBILITIES AND OBLIGATIONS.** Waterfront Docks' employees, in their sole discretion, may make reasonable efforts to inform Club of dangerous conditions requiring Club's attention, but Waterfront Docks assumes no responsibility or liability for the same, including but not limited to tending mooring lines, moving the Floating Dock or Vessels, or moving boats from berths to which they are or were assigned. Club further agrees to provide Waterfront Docks a key or combination to locks securing the Vessels, if any. It is expressly agreed that Waterfront Docks shall not be liable to Club if for any reason Waterfront Docks fails to move the Floating Dock or Vessels.

7. **RATIFICATION OF ACTIONS.** Notwithstanding anything herein to the contrary and although Waterfront Docks has absolutely no obligation to do so, should Waterfront Docks enter upon the Floating Dock or Vessels or take any action to protect the Floating Dock or Vessels, which action is hereby approved and authorized by Club, including but not limited to relocating the Floating Dock or Vessels, installing mooring lines, or pumping the Vessels, or similar services, Club agrees to reimburse and indemnify Waterfront Docks as more specifically provided for in the attached Rules and to hold Waterfront Docks, its representatives, agents, or contractors harmless for any loss or damage as the result of such action undertaken regardless of the action taken or circumstances giving rise to the action.

8. **HAZARDOUS MATERIALS.** Club covenants and agrees to comply with all applicable environmental and all other federal, state and local governmental statutes, ordinances, rules and regulations relating to the presence of hazardous substances, hazardous wastes, pollutants or contaminants. Club agrees and does hereby fully indemnify and shall hold Waterfront Docks absolutely harmless from any loss, damage, or expense, including reasonable attorney's fees and costs and expenses of any appeal, which Waterfront Docks may incur or suffer by reason of any claim or liability arising from Club's noncompliance with applicable environmental laws and the terms of this paragraph. Club specifically covenants and agrees that no hazardous substances, hazardous wastes or waste by-products, pollutants or contaminants, shall be dumped in any trash receptacle, or otherwise, in, on or about the Fixed Dock or Waterfront Docks' facilities, and that all such substances shall be stored or disposed of in specially marked containers/areas. These covenants and indemnities shall survive the expiration or termination of this Agreement.

9. **NO ASSIGNMENT OR SUBLICENSING.** This Agreement is not transferable or assignable and runs to Club only. Club may not assign this Agreement or sublicense the Fixed Dock. In the event Club suspends its Program, Waterfront Docks shall have the right to cancel this Agreement.

10. **INSURANCE.** Club shall, throughout the term of this Agreement and any renewal thereof, at its own expense, keep and maintain in full force and effect the following insurance coverages.

a. Commercial General Liability Insurance, including general marine liability, products and completed operations liability, personal and advertising liability, and P&I liability coverage at a minimum of \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate.

Each such policy shall list Waterfront Docks as additional insured and provide that it is not subject to cancellation or reduction in coverage

May 2, 2011

except after thirty (30) days following notice to Waterfront Docks. Club shall deliver to Waterfront Docks certificates of insurance for all insurance policies required hereunder. Club shall, within a reasonable time prior to the expiration of any such policy, furnish Waterfront Docks with certificates of insurance evidencing renewal thereof. Waterfront Docks may, in its sole discretion, require Club to expand the form and/or increase the amounts of all such insurance.

11. **WAIVER OF SUBROGATION.** Club releases and relieves Waterfront Docks and waives Club's entire rights of recovery against Waterfront Docks for loss or damage arising out of or incident to any of the perils insured against under this Agreement as well as any of the perils insured against by any fire and/or extended coverage endorsement insurance policy Club might own, whether loss or damage is due to the negligence of Waterfront Docks or their agents, employees, and/or invitees. Club shall give notice to its insurance carriers that this waiver of subrogation is contained in this Agreement and cause the carriers to accept this waiver of subrogation, to the extent permissible by applicable law.

12. **UTILITIES.** Water, sewer, and electric utilities are not available at Fixed Dock.

13. **CHANGES TO COMMON AREA/DOCK ASSIGNMENT.** Waterfront Docks reserves the right, without recourse to Club, to relocate and/or change any access ways, parking and similar areas, as may be necessary in Waterfront Docks' sole discretion for the efficient operation of the Waterfront Docks or for any other purpose. Waterfront Docks may permanently reassign the Club to another dock only upon written request to and written acceptance from Club. In which case, said written request and acceptance shall serve as an amendment hereto, but only as to the dock to be licensed and shall not affect any other provision hereof unless such further revision is reduced to writing and signed by the parties hereto. Waterfront Docks reserves the right, without recourse to Club, to temporarily relocate the Club to another location on the Waterfront, including another dock, in Waterfront Docks' sole discretion. Club shall temporarily relocate their Floating Dock and Vessels as and when directed by Waterfront Docks if practical and reasonable. If Club's assistance in such temporary relocation is not practical and reasonable, Waterfront Docks is authorized to perform such temporary relocation of the Floating Dock and Vessels. The term "Fixed Dock" as used herein shall also apply to the location or dock to which the Floating Dock and Vessels are permanently reassigned or temporarily relocated as provided for hereinabove.

14. **SECURING THE FLOATING DOCK, GANGWAY AND VESSELS.** The Floating Dock and gangway shall be secured to the Fixed Dock in a manner acceptable to Waterfront Docks. Club Vessels will be secured when stowed or docked. If Waterfront Docks secures the Floating Dock, gangway or Vessels, Waterfront Docks is entitled to reimbursement and indemnity as more specifically provided for in the attached Rules.

15. **COMMON AREAS.** This Agreement grants the Boat Owner only a license to use the Fixed Dock and non-exclusive access to piers, docks, sidewalks, parking lots and other nearby common areas that are reasonably necessary to use the Fixed Dock.

16. **RULES AND REGULATIONS.** Club shall comply with all rules and regulations of Waterfront Docks, including but not limited to the Rules, as the same may be amended from time to time, during the existence of this Agreement. Any crew or guest of the Club are the responsibility of the Club and must comply with the Rules. The current version of said Rules is attached hereto as Exhibit "A" and is incorporated herein by reference. Club acknowledges having received and read the Rules currently in effect. Waterfront Docks reserves the right to reasonably amend the Rules in its sole and absolute discretion from time to time, and Club further agrees to comply with such amended Rules. Any amended Rules shall also automatically be incorporated herein. If Club or those under the responsibility of Club fail to comply with the Rules or otherwise cause disorder, depredations or indecorous conduct that might injure a person, cause damage to property, or harm Waterfront Docks' reputation, the same shall be cause for immediate removal of the Floating Dock and Vessels, without prejudicing Waterfront Docks' right to damages and any financial obligation of Club to Waterfront Docks.

a. Notwithstanding anything herein or anything contained in the Rules to the contrary, Floating Dock, gangway and Vessels must be removed when the Pamlico area is placed under a NOAA weather warning in accordance with Rule 21 of the Rules.

b. Notwithstanding anything herein or anything contained in the Rules to the contrary, with the exception of Club Vessels, there shall be no storage of any items of any kind upon the Fixed Dock or Floating Dock without advance permission from Waterfront Docks.

17. **DEFAULT.** Club shall be in default under this Agreement if any of the following occur.

a. Club becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee, or other liquidating officer is appointed for Club or the business of Club. In no event shall this Agreement or any rights or privileges hereunder be an asset of Club under any bankruptcy, insolvency, or reorganization proceedings.

b. Club violates any rule or regulation of Waterfront Docks.

c. Club violates, breaches, or fails to keep or perform any covenant, term or condition of this Agreement.

18. **NO WAIVER.** Waterfront Docks shall not be deemed to have waived any right, power, privilege or remedy unless such waiver is in writing and duly executed by Waterfront Docks. No failure or delay in the exercise of any right or remedy shall be construed as a waiver of such right or remedy, and no partial exercise of any right or remedy shall preclude the further exercise of such right or remedy.

19. **REMEDIES.** SHOULD CLUB FAIL TO COMPLY WITH ANY OF THE PROVISIONS OF THIS AGREEMENT, WATERFRONT DOCKS MAY INSTITUTE ANY ACTION, SUIT OR PROCEEDING TO ENFORCE THE TERMS OF THIS AGREEMENT OR TO COLLECT ANY AMOUNTS DUE HEREUNDER, AND WATERFRONT DOCKS SHALL BE ENTITLED TO REIMBURSEMENT FROM CLUB FOR ALL COSTS AND EXPENSES REASONABLY INCURRED IN ENFORCING ITS RIGHTS HEREUNDER, INCLUDING BUT NOT LIMITED TO, COLLECTION OF ALL COURT COSTS AND REASONABLE ATTORNEYS' FEES.

May 2, 2011

20. **INDEMNIFICATION.** Club does for itself, its agents, successors, assigns, customers, guests and invitees, hereby unconditionally release, hold harmless, and will indemnify, defend, acquit, and forever discharge the City of Washington, its respective present and former employees and elected officials, in both their individual and official capacities, agents, representatives, contractors, attorneys, insureds, successors, and assigns, and each of them, respectively, of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, attorneys' fees, and consequential, general, special, and punitive damages or liabilities, known or unknown, on account of, or in any way related to or growing out of this Agreement, including but not limited to Club's operation of the Program, Club's sailing instruction operation and/or Club's use of the Fixed Dock and waterfront docks. It is the intent and understanding of the parties that this indemnification shall include but not be limited to 1) any injury, including death, to any person, 2) any claim arising from any accident, fire, or casualty from any cause whatsoever, including negligence, and 3) any claim of Club's participants, customers, invitees, guests, and/or boarders of the Vessels caused by, related to, or arising from Club's use of the Fixed Dock, Club's Program or the contemplated sailing instruction operations or this Agreement.

21. **ADHERENCE TO REGULATIONS.** Club agrees to comply with all applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or anytime hereafter may be applicable to the Fixed Dock, the waterfront docks, public waters, the Club, any improvements made by Club pursuant to advance written consent of Waterfront Docks, and Club's operation of the Program, including but not limited to the sailing instruction operations contemplated hereby and the related enterprise. Club shall indemnify and hold Waterfront Docks harmless for any and all damage of any kind arising from Club's failure to comply with the aforementioned rules and regulations, including attorney's fees.

22. **REPORTING REQUIREMENTS.** Club shall keep or cause to be kept complete records of the business it conducts or transacts as a result of this Agreement and any additional records reasonably requested and, upon request, provide any such records or reports required by the City Council or City Manager.

23. **RELATIONSHIP OF PARTIES.** In carrying out the terms and conditions of this Agreement, Club is an independent contractor and is not an agent or employee of Waterfront Docks. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, or employee relationship between Waterfront Docks and Club.

24. **ILLEGAL PROVISIONS, GOVERNING LAW.** If any provision of this Agreement shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of North Carolina.

IN WITNESS WHEREOF, the parties have executed this Agreement this the day and year first above written.

DOWNTOWN WASHINGTON ON THE WATERFRONT, INC.
d/b/a WASHINGTON HARBOR DISTRICT ALLIANCE
d/b/a THE LITTLE WASHINGTON SAILING CLUB

CITY OF WASHINGTON

By: _____ (SEAL)

By: _____ (SEAL)

Title: _____

Title: _____

EXHIBIT "A"

Rules and Regulations For Washington Waterfront Docking

1. All vessels must register with the dock attendant ("Management") upon arrival to the Washington Waterfront Docks ("the Waterfront"). "Management" may also refer to the City of Washington ("City") where required by context.
2. Major repairs of such extent and nature as are normally performed at boat yard facilities, including but not limited to rebuilding or replacing engines, and the sanding, painting, or refinishing of any portion of a boat, shall not be performed at or near a slip or the Waterfront. No other type of work may be performed at or near a slip or the Waterfront unless the boat owner obtains advance approval from Management and the contractor who intends to perform such work satisfies Management that the contractor possesses adequate insurance coverage.
3. Boat owner shall not make any alterations, additions or improvements in or to a slip, the Waterfront or to any adjacent common area without prior written approval from Management. In addition, no dock boxes, steps or any other objects can be installed or kept on the docks or piers without the written consent of Management. No flammable materials, cleaners or pollutants may be kept on the docks or piers. Shore power cables, hoses, dock lines or any other connecting apparatus between the dock and a boat owner's vessel must be kept safely clear of both the passageway on the dock or pier and clear of the fairway to adjacent slips.
4. At all times when on the Waterfront property, or on any boat therein, boat owners shall conduct themselves so as to not violate any City Ordinance nor to create any annoyance, hazard, or nuisance at or to the Waterfront, other boat owners, their guests or other patrons of the Waterfront. Boat owners further accept responsibility for insuring like conduct of their guests, crew or any others in their company.
5. Absolutely no pollutants, including but not limited to sewage, oil, or fuel, will be dumped, pumped or allowed to run into the waters surrounding the Waterfront. All sewage shall be disposed of at the proper facility for such purpose.
6. No swimming, diving or crabbing is permitted at the Waterfront.
7. No advertising or soliciting, including "For Sale" signs, is permitted on any boat or slip at the Waterfront without prior written consent of Management.
8. Vessels may tie to a Waterfront dock only by the cleats or pilings provided for such purpose. No vessel nor any other gear or items may be tied to any other structure, fixture or point along the Waterfront.
9. No commercial vessels may be berthed at the Waterfront and no commercial transactions shall be permitted from the Waterfront without the prior written consent of Management. Soliciting of any kind for any purpose is prohibited without prior written consent of Management.
10. Open fires for cooking, grilling or for any reason are strictly prohibited on the piers and docks at the Waterfront. Boat owners accept liability for any open flames aboard their vessel that may, directly or indirectly, endanger other vessels, docks, piers or any other property at the Waterfront.
11. Laundry is not to be hung from a vessel or the docks.
12. Pets must be leashed at all times when not aboard a vessel. No pets are allowed on the wetland boardwalk.
13. To be berthed at the Waterfront, a vessel must be registered or documented, identified, marked, equipped and maintained as required by law and safe practice. At all times, vessels berthed at the Waterfront must be in a clean, seaworthy, sanitary, fully operational condition, dry within, and regularly repaired and maintained. No vessel berthed at the Waterfront shall be an eyesore or

Adopted by City Council - 3/9/2009

May 2, 2011

constitute a fire, safety, sinking or pollution hazard. Any vessel considered to be unsafe; a pollution hazard; threatening to the dock structure, other vessels, or to people; inappropriately sized or shaped; or whose watertight integrity is questionable will be required to vacate the Waterfront.

14. Unsafe conditions or practices on the Waterfront or aboard a vessel are prohibited. Such conditions must be corrected or practices terminated or the responsible party and/or the vessel must vacate the Waterfront at the discretion and direction of Management.
15. Slips, piers, docks, and surrounding areas shall be kept clean, clear and trash free. No garbage, trash or any other materials in violation of MARPOL 73/78 regulations, as may be amended, will be thrown overboard. Shore disposal receptacles intended for that purpose will be utilized.
16. Consumption of alcoholic beverages is prohibited on the Waterfront except while aboard a vessel.
17. Management reserves the right to have raised and repaired at the owner's expense any vessel which sinks for any reason while at the Waterfront _____.
18. NO REFUNDS will be given.
19. All boats must have an assigned space. Except for slips that are governed by a Waterfront Docking Agreement, assigned spaces are subject to change in Management's discretion. Additional boats, regardless of type or size, are not permitted to be placed on the walkways, docks, or finger piers, tied along side another boat or placed on shore. Rafting will only be allowed in conjunction with special events authorized by Management.
20. Refueling any vessel by any means (including portable gas cans) is prohibited at the Waterfront unless consented to by Management and approved by the Fire Marshal. See Section 2210.4 of the Fire Code, as may be amended.
21. Boat owners shall, in times of unusual, predictable water surges, such as a tropical depression or hurricane, move their boats from the Waterfront, including slips, within a reasonable period of time after the Pamlico Sound area is given a NOAA Weather Warning Condition. If a boat owner fails or refuses to remove their boat within said reasonable period of time, Management shall have the right, but not the obligation, to relocate a boat and the owner of any boat that is relocated shall reimburse and indemnify the City as more specifically provided for herein and not hold the City, its representatives, agents, or contractors liable or responsible for damages done to a boat during relocation, subsequent mooring, or anchorage; during a storm; or any incident thereafter _____. Should conditions prohibit any movement of a boat from the Waterfront, including a slip, boat owners assume all liability for any damages suffered to the property, pier, or other facilities of the City. In addition to all of the other liabilities and obligations of boat owners to the City set forth in these Rules and Regulations and any Waterfront Docking Agreement that may be applicable, boat owners shall pay the City for any and all damages suffered by the City as a result of any damage caused by a boat owner or their boat to the City's property, including but not limited to the Waterfront, slip, docks, pilings, bulkhead, utility lines, and any other real or personal property in which the City has an interest. As used herein, damages include all damages which the City may suffer, including but not limited to property damage, business interruption damage, loss of rentals, personal injury, and any other damages, including incidental and consequential damages, be they direct or indirect and regardless of whether the damage is aggravated or incurred in whole or in part by the negligence of the City or its agents, representatives, employees, invitees, partners, or any other person, firm or entity.
22. Live-aboards are not permitted except in the case of transient vessels.
23. If the owner of a vessel tied to the Waterfront cannot be determined or if the owner refuses to sign a registration form, transient dockage fees will immediately and automatically be applied and shall be assessed in the event the owner is identified. Non-payment of such fees within 90 days will cause the vessel to be declared "abandoned".

City Council Adopted – 3/9/2009

24. Any action, including but not limited to relocation of a boat, installing mooring lines, pumping a boat, or similar services, concerning a boat deemed by Management as necessary to be taken, or otherwise authorized to be taken pursuant to these Rules or a Waterfront Docking Agreement, may be taken by Management or a third party at Management's direction. It is expressly understood that Management shall not be liable to a boat owner if for any reason Management fails to take any such action under any circumstance. Boat owners expressly indemnify and hold harmless Management from any and all claims that may arise from Management taking any action contemplated hereby. In the event Management takes any such action contemplated hereby, boat owners shall reimburse Management for the labor, materials, and related expenses associated with such action at the prevailing Management's rates or market rates, if applicable, within ten (10) days upon receipt of a bill for such expenses. In the event a third party takes any such action contemplated hereby at Management's direction, boat owners shall be responsible for and pay the cost charged by said third party within ten (10) days upon receipt of a bill for such charges. Management shall have a lien against and security interest in a boat, her appurtenances and contents, for any unpaid sums due related to said boat, including but not limited to sums arising from these Rules or a Waterfront Docking Agreement and/or sums due for damage caused or contributed to by a boat owner, a boat owner's guests, or an owner's boat to any piers or property of Management or to any other person.
25. Management reserves the right to revoke docking privileges to any person or vessel failing to comply with a directive from Management, these Rules and Regulations, or a Waterfront Docking Agreement.

City Council Adopted – 3/9/2009



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Lynn Lewis, Washington Tourism
Date: May 2, 2011
Subject: Civic Center Management Agreement
Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

Approve the Civic Center Management Contract between the City of Washington and the Washington Tourism Development Authority with the following amendment:

3. **ALLOCATION BY THE CITY.** The City agrees to allocate \$50,000 **\$65,000.00** per year to assist in the operation of the Civic Center and, to that end, agrees to pay the TDA the sum of \$4,166.67 **\$5,416.67** per month on or before the 10th of each month beginning as of the 10th day of July, 2011. During the City’s budget process, TDA may make specific requests to address maintenance items other than those described in Section 13. ~~Within its recognized budget constraints, the City will use its best efforts to provide funding to address such maintenance items up to a maximum of \$15,000.00 per year.~~

BACKGROUND AND FINDINGS:

The WTDA has operated the Civic Center for the previous 5 years. The City of Washington has been satisfied each additional request for additional maintenance and other projects during that time.

With the \$50,000 annual contribution, the Civic Center has operated at a deficit of approximately \$10,000 (excluded the above mentioned maintenance projects).

FISCAL IMPACT

Additional allocation of \$1,250 per month for the term of the contract that should begin with a new fiscal year (FY11-12)

SUPPORTING DOCUMENTS

Attached spreadsheet showing funding for the previous 4 years.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 4/27 Date Concur _____ Recommend Denial _____ No Recommendation _____

	EXPENSES	REVENUE	CITY FUNDS	DIFFERENCE	Additional City Project Funding	TOTAL EXPENSES	TOTAL REVENUE	TOTAL DIFFERENCE	TOTAL CITY FUNDS
FY 2006-07	\$ 125,080	\$ 60,810	\$ 50,000	\$ (14,270)	\$ 70,606	\$ 195,686	\$ 110,810	\$ (84,876)	\$ 120,606
FY 2007-08	\$ 145,356	\$ 90,077	\$ 50,000	\$ (5,279)	\$ 27,250	\$ 172,606	\$ 140,077	\$ (32,529)	\$ 77,250
FY 2008-09	\$ 130,681	\$ 72,261	\$ 50,000	\$ (8,420)	\$ 16,409	\$ 147,090	\$ 122,261	\$ (24,829)	\$ 66,409
FY 2009-10	\$ 138,049	\$ 74,144	\$ 50,000	\$ (13,905)	\$ 7,565	\$ 145,614	\$ 124,144	\$ (21,470)	\$ 57,565
	\$ 134,792	\$ 74,323		\$ (10,469)					

Replacement of decking boards and reconfiguration to meet ADA guidelines	\$15,000
Replace canvas awnings (present ones are dry-rotting and molded. Were initially installed in 1997)	\$2,500
Upgraded WiFi	\$7,000
Purchase of Tables & Chairs (this is an opportunity for additional revenue. Round tables and white chairs can be rented to renters of the facility)	\$22,000
Lighting Up fit (City has received a grant to convert to more energy efficient lighting, request is to cover potential gap between grant and actual funding)	\$5,000
New draperies (existing drapes were hung 30 years ago. They are no longer fire-safe and diminish the aesthetic appeal of the facility)	\$5,000
Restrooms: replace sinks and faucets, reface stall partitions and counter tops, add some type of splash board for sink mirrors (much of the work that was done to convert the bathrooms to be ADA compliant was done poorly and now needs to be fixed)	\$20,000
Kitchen linoleum	\$3,500

TOTAL REQUEST

\$80,000

**NORTH CAROLINA
BEAUFORT COUNTY**

THIS LEASE AND MANAGEMENT AGREEMENT (“Lease”) is made and entered into as of the 1st day of July, 2011 by and between the **CITY OF WASHINGTON**, a body politic and corporate, existing under the laws of the State of North Carolina (“City”), and the **CITY OF WASHINGTON TOURISM DEVELOPMENT AUTHORITY**, a Public Authority under the Local Government Budget & Fiscal Control Act (“TDA”), (collectively may be referred to as the “Parties”).

WITNESSETH

WHEREAS, the TDA was organized and established under the authority of North Carolina House Bill 592, Chapter 158, as ratified in the 1991 Session of the General Assembly of North Carolina, as later amended, and the City Charter and Code.

WHEREAS, the TDA operates subject to the provisions contained in the bill above referred to, as amended, the City Charter as well as City Code, and pursuant to by-laws adopted by the TDA for the operation of the TDA and the transaction of its business.

WHEREAS, the TDA’s purpose is to promote travel and tourism – to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, and engage in similar promotional activities that attract tourists or business travelers to the area.

WHEREAS, the TDA has the authority to spend money that, in the judgment of the TDA, is designed to increase the use of lodging facilities, meeting facilities, or convention facilities in the City or to attract tourists or business travelers to the City.

WHEREAS, the TDA is authorized to contract with appropriate organizations or agencies to assist it in carrying out the above purposes.

WHEREAS, for the last five (5) years the Parties have been party to a Lease and Management Agreement that expires on June 30, 2011.

WHEREAS, the Parties have agreed to enter into this Lease whereby the City will continue to lease to the TDA the Washington Civic Center (“Civic Center”) as described in Exhibit A attached hereto in accordance with the terms and provisions of this Lease and the TDA will continue to manage the Civic Center.

NOW THEREFORE, in consideration of the rents hereinafter agreed to be paid, the mutual covenants and agreements hereinafter recited and for the benefit of the public and the citizens of the City and Beaufort County generally, the receipt and legal sufficiency of which consideration is hereby acknowledged, the City does hereby lease and demise unto the TDA and the TDA does hereby lease and take as tenant from the City those certain premises (hereinafter called the “Premises”) within the City and more particularly

described in Exhibit A attached hereto. Except as specifically provided for herein, the City reserves unto itself and the public generally the right to use the parking areas and driveways adjoining the Civic Center building as a means of ingress, egress and access to the adjoining property of the City on which the Peterson Building is located. Notwithstanding the foregoing, the TDA shall have the right to reserve the parking spots located to the North of the Peterson Building for specific periods of time as may be necessary in conjunction with specific Civic Center events after appropriate consultation and notice to any parties potentially affected thereby, including the City.

The TDA has carefully inspected the Premises and acknowledges that the same is in satisfactory condition for its use. Except as may be specifically provided for hereinafter and for those certain improvements that may be specifically addressed hereinafter, the City shall have no obligation to make any improvements to the Premises whatsoever and the TDA agrees to accept the same in its present condition, "as is."

TO HAVE AND TO HOLD said Premises unto the TDA upon the following terms and conditions.

1. **TERM.** The term of this Lease shall be for a period of three (3) years and will begin as of the 1st day of July, 2011 and shall end at 12:00 o'clock midnight on the 30th day of June, 2014, subject to the provisions herein.
 - a. **EXTENSION.** The TDA shall give notice at least six (6) months prior to the expiration hereof if it desires to continue this Lease. If the TDA gives the City notice of its desire to extend this Lease, the Parties shall renegotiate the same in good faith.
2. **RENT.** As consideration for the leasehold interest granted herein for this term, the TDA agrees to be responsible for all management and operations of the Civic Center, including supervision of all Civic Center staff as hereinafter defined.
3. **ALLOCATION BY THE CITY.** The City agrees to allocate \$50,000.00 per year to assist in the operation of the Civic Center and, to that end, agrees to pay the TDA the sum of \$4,166.67 per month on or before the 10th of each month beginning as of the 10th day of July, 2011. During the City's budget process, TDA may make specific requests to address maintenance items other than those described in Section 13. Within its recognized budget constraints, the City will use its best efforts to provide funding to address such maintenance items up to a maximum of \$15,000.00 per year.
4. **TERMINATION.** The TDA has the absolute right to terminate this Lease by providing the City six (6) months written notice prior to the end of each fiscal year of this Lease (on or before December 31, 2011 and December 31, 2012).
5. **CIVIC CENTER STAFF.** The employment of the TDA Director and Civic Center staff, including the specifics of all relevant employment terms and

relationships, shall be governed by an Interlocal Agreement entered into between the Parties, which Interlocal Agreement is, or shall be, incorporated herein by reference as if fully set forth.

6. **ARTS COUNCIL AND PAMLICO-TAR RIVER FOUNDATION LEASES.**

The present leases between the City and the Beaufort County Arts Council as well as the Pamlico-Tar River Foundation shall remain direct leases between those entities and the TDA shall have no responsibility for the operation, maintenance, or liability associated with those premises so leased or any activities conducted thereon. The City may continue such leases as well as renew the same for so long as the City desires. However, in the event the leases between the City and the Beaufort County Arts Council or the Pamlico-Tar River Foundation, respectively, are terminated and not renewed, then, in that event, the TDA shall have the right of first refusal to include such space within the property leased hereunder.

7. **DEFAULT.**

a. The occurrence of one or more of the following events (hereinafter called "Events of Default") shall constitute a default by the TDA:

- i. Failure to perform any provision of this Lease if the failure to perform is not cured within ten (10) days after written notice thereof has been given to the TDA and
- ii. Dissolution of the TDA.

b. The occurrence of one or more of the following events of default shall constitute a default by the City:

- i. Failure to perform any provision of this Lease if the failure to perform is not cured within ten (10) days after written notice thereof has been given to the City.

8. **REMEDIES UPON DEFAULT.**

a. The City shall have the absolute right upon default by the TDA to enter the Premises without notice to vacate (any such right to which is hereby waived by the TDA) and re-let them, changing any and all locks on the Premises, all without being liable for forcible entry, trespass, or other tort.

b. The TDA shall have the absolute right upon default by the City to vacate the Premises, return all keys to the City and have no further obligation to manage and operate the Civic Center.

c. In the event either party shall exercise the above described remedies upon default, the TDA shall promptly deliver any and all of the TDA records, including bookings, necessary for the City to continue the management and operation of the Civic Center.

9. **WAIVER.** No course of dealing or any delay on the part of either party in exercising any rights it may have under this Lease shall operate as a waiver of any of its rights hereunder nor shall any waiver of any prior default operate as a waiver of any subsequent default or defaults and no express waiver shall affect

any condition, covenant, rule or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

10. **USE OF PREMISES.** The TDA shall use the Premises to further the purposes of the TDA as stated in its by-laws and for such purposes as may be associated with civic centers, comparable to similar communities and regional activities. The TDA shall be responsible for the entire management of said facility and shall have the right to establish reasonable regulations and policies, including any and all rates applicable to rent the same and for activities taking place within the same. The TDA shall be responsible for promoting said facility pursuant to an updated, written Three (3) Year Plan, which Three (3) Year Plan will be submitted to the City on or before June 12, 2011. Upon receipt of said Three (3) Year Plan by the City, it shall be attached hereto as Exhibit B and incorporated herein by reference.
11. **DISCRIMINATION.** The TDA, in its use, improvement, or operation of the Premises and facilities of the Civic Center, shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise use the Premises in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 and as said regulations may be amended.
12. **OWNERSHIP OF CONTENTS.** On July 1, 2006, the City conveyed the contents then located in the Civic Center to the TDA and presented the TDA with a Bill of Sale for the same. The Parties acknowledge that ownership of the contents located in the Civic Center at the expiration of the initial term, earlier termination, or expiration of any subsequent term shall revert to and/or become the property of the City without compensation therefor and as further consideration for this Lease. In this regard, the TDA shall present a Bill of Sale for the same to the City at such time.
13. **MAINTENANCE.** The City shall be responsible during the term of this Lease for major structural maintenance of the Civic Center structure and building including decking, flooring, roofing, HVAC, plumbing and electrical systems. The TDA shall be responsible for all other maintenance whatsoever in connection with said facility. Notwithstanding the foregoing, in the event a maintenance or repair issue or need arises, the TDA may contact the City Manager's office at the City concerning said issue or need and, if the City is capable of assisting the TDA in addressing the issue or need with minimal cost or manpower, in its sole discretion, the City will provide such assistance to the extent such assistance does not produce a major disruption in the City's normal operations as well as responsibilities and so long as such assistance is practicable. Nothing herein shall be construed to limit the TDA's maintenance obligation(s) as described herein. The City shall maintain the landscaping and parking areas in connection with its routine maintenance of the Peterson Building.

14. **ASSIGNMENT AND SUBLETTING.** The TDA shall not assign this Lease or sublet the Premises without the prior written consent of the City.
15. **UTILITIES AND OTHER SERVICES.** The TDA was made responsible for and paid any and all charges (\$2,448.87) for utilities incurred on the Premises during the month before the inception of the initial Lease term (June of 2006). The TDA has since been reimbursed for said payment by the City through a credit. Therefore, the TDA shall be responsible for and pay any and all charges for utilities as may be incurred on the Premises during the term of this Lease. The TDA shall not use or permit in the Premises any electrical device which, in the opinion of the electrical provider, will overload the building's electrical circuits.
16. **ALTERATIONS.** Other than routine improvements, repair and maintenance necessary to address ordinary, daily wear and tear, the TDA shall make no alterations, additions or improvements to the Premises without the prior written consent of the City. All alterations, additions and improvements made by, for or at the direction of the TDA shall become the property of the City and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease without compensation therefor and as further consideration for this Lease. The TDA shall promptly pay and discharge any and all licenses, imposts, liens or other charges arising out of or in connection with the performance of any act required of or permitted the TDA hereunder and shall keep the Premises free and clear from any and all such liens or charges.

Upon receiving the prior written consent of the TDA, the City shall have the right, but not the obligation, to make alterations, additions, or improvements to the Premises and the same shall, when made, be the property of the City and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease.

17. **CITY'S RIGHT OF ENTRY.** The City Manager or his designee shall have the right to enter and to grant licenses to others to enter the Premises for such lengths of time as the City shall deem reasonable a) to inspect the Premises; b) to exhibit the Premises to prospective tenants or purchasers of the Premises; c) after reasonable notice to the TDA, to make alterations, additions, improvements and repairs to the Premises or to the building and to store necessary materials, tools and equipment for such alterations or repairs; d) after reasonable notice to the TDA, for any purpose which the City shall deem necessary for the operation and maintenance of the Premises, including building, and the general welfare and comfort of its tenants; e) after reasonable notice to the TDA, for the purpose of removing from the Premises any placards, signs, fixtures, alterations or additions not permitted by this Lease or applicable regulation; and f) after reasonable notice to the TDA, to abate any condition which constitutes a violation of any covenant or condition of this Lease.

18. **USAGE BY AND RATE FOR THE CITY.** The TDA agrees to allow any appropriate individual, group, or entity of the City to use the Premises as long as the same is not already reserved. Any such use by the City or its affiliates shall be consistent with the policies and procedures established by the TDA. The TDA agrees, as part of its rate structure, to provide a special rate for use by any appropriate individual, group, or entity of the City, which special rate shall not exceed 33% of the then current, full rate charged to other users of the Premises.
19. **INDEMNIFICATION OF THE CITY.** The TDA agrees to indemnify and defend the City and to save harmless the City, and the tenants, licensees, invitees, agents, servants and employees of the City against and from any and all claims by or on behalf of any person, firm or corporation arising by reason of injury to person or property occurring on the Premises or in the building occasioned in whole or in part by any act or omission on the part of the TDA or any employee, representative, agent, assignee or subtenant of the TDA, including any individuals who are actually City employees but who regularly perform functions for or duties assigned by the TDA such as the TDA Director and TDA staff or by reason of any unlawful use of the Premises or by reason of any breach, violation or non-performance of any covenant in this Lease on the part of the TDA to be observed or performed, and also by reason of any matter or thing growing out of the occupancy or use of the Premises by the TDA or any one holding under the TDA. The TDA agrees to pay the City promptly for all damage to the Premises or the building, which is not covered by insurance, and for all damage to tenants or occupants caused by the TDA's misuse or neglect of the Premises or the building or of its or their apparatus and appurtenances and the TDA agrees in any event to reimburse and compensate the City as additional rent within five (5) days of rendition of any statement to the TDA by the City for expenditures made by the City or for fines sustained or incurred by the City due to non-performance or non-compliance with or breach of or failure to observe any term, covenant or condition of this Lease upon the TDA's part to be kept, observed, performed or complied with.

The City shall not be liable to the TDA for any damage by or from any act or negligence of any co-tenant or other occupant of the building or by any owner or occupant of adjoining or contiguous property. Neither the City nor its agents shall be liable to the TDA or to any person, firm or corporation claiming through or under the TDA for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, glass, electricity, water, rain or snow or leaks from any part of the building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatever nature, unless caused by or due to proven acts of negligence of the City. The City shall not be liable to the TDA or to any person, firm or corporation claiming through or under the TDA for any latent defect in the Premises or in the building.

20. **INDEMNIFICATION OF THE TDA.** The City agrees to indemnify and defend the TDA and to save harmless the TDA, including all tenants, licensees, invitees, agents, servants, and employees of the TDA against and from any and all claims by or on behalf of any person, firm or corporation arising by reason of the City's negligent failure to adequately perform major structural maintenance of the Civic Center structure and building, including decking, roofing, flooring, HVAC, plumbing, and electrical systems. The indemnification provisions of this Section 20 shall not apply to any condition unless and until the TDA provides the City written notice that major structural maintenance is required for the Civic Center structure and building, including decking, roofing, flooring, HVAC, plumbing, and electrical systems.
21. **INSURANCE AND INSURANCE RATES.** Throughout the term of this Lease, City shall carry fire and extended coverage insurance insuring its interest in the building and the Premises, such insurance to be written by insurance companies and in amounts satisfactory to the City. Throughout the term of this Lease, the TDA shall carry fire and extended coverage insurance insuring its interest, if any, in improvements to or in the Premises, its contents, and its interest in its furniture, equipment, supplies or other property. Throughout the term of this Lease, the TDA shall carry public liability insurance insuring against all liability of the TDA and its authorized representatives including any liability whatsoever caused by any accident or other occurrence causing bodily injury or property damage to any person or property and arising out of and in connection with the TDA's use or occupancy of the Premises, such insurance to be written by insurance companies and in amounts satisfactory to the City. The TDA hereby waives any claim, right of action, or subrogation which it may have against the City for any loss or damage covered by such insurance.

The TDA shall not do or cause to be done or permit on the Premises anything deemed extra hazardous and the TDA shall not use the Premises or the building in any manner which will cause an increase in the premium rate for any insurance in effect on the Premises, building, or part thereof. If, because of anything done, caused to be done, permitted or omitted by the TDA or its agents, servants or employees, the premium rate for any kind of insurance in effect on the Premises shall be raised, the TDA shall pay the City on demand the amount of any such increase in premium. If the City demands that the TDA remedy the condition which caused any such increase in an insurance premium rate, the TDA shall remedy such condition within five (5) days after receipt of such demand.

22. **FIRE OR OTHER CASUALTY.** In the event that before or during the term of this Lease, the Premises or the building shall be damaged by fire or other casualty which renders the building, the Premises or any part of the building or the Premises untenable, the City within twenty (20) days of such fire or casualty or of receipt of written notice from the TDA of such damage (whichever shall last occur) shall have the right to either 1) serve written notice upon the TDA of the City's intent to repair said damage or 2) if said damage renders so much of the

Premises untenantable [in excess of fifty percent (50%) of the value of the premises] that repair would not be feasible, or if said damage shall have been occasioned by the act or omission of the TDA, its servants, agents, members or employees, serve written notice upon the TDA that this Lease is terminated, provided, however, that the City shall not so terminate this Lease unless such repairs cannot be made within a period of sixty (60) days or unless at the time such notice is given there remains less than one hundred eighty (180) days during the unexpired current term of this Lease. If the City shall elect to repair such damage, such repairs shall be commenced within fifteen (15) days of notice to the TDA of such election and such repairs shall be completed within one hundred eighty (180) days of notice to the TDA of such election.

The other provision of this Section 22 notwithstanding, the City shall have no obligation to replace or repair any property in the building or on the Premises belonging to the TDA or to anyone claiming through or under the TDA nor shall the City have any obligation hereunder to replace or repair any property on the Premises which the City shall have the right to require the TDA to remove from the Premises or any alteration, addition or improvement made to the Premises by, for or at the direction of the TDA.

23. **QUIET ENJOYMENT.** The City agrees that the TDA on paying the rent and performing all the terms and conditions of this Lease shall quietly have, hold and enjoy the Premises for the term aforesaid.
24. **NOTICES.** If to the TDA as follows:

Washington Tourism Development Authority
P.O. Box 1765
Washington, NC 27889

With copy to:

William P. Mayo, Jr.
Mayo & Mayo
102 W. 2nd St.
Washington, NC 27889

As to the City:

Attn: City Manager
City of Washington
P.O. Box 1988
Washington, NC 27889

With copy to:

Franz F. Holscher
Rodman, Holscher, Francisco & Peck, P.A.
P. O. Box 1747
Washington, NC 27889

25. **INTEGRATION AND BINDING EFFECT.** The entire agreement, intent and understanding between the City and the TDA is contained in the provisions of this Lease and any stipulations, representations, promises or agreements, written or oral, made prior to or contemporaneously with this Lease shall have no legal or equitable effect or consequence unless reduced to writing herein. This Lease shall be governed by and construed pursuant to the laws of the State of North Carolina.
26. **COMPLIANCE BY THE TDA WITH GOVERNMENTAL REGULATIONS.** The TDA shall comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties foreseen and unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Premises or any part thereof, or any of the adjoining property, or any use or condition of the Premises or any part thereof. The TDA shall comply with any and all local, State, Federal or other rules and regulations as well as all applicable environmental rules and regulations. In the performance of any acts required of or permitted by the TDA under any provision of this Lease, the TDA shall obey and comply with all lawful requirements, rules, regulations, and ordinances of all legally constituted authorities, existing at any time during the continuance of such performance in any way affecting the Premises or the use of the Premises by the TDA, including but not limited to all wetland regulations, CAMA regulations, or other governmental setbacks. Such compliance shall include compliance by the TDA with requirements of the Occupational Safety and Health Act, and all amendments thereto, as the same applies to the TDA's use of the Premises.

(Signatures On Following Page)

IN WITNESS WHEREOF, the TDA has caused this Lease to be signed by its Chairperson and the City has caused this Lease to be signed by its Mayor by authority duly given as of the day and year first written above.

PRE-AUDIT CERTIFICATE
CITY OF WASHINGTON

This Agreement has been pre-audited pursuant to N.C.G.S. § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Matt Rauschenbach, Chief Financial Officer
City of Washington

PRE-AUDIT CERTIFICATE
WASHINGTON TOURISM DEVELOPMENT AUTHORITY

This Agreement has been pre-audited pursuant to N.C.G.S. § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Jackie Woolard
Treasurer

ATTEST:

CITY OF WASHINGTON

By: _____ (SEAL)
Cynthia S. Bennett, City Clerk

By: _____ (SEAL)
N. Archie Jennings, III, Mayor

**WASHINGTON TOURISM
DEVELOPMENT AUTHORITY**

By: _____ (SEAL)
Nan McLendon, Chairperson

**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that NAN McLENDON personally appeared before me this day, and being duly sworn by me, acknowledged that she is Chairperson of the WASHINGTON TOURISM DEVELOPMENT AUTHORITY, and that by authority duly given and as the act of the Board the foregoing instrument was signed by her.

Witness my hand and notary seal this _____ day of _____ 2011.

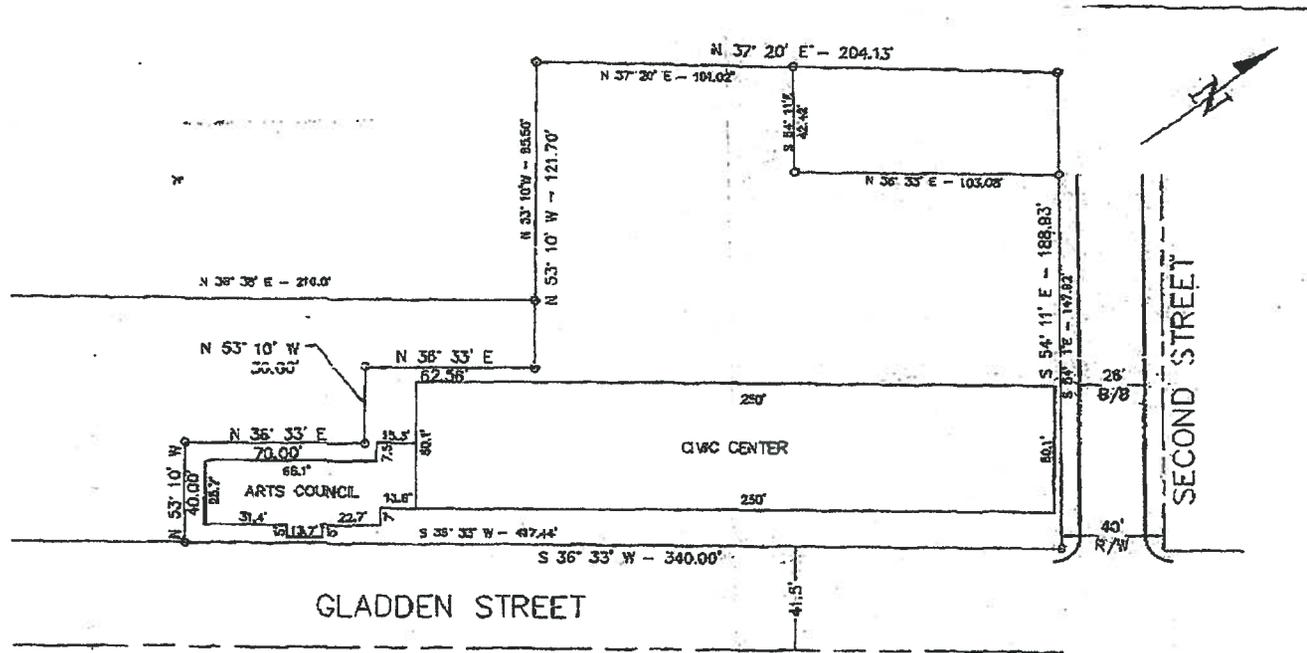
Notary Public
My Commission expires: _____

**NORTH CAROLINA
BEAUFORT COUNTY**

I, _____, a Notary Public of the State and County aforesaid, certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by N. ARCHIE JENNINGS, III, its Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

Witness my hand and notary seal this _____ day of _____ 2011.

Notary Public
My Commission expires: _____



CIVIC CENTER SITE PLAN	
SCALE 1"=50'	CITY WASHINGTON
DATE 7/17/06	COUNTY BEAUFORT
CITY OF WASHINGTON PUBLIC WORKS DEPARTMENT 102 E. 2ND ST. WASHINGTON, N.C. 27889	

Exhibit B
Three (3) Year Plan

DRAFT



City of Washington REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Keith Hardt, P.E., Electric Director
Date: 20 April 2011
Subject: Award Contract for Bucket Truck Purchase and Approve Purchase Order

Applicant Presentation:
Staff Presentation: Keith Hardt, P.E., Electric Director

RECOMMENDATION:

I move that City Council approve contract for the purchase of a bucket truck from Altec Industries in the amount of \$173,275 and approve the corresponding purchase order.

BACKGROUND AND FINDINGS:

The City Council approved \$200,000 in the fiscal year 2010-11 budget for the purchase of a bucket truck to replace vehicle number #604. Below are the bids received:

<u>Vendor</u>	<u>Cost Per Unit</u>	<u>Delivery</u>	<u>Trade-In</u>
A) Altec	\$173,275	210-240 days	\$480
B) Terex	\$188,479	150-180 days	\$800
C) Maps	no quote		

The trade-in option will not be exercised. The replaced equipment will be sold utilizing GovDeals. Traditionally equipment sells on GovDeals for more that has been offered by trade in.

PREVIOUS LEGISLATIVE ACTION

Equipment #604 replacement was approved in the current fiscal year budget.

FISCAL IMPACT

Currently Budgeted (Account 35-90-8390-7402) _____ Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

None.

City Attorney Review: _____ Date By May 2, 2011 (if applicable)
Finance Dept Review: _____ Date By Page 82 of 198 (if applicable)
City Manager Review: 4/27 Concur DIR Recommend Denial _____ No Recommendation _____ Date

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:9066
PO #: Not Assigned
User Name: Nicole Williams

Date: 04/20/2011
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$173,275.00

ALTEC INDUSTRIES, INC.
DRAWER 0414
BIRMINGHAM, AL 35246

Ship To:
CITY OF WASHINGTON CITY HALL (ELEC)
102 EAST 2ND STREET
WASHINGTON, NC 27889

Vendor Instructions: Electric Department
Nicole Williams
975-9303

Quantity	Description	Job Number	Unit Price	Extended
1	Purchase bucket truck to replace # 604		\$173,275.00	\$173,275.00
Sub Total				\$173,275.00
Total Tax				\$0.00
Total				\$173,275.00

Account Number	Account Description	Amount
35-90-8390-7402	INSTALLMENT PURCHASES 10/11	\$173,275.00
Total		\$173,275.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *[Signature]*
Date: 04-21-11
Subject: Award Contract for Labor and Equipment for the Lighting Retrofit Project and Approve Purchase Order for Same.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

(Bid Tabulation and recommendation will be distributed at the City Council Meeting)

BACKGROUND AND FINDINGS:

This request is to award a contract for the labor, material and equipment to install energy efficiency upgrades in six (6) municipally owned buildings as well as approving the purchase order for the contract amount. As you may recall, the City received an American Recovery and Reinvestment Act (ARRA) grant from the North Carolina Department of Commerce (NCDOC), Energy Division to re-lamp and re-ballast lighting fixtures. Due to current time constraints associated with spending ARRA funds the NCDOC requested that the City award the contract and expend the funds as soon as possible to avoid “pull back”, a loss of funding. A letter from Jennifer Bumgarner, Assistance Secretary for Energy with the NCDOC, is enclosed explaining the need to proceed expeditiously. We responded to this letter and have been assured that our response was satisfactory and that this project is still funded.

As discussed at the April 11, 2011 meeting, we received three (3) bids in response to a Request for Proposals. With your approval, staff rejected all bids and re-advertised due to the difference in funds available and the lone responsive contractor’s bid. The bid opening is scheduled for Thursday, 28 April 2011 at 2:00 p.m. A bid tabulation and recommendation will be prepared and distributed at the City Council meeting for their consideration.

PREVIOUS LEGISLATIVE ACTION

Most recently 04-11-11, granted permission to re-advertise for bids.

FISCAL IMPACT

Currently Budgeted (61-60-4930-4500) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Letter from Jennifer Bumgarner. Staff response.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: May 2, 2011 (if applicable)
 City Manager Review: _____ Concur _____ Recommend Denial *RL* No Recommendation *4/27* Date

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RECEIVED

**North Carolina Department of Commerce
Energy Division**

Beverly Eaves Perdue, Governor
Jennifer Bumgarner, Assistant Secretary for Energy

J. Keith Crisco, Secretary
Ward Lenz, State Energy Office Director

March 2, 2011

Mr. James C. Smith
City of Washington
102 East Second Street
Washington, NC 27889-4921

Dear Mr. Smith:

I am writing regarding your award of U.S. Department of Energy (DOE) funds from the North Carolina State Energy Office (SEO). Your Award is made with funds appropriated by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (the "Recovery Act"). The primary objectives of the Recovery Act are to stimulate the economy and to create and retain jobs. To meet these important objectives, we require that all grantees expend these funds and complete their approved projects as quickly as possible. You are receiving this letter because our records indicate that your organization has not made adequate progress in spending to date.

In order to maintain this grant to your organization, we must have immediate and detailed information regarding your plan to spend these funds. Please provide the following to Jack Hyman, your Program Manager, within ten business days of the date of this letter:

- 1.) The steps you have taken to implement your project;
- 2.) Any challenges you are experiencing that prevent you from spending funds;
- 3.) Proposed steps to make substantial progress toward expending your awarded funds by April 15, 2011 (i.e., enter contracts for goods or services to implement your project)
- 4.) A detailed plan to expend all funds and submit your final report no later than December 30, 2011, including a monthly projection of expected expenditures; and
- 5.) Confirmation that all required monthly and quarterly reports for this grant are current, and if applicable, submission of overdue monthly or quarterly reports.

Efforts are underway in the U.S. Congress to pull back Recovery Act funds to help reduce the federal budget deficit. Any unspent funds, including those obligated to your project, are now at risk. Moreover, the SEO has a number of worthy and eligible projects on waiting lists for funding. Therefore, if you fail to respond to this letter as requested or to show substantial

Mailing Address:
1340 Mail Service Center
Raleigh, NC 27699-1340

Telephone (919) 733-2230
Fax (919) 733-2953
www.energync.net

Location:
1830A Fillery Place
Raleigh, North Carolina 27604

An Equal Opportunity/Affirmative Action Employer

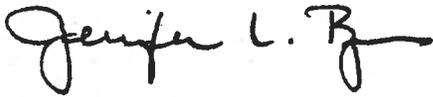


March 2, 2011
Page Two

progress by April 15, 2011, the SEO will take steps to terminate your award and to reallocate your funding to another project.

We stand ready to assist you in overcoming obstacles to the successful completion of your project, but we must hear from you to start that process. Your program manager can provide access to a range of tools to support your project, including qualified technical assistance providers who can help with some of your individual needs. We look forward to working with you to ensure that your project succeeds.

Sincerely,



Jennifer Bumgarner
Assistant Secretary for Energy



March 10, 2011

Jack Hyman
State Energy Office
1340 Mail Service Center
Raleigh, NC 27699-1340

RE: ARRA Grant Expenditures

Mr Hyman:

The City of Washington was awarded funds from the Department of Energy through the North Carolina State Energy Office (SEO) for the Energy Efficiency in Government Buildings program. These funds were appropriated by American Recovery and Reinvestment Act of 2009. Being selected is an honor and one we do not take lightly. This letter serves as a response to the communication the city received from Jennifer Bumgarner, Assistant Secretary of the SEO on March 4, 2011.

The first quarter of 2011, many project activities took place. These include:

1. Local governing board formally accepting the award
2. Filing system adopted/implemented
3. Request for Proposals developed for the lighting retrofit project element with input from city attorney and SEO approved technical assistance provider
4. Initial monitoring of energy use completed and verified by third party contractor
5. Request for Proposals advertised for in three publications (HUB, local newspaper, and Interactive purchasing system)
6. Pre-bid meeting held

The second quarter of 2011 will be just as exciting. We anticipate the following accomplishments:

1. Bid for lighting retrofit project element accepted, and construct begins (first drawdown)
2. Request for proposals HVAC project element developed and advertised
3. Request for proposals HVAC project element, pre-bid meeting hosted
4. Bids received and contract awarded for HVAC project element
5. Construction begins for HVAC project element (second drawdown)

To demonstrate these tasks, I've included a project timeline. If you have any questions, please feel free to contact me. We look forward to implementing this project in a timely manner.

Thanks,

A handwritten signature in black ink, appearing to read "B. Gentile", is written over the printed name.

Bianca T. Gentile
Community Development Planner
252.402.6888

Enclosure: Project timeline
CC: Carl Classen, John Rodman



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 04-20-11
Subject: Adopt an Ordinance to Delete Chapter 38 – Water and Wastewater and Adopt Chapter 38 – Water and Chapter 39 – Wastewater/SUO.

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council approve the ordinance to repeal Chapter 38 - Water and Wastewater in its entirety and replace it with a new Chapter 38 - Water and Chapter 39 – Wastewater/SUO.

BACKGROUND AND FINDINGS:

For well over a year, Public Works staff has been working with the State to implement a SUO, Sewer Use Ordinance, which would meet their new criteria. We originally tried to keep water and wastewater in the same ordinance but found it increasingly difficult to do so with each submittal for review. Therefore, we split the two into separate chapters and you have them before you now for your approval. Additionally, when brought to Council at the April 11, 2011 meeting for consideration, this item was pulled from the agenda due to questions/comments that some members of Council had. Those questions/comments have been addressed and have been incorporated as needed into the attached document. As presented, Chapter 38 – Water, has no substantive changes. The changes on the wastewater side were as required by the State.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

See attached Chapter 38 and 39.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: May 2, 2011 (if applicable)
 City Manager Review: *OR* Concur Page 88 of 198 Recommendation Denial _____ No Recommendation *4/27* Date

**AN ORDINANCE TO AMEND CHAPTER 38, WATER AND WASTEWATER, OF THE
CODE OF ORDINANCES OF THE CITY OF WASHINGTON**

WHEREAS, the NC Division of Water Quality, 15A NCAC 2H .0900, and 40 CFR 403 revisions authorize local governments to amend ordinances regulating the collection and treatment operations of Publicly Owned Treatment Works (POTW); and

WHEREAS, the amendment set out below is intended to update and create uniform requirements for POTW and the contributors into the wastewater collection and treatment system; and to promote the elimination of discharges of harmful pollutants to sanitary sewers.

BE IT ORDAINED by the City Council of the City of Washington that:

Section 1: Chapter 38, Water and Wastewater Code of Ordinances be and is hereby repealed in its entirety and a new Chapter 38, Water, and a new Chapter 39, Wastewater/SUO, be inserted as follows:

**CHAPTER 38
WATER**

ARTICLE I. GENERAL PROVISIONS

Sec. 38-1. Purpose and Policy.

This chapter sets forth uniform requirements for direct and indirect contributors into the water distribution and treatment system for the City of Washington, hereafter referred to as the city, and enables the city to comply with all applicable State and Federal laws. This policy provides for the setting of fees for the equitable distribution of expenditures and the cost of the water. This chapter shall apply to the city and to persons who are, by permit or agreement with the city; except as otherwise provided herein, the Director shall administer the provisions of this chapter.

The objectives of this chapter are:

- (a) To ensure that the municipality complies with all Federal and State laws to which the municipal water system is subject, and
- (b) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal water system,

Sec. 38-2. Definitions and Abbreviations.

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
 - (1) *City*. The City of Washington or, where the context so indicates, the City Council.
 - (2) *Color*. This represents the true color due to the substances in solution.
 - (3) *Customer*. The person that contracts with the city for provision of water service.
 - (4) *Director*. The Director of Public Works or his/her authorized representative.
 - (5) *Operation and Maintenance*. All costs, direct and indirect, not including debt service and capital related expenditures, but inclusive of expenditures attributable to administration, monitoring, inspections, reviewing applications, maintenance of equipment, and treatment and distribution of water, necessary to assure adequate water distribution and treatment on a continuing basis which conforms to applicable regulations and assures optimal long-term facility management.
 - (6) *Person*. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
 - (7) *pH*. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

- (8) *Pollution.* This means any material that causes the alteration of the chemical, physical, biological, and radiological integrity of water.
- (9) *Public Water System.* A system for the provision to the public of water for human consumption through pipes or other constructed conveyances serving fifteen (15) or more service connections or which regularly serves twenty-five (25) or more individuals. Plans and specifications must be approved by the DENR.
- (10) *Qualified Laboratory.* Laboratories currently certified by the state to perform water and wastewater analyses.
- (11) *Standard Methods.* The laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation or another procedures recognized by the DWQ, DPH, and EPA.
- (12) *State.* Refers to the state of North Carolina.
- (b) This chapter is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) Shall is mandatory; may is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this chapter shall have the designated meanings:
 - (1) CFR Code of Federal Regulations
 - (2) CWA Clean Water Act
 - (3) DENR NC Department of Environment and Natural Resources
 - (4) DPH NC Division of Public Health
 - (5) DWQ NC Division of Water Quality
 - (6) EPA Environmental Protection Agency
 - (7) gpd Gallons per day
 - (8) l Liter
 - (9) mg Milligrams
 - (10) mg/l Milligrams per liter
 - (11) N.C.G.S. North Carolina General Statutes
 - (12) NCAC North Carolina Administrative Code
 - (13) O & M Operation and Maintenance
 - (14) USC United States Code.

Sec. 38-3. Authority.

All utilities owned, leased or used by the city, whether inside or outside the corporate limits, shall be under the full control of the city pursuant to authorization in Session Laws of 1953, Chapter 300. The duty of enacting and enforcing rules and regulations governing the management and control of city properties shall be vested in the city, and the duty of enforcing such rules and regulations may be delegated.

Sec. 38-4. Visiting utility stations.

No visitor shall be permitted to enter the water treatment plant or any worksite unless accompanied by the Director or his designee, and under no circumstances shall any visitor handle or in any way come in contact with any part of the machinery.

Sec. 38-5. Connections and meters.

- (a) *Connections.* All meters, meter boxes, pipes and other equipment furnished and used by the city in installing any water connection shall be and remain the property of the city.
- (b) *Maintenance of Meters.* All meters, except such as are required to be furnished by specified users of water, shall be kept in good repair and working order by and at the expense of the city.

- (c) *Connections – Work to be done by the city.* The construction of taps for the connection of the public water lines on any lot with public water lines in any street and the necessary excavation thereof shall be done only by the city.
- (d) *Connections—Application.*
 - (1) No connection shall be made to any public water line except after approval of the written application therefor.
 - (2) Every application for a water connection shall state the name of the owner of the lot, the name of the street on which lot is situated, the number of the house, if there is one (1) on the lot or, if not, a description of the location of the lot, the number and kind of connections required and the character of surface of the abutting street. Every such application shall be signed by the person making the application and shall be accompanied by the proper fee for making the connection applied for.
- (e) *Connections— separate connections required; exceptions.* Every house or building abutting any public water line shall have a separate connection. The city may construct a single water line of sufficient size to the curblin; provided each house or business is connected through a separate water meter. Approved projects may be served with a single master water meter if approved by the city.
- (f) *Connections — where connection inside.* Water connections shall be made into existing connections constructed by the city to serve a lot. If a connection does not exist, one shall be provided as close as possible to the location requested by the customer.

Sec. 38-6. Standards and provisions for water systems.

- (a) *Provisions of water service.*
 - (1) *Area outside city.*
 - a. *With adequate public water existing.* Upon receipt of a request for water service and payment of all fees and charges, the city may construct a water connection to serve the property. The property owner shall pay the then existing connection fee and capital investment fee prior to receiving a tap.
 - b. *Public water not existing.*
 - 1. Upon receipt of a request for water service, the city may approve the request and authorize construction of a line to serve the property. When a water line is constructed, it shall extend across the entire frontage of the property to be serviced.
 - 2. The owner or developer shall bear the cost of all materials and right-of-way to construct a water line from the nearest adequately sized line to serve the property, and to construct all distribution lines required and approved by the city to serve the property to be developed. The city may bear the cost of labor and equipment to construct the line. The city may order that the construction be accomplished by a contractor, in which case the party requesting such service shall pay the full cost.
 - 3. If the city determines that sufficient advantages exist, it may choose to bear the cost of materials, labor and equipment to construct a line from the nearest adequately sized water line to the property to be served.
 - 4. Each property requesting service and abutting a water line constructed according to subsection 38-6(a)(1)(b) 1 or 2 of this section shall comply with subsection 38-6(a)(1)a of this section.
 - c. *Charges after annexation into city.* After annexation into the city, property which is not already connected and abuts an existing water line shall pay the then existing inside capital investment fee and water connection fee prior to receiving a tap.
 - d. *Fire hydrants.* The city shall not install fire hydrants outside the corporate limits, except where arrangements are made to pay for construction of the hydrant, pay an annual fee, measure water flow and pay for water used.
 - e. *Water rates.* Customers outside the city shall be charged the regular outside rate.
 - (2) *Area inside city.*

- a. *With adequate water lines existing.* The city shall construct a water tap after receipt of the then existing water connection fee.
- b. *Water lines not existing.* When a property owner within the city requests water service, the city may order the extension of a water main to serve the property and assess all abutting property owners, who do not already have access to a water line, an amount equal to the cost of materials, but such assessments shall not exceed an amount as established from time to time by ordinance.
- c. *Other conditions.* When a subdivision or developer requests water service and conditions in subsection (1) or (2) of this section do not apply, or if an unusually large amount of construction is required, the conditions of payment shall be determined through negotiations and established in a contract between the property owner and city.

Sec. 38-7. Taking water from public fire hydrants and inspection of fire hydrants.

No person, except the Director or Chief of the Fire-Rescue-EMS Department or a person in charge of street cleaning, shall take or in any way use water for private use from public fire hydrants, unless such person pay for a hydrant meter, as stated in Sec. 38-16, for the privilege and receive the usual permit to do so.

It shall be the duty of the Director to examine, or cause to be examined, all fire hydrants in the city at least once every six (6) months.

Sec. 38-8. Tampering with equipment.

- (a) It shall be unlawful for any person to tamper with, remove or otherwise interfere with the water meters or any other water utility equipment, apparatus or materials belonging to the distribution system of the city, with the exception of those licensed plumbing contractors so designated to do so by the city, and then only in the event of necessary repairs or emergency service to the property of the water consumers of the city, and with proper notification to the city by such licensed plumbing contractor. It shall be unlawful for any reason to remove or damage property of any kind belonging to the city.
- (b) A reward of up to two-hundred and fifty dollars (\$250.00) shall be offered to any person furnishing information leading to the arrest and conviction of any person violating this section.
- (c) A fee, in an amount established from time to time by ordinance, shall be charged for the city's cost in investigating customers who tamper with their water service without permission of the city. Service may be discontinued if this fee is not paid.
- (d) For customers who tamper with the water meters, fees shall be charged, in amounts and according to criteria as established from time to time by ordinance, to cover the additional costs to the city. Service may be discontinued if these fees are not paid.
- (e) Water utility customers shall protect water meters and related equipment on their premises from vandalism or being tampered with in any way, and shall promptly report to the city's Public Works Department any such vandalism or tampering. If any such vandalism or tampering is not so reported, the same shall constitute prima facie evidence that such vandalism or tampering was by the customer.

Sec. 38-9. Right to shut off water for repairs and no claim for damages on account of accident.

The city reserves the right at any time to shut off the water, in case of an accident, for the purpose of making connections or repairs.

It is expressly agreed between the city, users, and customers that no claim for damages shall be made against the city on account of accidental failure to supply water, whether by quantity or quality.

ARTICLE II - OPERATION OF SYSTEM

Division 1. General Water Use Requirements

Sec. 38-10. Public water system defined; approval of plans and specifications.

A public water system is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances serving fifteen (15) or more service connections or which regularly serves twenty-five (25) or more individuals. Plans and specifications must be approved by the State Department of Environment, Division of Environmental Health, and Public Water Supply Section.

Sec. 38-11. Water system.

- (a) The water system shall be considered as made up of two parts: the city water system and the customer's system.
- (b) The city system shall consist of the source facilities and the distribution system and shall include all those facilities of the water system under the complete control of the city, up to and including the water meter; at which point, the customer's system customarily begins.
- (c) The source shall include all components of the facilities utilized in the production, treatment, storage and delivery of water to the distribution system.
- (d) The distribution system shall include the network of conduits used for the delivery of water from the source to the customer's system.
- (e) The customer's system shall include those parts of the facilities beyond the termination of the city's distribution system which are utilized in conveying potable water to points of use.

Division 2. Operation of System

Sec. 38-12. Cross-connections.

- (a) No potable water supply shall be connected, by any means whatever to another source of water supply or to a storage facility unless such connection has been previously approved by the Public Water Supply Section and the Director.
- (b) No person shall introduce any water into the distribution system or the potable water supply through any means other than from a source of supply duly approved by the Public Water Supply Section and the Director, or make a physical connection between an approved supply and unapproved supply unless authorized in an emergency by the State Division of Environmental Health, and Public Water Supply Section and the Director.
- (c) All cross-connections between potable water supplies and nonpotable or unprotected supplies which are not specifically covered in the categories in this section shall be considered as special problems and the protective devices required shall be determined by the Public Water Supply Section and the Director on the basis of the degree of health hazard involved.
- (d) No person shall fill special tanks or tankers containing pesticides, fertilizers, other toxic chemicals, or their residues from the potable water system; except at a location with an over-the-rim free discharge of water or an approved reduced pressure backflow preventer properly installed on the potable water supply. The city shall not permit the filling of such special use containers except at locations so equipped.

Sec. 38-13. Facilities that require assemblies.

- (a) Any customer either operating or planning to operate facilities identified by the city as having a potential for backflow into the city's public water supply system, shall install an approved backflow prevention assembly on all such service connections according to the degree of hazard present. The following facilities have been identified by the city as having a potential for backflow and require backflow prevention assemblies as indicated: These guidelines are supplemental to section 1006(b) of the Rules Governing Public Water Supplies.
- (b) *Degree of hazard.*
 - (1) Severe: Actual or potential threat of contamination that presents an imminent danger to the public health with consequence of serious illness or death.
 - (2) Moderate: One that presents foreseeable and significant potential for pollution, nuisance, aesthetically objectionable or other undesirable alterations of the drinking water supply.
- (c) *Backflow prevention assembly requirements.*

	RPZ	DCVA	
<u>Degree Of Hazard</u>	<u>Reduced Pressure Zone</u>	<u>Double Check Valve Assembly</u>	<u>Air gap</u>
Severe	X	-----	X
Moderate	-----	X	-----

Facilities that require installation of Backflow Preventer and this list is not intended to be an exhaustive list.

- (1) Automotive Service Station, Dealerships

- a. Moderate Hazard: DCVA
- b. Severe Hazard (e.g. wash pits, hydraulic equipment): RP
- (2) Bakeries: DCVA
- (3) Beauty Shops/Barber
 - a. Moderate Hazard (e.g. hair cuts): DCVA
 - b. Severe Hazard (e.g. washing hair, chemical treatment): RP
- (4) Beverage Bottling Plants or Breweries: RP
- (5) Canneries, Packing Houses or Rendering Plants: RP
- (6) Chemical Processing Plants: RP
- (7) Church Baptismal: DCVA
- (8) Commercial Car Wash Facilities: RP
- (9) Commercial Establishments using processed water:
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: RP
- (10) Commercial Greenhouses: RP
- (11) Concrete/Asphalt Plants: RP
- (12) Dairies or Cold Storage Plants: RP
- (13) Dentist or Orthodontist: RP
- (14) Dye Works: RP
- (15) Film Laboratories or Photo Processing: RP
- (16) Fire Systems
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard (e.g. foam, antifreeze, booster pump): RP
- (17) Funeral Homes: RP
- (18) Hospital, Medical Buildings or Medical Clinics: RP
- (19) Laboratories: RP
- (20) Laundries
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: (e.g. Dry Cleaners): RP
- (21) Lawn Irrigation Systems:
 - a. Moderate Hazard: RP
 - b. Severe Hazard: (e.g. booster pump, chemical system): RP
- (22) Metal Manufacturing, Cleaning, Processing or Fabricating Plants: RP
- (23) Morgues, Mortuaries, or Autopsy Facilities: RP
- (24) Multi-Story Buildings:
 - a. (Three or Four stories) Moderate Hazard: DCVA
 - b. (Five or more stories) Severe Hazard: RP
- (25) Nursing and Convalescent Homes: RP
- (26) Oil and Gas Production, Storage or Transmission Properties: RP
- (27) Pest Control (exterminating or fumigating): RP
- (28) Power Plants: RP
- (29) Restaurants: DCVA
- (30) Restricted, Classified or other Closed Facilities: RP
- (31) Sand or Gravel Plants: RP

- (32) Schools:
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: RP
- (33) Sewage or Storm Drain Facilities: RP
- (34) Swimming Pools: RP
- (35) Veterinary Hospitals or Clinics: RP
- (36) Wastewater Treatment Plants: RP
- (37) Water Treatment Plants: RP
- (38) Waterfront Commercial Facilities and Industries: RP
- (d) Other types of facilities not listed may also be required to install approved backflow prevention assemblies if determined necessary by the city.
- (e) Approved backflow prevention assemblies shall be installed on the customer's system at the point of service to any facility that the city identifies as having a potential for backflow.
- (f) Approved backflow preventer assemblies. Meets American Society of Sanitary Engineering (ASSE) standard and carries an ASSE seal or is on the University of Southern California approval list or is an assembly approved by the city.
- (g) *Backflow prevention assembly installation.* Backflow prevention must be located in a place where it is readily accessible for regular testing, maintenance and inspection. Bypass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly installed that is equal to that on the main line.
 - (1) *Reduced pressure zone.*
 - a. Above ground installation preferred.
 - b. Below ground vault shall have positive drainage with adequate gravity drainage to atmosphere.
 - c. Twelve (12) inches minimum clearance with manufacturer's recommendations.
 - (2) *Double check valve assembly.*
 - a. Vertical or horizontal installation acceptable.
 - b. Adequate drainage shall be provided if installed below ground.

Sec. 38-14. Policy.

- (a) When it has been determined by the city, that a requested service requires the installation of a backflow prevention assembly, the customer shall, prior to receiving such service, submit for review and approval, plans and specifications of the proposed facilities. The submittal shall include a description of proposed facilities. The submittal shall include a description of proposed processes, operations, etc., in such detail as needed to evaluate potential effects on the city's system. Proposed assemblies shall be identified by size, manufacturer and model number or by specification.
- (b) When it has been determined by the city, that an existing service may require the installation of a backflow prevention assembly, the customer shall submit for review such information as may be necessary to permit the city to evaluate the potential for undesirable effects on its system. Upon notification of the customer by the city that a backflow prevention assembly(ies) is necessary, the customer shall submit plans and specifications for approval and install or cause to be installed entirely at the customer's expense such assemblies as may be necessary.
- (c) If it has been determined by the city that an imminent health hazard exist, then the water service to the facility causing the imminent health hazard may be terminated.
- (d) All existing facilities which pose a potential severe hazard to the public water system shall install a reduced pressure principle backflow prevention assembly at the point of service within sixty (60) days of notification by the city at the customer's expense.
- (e) All existing industrial and commercial facilities that have or may have an actual or potential cross-connection, that are not identified as a "severe hazard" shall be considered moderate hazard facilities. All existing moderate hazard facilities shall install a double-check valve assembly at the point of service within ninety (90) days of notification by the city at the customer's expense.

- (f) When required, an approved backflow prevention assembly shall be installed on each service line to a customer's water system in accordance with the requirements of the city at the customer's expense.
- (g) Reduced pressure principle assemblies shall be installed at the point of service in a horizontal position and in a location in which no portion of the assembly will become submerged under any circumstance or be subjected to temperatures below freezing. Pit and/or below grade installations are prohibited. An RP shall be installed in accordance with detailed specifications provided by the city's manual of water system details.
- (h) All double-check valve assemblies shall be installed at the point of service in drainable pits wherever below ground installation is necessary, in accordance with detailed specifications provided by the city's manual of water system details. Double-check valve assemblies may be installed in a vertical position with prior approval from the city, provided the flow of water is in an upward direction.
- (i) Backflow prevention assemblies shall be installed such that periodic testing and necessary repairs can be conveniently performed by city approved backflow testers.
- (j) No water service shall be provided to any facility or service that requires the installation of a backflow prevention assembly until the installed assembly has passed the test performed by a certified tester, and the test results have been received by the city.
- (k) No new or existing water service connection to any premises shall be installed or maintained by the city unless the water supply is protected by an approved backflow prevention assembly(ies) as required by Federal and State Laws and Regulations, and this city ordinance.
- (l) Water mains served by the city but not maintained by the city shall be considered cross-connections. The degree of protection required shall be based upon the degree of hazard, as determined by the city.
- (m) No person shall fill special use tanks or tankers from the public water system except at a city approved location equipped with an air gap or an approved reduced pressure backflow prevention assembly properly installed on the city's water supply.
- (n) Ownership, testing, and maintenance of the assembly shall be the responsibility of the customer.
- (o) It shall be the customer's responsibility to notify the city if the customer's water system becomes contaminated or polluted or if there is reason to believe that a backflow incident has occurred from the customer's water system into the public water system.
- (p) Upon notification to the customer by the city that the existing backflow prevention assembly is not in compliance with these regulations, the customer shall replace the existing backflow prevention assembly with an approved backflow prevention assembly in accordance with the requirements of the city.
- (q) Removal of an approved backflow prevention assembly from a service connection that has been deemed a hazard by the city may result in immediate disconnection from the city's public water system.
- (r) No person shall connect a hose to a fire hydrant unless an approved backflow prevention assembly is connected to the hydrant, unless otherwise approved by the city.
- (s) The customer's system shall be open for inspection at all reasonable times to city personnel to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the city may deny or immediately discontinue service to the premise. The city shall bear no liability for direct or indirect damages caused by discontinuance of service. Should an inspection of the premise be refused, the city reserves the right to discontinue service until the customer has granted access to the premise. The customer may be subject to civil penalties outlined in item (v) of this section for refusing access or being in noncompliance of this chapter.
- (t) Backflow prevention assemblies that shall be connected to the city's public water system shall be limited to those assemblies approved by the city, or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, or meets the American Society of Sanitary Engineering (ASSE) Standard and carries an ASSE seal.
- (u) Installation of all backflow assemblies shall be the customer's responsibility unless otherwise stated by the city. Backflow prevention assemblies shall be located downstream of the meter, at the point of service or at a location approved by the city.
- (v) Any facility or customer found to be in noncompliance with the provisions of these regulations will receive a notice of violation by certified mail with a time limit addressed to correct any deficiencies. If the customer neglects to correct a violation, they will be charged a civil penalty that shall not exceed one hundred dollars (\$100.00) per day of each continuous day of violation for moderate hazards. The civil

penalty for willful neglect of moderate and severe hazard violations of any provision in this section shall not exceed five hundred dollars (\$500.00) per day for each day of continuous violation. The civil penalty will be assessed by the director of public works upon recommendation of the operator in responsible charge (ORC) of the water distribution system.

Sec. 38-15. Testing and repair of assemblies.

- (a) Testing of backflow prevention assemblies shall be performed by a certified backflow prevention assembly tester. Such tests shall be conducted upon installation, prior to receiving service, and annually thereafter. A record of all testing and repairs is to be retained by the customer. Copies of the records shall be provided to the city within ten (10) business days after the completion of any testing, and/or repair work.
- (b) Any time that repairs to backflow prevention assemblies are deemed necessary, whether through annual or required testing, or routine inspection by the consumer or by the city, these repairs shall be completed within a specified time in accordance with the degree of hazard. In no case shall this time period exceed:
 - (1) Moderate Hazard Facilities – fifteen (15) business days
 - (2) Severe Hazard Facilities – ten (10) business days
- (c) Submission of falsified test results or material that is incomplete in any manner by a certified tester may result in the tester being removed from the city's tester list.
- (d) Only original manufactured parts may be used to repair an assembly.
- (e) All backflow prevention assembly testers shall submit a copy of their tester's certification to the city prior to testing any backflow prevention assembly(s) connected to the city's public water system.
- (f) All equipment used to test backflow prevention assemblies within the city's public water system shall be properly maintained and calibrated annually in accordance to the manufacturer's guidelines. A copy of the calibration certificate shall be submitted to the city.
- (g) Backflow prevention must be located in a place where it is readily accessible for regular testing, maintenance and inspection. By pass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly installed that is equal to that on the main line.
 - (1) *Reduced Pressure Zone.*
 - a. Above ground installation preferred.
 - b. Below ground vault shall have positive drainage with adequate gravity drainage to atmosphere.
 - c. Twelve (12) inches minimum clearance with manufacturer's recommendations.
 - (2) *Double Check Valve Assembly.*
 - a. Vertical or Horizontal installation acceptable.
 - b. Adequate drainage shall be provided if installed below ground.

Sec. 38-16. Temporary water service.

Persons needing temporary water service for construction purposes only may apply for a hydrant meter. If hydrants and hydrant meters are available, temporary service will be provided under the following conditions:

- (a) The application fee for a hydrant meter shall be in an amount established from time to time by ordinance, for each ninety (90) days of usage or portion thereof plus the cost of the water used.
- (b) The customer shall be responsible for all damages to the meter and hydrant which occur as a result of their being used to provide a temporary water service;
- (c) The city will remove the hydrant meter at the end of the ninety (90) days unless requested to do so earlier. Hydrant meters will not be reinstalled in the same location if permanent water service is available.
- (d) City personnel shall install the hydrant meter with the fire hydrant valve left open. The customer shall not operate the fire hydrant. Unauthorized operation of a fire hydrant shall be cause for removal of the hydrant meter.
- (e) Only city personnel shall be allowed to move a hydrant meter. Unauthorized relocation of a hydrant meter shall be cause for removal of the hydrant meter.
- (f) A request to relocate a hydrant meter will be handled the same as a new application.

Secs. 38-17 – 38-41. Reserved.

Division 3. Fees

Sec. 38-42. Purpose.

It is the purpose of this chapter to provide for the recovery of costs from users of the water system of the city for the implementation of the program established herein. A schedule of water rates shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's water system. The rates shall be reviewed and adjusted by the City Council, as needed.

Sec. 38-43. General requirements within city.

- (a) Water extensions shall be made upon order of the city as it deems necessary, and in accordance with provisions of state law the cost of such extensions shall be shared jointly by city and owners of property abutting the water extension improvements, according to this policy.
- (b) Corner lots are exempt from front water improvement assessments for a maximum of one hundred fifty (150) feet on one (1) side of corner lot. In the event a water line is constructed across only one (1) side of a corner lot, that side shall be assessed at the then existing rate for its full distance. At such time in the future that a water line is extended across the other side of that corner lot, that side will be assessed at the then existing rate; except, that a corner lot exemption up to one hundred fifty (150) feet, but not exceeding the distance along that side, shall be allowed, provided an assessment has been paid for the first side. Lots having a double frontage shall be assessed for water improvements on both sides if both sides can be developed according to the zoning ordinance. If a double frontage lot is also a corner lot, one (1) corner lot exemption shall be allowed, unless both frontages can be developed according to the zoning ordinance and both frontages have been assessed. In such case the property shall be entitled to two (2) corner lot exemptions.
- (c) The city shall not assess any of the cost of enlarging water lines in use.
- (d) An assessment for water extensions made under this policy may be spread over a period of ten (10) years if requested by the property owner. Such assessments shall bear interest at the highest rate provided by state law per annum on the unpaid balance, with the first assessment becoming due in October next succeeding the date of improvements within the city limits only.

Sec. 38-44. Water connection fees and capital investment fees.

- (a) Water connection fees are minimum fees for the installation of a tap at the right-of-way. These minimum fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the fee schedule will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's water system. The fees shall be reviewed and adjusted by the City Council, as needed. Minimum fees shall be paid prior to construction of the tap. If the city anticipates that the total actual construction cost will exceed the minimum fee, the city shall provide the customer with a written estimate of such cost as well as associated work, and receive written approval from the customer, prior to commencing such work. Any additional fees to equal the total actual construction cost shall be paid prior to customer making tie-in to the tap. For any tap larger than listed on the fee schedule, the Director shall provide the customer with a written estimate therefor, and receive written approval thereof from the customer, prior to commencing such work. Any additional cost to equal the total actual construction costs shall be paid prior to customer making tie-in to the tap. For taps requiring more than the usual construction work, the city may require customer to employ an outside contractor to make the tap. Contractors shall obtain a permit for the public works department and all work shall be in accordance to city specifications.
- (b) Capital investment fees are charges for the construction of water lines which, at the time of construction, abut property outside the corporate limits. Fees shall be charged as established from time to time by ordinance. Property which is annexed into the city and abuts an existing water line, and has not previously paid a capital investment fee, shall pay the capital investment fee before service is provided. Property owners within the corporate limits may pay their capital investment fees in ten (10) equal annual installments, if requested by the property owners. Such capital investment fees will bear interest at the highest rate provided by state law per annum on the unpaid balance, with the first payment coming due and payable ninety (90) days after the date the capital investment fee charge is made and subsequent installments shall be due and payable annually on the same day of each subsequent year until paid in full.

Sec. 38-45. Service fees — new customers.

New customers to the water system will be charged a service fee in the amount as established from time to time by ordinance and any deposit which is required of all customers.

Sec. 38-46. Service fees – transfers.

Customers moving from one location to another within the water system shall be charged a service fee in the amount established from time to time by ordinance.

Sec. 38-47. Water rates and bills.

A schedule of water rates shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the Director, and copies shall be made available to the customers of the city's water system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager.

(a) *Residential service.*

- (1) This service is available for the supply of drinking water to single family residences within the city and outside the city limits where the city's water supply facilities are extended.
- (2) Service is not available under this schedule for any nondomestic use; such as from business operated in the residence, for commercial for multifamily use, such as, master metered apartments, motels, inns, and mobile home parks; or for resale.
- (3) This service is applicable when the customer's residence is served by a water service tap up to one (1) inch in diameter.
- (4) The minimum monthly charge for city customers will be determined by the current rate schedule.
- (5) Commodity charges will be based on an assumed minimum consumption or the customer's total water consumption, whichever is greater, during the billing period. Water consumption will be metered and rounded to nearest cubic foot for billing, except when the amount of water used is not registered because of a defective meter, the method described in Sec. 38-50 will be used.
- (6) The water service charge shall be billed to each customer at the same time the sewer bills are rendered and shall be collected at the same time and in the same manner as sewer accounts.

(b) *General service.*

- (1) This service is available for the supply of drinking water to commercial, industrial, institutional and other customers within the city and outside the city limits where the city's water facilities are extended. Service is not available for resale service.
- (2) The minimum monthly charge for inside city customers will be determined by the current rate schedule.
- (3) Commodity charges will be based on the customer's total water consumption during the billing period, except when the amount of water used is not registered because of a defective meter; the method described in Sec. 38-50 will be used.
- (4) Water consumption will be metered and rounded to the nearest cubic foot for billing.

Sec. 38-48. Billing, payments, and late payment penalties.

- (a) All water meters shall be read monthly, and bills shall be mailed on a cycle basis.
- (b) Every bill shall be due when mailed to the customer at the last address provided by the customer. A bill shall reflect a due date of fifteen (15) days from the billing date shown on the bill. The same notice will serve as a notice of possible disconnect if payment is not received within thirty-two (32) days of the billing date, allowing greater than the statutory minimum
- (c) A late payment penalty in the amount of five percent (5%) per month shall be imposed upon any outstanding unpaid balance twenty-five (25) days after the billing date shown on the bill. The late payment penalty will be reflected on the bill rendered the following month.
- (d) An automated telephone reminder system will attempt to contact all delinquent accounts prior to disconnection as a courtesy if the customer has provided a phone number.
- (e) If payment has not been received within thirty-two (32) days from the original billing date, services will be disconnected on the thirty-third (33rd) day. After payments in the night deposit are posted and the cutoff person has left the office for the purpose of disconnecting a delinquent customer, a service fee in an amount as established from time to time by ordinance will be charged on that date, whether services are disconnected or not.

- (f) A customer whose services are disconnected for such delinquency may have services restored during regular working hours by the payment of the bill in full plus the twenty-dollar (\$25.00) service fee. If a customer requests that services be reconnected after regular working hours, their service fee shall be in an amount as established from time to time by ordinance. Payment must be received by 11:00 a.m. the following day or services will be disconnected.
- (g) The customer shall pay all billed utility charges before transferring service from one location to another. The final bill shall be mailed to the customer's new billing address. If a customer fails to pay his utility bills for any account where he is listed as the customer and such account becomes delinquent, the city may transfer the amount owed to any other account where the customer is a primary recipient of utilities and cutoff utilities to such account for nonpayment. The city may also refuse to transfer an account to a new customer's name or connect services to a new account where the delinquent customer will be a primary recipient of utilities. A customer is a primary recipient of utilities wherever he is listed as a customer, resides as a head of household or conducts a trade or business. The city's determination that a customer is primary recipient of utilities shall be effective until the customer proves otherwise.
- (h) Any customer who has a check or draft returned from a financial institution because of insufficient funds or closed account shall be charged a service fee in accordance with N.C.G.S. 25-3-506.
- (i) Customers requesting alternate payment due dates must make such request of the city and utilize the city's bank draft service. The customer may choose one of the following periods of the month for their bill to be drafted:
 - (1) Between the 7th and 16th of the month
 - (2) Between the 14th and 24th of the month
 - (3) Between the 22nd and 31st of the month
 - (4) Between the 28th and 9th of the month.

Sec. 38-49. Meter testing; protested bills.

If a water customer has an excessive bill and thinks that it is caused by a faulty meter, he may, by making a deposit with the city, request that the meter be removed and checked. If the meter is found to be in error, the deposit will be refunded and the bill adjusted for the three (3) preceding months. The adjustment will be based on the percentage of error in the meter. If the meter is found to be accurate, the deposit will be retained by the city. The deposit amount shall be as established from time to time by ordinance.

Sec. 38-50. Adjustment of water bills.

- (a) If the city determines that it has overcharged or undercharged a customer on account of its error, the city shall refund or recover the difference subject to the following:
 - (1) The adjustment period shall be limited to the lesser of the actual period during which the error occurred or twelve (12) months;
 - (2) The amount of adjustment shall be determined by the Director based upon such evidence as he deems appropriate; and
 - (3) Any overcharge may be either refunded or credited to the customer and any undercharge shall be billed to the customer.
- (b) If the city determines that it has undercharged a customer on account of any unlawful or materially misleading act of such customer, the undercharge shall be determined and collected as set out in this section, except the adjustment period shall be the greater of the actual period during which the error occurred (up to thirty-six (36) months) or twelve (12) months, if the adjustment period cannot be determined. The city shall, in addition to collecting such undercharge, have the right to take such other action against such customer as is permitted by law.

Sec. 38-51. Water facilities impact fee.

- (a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - (1) *Capital equipment* means equipment with an expected use life of three (3) years or more.
 - (2) *Connection to the water system* means the physical connect of a building, structure or use of land to the city's water lines, no matter if such connection is made through or by intermediate lines.
 - (3) *Development order* means a regulatory approval by the city.

- (4) *Fee payer* means a person applying for connection to the city’s water system.
 - (5) *Water system* means the physical public distribution and plant facilities of the city, administrative adjuncts to such system and the planned future improvements to such system.
 - (6) *Water facilities* means physical public distribution and plant facilities of the city.
- (b) *Legislative findings.* The city finds, determines and declares that:
- (1) The city has expanded and must further expand and upgrade its water facilities in order to maintain current and meet anticipated future standards of public health if new development is to be accommodated without decreasing current standards of health.
 - (2) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of water facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
 - (3) Connecting to the city water system will create a need for the construction, equipping, expansion, and upgrading of water facilities.
 - (4) The fees established by this section are derived from, are based upon, and do not exceed the costs of providing additional and/or upgraded water facilities necessitated by the connection to the city’s water system.
- (c) *Short title, authority, and applicability.*
- (1) The ordinance from which this article is derived shall be known and may be cited as the “City of Washington Water Facilities Impact Fee Ordinance.”
 - (2) The City Council has the authority to adopt the ordinance from which this article is derived pursuant to its general police powers and its obligation to protect the health, welfare, safety of its residents.
 - (3) This article shall apply in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its water system.
- (d) *Intent and purposes.*
- (1) This article is intended to assist in the implementation of the city comprehensive plan.
 - (2) The purpose of this article is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide water facilities in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its water system.
- (e) *Rules of construction.*
- (1) The provisions of this article shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, and welfare.
 - (2) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article:
 - a. In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
 - b. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
 - c. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - d. The phrase “used for” includes “arranged for”, “designed for”, “maintained for”, or “occupied for”.
 - e. The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
 - f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, either or”, the conjunction shall be interpreted as follows:

1. The term “and” indicates that all the connected terms, conditions, provisions or events or events shall apply.
 2. The term “or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 3. The term “either or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- g. The word “includes” shall not limit a term to the specific example but us intended to extend its meaning to all other instances or circumstances of like kind or character.
- h. The term “City Manager” means the Washington City Manager or municipal officials he may designate to carry out the administration of this article.
- (f) *Imposition of water facilities impact fee.* Any person who, after the effective date of the ordinance from which this article is derived seeks to connect to the city water system is hereby required to pay a water facilities impact fee in the manner and amount set forth in this article.
- (g) *Computation of the amount of water facilities impact fee.*
- (1) Water facilities impact fees shall be established from time to time by ordinance. A schedule of these fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the Director, and copies shall be made available to the customers of the city’s water system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon the recommendation of the City Manager.
 - (2) If a fee payer opts not to have the impact fee determined according to subsection (b) of this section, then the fee payer shall prepare and submit to the City Manager an independent fee calculation study for the land development activity for which a connection to the city’s water system is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for water demand prescribed by the North Carolina Department of Environment and Natural Resources (DENR). The documentation submitted shall show the basis upon which the independent fee calculation was made. The City Manager shall consider the documentation submitted by the fee payer but is not required to accept such documentation as he shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. If an acceptable independent fee calculation study is not presented, the fee payer shall pay water facilities impact fees based upon the current fee schedule. If an acceptable independent fee calculation study is presented, the City Manager may adjust the fee to that appropriate to the particular development. Determination made by the City Manager pursuant to this subsection may be appealed to the Washington City Council by filing a written request with the City Manager within ten (10) days of the City Manager’s determination.
- (h) *Payment of fee.*
- (1) The fee payer shall pay the water facilities impact fee required by this article to the city division of Revenue Collections prior to the connection to the city’s water system.
 - (2) All fines collected shall be properly identified by and promptly transferred for deposit in the appropriate Water Facilities Impact Fee Trust Fund to be held in separate accounts as determined in this article and used solely for the purposes specified in this article.
- (i) *Water Facilities Impact Fee Trust Funds established.*
- (1) There are hereby established two (2) separate Water and Sewer Facilities Impact Fee Trust Funds:
 - a. The Water Facilities Impact Fee Trust Fund; and
 - b. The Sewer Facilities Impact Fee Trust Fund
 - (2) Funds withdrawn from these accounts must be used in accordance with the provisions of this article.
- (j) *Use of funds.*

- (1) Funds collected from water facility impact fees shall be used solely for the purpose of acquiring, equipping, and/or making capital improvements to water facilities under the jurisdiction of the city, and shall not be used for maintenance or operations.
- (2) Funds from the Water Facilities Impact Fee Trust Fund may only be used for water facilities purposes. Funds shall be expended in the order in which they are collected.
- (3) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which water facilities impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (b) of this section.
- (4) At least once each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for water facilities, assigning funds, including any accrued interest, from the several Water Facilities Impact Fee Trust Fund to specific water facilities improvements projects and related expenses, monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Water Facilities Impact Fee Trust Fund until the next fiscal period, except, as provided by the refund provisions of this article.
- (5) Funds may be used to provide refunds as described in subsection (k) of this section.
- (6) Funds may be funded to rebate developer costs for providing water capital facilities to excess of the capacity required to the individual developer making the provision. Any rebates must be pursuant to a refunding agreement between the developer and the city after the effective date of the ordinance from which this article is derived. Prior refunding agreements may be renegotiated in order to bring such agreements into accord with the provisions of this article.

(k) *Refund of fees paid.*

Any funds not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date the water facilities impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at the rate of five percent (5%) per annum, provided that the landowner submits an application for a refund to the City Clerk within one hundred eighty (180) days of the expiration of the six (6) year period.

(l) *Exemptions and credits.*

(1) The following shall be exempted from payment of the impact fee:

- a. Alterations or expansions of an existing building where no additional; or larger water connections are requested and where the use is not changed.
- b. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger water connections are requested and where the use is not changed.
- c. The installations of a replacement mobile home on a lot or other such site when water capital facilities impact fee for such mobile home site has previously been paid pursuant to this article or where a mobile home legally existed on such site on or prior to the effective date of the ordinance from which this article is derived.
- d. Any claim of exemption must be made no later than the time of application for connection to the city's water system. Any claim not so made shall be deemed waived.

(2) *Credits.*

- a. Water facilities capital improvements may be offered by the fee payer as total or partial payment of the required impact fee. The offeror must request a water facilities impact fee credit. If the City Manager accepts such an offer, whether the acceptance is before or after the effective date of the ordinance from which this article is derived, the credit shall be determined and provided in the following manner:
 1. Credit for the dedication of land shall be valued at:
 - a. One hundred ten percent (110%) of the most recent assessed value by the county tax assessor;
 - b. By such other appropriate method as the City Council may have accepted prior to the effective date of the ordinance from which this section is derived for particular water facilities improvements; or

- c. By fair market value established by private appraisers acceptable to the city. Credit for the dedication of water facilities land shall be provided when the property has been conveyed at no charge to; and accepted by, the city in a manner satisfactory to the City Council.
- 2. Applicants for credit for construction of water facilities improvements shall submit acceptable engineering drawings and specification and construction cost estimates to the City Manager. The City Manager shall determine credit for construction based upon either these cost estimates or upon alternated engineering criteria and construction cost estimates if the City Manager determines that such estimates submitted by the applicant are either unreliable or inaccurate. The City Manager shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the water facilities impact fee component to which the credit will apply the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of a duplicate copy of such letter or certificate and return such signed document to the City Manager before credit will be given. Failure of the applicant to sign, date and return such document within sixty (60) days shall nullify the credit.
- 3. Except as provided in subsection (1) of this section, credit against impact fees otherwise due will not be provided until:
 - a. The construction is completed and accepted by the city; or
 - b. A suitable maintenance and warranty bond is received and approved by the City Clerk, when applicable.
- 4. Credit may be provided before completion of specified water facilities improvements if adequate assurances are given by the applicant that the standards set out in this section will be met and if the fee payer posts security, as provided in this subsection, for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the City Clerk in an amount determined by the City Manager. If the water facilities construction project will not be constructed in one (1) year of acceptance of the offer by the City Manager, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the City Clerk of the City Council prior to acceptance of the security by the City Clerk. If water facilities construction project is not to be completed within five (5) years of the date of the fee payer's offer, the City Council must approve the water facilities construction project and its scheduled completion date prior to the acceptance of the offer by the City Manager.
 - a. Any claim for credit must be made no later than the time of application for connection. Any claim not so made shall be deemed waived.
 - b. Credits shall not be transferable from one project or development to another without the approval of the City Council.
 - c. Credits shall not be transferable from one (1) component of the water and sewer facilities impact to another component of this fee.
 - d. Determination made by the City Manager, pursuant to the credit provisions of this section, may be appealed to the City Council by filing a written request with the City Manager within ten (10) days of the City Manager's determination.
- (m) *Review.* The fees contained in this section shall be reviewed by City Council at least once each fiscal biennium at the time of adoption of the city budget.
- (n) *Penalty Provision.* A violation of this Sec. 38-52 of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution city shall have the power to sue in civil court to enforce the provisions of this section.

Secs. 38-52 – 38-60. Reserved.

Division 11. Conflict

Sec. 38-61. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Secs. 38-62 - 38-80. Reserved.

Division 12. Effective Date

Sec. 38-81. Effective date.

This chapter shall be in full force and effect from and after its passage, approval and publication, as provided by law.

CHAPTER 39

WASTEWATER/SUO

ARTICLE I. GENERAL PROVISIONS

Sec. 39-1. Purpose and policy.

This chapter sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Washington, hereafter referred to as the city, and enables the city 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 objectives of this chapter are:

- (a) To prevent the introduction of pollutants into the municipal wastewater system; which will interfere with the operation of the system or contaminate the resulting sludge;
- (b) To prevent the introduction of pollutants into the municipal wastewater system which will pass through the system, inadequately treated, into any waters of the State or otherwise be incompatible with the system;
- (c) To promote reuse and recycling of industrial wastewater and sludges from the municipal system;
- (d) To protect both municipal personnel who may be affected by sewage, sludge, and effluent in the course of their employment as well as protecting the general public;
- (e) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal wastewater system; and
- (f) To ensure that the municipality complies with its NPDES or Non-discharge Permit conditions, sludge use and disposal requirements and any other Federal or State laws to which the municipal wastewater system is subject.

This chapter provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This chapter shall apply to all users of the municipal wastewater system, as authorized by N.C.G.S. 160A-312 and/or 153A-275. The city shall designate an administrator of the POTW and pretreatment program hereafter referred to as the POTW Director; except as otherwise provided herein, the POTW Director shall administer, implement, and enforce the provisions of this chapter. Any powers granted to or imposed upon the POTW Director may be delegated by the POTW Director to other city personnel. By discharging wastewater into the municipal wastewater system, industrial users located outside the city limits agree to comply with the terms and conditions established in this chapter, as well as any permits, enforcement actions, or orders issued hereunder.

Sec. 39-2. Definitions and abbreviations.

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
 - (1) *Act or "the Act"*. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.

- (2) *Ammonia nitrogen.* The total amount of nitrogen in wastewater in the form of ammonia or ammonium.
- (3) *Approval authority.* The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.
- (4) *Authorized representative of the industrial user.*
 - a. If the industrial user is a corporation, authorized representative shall mean:
 - 1. the president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 - 2. the manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
 - c. If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - d. The individuals described in Sec. 39-2(a)(4)-(c) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the city.
 - e. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to POTW Director prior to or together with any reports to be signed by an authorized representative.
- (5) *Billable Biochemical Oxygen Demand.* The discharge in pounds of BOD calculated using the billable flow and concentration of BOD in the wastewater in excess of two-hundred fifty (250) mg/l.
- (6) *Billable Total Suspended Solids.* The discharge in pounds of TSS calculated using the billable flow and concentration of TSS in the wastewater in excess of two-hundred fifty (250) mg/l.
- (7) *Biochemical Oxygen Demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
- (8) *Building drain.* That part of the lowest horizontal piping of a drainage system which receives wastewater and is located inside the walls of a building and conveys the wastewater to the building sewer, which begins five (5) feet outside the building wall.
- (9) *Building sewer.* A sewer conveying wastewater from the premises of a user to the POTW.
- (10) *Bypass.* The intentional diversion of waste streams from any portion of a user's treatment facility.
- (11) *Categorical standards.* This means the National Categorical Pretreatment Standards or Pretreatment Standard.
- (12) *Chemical Oxygen Demand.* The total amount of oxygen required to oxidize the organic matter in waste as described in standard methods.

- (13) *City*. The City of Washington or, where the context so indicates, the City Council.
- (14) *Color*. This represents the true color due to the substances in solution.
- (15) *Concentration based limit*. A limit based on the relative strength of a pollutant in wastewater, usually expressed in mg/l.
- (16) *Direct discharge*. The discharge of wastewater directly to the waters of the state.
- (17) *Environmental Protection Agency or EPA*. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
- (18) *Grab sample*. A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (19) *Holding tank waste*. Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- (20) *Indirect discharge or discharge*. The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
- (21) *Industrial user or user*. Any person which is a source of indirect discharge.
- (22) *Instantaneous measurement*. Represents a single reading, observation or measurement of the discharge.
- (23) *Interference*. The inhibition, or disruption of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- (24) *Local limits*. Concentration or mass-based limits developed by the director for controlling the discharge of pollutants.
- (25) *Mass-based limit*. A limitation based on the actual quantity of a pollutant in a discharge, usually expressed in pounds per unit of production.
- (26) *Medical waste*. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (27) *National categorical pretreatment standard or categorical standard*. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
- (28) *National Pollution Discharge Elimination System or NPDES Permit*. A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.
- (29) *National prohibitive discharge standard or prohibitive discharge standard*. Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 39.26 of this chapter and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
- (30) *Natural outlet*. Any outlet into a watercourse, pond, ditch, lake, or other surface water or groundwater.
- (31) *New source*.
 - a. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be

applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:

1. the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 2. the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 3. the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
- b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section (a)(2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
- c. For purposes of this definition, construction of a new source has commenced if the owner or operator has:
1. Begun, or caused to begin, as part of a continuous on-site construction program:
 - i. Any placement, assembly, or installation of facilities or equipment; or
 - ii. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- (32) *Noncontact cooling water.* Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (33) *Non-discharge permit.* A disposal system permit issued by the State pursuant to N.C.G.S. 143-215.1.
- (34) *Operation and maintenance.* All costs, direct and indirect, not including debt service and capital related expenditures, but inclusive of expenditures attributable to administration, monitoring, inspections, reviewing applications, maintenance of equipment, and treatment and collection of wastewater, necessary to assure adequate wastewater collection and treatment on a continuing basis which conforms to applicable regulations and assures optimal long-term facility management.
- (35) *Pass through.* A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES or Non-discharge Permit, or a downstream water quality standard.
- (36) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
- (37) *pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (38) *Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes,

- biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- (39) *POTW Director.* The city administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance.
- (40) *POTW treatment plant.* That portion of the POTW designed to provide treatment to wastewater.
- (41) *Pretreatment or treatment.* This is the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- (42) *Pretreatment program.* The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- (43) *Pretreatment requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (44) *Pretreatment standards.* Prohibited discharge standards, categorical standards, and local limits.
- (45) *Publicly Owned Treatment Works (POTW) or municipal wastewater system.* A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.
- (46) *Qualified laboratory.* Laboratories currently certified by the state to perform water and wastewater analyses.
- (47) *Severe property damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (48) *Significant industrial user.* Any industrial user of the wastewater disposal system who
- a. has an average daily process wastewater flow of twenty-five thousand (25,000) gallons or more, or
 - b. contributes more than five percent (5%) of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge, or
 - c. is required to meet a National categorical pretreatment standard, or
 - d. is found by the city, the Division Of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (49) *Significant noncompliance or reportable noncompliance.* A status of noncompliance defined as follows:
- a. *Violations of wastewater discharge limits.*
 1. *Chronic Violations.* Sixty-six (66) percent or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six (6) month period.

2. *Technical Review Criteria (TRC) violations.* Thirty-three percent (33%) or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six (6) month period. There are two groups of TRCs:
 - i. For the conventional pollutants: BOD, TSS, fats, oil and grease TRC = 1.4
 - ii. For all other pollutants TRC = 1.2
 3. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.
 4. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- b. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.
 - c. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, ninety (90) day compliance reports, and periodic compliance reports within thirty (30) days from the due date.
 - d. Failure to accurately report noncompliance.
 - e. Any other violation or group of violations that the control authority considers to be significant.
- (50) *Slug load or discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature, a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in Sec. 39-26 of this chapter.
- (51) *Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
- (52) *Standard methods.* The laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation or another procedures recognized by the DWQ, DPH, and EPA.
- (53) *State.* Refers to the state of North Carolina.
- (54) *Storm sewer.* A sewer that carries only stormwater, surface runoff, street wash, and drainage, and to which wastewater is not intentionally admitted.
- (55) *Storm water.* Any flow occurring during or following any form of natural precipitation and resulting there from.
- (56) *Total Kjeldahl nitrogen.* The sum of organic nitrogen and ammonia nitrogen content of a wastewater as determined by standard methods.
- (57) *Total nitrogen.* The sum of TKN, nitrates, and nitrites content of a wastewater as determined by standard methods.
- (58) *Total phosphorus.* All orthophosphates and condensed phosphates both dissolved and particulate, organic and inorganic.
- (59) *Total suspended solids.* The total suspended matter that either floats on the surface of, or is suspension with, wastewater and is removable by laboratory filtration as described in standard methods.
- (60) *Toxic substances.* Any substances whether gaseous, liquid, or solid, which when discharged to the POTW in sufficient quantities may tend to interfere with any wastewater treatment process, or to constitute a hazard to the environment or recreation in the receiving waters of the effluent from the

POTW. These substances include but are not limited to those pollutants listed as toxic in regulations promulgated by the EPA under the provisions of 307(a) of the Act, or other acts.

- (61) *Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.
 - (62) *User.* Any person, who discharges, caused or permits the discharge of wastewater to the POTW.
 - (63) *User charge system.* The system charges levied on users for the operation and maintenance costs of the water or wastewater.
 - (64) *Wastewater.* The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.
 - (65) *Wastewater Permit.* As set forth, in Sec. 39-62 of this chapter.
 - (66) *Waters of the State.* All streams, lakes, ponds, marshes, watercourse, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.
- (b) This chapter is gender neutral and the masculine gender shall include the feminine and vice-versa.
 - (c) Shall is mandatory; may is permissive or discretionary.
 - (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
 - (e) The following abbreviations when used in this chapter shall have the designated meanings:
 - (1) BOD Biochemical Oxygen Demand
 - (2) CFR Code of Federal Regulations
 - (3) COD Chemical Oxygen Demand
 - (4) CWA Clean Water Act
 - (5) DENR NC Department of Environment and Natural Resources
 - (6) DPH NC Division of Public Health
 - (7) DWQ NC Division of Water Quality
 - (8) EPA Environmental Protection Agency
 - (9) gpd Gallons per day
 - (10) l Liter
 - (11) mg Milligrams
 - (12) mg/l Milligrams per liter
 - (13) NCAC North Carolina Administrative Code
 - (14) N.C.G.S. North Carolina General Statutes
 - (15) NPDES National Pollution Discharge Elimination System
 - (16) O & M Operation and Maintenance
 - (17) POTW Publicly Owned Treatment Works
 - (18) RCRA Resource Conservation and Recovery Act
 - (19) SIC Standard Industrial Classification
 - (20) SWDA Solid Waste Disposal Act
 - (21) TKN Total Kjeldahl Nitrogen
 - (22) TSS Total Suspended Solids
 - (23) USC United States Code.

Sec. 39-3. Authority.

All utilities owned, leased or used by the city, whether inside or outside the corporate limits, shall be under the full control of the city pursuant to authorization in Sessions Laws of 1953, Chapter 300. The duty of enacting and enforcing rules and regulations governing the management and control of city properties shall be vested in the city, and the duty of enforcing such rules and regulations may be delegated.

Sec. 39-4. Visiting utility stations.

No visitor shall be permitted to enter the wastewater treatment plant or any pumping station unless accompanied by the person in charge, and under no circumstances shall any visitor handle or in any way come in contact with any part of the machinery.

Sec. 39-5. Connections and meters.

- (a) *Connections.* All meters, meter boxes, pipes and other equipment furnished and used by the city in installing any sewer connection shall be and remain the property of the city.
- (b) *Maintenance of Meters.* All meters, except such as are required to be furnished by specified users of water, shall be kept in good repair and working order by and at the expense of the city. Meters for measuring the flow of wastewater, where required, shall be provided and maintained by and at the expense of the customer.
- (c) *Connections – work to be done by the city.* The construction of laterals for the connection of the public sewer lines on any lot with public sewer lines in any street and the necessary excavation thereof shall be done only by the city.
- (d) *Connections — Application.*
 - (1) No connection shall be made to any public sewer line except after approval of the written application therefore.
 - (2) Every application for a sewer connection shall state the name of the owner of the lot, the name of the street on which lot is situated, the number of the house, if there is one (1) on the lot or, if not, a description of the location of the lot, the number and kind of connections required and the character of surface of the abutting street. Every such application shall be signed by the person making the application and shall be accompanied by the proper fee for making the connection applied for.
 - (3) No person shall make any connection of roof downspouts, exterior foundation drains, area drains, or other sources of inflow, groundwater, or other unpolluted waters to a building sewer or building drain which in turn is connected, directly or indirectly, to a public sanitary sewer.
- (e) *Connections — separate connections required; exceptions.* Every house or building abutting any public sewer shall have a separate connection.
- (f) *Connections — where required.* Within thirty (30) days after the time when any public sanitary sewer in any street is completed and ready for use, the owner of any abutting lot having thereon improvements for occupancy shall cause a sanitary closet and sink to be installed and to be connected with the sanitary sewer; provided, that where a house adjacent to a sanitary sewer is connected to an existing septic tank, a connection shall not be required as long as the septic tank operates properly or if the director determines that it is not feasible to connect. When, in the opinion, of the county health officer, the septic tank does not work properly or becomes a health hazard, he shall notify the owner in writing and send a copy of the notice to the director. The owner shall then be required to connect to the sanitary sewer within thirty (30) days from the date of the notice.
- (g) *Connections — where connection inside.*
 - (1) Sewer connections shall be made into existing connections constructed by the city to serve a lot. If a connection does not exist, one shall be provided as close as possible to the location requested by the customer. The building sewer shall be constructed to the cleanout at approximately the start of the right-of-way or property line.
 - (2) Old building sewers may be used in connection with new buildings only when they are found, upon examination and testing by the director, to meet all requirements of the city and this chapter. All new building sewers including necessary replacement of existing building sewers shall comply with the state building code, volume II, plumbing.

- (3) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may, directly or indirectly, be occasioned by the installation of the building sewer provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of the city.
- (4) It shall be the responsibility of the owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the director that repairs are necessary. Should the owner fail to repair the building sewer within fifteen (15) days after receiving written notification that such repairs are necessary, the city may make the necessary repairs and shall assess the owner for the cost of the repairs.
- (5) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain may be lifted by a means approved by the city and discharged to the building sewer. The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes and other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures shall be approved by the city before installation.
- (h) *Connections—Connections beyond the city limits.* Any person owning or controlling premises located beyond the corporate city limits and desiring to install a plumbing system for the purpose of discharging wastewater into the public sewer may do so by complying with the requirements of this article and paying all applicable fees and charges.

Sec. 39-6. Standards and provisions for sewer systems.

- (a) *Standards for sewer system.*
Plans for additions or alterations to the existing sewer system shall be approved by the director or DWQ. Septic tanks shall not be constructed within the city limits. Existing septic tanks may be used until any type of cleaning or repair is required, at which time the structure shall be connected to the public sewer and the septic tank removed or filled with dirt.
- (b) *Provisions of sewer service.*
 - (1) *Area outside city.*
 - a. *With adequate public sewer existing.* Upon receipt of a request for sewer service and payment of all fees and charges, the city may construct a sewer connection to serve the property. The property owner shall pay the then existing connection fee and capital investment fee prior to receiving a tap.
 - b. *Public sewer not existing.*
 - 1. Upon receipt of a request for sewer service, the city may approve the request and authorize construction of a line to serve the property. When a public sewer is constructed, it shall extend across the entire frontage of the property to be served.
 - 2. The party requesting service shall pay the entire cost of construction, including materials, labor, equipment and necessary lift stations.
 - 3. If the city determines that sufficient advantages exist, it may choose to bear the cost of constructing a public sewer from the nearest adequately sized public sewer to the property to be served.
 - 4. Each property requesting service and abutting a public sewer constructed according to subsection (b)(1)b. 1 or 2 of this section shall comply with subsection (b)(1)a. of this section.
 - c. *Charges after annexation into city.* After annexation into the city, property which abuts an existing public sewer shall pay the then existing inside capital investment fee and connection fee prior to receiving a connection.
 - d. *Sewer rates.* Customers outside the city shall be charged the regular outside rate.
 - (2) *Area inside city.*

- a. *With adequate public sewer existing.* The city shall construct a sewer connection after receipt of the then existing connection fee.
 - b. *Public sewer not existing.* When a property owner within the city requests sewer service, the city may order the extension of a public sewer to serve the property and assess all abutting property owners an amount equal to the cost of materials, but such assessments shall not exceed fifteen dollars (\$15) per front foot. The city shall pay the cost of all lift stations and force mains.
 - c. *Other conditions.* When a subdivision or developer requests sewer service and conditions in subsection (1) or (2) of this section do not apply, or if an unusually large amount of construction is required, the conditions of payment shall be determined through negotiations and established in a contract between the property owner and city.
- (c) *Outdoor Privies.* It shall be unlawful to construct, maintain, or use any outdoor privy; or use any device for collecting wastewater within the city limits which is not connected to the public sewer.

Secs. 39-7 – 39-25. Reserved.

ARTICLE II. GENERAL SEWER USE REQUIREMENTS

Division 1. General Sewer Use Requirements

Sec. 39-26. Prohibited discharge standards.

- (a) *Discharging wastewater to natural outlet prohibited; discharge of stormwater or unpolluted water.* Wastewater shall not be discharged to a natural outlet in the limits of the city. All stormwater shall be discharged to the storm sewer system. Unpolluted water may be discharged to the storm sewer system with approval of DWQ.
- (b) *Prohibited discharges into sewers—generally.* No person shall pour, throw or discharge any substance, or other solid or liquid, into any sanitary or storm sewer at any manhole or at any opening therein other than a sewer connection, nor shall any person discharge into any sanitary or storm sewer any substance likely to obstruct or to cause undue injury to the same or any substance of such high causticity or of a sufficiently acid nature to interfere materially with the equipment used in connection therewith.
- (c) *Prohibited discharges into sewers — specified waters and wastes.*
 - (1) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
 - (2) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater;
 - a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
 - b. Solid or viscous substance in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case, solids greater than one half inch (1/2”) in any dimension.
 - c. Any wastewater having a pH less than 5.0 or more than 10 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
 - d. Wastewater containing pollutants in sufficient quantity either singly or by interaction with other pollutants which cause interference, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the POTW.
 - e. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
 - f. Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).

- g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - h. Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with Sec. 39-33 of this chapter.
 - i. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
 - j. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
 - k. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable State or Federal regulations.
 - l. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW Director.
 - m. Petroleum oil, nonbiodegradable cutting oil, solvents, or products of mineral oil origin in amounts that may cause interference or pass through.
 - n. Any sludges, screenings or other residues from the pretreatment of industrial wastes.
 - o. Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit.
 - p. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
 - q. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director.
 - r. Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B.0200.
 - s. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - t. Recognizable portions of the human or animal anatomy.
 - u. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
 - v. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
 - w. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
- (e) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.

- (f) When the POTW Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW Director shall:
 - (1) advise the user(s) of the potential impact of the contribution on the POTW in accordance with Article II, Division 7 of this chapter.
 - (2) take appropriate actions in accordance with Sec. 39-61 and Sec. 39-62 for such user to protect the POTW from interference or pass through.

Sec. 39-27. National Categorical Pretreatment Standards.

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein.

- (a) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).
- (c) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.
- (d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

Sec. 39-28. Local limits.

An industrial waste survey is required prior to a User discharging wastewater containing in excess of the following average discharge limits.

BOD	250	mg/l	Lead	0.049	mg/l
TSS	250	mg/l	Mercury	0.0003	mg/l
NH ₃	25	mg/l	Nickel	0.021	mg/l
Arsenic	0.003	mg/l	Silver	0.005	mg/l
Cadmium	0.003	mg/l	Zinc	0.175	mg/l
Chromium	0.05	mg/l (total chromium)			
Copper	0.061	mg/l			
Cyanide	0.015	mg/l			

Industrial Waste Survey information will be used to develop user-specific local limits when necessary to ensure that the POTW's maximum allowable headworks loading are not exceeded for particular pollutants of concern. User-specific local limits for appropriate pollutants of concern shall be included in wastewater permits. The POTW Director may impose mass based limits in addition to, or in place of concentration based limits.

No person shall discharge wastewater in excess of the concentration set forth in pretreatment standards or their wastewater discharge permit. The POTW Director shall establish permit limitations on a case-by-case basis in accordance with DWQ and EPA regulations and an approved headworks analysis. State requirements and limitations on discharges shall apply in any case where they are more stringent than requirements or limitations developed by the city or EPA.

Sec. 39-29. Right of revision.

The city reserves the right to establish limitations and requirements which are more stringent than those required by either State or Federal regulation if deemed necessary to comply with the objectives presented in Sec. 39-1 of this chapter or the general and specific prohibitions in Sec. 39-26 of this chapter, as is allowed by 40 CFR 403.4.

Sec. 39-30. Dilution.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the National categorical pretreatment standards, unless expressly authorized by an applicable pretreatment standard, or in any other pollutant-specific limitation developed by the city or State.

Sec. 39-31. Pretreatment of wastewater.

- (a) Users shall provide pretreatment as required to comply with this chapter or discharge permit, and shall achieve compliance with all local limits and pretreatment standards within the specified time limitations. Any facilities required to pretreat wastewater shall be constructed, operated, and maintained at the expense of the owner. Detailed plans showing the pretreatment facilities and operating procedure shall be submitted to and approved by the director before construction of the facilities. Submission and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the director under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to the director prior to the initiation of the changes.
- (b) *Additional Pretreatment Measures.*
 - (1) Whenever deemed necessary, the POTW Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.
 - (2) In order to equalize flows over a twenty-four hour period, each user discharging in excess of forty thousand (40,000) gallons in any one (1) day shall construct and maintain at user's own expense a suitable storage tank. Such tank shall have a capacity of at least eighty percent (80%) of the normal volume of one (1) twenty-four (24) hour production period of waste and an outlet to the sewer which is controlled by a waterworks type rate controller or other approved devices, the setting of which shall be directed by the city. The POTW Director shall approve all plans prior to construction. A wastewater discharge permit may be issued solely for flow equalization.
 - (3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.
 - (4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

Sec. 39-32. Accidental discharge/slug control plans.

- (a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Sec. 39-2(a)(50). All SIUs must be evaluated within one year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.
- (b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sec. 39-75 and Sec. 39-76.
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
 - (1) Description of discharge practices, including non-routine batch discharges;
 - (2) Description of stored chemicals;
 - (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by Sec. 39-76 of this chapter; and
 - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (d) Wastewater which constitutes a slug as defined herein will have a surcharge at the discretion of the POTW Director.

Sec. 39-33. Hauled wastewater.

- (a) Septic tank waste shall not be introduced into the POTW or any part of the collection system.
- (b) The POTW Director shall require haulers of industrial waste to obtain wastewater discharge permits. The POTW Director may require generators of hauled industrial waste to obtain wastewater discharge permits. The POTW Director also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this chapter.
- (c) Industrial waste haulers may discharge loads only at locations designated by the POTW Director. No load may be discharged without prior consent of the POTW Director. The POTW Director may collect samples of each hauled load to ensure compliance with applicable standards. The POTW Director may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.
- (d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.

Secs. 39-34 – 39-41. Reserved.

Division 2. Fees

Sec. 39-42. Purpose.

It is the purpose of this chapter to provide for the recovery of costs from users of the wastewater disposal system of the city for the implementation of the program established herein. A schedule of sewer rates shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's sewer system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager.

Sec. 39-43. General requirements within city.

- (a) Sewer extensions shall be made upon order of the city as it deems necessary, and in accordance with provisions of state law the cost of such extensions shall be shared jointly by city and owners of property abutting the sewer extension improvements, according to this policy.
- (b) Corner lots are exempt from front sewer improvement assessments for a maximum of one hundred fifty (150) feet on one (1) side of corner lot. In the event a sewer line is constructed across only one (1) side of a corner lot, that side shall be assessed at the then existing rate for its full distance. At such time in the future that a sewer line is extended across the other side of that corner lot, that side will be assessed at the then existing rate; except, that a corner lot exemption up to one hundred fifty (150) feet, but not exceeding the distance along that side, shall be allowed, provided an assessment has been paid for the first side. Lots having a double frontage shall be assessed for sewer improvements on both sides if both sides can be developed according to the zoning ordinance. If a double frontage lot is also a corner lot, on one (1) corner lot exemption shall be allowed, unless both frontages can be developed according to the zoning ordinance and both frontages have been assessed. In such case the property shall be entitled to two (2) corner lot exemptions.
- (c) The city shall not assess any of the cost of enlarging sewer lines in use.
- (d) An assessment for sewer extensions made under this policy may be spread over a period of ten (10) years if requested by the property owner. Such assessments shall bear interest at the highest rate provided by state law per annum on the unpaid balance, with the first assessment becoming due in October next succeeding the date of improvements within the city limits only.

Sec. 39-44. Sewer connection fees and capital investment fees.

- (a) Sewer connection fees are fees for the installation of a tap at the right-of-way. These fees shall be adopted by the city council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the fee schedule will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's sewer system. The fees shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager. Minimum fees shall be paid prior to construction of the tap. Any additional fees to equal the total actual construction cost shall be paid prior to customer making tie-in to the tap. For any tap larger than listed on the fee schedule, the cost shall be estimated by the POTW Director at the time of the request. Any additional cost to equal the total actual construction costs shall be paid prior to customer making tie-in to the tap. For taps requiring more than the usual construction work, the city may require customer to employ

an outside contractor to make the tap. Contractors shall obtain a permit for the public works department and all work shall be in accordance to city specifications.

- (b) Capital investment fees are charges for the construction of sewer lines which, at the time of construction, abut property outside the corporate limits. Fees shall be charged as established from time to time by ordinance. Property which is annexed into the city and abuts an existing sewer line, and has not previously paid a capital investment fee, shall pay the capital investment fee before service is provided. Property owners within the corporate limits may pay their capital investment fees in ten (10) equal annual installments, if requested by the property owners. Such capital investment fees will bear interest at the highest rate provided by state law per annum on the unpaid balance, with the first payment becoming due in October next succeeding the date the capital investment fee charge is made.

Sec. 39-45. Service fees — new customers.

New customers to the wastewater system will be charged a service fee in the amount as established from time to time by ordinance and any deposit which is required of all customers.

Sec. 39-46. Service fees – transfers.

Customers moving from one location to another within the wastewater system shall be charged a service fee in the amount established from time to time by ordinance.

Sec. 39-47. Sewer rates and bills.

A schedule of sewer rates shall be adopted by the city council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the POTW Director, and copies shall be made available to the customers of the city's sewer system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager.

(a) *Residential service.*

- (1) This service is available for the collection and treatment of domestic sewage from single family residences within the city and outside the city limits where the city's collection facilities are extended.
- (2) Service is not available under this schedule for any nondomestic sewage; such as from business operated in the residence, for commercial for multifamily use, such as, master metered apartments, motels, inns, and mobile home parks; or for resale.
- (3) This service is applicable when the customer's residence is served by a water service tap up to one (1) inch in diameter.
- (4) The minimum monthly charge for city customers will be determined by the current rate schedule.
- (5) Commodity charges will be based on the customer's total water consumption during the billing period. Water consumption will be metered and rounded to nearest cubic foot for billing. Except when the amount of water used is not registered because of a defective meter, the method described in Sec. 39-50 will be used.
- (6) Existing customers not receiving water service shall provide a meter to measure total use. When total use is not known, bills will be rendered on the basis of estimates by the POTW Director.
- (7) The sewer service charge shall be billed to each customer at the same time the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.

(b) *General service.*

- (1) This service is available for the collection and treatment of sewage discharged by commercial, industrial, institutional and other customers within the city and outside the city limits where the city's collection facilities are extended. Service is not available for resale service.
- (2) The minimum monthly charge for inside city customers will be determined by the current rate schedule.
- (3) Charges will be established periodically for billing of some costs attributable to wastewater with greater pollutant concentrations than normal domestic sewage. The following rates are applicable for five-day BOD and suspended solids:
 - a. BOD: \$0.24/pound for concentration in excess of 300 mg/l
 - b. TSS: \$0.29/pound for concentration in excess of 300 mg/l

Charges for additional costs attributable to other pollutants will be assessed to each customer, as applicable. All nondomestic customers that utilize two inch or greater meters shall be charged an additional \$0.00414 per cubic foot for administration of the industrial pretreatment program.

- (4) Commodity charges will be based on the customer's total water consumption during the billing period, except when the customer's water consumption significantly exceeds the discharge into the wastewater collection system. When applicable, the customer may pay the cost of installing and maintaining the necessary equipment to monitor the flow not returned to the wastewater collection system, and has the billing use reduced accordingly.
- (5) The sewer service charge shall be billed to each customer at the same time that the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.

Sec. 39-48. Wastewater surcharges.

- (a) All persons discharging industrial wastewater into the public sanitary sewer shall be rendered a monthly bill as a surcharge covering the entire costs to the city incurred by treating all wastewater having pollutants in excess of those defined as billable. Such surcharge shall be evoked as herein provided in addition to the existing service charge if such charge is now imposed or in addition to any sewer charge imposed after the adoption of this article. The surcharge shall include:
 - (1) All fixed charges and amortization costs of plant capacity required for treating such wastewater.
 - (2) A charge covering the operational cost incurred by the city in treating such wastewater.
- (b) A surcharge in amounts established from time to time by ordinance per one hundred pounds of billable biochemical oxygen demand and suspended solids shall be made to cover the fixed charges and amortization cost of plant capacity. The POTW Director shall recommend a surcharge for the other billable pollutants.
- (c) The surcharge covering operational costs shall be fixed at the beginning of the fiscal year and shall be computed from the actual costs per pound of pollutant removed from the wastewater as experienced at the wastewater treatment plant during the preceding fiscal year.
- (d) The combined surcharge as set forth in subsections (b) and (c) of this section shall be billed and payable monthly on a separate bill rendered by the city. Such bill shall be sent through the United States mail notifying all persons of the amount and date due. Failure to receive notice is not an excuse for nonpayment of bills. Delinquencies shall be handled in accordance with the provisions of this section.
- (e) In case a person discharging wastewater into the public sanitary sewer does not procure his water supply from the city and becomes delinquent on his payment of the surcharge, his connection with the wastewater system may be severed and may only be reconnected at his expense.

Sec. 39-49. Billing, payments, and late payment penalties.

- (a) All wastewater meters shall be read monthly, and bills shall be mailed on a cycle basis.
- (b) Every bill shall be due when mailed to the customer at the last address provided by the customer. A bill shall reflect a due date of fifteen (15) days from the billing date shown on the bill. The same notice will serve as a notice of possible disconnect if payment is not received within thirty-two (32) days of the billing date, allowing greater than the statutory minimum
- (c) A late payment penalty in the amount of five percent (5%) per month shall be imposed upon any outstanding unpaid balance twenty-five (25) days after the billing date shown on the bill. The late payment penalty will be reflected on the bill rendered the following month.
- (d) An automated telephone reminder system will attempt to contact all delinquent accounts prior to disconnection as a courtesy if the customer has provided a phone number.
- (e) If payment has not been received within thirty-two (32) days from the original billing date, services will be disconnected on the thirty-third (33rd) day. After payments in the night deposit are posted and the cutoff person has left the office for the purpose of disconnecting a delinquent customer, a service fee in an amount as established from time to time by ordinance will be charged on that date, whether services are disconnected or not.
- (f) A customer whose services are disconnected for such delinquency may have services restored during regular working hours by the payment of the bill in full plus the twenty-dollar (\$25.00) service fee. If a customer requests that services be reconnected after regular working hours, their service fee shall be in an amount as established from time to time by ordinance. Payment must be received by 11:00 a.m. the following day or services will be disconnected.

- (g) The customer shall pay all billed utility charges before transferring service from one (1) location to another. The final bill shall be mailed to the customer's new billing address. If a customer fails to pay his utility bills for any account where he is listed as the customer and such account becomes delinquent, the city may transfer the amount owed to any other account where the customer is a primary recipient of utilities and cutoff utilities to such account for nonpayment. The city may also refuse to transfer an account to a new customer's name or connect services to a new account where the delinquent customer will be a primary recipient of utilities. A customer is a primary recipient of utilities wherever he is listed as a customer, resides as a head of household or conducts a trade or business. The city's determination that a customer is primary recipient of utilities shall be effective until the customer proves otherwise.
- (h) Any customer who has a check or draft returned from a financial institution because of insufficient funds or closed account shall be charged a service fee in accordance with N.C.G.S. 25-3-506.
- (i) Customers requesting alternate payment due dates must make such request of the city and utilize the city's bank draft service. The customer may choose one of the following periods of the month for their bill to be drafted:
 - (1) Between the 7th and 16th of the month
 - (2) Between the 14th and 24th of the month
 - (3) Between the 22nd and 31st of the month
 - (4) Between the 28th and 9th of the month.

Sec. 39-50. Meter testing; protested bills.

If a sewer customer has an excessive bill and thinks that it is caused by a faulty meter, he may, by making a deposit with the city, request that the meter be removed and checked. If the meter is found to be in error, the deposit will be refunded and the bill adjusted for the three (3) preceding months. The adjustment will be based on the percentage of error in the meter. If the meter is found to be accurate, the deposit will be retained by the city. The deposit amount shall be as established from time to time by ordinance.

Sec. 39-51. Adjustment of sewer bills.

- (a) If the city determines that it has overcharged or undercharged a customer on account of its error, the city shall refund or recover the difference, subject to the following:
 - (1) The adjustment period shall be limited to the lesser of the actual period during which the error occurred or twelve (12) months;
 - (2) The amount of adjustment shall be determined by the POTW Director based upon such evidence as he deems appropriate; and
 - (3) Any overcharge may be either refunded or credited to the customer and any undercharge shall be billed to the customer.
- (b) If the city determines that it has undercharged a customer on account of any unlawful or materially misleading act of such customer, the undercharge shall be determined and collected as set out in this section, except the adjustment period shall be the greater of the actual period during which the error occurred (up to thirty-six (36) months) or twelve (12) months, if the adjustment period cannot be determined). The city shall, in addition to collecting such undercharge, have the right to take such other action against such customer as is permitted by law.

Sec. 39-52. Sewer facilities impact fees.

- (a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - (1) *Capital Equipment* means equipment with an expected use life of three (3) years or more.
 - (2) *Connection to the sewer system* means the physical connect of a building, structure or use of land to the city's sewer lines, no matter if such connection is made through or by intermediate lines.
 - (3) *Development order* means a regulatory approval by city.
 - (4) *Fee payer* means a person applying for connection to the city's sewer system.
 - (5) *Sewer system* means the physical public collection and treatment facilities of the city administrative adjuncts to such system and the planned future improvements to such system.
 - (6) *Sewer facilities* means physical public collection and treatment facilities of the city.
- (b) *Legislative findings.* The city finds, determines and declares that:

- (1) The city has expanded and must further expand and upgrade its sewer facilities in order to maintain current and meet anticipated future standards of public health if new development is to be accommodated without decreasing current standards of health.
 - (2) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of sewer facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
 - (3) Connecting to the city sewer system will create a need for the construction, equipping, expansion, and upgrading of sewer facilities.
 - (4) The fees established by this section are derived from, are based upon, and do not exceed the costs of providing additional and/or upgraded sewer facilities necessitated by the connection to the city's sewer system.
- (c) *Short title, authority, and applicability.*
- (1) The ordinance from which this article is derived shall be known and may be cited as the "City of Washington Sewer Facilities Impact Fee Ordinance."
 - (2) The City Council has the authority to adopt the ordinance from which this article is derived pursuant to its general police powers and its obligation to protect the health, welfare, safety of its residents.
 - (3) This article shall apply in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (d) *Intent and purposes.*
- (1) This article is intended to assist in the implementation of the city comprehensive plan.
 - (2) The purpose of this article is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide sewer facilities in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (e) *Rules of construction.*
- (1) The provisions of this article shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, and welfare.
 - (2) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article:
 - a. In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
 - b. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 - c. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - d. The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
 - e. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
 - f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and", "or", either or", the conjunction shall be interpreted as follows:
 1. The term "and" indicates that all the connected terms, conditions, provisions or events shall apply.
 2. The term "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 3. The term "either or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.

- g. The word “includes” shall not limit a term to the specific example but us intended to extend its meaning to all other instances or circumstances of like kind or character.
 - h. The term “City Manager” means the Washington City Manager or municipal officials he may designate to carry out the administration of this article.
- (f) *Imposition of sewer facilities impact fee.* Any person who, after the effective date of the ordinance from which this article is derived seeks to connect to the city sewer system is hereby required to pay a sewer facilities impact fee in the manner and amount set forth in this article.
- (g) *Computation of the amount of sewer facilities impact fee.*
- (1) Sewer Facilities Impact Fees shall be established from time to time by ordinance. A schedule of these fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the POTW Director, and copies shall be made available to the customers of the city’s sewer system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon the recommendation of the City Manager.
 - (2) If a fee payer opts not to have the impact fee determined according to subsection (b) of this section, then the fee payer shall prepare and submit to the City Manager an independent fee calculation study for the land development activity for which a connection to the city’s sewer system is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for sewer demand prescribed by the North Carolina Department of Environment and Natural Resources (DENR). The documentation submitted shall show the basis upon which the independent fee calculation was made. The City Manager shall consider the documentation submitted by the fee payer but is not required to accept such documentation as he shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. If an acceptable independent fee calculation study is not presented, the fee payer shall pay sewer facilities impact fees based upon the current fee schedule. If an acceptable independent fee calculation study is presented, the City Manager may adjust the fee to that appropriate to the particular development. Determination made by the City Manager pursuant to this subsection may be appealed to the Washington City Council by filing a written request with the City Manager within ten (10) days of the City Manager’s determination.
- (h) *Payment of fee.*
- (1) The fee payer shall pay the sewer facilities impact fee required by this article to the city division of Revenue Collections prior to the connection to the city’s sewer system.
 - (2) All fines collected shall be properly identified by and promptly transferred for deposit in the appropriate Sewer Facilities Impact Fee Trust Fund to be held in separate accounts as determined in this article and used solely for the purposes specified in this article.
- (i) *Sewer Facilities Impact Fee Trust Funds established.*
- (1) There are hereby established two (2) separate Water and Sewer Facilities Impact Fee Trust Funds:
 - a. The Water Facilities Impact Fee Trust Fund; and
 - b. The Sewer Facilities Impact Fee Trust Fund
 - (2) Funds withdrawn from these accounts must be used in accordance with the provisions of this article.
- (j) *Use of funds.*
- (1) Funds collected from sewer facility impact fees shall be used solely for the purpose of acquiring, equipping, and/or making capital improvements to sewer facilities under the jurisdiction of the city, and shall not be used for maintenance or operations.
 - (2) Funds from the Sewer Facilities Impact Fee Trust Fund may only be used for sewer facilities purposes. Funds shall be expended in the order in which they are collected.
 - (3) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which sewer facilities impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (b) of this section.

- (4) At least once each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for sewer facilities, assigning funds, including any accrued interest, from the several Sewer Facilities Impact Fee Trust Fund to specific sewer facilities improvements projects and related expenses, monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Sewer Facilities Impact Fee Trust Fund until the next fiscal period, except, as provided by the refund provisions of this article.
 - (5) Funds may be used to provide refunds as described in subsection (k) of this section.
 - (6) Funds may be funded to rebate developer costs for providing sewer capital facilities in excess of the capacity required for the individual developer making the provision. Any rebates must be pursuant to a refunding agreement between the developer and the city after the effective date of the ordinance from which this article is derived. Prior refunding agreements may be renegotiated in order to bring such agreements into accord with the provisions of this article.
- (k) *Refund of fees paid.* Any funds not expended or encumbered by the end of the calendar quarter immediately following six years (6) from the date the sewer facilities impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at the rate of five percent (5%) annually, provided that the landowner submits an application for a refund to the City Clerk within one hundred eighty (180) days of the expiration of the six (6) year period.
- (l) *Exemptions and credits.*
- (1) The following shall be exempted from payment of the impact fee:
 - a. Alterations or expansions of an existing building where no additional or larger sewer connections are requested and where the use is not changed.
 - b. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger sewer connections are requested and where the use is not changed.
 - c. The installations of a replacement mobile home on a lot or other such site when sewer capital facilities impact fee for such mobile home site has previously been paid pursuant to this article or where a mobile home legally exited on such cite on or prior to the effective date of the ordinance from which this article is derived.
 - d. Any claim of exemption must be made no later than the time of application for connection to the city's sewer system. Any claim not so made shall be deemed waived.
 - (2) *Credits.*
 - a. Sewer facilities capital improvements may be offered by the fee payer as total or partial payment of the required impact fee. The offeror must request a sewer facilities impact fee credit. If the City Manager accepts such an offer, whether the acceptance is before or after the effective date of the ordinance from which this article is derived, the credit shall be determined and provided in the following manner:
 - 1. Credit for the dedication of land shall be valued at:
 - a) One hundred ten percent (110%) of the most recent assessed value by the county tax assessor;
 - b) By such other appropriate method as the City Council may have accepted prior to the effective date of the ordinance from which this section is derived for particular sewer facilities improvements; or
 - c) By fair market value established by private appraisers acceptable to the city. Credit for the dedication of sewer facilities land shall be provided when the property has been conveyed at no charge to; and accepted by, the city in a manner satisfactory to the City Council.
 - 2. Applicants for credit for construction of sewer facilities improvements shall submit acceptable engineering drawings and specification and construction cost estimates to the City Manager. The City Manager shall determine credit for construction based upon either these cost estimates or upon alternated engineering criteria and construction cost estimates if the City Manager determines that such estimates submitted by the applicant are either unreliable or inaccurate. The City Manager shall provide the applicant with a letter or

certificate setting forth the dollar amount of the credit, the sewer facilities impact fee component to which the credit will apply the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of a duplicate copy of such letter or certificate and return such signed document to the City Manager before credit will be given. Failure of the applicant to sign, date and return such document within sixty (60) days shall nullify the credit.

3. Except as provided in subsection (1) of this section, credit against impact fees otherwise due will not be provided until:
 - a. The construction is completed and accepted by the city; or
 - b. A suitable maintenance and warranty bond is received and approved by the City Clerk, when applicable.
 4. Credit may be provided before completion of specified sewer facilities improvements if adequate assurances are given by the applicant that the standards set out in this section will be met and if the fee payer posts security, as provided in this subsection, for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the City Clerk in an amount determined by the City Manager. If the sewer facilities construction project will not be constructed in one (1) year of acceptance of the offer by the City Manager, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the City Clerk of the City Council prior to acceptance of the security by the City Clerk. If sewer facilities construction project is not to be completed within five (5) years of the date of the fee payer's offer, the City Council must approve the sewer facilities construction project and its scheduled completion date prior to the acceptance of the offer by the City Manager.
 - b. Any claim for credit must be made no later than the time of application for connection. Any claim not so made shall be deemed waived.
 - c. Credits shall not be transferable from one project or development to another without the approval of the City Council.
 - d. Credits shall not be transferable from one (1) component of the water and sewer facilities impact to another component of this fee.
 - e. Determination made by the City Manager, pursuant to the credit provisions of this section, may be appealed to the City Council by filing a written request with the City Manager within ten (10) days of the City Manager's determination.
- (m) *Review.* The fees contained in subsection (g)(1) of this section shall be reviewed by City Council at least once each fiscal biennium at the time of adoption of the city budget.
- (n) *Penalty Provision.* A violation of this Sec. 39-52 of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution city shall have the power to sue in civil court to enforce the provisions of this section.

Secs. 39-53 – 39-60. Reserved.

Division 3 - Wastewater Discharge Permit Application and Issuance

Sec. 39-61. Wastewater dischargers.

It shall be unlawful for any person to connect or discharge to the POTW without first obtaining the permission of the city. When requested by the POTW Director, a user must submit information on the nature and characteristics of its wastewater within thirty (30) days of the request. The POTW Director is authorized to prepare a form for this purpose and may periodically require users to update this information.

Sec. 39-62. Wastewater permits.

All significant industrial users shall obtain a significant industrial user permit prior to the commencement of discharge to the POTW. Existing industrial users who are determined by the POTW Director to be significant industrial users shall obtain a significant industrial user permit within one hundred eighty (180) days of receiving notification of the POTW Director's determination. Industrial users who do not fit the significant industrial user criteria may at the discretion of the POTW Director be required to obtain a wastewater discharge permit for non-significant industrial users.

- (a) *Significant Industrial User Determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the POTW Director a significant industrial user determination. If the POTW Director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.
- (b) *Significant Industrial User Permit Application.* Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within ninety (90) days after notification of the POTW Director's determination in Sec. 39.62(a) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:
 - (1) Name, address, and location, (if different from the address);
 - (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
 - (3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in Article II Division 1 of this chapter, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in Sec. 39-80 and Sec. 39-81;
 - (4) Time and duration of the indirect discharge;
 - (5) Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
 - (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
 - (7) Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
 - (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
 - (9) If additional pretreatment and/or O & M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
 - b. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.
 - (10) Each product produced by type, amount, process or processes and rate of production;

- (11) Type and amount of raw materials processed (average and maximum per day);
 - (12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
 - (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in Sec. 39-71 of this chapter.
 - (14) Description of current and projected waste reduction activities in accordance with N.C.G.S. 143-215.1(g).
 - (15) Description of existing on-site pretreatment facilities and practices.
 - (16) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.
- (c) *Application Signatories and Certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in Sec. 39-2(a)(3) and contain the following certification statement:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- (d) *Application Review and Evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.
- (1) The POTW Director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
 - (2) Within thirty (30) days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (e) *Tentative determination and draft permit.*
- (1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
 - (2) If the staff's tentative determination in paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
 - a. Proposed discharge limitations for those pollutants proposed to be limited;
 - b. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
 - (3) The staff shall organize the determinations made pursuant to paragraphs (1) and (2) above and the general permit conditions of the City into a significant industrial user permit.
- (f) *Permit Synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:
- (1) a sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
 - (2) a quantitative description of the discharge described in the application which includes at least the following:
 - a. the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;

- b. the actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,
 - c. the basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.
- (g) *Final action on Significant Industrial User permit applications.*
- (1) The POTW Director shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
 - (2) The POTW Director is authorized to:
 - a. issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and N.C.G.S. 143-215.1;
 - b. issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - c. modify any permit upon not less than sixty (60) days notice and pursuant to Sec. 39-62(i) of this chapter;
 - d. revoke any permit pursuant to Sec. 39-112 of this chapter;
 - e. suspend a permit pursuant to Sec. 39-112 of this chapter;
 - f. deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of N.C.G.S. 143-215.1.
- (h) *Adjudicatory hearings.*
- (1) Any significant industrial user whose permit is denied, terminated or is granted subject to conditions he deems unacceptable shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer appointed by the POTW director upon making written demand, identifying the specific issues to be contested, to the POTW Director within thirty (30) days following notice of the final decision regarding any of the above. Unless such written demand is made, the above described decisions shall be final and binding, subject to review by the Division of Water Quality, Department of Environment and Natural Resources, pursuant to 15A NCAC 02H .0917, as may be amended. For modified permits, only those parts of the permit being modified may be adjudicated. The POTW Director, or other hearing officer, as appropriate, shall make a decision upon said demand and, within thirty (30) days of receipt of said demand, transmit a copy of the decision to the petitioner by registered or certified mail.
 - a. *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.
 - b. *Renewed or modified permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed or modified 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.
 - c. *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (2) Any decision of a hearing officer, or the POTW Director, made as a result of an adjudicatory hearing held hereunder, may be appealed to the City Manager or other unbiased entity designated by the City Manager, upon filing written demand within ten (10) days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The City Manager, or other unbiased entity designated by the City Manager, shall make a final decision on the appeal within ninety (90) days and transmit a copy of the decision to the petitioner by registered or certified mail. This decision is the final decision for the purposes of judicial review. Appeal hearings shall be conducted in accordance with applicable provisions of the city regulations.
 - (3) *Official record.* When a final decision for the purposes of judicial review is issued, the city shall cause to be prepared an official record of the case that includes all notices, motions, and other like

pleadings; a copy of all documentary evidence introduced; a certified transcript of all testimony taken, if testimony is transcribed, or, if testimony is taken and not transcribed, then a narrative summary of any testimony taken; and a copy of the final decision. Any person against whom a final decision for the purposes of judicial review is entered may seek judicial review of the decision by filing a written petition within thirty (30) days after receipt of notice by registered or certified mail of the final decision, but not thereafter, to the appropriate Superior Court of justice along with a copy to the city. Within thirty (30) days after receipt of a copy of the petition for judicial review, the city shall transmit to the reviewing court the original or a certified copy of the official record.

(i) *Permit modification.*

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below.
 - a. changes in the ownership of the discharge when no other change in the permit is indicated,
 - b. a single modification of any compliance schedule not in excess of four (4) months,
 - c. modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
 - d. modifications of the monitoring requirements in the permit.Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (2) Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by Sec. 39-62(b), the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the sixty (60) day notice required by N.C.G.S. 143-215.1(b) for modifications.

(j) *Permit conditions.*

- (1) The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this chapter and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to containing, the following:
 - a. a statement of duration (in no case more than five (5) years);
 - b. a statement of non-transferability;
 - c. applicable effluent limits based on categorical standards or local limits or both;
 - d. applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
 - e. requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Sec. 39-2;
 - f. requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Sec. 39-2(a)(51), if determined by the POTW Director to be necessary for the user and,
 - g. requirements for immediately notifying the POTW Director of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Sec. 39-2(a)(51). Also see Sec. 39-75 and Sec. 39-76;
 - h. a statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.

- (2) In addition, permits may contain, but are not limited to containing, the following:

- a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
 - b. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 - c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
 - d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
 - e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
 - f. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - g. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
 - h. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).
 - i. Compliance schedules for meeting pretreatment standards and requirements.
 - j. Requirements for submission of periodic self-monitoring or special notification reports.
 - k. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Sec. 39-83 and affording the POTW Director, or his representatives, access thereto.
 - l. Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
 - m. Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee.
 - n. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit.
 - o. Other conditions as deemed appropriate by the POTW Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.
- (k) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than a year or may be stated to expire on a specific date.
- (l) *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
- (m) *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with Sec. 39-62 a minimum of one hundred eighty (180) days prior to the expiration of the existing permit.

Secs. 39-63 - 39-70. Reserved.

Division 4. Reporting Requirements

Sec. 39-71. Baseline monitoring reports.

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in paragraph (b), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW Director a report which contains the information listed in paragraph (b), below. A new source shall

report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.

- (b) Users described above shall submit the information set forth below.
- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
 - (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
 - (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) *Measurement of pollutants.*
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 39-80 of this chapter.
 - c. Sampling must be performed in accordance with procedures set out in Sec. 39-81 of this chapter and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
 - (6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in Sec. 39-2(a)(4) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
 - (7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Sec. 39-72 of this chapter.
 - (8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with Sec. 39-62(c) of this chapter.

Sec. 39-72. Compliance schedule progress reports.

The following conditions shall apply to the compliance schedule required by Sec. 39-71(b)(7) of this chapter:

- (a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);
- (b) No increment referred to above shall exceed nine (9) months;
- (c) The user shall submit a progress report to the POTW Director no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule; and
- (d) In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.

Sec. 39-73. Reports on compliance with categorical pretreatment standard, deadline.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user

subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in Sec. 39-71(b)(4-6) of this chapter. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Sec. 39-62(c) of this chapter.

Sec. 39-74. Periodic compliance reports.

Municipalities may sample and analyze user discharges in lieu of requiring the users to conduct sampling and analysis.

- (a) All significant industrial users shall, at a frequency determined by the POTW Director but in no case less than once every six (6) months, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the applicable flows for the reporting period. Sampling and analysis must be performed in accordance with procedures set out in Sec. 39-80 and Sec. 39-81 of this chapter. All periodic compliance reports must be signed and certified in accordance with Sec. 39-62(c) of this chapter.
- (b) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the POTW Director, using the procedures prescribed in Sec. 39-80 and Sec. 39-81 of this chapter, the results of this monitoring shall be included in the report.

Sec. 39-75. Reports of changed conditions.

Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. See Sec. 39-76(d) for other reporting requirements.

- (a) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Sec. 39-62 of this chapter.
- (b) The POTW Director may issue a wastewater discharge permit under Sec. 39-62 of this chapter or modify an existing wastewater discharge permit under Sec. 39-62 of this chapter in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

Sec. 39-76. Reports of potential problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Sec. 39-2(a)(51), that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Sec. 39-2(a)(51).

Sec. 39-77. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require.

Sec. 39-78. Notice of violation/repeat sampling and reporting.

- (a) If sampling performed by a user indicates a violation, the user must notify the POTW Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW Director within thirty (30) days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:
 - (1) if the POTW Director monitors at the user's facility at least once a month; or
 - (2) if the POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.
- (b) If the POTW Director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:
 - (1) the POTW Director monitors at the user's facility at least once a month; or
 - (2) the POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
 - (3) the POTW Director requires the user to perform sampling and submit the results to the POTW Director within the thirty (30) day deadline of the POTW becoming aware of the violation.

Sec. 39-79 Notification of the Discharge of Hazardous Waste

The city prohibits the discharge of any hazardous wastes without notification and approval of the POTW Director.

- (a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under Sec. 39-75 of this chapter. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sec. 39-71, Sec. 39-73 and Sec. 39-74, of this chapter.
- (b) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued there under, or any applicable Federal or State law.

Sec. 39-80. Analytical Requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by EPA.

Sec. 39-81. Grab and composite sample collection.

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.
- (b) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the POTW Director may allow collection of multiple grabs during a twenty-four (24) hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) *Composite samples.* All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

Sec. 39-82. Timing.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

Sec. 39-83. Record keeping.

- (1) Users subject to the reporting requirements of this chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this chapter and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the user or the city, or where the user has been specifically notified of a longer retention period by the POTW Director.
- (2) The POTW Director may develop procedures for receipt of electronic reports for any reporting requirements of this chapter. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Division 7-Enforcement of this chapter.

Secs. 39-84 -39-91. Reserved.

Division 5. Compliance Monitoring

Sec. 39-92. Monitoring facilities.

The city requires the user to provide and operate at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the requirements of the city and all applicable local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification by the city.

Sec. 39-93. Inspection and sampling.

The city will inspect the facilities of any user to ascertain whether the purpose of this chapter is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the city, approval authority and EPA or their representative ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying or in the performance of any of their duties. The city, approval authority and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into their premises, the user shall make necessary arrangements with their security guards so that upon presentation of suitable identification, personnel from the city, approval authority and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Denial of the POTW Director's approval authority's or EPA's access to the user's premises shall be a violation of this chapter. Unreasonable delays may constitute denial of access.

Sec. 39-94. Search warrants.

If the POTW Director, approval authority, or EPA has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this chapter or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the POTW Director, approval authority, or EPA may seek issuance of a search warrant from the court having jurisdiction within the city.

Secs. 39-95 -39-102. Reserved.

Division 6. Confidential Information

Sec. 39-103. Confidential information.

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the POTW Director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

Secs. 39-104 -39-111. Reserved.

Division 7. Enforcement

Sec. 39-112. Administrative Remedies.

- (a) *Notification of violation.* Whenever the POTW Director finds that any industrial user has violated or is violating this chapter, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the POTW Director may serve upon such a person a written notice stating the nature of the violation. Within thirty (30) days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (b) *Consent orders.* The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible

for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to Sec. 39-112(d), below.

- (c) *Show cause hearing.* The POTW Director may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this chapter or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.

The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

A show cause hearing under this section is not a prerequisite to the assessment of a civil penalty under Sec. 39-113 nor is any action or inaction taken by the POTW Director under this section subject to an administrative appeal under Sec. 39-62(h).

- (d) *Administrative orders.* When the POTW Director finds that an industrial user has violated or continues to violate this chapter, permits or orders issued hereunder, or any other pretreatment requirement the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:

- (1) Immediately comply with all requirements;
- (2) Comply in accordance with a compliance time schedule set forth in the order;
- (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
- (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

- (e) *Emergency suspensions.* The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within fifteen (15) days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.

- (f) *Termination of Permit or Permission to Discharge.*

- (1) The POTW Director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:
 - a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
 - b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
 - c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
 - d. Violation of conditions of the permit or permission to discharge, conditions of this chapter, or any applicable State and Federal regulations;
 - e. Tampering with or deliberately altering monitoring equipment;

- f. Changes in POTW NPDES permit, receiving stream water quality standards, POTW treatment plant process, sludge disposal practices or requirements, or other modifications of similar nature that impact the city's ability to accept industrial wastewater;
 - g. For causes necessitating an emergency suspension;
 - h. Failure to show cause; or
 - i. Nonpayment of sewer user charges
- (2) A user whose permission to discharge has been revoked may apply for new permission to discharge and shall pay all delinquent fees, charges, penalties, and such other sums as may be due to the city.
 - (3) Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under Article II, Sec. 39-112(c) of this chapter why the proposed action should not be taken.

Sec. 39-113. Civil penalties.

- (a) Any user who is found to have failed to comply with any provision of this chapter, or the orders, rules, regulations and permits issued hereunder, may be fined up to twenty-five thousand dollars (\$25,000.00) per day per violation.
 - (1) Penalties between ten thousand dollars (\$10,000) and twenty-five thousand dollars (\$25,000.00) per day per violation may be assessed against a violator only if:
 - a. For any class of violation, only if a civil penalty has been imposed against the violator within the five (5) years preceding the violation, or
 - b. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this chapter, or the orders, rules, regulations and permits issued hereunder, only if the POTW Director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five (5) years preceding the violation.
- (b) In determining the amount of the civil penalty, the POTW Director shall consider the following:
 - (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - (2) The duration and gravity of the violation;
 - (3) The effect on ground or surface water quantity or quality or on air quality;
 - (4) The cost of rectifying the damage;
 - (5) The amount of money saved by noncompliance;
 - (6) Whether the violation was committed willfully or intentionally;
 - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
 - (8) The costs of enforcement to the city.
- (c) Appeals of civil penalties assessed in accordance with this section shall be as provided in Sec. 39-116.

Sec. 39-114. Other available remedies.

Remedies, in addition to those previously mentioned in this chapter, and are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (a) *Criminal violations.* The District Attorney for the applicable Judicial District may, at the request of the city, prosecute noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (N.C.G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (N.C.G.S. 143-215.6B(i)).

- (b) *Injunctive relief.* Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, the POTW Director, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (c) *Discontinuance of sewer.*
 - (1) The POTW Director shall have the right to discontinue sewer service to the property of a user of such service in the event of nonpayment of sewer charges; provided that no discontinuation shall be made until the user shall have been given notice of his right to be heard in person or by counsel on the question of discontinuation before the city or any person designated by the city after not less than five (5) days written notice specifying the basis of the discontinuation. Any user whose permit has been terminated or who has failed to pay the user charge or any other charge imposed by the city shall be subject to termination of service by disconnection of the property from the sewer service. The city shall have the right of entry in and upon the premises and the right of ingress and egress to determine the location of the service line or to dig it up to uncover it for the purpose of disconnecting the service line from the property, or sealing, or plugging such line, or any collection line, upon the notice as provided under the city's regulations.
 - (2) Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (d) *Public Nuisances.* Any violation of the prohibitions or effluent limitations of this chapter or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the city governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.
- (e) *Judicial remedies.* If any person discharges wastewater contrary to the provisions of this chapter or any order or permit issued hereunder, or otherwise violates provisions of this chapter or any order or permit issued hereunder, the POTW, through the city's attorney, may commence an action for appropriate legal or equitable relief in the appropriate general court of justice.
- (f) If a public sewer becomes obstructed or damaged because of any substances improperly discharged into it, the person responsible for such discharge shall be billed and shall pay for the expenses incurred by the city in cleaning out, repairing or rebuilding the sewer as well as damages incurred by the city arising from claims of private property owners which are caused by such obstruction or damage.

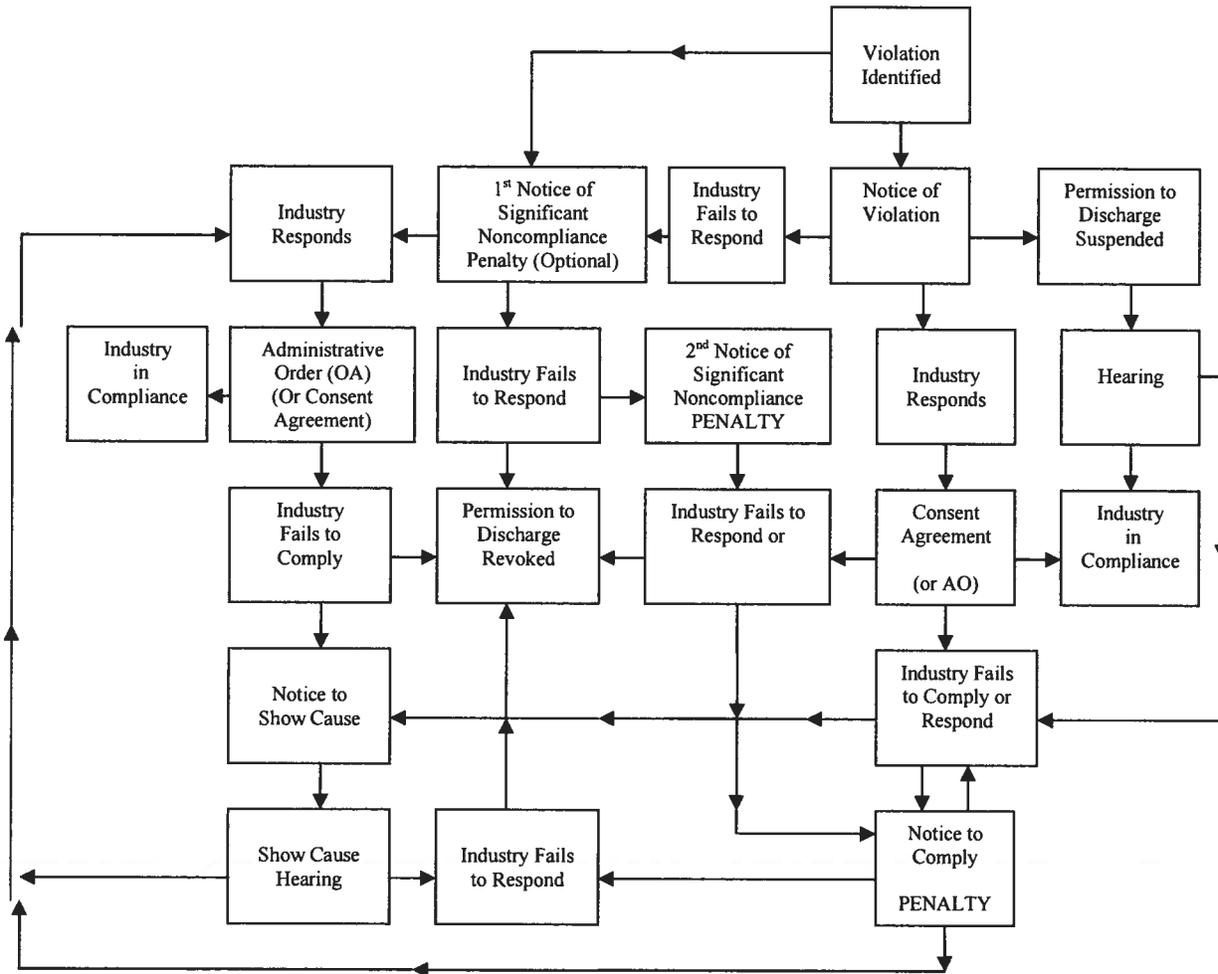
Sec. 39-115. Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The POTW Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one enforcement action against any noncompliant user.

Sec. 39-116 Adjudicatory hearings.

Any person jointly or severally aggrieved by any decision, including but not limited to order, requirement, determination, fine, violation, grant, denial, approval or finding, made or based in whole, in part, or otherwise pursuant to the provisions of this chapter, by the city or representative thereof, shall have the right to an adjudicatory hearing concerning said decision upon making written demand therefor as more specifically provided for in, and thereafter utilizing the procedures contained in, the section of this chapter concerning adjudicatory hearings, which section is 39-62(h), as may be amended. As more particularly provided for in Sec. 39-62(h), all such decisions are final and binding unless said written demand is filed within thirty (30) days of the date such decision is made.

Sec. 39-117. Enforcement Management Strategy Plan for the City of Washington.



Secs. 39-118 -39-124. Reserved.

Division 8. Annual Publication of Significant Noncompliance

Sec. 39-125. Annual publication of significant noncompliance.

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(10), with applicable pretreatment standards and requirements, during the previous 12 months.

Secs. 39-126 -39-133. Reserved.

Division 9. Affirmative Defenses to Discharge Violations

Sec. 39-134. Upset.

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.
- (b) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (1) An upset occurred and the user can identify the cause(s) of the upset;

- (2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- (3) The user has submitted the following information to the POTW Director within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
 - a. A description of the indirect discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (c) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.
- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

Sec. 39-135. Prohibited discharge standards defense.

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 39-26(a) of this chapter or the specific prohibitions in Sec. 39-26(b)(2), (3), and (5-7) of this chapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (a) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (b) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

Sec. 39-136. Bypass.

- (a) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.

(b) *Notification.*

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW Director, at least ten (10) days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(c) *Exceptions to enforcement action.*

- (1) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment

should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

- c. The user submitted notices as required under paragraph (b) of this section.
- (2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

Secs. 39-137 -39-144. Reserved.

Division 10. Severability

Sec. 39-145. Severability.

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

Secs. 39-146 -39-153. Reserved.

Division 11. Conflict

Sec. 39-154. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this chapter are hereby repealed to the extent of such inconsistency or conflict.

Secs. 39-155 -39-162. Reserved.

Division 12. Effective Date

Sec. 39-163. Effective date.

This chapter shall be in full force and effect from and after its passage, approval and publication, as provided by law.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

MAYOR

ATTEST:

CITY CLERK



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director
Date: 04-26-11
Subject: Authorize the Manager to Execute the Attached Sanitary Sewer Force Main, Service and Easement Agreement with Alderbrook Pointe, L.P.

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council authorize the manager to execute the attached Sanitary Sewer Force Main, Service and Easement Agreement with Alderbrook Pointe, L.P.

BACKGROUND AND FINDINGS:

As you may recall, the preliminary site plan was approved for this development at the March 14, 2011. At that time, there was discussion regarding sanitary sewer service for this project, specifically, what would be required of the developer in order for them to have sufficient capacity for this project. The attached agreement covers the requirements in detail. In summary, a new force main will be installed by the developer from the sewer lift station near 13th and Bridge Streets to the sewer lift station at 5th and Respass Streets. The City will make upgrades at the 13th and Bridge sewer lift station as outlined in the 2011-2016 Capital Improvement Plan.

PREVIOUS LEGISLATIVE ACTION

Preliminary site plan approval for Alderbrook Pointe – 03-14-11.

FISCAL IMPACT

___ Currently Budgeted (Account ___) ___ Requires additional appropriation ___ X No Fiscal Impact

SUPPORTING DOCUMENTS

See attached agreement.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: PK Concur May 26, 2011 Recommend Denial _____ No Recommendation 4/27 Date

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

**SANITARY SEWER FORCE MAIN,
SERVICE AND EASEMENT AGREEMENT**

THIS SANITARY SEWER FORCE MAIN, SERVICE AND EASEMENT AGREEMENT (the “Agreement”) is entered into and made as of the ____ day of _____, 2011, by and between the **CITY OF WASHINGTON, NORTH CAROLINA**, a municipal corporation (hereinafter referred to as the “City”), and **ALDERBROOK POINTE L.P.**, a North Carolina limited partnership, whose address is 5309 Transportation Boulevard, Cleveland, Ohio 44125 (hereinafter referred to as the “Owner”).

W I T N E S S E T H

WHEREAS, Owner intends to acquire the property described in Paragraph 2 below (hereinafter referred to as the “Subject Property”).

WHEREAS, if Owner acquires the Subject Property, **Owner** intends to develop the Subject Property as a 64 unit multiple building, apartment project (hereinafter referred to as the “Development”).

WHEREAS, the Subject Property is situated in the **City**.

WHEREAS, the City has conditioned the issuance of its development approvals and other assistance, as more specifically provided for herein, for the Development on **Owner** entering into an agreement for the construction of a certain, new sanitary sewer force main.

WHEREAS, Owner desires that the **City** provide water and sanitary sewer service to the Subject Property, in compliance with the laws and regulations of the **City** and of all other governmental authorities.

WHEREAS, the **City** is authorized to enter into contracts for providing as well as making improvements to public enterprises, including sanitary sewer service systems and sanitary sewer force mains pursuant to Article 16 of Chapter 160A of the North Carolina General Statutes.

WHEREAS, the **City** has made a determination that this Agreement, including the sanitary sewer force main improvements hereunder required to be made by **Owner**, is not subject to Article 8 of Chapter 143 of the North Carolina General Statutes.

WHEREAS, it is the purpose of this Agreement to clearly set forth the understanding and agreement of the parties concerning the matters contained herein.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows.

1. **Incorporation**. The recitals herein contained are true and correct and are incorporated herein by reference.
2. **Ownership**. **Owner** represents that it is or will be, prior to commencing the sanitary sewer force main improvements hereunder, the owner of the Subject Property located on North Pierce Street at or near West Fifteenth Street, Washington, North Carolina, and having a parcel number of _____. The parties hereto expressly acknowledge that **Owner's** obligation hereunder to make or construct sanitary sewer force main improvements shall not be triggered unless and until **Owner** acquires fee simple title to the subject property.
3. This section intentionally left blank.
4. This section intentionally left blank.
5. **Sanitary Sewer Improvements and Sewer Service**.
 - 5.1 **New Eight (8) Inch Sewer Force Main**. Subject to the provisions contained in Section 5.1.a., **Owner** will design, construct and install, at its expense, a new eight (8) inch ductile iron (see below for *possible* alternative) sewer force main (hereinafter referred to as the "force main"), as approved by the Inspecting Engineers (as defined in Section 5.2), between the existing pump station located

at West 13th Street and North Bridge Street (hereinafter referred to as the “13th Street Pump Station”) and the existing pump station at West 5th Street and North Respass Street (hereinafter referred to as the “5th Street Pump Station”) (hereinafter collectively referred to as the “Pump Stations”) in the City. The anticipated location and route of the force main path shall be as shown on Exhibit “A” attached hereto and incorporated herein by reference, as determined on February 2, 2011 by **Owner’s** engineer and Mr. Allen Lewis, the City’s Public Works Director. The parties recognize that, in the event the force main path is required to be moved or altered, any such movement or alteration of the force main path shall require approval from the City. **Owner’s** obligation to construct and install the force main is conditioned upon a) **Owner’s** ability to do such work in the streets and rights of way of the City on an open cut basis and the City or other appropriate governmental body issuing appropriate permits therefor, and b) there being no requirement for either the City or **Owner** to competitively bid the work. Notwithstanding the foregoing, **Owner** must provide to the City and receive prior approval from the City for any requests for proposals or similar documents, any bids received by **Owner**, and any contract for the force main improvements.

In regard to the requirements above that **Owner** utilize ductile iron material when constructing the force main referenced above and that **Owner** receive approval from the City for any bid or contract for the force main improvements, **Owner** shall solicit and receive bids or quotes that would require the contractor submitting the bid or quote to use solely ductile iron material for said force main. **Owner** may also solicit and receive bids or quotes that would allow the contractor submitting the bid or quote to use C-900 PVC pipe for the force main instead of ductile iron material. If **Owner** solicits and receives quotes or bids for both ductile iron material and C-900 PVC pipe, **Owner** shall provide both quotes or bids to the City Public Works Director, Allen Lewis, who may consult with the Inspecting Engineers and, after such consultation, if any, shall decide, in his sole discretion and without any recourse from **Owner** whatsoever, which material (ductile iron or C-900 PVC pipe) shall be used.

Owner's responsibility is limited to the construction as well as installation of the force main and the **City** shall be responsible for all connections, controls, electronics and such improvements to the Pump Stations as are described in Section 5.1.b. below. **Owner** shall not be required to remove the existing force main system (or appurtenances thereto) and shall be permitted to abandon such existing mains and pipes and appurtenances in place without filling or grouting of those mains and pipes. **Owner's** design engineer for the force main shall be required to certify that the capacity of the downstream system is sufficient to convey the additional peak hourly wastewater flow generated by the 13th Street Pump Station.

5.1.a. Transfer of Force Main Improvements Obligation. If the Inspecting Engineers (as defined in Section 5.2) find that **Owner** has expended \$500,000.00 toward the construction as well as installation of said force main improvements and that said expenditures were legitimate, reasonable, and in accordance with the design approved by them, then **Owner's** obligation to construct as well as install, at its expense, the force main improvements shall be transferred to the **City** and the **City** thereafter shall be responsible for completion of the same so long as adequate funding is provided for in the then current budget. Notwithstanding the foregoing, the **City** and **Owner** will use their respective best efforts to complete said force main improvements if **Owner** has expended \$500,000.00 toward the construction as well as installation of said force main improvements and said expenditures were legitimate, reasonable, and in accordance with the design approved by the Inspecting Engineers.

5.1.b. Pump Stations Improvements. The **City** will design, construct and install, at its expense, any and all improvements and upgrades necessary at the Pump Stations, including the installation of new pumps and other systems as needed, to accommodate the new force main to be constructed as well as installed by **Owner** (such improvements and upgrades to be constructed and installed by the **City** shall be referred to hereinafter as the "Pump Stations Improvements"). The construction as well as installation of the Pump Stations Improvements shall be coordinated by the **City** and/or its contractors in conjunction with the force main

improvements to be made by **Owner** and its contractors, and the parties agree that the force main will be constructed as well as installed prior to the construction as well as installation by the **City** of the Pump Stations Improvements and the connection by **Owner** of the force main to the Pump Stations.

- 5.2 General Construction Requirements. The force main improvements shall be constructed or caused to be constructed (i) at the sole cost and expense of **Owner** and its successors, except as specifically provided for herein; (ii) pursuant to designs and engineering drawings and specifications which are to be reviewed and are subject to approval from the **City's** selected engineers (herein referred to as the "Inspecting Engineers"); and (iii) in accordance with all applicable local, state and federal environmental and public health laws, ordinances and regulations.

The cost of the Inspecting Engineers for their work in reviewing the designs and engineering drawings and specifications as well as for their work in inspecting the construction of the force main improvements shall be borne by **Owner** in accordance with the fees provided for in the Short Form of Agreement Between Owner and Engineer for Professional Services for the 13th and Bridge Service Area Study and Design/Construction Review (Alderbrook Pointe) (hereinafter referred to as the "Inspecting Engineers Contract") attached hereto as Exhibit "B" and incorporated herein by reference. **Owner** shall deposit the amount contained in the Inspecting Engineers Contract that is estimated to be the total compensation for services and reimbursable expenses of the Inspecting Engineers in connection herewith (currently \$40,000.00) into the trust account of Rodman, Holscher, Francisco & Peck, P.A. (hereinafter referred to as "Law Firm"). \$15,000.00 of said \$40,000.00 will be so deposited simultaneously with **Owner's** execution of this Agreement. The balance (\$25,000.00) will be disbursed directly to said trust account from the proceeds of the closing through which **Owner** receives financing to fund its obligations hereunder to design, construct and install the force main improvements contemplated hereby. Law Firm shall receive invoices from the Inspecting Engineers and issue corresponding payments in satisfaction thereof to the Inspecting Engineers unless Law Firm has received a written notice

of dispute from the **Owner** or **City** that contains a specific dollar amount that is in dispute. Law Firm will withhold payment of such specific dollar amount until said dispute is withdrawn in writing. Notwithstanding the foregoing, Law Firm, in its sole discretion, reserves and shall have the right, power, and authority, at any time, to pay any disputed amount into the Superior Court Clerk of Beaufort County. Any balance remaining in said deposit after all invoices have been satisfied shall be refunded by Law Firm to **Owner**. The amount deposited by **Owner** with Law Firm shall be counted and included for all purposes as part of **Owner's** obligation to expend \$500,000.00 for the construction as well as installation of the force main improvements. By execution hereof and in exchange for as well as in consideration of Law Firm processing said payments, the parties hereto expressly release, hold harmless, and will indemnify Law Firm from and against any and all claims, demands, disputes, damages, costs, expenses (including attorney's fees) the parties hereto may have against or that are incurred by Law Firm as a result, directly, indirectly, or otherwise, from Law Firm's performance of the Law Firm's role in processing said payments as more fully described hereinabove.

At no cost to **Owner**, as a condition of this Agreement, and so long as the same are in proper form as well as contain proper content, the **City** shall grant to **Owner** and its contractors all required construction and operational permits, including street opening permits, as well as all easements, licenses and/or rights-of-way necessary for the location, installation, maintenance or repair of the force main, including such easements, licenses and rights-of-way granted to or which shall be obtained by the **City** from third parties for the installation of such improvements including, without limitation, any easement that may be required over a portion of any property owned by the Beaufort County Board of Education. All costs incurred in connection with such easements shall be borne by the **City**.

5.3 Inspections. **Owner** shall provide reasonable access at all times to Inspecting Engineers to permit thorough inspections of all work contemplated by this Section 5 in order to ensure that the work is being done in accordance with the approved

designs and engineering drawings and specifications as well as all applicable laws, ordinances and regulations.

5.4 Completion of Plan Review and Construction. The City has provided to Owner copies of all designs and engineering drawings and specifications the City is aware of that are available to the City and relate to the existing force main system between the Pump Stations, including upstream and downstream connections and mains connecting into and out from those Pump Stations. Owner shall present the City with a complete set of all designs and engineering drawings and specifications for the force main improvements by _____, 2011. The City will complete its review of Owner's complete set of all designs and engineering drawings and specifications for the force main improvements within twenty-one (21) days of the City's receipt thereof from Owner. The parties shall use their best efforts to complete any required revision, subsequent review, and ultimate approval of the same. In any event, Owner shall complete its obligation, as more specifically described and limited herein, to construct the force main improvements by March 15, 2012. In the event Owner fully completes the construction of the force main improvements and no such obligation to complete the same has been transferred to and accepted by the City, the City shall complete the Pump Stations Improvements by March 15, 2012 or within two (2) months of the completion of the force main improvements by Owner, whichever is later. Thereafter, Owner shall complete any connection of the force main to the Pump Stations that may be necessary with due diligence. In the event Owner does not fully complete the construction of the force main improvements and said obligation to complete the same is transferred to and accepted by the City as more specifically provided for herein, the City shall complete any obligation transferred to it for the completion of the force main improvements and the Pump Stations Improvements within a reasonable period of time and so long as adequate funding is provided for in the then current budget.

5.5 Ownership, Maintenance, and Repair of Force Main Improvements. Upon completion of the installation of the force main improvements or when Owner has expended \$500,000.00 for said force main improvements as more specifically

described in Section 5.1.a. and subject to approval of the same by the Inspecting Engineers as more specifically provided for hereinabove, those force main improvements and any related facilities shall be conveyed to the City for the sum of One Dollar (\$1.00) and shall become part of the City's public sewer system. From and after the date of such conveyance, the City will be responsible for all maintenance, repair and replacement obligations with respect to the force main improvements and related facilities that are not warranted by Owner as more specifically provided for hereinafter. Owner warrants and guarantees that all force main improvements constructed by it or through its direction shall be in accordance with the applicable designs and engineering drawings and specifications referred to herein, will not be defective, and will be suitable for its intended purpose for at least twelve (12) months from conveyance thereof to the City.

5.6 Rights and Charges. Owner shall be required to pay all fees customarily charged by the City in conjunction with the Development.

5.A. Contribution to Sidewalk Construction.

Prior to the issuance of any building permits for the Subject Property by the City, Owner shall make a one-time contribution to the City in the amount of \$15,000.00, which amount shall be dedicated exclusively to the future construction of sidewalks in the City. The City may utilize said \$15,000.00 for the construction of any sidewalk it sees fit, in its discretion, subject to the following. If the Development is developed, the properties located to the north and/or west of the Development are developed and the Planning Director as well as Planning Board deem it to be an appropriate as well as necessary feature of such development of the properties to the north and west of the Development, then, in those events, the City shall contribute \$15,000.00 toward the construction of a sidewalk as part of said development of the properties located to the north and west of the Development. Said \$15,000.00 contribution to sidewalk construction shall be separate and apart from the \$500,000.00 expenditure more specifically provided for herein for the force main improvements.

6. **Obligations.** Owner shall furnish performance and payment bonds, in a form satisfactory to the City, in its sole discretion, each in an amount at least equal to the amount for which any contract is let by Owner to construct the force main improvements. Said performance and payment bonds shall be security for the faithful performance and payment of all of Owner's obligations hereunder.
7. **Enforcement.** In the event that enforcement of this Agreement by the City becomes necessary and the City is successful in such enforcement, Owner shall be responsible for all costs and expenses, including attorneys' fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Interest on unpaid, overdue sums shall accrue at the rate of eighteen percent (18%), compounded annually, or at the maximum rate allowed by law.
8. **Conditions.** Owner's obligations under this Agreement are contingent upon the occurrence of the following no later than August 1, 2011: (a) (i) closing on all financing (upon reasonable terms), (ii) obtaining all permits and necessary approvals and (iii) acquiring all easements for the force main improvements, and (b) obtaining binding commitments for all financing and the purchase of all tax credits in an amount necessary for the Development to be constructed on the Subject Property.
9. **Indemnification.** Owner shall indemnify and hold harmless the City and its Inspecting Engineers from and against all claims, demands, disputes, damages, costs, expenses (to include attorneys' fees whether or not litigation is necessary and, if necessary, both at trial and on appeal) incurred by the City as a result, directly or indirectly, of the design, construction and installation of the force main improvements, except those claims or liabilities caused by or arising from the negligence of the City, or its employees or agents.
10. **Release of Owner.** With the exception of the warranty hereinbefore provided for, upon (i) the completion of all of the improvements to be constructed by Owner hereunder as evidenced by certification from the Inspecting Engineers that such improvements are complete and in compliance with all requirements set forth herein and (ii) the payment of

all costs by **Owner** as required under this Agreement, the **City** will release, in writing if requested, **Owner** from all of **Owner's** continuing obligations hereunder.

12. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or by reputable overnight courier service. Any notice given pursuant to the provisions hereof shall be deemed given on the date such notice is received if delivered by hand or by reputable overnight courier service and on the second business day after it is mailed if sent by certified mail, return receipt requested. Said notice shall be sent to the following, as applicable:

OWNER'S REPRESENTATIVES:

Alderbrook Pointe LP
Attn: Ted Einhorn
5309 Transportation Boulevard
Cleveland, Ohio 44125

CITY'S REPRESENTATIVES:

Washington City Manager
P. O. Box 1988
102 East Second Street
Washington, N. C. 27889

LAW FIRM:

Rodman, Holscher, Francisco & Peck, P.A.
Attn: Franz Holscher
P.O. Box 1747
Washington, NC 27889

Should any party identified above change or should a party's address change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein.

13. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
14. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of **Owner** and its assigns and successors in interest and the **City** and its assigns and successors in interest. This Agreement does not, and is not intended to,

prevent or impede the City from exercising its legislative authority as the same may affect the Subject Property.

15. **Severability**. If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected.
16. **Construction of Agreement**. This Agreement concerns property situated in the State of North Carolina and shall be deemed to be a contract made under the laws of said State and interpreted in accordance with said laws.
17. **Amendment and Waiver**. This Agreement may not be amended or modified in any way except by instrument in writing executed by all parties hereto.
18. **Counterparts**. This Agreement may be executed in counterparts which when signed by both parties and delivered to the other party shall constitute one agreement.
19. **City Legal Fees**. Owner agrees to pay the cost of recording this document in the public records of Beaufort County, North Carolina. Owner also shall be responsible for all of the reasonable fees and expenses of counsel for the City incurred in connection with the negotiation and preparation of this Agreement up to an amount equal to \$5,000.00, which amount shall be separate and apart from the \$500,000.00 expenditure more specifically provided for hereinbefore for the force main improvements.

(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, Owner and the City have caused this instrument to be executed by proper authority duly given as of the day and year first above written.

ALDERBROOK POINTE L.P.

By: NRP ALDERBROOK POINTE LLC,
general partner

Signature

Printed Name

Managing Member

Title

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared ALDERBROOK POINTE L.P., an Ohio limited partnership, by NRP ALDERBROOK POINTE LLC, its General Partner, by _____ its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said limited partnership, and his free act and deed personally and as such Managing Member of the General Partner.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2011.

Notary Public
My commission expires:_____

PRE-AUDIT CERTIFICATE

This Contract has been pre-audited per North Carolina General Statute § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Matt Rauschenbach, Chief Financial Officer
City of Washington

ATTEST:

CITY OF WASHINGTON

Cynthia S. Bennett, City Clerk

Peter T. Connet, Interim City Manager

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, _____, a Notary Public of the State and County aforesaid, certify that Cynthia S. Bennett personally appeared before me this day and acknowledged that she is City Clerk of the City Of Washington, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Peter T. Connet, its Interim City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the ____ day of _____, 2011.

NOTARY PUBLIC

My Commission expires: _____.

Exhibit "B"

**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of March 11, 2011 ("Effective Date") between

CITY OF WASHINGTON ("Owner")

and RIVERS & ASSOCIATES, INC. ("Engineer")

Engineer agrees to provide the services described below to Owner for (Project Description):

13th & BRIDGE SERVICE AREA STUDY & DESIGN/ CONSTRUCTION REVIEW (ALDERBROOK POINTE)

(See Attachment 2 Item A: "Project Description") ("Project").

Description of Engineer's Services (Scope of Work): See Attachment 2 Item B: "Scope of Work".

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

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b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party

to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the

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“Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. Engineer will not provide or offer to provide services inconsistent with or contrary to the standard of care described in 7.01.A above nor make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, Engineer will not accept those terms and conditions offered by the Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly accepted in writing. Written acknowledgment of receipt

or the actual performance of services subsequent to receipt, of any such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

J. If required in the agreement, the Engineer will provide electronic files of drawings in PDF format or AutoCad DWG or DXF format for the Owner's use under the conditions indicated above. The Engineer will not be responsible for the data in the electronic files after 60 days. The files will be submitted on CD. The Engineer's name and seal may be removed from the drawings. 7.01.F applies to all electronic files.

K. Any reuse of the design documents without written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefore. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

B. The following Attachments are included:

Attachment 1	Standard Rates
Attachment 2	Project Description & Scope of Work

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9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ N/A .

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding -- months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

9.02 Payment (Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.

2. Engineer's Standard Rates are attached as Attachment 1.

3. The total compensation for services and reimbursable expenses is estimated to be \$40,000.00 *
*See Attachment 2, Item B: "Scope of Work".

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 1.5 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER: CITY OF WASHINGTON

ENGINEER: RIVERS & ASSOCIATES, INC.

By: _____
(Signature)

By: _____
(Signature) *Gregory J. Churchill*

Typed Name: _____

Typed Name: Gregory J. Churchill, P.E.

Title: _____

Title: Vice President

Date: _____

Date: March 11, 2011

Attest: _____

Attest: _____
F. Durward Tyson, Jr.

Name:
Title:
(SEAL)

Name: F. Durward Tyson, Jr. P.E.
Title: Secretary
(SEAL)

Designated Representative:

Designated Representative: M. Blaine Humphrey, P.E.

Title: _____

Title: Project Manager

Address for giving notices:

Address for giving notices:

107 East Second Street

P. O. Box 929

Phone No: _____

Greenville, NC 27858 (Street) or 27835 (P.O. Box)

Fax No: _____

Phone No: (252) 72-4135

E-Mail: _____

Fax No: (252) 752-3974

E-Mail: bhumphrey@riversandassociates.com

This instrument has been pre-audited in the manner required by the Local Budget and Fiscal Control Act.

By: (Signature) _____
Finance Officer

Typed Name: _____

Date: _____

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ATTACHMENT I
RIVERS AND ASSOCIATES, INC.
STANDARD RATES
Effective April 12, 2008

<u>EMPLOYEE CLASSIFICATION:</u>	<u>HOURLY RATES:</u>
Principal	\$165.00
Sr. Project Manager	\$155.00
Project Manager II	\$140.00
Project Manager I	\$130.00
Project Engineer II	\$120.00
Project Engineer I	\$105.00
Design Engineer II	\$95.00
Design Engineer I	\$85.00
Landscape Architect	\$100.00
Landscape Designer	\$90.00
Project Planner I	\$90.00
Planner II	\$80.00
Planner I	\$70.00
Designer IV	\$115.00
Designer III	\$105.00
Designer II	\$90.00
Designer I	\$75.00
CAD Technician III	\$70.00
CAD Technician II	\$65.00
CAD Technician I	\$60.00
Project Surveyor II	\$105.00
Project Surveyor I	\$90.00
Party Chief III	\$80.00
Party Chief II	\$60.00
Party Chief I	\$55.00
Surveyor Technician II	\$50.00
Surveyor Technician I	\$45.00
I-Man Robotic II	\$135.00
I-Man Robotic I	\$100.00
Resident Project Representative III	\$85.00
Resident Project Representative II	\$70.00
Resident Project Representative I	\$60.00
Intern Tech	\$35.00
Administrative Assistant	\$65.00
Sub-Consultants and Fees	1.15 x Cost
Travel	Current IRS Rate
Miscellaneous Expenses	Cost

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ATTACHMENT 2
CITY OF WASHINGTON
ALDERBROOK POINTE
13th & BRIDGE SERVICE AREA STUDY & DESIGN/ CONSTRUCTION
REVIEW

A. PROJECT DESCRIPTION

The project includes evaluation of the service area for the 13th & Bridge Pump Station and design/ construction review for the Alderbrook Pointe Development Project.

B. SCOPE OF WORK

Engineering services required to implement the project shall include:

- | | | |
|----|---|----------------------|
| 1. | Meetings with City to discuss project as needed: | \$3,000 Est. |
| 2. | Meeting with Rice & Assoc. to discuss project design: | \$2,000 Est. |
| 3. | Evaluate flow from complete build-out of Service Area: | \$1,000 Est. |
| | A. Get data from Rice & Assoc. about Alderbrook Pointe flow. | |
| | B. Update 201 Facilities Plan (2003) flow data for current situation. | |
| | C. Review with City. | |
| 4. | Preliminary evaluation for sewer force main for 13th & Bridge with complete development: | \$2,000 Est. |
| | A. Analyze force main to 5 th and Respass. | |
| | B. Evaluate effect on 5 th and Respass Pump Station. | |
| | C. Review with City. | |
| 5. | Establish design criteria for force main: | \$2,000 Est. |
| | A. Prepare list of design criteria for force main. Include sample plans and specifications. | |
| | B. Review with City and Rice & Assoc. | |
| 6. | Review Alderbrook Pointe Dev.'s sewer plans & specs: | \$5,000 Est. |
| | A. Review plans, specs and computations at 50% and 100% complete. | |
| | B. Review permit application to DENR for force main facilities to be owned and operated by the City, if applicable. | |
| 7. | Review Alderbrook Pointe Dev. Sewer Project during construction: | \$15,000 Est. |
| | A. Review City's copy of shop drawings for force main prior to approval by Developer's Engineer. | |

- B. Review construction work periodically with the City and Contractor
(Assume 30 working days construction period).
- C. Assist the City in final inspection.

Subtotal **\$30,000 Est.**

- 8. **Additional Cost for Multiple Reviews and Resolving Problems: \$10,000 Est.**
- 9. **The review of the work by the City's Engineer is for the City's benefit and assistance only, and is not intended to relieve the Developer's Engineer and Contractor of their responsibilities.**

ESTIMATED TOTAL BASED ON HOURLY RATES: **\$40,000 Est.**

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City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 2, 2011
Subject: Adopt Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a resolution authorizing the filing of an application for approval of a financing agreement authorized by NC General Statute 160A-20 for the issuance of an Installment Purchase Contract to fund the Springs Road building improvement project.

BACKGROUND AND FINDINGS:

This resolution of findings along with a public hearing on the Springs Road building improvement project are requirements of the application of approval of installment purchases by the State of NC Department of State Treasurer, Local Government Commission.

PREVIOUS LEGISLATIVE ACTION

Multiple actions including Impressions lease, Declaration of Official Intent to Reimburse, and Capital Project Ordinance.

FISCAL IMPACT

___ Currently Budgeted () ___ Requires additional appropriation
X No Fiscal Impact (supplemental rent will service the debt)

SUPPORTING DOCUMENTS

Resolution
Improvement Summary

City Attorney Review: ___ Date By: ___ (if applicable)
Finance Dept Review: ___ Date By: ___ (if applicable)
City Manager Review: PTC Concur ___ Recommend Denial ___ No Recommendation
4/27 Date

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR
APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH
CAROLINA GENERAL STATUTE 160A-20**

WHEREAS, the City of Washington, North Carolina desires to finance building maintenance improvements to the City property located on 234 Springs Road in Washington, NC (the "Project") with the proceeds from the issuance of an Installment Purchase Contract purchased by a single financing institution to better serve the citizens of Washington; and

WHEREAS, The City of Washington desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Washington, North Carolina, meeting in regular session on the 2nd day of May, 2011, make the following findings of fact:

1. The proposed contract is necessary and expedient because building improvements are required to repair and replace the roof, replace and improve the fire protection system, and provide other improvements necessary for the continued use of this facility. The improvements are included in the City's lease with Impressions Marketing Group, Inc. that includes supplemental rent for these improvements and related debt service. This facility has not been well maintained for several years and these improvements will extend its useful life.
2. The proposed contract is preferable to a bond issue for the same purpose because the issuance cost and interest rate is higher for general obligation bonds and the issuance of an Installment Purchase Contract can be done in a more expedient manner.
3. Based upon information provided to the Council, the costs of the financing described above is favorably comparable to the costs associated with other alternative means of financing and is acceptable to the Council.
4. The City of Washington's debt management procedures and policies have been carried out in strict compliance with law.
6. No increase in ad valorem taxes is necessary to service this debt.
7. The City of Washington is not in default under any obligation for repayment of borrowed money.
8. The supplemental rent in the Impressions Marketing Group, Inc. lease is adequate to service the debt of this financing.
9. The attorney for the City of Washington will render an opinion that the proposed Project is authorized by law and that lease payment funds may be expended pursuant to the Constitution and laws of North Carolina.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor is hereby authorized to act on behalf of the City of Washington in filing an application with the North Carolina Local

Building Improvements

<u>\$</u>	<u>Description</u>	
457,430	Roof replacement/repair	
26,061	Fire protection inside building (excludes replacing pressure gauges)	
82,800	Fire protection outside building	
36,646	General contractor	5%
66,629	Contingency	10%
<u>100,000</u>	Miscellaneous (dock doors, etc.)	
769,566	Total	

Rent Structure

392,736	Square footage
1.00	Current \$ rent/square foot
0.45	Proposed increase/sq. foot
176,731	Proposed \$ increase
4.35	Payback years
883,656	Increase Total for 5 Years

Debt Service

Interest Rate	4.25%	3%	2.50%
Term	4.92	4.92	4.92
Annual Payment	176,736	170,681	168,285



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Peter T. Connet, Interim City Manager
Date: April 21, 2011
Subject: Approve Warren Field Airport Fire District Agreement with Beaufort County
Applicant Presentation: N/A
Staff Presentation: Peter T. Connet, Interim City Manager

RECOMMENDATION:

I move that Council approve the Warren Field Airport Fire District Agreement between the City of Washington and Beaufort County – effective January 1, 2011.

BACKGROUND AND FINDINGS:

The attached draft puts agreement into final form the Letter of Understanding dated October 17, 2009 between the City and the County. The City de-annexed the Airport property and the County is to share the tax revenues above a base line of \$8,128 for tax year 2010 in exchange for the City providing fire protection within the new district. The County Manager has reported that this 1st year payment will be in the range of \$13,000 which will be reported in the final agreement. Staff recommends approval of the final agreement.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Draft agreement with exhibits A & B.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: prc Concur _____ Recommend Denial _____ No Recommendation 4/27 Date

**NORTH CAROLINA
BEAUFORT COUNTY**

This Agreement is made and entered into effective as of the 1st day of January, 2011, by and between the County of Beaufort, a political subdivision of the State of North Carolina established and operating pursuant to the laws of the State of North Carolina (hereinafter referred to as the “County”) and the City of Washington, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as the “City”).

WITNESSETH

WHEREAS, North Carolina General Statute § 69-25.5 and § 153A-301 authorize counties to provide for fire protection in a designated response district by contracting with any incorporated city or town for the same.

WHEREAS, North Carolina General Statute § 160A-11, § 160A-293, and § 160A-461 authorize incorporated cities and towns to contract and be contracted with for fire protection, and to send firemen and equipment outside the corporate limits of a municipality to provide fire protection to rural or unincorporated areas pursuant to agreements between municipalities and counties.

WHEREAS, North Carolina General Statute § 159-13(a) provides that, subject to certain enumerated exceptions, local governments authorize all financial transactions through budget ordinances, which budget ordinances “may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source.”

WHEREAS, the City is the owner of equipment, land and buildings necessary for the operation of its Fire Department.

WHEREAS, the County has negotiated with the City to obtain fire protection for the district named below under the terms and conditions contained herein.

NOW, THEREFORE, pursuant to said relevant statutory authority, and for and in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows.

1. The County has established or hereby establishes, as the case may be, a rural fire protection district designated as the Warren Field Airport Fire District, specifically a portion of the Warren Field Airport property as more specifically shown on that survey map entitled “Asbuilt Survey of Chainlink Fence – Washington Warren Field Airport” by Burgess Land Surveying P.A. dated July 22, 2009 and attached hereto as Exhibit A. Reference is herein made to said survey map and the same is incorporated herein for a more complete and accurate description. The fire protection for said Warren Field Airport Fire District shall be provided by the Washington Department of Fire-Rescue-EMS Services (hereinafter referred to as “City Fire Department”) as more specifically provided

for herein. For the City Fire Department's operational guidelines and policy purposes, said Warren Field Airport Fire District and the corporate limits of the City shall be treated as one.

2. Any employee or member of the City Fire Department shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, which they have within the corporate limits of the City while and when they are engaged in any duty or activity outside the corporate limits of the City pursuant to orders of the Fire Chief or City Council.
3. The City shall provide fire protection services to the extent of the certifications of the responding crew(s) within said Warren Field Airport Fire District. Upon receipt of a request for fire protection services in the aforementioned area, the City shall dispatch the appropriate, primary resources, if available. The dispatched primary resources shall render said fire protection to the limit of their certifications. If the appropriate primary resources are unavailable, the City shall follow the mutual aid protocol then in effect. The City shall furnish said fire protection service without charge to persons and property located in the Warren Field Airport Fire District in an efficient and workmanlike manner.
4. The City agrees to use its best efforts to maintain a minimum of 9S rating or better with the North Carolina Department of Insurance, State Fire Marshal's Office for its established fire insurance boundaries, including said Warren Field Airport Fire District.
5. The obligation of the City to respond to calls under this Agreement shall be included in its primary duty to furnish and provide services within the corporate city limits.
6. The County and City have heretofore partnered and shall continue to partner in their mutual efforts to provide incentives for increased aviation activity at Warren Field Airport and the economic benefits thereof. In pursuit of this effort, the parties hereto previously participated in the deannexation of the Warren Field Airport property described herein from the City's corporate limits to reduce the taxation burden upon those who have located, or who may locate, their personal property and other assets therein. In furtherance of these pursuits, the parties entered a letter of understanding regarding future County grant appropriations to the City for future Airport operation and recruitment efforts as a result of said deannexation, which letter of understanding was executed by the respective managers of the parties. The parties hereto desire to memorialize and be bound by the understandings of said letter of understanding, and related to said letter of understanding, by incorporating such understandings into this Agreement.
 - a. As more specifically provided for herein, the parties desire to establish how the County has made and shall make future grant appropriations to the City in return for the City's efforts to operate and recruit new users of the City's airport and to attract additional as well as higher valued property to be located at the Airport.

- b. Using the then newest tax scrolls for calendar year 2009, the parties estimated the baseline measurement of the total Airport tax base for calendar year 2010 and agreed that a total Airport tax base of \$1,354,635.00 represented a fair baseline measurement for the first tax year (calendar year 2010) in which the Airport's tax rate would benefit from said deannexation.
- c. The County and the City hereby acknowledge that the Airport was removed from the City limits for the purposes of reducing taxation and attracting tax base as more fully described herein and the County has continued and will continue to benefit from tax revenue no more and no less than the sum produced by the baseline measurement identified above at the fiscal year 2009-2010 County tax rate of sixty cents (\$.60). As a result, the County has benefited and will benefit from no more and no less than the sum of \$8,128.00 from Airport property tax revenue beginning in tax year 2010, which tax year begins on January 1, 2010 (which is the fiscal year that begins in July of 2010 and ends in June of 2011).
- d. The County has continued and will continue the aggressive collection of property tax revenues from the total tax base at the Airport utilizing the County's tax rate from and after tax year 2010. The City's efforts to attract, and then retain, new tax base (in the form of new aircraft, real estate, etc.) to the Airport on or before January 1, 2010 resulted in the collection of County property tax revenues which exceeded the baseline sum of \$8,128.00, which excess the County has retained or will retain in tax year 2010 (fiscal year July of 2010 through June of 2011).
- e. The County shall appropriate an "airport grant" to the City in the month of June 2011 (which is tax year 2010) equal to the value of property tax revenue the County has collected/retained or will collect/retain in excess of the baseline sum of \$8,128.00 for the tax year 2010 (which is fiscal year July of 2010 through June of 2011). The County will provide the City with this same "airport grant" in June of each subsequent fiscal year (2012, 2013, 2014, and so on). The parties will determine the amount of the "airport grant" each subsequent fiscal year by utilizing the same baseline measurement identified above (total airport tax base of \$1,354,635.00 multiplied by the then current County tax rate) to arrive at a baseline sum, which baseline sum will be compared to the product of the then current total airport tax base when multiplied by the then current County tax rate. The amount of the "airport grant" shall be the amount that said product exceeds said baseline sum. On or before April 30th of each succeeding year beginning with April 30th of 2012, the Finance Officer for the County will provide the Chief Financial Officer for the City with the amount of the then current total Airport tax base for the corresponding calendar year, the County tax rate for the corresponding fiscal year, and the proposed amount of the "airport grant" for that particular year. The parties shall meet and resolve any discrepancy concerning said amounts and rate, including the calculation of the "airport grant", within thirty (30) days of the date on which the Chief Financial Officer for the City receives such information from the Finance Officer for the County. The County will provide the City with this same "airport grant" in this same manner each year

until the value of the “airport grant” reaches \$100,000.00 for any given year. If at any point in time the “airport grant” reaches a value of \$100,000.00 for any given year, the City and the County will meet to discuss the expenses associated with operating the Airport and negotiate in good faith the “airport grant” as well as the calculation thereof.

- f. The parties understand that this “airport grant” arrangement as described above put the City in a “risk/reward” scenario from October 27, 2009 through January 1, 2010 as more particularly described hereafter. In the event the baseline measurement of the total airport tax base (defined above at an amount of \$1,354,635.00) remained the same after January 1, 2010, then, in that event, the revenues from property tax collections would be sufficient only for the purpose of funding the County’s baseline sum of \$8,128.00 in tax year 2010. If, however, the total airport tax base increased prior to January 1, 2010, the City would benefit from an “airport grant” in June of 2011 equal to the dollar for dollar increase in property tax revenues collected for the tax year 2010 above the sum of \$8,128.00. Thereafter, the City will similarly benefit from any other additional revenues that accumulate year by year beyond the County’s baseline sum for the then current year. This relationship will continue until the value of the “airport grant” reaches \$100,000.00 for any given year; at which time, the parties will meet and negotiate in good faith as hereinbefore provided.
 - g. The term “airport” as used from time to time herein shall, depending upon the context, mean and refer to that real property located at Warren Field Airport and deannexed by the General Assembly of North Carolina, effective January 1, 2010. Said area is commonly referred to as that area within the current Airport fence line and is specifically described in Section 1 hereinabove.
7. Either party may propose an amendment to this Agreement by submitting the amendment in writing to the other party at least sixty (60) days in advance of the amendment’s proposed effective date. Any amendment proposed by one party is subject to and contingent upon prior written approval by the other party.
 8. This Agreement is not intended to serve for the benefit of any third party. The rights and obligations contained herein belong exclusively to the entities that are parties hereto and no third party shall rely upon anything contained herein as a benefit to that third party.
 9. The terms and provisions herein contained constitute the entire Agreement by and between the County and the City and are intended to, among other things, establish as well as designate the Warren Field Airport Fire District and implement the understandings of said letter of understanding into binding, contractual obligations. A copy of said “Letter of understanding regarding future County grant appropriations to the City for future airport operations and recruitment efforts as a result of deannexation” dated October 27, 2009 is attached hereto as Exhibit B.

10. This Agreement is effective as of the day and year first above written and shall remain effective subject to the continued legal existence of the Warren Field Airport Fire District.

IN WITNESS WHEREOF, after due authority given, the County has caused this Agreement to be signed in its name by its Manager, and attested by its Clerk, and the City has caused this Agreement to be signed in its name by its Manager, and attested by its Clerk.

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited per North Carolina General Statute § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Jim W. Chrisman, Finance Officer
Beaufort County

ATTEST:

BEAUFORT COUNTY

Sharon Singleton, Clerk

Paul Spruill, Manager

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, _____, a Notary Public of the State and County aforesaid, certify that Sharon Singleton personally appeared before me this day and acknowledged that she is Clerk of Beaufort County, a political subdivision of the State of North Carolina, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Paul Spruill, its Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this the ____ day of _____, 2011.

NOTARY PUBLIC

My Commission expires: _____.

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited per North Carolina General Statute § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Matt Rauschenbach, Chief Financial Officer
City of Washington

ATTEST:

CITY OF WASHINGTON

Cynthia S. Bennett, City Clerk

Peter T. Connet, Interim City Manager

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, _____, a Notary Public of the State and County aforesaid, certify that Cynthia S. Bennett personally appeared before me this day and acknowledged that she is City Clerk of the City Of Washington, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Peter T. Connet, its Interim City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the ____ day of _____, 2011.

NOTARY PUBLIC

My Commission expires: _____.

EXHIBIT B

BOARD OF COMMISSIONERS

Jay McRoy, Chairman
Jerry Langley, Vice Chairman
Ed Booth
Robert Cayton
Stan Deatherage
Al Klemm
Hood Richardson



COUNTY OFFICIALS

Paul G. Spruill, County Manager
Sharon C. Singleton, Clerk to the Board
William P. Mayo, County Attorney
Jim Chrisman, Asst. County Manager

BEAUFORT COUNTY NORTH CAROLINA

October 27, 2009

City of Washington
Mr. Jim Smith, City Manager
102 East 2nd Street
Washington, NC 27889

Re: Letter of understanding regarding future County grant appropriations to the City for future airport operation and recruitment efforts as a result of deannexation

Dear Mr. Smith:

Please accept this correspondence and attach your signature in order to indicate our understanding regarding future County grant appropriations to the City in return for the City's efforts to operate and recruit new users of the City's airport.

Using the newest tax scrolls for calendar year 2009, we can now estimate the baseline measurement of the total airport tax base for calendar year 2010. We agree a total airport tax base of \$1,354,635 represents a fair baseline measurement for the first tax year (calendar year 2010) in which the airport's tax rate will benefit from a newly approved deannexation.

The County and the City agreed that provided the airport was removed from the City limits for purpose of taxation, the County would continue to benefit from tax revenue no more and no less than the sum produced by the baseline measurement identified above at today's County tax rate of sixty cents. As a result, the County will benefit from no more and no less than the sum of \$8,128 from airport property tax revenue beginning in tax year 2010 which begins on January 1, 2010 (*which is the fiscal year that begins July, 2010 and ends June, 2011*).

The County will, however, continue the aggressive collection of property tax revenues from the total tax base at the airport utilizing the County's tax rate beginning in tax year 2010. The City's efforts to attract new tax base (*in the form of new aircraft, real estate, etc*) to the airport on or before January 1, 2010 will result in collection of County property tax revenues which exceed the baseline sum of \$8,128 that the County will keep for itself in tax year 2010 (*FY 2010-2011*).

The County will appropriate an "airport grant" to the City in the month of June, 2011 (*which is tax year 2010*) equal to the amount of property tax revenue the County has collected in excess of the baseline sum of \$8,128. The City will receive this same "airport grant" in June of each subsequent fiscal year (*2012, 2013, 2014, and so on*) until the value of the "airport grant" reaches \$100,000 annually. If at any point in time the "airport grant" reaches a value of \$100,000 annually, the City and the County will revisit the issue and expense of airport operations.

BEAUFORT COUNTY ADMINISTRATION BUILDING
121 West 3rd Street • Washington, North Carolina 27889 • Phone (252) 946-0079 • Fax (252) 946-7722

We both wish to clarify that this letter of understanding puts the City in a 'risk/reward' scenario between the date of this letter and January 1, 2010. Should the baseline measurement of the total airport tax base (*defined above at an amount of \$1,354,635*) remain the same after January 1, 2010, the revenues from property tax collections will be sufficient only for the purpose of funding the County's baseline sum of \$8,128 in tax year 2010. Should, however, the total airport tax base increase as a result of the relocation of new aircraft to our local airport prior to January 1, 2010, the City would benefit from an "airport grant" in June, 2011 equal to the dollar for dollar increase in property tax revenues collected above the sum of \$8,128.

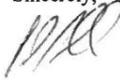
For example, the City is currently negotiating the lease of a vacant hangar that may result in the relocation of an aircraft before January 1, 2010 valued for purposes of taxation at an estimated \$2.0 million. Should the City succeed in relocating such an aircraft to Beaufort County before this date, the County will collect sufficient property tax revenues such that the City will benefit from an "airport grant" in June, 2011 estimated at \$10,000 or greater depending on the County's tax rate at that time. The City will exclusively benefit in future years not only from the estimated \$10,000 "airport grant" resulting from a successful relocation of the aircraft mentioned in the above example, but will also benefit from any other additional revenues that accumulate year by year beyond the County's baseline sum of \$8,128. Again, this relationship will continue until the value of the "airport grant" reaches \$100,000 annually.

Had the City and the County taken no action regarding the deannexation of the airport and continued to levy their respective tax rates against the baseline measurement of the total airport tax base as defined above, the City would have collected no more than \$8,128 in June, 2011 utilizing its current tax rate of sixty cents. Moreover, the City would lack the tool of utilizing the incentive of a much lower property tax rate for the purpose of recruiting future aircraft to the facility.

Finally, the City and County understand that a separate document may be necessary between the date of this letter and January 1, 2010 regarding the issue of providing Fire Protection Service to the airport via the City's Fire Department for the purpose of controlling the fire insurance rating at the airport.

Please indicate below (as I have already) the City's understanding of this arrangement by completing the appropriate signature.

Sincerely,



Paul Spruill,
County Manager

Signed:



Jim Smith, City Manager
City of Washington



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: John Rodman, Planning & Development
Date: April 19, 2011
Subject: Resolution: Adopt a resolution supporting the nomination of the North Market Street Historic District to the National Register (NR).
Applicant Presentation: N/A
Staff Presentation: John Rodman, Planning and Development

RECOMMENDATION:

I move that the City Council adopt the resolution supporting and recommending that the nomination of the North Market Street Historic District to the National Register of Historic Places be approved.

BACKGROUND AND FINDINGS:

The National Register is the nation's official list of historic buildings, districts, archeological sites, and other resources worthy of preservation. Listing a property in the National Register places no obligation or restriction on a private owner using private resources to maintain or alter their property. Owners of private property nominated to the NR have an opportunity to concur or object to the listing. A public hearing on the nomination will be held on May 3, 2011 at 7:00 pm in conjunction with Historic Preservation Commission meeting.

PREVIOUS LEGISLATIVE ACTION

Approved the funding for a study in March 2009
Project completed March 2011

FISCAL IMPACT

___ Currently Budgeted (Account _____) ___ requires additional appropriation
___ No Fiscal Impact

SUPPORTING DOCUMENTS

- Resolutions
- Application
- Map

City Attorney Review:	_____	Date	By: _____	(if applicable)
Finance Dept Review:	_____	Date	By: _____	(if applicable)
City Manager Review:	<u>pro</u>	Concur	May 2, 2011	Recommend Denial _____ No Recommendation
	<u>4/27</u>	Date		

RESOLUTION
NORTH MARKET STREET HISTORIC DISTRICT

WHEREAS, the City of Washington has created one National Register Historic District to preserve the character of existing neighborhoods, designate properties as historic landmarks, and safeguard the heritage of the City, and;

WHEREAS, the City of Washington wishes to promote the use and conservation of the National Register District for the education, pleasure, and enrichment of the residents of the City, and;

WHEREAS, the above referenced National Register Historic District Nomination has been scheduled for presentation to State of North Carolina National Register Advisory Committee, and;

WHEREAS, the City recognizes that the listing of a property in the National Register places no obligation or restriction on a private owner using private resources to maintain or alter the property, and;

WHEREAS, both the City Council and the Washington Historic Preservation Commission support the application for nomination, and;

NOW THEREFORE BE IT RESOLVED that the Washington City Council recommends the application for the nomination of the North Market Street Historic District to the National Register be approved.

ADOPTED this the 2nd day of May , 2011 by the City Council of the City of Washington.

N. Archie Jennings, Mayor

ATTEST:

Cynthia S. Bennett, City Clerk

THE CHIEF ELECTED LOCAL OFFICIAL OR THE LOCAL GOVERNING BOARD SHOULD
COMPLETE ONE OF THE FOLLOWING COMMENT PARAGRAPHS:

C. We, the _____, or We, the _____ have reviewed the nomination for the **North Market Street Historic District** and that the property **meets** the criteria for listing in the National Register of Historic Places as stated in Section 8 of the report. We therefore, **recommend** that the property be submitted for listing in the Register.

Additional Comments:

Chief Local Elected Official's signature and date

D. We, the _____, or We, the _____ have reviewed the nomination for the **North Market Street Historic District** and that the property **does not meet** the criteria for listing in the National Register of Historic Places as stated in Section 8 of the report. We therefore, **do not recommend** that the property be submitted for listing in the Register. The reasons for my (or our) findings concerning this nomination are stated below (use additional sheet if necessary).

Additional comments:

Chief Local Elected Official's signature and date

NATIONAL REGISTER FACT SHEET 1

WHAT IS THE NATIONAL REGISTER OF HISTORIC PLACES?

The National Register of Historic Places is the nation's official list of buildings, structures, objects, sites, and districts worthy of preservation for their significance in American history, architecture, archaeology, and culture. The National Register was established by the National Historic Preservation Act of 1966. The purpose of the Act is to ensure that as a matter of public policy, properties significant in national, state, and local history are considered in the planning of federal undertakings, and to encourage historic preservation initiatives by state and local governments and the private sector.

What the National Register Means for the Private Property Owner

The listing of a property in the National Register places no obligation or restriction on a private owner using private resources to maintain or alter the property. Over the years, various federal incentives have been introduced to assist private preservation initiatives. A private owner of a National Register property becomes obligated to follow federal preservation standards only if federal funding or licensing is used in work on the property, or if the owner seeks and receives a special benefit that derives from National Register designation, such as a grant or a tax credit described below.

National Register listing should not be confused with local historic property and historic district designations. These designations are made by a local governing board on the recommendation of a local historic preservation commission. This program of local designations is an option available to local governments under North Carolina enabling legislation (G.S. 160A-400). Properties and districts listed in the National Register sometimes also receive local designation in jurisdictions where local preservation commissions have been established according to the state enabling legislation, but there is no direct correlation between National Register listing and local designation.

National Register listing means the following:

1. Consideration and Protection in Public Planning:

All properties and districts listed in or eligible for listing in the National Register are considered in the planning of federal undertakings such as highway construction and Community Development Block Grant projects. "Federal undertakings" also include activities sponsored by state or local governments or private entities if they are licensed or partially funded by the federal government. "Federal undertakings" do not include federal farm subsidies or loans made by banks insured by the FDIC.

National Register listing does not provide absolute protection from federal actions that may affect the property. It means that if a federal undertaking is in conflict with the preservation of a National Register property, the North Carolina Historic Preservation Office will negotiate with the responsible federal agency in an effort to eliminate or minimize the effect on the historic property. This review procedure applies to properties that are determined eligible for the National Register in the day-to-day environmental review process as well as those actually listed in the National Register.

Similarly, North Carolina law (G.S. 121-12a) provides for consideration of National Register properties in undertakings funded or licensed by the state. Where a state undertaking is in conflict with the preservation of a National Register property, the North Carolina Historical Commission is given the opportunity to review the case and make recommendations to the state agency responsible for the undertaking. The commission's recommendations to the state agency are advisory.

2. Incentives for the Preservation of National Register Properties:

Tax Benefits. Under the Tax Reform Act of 1986, a building that is listed in the National Register or is a contributing building in a National Register historic district may be eligible for a 20% federal income investment tax credit claimed against the costs of a qualified rehabilitation of the building. These credits apply only to income-producing, depreciable properties, including residential rental properties. The federal credits do not apply to owner-occupied residential properties. The cost of the rehabilitation must exceed the adjusted basis of the building (original cost minus land value, minus depreciation, plus previous capital improvements). Plans for the rehabilitation are reviewed by the North Carolina Historic Preservation Office and the National Park

Service, and work on the building must meet the Secretary of the Interior's *Standards for Rehabilitation*. For more information and applications, contact the Preservation Tax Credit Coordinator at the address given below, or telephone 919/733-6547, ext. 242.

Effective January 1, 1998, taxpayers who receive the federal income tax credit for rehabilitating certified historic structures are allowed to take as a credit against North Carolina income taxes an amount equal to 20% of the expenditures that qualify for the federal credit.

Also effective January 1, 1998, a building that is listed in the National Register or is a contributing building in a National Register historic district may be eligible for a 30% state income investment tax credit claimed against the costs of a qualified rehabilitation of the building. This credit applies only to **nonincome-producing properties, including owner-occupied residential properties**. The cost of the rehabilitation must exceed \$25,000 within a 24-month period: Plans for the rehabilitation are reviewed by the North Carolina Historic Preservation Office, and work on the building must meet the Secretary of the Interior's *Standards for Rehabilitation*. For more information and applications, contact the Preservation Tax Credit Coordinator at the address given below or telephone 919/733-6547, ext. 234.

The Tax Treatment Extension Act of 1980 provides federal tax deductions for charitable contributions of partial interests (easements) in historically significant properties for conservation purposes. Interested individuals should consult legal counsel or the local Internal Revenue Service office for assistance in determining the tax consequences of the provisions of this act.

Grants and Loans. A limited program of matching grants for the rehabilitation of National Register properties, including those that are privately owned, was authorized by the National Historic Preservation Act of 1966, but has not been funded to a significant degree since the early 1980s. A loan program authorized by the Act has never been funded.

In 1993, 1994, 1995, and 1997 the North Carolina General Assembly passed bills which provided funding to the Department of Cultural Resources for grants to local historical organizations for fiscal years 1993-94, 1994-95, 1995-96, and 1997-98. The purpose of the grants is to encourage the protection, preservation, and interpretation of historic assets with local or regional significance. Priority consideration is given to properties listed in or eligible for listing in the National Register. Continuation of this program in future years is dependent upon additional funding by the General Assembly.

NOTE: A privately owned individual property may not be listed in the National Register over the objection of its owner or, in the case of a property with multiple owners, over the objection of a majority of owners. A district may not be listed in the National Register over the objection of a majority of owners of private property within the proposed district. For a complete description of procedures for objecting to a National Register nomination, see *National Register Fact Sheet 5: "Procedure for Supporting or Objecting to National Register Listing."*

See also the following numbered *National Register Fact Sheets*:

- 2: "National Register Criteria for Evaluation"
- 3: "How Historic Properties Are Listed in the National Register of Historic Places"
- 4: "The National Register of Historic Places in North Carolina: Facts and Figures"

See the handout entitled "A Comparison of the National Register of Historic Places With Local Historic Landmark and District Designations" for a review of the differences between these two programs.

FOR MORE INFORMATION:

Historic Preservation Office World Wide Web site at <http://www.hpo.ncdcr.gov>
Historic structures and the National Register: **Survey and Planning Branch**, 919/807-6570
Archaeological sites and the National Register: **Office of State Archaeology**, 919/807-6554
Preservation tax credits and technical restoration assistance: **Restoration Branch**, 919/807-6590
Environmental protection and planning: Environmental Review Coordinator, **Administration Branch**, 919/807-6570

Written inquiries to each of these branches may be sent to the State Historic Preservation Office, 4617 Mail Service Center, Raleigh, North Carolina 27699-4617.

The National Register program is governed by the following federal and state rules and regulations: 36CFR Part 60 (interim rule), 36CFR Part 61 (final rule), and North Carolina Administrative Code T07: 04R .0300.

11/09

500 copies of this document were printed at a cost of \$20.00, or \$0.04 per copy.

May 2, 2011

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NATIONAL REGISTER FACT SHEET 2

NATIONAL REGISTER CRITERIA FOR EVALUATION

The following criteria are designed to guide the states, federal agencies, and the Secretary of the Interior in evaluating potential entries for the National Register.

The quality of significance in American history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. *that are associated with events that have made significant contribution to the broad patterns of our history; or*
- B. *that are associated with the lives of persons significant in our past; or*
- C. *that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
- D. *that have yielded, or may be likely to yield, information important in prehistory or history.*

Criteria Considerations (Exceptions): *Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:*

- A. *a religious property deriving primary significance from architectural or artistic distinction or historical importance; or*
- B. *a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or*
- C. *a birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his or her productive life; or*
- D. *a cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or*
- E. *a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or*
- F. *a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or*
- G. *a property achieving significance within the past 50 years if it is of exceptional importance.*

(see other side)

APPLYING THE CRITERIA

The two principal issues to consider in determining eligibility for the National Register are "significance" and "integrity."

A property may have "significance" for association with important events or patterns of history (criterion A); for association with an important historical figure (criterion B); as an important example of period architecture, landscape, or engineering (criterion C); or for the information it is likely to yield (criterion D, applied to archaeological sites and districts, and sometimes applied to certain types of structures). A National Register nomination must demonstrate how a property is significant in at least one of these four areas. For properties nominated under criterion A, frequently cited areas of significance are agriculture, community planning and development, social history, commerce, industry, politics and government, education, recreation and culture, and others. For technical reasons, criterion B (significant person) nominations are rare. Criterion C (architecture) is cited for most, but not all, nominations of historic buildings. Archaeological sites are always nominated under criterion D, but may also have significance under one or more of the other three criteria.

Properties are nominated at a local, state, or national level of significance depending on the geographical range of the importance of a property and its associations. The level of significance must be justified in the nomination. The majority of properties (about 70%) are listed at the local level of significance. The level of significance has no effect on the protections or benefits of listing.

Besides meeting one or more of the above criteria, a property must also have "integrity" of "location, design, setting, materials, workmanship, feeling, and association." This means that the property must retain enough of its historic physical character (or in the case of archaeological sites, intact archaeological features) to represent its historic period and associations adequately.

All properties change over time, and in some cases past alterations can take on historical significance in their own right. The degree to which more recent, incompatible, or non-historic alterations are acceptable depends on the type of property, its rarity, and its period and area of significance. Buildings with certain types of alterations are usually turned down by the National Register Advisory Committee. For example, 19th and early 20th century wood frame buildings that have been brick veneered in the mid-20th century are routinely turned down for loss of historic integrity. Similarly, it is extremely rare that buildings covered in synthetic materials such as aluminum or vinyl siding are individually eligible for listing in the Register.

Criteria Exceptions

The criteria exclude birthplaces and graves of historical figures, cemeteries, religious properties, moved buildings, reconstructions, commemorative properties, and properties less than 50 years old, with certain exceptions. The following exceptions are sometimes encountered:

Historic **churches** that retain sufficient architectural integrity can usually be successfully nominated under criterion C (architecture), sometimes together with criterion A for social or religious history, provided they have not been brick veneered or covered in aluminum or vinyl siding.

Cemeteries may sometimes successfully be nominated under criterion C when they retain important examples of historic stone carving, funerary art, and/or landscaping, and they also may be eligible under criterion A or criterion D. However, both the National Register Advisory Committee and the National Register have turned down nominations of graves when the historical importance of the deceased is the sole basis for the nomination. The National Register was created primarily to recognize and protect historic places and environments that represent how people lived, worked, and built in the historic past. Human burials are recognized and protected under other laws and programs.

Moved buildings may sometimes be successfully nominated under criterion C for architecture when they remain in their historic communities and the new setting adequately replicates the original setting. The point to remember is that the program is called the National Register of Historic Places, not Historic Buildings or Historic Things, because significance is embodied in locations and settings as well as in the structures themselves. Buildings moved great distances, buildings moved into incompatible settings (such as a farmhouse moved into an urban neighborhood or a downtown residence moved to a suburb), and collections of buildings moved from various locations to create a pseudo-historic "village" are routinely turned down. In some cases, the relocation of a historic building to a distant or incompatible setting may be the last and only way to save it, and such an undertaking may be worthwhile. However, sponsors of such a project must understand that the property subsequently may not be eligible for the National Register.

If a property is **less than 50 years old**, it can be nominated only if a strong argument can be made for exceptional significance. For example, Dorton Arena on the State Fairgrounds was completed in 1953. It was successfully nominated to the National Register in 1973 as one of the most important examples of modernism in ~~post-World War II~~ World War II American architecture.

NATIONAL REGISTER FACT SHEET 3

HOW HISTORIC PROPERTIES ARE LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES

Who Administers the National Register Program?

The National Register of Historic Places is a list maintained by the National Park Service of buildings, structures, sites, objects, and districts that are significant in American history, architecture, archaeology, engineering, and culture, and that meet criteria for evaluation established by the National Historic Preservation Act of 1966. Nominations to the National Register are submitted from each of the states by the **State Historic Preservation Officer (SHPO)**. In North Carolina, the SHPO is the Director of the Division of Archives and History. The section within the Division that administers the National Register and related programs is the **State Historic Preservation Office (HPO)**. The personnel of the Historic Preservation Office serve as staff for the SHPO in National Register activities and duties.

In every state, a review board examines potential nominations and makes recommendations to the SHPO regarding the eligibility of properties and the adequacy of nominations. In North Carolina, the review board is called the **National Register Advisory Committee (NRAC)**. The NRAC meets thrice annually (February, June, October) to consider the eligibility of properties for nomination to the National Register. Nominations prepared under the supervision of the HPO staff and approved by the NRAC are forwarded to the Keeper of the National Register in the National Park Service in Washington, D.C. Final authority to list properties in the National Register resides with the National Park Service.

How are Eligible Properties Identified?

Properties and districts that may be eligible for the National Register are usually brought to the attention of the HPO staff and the NRAC either (1) through a county or community survey of historic properties co-sponsored by the Historic Preservation Office and a local government or organization; (2) by interested individuals who provide preliminary information about properties to the HPO staff; or (3) through historic property surveys conducted as part of the environmental review process.

Persons who seek National Register listing for properties that have not been recorded in survey projects co-sponsored by the Historic Preservation Office may submit a "**Study List Application**" to the HPO. If adequate information and color views of the property are included with the application, the NRAC will consider the property at its next quarterly meeting. If in the opinion of the NRAC the property appears to be potentially eligible for the National Register, it is placed on the Study List. This action by the NRAC authorizes the HPO staff to work with the owner to coordinate a formal nomination of the property to the National Register.

The NRAC can best evaluate the eligibility of an individual property within the context of a community-wide or regional inventory of historic or prehistoric properties. This provides a basis for comparing the relative significance of similar types of historic or prehistoric properties in a community or region. *In counties or communities where no such inventory has been assembled, the NRAC will sometimes find it necessary to defer a decision about the eligibility of an individual property until a comprehensive survey of historic properties has taken place.* Likewise, the NRAC may consider some properties as contributing components within larger districts but not as individually eligible. Information about grants to local governments for local historic property surveys and nominations is available from the Historic Preservation Office.

What is a National Register Nomination?

A National Register nomination is a scholarly and authoritative document that thoroughly describes and evaluates a property's setting and physical characteristics, documents its history, assesses its significance in terms of its historic context, and demonstrates how it specifically meets National Register criteria for evaluation. It is supported by professional quality black and white photographs, maps delineating the property's boundaries, and other materials and information. The nomination must be prepared according to federal and state guidelines.

Who Prepares National Register Nominations?

Most nominations are prepared by private consultants hired either by individual property owners or by local governments or organizations. Nominations of archaeological sites are sometimes prepared by professional archaeologists as part of their on-going research. HPO National Register staff is responsible for reviewing, editing, and processing nominations prepared in these ways. Due to the great demand for National Register nominations and the small number of HPO staff, the HPO is unable to prepare nominations as a public service.

An owner of a Study List property who seeks to have it listed in the National Register may hire a private consultant to prepare the nomination. A list of qualified consultants is available from the Historic Preservation Office. HPO staff cannot quote fees, and fees will vary depending on the consultant and the complexity of the nomination. An owner may expect to pay a professional historian, architectural historian, or archaeologist the equivalent of 40 to 80 hours of time at a professional hourly wage.

Some owners are interested in preparing their own nominations and are capable of doing so. A packet that includes the NPS instruction manual, the supplementary state instruction manual, and sample nominations may be purchased from the Historic Preservation Office for \$7.50. The level of description, historical documentation, analysis, and writing in every nomination must meet accepted professional standards. The SHPO will not submit substandard nominations to Washington, and HPO staff cannot make major revisions or provide detailed critiques of inadequate nominations. Because documentation of archaeological properties always involves excavation, analysis, and interpretation requiring specialized training, nominations of archaeological properties are always prepared by professional archaeologists.

What Happens to the Finished Nomination?

The nomination is reviewed by members of the National Register Advisory Committee at one of the regular quarterly meetings. If the NRAC recommends that the nomination be submitted to the National Register, it is signed by the State Historic Preservation Officer and forwarded to the Keeper of the National Register. At the National Register office, the nomination is reviewed and the decision to list or not list is made within not less than 15 and not more than 45 days of receipt. If the property is listed, the HPO will notify the owner and provide a certificate stating that the property has been listed in the National Register of Historic Places. Owners who desire plaques may order them from private commercial suppliers. The HPO does not provide plaques or recommend any particular supplier, but a list of manufacturers is available on request.

FOR MORE INFORMATION CONTACT: National Register Coordinator
Survey and National Register Branch
State Historic Preservation Office
4617 Mail Service Center
Raleigh, North Carolina 27699-4617 919/807-6587

Offices of the Survey and Planning Branch are at 109 E. Jones Street in Raleigh. For information about archaeological sites and the National Register, contact the Office of State Archaeology, 4619 Mail Service Center, Raleigh, NC 27699-4619, telephone 919/807-6554.

Please also see the Historic Preservation Office World Wide Website at <http://www.hpo.ncdcr.gov> 2009

NATIONAL REGISTER FACT SHEET 4

THE NATIONAL REGISTER OF HISTORIC PLACES IN NORTH CAROLINA: FACTS AND FIGURES

- There are more than 85,000 listings of historic buildings, structures, sites, objects, and districts in the National Register across the United States and its territories.
- The first nominations from North Carolina were submitted in 1969. Today there are approximately 2,710 National Register listings in the state. In recent years the state has submitted an average of 50 new nominations per year to the National Register. Most nominations are prepared by private consultants working for local governments or for private property owners. Nominations are carefully prepared and screened in the review process, and 99% of all nominations from North Carolina have been successfully listed. A list of all National Register entries in North Carolina as of the end of the most recent half-calendar year, arranged alphabetically by county and giving name, town or vicinity, and date listed, is available on the State Historic Preservation Office web site at <http://www.hpo.ncdcr.gov>. A similar list may be accessed at the National Register web site, <http://www.nr.nps.gov/nrloc1.htm>.
- Of the 2,710 total listings in North Carolina, about 500 are historic districts, some of which contain hundreds of contributing historic buildings or sites. Types of districts include residential neighborhoods, commercial districts, prehistoric and historic archaeological districts, industrial complexes, mill villages, and rural farming districts. Since the first historic district nominations did not include complete lists of all properties within district boundaries, it is not possible to determine the precise number of historic properties in North Carolina that are listed in the National Register. The National Park Service estimates that more than 66,000 historic resources in North Carolina are listed in the National Register either as individual listings or as contributing properties within districts. Properties within districts that contribute to the historic character of the district are eligible for federal environmental protections and benefits to the same extent as if they were individually listed.
- Of all North Carolina properties listed in the National Register, approximately 85% are privately owned and 15% publicly owned. About 70% are listed at a local level of significance, 25% at a statewide level, and 5% at a national level of significance. The level of significance at which a property or district is listed does not affect its eligibility for benefits or the consideration it receives in environmental review processes.
- North Carolina's National Register listings reflect the whole spectrum of the state's human experience through its long history: prehistoric Indian sites; shipwreck sites; modest log houses of settlers and slaves; houses and outbuildings of ordinary farmers and townspeople; the mansions of wealthy planters and merchants; churches of all sizes and denominations; courthouses, schools and other public buildings; commercial buildings of many types; and industrial and transportation buildings and sites. Listings vary from 10,000-year-old archaeological sites to the 1953 Dorton Arena at the State Fairgrounds. What all these places have in common is that they reveal in a tangible way some important aspect of past life in North Carolina and its diverse communities.
- The State Historic Preservation Office reviews approximately 4,000 federal and state actions annually to determine their potential effects on properties listed in or eligible for, listing in the National Register. Where a federal or state undertaking is in conflict with the preservation of a National Register property, the State Historic Preservation Office will negotiate with the responsible agency in

- an attempt to eliminate or minimize the effect under procedures prescribed by federal law (Section 106 of the National Historic Preservation Act of 1966) or state law (G.S. 121-12a).
- From 1976 through May of 2010, 1,259 National Register properties in North Carolina were rehabilitated under state and federal historic preservation income-producing tax incentive programs, representing an investment of over \$1.01 billion in National Register properties in the state. From 1998 through May 2010, completed rehabilitation projects of 1,115 owner-occupied residences, representing \$172.5 million in investment, were reviewed for certification under a North Carolina historic preservation tax incentive program.
 - The Restoration Branch of the State Historic Preservation Office offers technical restoration consultation services to owners of historic properties, including municipal and county governments, churches, businesses, and private property owners. Restoration Branch staff provides consultation services to more than 2,000 historic properties in a typical year. Restoration staff is located in Raleigh (919/733-6590), Asheville (828/274-6789), and Greenville (252/830-6580).
 - Since the mid-1970s almost three-quarters of North Carolina's 100 counties and scores of municipalities have participated in survey and planning grant projects co-sponsored with the State Historic Preservation Office to conduct comprehensive surveys of historic properties and prepare nominations of properties and districts to the National Register of Historic Places. Many other counties have participated in regional reconnaissance surveys. The Survey and Planning Branch maintains an estimated 80,000 survey files with photographs and information about historic structures. The Office of State Archaeology maintains information concerning the approximately 41,000 prehistoric and historic archaeological sites recorded in the state. Fifty-one counties and thirty-seven municipalities have published historic architecture survey catalogues, many of which are still in print and available for purchase from the State Historic Preservation Office.

For information about why the National Register was created and what listing means to a property owner, see *NATIONAL REGISTER FACT SHEET 1, "WHAT IS THE NATIONAL REGISTER OF HISTORIC PLACES?"*

For an explanation of National Register criteria for evaluation, see *NATIONAL REGISTER FACT SHEET 2, "NATIONAL REGISTER CRITERIA FOR EVALUATION."*

For information about how properties and districts are listed in the National Register, see *NATIONAL REGISTER FACT SHEET 3, "HOW HISTORIC PROPERTIES ARE LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES."*

See the handout titled "A COMPARISON OF THE NATIONAL REGISTER OF HISTORIC PLACES WITH LOCAL HISTORIC LANDMARK AND DISTRICT DESIGNATIONS" for an explanation of the differences between the two programs.

FOR MORE INFORMATION:

Please Also See The Historic Preservation Office World Wide Web Site at <http://www.hpo.ncdcr.gov>

Historic structures and the National Register: **Survey and National Register Branch**, 4617 Mail Service Center, Raleigh, NC 27699-4617; phone 919/807-6570.

Archaeological sites and the National Register: **Office of State Archaeology**, 4619 Mail Service Center, Raleigh, NC 27699-4619; phone 919/807-6554.

Preservation tax credits and technical restoration assistance: **Restoration Branch**, 4617 Mail Service Center, Raleigh, NC 27699-4617; phone 919/733-6590.

Grants to local governments and organizations for historic property surveys and National Register nominations: Grants Coordinator, **Administration Branch**, 4617 Mail Service Center, Raleigh, NC 27699-4617; phone 919/807-6582.

The National Register program is governed by the following federal and state rules and regulations: 36CFR Part 60 (interim rule), 36CFR Part 61 (final rule), and North Carolina Administrative Code T07: 04R .0300.

NATIONAL REGISTER FACT SHEET 5

PROCEDURE FOR SUPPORTING OR OBJECTING TO NATIONAL REGISTER LISTING

Under federal law a privately owned property may not be listed individually in the National Register over the objection of its owner or, in the case of a property with multiple owners, over the objection of a majority of owners. A district may not be listed in the National Register over the objection of a majority of owners of private property within the proposed district.

Supporting a National Register nomination:

Private owners who seek National Register listing for their properties are not required to submit statements of concurrence, though letters of support of the nomination are welcomed and become a permanent part of the nomination file. Owners who wish to support a nomination are encouraged to submit letters of support to the State Historic Preservation Officer prior to the National Register Advisory Committee meeting at which the nomination is to be considered.

Objecting to a National Register nomination:

Any owner or partial owner of a nominated private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that he or she is sole or partial owner of the private property and objects to the listing. Each owner or partial owner of the property has one vote regardless of what part of the property or how much property the individual owns. Owners who wish to object are encouraged to submit statements of objection prior to the meeting of the National Register Advisory Committee at which the nomination is being considered. However, statements of objection may be submitted and will be counted up until the actual date of listing, which usually takes place at least 15 days but not more than 45 days after the nomination is mailed to the Keeper of the National Register following the National Register Advisory Committee meeting.

If a majority of private property owners should object, the property or district will not be listed. However, in such cases the State Historic Preservation Officer is required to submit the nomination to the Keeper of the National Register for a *determination of eligibility* for the National Register. If the property or district is determined *eligible* for listing, although not formally listed, it will be treated as a listed property or district for purposes of federal undertakings in the environmental review process. Such properties are not eligible for federal preservation grants or tax credits until the objections are withdrawn and the property is listed.

Address letters of support or objection to:

State Historic Preservation Officer
Office of Archives and History
4610 Mail Service Center
Raleigh, North Carolina 27699-4610

National Register Advisory Committee meetings are open to the public. Meetings normally are held the second Thursday of February, June, and October in the conference room on the third floor of the Archives/State Library Building at 109 East Jones Street in Raleigh. For more information, call 919/807-6570.

FOR MORE INFORMATION:

Historic structures and the National Register: **Survey and National Register Branch**, 919/807-6570.
Archaeological sites and the National Register: **Office of State Archaeology**, 919/807-6550.
Preservation tax credits and technical restoration assistance: **Restoration Branch**, 919/807-6570.

Please also see the Historic Preservation Office World Wide Web site at <http://www.hpo.ncdcr.gov>



COPY

City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Blanca Gentile, Special Projects
Date: June 7, 2010
Subject: Administrative Services, CDBG Housing development grant: NOFI (Northgate, Old Fort Initiative)
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that council authorize Mayor Jennings to negotiate and execute the contract for administrative services with Holland Consulting Planners for the 2009 Community Development Block Grant, Housing Development program. The goal is this project is to construct 15 affordable housing units in the Northgate, Old Fort area and deliver pre and post housing/financial counseling services to potential buyers.

BACKGROUND AND FINDINGS:

After being awarded funds, the Department of Planning and Development advertised for the procurement of administrative services. Out of the two respondents, Holland Consulting Planners is recommended based on (1) hourly rates- was \$10/hr less, (2) firm has a local office and is easily accessible, and (3) Prior related experience.

The recommendation of the planning staff is to negotiate a professional services contract to administer the Northgate, Old Fort Initiative (NOFI) Housing Development project for the Community Development Block Grant in an amount not to exceed \$20,000.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Contract for Administrative Services

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *js* Concur _____ Recommend Denial _____ No Recommendation 6/9/10 Date

ATTACHMENT "A"

CITY OF WASHINGTON, NORTH CAROLINA
FY09 CDBG COMMUNITY HOUSING DEVELOPMENT
AMENDMENT #1 - FEE SCHEDULE

<u>Staff Position</u>	<u>Hourly Rate</u>
T. Dale Holland Principal	\$150.00
J. Reed Whitesell Community Development Manager	\$125.00
Chris Hilbert Program Administrator	\$85.00
Jessie Miars Housing Counselor/ Environmental Review Coordinator	\$75.00
Administrative Services	\$55.00

April 12, 2011

Mr. John Rodman, Planning Director
City of Washington
Post Office Box 1988
Washington, North Carolina 27889-1988

Dear John:

Enclosed is a proposed contract amendment to our contract for administration of the City's FY09 CDBG Housing Development (HD) Project. This amendment is requested for the following additional work items:

- Preparation of revised Environmental Review and management of Release of Funds process.
- Management of compliance activities associated with the need to acquire alternate parcels in Northgate Subdivision.
- Extended program compliance time line.

The increase of \$5,000.00 will result in a total contract amount of \$25,000.00 which is 10.9% of the total grant amount. CDBG program guidelines allow up to 18% of the grant amount for program administration.

If this amendment is acceptable, please have each copy executed as required, keep one for your records and return the remaining two copies to Cynthia Strader, Finance Officer, at our Wilmington office at the address listed below.

Please contact me if you have any questions. Your favorable recommendation will be appreciated.

Sincerely,



T. Dale Holland, AICP
President

Enclosures

AMENDMENT NO. 1
CONTRACT FOR CONSULTANT SERVICES

THE AGREEMENT dated June 15, 2010, between the CITY OF WASHINGTON, NORTH CAROLINA, hereinafter called the City, and HOLLAND CONSULTING PLANNERS, INC., hereinafter called the Consultant, is hereby amended as follows:

The City agrees to increase the contract amount from \$20,000 to \$25,000 (+\$5,000) to compensate the Consultant for administering the following services related to the City's FY09 CDBG Housing Development (HD) Project:

- Preparation of revised Environmental Review and management of Release of Funds process.
- Management of compliance activities associated with the need to acquire alternate parcels in Northgate Subdivision.
- Extended program compliance time line.

The increased contract amount will be paid in monthly installments, beginning April 2011, based on actual hourly charges accrued. Hourly rates shall be based on the rates included in Attachment "A."

The City and the Consultant each binds himself, his partners, successors, executors, administrators and assigns to the other party to the agreements, and to the partners, successors, executors, administrators, and assigns of each other party in respect to all covenants of the Amended Agreement.

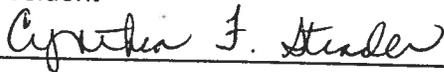
The City and the Consultant hereby agree to the full performance of the covenants contained herein.

IN WITNESS HEREOF, they have executed this amendment, this 2nd day of May, 2011.

HOLLAND CONSULTING PLANNERS, INC.

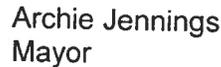


T. Dale Holland, AICP
President



Witness

CITY OF WASHINGTON, NC



Archie Jennings
Mayor

Clerk to the Board

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



Finance Officer



Date

(SEAL)



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: John Rodman, Planning & Development
Date: April 21, 2011
Subject: Adopt grant project ordinance amendment for administrative services with the FY 09 CDBG HD Grant.

Applicant Presentation: Reed Whitesell, Holland Planners
Staff Presentation: John Rodman, Planning and Development

RECOMMENDATION:

I move the City Council adopt a grant project amendment for \$5,000 for administrative services related to the FY 09 CDBG Housing Development Project as shown on the attached budget ordinance amendment.

BACKGROUND AND FINDINGS:

The Project Budget Ordinance for the FY 09 CDBG Housing Development Project was adopted in June 2010 for \$227,700. The original contract for administrative services with Holland Consulting Planners for the CDBG Housing Development Project (Northgate/Old Fort Initiative) was a professional services contract to administer the project in an amount not to exceed \$20,000. Holland has asked for an additional \$5,000 for services. The requested funds will be transferred from the Planning Line Item to Administration.

PREVIOUS LEGISLATIVE ACTION

Approved the Project Budget Ordinance – June 14, 2010

FISCAL IMPACT

Currently Budgeted (Account _____) _____ requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Ordinance for Grant Project Amendment
Copy of previously approved Grant Project Ordinance

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: PR Concur _____ Recommend Denial _____ No Recommendation
4/27 May 2, 2011 Date

**AN ORDINANCE TO AMEND THE GRANT PROJECT ORDINANCE FOR THE
CDBG- AFFORDABLE HOUSING GRANT
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina:

Section 1. That the following accounts in the CDBG- Affordable Housing Grant be increased or decreased by the following amounts:

50-60-4930-0400	Administration	\$ 5,000
50-60-4930-0401	Planning	(5,000)

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

MAYOR

ATTEST:

CITY CLERK

COPY

Agenda Date: June 14, 2010

**A GRANT PROJECT ORDINANCE FOR
COMMUNITY DEVELOPMENT BLOCK GRANT
PROJECT #09-C-2050
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2009-2010**

BE IT ORDAINED, by the City Council of the City of Washington, North Carolina, that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby amended:

Section 1. The project authorized is for housing development and is to be financed with grant funds.

Section 2. The officers of this unit are hereby directed to proceed with the project within the terms of the grant agreements.

Section 3. The following amounts are appropriated for the project:

50-60-4930-0400	Administration	\$20,700
50-60-4930-0405	Planning	60,000
50-60-4930-7100	Acquisitions	<u>147,000</u>
	Total	\$227,700

Section 4. The following revenue is anticipated to be available to complete this project:

50-60-3470-0000	CDBG Grant Funds	\$227,700
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Section 5. The Finance Director is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to satisfy the requirements of the grant agreements.

Section 6. Funds may be advanced by the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grant agencies in an orderly and timely manner.

Section 7. The Finance Director is directed to report, on a monthly basis, on the financial status of each project element in Section 3 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detail analysis of past and future costs and revenues on this grant project in every budget submission made to the City Council.

Section 9. Copies of this grant project ordinance shall be furnished to the City Clerk, and to the Budget Officer, and to the Finance Director for direction in carrying out this project.

Agenda Date: June 14, 2010

Section 10. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. This ordinance shall become effective upon its adoption.

This the 14th day of June, 2010.

Mayor

Attest:

City Clerk