

The Washington City Council met in a continued session on Monday, January 22, 2007 in the Council Chambers at the Municipal Building at 4:30 p.m. Present were: Judy Jennette, Mayor; Ed Gibson, Councilman; Richard Brooks, Councilman; Mickey Gahagan, Councilman; Darwin Woolard, Mayor Pro tem; James Smith, City Manager; Franz Holscher, City Attorney; and Rita A. Thompson, City Clerk. Councilman Jennings was absent.

Also present were: Carol Williams, Finance Director; Jimmy Davis, Fire Chief; Joey Toler, DWOW Director; Lynn Lewis Tourism Development Authority Director; Allen Lewis, Public Works Director; and Mike Voss, of the Washington Daily News.

Mayor Jennette called the meeting to order, and Councilman Gibson delivered the invocation.

AMENDMENTS TO AGENDA

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously approved the agenda, as submitted.

On motion of Councilman Gahagan, seconded by Mayor Pro tem Woolard, Council unanimously amended the motion to include adding "Planning Session Discussion."

REPORTS

- Recreation League Agreement almost completed (Gahagan)
- Meeting at Impressions to look at repairs of Hamilton Beach building (Gibson)
- Need sidewalks on 3rd, 5th and Hackney Avenue – Smart Growth – (Gahagan) Write letter to Neal Lassiter, Division Engineer
- Need to look at a plan for overflow parking for tournaments and games at Sports Complex (Gahagan)

AWARD CONTRACT FOR CONSTRUCTION OF FIRE STATION #2

Jimmy Davis, Fire Chief, was directed to cut \$94,000 from the Fire Station #2 contract and report back to Council. Chief Davis reported on the items cut, as follows:

Credit Cost of alternate A-5	-\$32,300
Add back operable window requirement	\$ 6,900
Eliminate 6" RPZ @ street	-\$13,080
Add back truck fill line & 2" double check backflow	\$13,700
Total Credit to Project to remove Sprinkler	-\$24,780
Delete Alternate Bid item #13 Hurricane Shutters	-\$ 6,000
Reduce Furnishings Budget	\$ 3,220
Delete Generator From Budget	-\$60,000
Total Savings with cuts & deletions	- \$94,000

Chief Davis stated that the actual cost of the project is currently \$2,872,312.00 which exceeds the previous City Council approved budget of \$2,867,190.00 by \$5,122.00. If this additional \$5,122.00 cannot be realized within the project by further cost savings measures, City staff intends to complete the project by any means necessary, which may include paying the overage out of the City's Capital Reserve for Public Safety or any other means the City best sees fit to pay this amount.

On motion of Councilman Gahagan, seconded by Councilman Brooks, Council unanimously accepted the recommendation of Stewart-Cooper-Newell and awarded the contract to build Fire-Rescue-EMS Station #2 to Hudson Brothers Construction from Greenville, NC with the contract not to exceed Two Million Two Hundred Forty Nine Thousand Seven Hundred and Thirty Three Dollars and no/100(\$2,249,733.00.)

**APPROVAL OF WATER AND SANITARY SEWER AND EASEMENT
AGREEMENT WITH MARICK HOME BUILDERS, LLC**

Jim Smith, City Manager, stated that Marick Home Builders, LLC has authority under the existing agreement that was signed with NC Land Partners to extend water and sewer. The City was hoping to control the height since Council felt it is excessive but we cannot. The City will take over that portion of the County's water system, Marick will replace the current water lines with bigger lines and they will be City water and sewer customers.

After discussion, on motion of Councilman Gahagan, seconded by Councilman Gibson, Council unanimously approved the Water and Sanitary Sewer and easement Agreement with Marick Home Builders, LLC.

**STATE OF NORTH CAROLINA
SERVICE**

**WATER AND SANITARY SEWER
AND EASEMENT**

**AGREEMENT
COUNTY OF BEAUFORT**

THIS WATER AND SANITARY SEWER SERVICE AND EASEMENT AGREEMENT (the "Agreement") is entered into and made as of the 22ND day of January, 2007, by and between the **CITY OF WASHINGTON, NORTH CAROLINA**, a municipal corporation (hereinafter referred to as the "**City**"), and **Marick Home Builders, LLC**, a South Carolina limited liability company, whose address is: 501 Brixton Circle, Simpsonville, SC 29681 (hereinafter referred to as the "**Owner/Developer**").

W I T N E S S E T H

WHEREAS, the Owner/Developer warrants that it holds legal title to the property described in Paragraph 2 below (the "Subject Property") and that the holders of any and all liens and encumbrances affecting such property will subordinate their interests to this Agreement; and

WHEREAS, the Owner/Developer intends to develop the Subject Property as an approximately three hundred (300) unit residential condominium project (the "Condominium Development") with a possibility of up to 400 units; and

WHEREAS, Subject Property is in an unincorporated part of Beaufort County, North Carolina (the "County"); and

WHEREAS, the County has conditioned the issuance of its development approvals for the Subject Property on Owner/Developer entering into an agreement whereby the City supplies water and sanitary sewer service to the Subject Property; and

WHEREAS, pursuant to North Carolina General Statute Sections 160A-312, the City may provide water and sanitary sewer service outside of its corporate limits; and

WHEREAS, the Owner/Developer 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; and

WHEREAS, the City is authorized to enter into contracts for providing water and sanitary sewer service pursuant to North Carolina General Statutes Section 160A-322; and

WHEREAS, the City is authorized to contract with the Owner/Developer for improvements to water and sanitary sewer systems pursuant to North Carolina General Statutes Section 160A-320; and

WHEREAS, the City has entered into that certain Water and Sanitary Sewer and Easement Agreement dated July 6, 2006 (the "Existing Agreement") with NC Land Partners, LLC, a Delaware Limited Liability Company ("NC Land Partners"), predecessor in title to the subject property; and

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

1. **Incorporation.** The recitals herein contained and true and correct and are incorporated herein by reference.

2. **Ownership.** The Owner/Developer represents that it is the present owner of the following described property (hereinafter referred to as the "Subject Property") which is described on **Exhibit "A"** attached hereto and incorporated by reference.

3. **Title Opinion/Certification.** The Owner/Developer will provide to the City, in advance of the City's execution of this Agreement, a title opinion of an attorney licensed in North Carolina, or a certification by a title company authorized to do business in North Carolina, showing marketable title to the Subject Property to be in the name of the Owner/Developer and showing all liens, mortgages, and other encumbrances.

4. **Subordination/Joinder.** All liens, mortgages, and other encumbrances now on the Subject Property, must be subordinated to the terms of this Agreement. It shall be the responsibility of the Owner/Developer to promptly obtain the said subordination, in form and substance acceptable to the City, prior to the City's execution of the Agreement.

5. **Sewer Improvements and Sewer Service.**

5.1 **Condominium Gravity Flow System.** Owner/Developer will design and install a gravity flow sanitary sewer line as approved by the Inspecting Engineers (as defined in Section 5.2) from the Condominium Development to the New Pump Station (as defined below) which will provide sanitary sewer service for the Condominium Development (the "Condominium Gravity Line"). "New Pump Station" shall mean that new pump station constructed by NC Land Partners in accordance with the Existing Agreement.

5.2 **General Construction Requirements.** The Condominium Gravity Line shall be constructed or caused to be constructed (i) at the sole cost and expense of Owner/Developer and its successors, and (ii) pursuant to engineering plans and specifications which are to be reviewed and approved by Rivers & Associates, Inc. of Greenville NC (the "Inspecting Engineers") and in accordance with all applicable local, state and federal environmental and public health laws, ordinances and regulations. Owner/Developer will provide reasonable access at all times to Inspecting Engineers to permit thorough inspections of the work in order to ensure that the work is being done in accordance with the approved plans and specifications and applicable laws, ordinances and regulations. The cost of the Inspecting Engineers for their work in reviewing the plans and inspecting the construction of the Condominium Gravity Line will be borne by the Owner/Developer in accordance with the fees provided in the Whichards Beach Service Area Study and Design Review Agreement attached hereto as **Exhibit "B"**, as applicable to the Condominium Gravity Line. Owner/Developer will be responsible for obtaining all required construction and operational permits as well as all easements necessary for the location, installation, maintenance or repair and replacement of the Condominium Gravity Line. Upon request by the City, Owner/Developer will provide to the City certified true copies of all permits which it has obtained in connection with the Condominium Gravity Line. The Owner/Developer will provide easements for the placement of all facilities to be owned by the City which will be in form and substance reasonably satisfactory to the City and will contain an express provision providing that such easements may be assigned to the City and that whether assigned or not, the City has the right to utilize such easements for the purposes for which they were granted. All costs incurred in connection with such easements shall be borne by the Owner/Developer.

5.3 **Completion of Construction.** All improvements for the Condominium Gravity Line to be owned by the City will be constructed within five years of the execution hereof or sufficiently in advance of the issuance of a certificate of occupancy for the structures to be served to allow testing and approval but in no case less than 90 days before issuance of any certificate of occupancy.

5.4 **Ownership of Sewer Improvements.** Upon completion of the Condominium Gravity Line, those facilities except those located on the property of the Condominium Development will be conveyed to the City, together with any easements associated therewith, for the sum of One Dollar (\$1.00) and from and after the date of

such conveyance, the City will be responsible for all maintenance, repair and replacement obligations with respect to the Condominium Gravity Line, except within the property of the Condominium Development.

5.5 Rights and Charges. Owner/Developer will be required to pay all customary impact fees and connection fees on a per unit basis related to the provision of sewer service by City on a per unit basis regardless of whether any groups of units or buildings are served by a master meter. The condominium association to be formed by or on behalf of the owners of units in the Condominium Development (the "Association") or other facility owner will pay a monthly sanitary sewer collection charge which is equal to twice the then current rate charged to regular residential customers residing inside the City limits.

6. Water Service.

6.1 Water Line Construction Obligations. The parties acknowledge that existing eight inch (8") water lines provide County water service to customers in the vicinity of the Condominium Development ("Existing Users"), and such water lines must be replaced by twelve inch (12") water lines in connection with the City's provision of water service to the Condominium Development in accordance with this Agreement. Owner/Developer shall be responsible for installing twelve inch (12") water lines to the City's specifications in the locations generally shown on that map attached hereto as **Exhibit "C"**, in place of existing eight inch (8") water lines, to the extent necessary, in the sole discretion of the City and/or the Inspecting Engineers, for the City to provide full residential water service, including fire protection, to each building in the Condominium Development and to provide full water service to the Existing Users. Owner/Developer also shall be responsible for connecting such water lines to conveniently accessible master water meters for each building in the Condominium Development. Additionally, if determined by the Inspecting Engineers that upgrades to existing portions of the City water lines are needed in order to provide adequate fire service to the Condominium Development, Owner/Developer will be responsible for such upgrades. All construction work required for the installation of the water lines and all water meters, including any fire protection upgrades, shall be done in accordance with plans and specifications approved by the Inspecting Engineers and all applicable governmental laws and regulations and shall all be and all applicable governmental laws and regulations and shall all be done at the sole cost and expense of Owner/Developer.

6.2 Water Tank Construction Obligations. Owner/Developer shall be responsible for constructing and maintaining (i) a drinking water tank to connect to the potable water system servicing the Condominium Development (the "Drinking Water Tank") and (ii) a water storage tank separate from the Drinking Water Tank and potable water system servicing the Condominium Development, which storage tank shall service the fire protection system for the Condominium Development (the "Fire Protection System Tank") (and together with the Drinking Water Tank, the "Water Tanks"). Owner/Developer shall be responsible for connecting the Water Tanks to water lines servicing the Condominium Development. All construction work required for the installation of the Water Tanks shall be done in accordance with plans and specifications approved by the Inspecting Engineers and all applicable governmental laws and regulations and shall all be done at the sole cost and expense of Owner/Developer. Owner/Developer shall be responsible for the operation and maintenance of the Water Tanks, including, without limitation, discharging and replacing the water in the Drinking Water Tank not less than once every twenty-four (24) hours, and otherwise operating and maintaining the Water Tanks in compliance with applicable laws. Owner/Developer also shall be responsible for ensuring that the Water Tanks remain completely separate and that no leakage or other water migration into the Drinking Water Tank from the Fire Protection System shall occur.

6.3 Inspections. Owner/Developer shall provide such access to the Inspecting Engineers as may be reasonably required for the Inspecting Engineer to confirm that all construction set forth in this Section 6 is in accordance with the approved plans and specifications and all applicable laws and regulations. Owner/Developer will be responsible for paying all costs of the Inspecting Engineer for reviewing such plans and specifications and conducting such inspections in accordance with the rate schedule set forth on **Exhibit "D"**.

6.4 Ownership of Improvements. The ownership of all water lines up to the master meter for each building in the Condominium Development and all master meters will be conveyed to the City for One Dollar (\$1.00) upon the completion of such lines and after such conveyance, the operation, maintenance and repair of such lines up to such meters shall be the responsibility of City. Owner/Developer shall be responsible, at its sole cost and expense, for obtaining all necessary easements as may be necessary to allow the installation, operation, maintenance and repair of such lines. All such easements shall be in form and substance reasonably satisfactory to the City and shall expressly provide that they will be assigned to the City. All improvements constructed under this Section 6 to be owned by the City will be constructed within five years of the execution hereof or sufficiently in advance of the issuance of a certificate of occupancy for the structures to be served to allow testing and approval but in no case less than 90 days before issuance of any certificate of occupancy.

6.5 Costs. Owner/Developer will be responsible paying all impact fees, and connection fees customarily charged by the City with the extension of water service to new customers on a per unit basis regardless of whether any groups of units or buildings are served by a master meter. Monthly water fees will be charged by the City to each user in accordance with its customary rate schedule for supplying water service to residential users outside the City's limits. The parties acknowledge that while the Condominium Development potentially will be occupied primarily on a seasonal basis, in order to provide adequate water service to the Condominium Development, the City must provide water service capacity as if the Condominium Development is occupied on a full-time basis, and accordingly the provision of such water service capacity shall be reflected in the monthly water fees charged by the City. Owner/Developer also will be responsible for and shall reimburse the City for any other costs incurred by the City in connection with providing water service to Existing Users as set forth in Section 6.1 above (other than the cost of such Existing Users' actual water usage), including, without limitation, the cost for the City to purchase approximately 300 water service contracts for the Condominium Development and approximately 56 water service contracts for the NC Land Partners development, which would otherwise be served by County Water at a cost of seven hundred fifty dollars each (\$750 ea.) from Beaufort County and the cost to provide temporary water service to the Existing Users.

6.6 Maintenance and Repair of Water Lines. The City shall be responsible for the maintenance and repair of the City water lines (and shall be responsible for the cost of any water leaks from such water lines) up to the master meter for each building in the Condominium Development. Owner/Developer or the Association shall be responsible for the maintenance and repair of water lines connecting from the master meter for each building in the Condominium Development to each unit or common area in the Condominium Development, and shall be responsible for the cost of any water leaks from such water lines.

7. Obligations. Should the Owner/Developer fail to undertake and complete its obligations as described in this Agreement, to the City's specifications, then the City shall give the Owner/Developer thirty (30) days written notice to commence and ninety (90) days to complete said required obligation. If the Owner/Developer fails to complete the obligations within the ninety (90) day period then the City, without further notice to the Owner/Developer, or its successors in interest, may, without prejudice to any other rights or remedies it may have, perform any and all of the obligations described in this Agreement. Further, the City is hereby authorized to assess the actual and verified cost of completing the obligations required under this Agreement against the Subject Property. The lien of such assessments and all other liens in favor of the City set forth in this Agreement shall be superior to all others, and all existing lienholders and mortgagees, by their execution of the subordination or joinder documents, agree to subordinate their liens or mortgages to the City's said liens or assessments.

8. Voluntary Annexation. Owner/Developer hereby acknowledges the Existing Agreement referred to hereinabove, including but not limited to numbered paragraph 8 thereof entitled "Voluntary Annexation". Said paragraph contains a restrictive covenant requirement, that provides for, among other things, voluntary annexation of the Subject Property by the City, which paragraph and requirement are specifically incorporated herein by reference.

9. **Enforcement.** In the event that enforcement of this Agreement by the City becomes necessary, and the City is successful in such enforcement, the Owner/Developer 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 which costs, expenses and fees shall also be a lien upon the Subject Property superior to all others. Should this Agreement require the payment of any monies to the City the recording of this Agreement shall constitute a lien upon the property for said monies, until said are paid, in addition to such other obligations as this agreement may impose upon the Subject Property and the Owner/Developer. Interest on unpaid overdue sums shall accrue at the rate of eighteen percent (18%) compound annually or at the maximum rate allowed by law.

10. **Indemnification.** The Owner/Developer shall indemnify and hold harmless the City 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 use or development of the Subject Property, by the City or by third parties, except those claims or liabilities caused by or arising from the gross negligence of the City, or its employees or agents.

11. **Release of Owner/Developer.** Upon (i) the completion of all of the improvements to be constructed by Owner/Developer pursuant to Sections 5 and 6 above as evidenced by the certification by the Inspecting Engineers that such improvements are complete and in compliance with all requirements set forth herein, (ii) the payment of all costs by Owner/Development as required under this Agreement and (iii) the assumption, in writing, by the Association of all of Owner/Developer's continuing obligations set forth in this Agreement, the City will release, in writing, Owner/Developer from all of Owner/Developer'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 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/DEVELOPER'S REPRESENTATIVES:

Marick Home Builders, LLC
Attn: Rick Thoennes, III
501 Brixton Circle
Simpsonville, SC 29681

CITY'S REPRESENTATIVES:

Washington City Manager
P. O. Box 1988
102 East Second Street
Washington, N. C. 27889

Should any party identified above 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. It shall be the Owner/Developer's obligation to identify its lender(s) to all parties 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 the Owner/Developer and its assigns and successors in interest including, without limitation, the individual owners of units in the Condominium Development, as well as the Association, and the City and its assigns and successors in

interest. The Owner/Developer agrees to pay the cost of recording this document in the Public Records of Beaufort County, North Carolina, and shall reimburse the City for the preparation of this Agreement in such amount to be determined by the City. 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. Notwithstanding anything to the contrary herein, Owner/Developer may assign its rights, interests, liabilities and obligations under this Agreement in full with the consent of the City, which shall not be unreasonably withheld.

18. **Effect of Agreement on Existing Agreement.** There currently exists a water and sewer Agreement between NC Land Partners, LLC and the City of Washington. To the extent that any of the obligations of Owner/Developer on the Subject Property set forth in this Agreement are the same as the obligations of NC Land Partners set forth in the Existing Agreement (“Overlapping Obligations”), City shall seek performance of the Overlapping Obligations from Owner/Developer, and shall not seek performance of same from NC Land Partners, LLC. It being the intention of the Owner/Developer to accept responsibility for installation of the water and sewer infrastructure located on the Subject Property for the contemplated condominium development when it purchased the property from NC Land Partners, LLC.

19. **City Legal Fees.** Owner/Developer 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.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Owner/Developer and the City have executed this Agreement as of the day and year first above written.

s/Rick Thoennes, III
RICK THOENNES, III
OWNER/DEVELOPER’S REPRESENTATIVES

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

DISCUSSION – CONSTRUCTION LOAN ON SUBSTATION

Carol Williams reported that she has talked with Wachovia Bank about borrowing more money to pay the additional \$336,486 needed to build the substation. (\$563,000-130,567-96,273=\$336,486). They are willing to loan the City the additional funding, however, the terms have not been worked out.

Councilman Gahagan stated that he wants to hear the information from Keith Hardt, Electric Director. Mr. Smith stated that the Director has agreed to cut back on this year's capital improvements to finish the substation.

Council discussed whether or not this should have been contracted out as a turn key job. Mr. Smith stated that the way Keith did it is less expensive, subletting each part.

Councilman Gibson stated that he would like to hear some of the reasons, that someone needs to be accountable.

Mr. Smith asked Carol Williams to proceed to borrow the rest of the money and Keith Hardt will be asked to be at the next meeting.

Mayor Jennette stated that Keith needs to be here when Council votes on it.

APPROVAL OF CIVIC CENTER AGREEMENT BETWEEN CITY OF WASHINGTON AND THE TOURISM DEVELOPMENT AUTHORITY

Franz Holscher, City Attorney, summarized the major components of the agreement. Mr. Smith stated that he hopes the TDA will do a more accurate job of managing the Civic Center and bring in more revenue.

After discussion, on motion of Councilman Gahagan, seconded by Councilman Gibson, Council unanimously approved the Lease and Management Agreement between the City of Washington and the Tourism Development Authority for the Civic Center.

NORTH CAROLINA

BEAUFORT COUNTY

THIS LEASE AND MANAGEMENT AGREEMENT ("Lease"), is made and entered into as of the 1st day of July, 2006 by and between the **CITY OF WASHINGTON**, a body politic and corporate, existing under the laws of the State of North Carolina, ("City") and **CITY OF WASHINGTON TOURISM DEVELOPMENT AUTHORITY** ("TDA"), collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, TDA was established under the authority of the North Carolina House Bill 592 Chapter 158 as ratified in the 1991 Session of the General Assembly of North Carolina and the City of Washington City Ordinance;

WHEREAS, TDA operates subject to the provisions contained in the bill above referred to and pursuant to by-laws adopted by TDA for the operation of TDA and the transaction of its business;

WHEREAS, 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, or engage in similar promotional activities that attract tourists or business travelers to the area;

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

WHEREAS, the parties have agreed that City will enter into a contract with TDA whereby City leases 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 that the facility will be managed by the TDA.

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 of Washington and Beaufort County generally, the receipt and sufficiency of which is hereby acknowledged, City does hereby lease and demise unto TDA and TDA does hereby lease and take as tenant from City those certain premises (hereinafter called the "Premises") within the City of Washington and more particularly described in Exhibit A attached hereto. Except as specifically provided for herein, 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, TDA shall have the right to reserve the parking spots located to the North of the Peterson Building for specific periods of time as necessary in conjunction with specific Civic Center events after appropriate consultation and notice to any parties potentially affected thereby, including the City.

Subject to those currently existing, specific conditions specifically addressed hereinafter and listed on Exhibit B, TDA has carefully inspected the Premises and acknowledges that the same are in satisfactory condition for its use. Except for those certain improvements specifically addressed hereinafter, City shall have no obligation to make any improvements in the Premises whatsoever and 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 initial term of this Lease shall be for a period of five years and will begin as of the 1st day of July, 2006 and shall end at 12:00 o'clock midnight on the 30th day of June, 2011, subject to the provisions herein.

a. **EXTENSION.** TDA agrees to give notice at least 6 months prior to the expiration hereof if it desires to continue this Lease. The parties hereto agree that if TDA gives City notice of its desire to extend this Lease, both parties will renegotiate the same in good faith.

2. **RENT.** As consideration for the leasehold interest granted herein for this initial term, 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 CITY.** 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 unto 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, 2006.

4. TERMINATION. TDA has the absolute right to terminate this Lease by providing the City six (6) months written notice prior to the end of the fiscal year during each year of this lease.

5. CIVIC CENTER STAFF. The TDA director will make recommendations to the City Manager for the creation and deletion of Civic Center staff positions as necessary. Subject to the approval of the City Manager, the TDA director shall hire employees to fill those positions in accordance with City policy. All employees so hired shall be employees of the City and subject to the City's personnel policy. All Civic Center staff benefits including salaries will be administered by the City and shall be a pass through as presently is done for TDA employees.

6. ARTS COUNCIL AND PTRF LEASES. The present Leases between the City of Washington and the Beaufort County Arts Council as well as the Pamlico Tar River Foundation shall remain direct leases between those entities and TDA shall have no responsibility for the operation, maintenance, or liability for 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 of Washington and the Beaufort County Arts Council as well as the Pamlico Tar River Foundation, respectively, are terminated and not renewed, then, in that event, 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 TDA:

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

ii. Dissolution of TDA.

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

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

8. REMEDIES UPON DEFAULT.

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

b. TDA shall have the absolute right upon default by 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, TDA shall promptly deliver any and all 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. 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. 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. TDA shall be responsible for promoting said facility pursuant to the 5 Year Plan submitted to the City of

Washington by document dated June 12, 2006. Reference to the same is made herein for its provisions and the same is attached as Exhibit C hereto.

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.

11. OWNERSHIP OF CONTENTS. City hereby conveys the contents currently located in the Civic Center to TDA and will present 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 become the property of the City. In this regard, TDA shall present a Bill of Sale for the same to the City at such time.

12. MAINTENANCE. It is hereby agreed between the parties hereto that, during the first twelve (12) months of operation, City shall replace the HVAC System at the sole cost of the City. The City shall be responsible during the term of this Lease for major structural maintenance of the Civic Center structure and building including flooring, roofing, HVAC, plumbing and electrical systems. TDA shall be responsible for all other maintenance whatsoever in connection with said facility. The City shall maintain the landscaping and parking areas in connection with its routine maintenance of the Peterson Building.

13. ASSIGNMENT AND SUBLETTING. TDA shall not assign this Lease or sublet the Premises without the prior written consent of the City.

14. UTILITIES AND OTHER SERVICES. 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. 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.

15. ALTERATIONS. Other than routine improvements, repair and maintenance necessary to address ordinary, daily wear and tear, 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 City and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease. 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 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, 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 City and shall remain upon and be surrendered with the Premises as a part thereof at the expiration or earlier termination of this Lease.

16. CITY'S RIGHT OF ENTRY. The City Manager or his designee shall have the right to enter and to grant licenses to enter the Premises for such lengths of time as 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 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 TDA, for any purpose which 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 TDA, for the purpose of removing

from the Premises any placards, signs, fixtures, alterations or additions not permitted by this Lease, and f) after reasonable notice to TDA, to abate any condition which constitutes a violation of any covenant or condition of this Lease.

17. USAGE BY AND RATE FOR CITY. TDA agrees to allow any appropriate individual, group, or entity of the City to use the Premises as long as the same are not already reserved. Any such use by the City or its affiliates shall be consistent with the policies and procedures established by the TDA. 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.

18. INDEMNIFICATION OF CITY. TDA agrees to indemnify and defend City and to save harmless City, and the tenants, licensees, invitees, agents, servants and employees of 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 TDA or any employee, agent, assignee or subtenant of TDA, 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 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 TDA or any one holding under TDA. TDA agrees to pay 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 TDA's misuse or neglect of the Premises or the building or of its or their apparatus and appurtenances and TDA agrees in any event to reimburse and compensate City as additional rent within five (5) days of rendition of any statement to TDA by City for expenditures made by City or for fines sustained or incurred by City due to non-performance or non-compliance with or breach or failure to observe any term, covenant or condition of this Lease upon TDA's part to be kept, observed, performed or complied with.

City shall not be liable to 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 City nor its agents shall be liable to TDA or to any person, firm or corporation claiming through or under 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 City. City shall not be liable to TDA or to any person, firm or corporation claiming through or under TDA for any latent defect in the Premises or in the building.

19. INDEMNIFICATION OF TDA. City agrees to indemnify and defend TDA and to save harmless TDA, including all tenants, licensees, invitees, agents, servants, and employees of TDA against and from any and all claims by or on behalf of any person, firm or corporation arising by reason of City's negligent failure to adequately perform major maintenance of the Civic Center structure and building, including roofing, flooring, HVAC, plumbing, and electrical systems, to any personal property claimed therefor. City also agrees to indemnify and defend and to save TDA harmless from any negligent breach, violation, nonperformance of any covenant of this Lease on the part of the City, or for any violation, fine, assessment, or other loss or damage arising from any of the conditions listed in Exhibit B attached hereto. The indemnification provisions of this Section 19 shall not apply to any condition other than those conditions listed in Exhibit B unless and until TDA provides the City notice that major maintenance is required for the Civic Center structure and building, including roofing, flooring, HVAC, plumbing, and electrical systems.

20. 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 with TDA listed as additional insured. Throughout the term of this Lease, 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, TDA shall carry public liability insurance insuring against all liability of 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 TDA's use or occupancy of the Premises, such insurance to be written by insurance companies and in amounts satisfactory to City, however this requirement shall be satisfied if the current City public liability policy affords the TDA with such coverage without any additional premium. TDA hereby waives any claim or right of action which it may have against City for any loss or damage covered by such insurance.

TDA shall not do or cause to be done or permit on the Premises anything deemed extra hazardous and 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 TDA or its agents, servants or employees, the premium rate for any kind of insurance in effect on the Premises shall be raised, TDA shall pay City on demand the amount of any such increase in premium which City shall pay for such insurance and if City shall demand that TDA remedy the condition which caused any such increase in an insurance premium rate, TDA shall remedy such condition within five (5) days after receipt of such demand.

21. FIRE OR OTHER CASUALTY. In the event that before or during the term(s) 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, City within twenty (20) days of such fire or casualty or of receipt of written notice from TDA of such damage (whichever shall last occur) shall have the right to either 1) serve written notice upon TDA of City's intent to repair said damage or 2) if said damage renders so much of the Premises untenable [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 TDA, its servants, agents, members or employees, serve written notice upon TDA that this Lease is terminated, provided, however, that 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 City shall elect to repair such damage, such repairs shall be commenced within fifteen (15) days of notice to TDA of such election and such repairs shall be completed within one hundred eighty (180) days of notice to TDA of such election.

The other provision of this Section 21 notwithstanding, City shall have no obligation to replace or repair any property in the building or on the Premises belonging to TDA or to anyone claiming through or under TDA nor shall City have any obligation hereunder to replace or repair any property on the Premises which City shall have the right to require TDA to remove from the Premises or any alteration, addition or improvement made to the Premises by, for or at the direction of TDA.

22. QUIET ENJOYMENT. City agrees that 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.

23. NOTICES. If to TDA as follows:

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

With copy to:

Wayland J. Sermons, Jr., P.A.
P. O. Box 69
Washington, NC 27889

As to City:

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

24. INTEGRATION AND BINDING EFFECT. The entire agreement, intent and understanding between City and 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.

25. COMPLIANCE BY TDA WITH GOVERNMENTAL REGULATIONS. 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. 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 TDA under any provision of this Lease, 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 TDA, including but not limited to all wetland regulations, CAMA regulations, or other governmental setbacks. Such compliance shall include compliance by 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.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease Agreement and have hereunto set their seals as of the day and year first above written.

s/Scott Shepard
SCOTT SHEPARD
CHARIMAN
TOURISM DEVELOPMENT AUTHORITY

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

RECESS TO COMMITTEE OF THE WHOLE

**CLOSED SESSION – ATTORNEY/CLIENT, PROPERTY ACQUISITION AND
PERSONNEL**

On motion of Councilman Gahagan, seconded by Councilman Gibson, Council unanimously agreed to go in to closed session under G.S. 143-318.11(a)(3) Attorney/Client, G.S. 143-318.11(a)(5) Property Acquisition, and G.S. 143-318.11(a)(6) Personnel.

At 6:00 p.m., on motion of Mayor Pro tem Woolard, seconded by Councilman Brooks, Council unanimously agreed to come out of closed session.

On motion of Councilman Gibson, seconded by Councilman Brooks, Council unanimously agreed to continue the meeting for fifteen (15) minutes.

**EXCHANGE OF STRIP OF LAND ON WATER STREET FOR STRIP OF LAND
ADJOINING WATER STREET FOR MOSS PROPERTY PARTNERS**

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously approved the City of Washington exchanging a strip of land 50 feet wide from Water Street to the Pamlico River for a strip of land 15 feet wide adjoining Water Street and for a release from Moss Property Partners release of the Evans Seafood Property from any restrictions of a sale of same for a lodging facility. Both exchanges of property are shown on maps of Mayo and Associates. The conveyance by the City will be subject to the easement and agreement between the City and the Cleanwater Trust. Further, the City shall retain an easement across this strip to access and maintain City facilities.

COASTAL RESOURCES COMMISSION NOMINATION

On motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously nominated Doug Mercer to the Coastal Resources Commission to replace Patrick Nash.

BROWN LIBRARY

Mayor Jennette state that she and the City Manager have met with the State Library and will discuss it at the Planning Session.

PLANNING SESSION

Mayor Jennette passed out a proposed list of items to talk about at the Planning Session and asked Council to look it over for comments.

ADJOURN MEETING

At 6:15 p.m., on motion of Mayor Pro tem Woolard, seconded by Councilman Gibson, Council unanimously adjourned the meeting until Thursday, February 1, 2007 at 9:00 a.m. at the Agricultural Building for the Planning Session.

**Rita A. Thompson, CMC
City Clerk**