

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

DECLARATION OF OFFICIAL INTENT TO REIMBURSE

This declaration (the "Declaration") is made pursuant to the requirements of the United States Treasury Regulations Section 1.150-2 and is intended to constitute a Declaration of Official Intent to Reimburse under such Treasury Regulations Section.

The undersigned is authorized to declare the official intent of the City of Washington, North Carolina (the "Issuer") with respect to the matters contained herein.

1. **Expenditures to be Incurred.** The issuer anticipates incurring expenditures (the "Expenditures") for building improvements of the Impressions facility (the "Projects").
2. **Plan of Finance.** The issuer intends to finance the costs of the Projects with the proceeds of debt to be issued by the Issuer (the "Borrowing").
3. **Maximum Principal Amount of Debt to be Issued.** The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Projects is \$769,566.

4. **Declaration of Official Intent to Reimburse.** The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

Adopted this the 11th day of April, 2011

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

- C. Adopt – Capital Project Ordinance for Impressions Building Improvement Project

**A CAPITAL PROJECT ORDINANCE FOR THE IMPRESSIONS BUILDING
IMPROVEMENT PROJECT 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, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

Section 1. The project authorized is for building improvements at the Impressions site funded by Installment Note Proceeds.

Section 2. The officers of this unit are hereby directed to proceed with the project within the terms of the financing documents.

Section 3. The following amounts are appropriated for the project:

56-60-4930-4500	Construction	\$666,291
56-60-4930-0400	Professional Services	36,646
56-60-4930-9900	Contingency	<u>66,629</u>
	Total	\$769,566

Section 4. The following revenue is anticipated to be available for this project:

56-60-3920-9101	Installment Note Proceeds	\$769,566
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Section 5. The Finance Officer is hereby directed to maintain within the Capital Project Fund sufficient detailed accounting records to satisfy the requirements of the financing agreement.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments that are due. Reimbursement requests should be made to the loan agency in an orderly and timely manner.

Section 7. The Finance Director is directed to report, on a monthly basis, the financial status of each project element in Section 3 and on the total 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 capital project in every budget submission made to the City Council.

Section 9. Copies of this capital project ordinance shall be furnished to the City Clerk, Budget Officer, and Finance Director for direction in carrying out this project.

Section 10. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. This ordinance shall become effective upon its adoption.

Adopted this the 11th day of April, 2011.

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

- 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)
- E. Authorize – Re-advertisement of RFP for ARRA lighting retrofit
- 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 2011-2012

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)

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.

T H E A M E R I C A N I N S T I T U T E O F A R C H I T E C T S

AIA Document B 141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED with RESPECT TO ITS COMPLETION OR MODIFICATION.*

AGREEMENT

made as of the **Thirtieth** day of **March** in the year of **Two Thousand Eleven**.

BETWEEN the Owner:

(Name and address)

City of Washington.
PO Box 1988 / 310 West Main Street
Suite 200, Peterson Building
Washington, NC 27889

and the Architect:

(Name and address)

Mark Smith Architect
2020-A Cambria Drive
Greenville, North Carolina 27834

For the following Project:

(Include detailed description of Project, location, address and scope.)

Festival Park Development
Phase 2 Buildings and Site Improvements
Water Street, Washington, NC

The Owner and Architect agree as set forth below.

ARTICLE 1
ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICE

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2
SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment of 60 days after the date of Substantial completion of the Work.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent shall not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work, when completed will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive site representation may be agreed to as an Additional Service, as described in paragraph -3.2.)*

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of another persons performing portions of the Work.

2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections to minor deviations from the Contract Documents correctable prior to completion and to special qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check quality of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility, of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all

of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by, the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of a material, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the criteria is required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may, authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except

for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as agreed by the owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as the date of this Agreement, unless otherwise agreed.

3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify, the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1** inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary, by adjustments in the Owner's program or Project budget;
- .2** required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents or
- .3** due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other Cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by, major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment .

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner. .

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect. .

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of their final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 if requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity, tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the

Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement..

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's method of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.4 if a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bonafide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify, the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Owner shall be permitted to retain copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information and reference in connection with the Owner's use and occupancy of the Project. The

Architect's Drawings, Specifications or other documents shall not be used by the Owner or others on other projects, for additions to this Project or for completion of this Project by others, unless the Architect is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Architect.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7

ARBITRATION

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree other-wise.

7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement except by written consent containing a specific reference to this Agreement signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially

to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitable adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- .1 Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the predesign, site analysis, or Schematic Design Phases; or
- .2 Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- .3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9 MISCELLANEOUS PROVISIONS

9.1 Unless other-wise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial completion.

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agent and employees of the other for damages but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project.

ARTICLE 10
PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long-distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project .

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents for bidding and permitting purpose. Incidental design phases expense of reproductions, postage and handling of Drawings, Specifications and other documents prior to bidding is included as a Basic Service.

10.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates . .

10.2.1.4 Expense of rendering, models and mock-up requested by the Owner. .

10.2.1.5 Expense of additional insurance coverage or limits, including professional liabilities insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants. .

10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project. .

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bonafide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11
BASIS OF COMPENSATION

Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of **None**

shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

Lump Sum fee of \$24,950.00 as described below

1. Schematic design	\$ 4,990.00
2. Construction documents Architectural	\$ 4,990.00
3. Construction documents Plumbing, Mechanical, Electrical	\$ 7,485.00
4. Bidding	\$ 1,247.50
5. Construction Phase services	\$ 6,237.50

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(insert additional phases as appropriate.)

At completion of each phase 1 through 4 described above, phase 5 shall be invoiced monthly prorated according to construction progress.

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Hourly Rates are as follows:	Professional Time:	\$105/ per hour
	Professional intern:	\$65/ per hour
	Technical Time:	\$55 / per hour
	Clerical Time	\$35 / per hour

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:*(Insert basis of compensation, including rates and /or multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.*

Hourly Rates are as follows:	Professional Time:	\$105/ per hour
	Professional intern:	\$65/ per hour
	Technical Time:	\$55 / per hour
	Clerical Time	\$35 / per hour

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of one and two tenths (1.2) times the amounts billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one and one tenths (1.1) times the expenses incurred by, the Architect, the Architect's employees and consultants in the interest of the Project.

11.5 ADDITIONAL PROVISIONS

None Applicable

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within twenty-four (24) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable fifteen (15) days from the date of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. *(Insert rate of interest agreed upon.)*

One percent (1%) per month

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12
OTHER CONDITIONS OR SERVICES

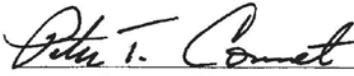
(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

The attached letter of proposal from MSA to Mr. Philip Mobley dated March 16, 2011 describing the scope of proposed services shall be incorporated into this agreement and shall take precedent over any conflict in scope of standard services that may be present above.

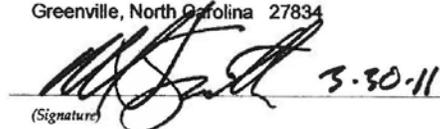
This Agreement entered into as of the day and year first written above.

OWNER City of Washington

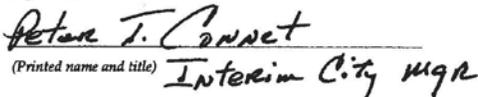
ARCHITECT Mark Smith Architect
2020-A Cambria Drive
Greenville, North Carolina 27834



(Signature)



(Signature)


(Printed name and title)

Mark Joseph Smith
(Printed name and title)

MSA

Mark Smith Architect

March 16, 2011

Mr. Philip W. Mobley, CPRP
Director, Parks & Recreation
PO Box 1988
310 West Main Street
Suite 200, Peterson Building
Washington, NC 27889-1988

**Re: Festival Park Phase 2
Water Street, Washington, NC**

Mr. Mobley,

Thank you for your consideration of MSA for your design needs, I look forward to working with you. The following fee proposal is submitted for your review and acceptance based upon our conversation. Please call if any of the following assumptions are incorrect, if you have any questions or require additional information.

This proposal is based on providing Design and Construction Administration Services for the City of Washington Parks and Recreation Festival Park Phase 2 project. Scope of project includes construction of a Restroom building and site development. Restroom facilities are for two Women's stalls and one lavatory; one Men's stall, urinal and lavatory. Design shall accommodate expansion. Building design shall be "floodproof" construction. Site design includes park amenities. Landscape vegetation and irrigation concept plans shall be prepared for design / build solicitation under a budget allowance.

Complete design services shall include the project bidding and construction administration.

Following are the Scope of Design Services proposed:

Schematic Design – Building and Site Planning

- Collect input from the Owner to establish and document the desired design objectives, plan configuration, appearances and design features.
- Note – this proposal allows for three (3) design scheme reiterations.
 1. Documentation of design objectives followed by preparation of several design schemes for review – ie. Schemes #1A, 1B, etc
 2. Review / select a design scheme, followed by continued development of the selected design scheme – issue Scheme 2
 3. Review developed Scheme 2, followed by revision to the scheme to create the final schematic design.- issue Scheme 3.

In our experience 3 reiterations normally result in an approved final Scheme 3. Changes in design objectives and re-visiting previous design decisions may result in additional reiterations. Additional design reiterations beyond Scheme 3 shall be reimbursable additional services.

Site Planning and Civil Engineering Services

- Site Grading and Layout Plan
- Schematic Landscape Vegetation and Irrigation concept layout – final design by contractor
- Site Details
- Exclusions:
 - Surveying is not included
 - No Stormwater Management is anticipated
 - No CAMA permit is anticipated
 - No Erosion Control permit is anticipated
 - No NCDENR permit is anticipated

Architectural Design Services

- Schematic plan designs – see above
- Title Sheet / Building Code Data
- Architectural Floor Plan
- Finish Schedules
- Door Schedules and details
- Exterior Elevations
- Wall Sections
- Details as required

Floodproofing

- Floodproof building design per FEMA standards
- FEMA Certifications

Structural Engineering Services

- Foundation Plan
- Roof Framing Plan
- Schedules and Details

Plumbing Engineering Services

- Plumbing Plans, Schedules and Details

HVAC Engineering Services

- None included

Electrical Engineering Services

- Building Power and Lighting Plans / schedules / details
- Site electrical service; utility company coordination
- Site lighting is not proposed

Project Manual / Specifications

- Technical Specifications
- General Conditions and Bidding Documents

Bidding / Negotiations with Contractors

- Assist the Owner with selection of Bidders
 - Distribute Bid Documents, conduct pre-bid conference, coordinate bidder's questions and requests for clarifications.
 - Conduct bid opening, evaluation and recommend award.
 - Negotiate contract as required.
-

Construction Administration Services

- Conduct Pre-Construction conference
- Review submittals
- Perform periodic construction site visits as required based on activities and progress; note this proposal includes six (6) site visits – more than six (6) shall be additional services.
- Conduct monthly Construction Progress meetings; note this proposal includes three (3) meetings – more than three (3) shall be additional services

Printing and Reproduction

- Normal printing and reproduction incidental to design is included in the fee.
- Three final sets and a .pdf file is included
- Multiple sets for bidding and construction shall be reimbursable expense.

Compensation

Services as described above	Lump Sum Fee	\$24,950
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Hourly Rates

For proposed hourly services and for services by your request and approval beyond the scope described herein the following hourly rates shall apply:

- Professional \$105 / hr
- Professional Intern \$65 / hr
- Technical \$55 / hr
- Clerical \$35 / hr

If you are in agreement with the Scope of Design Services and Compensation as described above we will draft an AIA Document B 141 Standard Form of Agreement between Owner and Architect.

Thank you for your consideration of this Proposal. Please call if you have any questions or require additional information.

Sincerely,



Mark J. Smith
Mark Smith Architect

**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

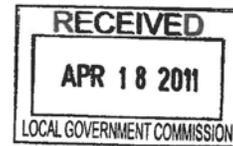
Mr. Rauschenbach stated, last month, the Finance Department went out on bids for an independent auditor to perform the fiscal year 2010-2011 audit. Bids were received March 28, 2011, with 5 certified accounting firms submitting bids. The Request for Proposal stated that the City intended to continue 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.

LGC-205 (Rev. 2010)
File in Triplicate.

CONTRACT TO AUDIT ACCOUNTS



of City of Washington, NC
Governmental Unit

On this 1st day of April, 2011, Martin Starnes & Associates, CPAs, P.A.

Auditor

730 13th Avenue Drive SE, Hickory, NC 28602

Mailing Address

, hereinafter referred to as

the Auditor, and City of Council of City of Washington, NC, hereinafter referred
Governing Board Governmental Unit

to as the Governmental Unit, agree as follows:

1. The Auditor shall audit all statements and disclosures required by generally accepted accounting principles and additional required legal statements and disclosures of all funds and/or divisions of the Governmental Unit for the period beginning July 1, 2010, and ending June 30, 2011. The non-major combining, and individual fund statements and schedules shall be subjected to the auditing procedures applied in the audit of the basic financial statements and an opinion will be rendered in relation to (as applicable) the governmental activities, the business-type activities, the aggregate discretely presented component units, each major governmental and enterprise fund, and the aggregate remaining fund information (nonmajor government and enterprise funds, the internal service fund type, and the fiduciary fund types).
2. At a minimum, the Auditor shall conduct his/her audit and render his/her report in accordance with generally accepted auditing standards. The Auditor shall perform the audit in accordance with Government Auditing Standards if required by the State Single Audit Implementation Act, as codified in G.S. 159-34. If required by OMB Circular A-133 and the State Single Audit Implementation Act, the auditor shall perform a Single Audit. This audit and all associated workpapers may be subject to review by Federal and State agencies in accordance with Federal and State laws, including the staffs of the Office of State Auditor (OSA) and the LGC. If the audit and/or workpapers are found in this review to be substandard, the results of the review may be forwarded to the North Carolina State Board of CPA Examiners.
3. *This contract contemplates an unqualified opinion being rendered.* If financial statements are not prepared in accordance with generally accepted accounting principles (GAAP), or the statements fail to include all disclosures required by GAAP, explain that departure from GAAP in the space below:
4. *This contract contemplates an unqualified opinion being rendered.* The audit shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances. *Any limitations or restrictions in scope which would lead to a qualification should be fully explained in an attachment to this contract.* The audit will have no scope limitations except:
5. If this audit engagement is subject to the standards for audit as defined in Government Auditing Standards, July 2007 revisions, issued by the Comptroller General of the United States, then the Auditor warrants by accepting this engagement that he has met the requirements for a peer review and continuing education as specified in Government Auditing Standards. The Auditor agrees to provide a copy of their most recent peer review report regardless of the date of the prior peer review report to the Governmental Unit and the Secretary of the Local Government Commission prior to the execution of the audit contract. (See Item 21.)
6. It is agreed that time is of the essence in this contract. All audits are to be performed and the report of audit submitted to the LGC by October 31, 2011. If it becomes necessary to amend the due date of the audit a written explanation of the delay must accompany the amended contract.
7. It is agreed that generally accepted auditing standards include a review of the Governmental Unit's system of internal control and accounting as same relates to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor will make a written report, which may or may not be a part of the written report of audit, to the Governing Board setting forth his findings, together with his recommendations for improvement. That written report must include all matters defined as "significant deficiencies and material weaknesses" in AU 325 of the AICPA Professional Standards. The Auditor shall file a copy of that report with the Secretary of the Local Government Commission.
8. All local government and public authority contracts for annual or special audits, bookkeeping or other assistance necessary to prepare the Unit's records for audit, financial statement preparation, any finance-related investigations, or any other audit-related work in the State of North Carolina require the approval of the Secretary of the Local Government Commission. Invoices for services rendered under these contracts shall not be paid by the Governmental Unit until the invoice has been approved by the Secretary of the Local Government Commission. (This also includes any progress billings.) [G.S. 159-34 and 115C-447] All invoices should be submitted in triplicate to the Secretary of the Local Government Commission. The original and one copy will be

Contract to Audit Accounts (cont.) _____ City of Washington, NC
(name of unit)

returned to the Auditor. Approval is not required on contracts and invoices for system improvements and similar services of a non-auditing nature.

9. In consideration of the satisfactory performance of the provisions of this agreement, the Governmental Unit shall pay to the Auditor, upon approval by the Secretary of the Local Government Commission, the following fee which includes any cost the Auditor may incur from work paper or peer reviews or any other quality assurance program required by third parties (Federal and State grantor and oversight agencies or other organizations) as required under the Federal and State Single Audit Acts:

Year-end bookkeeping assistance – [For audits subject to Government Auditing Standards, this is limited to bookkeeping services permitted by revised Independence Standards] Standard hourly rates ranging from \$75-\$250 per hour

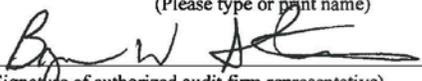
Audit \$27,000

Preparation of the annual financial statements \$5,000

10. The auditor working with local governmental unit that has outstanding revenue bonds will include in the notes to the audited financial statements, whether or not required by the revenue bond documents, a calculation demonstrating compliance with the revenue bond rate covenant. Additionally, the auditor should be aware that any other bond compliance statements or additional reports required in the authorizing bond documents need to be submitted to the LGC simultaneously with the local government's audited financial statements unless otherwise specified in the bond documents.
11. After completing the audit, the Auditor shall submit to the Governing Board a written report of audit. This report shall include, at least, Management's Discussion and Analysis, the financial statements of the governmental unit and all of its component units and notes thereto prepared in accordance with generally accepted accounting principles, combining and supplementary information requested by the client or required for full disclosure under the law, and the Auditor's opinion on the material presented. The Auditor shall furnish the required number of copies of the report of audit to the Governing Board as soon as practical after the close of the accounting period.
12. **The Auditor shall file** with the Local Government Commission two BOUND copies of the report of audit. If reports are received unbound they will **not** be reviewed by the LGC and will be returned to the auditor for binding. In addition, if the North Carolina Office of the State Auditor designates certain programs to be audited as major programs, a turnaround document and a representation letter addressed to the State Auditor shall be submitted to the Local Government Commission. Two bound copies of the report of audit should be submitted if the audit is performed only under the provisions of the State Single Audit Implementation Act or a financial audit is required to be performed in accordance with Government Auditing Standards. Three bound copies of the audit are to be submitted for Councils of Governments. Two bound copies of the audit should be submitted for tax levying Municipalities. Otherwise, one bound copy shall be submitted. Units that operate a 911 fund need to provide an additional copy to the number stated above. Bound copies of the report shall be filed with the Local Government Commission when (or prior to) submitting the invoice for the services rendered. The report of audit, as filed with the Secretary of the Local Government Commission, becomes a matter of public record for inspection and review in the offices of the Secretary by any interested parties. Any subsequent revisions to these reports must be sent to the Secretary of the Local Government Commission. These audited financial statements are used in the preparation of Official Statements for debt offerings (the auditors' opinion is not included), by municipal bond rating services, to fulfill secondary market disclosure requirements of the Securities and Exchange Commission, and other lawful purposes of the government, without subsequent consent of the auditor. If it is determined by the LGC that corrections need to be made to the unit's financial statements they should be provided within three days of notification unless, another time frame is agreed to by the LGC.
13. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the Governing Board in writing of the need for such additional investigation and the additional compensation required therefore. Upon approval by the Secretary of the Local Government Commission, this agreement may be varied or changed to include the increased time and/or compensation as may be agreed upon by the Governing Board and the Auditor.
14. If an approved contract needs to be varied or changed for any reason, the change must be made in writing, signed and dated by all parties and pre-audited if the change includes a change in audit fee. This document and a written explanation of the change must be submitted in triplicate to the Secretary of the Local Government Commission for approval. No change shall be effective unless approved by the Secretary of the Local Government Commission, the Governing Board, and the Auditor.
15. Whenever the Auditor uses an engagement letter with the client, Item 16 is to be completed by referencing the engagement letter and attaching a copy of the engagement letter to the contract to incorporate the engagement letter into the contract. In case of conflict between the terms of the engagement letter and the terms of this contract, the terms of this contract will control. Engagement letter terms are deemed to be void unless the conflicting terms of this contract are specifically deleted in Item 22 of this contract. Engagement letters containing indemnification clauses will not be approved by the Local Government Commission.
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Contract to Audit Accounts (cont.) _____ City of Washington, NC
(name of unit)

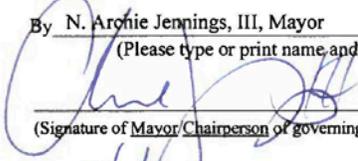
- 16. There are no special provisions except:
- 17. A separate contract should not be made for each division to be audited or report to be submitted. A separate contract must be executed for each component unit which is a local government and for which a separate audit report is issued.
- 18. The contract must be executed, pre-audited, signed by all parties and submitted in triplicate to the Secretary of the Local Government Commission. The mailing address is 325 North Salisbury Street, Raleigh, North Carolina 27603-1385. The physical address is 4505 Fair Meadow Lane, Suite 102, Raleigh, North Carolina 27607-6449.
- 19. The contract is a tri-party agreement and is not valid until it is approved by the Local Government Commission. Upon approval, the original contract will be returned to the Governmental Unit, a copy will be forwarded to the Auditor, and a copy retained by the Secretary of the Local Government Commission. The audit should not be started before the contract is approved.
- 20. There are no other agreements between the parties hereto and no other agreements relative hereto that shall be enforceable unless entered into in accordance with the procedure set out herein and approved by the Secretary of the Local Government Commission.
- 21. If this audit engagement is not subject to Government Auditing Standards, then Item 5 shall be listed as a deleted provision in Item 22. An explanation must be given for deleting this provision.
- 22. All of the above paragraphs are understood and shall apply to this agreement, except the following numbered paragraphs shall be deleted: (See Item 15.)

Firm Martin Starnes & Associates, CPAs, P.A.
 By Bryan W. Starnes, CPA, ABV
 (Please type or print name)

 (Signature of authorized audit firm representative)
 Email Address: BStarnes@MartinStarnes.com
 Date April 1, 2011

Approved by the Secretary of the Local Government Commission as provided in Article 3, Chapter 159 of the General Statutes or Article 31, Part 3, Chapter 115C of the General Statutes.

SHARON EDMUNDSON
 For the Secretary, Local Government Commission

 Date APR 19 2011 (Signature)

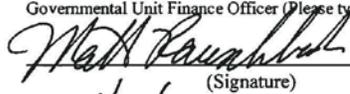
By N. Archie Jennings, III, Mayor
 (Please type or print name and title)

 (Signature of Mayor/Chairperson of governing board)
 Date 4/11/11

Email Address _____
 By _____
 (Chair of Audit Committee- please type or print name)

(Signature of Audit Committee Chairperson)
 Date _____
 (If unit has no audit committee, this section should be marked "N/A.")

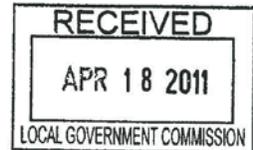
Email address _____

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

Matt Rauschenbach, CFO/Assistant City Manager
 Governmental Unit Finance Officer (Please type or print name)

 (Signature)
 Date 4/12/11
 (Preaudit Certificate must be dated.)

Email address MRAUSCHENBACH@WASHINGTON.NC
60

BOYCE, FURR & COMPANY, LLP
CERTIFIED PUBLIC ACCOUNTANTS



SAMUEL A. BOYCE, PARTNER
BOBBIE W. FURR, PARTNER

SANDY P. NEWELL, CPA
JO ELLEN B. LOY, CPA
DAVID E. BOYCE, CPA
PATRICIA T. WAGNER, CPA
CHERYL W. GAZALEH, CPA

May 5, 2009

Martin Starnes & Associates, CPAs, PA and the
Peer Review Committee, North Carolina Association
of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Martin Starnes & Associates, CPAs, PA (the firm) in effect for the year ended December 31, 2008. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards* and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Martin Starnes & Associates, CPAs, PA in effect for the year ended December 31, 2008, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Martin Starnes & Associates, CPAs, PA has received a peer review rating of *pass*.

Boyce, Furr & Company, LLP
BOYCE, FURR & COMPANY, LLP

4900 FALLS OF THE NEUSE ROAD • SUITE 220 • RALEIGH, NORTH CAROLINA 27609
919 862 0004 • FAX: 919 862 0009 • WWW.BOYCFURRCPA.COM

**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 §160A-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 § 160A-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.

Cynthia S. Bennett, CMC
City Clerk