



City of
Washington
NORTH CAROLINA
Council Agenda
OCTOBER 7, 2013
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval of minutes from September 9, and September 23, 2013 **(page 5)**

Approval/Amendments to Agenda

I. Consent Agenda:

- A. Approve/Support – An application by Washington Fire Department for the 2013 FEMA Assistance to Firefighters Grant (AFG) **(page 23)**
- B. Authorize/Approve – Purchase of a Garbage Truck through the piggyback of the City of Martinsville, VA **and** approve a corresponding purchase order to be written (\$124,965) **(page 24)**
- C. Declare/Surplus/Authorize – Declare surplus and Authorize the sale of a vehicle through electronic auction using GovDeals **(page 25)**
- D. Amend – Personnel Policy Article III, Section 18, Longevity Pay **(page 26)**
- E. Approve – Purchase Orders >\$20,000 **(page 27)**

II. Comments from the Public:

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

- A. None –

IV. Public Hearing – Other:

- A. None –

V. Scheduled Public Appearances:

- A. Wright Flight
- B. Ursula Corbett – Ducks in Smallwood
- C. Philip Ryals – Utilities

- VI. Correspondence and Special Reports:
- A. Memo – Festival Park – Established Partner’s List **(page 29)**
 - B. Memo - Hours of Operation – Moore Aquatic & Fitness Center **(page 30)**
 - C. Memo – Additional Swing on the Waterfront **(page 31)**
 - D. Memo – Demolition – 312 Water Street **(page 36)**
- VII. Reports from Boards, Commissions and Committees:
- A. Financial Reports **(emailed as available)**
- VIII. Appointments:
- A. Appointments – Library Board of Trustees **(page 47)**
- IX. Old Business:
- A. Authorize – City Manager to sign a contract with Mid-East Commission to complete the Parks & Recreation Comprehensive Plan for the City **(page 51)**
 - B. Accept/Award – Bids **and** Award contract – Lighthouse Restrooms **(page 59)**
 - C. Award/Approve – Bid to replace the Peterson Building handicap ramp and entrance to Horton Contractors **and** Approve purchase order (\$33,800) **(page 61)**
 - D. Approve – Boardwalk repair and purchase order (\$22,777) **(page 64)**
 - E. Adopt – EDA Grant Project Ordinance **and** Adopt the Budget Ordinance Amendment for the transfer of City’s match **(page 67)**
 - F. Approve/Authorize – Approve CDBG SBEA Jumpstart Washington Promissory Notes **and** Authorize the Mayor to execute the Legally Binding Commitments **(page 71)**


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- G. Approve/Authorize – Promissory Note and Deed of Trust and Authorize the City Manager to execute a Legally Binding Commitment with Metropolitan Housing and Community Development Corporation, Inc. **(page 81)**
- X. New Business:
- A. Accept/Adopt – Recommended management structure of the waterfront docks and Adopt Resolution creating the Waterfront Advisory Committee **(page 104)**
- B. Adopt – Budget Ordinance Amendment in the Airport Fund for purchase of flex wing mower (\$15,752) **(page 107)**
- C. Authorize – Manager to sign the FY 2014-2020- Airport TIP **(page 109)**
- D. Authorize – Manager to execute a Lease Agreement with Eastern Flying Service, Inc., for the Lease of the Corporate Hangar at Warren Field Airport (James Brinkley) **(page 111)**
- E. Amend – Chapter 32, Section 32-50 – Permit required – requiring permits prior to any excavation within public right-of-ways **(page 127)**
- F. Adopt – Ordinance to repeal Chapter 39 – Wastewater/SUO in its entirety and replace it with the new Chapter 39- Wastewater/SUO **(page 129)**
- G. Adopt – Ordinance to repeal Chapter 8 – Cemeteries in its entirety and replace it with the new Chapter 8 – Cemeteries **(page 184)**
- H. Adopt – Budget Ordinance Amendment in the Stormwater Fund for purchase of grass carp to stock Jack’s Creek (\$1,000) **(page 197)**
- I. Amend – Chapter 22, Section 22-97(d) – Prohibited Acts, Fishing, prohibiting fishing in Jack’s Creek between John Small Avenue and Park Drive **(page 200)**
- J. Authorize – Mayor and the City Attorney to execute the release of lots 64 and 81 in the Northgate Subdivision **(page 202)**



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

- XII. Any Other Business from the Mayor or Other Members of Council
 - A. None –

- XIII. Closed Session – Under NCGS § 143-318.11(a)(3) Attorney Client Privilege – including James L. Davis vs. City of Washington (09-OSP-06499)

- XIV. Adjourn – Until Monday, October 28, 2013 at 5:30 pm, in the Council Chambers at the Municipal Building.

The Washington City Council met in a regular session on Monday, September 9, 2013 at 5:30 pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Bobby Roberson, Mayor Pro tem; Doug Mercer, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Brian M. Alligood, City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney.

Councilman Moultrie was absent and excused from the meeting.

Also present were: Matt Rauschenbach, Administrative Services Director/C.F.O.; Stacy Drakeford, Fire & Police Services Director; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Keith Hardt, Electric Utilities Director; John Rodman, Community/Cultural Resources Director; Kristi Roberson, Parks and Recreation Manager; Susan Hodges, Human Resources Director; Gloria Moore, Library Director; Lynn Lewis, Tourism Director; and David Carraway, IT Department and Mike Voss, Washington Daily News.

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

APPROVAL OF MINUTES

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the minutes of August 12, and August 26, 2013 as submitted.

APPROVAL/AMENDMENTS TO AGENDA

By motion of Councilman Pitt, seconded by Councilman Brooks, Council approved the agenda as presented.

CONSENT AGENDA:

Councilman Mercer commented on purchase orders # 13441 (\$43,750 – Hospital Pharmacy) & 13511 (\$22,681.90 – Bobcat of Johnston County for Pamlico Fencing) stating this is not the grant proposal that was presented to Council and he opposed the approval of these purchase orders.

Mayor Pro tem Roberson requested to discuss purchase order #13471 (\$46,500 – Rediron Associates, LLC) under New Business - stating Council has not awarded the contract for this project yet (item is located later in the agenda).

By motion of Councilman Brooks, seconded by Councilman Pitt, Council approved the consent agenda by motion of 3-1. Motion carried – Councilman Mercer opposed.

A. APPROVE – PURCHASE ORDERS >\$20,000

- Requisition #13427, \$43,696.68, to Utility Service Co. Inc. for Elevated Tank Maintenance, account # 30-90-8140-4500.
- Requisition #13429, \$38,420, to Commercial Solutions Inc. for labor and material to install Carlisle 100 mil Fleece backed TPO roof system, supply and install new 24 gauge Kymar

- coated steel gutters and required downspouts and replace 3 new matching style skylights on existing curbs, account # 10-40-6120-7401.
- Requisition # 13441, Hospital Pharmacy for Funds for RX Drug Purchases under the job creation CDBG grant, account # 57-60-4930-4500.
 - Requisition # 13471, \$46,500, to Rediron Associates, LLC for to construct new add on truck shelter for equipment storage, account # 35-90-8390-7401.
 - Requisition # 13474, \$36,157.99, to Atlantic Power Systems of NC, Inc. for peak shaving Generators PM Level 1 inspection, Generators PM Level 2 inspection, labor & materials, fuel tanks foot valve removal, cleaning and re-installation, and 11 tanks, account # 35-90-8370-1600.
 - Requisition # 13486, \$20,000, to Shealy Electric for MC# Small Market Edition w/Portable Wiring Kit, to include, MC3 RF Unit, MC Software version 3,4,2, Toughbook CF-53 Laptop w/DVD, Power Adapter, and DC Auto, account # 35-90-7250-7401.
 - Requisition # 13498, \$31,620, to Westinghouse Electric Supply, for ABB OVR Recloser, Pole Mounting Frame to accommodate 3 single bushing pts and HCEP VOY-20G, and installed on pole mount OVR Frame.
 - Requisition # 13511, \$22,681.90, to Bobcat of Johnston County for purchase of Bobcat Skid-Steer Loader for Pamlico Fencing thru the CDBG SBEA Job Creation Grant, account # 57-60-4930-4500.

B. AWARD – CAPTAIN JIMMY POLLARD HIS POLICE SHIELD AND SERVICE WEAPON UPON RETIREMENT

Captain Jimmy Pollard began his employment with the City of Washington Police Department on October 03, 1984. Captain Jimmy Pollard will retire from the City of Washington, after 30 years of creditable service to its citizens, effective September 30, 2013. Council awarded Captain Jimmy Pollard his police shield and declared as surplus his service weapon a Glock Model #21, Serial #DGM915US to be awarded to him upon his retirement.

COMMENTS FROM THE PUBLIC:

Ms. Diana Aideuis, a resident of 122 South Harvey Street, submitted a letter and petition (73 signatures) in opposition to the location of the Dock Master Station (bathhouse site) and requested this letter be read during public comments by Mayor Jennings.

Mayor Jennings directed City Manager, Brian Alligood and Director of Community and Cultural Resources, John Rodman to meet with Ms. Aideuis to explain the location of the Dock Master Station. Mayor Jennings explained that a permanent structure cannot be built where the current restrooms are located.

Mayor Pro tem Roberson noted that the conversation originated at the coffee house on Water Street. He further explained there were three public hearings held on the location of the Dock Master Station and he noted some of the issues of the current location.

PUBLIC HEARING ON ZONING: NONE

PUBLIC HEARING OTHER: NONE

SCHEDULED PUBLIC APPEARANCES:

Ms. Dot Moate stated this will be her last report on the Little Washington Sailing School as she is retiring. Ms. Moate introduced the new chairperson, Ms. Anne Kumins. Ms. Moate shared that the school was started under Washington Harbor District Alliance six years ago. The 5th year of classes saw an attendance of 100+ students. Ms. Moate provided the following highlights:

2013 Highlights:

- Received 501(c)(3) status from the IRS, April, 2013.
- Record registration of 100+ Students from Greenville, Washington, other towns in NC & out of State.
- US Sailing Instructor classes held in May; Instructor provided by US Sailing.
- 8 weeks all day classes for beginners, June 10 – August 2
- 2 weeks all day classes for advanced students – August 5 – August 16
- Pacific Seacraft repaired boats which were in tiptop shape at beginning of season.
- Promoted LWSS in WDN; Greenville Daily Reflector; Radio/TV Shows; Facebook; schools in Beaufort County & Greenville; MITS & Pirates Day; free boat rides at Summer Festival.
- Several former students returned to volunteer their time to the School.
- Teamed up with PAL (5 scholarships) plus 9 other scholarships to students.
- Regatta –Capt. Sam’s Boat docks – August 24 funds donated to LWSS.
- Purchased 14 new life jackets with funds donated by one of our volunteers, Diana Lambeth.
- Thanks to our foundation sponsors: Carolina Wind Yachting Center; Capt. Sam’s Boat Yard; Cypress Landing Yacht Club; Potash Corp-Aurora; Pamlico Sailing Club and Pacific Seacraft. Also to West Marine for providing good service w/discounts on items; Down on Main for preparing lunches each day.
- Donated \$200 to WHDA in support of the Weather Display Tower project.
- Ended season with the largest positive cash flow in the history of the school.
- Thank you to the City of Washington for supporting us and WHDA who was our founding organization.
- New Board Chairperson for LWSS, Anne Kumins.

Plans for 2014

- Hire new instructors; 1 lead instructor and 1 assistant instructor.
- Enhance our relationship with PAL and other programs to encourage more scholarship students to participate.
- Reduce the advanced class to one week session. (beginner classes are most popular)
- Move the classroom to larger facility.
- Increase number of students to maximum capacity of 120!

Mayor Jennings and members of City Council thanked Ms. Moate for her leadership and for being the spokesperson of the Little Washington Sailing School. Ms. Moate stated the Little Washington Sailing School appreciates the City of Washington partnering with the School.

Ms. Barbara Gaskins stated that last year she planned and implemented a Trunk or Treat event. Ms. Gaskins stated Halloween can be a great time for children and also it could be a time when children fall prey to potential predators. The event last year was solely funded by participants of several social clubs, bike and car clubs. The event last year was held at Beebe Park and was a safe alternative for our children. The event this year has been planned on October 31, 2013 at Beebe Park. Ms. Gaskins requested the following:

- lighting (darkness at the park is not safe)
- traffic control (hard to handle the traffic coming back and forth)
- City provide man power for use of firehouse (fire safety month and a speaker will be present to speak with the children)
- Would like to plan this as an annual event

Ms. Gaskins stated a meeting has been planned for Sunday, September 15, 2013 at Beebe Park beginning at 3:00 pm. There were over 200 participants at last year’s Trunk or Treat. Promotion for this year’s event is currently underway.

Mayor Jennings directed City Manager, Brian Alligood to meet with Ms. Gaskins to facilitate City efforts and to work out the logistics.

CORRESPONDENCE AND SPECIAL REPORTS:

REPORT – JULY AND AUGUST LOAD MANAGEMENT DEVICE INSTALLATION
(copy attached)

MEMO – GENERAL FUND BUDGET TRANSFER

The Budget Officer transferred \$3,900 of funding between the Parks & Rec. Admin. and Aquatic Center departments of the General Fund to provide additional funds needed to repair the roof and replace a booster pump at the Aquatic Center.

NCGS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes. I hereby request the transfer of funds as set forth below from one account to another, all within the same appropriations fund account, as permitted and authorized by the General Statutes of North Carolina.

Department	Account #	Object Classification	Amount
From:			
Recreation	10-40-6120	7401	\$2400
To:			
Recreation	10-40-6126	1600	\$2400

For the purpose of: replace current booster pump with a 1 horse power stainless steel booster pump with a 30 gallon expansion tank.

REPORTS FROM BOARDS, COMMISSIONS AND COMMITTEES:

HUMAN RELATIONS COUNCIL

(Report approved as submitted)

WASHINGTON HARBOR DISTRICT ALLIANCE

(Report approved as submitted)

FINANCIAL REPORTS (EMAILED AS AVAILABLE)

APPOINTMENTS – VARIOUS BOARDS COMMISSIONS, AND COMMITTEES:

Board of Adjustment –

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council appointed Charlie Manning to the Board of Adjustment to fill the expired term of Claud Hodges, term to expire June 30, 2016.

Washington Electric Utilities Advisory Commission –

By motion of Councilman Pitt, seconded by Councilman Brooks, Council appointed Melanie Everett to the Washington Electric Utilities Advisory Commission to fill the expired term of Gloria Crenshaw, term to expire June 30, 2016.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council appointed Warren Smith to the Washington Electric Utilities Advisory Commission to fill the unexpired term of Don Wilkinson, term to expire June 30, 2014.

Library Board of Trustees

Mayor Pro tem Roberson requested the Board of Library Trustees appointment be continued.

Warren Field Airport Advisory Board

Councilman Mercer requested the Warren Field Airport Advisory Board appointment be continued.

ADOPT – BUDGET ORDINANCE 2012-2013 PROJECTS NOT COMPLETED:

Councilman Mercer commented on the projects that weren't completed during the year. Councilman Mercer called attention to two computers totaling \$2,500. In addition, there was the recognition that the Vision 100 grant monies at the Airport would be carried forward from year to year. Councilman Mercer expressed concerns with projects in the Finance Department, Information Technology Department, Water Fund, right-of-way, and the Electric Department. Councilman Mercer stated he was opposed to the concept of carrying money forward to the next year. Mayor Jennings voiced we regularly have monies that were not spent because of services not contracted or provided in the year they were budgeted – the monies go into the fund and is pulled back out of the fund. Mr. Rauschenbach explained by way of an example that in the IT Department the fiber optic project didn't start until May/June reason being we installed a new phone system.

Discussion was held regarding the process used for funding projects not completed in one fiscal year.

Mr. Rauschenbach stated we have gone through this process every year since his employment with the City (the first year, we wrote purchase orders to ourselves) Council did not care for that practice and we change to the appropriation method.

By motion of Councilman Brooks, seconded by Councilman Pitt, Council adopted a Budget Ordinance Amendment to appropriate funds for projects that were budgeted in 2012-2013 and not completed by 3-1 vote. Motion carried – Councilman Mercer opposed.
(copy attached)

ADOPT – BUDGET ORDINANCE AMENDMENT FOR OUTSTANDING PURCHASE ORDERS FROM FY 12/13 (\$1,574,170)

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted a budget ordinance amendment in the amount of \$1,574,170 for purchase orders outstanding from fiscal year 2012-2013 that are being brought forward into fiscal year 2013-2014 for payment.

(copy attached)

AWARD – CONTRACT FOR EXPANSION OF ELECTRIC DEPARTMENT STORAGE EQUIPMENT SHELTER

Mayor Pro tem Roberson inquired if we followed the normal procedure and wanted to know if we went out for bids. Mr. Rauschenbach stated ‘yes’ – 3 informal bids were received. Also, Mayor Pro tem Roberson expressed there are concerns when we do projects some feel they are exempt from the building permit – response ‘no they are not exempt’ the bidder is aware that he will need to coordinate with the Inspection Department. Mr. Alligood noted in the future staff will make sure they list the informal bids.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council awarded a contract to RedIron Associates, LLC in the amount of \$46,500 and approved corresponding purchase order.

APPROVE – BUDGET ORDINANCE AMENDMENT FOR ELECTRIC FUND – SOLAR FARM PROJECT #4 (\$450,200)

Councilman Mercer stated Interconnect Agreements obligate the City for a period of 35 years and he is concerned with that length of time and feels it is then a contract. Also, Councilman Mercer requested Council review all future Interconnect Agreements.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted a budget ordinance amendment in the amount of \$450,200 for Solar Project #4 in the electric fund.

(copy attached)

APPROVE – INTERCONNECT AGREEMENTS FOR SOLAR SYSTEM

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council agreed that all future Interconnect Agreements for Solar system be reviewed by the Council for their approval.

ADOPT – RESOLUTION HONORING S. ELLIS HANKINS

Councilman Pitt read the following resolution in honor of S. Ellis Hankins retirement from the North Carolina League of Municipalities for thirty years of service.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted the Resolution honoring S. Ellis Hankins for his years of service to the North Carolina League of Municipalities.

(copy attached)

CLOSED SESSION – UNDER § NCGS 143-318.11(a)(3) ATTORNEY CLIENT PRIVILEGE AND 143-318.11(a)(1) DISCLOSURE OF CONFIDENTIAL INFORMATION AND 143-318.10 (e) THE PUBLIC RECORDS ACT

By motion of Councilman Pitt, seconded by Councilman Brooks, Council agreed to enter closed session under § NCGS 143-318.11(a)(3) Attorney Client Privilege, 143-318.11(a)(1) Disclosure of Confidential Information, and 143-318.10(e) The Public Records Act at 6:15 PM.

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council agreed to come out of Closed Session at 6:40 pm.

ADJOURN – UNTIL MONDAY, SEPTEMBER 23, 2013

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adjourned the meeting at 6:40 pm until Monday, September 23, 2013 at 5:30 pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

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

The Washington City Council met in a continued session on Monday, September 23, 2013 at 5:30 pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Bobby Roberson, Mayor Pro tem; Doug Mercer, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Brian Alligood, City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney. Councilman Moultrie was absent.

Also present were: Matt Rauschenbach, Administrative Services Director/C.F.O.; Stacy Drakeford, Fire & Police Services Director; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Keith Hardt, Electric Utilities Director; John Rodman, Community/Cultural Resources Director; Kristi Roberson, Parks and Recreation Manager; Susan Hodges, Human Resources Director; Gloria Moore, Library Director; Lynn Lewis, Tourism Director; and David Carraway, IT Department.

Mayor Jennings called the meeting to order and Mayor Pro tem Roberson delivered the invocation.

BOY SCOUT - TROOP 21

Councilman Mercer recognized and welcomed William Martin and Leland Hill with Boy Scout Troop #21 for working toward receiving their Communications Badges.

APPROVAL/AMENDMENTS TO AGENDA

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

AUTHORIZE/ADOPT: AUTHORIZE MAYOR TO EXECUTE A FINANCIAL ASSISTANCE AWARD WITH THE US DEPARTMENT OF COMMERCE FOR VARIOUS WATER AND SEWER PROJECTS AND ADOPT GRANT PROJECT ORDINANCE AND ADOPT BUDGET ORDINANCE AMENDMENT

City Manager, Brian Alligood explained this is the agreement for the EDA grant award for \$1.44 million and match by the City of \$1.41 million for the infrastructure rehabilitation.

In October of 2012, Council authorized staff to apply for EDA funding for various water and sewer projects totaling approximately \$2,000,000. At that time, we were under the impression that the maximum amount of funding available would be \$1,000,000 with a 50% match. During the application process we were encouraged to submit a request for funding of all of the proposed projects and received funding for a total of \$1,442,049 as indicated on the attached Financial Assistance Award (see attached). The total project cost approved for these projects is \$2,852,156. There are a total of five (5) projects included in this grant award; the construction of a 16" water line from the water treatment plant to US 264, the design and construction of a liquid chlorine feed system at the water plant, the design and construction of a new sewer pump station at Water and Bonner streets and the design and installation of generators with automatic switch gears at the wastewater treatment plant and the sewer lift station at US 264 and Cherry Run.

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council authorized the Mayor to execute the Financial Assistance Award with the US Department of Commerce for various water and sewer projects **and** Adopt the grant project ordinance and budget ordinance amendment.

Councilman Mercer thanked Kevin Richards and staff for being instrumental in writing the grant application. Mayor Jennings commended staff for putting it together and seeing this project through.

United States Department of Commerce
Economic Development Administration

Re: Investment No. 04-79-06833

(Begin letter):

Dear Mayor Jennings:

I am pleased to inform you that the Department of Commerce's Economic Development Administration (EDA) has approved your application for a \$1,442,049 EDA investment to support construction of critical infrastructure improvements to support the retention and expansion of existing industries City-wide as well as small businesses located in the city's historic downtown.

Enclosed are two signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the award should be indicated by the signature of your principal official on each of the signed copies of the Financial Assistant Award. One of the executed copies should be returned to H. Philip Paradise, Jr., Regional Director, Atlanta Regional Office, Economic Development Administration, 401 West Peachtree Street, N.W, Suite 1820, Atlanta, Georgia 30308-3510. If not signed and returned within 30 days of receipt, EDA may declare the Award null and void.

Please do not make any commitments in reliance on this award until you have carefully reviewed and accepted the terms and conditions. Any commitments entered into prior to obtaining the approval of EDA in accordance with its regulations and requirements will be at your own risk.

EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA implements this mission by making strategic investments in the nation's most economically distressed communities that encourage private sector collaboration and creation of higher-skill, higher wage jobs, entrepreneurship and regional development.

I share your expectations regarding the impact of this investment and look forward to working with you to meet the economic development needs of your community.

Sincerely,
s/H. Philip Paradise, Jr.

**GRANT PROJECT ORDINANCE FOR THE EDA
GRANT AWARD
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2013-2014**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

Section 1. The project authorized is to provide funds for the design and construction of water and sewer infrastructure improvements.

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

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

76-90-8221-0400	Admin. & Legal- Water Line	\$ 10,280
76-90-8221-0405	Architectural & Eng. - Water Line	62,092
76-90-8221-0410	Other Architect & Eng.- Water Line	19,738
76-90-8221-0420	Proj. Insp. Fees & Audit- Water Line	37,628
76-90-8221-4500	Construction- Water Line	940,704
76-90-8221-9900	Contingency- Water Line	102,391
76-90-8221-0401	Admin. & Legal- Liquid Chlorine	3,068
76-90-8221-0406	Architect & Eng. - Liquid Chlorine	18,529
76-90-8221-0415	Other Arch. & Eng - Liquid Chlorine	5,890
76-90-8221-0425	Inspect Fees - Liquid Chlorine	11,229
76-90-8221-4505	Construction- Liquid Chlorine	280,722
76-90-8221-9901	Contingency- Liquid Chlorine	30,555
77-90-8221-0400	Admin. & Legal- Cherry Run	1,070
77-90-8221-0405	Architectural & Eng. - Cherry Run	6,460
77-90-8221-0410	Other Architect & Eng. - Cherry Run	2,053
77-90-8221-0420	Proj. Inspect Fees- Cherry Run	3,915
77-90-8221-4500	Construction- Cherry Run	97,866
77-90-8221-9900	Contingency- Cherry Run	10,652
77-90-8221-0401	Admin. & Legal- Generator	5,066
77-90-8221-0406	Architectural & Eng. - Generator	30,599
77-90-8221-0411	Other Architect & Eng. - Generator	9,727
77-90-8221-0425	Proj. Inspect Fees- Generator	18,543
77-90-8221-4505	Construction-Water & Bonner	463,577
77-90-8221-9901	Contingency-Water & Bonner	50,458
77-90-8221-4506	Construction-Water & Bonner	504,784
77-90-8221-9902	Contingency-Water & Bonner	54,943
	Total	\$2,852,156

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

76-90-3480-0000	EDA Grant Funds- Water	\$ 769,939
77-90-3480-0000	EDA Grant Funds- Sewer	672,110
76-90-3980-0000	City Contribution-Trans. Water Fund	706,133
77-90-3980-0000	City Contribution-Trans. Sewer Fund	<u>703,974</u>
	Total	\$2,852,156

Section 5. The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient detailed accounting records to satisfy the requirements of the EDA grant agreements.

Section 6. Funds may be advanced from the Water and Sewer Funds for the purpose of making payments that are due. Reimbursement requests should be made to the granting 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 grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detail analysis of past and future costs and revenues on this grant project in every budget submission made to the City Council.

Section 9. Copies of this grant project ordinance shall be furnished to the City Clerk, 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 23rd day of September, 2013.

ATTEST:

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2013-2014

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

Section 1. That the following accounts of the Water and Sewer Fund revenue budget be increased by the respective amounts indicated for the City’s cost share of the EDA Grant:

30-90-9910-3991	Fund Balance Appropriated	\$ 706,133
32-90-9910-3991	Fund Balance Appropriated	<u>703,974</u>
	Total	\$1,410,107

Section 2. That the following accounts of the Water and Sewer Fund appropriations budget be increased by the respective amounts indicated for the City’s cost share of the EDA Grant:

30-90-6610-9285	Fund Balance Appropriated	\$ 706,133
32-90-6610-9280	Fund Balance Appropriated	<u>703,974</u>
	Total	\$1,410,107

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 23rd day of September, 2013.

ATTEST:

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

MEMO: JACK’S CREEK ENGINEERING REPORT SUMMARY

City Manager, Brian Alligood reviewed the memo requested by City Council at the last meeting. This is a summary of reports of the engineering studies that had been done previously on Jack’s Creek and how they were reconciled.

(Begin memo):

SUBJECT: Jack’s Creek

Please find attached a copy of a drainage basin study done for Jack’s Creek in September of 1999 by Jarvis Associates, P.A., as well as a planning and engineering report for improvements in Jack’s Creek also done by Jarvis, as requested at the August 26 Council meeting. The study goes into detail about the existing problems as well as possible solutions, with those solutions proposed to start at the downstream end of the creek, as did the study done by Rivers and Associates in 2007 and mentioned to you several times since their report. Jarvis also proposed to raise Main Street to provide access during large storm events that normally flood Main Street from abnormally high tides. While in theory this will provide the access suggested, when the tide got up to the 8.0 elevation proposed for the new bridge, access would still be denied. Jarvis had also proposed removing the berm at Park Drive adjacent to the stormwater pump station and installing a bridge with a weir. The weir would allow water to flow out of the creek at a lower elevation than the existing berm. Likewise though, it would allow water to flow back into town during times of high tides, not just abnormally high tides. The system of box culverts with flood gates installed in 2004 in essence accomplished the same thing but also prevents high tide from inundating the City unless it breaches the berm. In order to breach the berm at Park Drive, the tide would have to exceed 8.0’. At that point, numerous streets within the City are under water already and we are at the mercy of the storm event and have to wait for the water to recede as we continue to run the pumps at the stormwater pump station, assuming that we are able to remain there and do not need to evacuate the site. As noted numerous times in the past, when the water level in the river falls at least 6” below the water level on the north side of Park Drive, the flood

gates on the box culverts will start to open. As it becomes obvious that the tide is going out, we will crank open the flood gates and let the water out of town as quickly as the river will take it.

Again, we did not ultimately build what was proposed in the Jarvis reports, but the system in place accomplishes the same thing without having the creek inundated with an above average high tide. (end memo)

Mayor Pro tem Roberson stated he appreciated the report noting that also there were another report in 1970 by William Freeman and Associates with a cost estimated around \$40,000 and requested a copy of this report. Mayor Pro tem Roberson requested Mr. Lewis provide a two page summary of the engineering reports. This would provide us with three (3) different engineering opinions about how to address these specific issues. Mayor Pro tem Roberson inquired about the property over at the 7th Street gym and the probability of opening that up to increase storage capacity (Ed Tech property). Mr. Lewis stated it is already opened up and is probably 40 ft. across the top.

Councilman Mercer directed Council's attention to the Jarvis report noting that all calculations are essentially done utilizing an elevation of 5½ feet. Councilman Mercer stated he is curious of what the storage capacity may be with the current elevations. Mr. Alligood and Mr. Lewis provided this information (approximately 7 ½ - 8 acres for the surface area of the water—from John Small Avenue to Park Drive) but do not know about the slope on the Creek area.

MEMO: IRON CREEK DRAINAGE

City Manager, Brian Alligood summarized the letter from Mr. Lewis and a copy of The Wooten Company report. Essentially, based on their determination, flood elevation of Ore Court is approximately 10.4 feet. You can raise the road but the problem is you can't get any higher than 9.1 feet and this will end up pushing water into garages. There is no way to fix it except going in and raising the entire area.

Mayor Jennings voiced at first it was thought to be cost prohibited for the 4 or 5 houses west of that road. The ditch or swell runs between those houses and the houses that are behind the next road over. If we are talking about ½ million dollars we could acquire those homes, move them, then make a retention pond. This would give us a holding pond strategy and Mayor Pro tem Roberson agreed. Mayor Pro tem Roberson said another possibility would be to elevate the houses above the BFE. We have had a great working relationship with FEMA and this is an area that consistently floods (originally this was not in the flood zone). Mr. Alligood inquired if there had been flooding in the actual homes and Mayor Pro tem Roberson voiced he has heard different stories. Mr. Alligood noted that unless water has actually been in the home, FEMA will not pay to raise the house. Mr. Lewis stated to the best of his knowledge there has not been water in the home. Mayor Pro tem Roberson stated when the houses were first built, the duct work was below the BFE and FEMA changed the regulation stating this could not be done; it has to be raised above the BFE for the duct work that is underneath the house. Mr. Lewis noted one thing that did help was the 47 lb. beaver they caught out there.

Mayor Pro tem Roberson requested Mr. Lewis reiterate how we had an issue concerning building the Hwy 17 By-pass. This is when The Wooten Company came in and applied for a

special use permit for the Briley property. Mayor Pro tem Roberson said he didn't believe the City ever received a call during the entire construction period from the Iron Creek residents and requested an update. Mr. Lewis provided an update. Councilman Brooks inquired at the other end of the waterway where the water goes out of Iron Creek is there anything on the other side that could be moved to help push the water out any quicker – (i.e. another pond on the other side)? Councilman Mercer suggested no one wants to acknowledge that Iron Creek is built in the bottom of a shallow and the rain events are one thing but the real flooding comes during a tropical storm. We can't control Mother Nature and Mayor Jennings said unless we can strategically hold more water in Iron Creek. Please see memo below:

(Begin memo):

SUBJECT: Ore Court – Preliminary Evaluation
Summary for Mayor and Washington City Council
Washington, North Carolina

Dear Mayor Jennings & Washington City Council Members:

As requested by the City of Washington, The Wooten Company has completed a preliminary evaluation of flooding issues during rain events along Ore Court in the Iron Creek Subdivision. More specifically it was requested that the option of raising the elevation of Ore Court to mitigate flooding be evaluated. For this evaluation flooding caused by the 10-year storm (a storm event that will occur on average once every ten (10 years) was used to assess the effectiveness of the proposed improvements. In addition an estimate of probable cost for the raising Ore Court was prepared.

Ore Court is off of Ore Drive approximately 0.40 miles east of the US Highway 264 crossing of Mitchell Branch Creek and is located in the 100-year flood zone. Based on this preliminary evaluation, Ore Court cannot be raised to the degree necessary to prevent flooding of the roadway during the 10-year storm. It appears that the roadway can be raised approximately 0.75 feet higher than its current elevation which would place the low point of Ore Court at approximately nine (9) feet. However, during the 10-year storm water will back up at the culvert crossing under Ore Drive and cause the flood elevation to be at least 10.4 feet at Ore Court.

Two different data sets were used to assess the flood elevation for this evaluation. First, available federal flood information including the Federal Emergency Management Agency (FEMA)/Flood Insurance Rate Maps (FIRM) and Flood Insurance Studies (FIS) were studied. These documents showed that the approximate flood elevation in the area of Ore Court as 9.1 feet during the 10-year storm. In addition to the federal flood information, existing data from the Iron Creek Subdivision Stormwater Narrative was used along with topographic data collected by The Wooten Company. Using a combination of the sources listed above, results show that water backs up at the culvert under Ore Drive and will cause the 10-year flood elevation to be 10.4 feet. At this point, a detailed hydrologic/hydraulic analysis has not been completed.

It was also relayed to us that residents along Ore Court have reported that during heavy rain events water is backing up in the roadway and, in extreme events, up to the bottom of the mailboxes at the low point on the south side street (approximately 3.5 feet above the back of curb or an elevation of 11.6 feet). A review of the survey data collected shows that Ore Court cannot be raised to this height as it would be higher than the garage floors of the homes along Ore

Court. The maximum possible height of Ore Court was derived by raising the roadway without creating other drainage issues along Ore Court. The results showed that the roadway could be raised approximately 0.75 feet to an elevation of 9.1' at the low point. Consistent with the City's request, an Estimate of Probable Cost for raising the roadway was generated which shows and Estimated Construction Cost of \$331,000 and a Total Project Cost of \$425,000.

While evaluating the possibility of raising the roadway at Ore Court to allow access during large rain events, we considered other possible options to help alleviate flooding. These options included large pumping facilities or large pumping facilities combined with berms. The extent of pumping facilities required to offer relief to Ore Court have not been determined as it was beyond the scope of this preliminary evaluation. Though the extent of pumping facilities have not been determined, it should be noted that due to the location of the existing 100-year flood plain, and the amount of flow experienced in the Iron Creek sub-division, significant infrastructure improvements and design/permitting efforts would be required and do not seem to be economically feasible.

As discussed above, it appears that the flood elevation for Ore Court, based on our preliminary evaluation, is 10.4 feet during the 10-year storm. Also, it appears Ore Court cannot be raised higher than 9.1 feet at the low point without causing additional drainage issues. While raising the road would mitigate flooding during smaller storms, it will not be effective for storms equal to or greater than the 10-year storm.

Please note that these findings, with additional details, are discussed in a letter addressed to Mr. Allen Lewis dated July 3, 2013. Should you have any questions or would like to discuss further, please do not hesitate to contact us. (end memo)

Sincerely,

THE WOOTEN COMPANY

/John A. Core, P.E.

MEMO: 2013 AFG GRANT

City Manager, Brian Alligood explained this is the FEMA Assistance Firefighters Grant and it is for informational purposes noting staff just wanted to get this out in front of Council because it will require a quick turnaround.

(Begin memo):

SUBJECT: 2013 AFG Grant

In anticipation of the opening of the application period for the FEMA Assistance to Firefighters Grant in the near future, I am writing to give you an overview of our plans for this process. As we were recently informed that we would not be awarded the 2012 grant, we intend to roll that application over into the 2013 process. That grant consisted of two thermal image cameras, washing and drying equipment for firefighting gear, and a vehicle exhaust system for station one at a total application cost of \$70,000. The 95% federal share of that grant would be \$66,500 and our 5% match would be \$3,500. In addition on the 2013 grant we are also considering adding a fire engine to the application in the amount of \$350,000. This would represent a 95% federal share of \$332,500 and our 5% match of \$17,500.

The grant writer will charge a fee of \$50 to roll over the 2012 grant and his normal fee of \$500 to add the fire engine to the 2013 application.

This memo is for your informational purposes only, and I can answer additional questions as required as we will come back to you during a regular council meeting requesting formal support to enter into the application process. (end memo)

/rr

MEMO: PROPOSED NCDOT PROJECT TO WIDEN 15TH STREET AND 2014 RESURFACING PLAN

City Manager, Brian Alligood explained that he and Mr. Lewis met with Division 2 Operations Engineer and Eastern Regional Field Operations Engineer to discuss the proposed NCDOT Project to widen 15th Street and 2014 resurfacing plan.

By being a channelized left-turn only median Mr. Alligood mentioned that NCDOT has raised a concern which will occur from business owners that this will be cutting off access from customers. NCDOT believes this will be minimum impact especially when it comes to safety. DOT is proposing to pay for it with an estimated \$3.2M and they are willing to move forward with the project with Council's support. If Council will not support the project then it will be thrown back in the hopper with all the other projects and it will compete with those projects on a State wide level. The good thing is because this project has been in play for so long it's been approved to be done. Cost benefit analysis on the State wide level funding is about a 5.0 level and this project by State number is only about a 3.2 level which leaves the probability that it will never get built if it goes on the State wide level. Please see memo:

(Begin memo):

SUBJECT: Proposed NCDOT Project to Widen 15th Street and 2014 Resurfacing Plan
On August 29, 2013 Allen Lewis, Public Works Director and I met with Dwayne Alligood, Division 2 Operations Engineer and Haywood Daughtry, Eastern Regional Field Operations Engineer to discuss upcoming proposed NCDOT projects within the City of Washington.

NCDOT is proposing to widen a 0.64 mile segment of 15th Street from Carolina Avenue (US 17 Business) to Pierce Street. It was reported that based on NCDOT data, this section of road has three (3) times the amount of crashes compared to similar sections of roads across the State. The proposed project will widen the existing 48' four-lane undivided section to a 64' four-lane divided section with a 16' median and 7'berms. In order to address the crash concerns, the median section will be a channelized left-turn only median. Traffic movements at signalized intersections will not be changed but left-turn movements throughout the remaining section will be controlled by channelization. The total cost of the project is estimated at \$3.5M with NCDOT paying the entire share.

NCDOT officials have stated that they anticipate concerns being raised by business owners that channelization will impede customer access to their property when compared to a free-flowing median. Based on past history with similar projects, officials believe this disruption to be minimal and far outweighed by the reduction in crashes and improved traffic safety. NCDOT has asked that Council support this design in order for the project to continue. After the first of

the year NCDOT officials will make a presentation to Council on the proposed project and seek formal support.

In addition as part of its 2014 resurfacing program, NCDOT is planning to resurface 5th Street (US 264) from 15th Street to Hudnell Street at an estimated cost of \$2M and 3rd Street (NC 32) from Bridge Street (US 17 Business) to Washington Park at an estimated cost of \$650,000. (end memo)

/ba

Mayor Jennings stated that safety is our first concern. Mayor Pro tem Roberson expressed his concerns regarding the right-of-way. Mayor Jennings noted that the Manager will arrange to have DOT come back after elections for a formal presentation, answer any questions, and will request the City’s support. Discussion followed.

DISCUSSION: LIGHTHOUSE RESTROOM & BOATER FACILITIES BID OPENING

City Manager, Brian Alligood stated there was a bid opening on Wednesday, September 18 and that 6 sets of plans were picked up but only received 3 bids. Attached handout:

Lighthouse Restrooms & Boaters Facilities

Bid opening: Wednesday, September 18th at 4P

3 bids received (6 picked up plans)

Base bids:	Stocks and Taylor	\$385,000
	AR Chesson	\$369,272
	White Construction	\$349,932

Project budget \$300,000

Approximately \$20,000 spent to date on design and bidding

Leaves approximately \$280,000 for construction

Using current low bid we are approximately \$70,000 short

John Rodman is meeting with White Construction this week to review bid (plan)

- hope to value engineer approximately \$20,000 out of bid
- leaves us approximately \$50,000 short
- 3 currently bid projects have come in under budget which picks up \$30,000
- believe we can identify the additional \$20,000 in the budget or look to contingency

Bring back solid numbers at the next regular meeting (Monday, October 7, 2013) for approval.

Councilman Mercer suggested that the square footage of the building is approximately 1200 sq. ft. and the bid is coming in at about \$300 per sq. ft. Mr. Alligood and Mr. Rodman said that’s correct. Mr. Alligood stated they heard this from the bidders that it is very expensive (one of the things putting in the block because it is anticipated that water will get in there and there will be additional cost because of flood proofing).

Mayor Jennings noted that Council will need to realize we have an expensive design but from a practical insight of our current budget capabilities we are \$20,000 away. We have been

kicking this one around for a decade and if we can find \$20,000 inside our current budget then we need to close the gap. Councilman Mercer agreed it is time to get it done. Mr. Alligood stated we do have grant funding on this project. Mayor Pro tem Roberson wanted to be sure that White Construction is a licensed general commercial contractor. Mr. Alligood stated he owns an unlimited license – Mayor Pro tem Roberson inquired residential? Mr. Alligood was not sure and stated staff will confirm.

DISCUSSION: SCHEDULING FOR OCTOBER COUNCIL MEETING

Mayor Jennings expressed that the regular scheduled Council meeting for the month of October coincides with the NCLM Conference. We have at least two Council members scheduled to attend the conference. It has been proposed to move the Council meeting back to October 7 and Mayor Jennings inquired if anyone had a conflict.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council agreed to move the regular October 14, 2013 Council meeting to October 7, 2013.

CLOSED SESSION: UNDER NCGS § 143-318.11(a)(1) DISCLOSURE OF CONFIDENTIAL INFORMATION AND 143-318.10(e) THE PUBLIC RECORDS ACT, NCGS 143-318.11(a)(3) ATTORNEY CLIENT PRIVILEGE – INCLUDING ROULHAC, ET AL VS. CITY OF WASHINGTON (11-CVS-1150) AND JAMES L. DAVIS VS. CITY OF WASHINGTON (09-OSP-06499)

By motion of Councilman Pitt, seconded by Council Brooks, Council agreed to enter closed session under NCGS § 143-318.11(a)(1) Disclosure of Confidential Information and 143-318.10(e) The Public Records Act, NCGS 143-318.11(a)(3) Attorney/Client Privilege – including Roulhac, et al vs. City of Washington (11-CVS-1150) and James L. Davis vs. City of Washington (09-OSP-06499) at 6:12 pm.

By motion of Councilman Mercer, seconded by Councilman Brooks, Council agreed to come out of Closed Session at 7:20 pm.

ADJOURN – UNTIL MONDAY, OCTOBER 7, 2013 AT 5:30 PM IN THE COUNCIL CHAMBERS AT THE MUNICIPAL BUILDING

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council adjourned the meeting at 7:20 pm until Monday, October 7, 2013 at 5:30 pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

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



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Robbie Rose, Fire Chief
Date: September 26, 2013 *RR*
Subject: 2013 AFG Grant
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that the City Council approve and support an application by Washington Fire Department for the 2013 FEMA Assistance to Firefighters Grant.

BACKGROUND AND FINDINGS:

As we were recently informed that we would not be awarded the 2012 grant, we intend to roll that application over into the 2013 process. That grant consisted of two thermal image cameras, washing and drying equipment for firefighting gear, and a vehicle exhaust system for station one at a total application cost of \$70,000. The 95% federal share of that grant would be \$66,500 and our 5% match would be \$3,500. In addition, on the 2013 grant we are also planning to add a fire engine to the application in the amount of \$350,000. This would represent a 95% federal share of \$332,500 and our 5% match of \$17,500.

The grant writer will charge a fee of \$50 to roll over the 2012 grant and his normal fee of \$500 to add the fire engine to the 2013 application.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: 10/2 Date Concur SW Recommend Denial _____ No Recommendation _____



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Mike Whaley
Date: September 26, 2013
Subject: Piggyback of Garbage Truck
Applicant Presentation: Allen Lewis, Public Works Director
Staff Presentation: N/A

RECOMMENDATION:

I move that City Council authorize the purchase of a Garbage Truck through the piggyback of the City of Martinsville, VA purchase order 747-00 dated 10/18/2012, and approve a corresponding purchase order to be written.

BACKGROUND AND FINDINGS:

<u>Vendor</u>	<u>Cost Per Unit</u>	<u>Delivery</u>	<u>Less Trade-In</u>
Cavalier Equipment	\$124,965.00	180 days	N/A

The General Statutes approved G.S. 143-129 as an exception which allows purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, State, or local government if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal, state, or local government contract if bid in the past 12 months.

PREVIOUS LEGISLATIVE ACTION

Budget adopted 5-20-13 with purchase of truck included - \$140,000

FISCAL IMPACT

Currently Budgeted (Account 38-90-4710-7400) Requires additional appropriation
No Fiscal Impact

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: but Concur _____ Recommend Denial _____ No Recommendation
10/2 Date



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Mike Whaley
Date: September 23, 2013
Subject: Declare Surplus/Authorize Electronic Auction of item through GovDeals
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that City Council declare surplus and authorize the sale of the following vehicle through electronic auction using GovDeals.

BACKGROUND AND FINDINGS:

The purpose of this Council Action is to declare surplus the following city vehicle and authorize the sale of this vehicle through electronic auction using GovDeals.

Vehicle Number	Make /Model	Serial	Odometer
<u>Number</u>	<u>Description</u>	<u>Number</u>	<u>Reading</u>
#9450	2002 Ford Ranger R10	1FTYR10U32TA68201	155,807

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 10/2 Date Concur but Recommend Denial _____ No Recommendation _____



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Brian Alligood, City Manager & Susan Hodges, Human Resources Director
Date: September 30, 2013
Subject: Personnel Policy Amendment
Applicant Presentation: N/A
Staff Presentation:

RECOMMENDATION:

I move that the City Council amend the City of Washington Personnel Policy Article III. Section 18. Longevity Pay effective October 7, 2013 to read as follows:

III. Section 18. Longevity Pay

Longevity pay may be awarded to each full-time employee, including the City Manager, who has completed five (5) years of continuous full-time employment with the City as of November 1 of each year. Compensation shall be twenty-five dollars (\$25.00) per each completed year of continuous full-time service as of November 1. Employees who are terminated voluntarily or involuntarily on or after November 1, but before longevity checks are issued, are entitled to longevity pay and will receive the compensation in their last paycheck.

Note: Employees hired with a full-time regular or probationary appointment prior to July 1, 2013 may receive Longevity Pay beginning with their first full year of employment as of November 1.

BACKGROUND AND FINDINGS:

The City Council adopted a revised Personnel Policy which went into effect on July 1, 2013. Unfortunately, a typographical error has been identified in Article III. Pay Plan, Section 18. Longevity Pay, which needs to be corrected. The adopted policy says that “employees who are terminated voluntarily or involuntarily prior to November 1, but before longevity checks are issued, are entitled to longevity pay and will receive the compensation in their last paycheck.” Longevity pay is based on years of service as of November 1 of each year and the intention of the policy is to include employees who terminate from employment on or after November 1 and prior to issuance of longevity checks. Therefore, the language in this section needs to be corrected to reflect the true intent of the policy.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: October 7, 2013 (if applicable)
City Manager Review: 10/2 Date Concurred 10/2 Recommend Denial No Recommendation _____



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: Purchase Orders > \$20,000 Approval
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council approve the attached purchase orders.

BACKGROUND AND FINDINGS:

Requisition #13612, \$26,975.45, to Deese Equipment Sourcing, for a Yale forklift for Park Boat Company, a participant in the CDBG SBEA Job Creation Grant 57-60-4930-4500.

PREVIOUS LEGISLATIVE ACTION

2013-2014 adopted budget and amended budget.

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Requisitions

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: for Concur _____ Recommend Denial _____ No Recommendation
10/2 Date

Requisition Form

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

Requisition #:13612
PO #: Not Assigned
User Name: Jessica Selby

Date: 09/26/2013
Approved By: Jessica Selby
Approved Code: Awaiting Final Approval
Total Amount: \$26,975.45

DEESE EQUIPMENT SOURCING
P.O. BOX 16432
GREENSBORO, NC 27416

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

Vendor Instructions:DO NOT MAIL
COMMUNITY DEVELOPMENT
JESSICA SELBY
2529759383

Quantity	Description	Job Number	Unit Price	Extended
1	FUNDS FOR THE PURCHASE OF A YALE FORKLIFT FOR PARK BOAT COMPANY THRU THE CDBG SBEA JOB CREATION GRANT. AMOUNT NOT TO EXCEED \$26,975.45		\$26,975.45	\$26,975.45
Sub Total				\$26,975.45
Total Tax				\$0.00
Total				\$26,975.45

Account Number	Account Description	Amount
57-60-4930-4500	JOB CREATION	\$26,975.45
Total		\$26,975.45

Requisition Approval History

Approval Date	Approval Description	Approved by	PO Number
9/26/2013	DEPT LEVEL APPROVAL	Jessica Selby	Not Assigned

This Requisition is awaiting Final PO Approval

Approval List

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

MEMORANDUM

DATE: October 7, 2013

TO: Mayor and City Council

FROM: Kristi Roberson, Parks & Recreation Department Manager

RE: Festival Park - Established Partner's List

Eastern Elementary School PTA has requested permission to be added to the Festival Park Established Partner's list. I support this request, however I feel it should include all Beaufort County Schools. Therefore, I recommend Beaufort County Schools be added to the Established Partner's list for Festival Park. A partner sponsored event is defined as an event sponsored by a Washington based non-profit that brings measurable economic and/or community impact to the City of Washington.

The City currently has joint use agreements with Beaufort County Schools. Beaufort County Schools are also allowed to rent Havens Gardens free of charge. I feel including them on the partners list is a good fit. BC Schools currently have a working relationship with the City and provide measurable community impact.

This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee *supported* this recommendation.

MEMORANDUM

DATE: October 7, 2013

TO: Mayor and City Council

FROM: Kristi Roberson, Parks & Recreation Department Manager

RE: Hours of Operation – Moore Aquatic & Fitness Center

The City of Washington hired a new Aquatic Supervisor, Dalace Inman, in August. Over the last few weeks she has reviewed our current operating hours and part time work schedules. We would like to request a pool schedule increase by staying open Monday through Friday from 1:00 PM-3:00 PM for adult lap swim.

Currently the pool is open Monday through Friday from 6:00 AM – 1 PM and 3:00 PM – 7:30 PM. We are open on Saturday from 10:00 AM – 6:00 PM and closed on Sunday. The total number of part time lifeguard staff hours is currently 135 hours per week.

The new hours of operation would be Monday – Friday from 6:00 AM – 7:30 PM and Saturday from 10:00 AM – 6:00 PM. The current part time schedules will be adjusted and the Aquatic & Fitness Supervisor will serve as the additional guard when needed. The total number of part time lifeguard staff hours will be 134.5.

The facility operating costs are the same whether we are open or closed. The proposed schedule will actually result in a .5 hour lifeguard staff savings per week and increase pool time for its adult members by 10 hours per week. Staff feels this will make a positive impact in the swimming community.

This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee *supported* this recommendation.



MEMORANDUM

DATE: October 7, 2013

TO: Mayor and City Council

FROM: Kristi Roberson, Parks & Recreation Department Manager

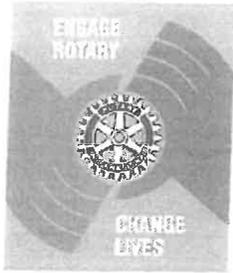
RE: Additional Swing on the Waterfront

Noon Rotary approached the Recreation Advisory Committee on September 16 to install a swing on the West end of the Waterfront. The swing will match the current swing located at Festival Park. I have attached a copy of the letter with their request.

The location for the new swing would be in front of Dock B (map attached). The Buildings & Grounds Supervisor has reviewed this location and it will not interfere with current irrigation lines.

I have spoken with the Division of Water Quality and the Division of Coastal Management. Both agencies state with little modification, we will be able to proceed with this project.

This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee *supported* this request.



WASHINGTON NOON ROTARY CLUB
P.O. Box 86 • Washington, NC 27889
2013 - 2014

August 29, 2013

Ms. Kristi H. Roberson
Manager, Parks & Recreation Department
City of Washington
310 West Main Street, Suite 200
Washington, N.C. 27889

Dear Ms. Roberson:

Per your request, the following information is provided regarding our Rotary Club's desire to construct a swing (identical to the one already near festival park) on the waterfront off of Stewart Parkway.

Each year, our club requests a Rotary "District Simplified Grant" from our district for worthwhile projects that might benefit the community. We had requested a grant this year for the purpose of constructing a swing on the waterfront, as many of our members have commented as to how esthetically pleasing it was to see the existing swing available to sit and view the Washington waterfront near Festival Park. We received the funds for this purpose within the last couple of weeks.

Provided we obtain the necessary approvals, we can begin the construction work within a couple of weeks and expect to finish the project within one week (with most work being done over weekends). While virtually all of the labor will be accomplished by Rotarians, we have appointed Muriel Moore (a fellow Rotarian and Licensed General Contractor) to oversee our work to ensure it meets or exceeds everyone's expectations.

Proposed location(s) can be coordinated with you to ensure we place the swing in a suitable location for everyone's benefit, and without disrupting existing trees, sidewalks or benches. We are hopeful that we might "tag onto" the CAMA permit obtained for the previous swing, as we don't anticipate the distance from the waterfront or the construction to be any different. Your favorable consideration would be most appreciated.

Sincerely,

Spencer G. Stanley
President 2013-14
Washington Noon Rotary

CLUB OFFICERS

President
Spencer Stanley

President Elect
John Tate

Vice President
Phil Holloman

Secretary
Dot Moate

Treasurer
Harriet Hart

Sergeant at Arms
Muriel Moore

Song Leader
John Tate

Chaplain
William Taylor

CHAIRS

Membership
Lisa Woolard

Service Projects
Ben Davis

Rotary Foundation
Jack Menzie

Club Administration
Steven Wood

Public Relations
Trent Tetterton

DISTRICT 7720

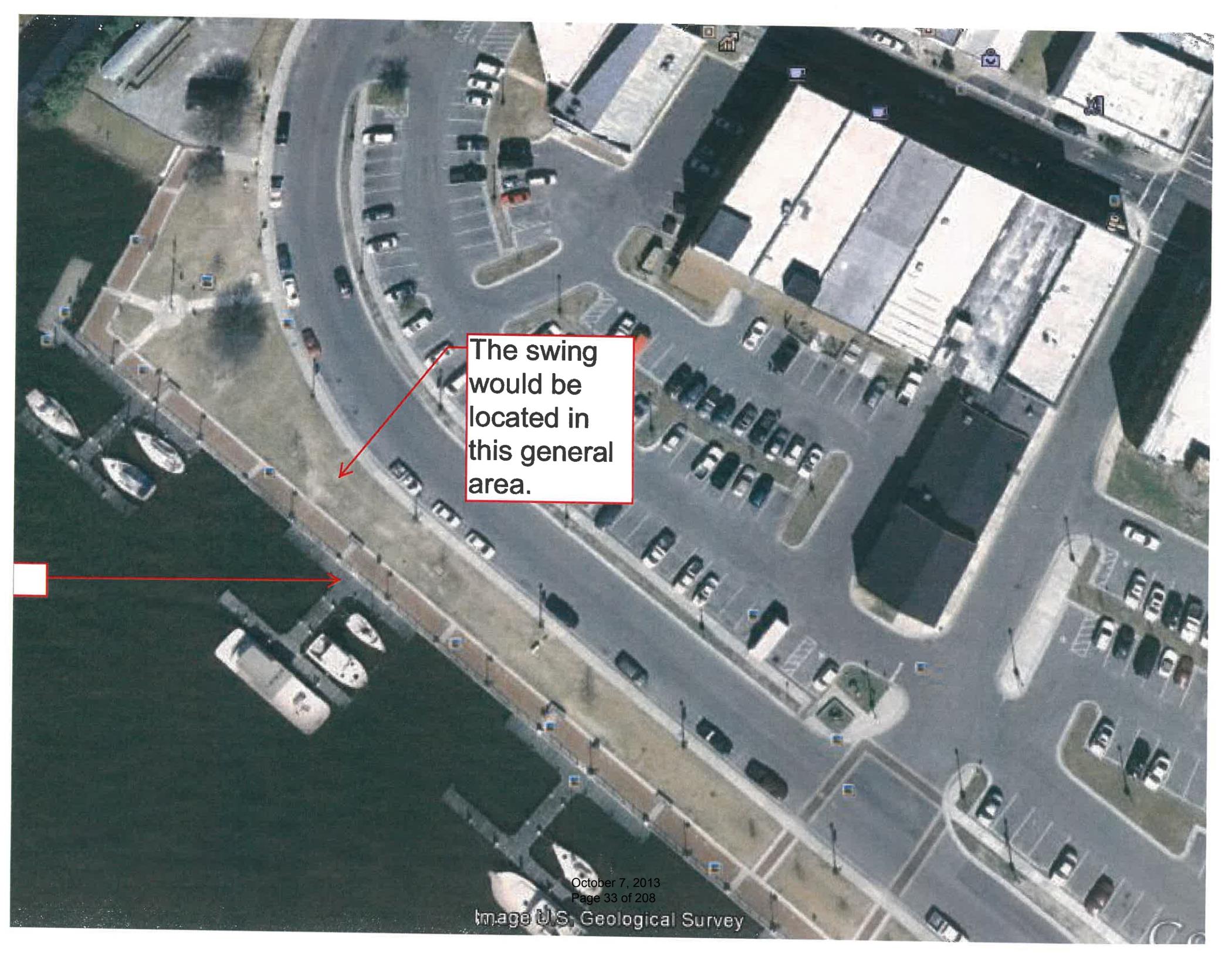
District Governor
Brenda Reges Shaw

Past District Governor
Skip Morgan
Tom Payne

Asst. District Governor
Jerry Phillips
Vanceboro, NC

INTERNATIONAL

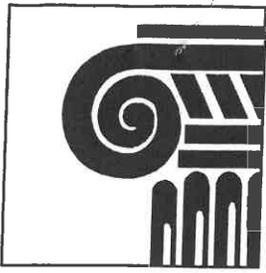
President
Ron D. Burton
Norman, Oklahoma

An aerial photograph showing a marina on the left with several boats docked, and a large parking lot on the right filled with cars. A red callout box with a white background and a red border is positioned in the center. It contains the text "The swing would be located in this general area." Two red arrows originate from the box: one points to a curved concrete barrier separating the parking lot from the marina, and the other points to a small white square on the left edge of the image.

The swing
would be
located in
this general
area.







MEMORANDUM

DATE: September 26, 2013
TO: Mayor Jennings & Members of the City Council
FROM: John Rodman, Community & Cultural Services
RE: Demolition – 312 Water Street

The governing body of the City may adopt and enforce ordinances relating to buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety. The minimum standards address conditions that are dangerous and injurious to public health, welfare, and safety and identify circumstances under which a public necessity exists for the repair, closing or demolition of such building and structures.

If after a notice and hearing the Code Official determines that the property has not been properly maintained and failed to meet minimum standards an order is issued to require the owner to demolish and remove the building or structure.

This process occurred with the structure located at 312 Water Street, owned by Mr. William Henry. The City Council adopted an ordinance condemning the structure as unsafe and directing that it be demolished. The demolition bid was awarded to St. Clair Trucking. During the delay in demolition the Historic Preservation Commission, as is their obligation, sought alternatives to the demolition process. These alternatives included discussions with Preservation North Carolina, actively seeking a buyer for the property, and conducting maintenance on the property.

A resolution was presented to the Historic Preservation Commission (HPC) by Ms. Victoria Rolinsky-Rader requesting that the HPC recommend to City Council to rescind its condemnation proceeding on the structure and either: 1) expend funds (which would be a lien on the property) to stabilize the house or 2) immediately impose maximum demolition by neglect fines on its owner until he stabilizes the structure. A petition was also presented that reflected persons who are interested in rescinding the order for demolition.

A copy of the previous Condemnation Ordinance, the Order to Remedy Defective Condition from the Code Official, a copy of the letter from Ms. Rolinsky-Rader, a copy of the petition from the concerned citizens, and the resolution from the Historic Preservation Commission are included for your review.

AN ORDINANCE FINDING THAT THE STRUCTURE DESCRIBED HEREIN IN THE CITY OF WASHINGTON IS DILAPIDATED AS WELL AS CONDEMNED AS UNSAFE AND DIRECTING THAT IT BE DEMOLISHED

WHEREAS, the City Council of the City of Washington finds that the structure located on the property having an address of 312 East Water Street, Washington, North Carolina and being owned by William R. Henry, Jr. has been found to be dilapidated pursuant to Section 6-132 *et seq* of the Washington City Code and has been condemned as, among other things, unsafe pursuant to North Carolina General Statute § 160A-426 and that all applicable statutory provisions have been complied with as a condition of the adoption of this Ordinance.

WHEREAS, the structure located on said property should be demolished and removed as directed by the Senior Building Official for, among other things, the reasons stated by the Senior Building Official in his June 12, 2012 Notice of Decision that was served on the property owner.

WHEREAS, the owner of the structure has been given a reasonable opportunity to bring the structure into compliance with the applicable standards of the City Code as well as State statute in accordance with North Carolina General Statute § 160A-425 *et seq* as well as 160A-441 and pursuant to the Order issued by the Senior Building Official in said Notice of Decision.

WHEREAS, said owner has failed to comply with said Order.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Washington as follows.

Section 1. The Senior Building Official is hereby authorized and directed to proceed to demolish and remove the above described structure located at 312 East Water Street in accordance with applicable provisions of the City Code and North Carolina General Statute § 160-432 *et seq* as well as 160A-441 *et seq*.

Section 2. Pursuant to North Carolina General Statute § 160A-432, the amounts incurred by the City in connection with any demolition or removal authorized hereunder shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner prescribed by law as liens for special assessments. The amounts incurred by the City in connection with any demolition or removal authorized hereunder shall also be a lien against any other real property owned by the above named owner and located within the City limits or within one mile of the City limits, except for the above named owner's primary residence.

Section 3. This Ordinance shall be recorded in the Office of the Register of Deeds of Beaufort County, North Carolina.

ORDER TO REMEDY DEFECTIVE CONDITION
6/12/2012

Mr. William R. Henry Jr.
217 Mallard Lane
Hampton, VA 23605

COPY

Re: 312 East Water Street
Washington, NC 27889
No.: 5675-97-5062
To: Mr. William R. Henry Jr./owner/ Parties in Interest in the above referenced property.

This matter coming on to be heard and being heard before the undersigned at 10:30 am on June 12, 2012 at 102 East Second Street, room 115 and the undersigned, having reviewed the file; carefully inspected the premises; heard the testimony; and reviewed the evidence, arguments, and other matters presented at the hearing, hereby makes the following findings of fact.

1. Proper notice of the formal complaint dated 5-30-2012 and stating the charges as well as containing a notice of this hearing was served upon the above owners of and parties in interest in the above property. No one was present at hearing.

2. The following conditions currently exist on the subject property, including dwelling.
 - a. Defects increasing the hazards of fire, accidents, or other calamities.
 - b. Lack of ventilation, light, or sanitary facilities.
 - c. Unsafe, unsanitary, or dangerous conditions.
 - d. Attracting insects or rodents.
 - e. Conditions creating a fire hazard.
 - f. Dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities.
 - g. Deteriorated condition of walls.
 - h. Overloaded floors.
 - i. Defective construction.
 - j. Decay of structure/walls/flooring/foundation.
 - k. Unsafe wiring.
 - l. Inadequate means of access.
 - m. Dangerous, injurious, or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the people of the City of Washington.
 - n. Other:

3. The repair, alteration, or improvement of the dwellings cannot be made at a reasonable cost in relation to the value to the dwelling.

Based upon the foregoing findings of fact, the undersigned concludes said dwelling is unfit for human habitation and is dilapidated.

Based upon the foregoing findings of fact and conclusions, you are hereby ordered as follows.

- ____ 1. To repair, alter or improve such dwellings to comply with the minimum standards of fitness established by Section 4-86 *et seq* of the Washington City Code within ____ days.
- ____ 2. To vacate and close the dwelling within ____ days.
- ____ 3. To vacate and close the dwelling within ____ days and until such repairs, alterations and improvements have been made.
4. Remove or demolish the dwellings within 30 days.

If you fail to comply with this order within the time specified herein, the undersigned may, among other things authorized by the Washington City Code and/or North Carolina state law, either 1) submit to the City Council at its next regular meeting a resolution directing the City Attorney to petition the Superior Court for an order directing you to comply with this order or 2) submit to the City Council an ordinance ordering the undersigned to cause such dwellings to be brought into compliance with this order. The cost of any repairs, alterations or improvements; vacating and closing; and/or removal or demolition, caused to be made or done by the undersigned shall constitute a lien against the subject property and shall also constitute a lien on any other real property of the owner of the subject property located within the City limits or within one mile thereof except for the owner's primary residence.

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

Respectfully,



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

Cc: Mr. Wayne Harrell, Chief Building Official
Mr. John Rodman, Director of Planning and Development
Mr. Franz Holscher, City Attorney
File

113 South Harvey Street
Washington, NC 27889
13th August 2013

John Rodman
City of Washington Planning Office
City Hall
Washington, NC 27889

Dear John,

At the City Council meeting last night, the Mayor, with the support of the Council, stated that Demolition by neglect matters should be specifically referred to the City Council by the Historic Preservation Commission, so that the Council could take action.

Given that we have a very pressing matter of a circa 1880 house identified as a contributing structure to the Historic District that is under threat of Condemnation by the city, and subsequent destruction. located at 312 Water Street, I am requesting that this issue be put on the agenda for action at the next meeting of the Commission. We do not have time to lose on this house. I am requesting that a motion be prepared, asking the City Council to use the tools in the Demolition by Neglect ordinance to either 1) expend funds (which would be a lien on the property) to stabilize the house or 2) immediately impose maximum demolition by neglect fines on its owner until he stabilizes the house. We should also ask the City Council to rescind its Condemnation proceeding on this house.

Sincerely,


Victoria Rolinsky-Rader

cc: City Manager

PETITION

We, the undersigned, petition the City of Washington and its agencies not to order the destruction of the house located at 312 Water Street, which was constructed about 1880 and is officially listed as a contributing structure to Washington's National Register Historic District, which is in savable condition, and has multiple people interested in restoring it.

Name:

Address:

Tom Pader

113 S. Harvey St.

Dianna C. Adams

1223 Harvey St.

ART TYNDALL

110 HARVEY ST.

Mari Mason

119 Harvey St.

Karen Tripp

625 E. Main St

Denae Steen

383 E. main St.

Jackie Synclaire

110 S. HARVEY ST.

Chanelle Mason

119 S Harvey St. Washington DC

Maurice Budgman

318 E Water St.

Lucie Wooten

311 E Main Str.

Joe Wooten

311 E Main Str.

Free Conyter

210 Water St

Ethel Johnson

307 East Main St

Whitney Tolson

238 EAST Second St - city

Richard Young III

142 E. Main Wash D.C.

PETITION

We, the undersigned, petition the City of Washington and its agencies not to order the destruction of the house located at 312 Water Street, which was constructed about 1880 and is officially listed as a contributing structure to Washington's National Register Historic District, which is in savable condition, and has multiple people interested in restoring it.

Name:

Address:

W. D. McNeil

628 B - E MAIN ST

Sharon Owens

622 E Main

Neil M. Croche

609 E. Main St.

Ray Barber III

609 E. Main St.

J Scott Cox

610 E Main St.

Robin Banks

550 E Main St

Elton G. Hudson

533 East. Main St

Samuel Byn

523 E main St

Richard [unclear]

516 E MAIN ST

Cheryl M. Wilson

516 E. Main St

Michael [unclear]

506 E. Main St

Dale [unclear]

428 E Main

Michelle [unclear]

428 E. MAIN ST

Edith Jenkins

412 E. Main

 COPY Martin
Tues 7:00

PETITION

We, the undersigned, petition the City of Washington and its agencies not to order the destruction of the house located at 312 Water Street, which was constructed about 1880 and is officially listed as a contributing structure to Washington's National Register Historic District, which is in savable condition, and has multiple people interested in restoring it.

Name:

Address:

MaryAnn Fay
Dorcas O'Rourke
Brittany Gay
Lauri Huron
Melissa Henley
Tom Tunney
Frances C. Pearce
Cornelia Sharpe
Luciane Sharpe
Michael J. Sharpe

501 E. Main St - Wash -
510 East 2nd St Wash.
100 Armory Pt, Wash.

123 Lobo Farm Rd.

506 East Main St.

303 Willow Court

203 South Baywood Lane

101 Azalea Drive

101 Azalea Drive

101 Azalea Drive

 COPY

George H Trimm

710 EAST MAIN ST

Sally S. Bliley

110 Academy St.

Alan Jeffe

323 E. Main St

J.P. Wells

702 E. Main St

Carol Miller
(if available)

409 E. Main St

Timmy (son)

491 East Main

Nov St Amst

427 E Main St

Dana A Cushing

431 E Main St

Pat Banks

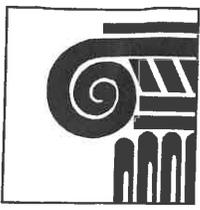
602 E. Main St.

Tim Coyne

421 E. 2nd St.

JUSTIN FERRARI

604 W. 2nd ST.



Resolution

WHEREAS, the house located at 312 Water Street is a particularly notable example of late 19th century residential construction, and

WHEREAS, the house located at 312 Water Street is listed as a contributing structure to the Washington Historic District, and

WHEREAS, the house located at 312 Water Street is bordered on three sides by houses of the mid to late 19th century, and

WHEREAS, loss of the house at 312 Water Street would severely and irreparably harm the streetscape and the historical integrity of the Historic District block in which it is located, and

WHEREAS, multiple people have expressed interest in acquiring and restoring the house located at 312 Water Street, and

WHEREAS, the owner of the house at 312 has for a considerable period of time neglected maintenance and upkeep on it,

BE IT THEREFORE RESOLVED, that the Historic Preservation Commission requests immediate action by City Council to either use city funds which would become a lien on the property to stabilize the house located at 312 Water Street, or in the alternative to begin imposing the maximum daily fine for demolition by neglect.

Motion made by: Victoria Rolinsky-Rader

Seconded by: Judi Hickson

All voted in favor -



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Cynthia S. Bennett, City Clerk
Date: September 26, 2013
Subject: Appointments to Board of Library Trustees
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

Board of Library Trustees

I move that the City Council appoint _____ to the Board of Library Trustees, to fill the expired term of **Muriel Brothers**, term to expire June 30, 2019.

I move that the City Council appoint _____ to the Board of Library Trustees, to fill the unexpired term of **Raymond Freeman**, term to expire June 30, 2018.

BACKGROUND AND FINDINGS:

Nominations will be made by the Council liaison at the October 7, 2013 Council meeting. Advertisements for vacant positions have published in the Washington Daily News and Cable 9.

PREVIOUS LEGISLATIVE ACTION:

Appointments continued from September 9th Council meeting

FISCAL IMPACT :

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

SUPPORTING DOCUMENTS:

Board Applications

City Manager Review: _____ Concur _____ Recommend Denial but No Recommendation

10/2 Date October 7, 2013

Requested Board LIBRARY BD. OF TRUSTEES

CANDIDATES REQUEST FOR APPOINTMENT TO BOARDS, COMMISSIONS, AND/OR AUTHORITY OF
THE CITY OF WASHINGTON

NAME STEPHEN H. MOLER

ADDRESS 203 LEE PLACE, WASHINGTON, N.C

PHONE (WORK) (252) 948-3888 (HOME) (252) 974-0479

E-MAIL ADDRESS STEVE.MOLER@NCPARKS.GOV

DO YOU LIVE WITHIN THE CORPORATE LIMITS OF WASHINGTON? YES () NO ()

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 43 YEARS

YEARS OF EDUCATION POST-UNDERGRADUATE

HAVE YOU SERVED ON A BOARD/COMMISSION OF THE CITY? YES () NO ()

IF YES, PLEASE INDICATE CITY PLANNING BOARD

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A
BOARD/COMMISSION? NO IF YES, EXPLAIN _____

STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): Use back of
sheet if additional space is needed.

I SERVED ON THE BROWN LIBRARY EXPANSION COMMITTEE BACK
IN THE 1980s. I HAVE SERVED ON OTHER BOARD IN THE PAST. I WAS CHAIRMAN
OF BOARD OF BEAUFORT CO. ARTS COUNCIL BACK IN 1984.

I HAVE A STRONG INTEREST THE BROWN LIBRARY AND I USE ITS
SERVICES.

NOTE: This information will be used by the City Council in making appointments to Boards and Commissions
AND, in the event you are appointed, it may be used as a news release to identify you to the community.

Date

Sept 26, 2013

Signature

Stephen H Moler

CANDIDATES REQUEST FOR APPOINTMENT TO BOARDS, COMMISSIONS, AND/OR AUTHORITY OF THE CITY OF WASHINGTON

NAME Leesa Payton Jones

ADDRESS 324 East 10th Street Washington NC 27889

PHONE (WORK) 609-444-8974 (HOME) 252-833-0995

E-MAIL ADDRESS Leesawisdom@aol.com

DO YOU LIVE WITHIN THE CORPORATE LIMITS OF WASHINGTON? YES NO

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 18 YEARS

YEARS OF EDUCATION 7 (City University of New York, Philadelphia Community College)

HAVE YOU SERVED ON A BOARD/COMMISSION OF THE CITY? YES NO

IF YES, PLEASE INDICATE _____

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? No IF YES, EXPLAIN _____

STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): *Use back of sheet if additional space is needed.*

I feel I am qualified for this appointment because I believe that libraries enhance the quality of a community and it's welfare. A well endowed library and the Board that ensures it's viability is an asset to everyone. I believe in the mission of the Library and what it means to Washington. I am producing a documentary about Washington for PBS and 85% of my research was done at the Brown Library. I am an advocate for promoting the vital resource this Library is and will work hard to add to it's mission and function.

NOTE: This information will be used by the City Council in making appointments to Boards and Commissions AND, in the event you are appointed, it may be used as a news release to identify you to the community.

July 9 2013

Date

Leesa P Jones
Signature

Requested Board Library

CANDIDATES REQUEST FOR APPOINTMENT TO BOARDS, COMMISSIONS, AND/OR AUTHORITY OF THE CITY OF WASHINGTON

NAME Joe Phipps

ADDRESS 101 River Chase, Washington, NC 27889

PHONE (WORK) 252-792-1521 (HOME) 252-946-3406

E-MAIL ADDRESS joekrishipps1@suddenlink.net jhipps@martincc.edu

DO YOU LIVE WITHIN THE CORPORATE LIMITS OF WASHINGTON? YES NO

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 16 YEARS

YEARS OF EDUCATION 17

HAVE YOU SERVED ON A BOARD/COMMISSION OF THE CITY? YES NO

IF YES, PLEASE INDICATE _____

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? none IF YES, EXPLAIN n/a

STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): *Use back of sheet if additional space is needed.*

I believe strongly in the mission of the board.

NOTE: This information will be used by the City Council in making appointments to Boards and Commissions AND, in the event you are appointed, it may be used as a news release to identify you to the community.

5/15/2013

Date

Joe Phipps

Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: October 7, 2013
Page 50 of 208



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Kristi Roberson, Parks & Recreation Manager
Date: October 7, 2013
Subject: Authorize City Manager to Contract with Mid-East Commission to complete the Parks & Recreation Comprehensive Pedestrian Plan for the City

Applicant Presentation: None
Staff Presentation: None

RECOMMENDATION:

I move City Council Authorize the City Manager to sign a contract with Mid-East Commission to complete the City of Washington Comprehensive Pedestrian Plan.

BACKGROUND AND FINDINGS:

On May 15, 2013 the City was awarded the Community Transformation Grant to complete a Comprehensive Pedestrian Plan in the amount of \$10,000. The City accepted the Community Transformation Grant on May 20, 2013.

This project has a completion date of July 2014.

PREVIOUS LEGISLATIVE ACTION

May 15, 2013 – grant awarded.
May 20, 2013 - City Accepted CTG \$10,000.

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 10/2 Date Concur AWT Recommend Denial _____ No Recommendation _____

MID-EAST COMMISSION

City of Washington Comprehensive Pedestrian Plan Update Services Contract July 1, 2013 – June 30, 2014

THIS AGREEMENT, made this ___ day of _____, 2013, by and between the Mid-East Commission, hereinafter called the “Commission,” and the City of Washington, North Carolina, hereinafter called the “Council.”

WITNESSETH

WHEREAS, the Commission operates to provide Planning and Technical Assistance to Local Governments in Region Q, and

WHEREAS, the Council, has requested the assistance of the Commission.

NOW, THEREFORE, the Commission and the Council mutually agree as follows:

1. Employment and Scope of Work

The Council hereby agrees to engage the Commission and the Commission agrees to perform in a satisfactory and proper manner the work as described in the detailed “Scope of Services” set forth in Exhibit A, attached hereto, and by this reference made a part hereof.

2. Length of Contract

The work of the Commission shall commence on or after the ___ day of _____, 2013, and shall be undertaken and completed in such sequence as to assure expeditious completion in light of the purposes of this Contract; but, in any event, the work required herein shall not extend beyond the Scope of Services set forth in Exhibit A, and this contract and all conditions of this contract shall expire on the 30th day of June 2014.

3. Assignability

The Commission shall not assign any interest in this Contract, and shall not transfer any interest in the same whether by assignment or substitution, without the prior written consent of the Council, unless specifically contained in the Scope of Work.

4. Compensation and Method of Payment

The Council will pay the Commission for the services provided hereunder, based upon an hourly rate for actual hours of work provided to the Council by the Commission staff. Associated travel costs authorized by the Council will be an extra charge. Such travel will include periodic (monthly) trips around the City for evaluation purposes.

The total of services shall not exceed \$10,000.00. The Commission will issue an invoice to the Council on a Monthly Basis. The Council will issue a check to the Commission upon receipt of the agreed upon services as set forth in Exhibit A.

5. Termination of Contract for Cause

The Council shall have the right to terminate this Contract by giving written notice to the Commission of such termination forty-five (45) days before such effective date.

6. Changes

The Council may from time to time request changes in the Scope of Work or services to be performed by the Commission hereunder. Such changes, including any increases or decreases in the Commission compensation, which are mutually agreed upon by and between the Council and the Commission, shall be incorporated as written amendments to the Contract.

7. Records

The Commission shall maintain financial records pertaining to this Contract for three years after final settlement of the Contract or until cleared by audit.

8. Access to Records

The Commission shall have access to all pertinent records of the City of Washington to assist the Commission staff in providing planning and technical services and as a part of this contract to assure that proper recordkeeping is maintained.

9. Interest of Contractor

The Commission covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. The Commission further covenants that in the performance of this contract no person having any such interest shall knowingly be employed.

10. Findings Confidential

Any reports, information, data, etc., given to or prepared or assembled by the Commission under this contract which the City of Washington requests to be kept confidential shall not be made available to any individual or organization other than the Washington City Council. The City of Washington is legally bound to disclose anything that is a public record.

11. Complete Agreement

This Contract contains the complete agreement of the Parties and may not be modified in any respect except by written amendment hereto.

12. Applicable Laws

The Parties agree that this document is to be governed, construed, and enforced in accordance with all of the laws of the State of North Carolina.

13. Property Rights

All documents, studies, reports, data, designs, drawings and other similar items produced by the Commission in the performance of this agreement shall be the sole property of the Council, and the City of Washington.

By: _____
Timmy Baynes, Executive Director
Mid-East Commission

By: _____
The Honorable Archie Jennings, Mayor
City of Washington

Date: _____

Date: _____

Attest: _____

Attest: _____

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

Signed _____
Finance Officer

EXHIBIT A

SCOPE OF SERVICES

Task 1: Base Data Collection

Mid-East Commission Planners will work with the City to gather all available relevant documents relating to pedestrian concerns, such as: plans, ordinances and other relevant written documents as well as base GIS and/or CAD layers such as current land use and zoning, street layer, and if available, rights of way. This process is anticipated to begin in August 2013 and will be completed in December 2013.

Task 2: Organization Meeting with City Staff

Mid-East will meet with the City's designated project manager, any associated recreation department staff, and City Public Works staff for introduction to the project and to discuss roles in the process. This meeting will take place in August 2013. This meeting will result in:

- Finalization of scope and time lines
- Discussion of City roles and responsibilities
- Identification of stakeholder groups and target meeting dates

Task 3: Field Work

Mid-East will conduct an initial field survey of the City to gain familiarity with the street system, typical street conditions, areas of development, perceived "hot spots" for pedestrian traffic, potential off-road connectivity, etc. Town staff will be encouraged to facilitate this survey in order to point out and provide commentary on conditions from a community standpoint. Mid-East will document areas of interest identified through the field survey and conduct additional reconnaissance as needed. This process is anticipated to be completed in October 2013.

Task 4: Existing Conditions Map and Inventory

Mid-East will compile data already available to our office and supplement it with City, NCDOT, and other sources of data, as well as develop the initial field survey, to lead to the development of an existing conditions map. Data on this map will include: all streets, street widths, location of all existing pedestrian facilities, trails, and other pertinent items, existing zoning, right-of-way ownership, posted speed limit, ADT and traffic counts (including heavy vehicles), crash data, trip generators and destination points, regional context, utility easement mapping (if available), etc. Mid-East will present this draft map to the City staff for review. Mid-East will also produce a final Existing Conditions Map which will incorporate input from City and the Pedestrian Advisory Committee. This process is anticipated to begin in October 2013 and be completed in December 2013.

Project Inventory shall include:

- Origins and destination points, trip generators
- Population and Demographics
- Existing facilities – location, condition, accessibility, adherence to standards, clearance, barriers, gaps, hazards, connectivity, capacity, function, degree of use
- Signage and markings, amenities

- Intersection conditions
- Interface with other forms of transit
- Current statutes, ordinances, policies, plans, programs, related staffing, agencies, committees, advocacy groups, partnerships and funding

Task 5: Advisory Committee Meeting I

Mid-East will facilitate the Advisory Committee meeting. This meeting will be conducted either in October or November of 2013. The agenda will include:

- Review and comment on the initial field survey findings
- Review of the existing conditions map(s) and inventory
- Identification and analysis of high-risk areas and populations
- Identification of Steering Committee member issues related to pedestrian planning
- Identification of any additional stakeholder groups (law enforcement, health, transportation, parks and recreation, planning, etc.) who should be interviewed to ensure that their needs are addressed in the planning process.

Task 6: Stakeholder Interviews

Mid-East Planning Staff will conduct stakeholder interviews with key individuals or organizations identified by the Advisory Committee or City staff. These interviews will be conducted in November and December of 2013.

Task 7: Open House I

Mid-East Planning Staff will plan and conduct a public meeting to inform the public of the project as well as gather feedback from the public on pedestrian and mobility issues and concerns. This interactive meeting will give participants the opportunity to indicate their residential location, their priorities for projects, etc. The Mid-East will work along with the City to advertise for the meeting as well as secure a location for the meeting. Planning for this meeting will begin in November 2013 with the meeting to be conducted in January 2014.

As part of this public input step, Mid-East will create an online survey through Survey Monkey to gather additional public input. The Mid-East will be responsible for advertising the survey while the City will be responsible for posting a link to the survey on the City website.

Task 8: Advisory Committee Meeting II

Mid-East will conduct a second Advisory Committee meeting to review the public meeting results with the Committee. The meeting will be structured to provide direction for preparation of a draft plan. This meeting is anticipated to take place in February 2014.

Task 9: Preparation of Draft Pedestrian Master Plan

Mid-East will begin drafting the updated plan, based upon input from the Advisory Committee and other citizen comments. Writing of this draft is anticipated to begin in February 2014 and be completed in March of 2014. The Plan will follow NCDOT's expanded municipal pedestrian plan template, addressing the following items:

- Vision, Goals and Scope (immediate concerns and long term aspirations)

- An explanation of the benefits of a walking
- General Description of Existing Facilities, Current Conditions, Trends, Policies, Projects, and Programs
- Existing Conditions Map depicting the entire project area (the City and its ETJ) in terms of current pedestrian facilities, streets, trails, origin/destination points, areas of focus, water bodies, topography, zoning, and other pertinent information.
- Identification of Target Populations, Unique Opportunities and Relevant Issues
- Overall Project Recommendations and Implementation Strategy, including coordination with existing related plans, regulations, and ordinances, as well as State and Federal guidelines
- Recommended Policies, Ordinance Modifications and Programs, including enforcement, community awareness, incentive and safety
- Recommended Implementation Strategies including potential partnering agencies and organizations
- Specific Project Identification and Priority List
- Comprehensive System Map clearly showing each proposed project according to location and type, proposed public transit routes and facilities, and other pertinent information.
- Facility Standards and Guidelines for sidewalk improvements, off-road multi-use paths, signage, signalization, etc.
- Cost Estimates for Proposed Facilities
- Funding strategies and recommendations for implementation and maintenance (including but not limited to grant information, local budget recommendations and maintenance programs, staffing, committee formation, ongoing evaluation)
- Specific references to additional existing documents that may aid implementation of the Plan.
- A guide to the State, regional, and local adoption and approval process for the Plan

Task 10: Open House II

Mid-East Planning Staff will present a project plan for public review at a second Open House meeting. Staff will convey how previous public input has shaped the plan, and elicit public reaction to the overall plan and project priorities. Like the first Open House, this meeting will be interactive and oriented to achieve maximum citizen input on the plan and project recommendations. Mid-East will facilitate and provide all materials for the meeting, with the Mid-East working along with the City to advertise the meeting and securing the meeting location. Planning for this meeting will begin in March 2014 with the meeting to take place in April 2014.

Task 11: Advisory Committee Meeting III

Mid-East will conduct a third Advisory Committee meeting to review the second public meeting results and the draft plan with the Committee. The meeting will be structured to provide direction for revising the draft plan. This meeting would be anticipated to take place in April 2014.

Task 12: Review of Draft Pedestrian Plan

After incorporating the review decisions of the Advisory Board, Mid-East will submit the plan draft to NCDOT Division 2, and the Mid-East RPO for review and comment. If significant

revisions to the Plan are recommended, a fourth Advisory Committee meeting may be required to determine final revisions. Mid-East will periodically apprise the reviewing agencies of the project as it progresses. Mid-East will make the plan draft available for public review and comment, on the web through the City website, throughout the development of the project. This process will begin in April 2014 and conclude in May 2014.

Task 13: Plan Revision and Final Assembly

Mid-East will make revisions to the Plan based upon agency comments. Mid-East will then resubmit the draft to the and to the City Recreation Advisory Committee and Planning Board. Mid-East will attend the review meeting of both the Recreation Advisory Committee and Planning Board, answer questions, and make necessary revisions to the Plan per recommendations. This process will begin in April 2014 and conclude in June 2014.

Task 14: Plan Adoption

Mid-East will attend a meeting of the City Council public hearing in order to present the Plan, answer questions, and otherwise assist the City staff with the Plan. Mid-East will revise the Plan per recommendations by the City Council. Additionally, Mid-East will submit the Plan to the Mid-East RPO for endorsement. The City will be responsible for advertising the public hearing. Mid-East will make its presentation in June 2014 and make necessary corrections for the July 2014 City Council meeting.

Task 15: Final Delivery

Upon adoption of the Plan by the City Council in July of 2014, Mid-East will furnish the City with the following:

- 15 printed copies of the final bound document with reduced (11"x17") maps and Executive Summary
- One complete Plan in PDF format
- All original electronic files used to generate the PDF file in editable Microsoft Office programs with full access rights
- One print ready original
- All ArcGIS files used to create the maps in ArcGIS 10 format.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: John Rodman, Planning & Development
Date: September 26, 2013
Subject: Accept Bids & award contract – Lighthouse Restrooms
Applicant Presentation: N/A
Staff Presentation: John Rodman, Planning and Development

RECOMMENDATION:

I move that the City Council accept the bids as presented and award the construction contract to the lowest responsible bidder, White Construction and Design, in the negotiated amount of **\$331,222**.

BACKGROUND AND FINDINGS:

The Lighthouse restroom sub-committee has completed work on final specifications and materials for the project. Mosley Design Group has completed work on a set of sealed drawings in order to begin the process of bidding the project. Site layout services, including surveying, grading and site plans have been completed. Bid documents were completed and an "Invitation to Bid" was extended. A pre-bid meeting was held on Thursday, August 29, 2013. Sealed bids for the construction of the Lighthouse Restrooms were received until 4:00 pm September 18, 2013. Bids were opened at that time.

PREVIOUS LEGISLATIVE ACTION

Appropriation approved as part of 2012-2013 budget in the amount of \$300,000

FISCAL IMPACT

Currently Budgeted (Account 78-40-6124-0401) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Contract
Bids Submitted

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 10/2 Date Concur but Recommend Denial _____ No
 Recommendation _____
 October 7, 2013
 Page 59 of 208

Construction Bids Submitted:

White Construction & Design	\$349,932
AR Chesson Co.	\$369,272
Stocks & Taylor Construction	\$385,000

Negotiated Bid:

White Construction & Design

Alternate Pricing:	Septic Sewer	-\$7,000
	Plumbing	-\$2,110
	Electrical	-\$2,100
	Mechanical	-\$5,000
	Windows/Doors	<u>-\$2,500</u>
		-\$18,710

White Construction & Design	\$349,932
	<u>-\$ 18,710</u>
	\$331,222



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: Peterson Building Handicap Ramp and Entrance Bid Award and Purchase Order
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council award the bid to replace the Peterson Building handicap ramp and entrance to Horton Contractors and approve a \$33,800 purchase order.

BACKGROUND AND FINDINGS:

Three bids to replace the Peterson Building handicap ramp and entrance were received and Horton Contractors was the low bid. The ramp and entrance will match the Civic Centers. Horton was also the contractor for the Civic Center deck.

PREVIOUS LEGISLATIVE ACTION

2013/2014 Budget - \$34,000

FISCAL IMPACT

Currently Budgeted (Account 10-40-6123-7401) Requires additional appropriation
No Fiscal Impact

SUPPORTING DOCUMENTS

Bid Tab
Requisition

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *bwt* Concur _____ Recommend Denial _____ No Recommendation
10/7 Date

BID TABULATION

Bid for: Peterson Building Porch and Ramp
Opened: 10:00 AM, Thursday
September 17, 2013

<u>Item</u>	<u>Description</u>	<u>Horton Contractors</u>	<u>Paul Woolard Constr.</u>	<u>Stocks and Taylor</u>
1	Labor and material to build ramp and porch at the Peterson Building	\$33,800.00	\$35,802.00	\$52,000.00

Recommendation: The recommended vendor would be Horton Contractors.

Signed: Michael Whaley

Requisition Form

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

Requisition #:13595
PO #: Not Assigned
User Name: Mike Whaley

Date: 09/18/2013
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$33,800.00
Ship To:
CITY OF WASHINGTON WAREHOUSE
203 GRIMES ROAD
WASHINGTON, NC 27889

HORTON CONTRACTOR INC.
121 BATH CIR
WASHINGTON, NC 27889

Vendor Instructions: Recreation Dept., Mike Whaley, 252-975-9308.

Quantity	Description	Job Number	Unit Price	Extended
1	Labor and material to construct a brick handicap ramp and remove the existing wood ramp. The entrance on the parking lot side will be removed and replaced with an elevated brick and concrete slab. Wrought iron handrails will be installed around both areas matching the handrail on the Civic Center. Matching brick to the Civic Center will be used.		\$33,800.00	\$33,800.00
Sub Total				\$33,800.00
Total Tax				\$0.00
Total				\$33,800.00

Account Number	Account Description	Amount
10-40-6123-7401	INSTALLMENT PURCHASES	\$33,800.00
Total		\$33,800.00

Approval List

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



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: Boardwalk Repair & Purchase Order
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council approve a \$22,777 purchase order to complete the repair of the waterfront boardwalk.

BACKGROUND AND FINDINGS:

The completion of the last phase of the boardwalk repair was sent out to bid. Three proposals were received. One of the three was rejected because it did not adhere to the bid request. Roanoke Electric submitted the lowest bid and it will be awarded to them. They also did the work for the second phase of this project. \$25,000 was budgeted for this project.

PREVIOUS LEGISLATIVE ACTION

2013/2014 Budget - \$25,000

FISCAL IMPACT

Currently Budgeted (Account 10-40-6130-7400) Requires additional appropriation
No Fiscal Impact

SUPPORTING DOCUMENTS

Bid Tab
Requisition

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

BID TABULATION

Bid for: Replace Boardwalk Boards
Opened: September 10, 2013, 2:00 PM

<u>Item</u>	<u>Description</u>	<u>Roanoke Electric</u>	<u>Paul Woolard</u>	<u>Turning Point</u>
1	Replace Boardwalk Boards	\$22,777.00	\$26,992.00	\$26.19/ft.

Recommendation: The recommended vendor would be Roanoke Electric. Turning Point was rejected because they did not quote a total turnkey price.

Signed: Micheal Whaley

Requisition Form

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

Requisition #:13593
PO #: Not Assigned
User Name: Mike Whaley

Date: 09/18/2013
Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$22,777.00
Ship To:
CITY OF WASHINGTON WAREHOUSE
203 GRIMES ROAD
WASHINGTON, NC 27889

ROANOKE ELECTRIC CORPORATION
PO BOX 7
PANTEGO, NC 27860

Vendor Instructions: Recreation Dept., Mike Whaley, 252-975-9308.

Quantity	Description	Job Number	Unit Price	Extended
1	This order is for the final phase of the boardwalk. This encompasses replacement of the boards in front of the Estuarium, the balance of the boardwalk boards and the replacement of some handrail on the boardwalk. The material used is to be 2" X 6" #1 Prime , 40 year, ground contact salt treated boards. Copper Azole to be .14/lbs/cu ft..Supply certification sheet to purchasing. Boards will be secured with 3" long 304 or 316 stainless steel screws. There will be 3 screws per floor joist. There are some transition areas that will require sanding or beveling to prevent trip hazards. Some areas may require additional 4" X 4" boards and bolts. Hand rails that are replaced will be secured with 3" stainless screws and no less than 6 feet in length. Cutting material is not allowed over the water on the boardwalk. A certificate of insurance is required prior to work beginning with the City of Washington named as the additional insured. The contractor will get a permit but there will be no fees.		\$22,777.00	\$22,777.00
Sub Total				\$22,777.00
Total Tax				\$0.00
Total				\$22,777.00

Account Number	Account Description	Amount
10-40-6130-7400	CAPITAL OUTLAY	\$22,777.00
Total		\$22,777.00

Approval List

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



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: Adopt EDA Grant Project Ordinance Amendment & Budget Ordinance Amendment
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt the EDA Grant Project Ordinance to the revised amounts on the attached Ordinance and adopt the Budget Ordinance Amendment for the transfer of the City's match.

BACKGROUND AND FINDINGS:

The budgeted amounts for engineering fees have been revised to reflect that the 16" water line project will not have any fees. Both ordinances have been revised to reflect the correct amounts.

PREVIOUS LEGISLATIVE ACTION

2013/2014 Budget

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Grant Project Ordinance Amendment
Budget Ordinance Amendment

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

10/7 Date October 7, 2013
Page 67 of 208

**GRANT PROJECT ORDINANCE FOR THE EDA
GRANT AWARD
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2013-2014**

BE IT ORDAINED by the City Council of the City of Washington, North Carolina, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted:

Section 1. The project authorized is to provide funds for the design and construction of water and sewer infrastructure improvements.

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

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

76-90-8221-0400	Admin. & Legal- Water Line	\$ 10,280
76-90-8221-0405	Architectural & Eng. - Water Line	0
76-90-8221-0410	Other Architect & Eng.- Water Line	0
76-90-8221-0420	Proj. Insp. Fees & Audit- Water Line	0
76-90-8221-4500	Construction- Water Line	940,701
76-90-8221-9900	Contingency- Water Line	102,391
76-90-8221-0401	Admin. & Legal- Liquid Chlorine	3,068
76-90-8221-0406	Architect & Eng. - Liquid Chlorine	31,470
76-90-8221-0415	Other Arch. & Eng - Liquid Chlorine	10,004
76-90-8221-0425	Inspect Fees - Liquid Chlorine	19,071
76-90-8221-4505	Construction- Liquid Chlorine	280,722
76-90-8221-9901	Contingency- Liquid Chlorine	30,555
77-90-8221-0400	Admin. & Legal- Cherry Run	1,070
77-90-8221-0405	Architectural & Eng. - Cherry Run	10,971
77-90-8221-0410	Other Architect & Eng. - Cherry Run	3,488
77-90-8221-0420	Proj. Inspect Fees- Cherry Run	6,649
77-90-8221-4500	Construction- Cherry Run	97,866
77-90-8221-9900	Contingency- Cherry Run	10,652
77-90-8221-0401	Admin. & Legal- Generator	5,066
77-90-8221-0406	Architectural & Eng. - Generator	51,969
77-90-8221-0411	Other Architect & Eng. - Generator	16,520
77-90-8221-0425	Proj. Inspect Fees- Generator	31,494
77-90-8221-4505	Construction- Generator	463,577
77-90-8221-9901	Contingency- Generator	50,458
77-90-8221-0402	Admin. & Legal-Water & Bonner	5,516
77-90-8221-0407	Architect & Eng. -Water & Bonner	56,589
77-90-8221-0412	Other Architect .-Water & Bonner	17,989
77-90-8221-0426	Proj. Inspect Fees-Water & Bonner	34,292

77-90-8221-4506	Construction-Water & Bonner	504,784
77-90-8221-9902	Contingency-Water & Bonner	<u>54,944</u>
	Total	\$2,852,156

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

76-90-3480-0000	EDA Grant Funds- Water	\$ 722,129
77-90-3480-0000	EDA Grant Funds- Sewer	719,920
76-90-3980-0000	City Contribution-Trans. Water Fund	706,133
77-90-3980-0000	City Contribution-Trans. Sewer Fund	<u>703,974</u>
	Total	\$2,852,156

Section 5. The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient detailed accounting records to satisfy the requirements of the EDA grant agreements.

Section 6. Funds may be advanced from the Water and Sewer Funds for the purpose of making payments that are due. Reimbursement requests should be made to the granting 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 grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detail analysis of past and future costs and revenues on this grant project in every budget submission made to the City Council.

Section 9. Copies of this grant project ordinance shall be furnished to the City Clerk, 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 7th day of October, 2013.

ATTEST:

CITY CLERK

MAYOR

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That the following accounts of the Water and Sewer Fund revenue budget be increased by the respective amounts indicated for the City's cost share of the EDA Grant.:

30-90-3991-9910	Fund Balance Appropriated	\$ 706,133
32-90-3991-9910	Fund Balance Appropriated	<u>703,974</u>
	Total	\$ 1,410,107

Section 2. That the following accounts of Water and Sewer Fund appropriations budget be increased by the respective amounts indicated for the City's cost share of the EDA Grant.:

30-90-6610-9276	Transfer to Grant Fund	\$ 706,133
32-90-6610-9279	Transfer to Grant Fund	<u>703,974</u>
	Total	\$ 1,410,107

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 7th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: CDBG SBEA Jumpstart Washington Grant Legally Binding Commitments
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council approve the Promissory Notes and authorize the Mayor to execute the Legally Binding Commitments for the respective businesses participating in the CDBG SBEA Jump Start Washington grant program.

BACKGROUND AND FINDINGS:

Legally binding commitments and promissory notes have been developed to protect the City's interest should a business not fulfill the requirements of the grant.

PREVIOUS LEGISLATIVE ACTION

2013/2014 Budget

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Legally Binding Commitment
Promissory Notes

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: but Concur _____ Recommend Denial _____ No Recommendation
10/7 Date

LEGALLY BINDING COMMITMENT- CREATING JOBS

STATE OF NORTH CAROLINA

City of Washington (LOCAL GOVERNMENT APPLICANT)

East Carolina Import Services, Inc. (COMPANY)

JOB CREATION AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the 6th day of November 2012, by and between East Carolina Import Services, Inc., a corporation authorized to transact business within the State of North Carolina (hereinafter referred to as the "Corporation") and the City of Washington, North Carolina (hereinafter referred to as the "Applicant"). This Agreement will not become effective until all conditions placed upon the Applicant's funding approval are satisfied and funds are released by the Department of Commerce (hereinafter "DOC") pursuant to a Community Development Block Grant (hereinafter "CDBG") with the Applicant.

WITNESSETH

WHEREAS, the Applicant anticipates receiving a CDBG for Program Year 2011 from the DOC in the amount of \$200,000 for the project entitled Jumpstart Washington (11-C-2340). This grant will be used primarily to benefit low to moderate income persons by financing activities under the Small Business and Entrepreneurial Assistance Grant project (the "Project") to be undertaken by the Applicant and the Corporation.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, the Corporation and the Applicant hereby agree as follows:

I. AGREED ACTIONS

A. The Corporation shall execute its responsibilities as identified in the Corporation's narrative exhibits and the employment profiles contained in the Applicant's CDBG application to DOC. Those exhibits and commitments are incorporated herein by reference, as if set out in full. The Corporation agrees to create the jobs and complete the Project hiring in a timely manner. The Corporation currently has continuing operations in the City that employ 3 people and the Corporation commits to employ 1 additional person by **January 16, 2015**.

The Corporation can request DOC to verify the creation of the additional job stated above prior to **January 16, 2015** and release the Corporation from further job creation documentation. In addition, the Corporation commits to employ a person whose household income is within low to moderate income limits in the new job stated above at the Corporation's Facility. The Corporation agrees that, if it fails to create and maintain **1** new job for a person whose household income is within low to moderate income limits prior to **January 16, 2015** or verified by DOC, it will reimburse the Applicant for \$21,875 (total grant amount received by the Corporation, divided by the number of new jobs to be created), for each such job not created.

The Applicant's liability under this Agreement shall not exceed the dollar amount of the grant made by the Department of Commerce. If unforeseen calamity, an Act of God or financial disaster is the cause of action under this section of the Agreement, the Corporation and the Applicant may appeal to DOC for an extraordinary modification of this responsibility. Such modification shall be at the discretion of the Secretary of the Department of Commerce. The requirement that persons of low to moderate income must hold a minimum of seventy percent (70%) of all jobs created through the grant cannot be waived.

B. Each party shall keep and maintain books, records, and other documents relating directly to the receipt and disbursement of grant funds and fulfillment of this Agreement.

C. Each party agrees that any duly authorized representative of the Applicant, DOC, the United States Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all of the books, records, and other documents relating to the grant and the fulfillment of the Agreement for a period of five (5) years following the completion of all close-out procedures respecting the CDBG funds, and the final settlement and conclusion of all issues arising out of the CDBG funds.

D. Notwithstanding anything herein to the contrary, the parties hereto acknowledge the due execution of the CDBG Grant Agreement between the Applicant and DOC and agree that any conflict between the provisions, requirements, duties, or obligations of this Agreement and the CDBG Grant Agreement shall be resolved in favor of the CDBG Grant Agreement.

II. ENFORCEMENT

A. If at the end of the approved project period the Corporation has failed to create the full number of job positions for low to moderate income persons presented in Agreed Actions Section I of this Agreement, then the Corporation will pay to the Applicant an amount calculated in the manner set out in Section I-A of this Agreement.

Private Company Commitment Form

I, _____, an official representative of East Carolina Import Services, Inc. ("Company"), do hereby certify that, if the application for the above referenced funds are approved, the Company will fulfill the following commitments:

- ❖ No other facilities will be abandoned nor will any other persons be displaced as a result of this project.
- ❖ All positions created by this project will be newly created positions and the jobs will not be "pirated" from another facility owned or operated by the Company.
- ❖ The Company will undertake and carry out the project in accordance with this application for CDBG-SBEA assistance. The information pertaining to the Company is accurate.
- ❖ The Company will retain **0** jobs and will create **1** additional new job within the two-year project period. The **1** job created will be filled by a low to moderate income person.
- ❖ The Company agrees to either screen all applications and hires for the required employee statistical information and the required documentation or to allow the Employment Security Commission to perform these functions on their behalf.
- ❖ The Company will either provide the Grantee with a quarterly status report (including the NCUI-101 report form) with sufficient detail for the Grantee to determine the number of hires and the low and moderate income status of each or will allow the Grantee or its representative to complete an on-site review of hiring information to develop a quarterly record of hiring status. This obligation will end at project close out unless the Community Investment and Assistance reviews available information and grants the company permission to stop collecting the required data at an earlier date.

Company Representative

Date

Disclosure of Civil Rights Complaints/Lawsuits & Bankruptcy by a Business

The following business East Carolina Import Services, Inc. hereby assures and certifies that there are no open, unresolved or pending lawsuits against the business participating in this Small Business & Entrepreneurial Assistance project. Furthermore, the business assures and certifies that they have not filed, nor do they have plans to file, for bankruptcy under Title 11 of the United States Code. If there are lawsuits pending, provide an explanation from the company's legal counsel about the circumstances and the impact of a judgment.

Signature of CEO of Business

Title

Date

LIMITED WAIVER OF CONFIDENTIALITY
UNEMPLOYMENT, TAX AND WAGE RECORDS

Name of Taxpayer: East Carolina Import Services, Inc.

Address: _____

Phone: _____

Federal Tax Identification Number _____

NC Unemployment Insurance Account Number: _____

I hereby waive the right to confidentiality, as found in N.C.G.S. 96-4(t), for the limited purpose of authorizing disclosure of certain information contained in the above company's quarterly unemployment insurance tax records filed with the North Carolina Employment Security Commission (the "NC ESC") to the North Carolina Department of Commerce and program administrators (collectively, the "Department") for the limited purpose of administering a Job Development Investment Grant, a One North Carolina Grant, an Industrial Revenue Bond, the Site Infrastructure Development Fund, a Community Development Block Grant, or other program administered by the Department from which the above-referenced company has sought assistance.

NC ESC is hereby authorized to disclose information contained in the above company's quarterly unemployment insurance tax records to the Department for this purpose.

Unemployment insurance tax information provided in the aggregate to NC ESC and disclosed to the Department, and the company's aggregated tax and wage information provided to or otherwise in the possession of the Department, may be treated as public information. This waiver is not intended to release the Department from any obligation it may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Chief Financial Officer or Other Authorized Company Official

Print Name: _____

Title: _____

Date: _____

DOC Form, rev. 9.05

PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (“Borrower”) promises to pay to the City of Washington or order (“Holder”) the principal sum of \$21,875.00, together with interest after default, all as described below.

Borrower acknowledges that Holder has agreed to advance up to the dollar amount indicated above pursuant to the below referenced Grant as well as Program and the Legally Binding Commitment – Creating Jobs, including Private Company Commitment Form, by and among Borrower and Holder (collectively, “Agreement”) that is attached hereto as Exhibit “A” and incorporated herein by reference as if fully set forth. Said Grant, Program, and Agreement require Borrower to, and Borrower hereby agrees to, among other things, incur a full level of private investment; create, fill, and maintain at least one (1) permanent full-time job on or by January 16, 2015, as more specifically provided for in said Agreement; and fulfill all of Borrower’s and Holder’s obligations under the North Carolina Department of Commerce (“DOC”), Community Investment Assistance (“CI”), Community Development Block Grant (“CDBG”) Program, Small Business and Entrepreneurial Assistance (“SBEA”) Grant Agreement City of Washington, with a grant number of 11-C-2340, as well as CI CDBG Program Funding Approval (collectively, “Grant”) and the Jumpstart Washington SBEA Grant Program (“Program”) that are either directly or indirectly dependent upon Borrower for fulfillment. The terms and conditions of said Grant, Program, and the SBEA Grant Program also are incorporated herein by reference as if fully set forth. In the event that 1) Borrower defaults in the performance of its obligations hereunder or under said Agreement, as more specifically provided for in said Agreement, or 2) DOC requires Holder to repay DOC any amount of Grant funds as more specifically provided for in said Agreement, all or a portion of the amount indicated above shall be subject to repayment to Holder or its designee in accordance with said Agreement. All such amounts due thereunder and hereunder shall be due upon demand by Holder, and may be paid directly to DOC if so required. If not paid within thirty (30) days following demand hereunder, the unpaid principal of this Note, and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, Holder may employ an attorney to enforce Holder’s rights and remedies, and Borrower as well as any maker, principal, surety, guarantor, and endorser of this Note hereby agree to pay Holder’s reasonable attorney’s fees not exceeding a sum equal to 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by Holder in exercising any of Holder’s rights and remedies upon default. The rights and remedies of Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singularly, successively, or together against Borrower; the property described in any such security instrument; or any other funds, property, or security held by Holder for payment or security, in the sole discretion of Holder, through repossession of the collateral or as otherwise allowed by law. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including Borrower as well as any maker, principal, surety, endorser, and guarantor hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the

Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by Holder and Borrower.

This Note evidences a debt payable by Borrower and is given for monies that may become owed under the Agreement and is secured by certain Certificate(s) of Title and/or UCC Financing Statement(s), which Certificate(s) of Title and/or UCC Financing Statement(s) reference this Note and is/are a lien(s) upon the property (collateral) therein described.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina, excluding its conflict of laws provisions.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of the _____ day of _____, 2013.

BORROWER:
EAST CAROLINA IMPORT SERVICES,
INC.

By: _____ (SEAL)
RUSSELL F. THIENPONT, President

Date _____

ATTEST:

WENDY THIENPONT, Secretary

NORTH CAROLINA
BEAUFORT COUNTY

I, _____, a Notary Public of the County and state aforesaid, certify that RUSSELL L. THIENPONT personally appeared before me this day and acknowledged that he is President of EAST CAROLINA IMPORT SERVICES, INC., a North Carolina Corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by WENDY THIENPONT as its Secretary.

Witness my hand and official stamp or seal, this _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires: _____

Amendment to Legally Binding Commitment City of Washington and Metropolitan Housing and Community Development Corporation, Inc. FY2005 CDBG Housing Development Program

This Amendment to Legally Binding Commitment for the City of Washington FY05 CDBG Housing Development Program (hereinafter referred to as the "Agreement") is entered into as of the _____ day of _____, 2013, by and between the City of Washington (hereinafter referred to as the "City") and Metropolitan Housing and Community Development Corporation, Inc. (hereinafter referred to as "METROPOLITAN").

RECITALS

WHEREAS, the City received an FY05 Community Development Block Grant-Housing Development (hereinafter referred to as "Grant") in the amount of \$250,000.00 from the North Carolina Department of Commerce, Division of Community Assistance (hereinafter referred to as "DCA"). The purpose of the Grant is to provide funds for land acquisition; the construction of infrastructure that will be maintained by the City; and the development, construction, conveyance, and occupancy of five (5) stick built homes specifically for, to, and by low to moderate income individuals/households (hereinafter referred to as "LMI") within the time period allowed by the Grant and/or DCA, which Grant is incorporated herein by reference as if fully set forth.

WHEREAS, METROPOLITAN is a nonprofit organization that promotes asset building strategies for LMI in the City and Beaufort County, and will perform its obligations under this Agreement consistent with the terms, conditions, and considerations contained herein, said Grant, the FY05 Grant Project Application (hereinafter referred to as "Grant Application"), the Grant Agreement, Funding Approval and any and all subsequent amendments thereto, extensions thereto, and/or other relevant conditions imposed by DCA, all of which are incorporated herein by reference as is if fully set forth (collectively may be referred to as "Grant Documents").

WHEREAS, the release of Grant funds by DCA was contingent upon, among other things, a legally binding commitment between the City and METROPOLITAN that obligates both parties to fulfill the terms of the Grant and, more particularly, defines METROPOLITAN's specific commitment to utilize Grant funds to acquire, develop, construct and convey said homes to LMI.

WHEREAS, the parties hereto previously entered into Legally Binding Commitments dated January 31, 2007 and March 15, 2011, a Promissory Note dated March 11, 2011 (hereinafter referred to as "Original Promissory Note") and a Deed of Trust dated April 27, 2011 (hereinafter referred to as "Original Deed of Trust").

WHEREAS, said March 15, 2011 Legally Binding Commitment required METROPOLITAN to, among other things, reimburse the City for any amount of Grant funds that DCA requires the City to repay to DCA.

WHEREAS, by correspondence dated May 6, 2013, DCA closed said Grant, made a finding that "... the City had failed to document that it has achieved an eligible CDBG National Objective ...", and directed the City to repay Community Assistance (DCA) \$250,000.00 by May 30, 2013. Said letter is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth.

WHEREAS, by correspondence dated June 4, 2013, DCA approved “the City’s submitted plan to repay the CDBG Program over a ten year period with equal annual payments of \$25,000.00 beginning July 1, 2013.” Said letter is attached hereto as Exhibit B and incorporated herein by reference as if fully set forth.

WHEREAS, the City has made said first annual payment of \$25,000.00 to DCA.

WHEREAS, by later correspondence from Richard B. Self, DCA indicated that “the outstanding debt for the City of Washington will be decreased by \$50,000.00 for each unit constructed and occupied by a Low-to-Moderate Income individual family. Any funds already reimbursed to DCA will not be eligible for return to the City as a result of the potential reductions in the future.” Said correspondence is attached hereto as Exhibit “C” and incorporated herein by reference as if fully set forth.

WHEREAS, after the above referenced correspondence, DCA verbally informed the City that said repayment shall occur over a three year period rather than a ten year period.

WHEREAS, in conjunction with said Grant, the City loaned METROPOLITAN \$60,000.00, expended \$10,000.00 for the benefit of METROPOLITAN for additional infrastructure, and expended \$20,000.00 for the benefit of METROPOLITAN for lot clearing. The aforementioned amounts total \$90,000.00 and shall hereafter be referred to as “Loan”.

WHEREAS, said Original Promissory Note and Original Deed of Trust require METROPOLITAN to repay said \$60,000.00 loan if METROPOLITAN does not satisfy certain obligations in said March 15, 2011 Legally Binding Commitment or the Grant Documents.

WHEREAS, upon execution of this Agreement and a related, new Promissory Note as well as a new Deed of Trust, this Agreement shall be a novation of and replace, in their entirety, said Legally Binding Commitments referenced above dated January 31, 2007 and March 15, 2011 and said Legally Binding Commitments shall be void, cancelled and of no further legal affect.

NOW, THEREFORE, in consideration of and in exchange for the mutual promises set forth herein, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the City and METROPOLITAN mutually agree as follows.

PART A – ACTIVITIES AND PERIOD OF PERFORMANCE

- Section 1 METROPOLITAN will perform the following.
1. Construct and complete installation of the infrastructure, including paving, contemplated by the Grant Documents, as amended, as necessary to support the five (5) affordable housing unit development of Phase 1.
 2. Complete construction, conveyance and occupancy of five (5) affordable housing units for, to, and by LMI consistent with and as described in the Grant Documents no later than June 30, 2016.
 3. Qualify and counsel potential homebuyers to purchase completed units.
 4. Market and coordinate the sale of the properties to LMI households.
 5. Address all questions regarding the Grant and Grant Documents to the City-appointed Grant contact, not DCA.

6. Fulfill all of its and the City's obligations under the Grant and Grant Documents that are either directly or indirectly dependent upon METROPOLITAN for fulfillment. Such obligations include, but are not limited to, complying with all applicable certifications and requirements, including but not limited to those certifications and requirements required by the North Carolina Department of Commerce and DCA. As may be more specifically provided for in the Grant Documents, METROPOLITAN shall, among other things, comply with the procurement standards set forth in 4 N.C. Administrative Code 19L. 0908.
7. Simultaneously with the execution hereof, METROPOLITAN shall make payment to the City in the amount of \$25,000.00, which amount represents reimbursement to the City for the City's first annual payment of \$25,000.00 to DCA referenced above.
8. Pay to the City any subsequent payment (hereinafter referred to as "Payment(s)") required of the City by DCA.
9. For every Payment the City is required to make to DCA, METROPOLITAN shall pay to the City the additional amount of \$30,000.00, which \$30,000.00 amount(s) shall be a partial repayment(s) on said above described Loan.
10. Simultaneously with the execution hereof, METROPOLITAN shall execute and deliver to the City a new Promissory Note and a new Deed of Trust, in a form satisfactory to the City in the City's sole discretion, secured, singularly or collectively, by all properties acquired in conjunction with this Agreement and the Grant, including Grant funds. Said new Promissory Note and new Deed of Trust shall be in the amount of \$340,000.00, which amount consists of \$250,000.00 in Grant funds previously expended and the \$90,000.00 Loan (collectively may be referred to as "Indebtedness"). Said Indebtedness will be reduced by any amount paid by METROPOLITAN to the City pursuant to this Agreement. Said Indebtedness shall also be reduced by the same amount of any decrease by DCA to the above referenced outstanding debt owed by the City to DCA on account of a unit being constructed, conveyed to, and occupied by an LMI. For any Payment that DCA does not require the City to make, said Indebtedness shall also be reduced by \$30,000.00.
11. Notwithstanding anything herein, in the new Promissory Note, or the new Deed of Trust to the contrary, in the event METROPOLITAN does not fully satisfy all of the conditions and requirements of this Agreement by June 30, 2016, METROPOLITAN shall, within thirty (30) days of the City's written demand that may be issued in the City's sole discretion, reconvey to the City on or before June 30, 2016 all portions of the real property that a) are secured by the new Deed of Trust and b) not conveyed by METROPOLITAN to LMI consistent with the Grant Documents.

Section 2 The City will perform the following:

1. Upon METROPOLITAN's completion of the infrastructure, including paving, as hereinabove described, the City shall maintain the infrastructure constructed for the five (5) affordable housing unit development of Phase 1.
2. Provide METROPOLITAN with copies of relevant DCA correspondence regarding the project including, but not limited to, policy interpretation or changes, reporting requirements, etc.
3. Upon execution of this Agreement, the new Promissory Note, and the new Deed of Trust and receipt of said \$25,000.00 payment from METROPOLITAN, the City shall mark the previous, above referenced Original Promissory Note dated March 15, 2011 "VOID" and deliver the same to METROPOLITAN.
4. Upon execution of this Agreement, the new Promissory Note, and the new Deed of Trust and receipt of said \$25,000.00 payment from METROPOLITAN, the City shall cancel the previous, above referenced Original Deed of Trust of record within a reasonable period of time.

PART B – TERM OF AGREEMENT

This Agreement shall commence on the day first above written and continue until the above referenced Indebtedness is paid or otherwise satisfied and METROPOLITAN has fulfilled its obligation, if applicable, under Part A, Section 1.11 hereof.

PART C – MISCELLANEOUS/SPECIAL CONDITIONS

1. The City and DCA, or their respective duly authorized representatives, shall have the right to request status reports from METROPOLITAN regarding the progress of programmed activities funded through the Grant.
2. METROPOLITAN shall keep and maintain all books, records, and other documentation that are its responsibility, under its control, and directly related to its receipt and disbursement of Grant funds and its fulfillment of this Agreement as well as the Grant.
3. This Agreement constitutes a legally enforceable contract and shall be governed by and construed in accordance with the laws of the State of North Carolina.
4. **Liabilities and Loss:** The City assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities undertaken by METROPOLITAN under this Agreement, whether with respect to persons or property of METROPOLITAN, or third parties. METROPOLITAN agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, METROPOLITAN agrees to indemnify, defend and save harmless the City and its officers, agents and employees from any and all claims and losses arising from this Agreement, including but not limited to those claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by METROPOLITAN or its agents in the performance of this Agreement.
5. METROPOLITAN shall at all times comply with all laws, ordinances, and regulations of federal, state, and local governments which may in any manner affect or be related to the performance of this Agreement.
6. METROPOLITAN may not assign any interest in this Agreement, nor transfer any interest in the same, without the written consent of the City.
7. METROPOLITAN represents that it has, or will secure at its own expense, all personnel required to monitor, carry out, and perform the scope of services of this Agreement and the Grant Documents. Such employees shall not be employees of the City. Such personnel shall be fully qualified and shall be authorized under state and local law to perform the required services.
8. In carrying out the terms and conditions of this Agreement, METROPOLITAN is an independent party from the City and is not an agent or employee of the City. Nothing in this Agreement shall create or be construed as creating a partnership, joint venture, or employee relationship between the City and METROPOLITAN.
9. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
10. Said new Promissory Note and new Deed of Trust shall, among other things, secure METROPOLITAN's performance of its obligations arising from the Grant, the Grant Documents, and this Agreement. METROPOLITAN may make application to the City for a release(s) from said new Promissory Note and new Deed of Trust. Said application for a release must include, among other things, such evidence and

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documentation as the City may, in its sole discretion, require in order to verify that METROPOLITAN has an LMI qualified purchaser(s) who has(have) secured qualified financing for the housing unit or units to be released. Upon conveyance of a housing unit by METROPOLITAN and the City's receipt of confirmation from DCA that said conveyance is a qualifying conveyance to an LMI under the Grant Documents as well as the City's receipt of confirmation from DCA that the City's above referenced outstanding debt with DCA has been decreased, the principal amount of said Indebtedness shall be reduced as provided for hereinabove.

PART D – NON-PERFORMANCE BY METROPOLITAN

Among other possible remedies and recourses of action, the City may pursue collection of the above referenced new Promissory Note as well as new Deed of Trust through foreclosure of the same upon METROPOLITAN's failure to perform any obligation required by or arising from this Agreement, the Grant, or the Grant Documents.

PART E – COMMUNITY DEVELOPMENT BLOCK GRANT PROVISIONS

1. CONFLICT OF INTEREST: MEMBERS, OFFICERS, OR EMPLOYEES OF THE LOCAL GOVERNING BODY OR OTHER PUBLIC OFFICIALS:

No member, officer, or employee of the City, no members of the governing body of the locality or localities who exercise any functions or responsibilities with respect to the CDBG-HD program during his tenure and for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. The City and METROPOLITAN shall incorporate, or cause to be incorporated, in all contracts arising herefrom a provision prohibiting such conflict of interest consistent with the purpose of this section.

2. NON-DISCRIMINATION

No person in the United States shall, on the grounds of race, color, national origin or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the performance of this Agreement.

No qualified personnel shall, on the basis of age or handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under the performance of this Agreement.

3. EXECUTIVE ORDER 11246 CLAUSE

- (i) METROPOLITAN and the City will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. METROPOLITAN and the City will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment; upgrading, demotion, or transfer; recruitment and advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. METROPOLITAN and the City agree to post, in conspicuous places available to

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employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

- (ii) METROPOLITAN and the City will, in all solicitations or advertisements for employees placed by or on behalf of METROPOLITAN or the City, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (iii) METROPOLITAN and the City will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers representative of METROPOLITAN and the City commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (iv) METROPOLITAN and the City will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (v) METROPOLITAN and the City will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (vi) In the event METROPOLITAN or the City fails to comply with the non-discrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and METROPOLITAN or the City may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rules, regulations, or order of the Secretary of Labor, or as otherwise provided by law.
- (vii) METROPOLITAN and the City will include the provisions of this and the preceding Paragraphs (i) through (vi) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 so that such provisions will be binding upon each subcontractor or vendor. METROPOLITAN and the City will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event METROPOLITAN or the City become involved in, or are threatened with litigation by a subcontractor or vendor as a result of such direction by the contracting agency, METROPOLITAN or the City may request the United States to enter into such litigation to protect the interests of the United States.

4. SECTION 3 COMPLIANCE IN THE PROVISION OF EMPLOYMENT AND BUSINESS OPPORTUNITIES

- (i) The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as

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amended, 12 U.S.C. 1701u. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the area of the project.

- (ii) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- (iii) METROPOLITAN and the City will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other Contractor or understanding if any, a notice advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- (iv) METROPOLITAN and the City will include these Section 3 clauses in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. Neither METROPOLITAN nor the City will subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- (v) Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135 and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement shall be conditions of the federal financial assistance provided for in conjunction with the project and shall be binding upon the applicant or recipients for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors, and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

5. NON-DISCRIMINATION CLAUSE CONCERNING HANDICAP AND AGE

METROPOLITAN/the City will not discriminate on the basis of age under the Age Discrimination in Employment Act of 1975, as amended (42 U.S.C 6101 et seq.), or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), or as otherwise prohibited by state or federal law.

6. ACCESS TO RECORDS AND RECORD RETAINAGE CLAUSE

In general, all official project records and documents must be maintained during the operation of this project and for five (5) years following close out in compliance with 15 NCAC13.1 Rule 0922, Record Keeping.

The Department of Commerce, the North Carolina Department of Treasurer, the Controller, the Attorney General of North Carolina, the United States Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the administering agency which are pertinent to the execution of this Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

7. LOBBYING CLAUSE

- (i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (ii) If any funds other than Federal appropriated funds have been paid or will be paid to any person by the undersigned for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grants, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLC, "Disclosure Form to Report Lobbying" in accordance with its instructions.

This is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, and U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

IN WITNESS THEREOF, the City and METROPOLITAN have executed this Agreement through duly authorized representatives, all as of the date written above.

(Signatures On Following Page)

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited per North Carolina General Statute § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.

Matt Rauschenbach, Chief Financial Officer
City of Washington

**METROPOLITAN HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION, INC.**

CITY OF WASHINGTON

By: _____ (SEAL)

By: _____ (SEAL)

Printed Name

Printed Name

Title

Title

Date

Date

**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that _____ personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is _____ of **METROPOLITAN Housing and Community Development Corporation, Inc.**, and that by authority duly given and as the act of METROPOLITAN Housing and Community Development Corporation, Inc. the foregoing instrument was signed by him/her.

Witness my hand and notary seal this _____ day of _____ 2013.

Notary Public

My Commission expires: _____

**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that _____ personally appeared before me this day, and being duly sworn by me acknowledged that he is _____ of the **City of Washington**, and that by authority duly given and as the act of the City the foregoing instrument was signed by him.

Witness my hand and notary seal this _____ day of _____ 2013.

Notary Public

My Commission expires: _____

October 7, 2013

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EXHIBIT A



North Carolina
Department of Commerce
Community Assistance
Community Development & Planning Division

Pat McCrory, Governor

Sharon Allred Decker, Secretary
Richard B. Self, Director

May 6, 2013

The Honorable Archie N. Jennings, Mayor
City of Washington
Post Office Box 1988
Washington, North Carolina 27889-1988

Subject: Closeout of Grant
CDBG Number: 05-C-1490

Dear Mayor Jennings:

We affirmed in our letter dated **January 9, 2013**, the subject Community Development Block Grant (CDBG) had a firm, amended closeout deadline of **March 11, 2013**. That extended deadline has passed and the original project closeout deadline of **November 10, 2009**, is now more than **4 years** past due. We are unable to extend this project any further.

Therefore, **Community Assistance (CA) is closing this grant**. The city has failed to document that it has achieved an eligible CDBG National Objective, therefore the money expended on the project is required be repaid to the CDBG program. **The City of Washington must repay Community Assistance \$250,000.00 by May 30, 2013**. On June 1, 2013 all funds for open grants will be frozen until payment is received. Checks should be made payable to the Department of Commerce, Division of Community Assistance.

Thrive NC

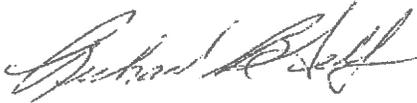
100 East Six Forks Road, Suite 200 • 4313 Mail Service Center • Raleigh, North Carolina 27699-4313
Tel: (919) 571-4900 • Fax: (919) 571-4951
www.nccommerce.com

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The Honorable John A. Hinton, Mayor
May 6, 2013
Page 2

If you have questions regarding this matter please call Mr. Charlie Thompson Jr., Chief, Grants Management Section at (919) 571-4965.

Sincerely,



Richard B. Self
Director

Enclosure

cc: Mr. Josh Kay, City Manager
Mr. John Rodman, Planning Director
Mr. Reed Whitesell, Grant Administrator
Ms. Toni Moore, CA Budget Officer



North Carolina
Department of Commerce
Community Assistance
Community Development & Planning Division

Pat McCrory, Governor

Sharon Allred Decker, Secretary
Richard B. Self, Director

June 4, 2013

The Honorable Archie Jennings, Mayor
City of Washington
Post Office Box 1988
Washington, North Carolina 27889-1988

Subject: Closeout of Grant and Repayment of Grant Funds
CDBG Number: 05-C-1490

Dear Mayor Jennings:

The Division of Community Assistance (CA) is in receipt of the city's letter requesting an installment plan for repaying the \$250,000 of Community Development Block Grant (CDBG) funds for the above-referenced grant.

The Division of Community Assistance approves the city's submitted plan to repay the CDBG Program over a ten year period with equal annual payments of \$25,000 beginning July 1, 2013. If the repayment is not received by the date of the 1st of each month beginning with July 1, 2013, CDBG funds for all of the city's open CDBG awards will be frozen.

Please contact Ms. Joyce Smith, Grants Management Representative at (919) 571-4900 or email jsmith@nccommerce.com for questions or grant assistance.

Sincerely,

Handwritten signature of Richard B. Self in cursive.

Richard B. Self
Director

RBS/JBS/TW

Mr. Joshua L. Kay, City Manager
Mr. Franz Holscher, City Attorney
Mr. John Rodman, Community & Cultural Services Director
Mr. J. Reed Whitesell, Holland Consulting Planners
Ms. Toni Moore, Finance, DCA

Thrive NC

100 East Six Forks Road, Suite 200 • 4313 Mail Service Center • Raleigh, North Carolina 27699-4313
Tel: (919) 571-4900 • Fax: (919) 571-4951
www.nccommerce.com

October 7, 2013

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RECEIVED JUL 30 2013

North Carolina
Department of Commerce
Community Assistance
Community Development & Planning Division

Pat McCrory, Governor

Sharon Allred Decker, Secretary
Richard B. Self, Director

Brian M. Alligood, City Manager
City of Washington
PO Box 1988
Washington, NC 27889

Dear Mr. Alligood:

In accordance with the correspondence from Ms. Vickie Miller the number of units was decreased from twelve units to five units. Five units places a grant value of \$50,000 per unit. Based on this, the outstanding debt for the City of Washington will be decreased by \$50,000 for each unit constructed and occupied by a Low-to-Moderate Income individual family. Any funds already reimbursed to DCA will not be eligible for return to the City as a result of the potential reductions in the future.

I am glad we were able to work out a satisfactory arrangement going forward. If additional information is needed please feel free to contact me.

Sincerely


Richard B. Self, Director

cc: Charlie Thompson, Section Chief
Toni Moore, Business Officer

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PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (“Borrower”) promises to pay to the City of Washington or order (the “Holder”) the principal sum of \$340,000.00, together with interest after default, all as described below.

The Borrower acknowledges that the Holder has advanced the dollar amount indicated above pursuant to the Amendment to Legally Binding Commitment by and among the Borrower and the Holder (the “Agreement”) dated _____, 2013, which Agreement is incorporated herein by reference as if fully set forth. As more specifically provided for therein, said Agreement requires the Borrower to, among other things, construct and convey five (5) affordable housing units to low to moderate income individuals/households (“LMI”) as well as to fulfill all of Borrower’s and Holder’s obligations under the related Grant Documents (as that term is defined in the Agreement) that are either directly or indirectly dependent upon Borrower for fulfillment. The terms of said Grant Documents also are incorporated herein by reference as if fully set forth. In the event that all or a portion of the required number of affordable housing units are not constructed and conveyed to LMI within a time period that will avoid the Division of the Community Assistance (DCA) from requiring the Holder to make one or more Payments (as that term is defined in the Agreement), as more specifically provided for in the Agreement, all or a portion of the amount indicated above shall be subject to repayment to the Holder or its designee. The Borrower hereby agrees to pay to the Holder, in accordance with the Agreement, the amount of any Payment required of the Holder by DCA plus an additional amount of \$30,000.00 for each such Payment. All such amounts due thereunder and hereunder shall be due upon demand by the Holder. If not paid within thirty (30) days following demand hereunder, the unpaid principal of this Promissory Note (“Note”), and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, the Holder may employ an attorney to enforce the Holder’s rights and remedies, and the Borrower, maker, principal, surety, guarantor, and endorsers of this Note hereby agree to pay the Holder reasonable attorney’s fees not exceeding a sum equal to 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by the Holder in exercising any of the Holder’s rights and remedies upon default. The rights and remedies of the Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singularly, successively, or together against the Borrower, the property described in any such security instrument, or any other funds, property, or security held by the Holder for payment or security, in the sole discretion of the Holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including the Borrower and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration of maturity and agree to continue to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

October 7, 2013
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Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by the Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by the Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to the Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by the Holder and the Borrower.

This Note evidences a debt payable by the Borrower and is given for monies that may become owed under the Agreement and will be secured by a Deed of Trust of even date herewith, which Deed of Trust shall be a lien upon the property therein described.

This Note is to be governed and construed in accordance with the laws of the State of North Carolina, excluding its conflict of laws provisions.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of the _____ day of _____, 2013.

**METROPOLITAN HOUSING AND
COMMUNITY DEVELOPMENT
CORPORATION, INC.**

By: _____ (SEAL)

Printed Name

Title

Date

**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that _____ personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is _____ of **Metropolitan Housing And Community Development Corporation, Inc.**, and that by authority duly given and as the act of Metropolitan Housing And Community Development Corporation, Inc. the foregoing instrument was signed by him.

Witness my hand and notary seal this _____ day of _____, 2013.

Notary Public

My Commission expires: _____ October 7, 2013
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**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

NORTH CAROLINA DEED OF TRUST

SATISFACTION: The debt secured by the within Deed of Trust together with the note(s) secured thereby has been satisfied in full.

This the _____ day of _____, 20__
Signed: _____

PREPARED BY AND RETURN TO:

RODMAN, HOLSCHER, PECK & EDWARDS, P. A.
Attorneys at Law
320 North Market Street
Post Office Box 1747
Washington, NC 27889
Telephone: (252) 946-3122

Property Address: _____

THIS DEED OF TRUST, made this _____ day of _____, 2013, by and between Metropolitan Housing and Community Development Corporation, Inc. and having an address of 102 West 4th Street, Washington, North Carolina 27889 ("Grantor"); Franz F. Holscher having an address of PO Box 1747, Washington, North Carolina 27889 ("Trustee"); and the City of Washington having an address of PO Box 1988, Washington, North Carolina 27889 ("Beneficiary"). The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH:

WHEREAS, the Beneficiary has advanced to, or for the benefit of, the Grantor the sum of Three Hundred Forty Thousand and 00/100 DOLLARS (\$340,000.00) (the "Loan") as evidenced by a Promissory Note ("Note") from the Grantor to the Beneficiary dated _____, 2013 and an Amendment to Legally Binding Commitment ("Agreement") between Grantor and Beneficiary dated _____, 2013, the terms of which Note and Agreement are incorporated herein by reference as if fully set forth, which sum together with any amounts advanced to protect the security of this Deed of Trust shall be the total amount secured.

WHEREAS, it has been agreed that the loan shall be secured by the conveyance of the land described in this Deed of Trust.

NOW, THEREFORE, as security for said indebtedness, advances and other sums extended by Beneficiary pursuant to this Deed of Trust and cost of collection (including attorneys fees as provided in the Note) and other valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the Grantor has bargained, sold, given and conveyed and does by these presents, bargain, sell, give, grant, and convey to said Trustee, his heirs, or successors, and assigns, the parcel(s) of land situated in the City of Washington and Washington Township, Beaufort County, North Carolina, (the "Premises"), together with all heating, plumbing, and lighting fixtures and equipment now or hereafter attached to or used in connection with the Premises, and more particularly described as follows.

See attached Exhibit A

TO HAVE AND TO HOLD said Premises, with all privileges and appurtenances thereunto belonging to said Trustee, his heirs, successors, and assigns forever, upon the trusts, terms and conditions and for the uses herein set forth.

October 7, 2013
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If the Grantor shall pay the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, and all other sums secured hereby and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled of record at the request and the expense of the Grantor.

If, however, there shall be any default (a) in the payment of any sums coming due under the Note, this Deed of Trust or any other instrument securing the Note and such default is not cured within ten (10) days from the due date, or (b) if there shall be any default in any of the terms, covenants or conditions of the Note secured hereby or any failure or neglect to comply to the satisfaction of the Beneficiary, in its sole discretion, with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Note and such default is not cured within the time period established by written notice to cure said default, or if no time period is provided for then within fifteen (15) days after written notice, then and in any of such events, without further notice, the Note shall, at the option of and upon demand of the Beneficiary, at once become due and payable and it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the land herein conveyed at public auction for cash, after having first giving such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice of and advertising the time and place of such sale in such manner as may then be provided by law, and upon such sale and any resales and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent him in such proceedings.

The proceeds of the Sale shall, after the Trustee retains the Trustee's commission, together with reasonable attorneys fees incurred by the Trustee in such proceedings, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness, in accordance with the following schedule, to wit: one-fourth (1/4) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (1/2) thereof after issuance of said notice, three-fourths (3/4) thereof after such hearing; and the full commission after the initial sale.

The Grantor does hereby covenant and agree with the Trustee and Beneficiary as follows.

1. **INSURANCE.** Grantor shall keep the Premises and all improvements on said land, now or hereafter erected, constantly insured for the benefit of the Beneficiary against loss by fire, windstorm and such other casualties and contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by this Deed of Trust, and as may be satisfactory to the Beneficiary. Grantor shall also insure all improvements on the Premises, whether now in existence or subsequently erected, against loss by flood as may be required by the Beneficiary. Grantor shall purchase such insurance, pay all premiums therefore, and shall deliver to Beneficiary such policies along with evidence of premium payment as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefore or deliver said policies along with evidence of payment of premiums thereon, then Beneficiary, at his option, may purchase such insurance. Such amounts paid by Beneficiary shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary. All proceeds from any insurance so maintained shall at the option of Beneficiary be applied to the debt secured hereby and if payable in installments, applied in the inverse order of maturity of such installments or to the repair or reconstruction of any improvements located upon the Property.

2. **TAXES, ASSESSMENTS, CHARGES.** Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Premises before the same shall become past due. In the event that Grantor fails to so pay all taxes, assessments, and charges as herein required, then the Beneficiary at its option, may pay the same and the amount so paid shall be added to the principal of the Note secured by this Deed of Trust and shall be due and payable upon demand of Beneficiary.

3. **ASSIGNMENTS OF RENTS AND PROFITS.** Grantor assigns to Beneficiary, in the event of default, all rents and profits from the land and any improvements thereon, and authorizes Beneficiary to enter upon and take

possession of such land and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and, after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. **PARTIAL RELEASE.** Grantor shall not be entitled to the partial release of any of the above described property unless a specific provision providing therefore is included in this Deed of Trust or the Agreement. In the event a partial release provision is included in this Deed of Trust or the Agreement, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. **WASTE.** Grantor covenants that he will keep the Premises herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Premises or their use, and that he will not commit or permit any waste.

6. **CONDEMNATION.** In the event that any or all of the Premises shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Premises by Grantor.

7. **WARRANTIES.** Grantor covenants with Trustee and Beneficiary that he is seized of the Premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that he will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions, if any, hereinafter stated on Exhibit B.

8. **SUBSTITUTION OF TRUSTEE.** Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce this trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and, upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

9. **SALE OF PREMISES.** Grantor agrees that, if the Premises or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law without the prior written consent of Beneficiary, Beneficiary, at its own option, may declare the Note secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Premises or in the beneficial ownership of the Premises, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Premises.

10. **ADVANCEMENTS.** If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note secured hereby, the Beneficiary may, but without obligation to do so, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by Beneficiary or prevent such failure to perform from constituting an event of default.

11. **INDEMNITY.** If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Premises, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

12. **WAIVERS.** Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

13. CIVIL ACTIONS. In the event that the Trustee is named as a party in any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including himself if he is a licensed attorney, to represent him in said action, and the reasonable attorney's fees of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust, and shall be due and payable by Grantor upon demand of the Beneficiary, and bear interest at the rate provided in the Note for sums due after default.

14. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

15. SUBORDINATION. Any subordination of this lien to additional liens or encumbrances shall be only upon the written consent of the Beneficiary.

16. RIGHT TO INSPECT. To assure and protect its right in this Deed of Trust and the Premises, the Beneficiary shall have the right of access to and inspection of the Premises at reasonable times and with reasonable notice to the Grantor.

17. NOTICES. Any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or mailing it by first class mail to the respective addresses stated herein or any address a party hereto designates by notice to the other.

18. HAZARDOUS MATERIALS. Borrower warrants that:

- (i) the Property shall be kept free of Hazardous Materials,
- (ii) Borrower shall not permit the installation, generation, transportation or release of Hazardous Materials in or on the Property.
- (iii) Borrower shall at all times comply with all applicable Environmental Laws affecting the Property and shall keep the Property free and clear of any liens imposed pursuant to any Environmental Laws.
- (iv) Borrower shall immediately give Lender oral and written notices in the event that Borrower knows of a violation of these warrants or receives any notice from any governmental agency or other party with regard to Hazardous Materials affecting the Property,

Borrower hereby agrees to indemnify Lender and hold Lender harmless from any losses, liabilities, damages, injuries (including but not limited to attorney's fees) and claims incurred or suffered by or asserted against Lender, as a direct or indirect result of any warranty or representation made by Borrower in this paragraph (Hazardous Materials) being false or untrue in any material respect.

For purposes of this Deed of Trust, "Hazardous Material" means petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or any hazardous, toxic or dangerous waste, defined as such in the Environmental Laws.

For purposes of this Deed of Trust, "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, any "Superfund" or "Superlien" law, or any other federal, state or local law relating to standards of conduct concerning any petroleum products, any flammable explosives, radioactive materials, asbestos or any material containing asbestos, and/or hazardous, toxic or dangerous waste.

16. GOVERNING LAW. This Deed of Trust is to be governed and construed in accordance with the laws of the State of North Carolina.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

**METROPOLITAN HOUSING AND COMMUNITY
DEVELOPMENT CORPORATION, INC.**

By: _____ (SEAL)

October 7, 2013
Printed Name
Page 100 of 208

_____ Title

**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that _____ personally appeared before me this day, and being duly sworn by me, acknowledged that he/she is _____ of **Metropolitan Housing and Community Development Corporation, Inc.**, and that by authority duly given and as the act of Metropolitan Housing and Community Development Corporation, Inc. the foregoing instrument was signed by him/her.

Witness my hand and notary seal this _____ day of _____, 2013.

Notary Public

My Commission expires: _____

EXHIBIT A

Lying and being in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

BEING ALL OF Parcel 1 containing 9.885 acres as shown on that certain survey of Rivers & Associates, Inc. entitled "Boundary Survey Alice G. Bailey Heirs Tract Owner: City of Washington" recorded in the Beaufort County Registry in Plat Cabinet H, Slide 70-3. Reference is made to said survey and the same is incorporated herein for a more complete and adequate description.

Lying and being in Washington Township, Beaufort County, North Carolina, more particularly described as follows:

BEING ALL OF Parcel 2 containing 2.225 acres as shown on that certain survey of Rivers & Associates, Inc. entitled "Boundary Survey Alice G. Bailey Heirs Tract Owner: City of Washington" recorded in the Beaufort County Registry in Plat Cabinet H, Slide 70-3. Reference is made to said survey and the same is incorporated herein for a more complete and adequate description.

Exhibit B
EXCEPTIONS



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: John Rodman, Community & Cultural Services
Date: September 26, 2013
Subject: Resolution – Waterfront Advisory Committee
Applicant Presentation: N/A
Staff Presentation: John Rodman, Community and Cultural Services

RECOMMENDATION:

I move that the City Council accept the recommended management structure of the waterfront docks and adopt the Resolution creating the Waterfront Advisory Committee.

BACKGROUND AND FINDINGS:

In accordance with a memorandum by City Manager Brian Alligood on the recommended management structure of the waterfront docks, the memo advised the creation of a 5 member Waterfront Advisory Committee to assist and make recommendations to a proposed dock master and to City Council. Members would include 3 at-large members and 2 members of the WHDA Maritime Committee. All 5 members would be appointed by City Council. The creation of the committee would allow the committee to begin the process of establishing goals and objectives for the waterfront docks.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Resolution

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 10/2 Date Concur Aut Recommend Denial _____ No
Recommendation _____



**RESOLUTION OF THE CITY OF WASHINGTON CREATING THE
WATERFRONT ADVISORY COMMITTEE**

WHEREAS, Washington City Council wishes to establish an advisory committee in order to provide recommendations to City Council regarding the management of the waterfront docks according to the *Washington Waterfront Docks Business Plan* and to advance the goals and objectives of said Plan; and

WHEREAS, the City of Washington waterfront is an invaluable resource, rich in history, open space, recreation, cultural events and water-based activities; and

WHEREAS, the City of Washington objective is for the waterfront to be welcoming to and for the benefit of all City residents and visitors and be self-sufficient while continuing to provide a high level of service to its users; and

WHEREAS, the Washington City Council has endorsed the *Washington Waterfront Docks Business Plan* to provide a management structure that will reduce costs, focus attention on the unique recreation/ business aspects of the docks, allow continued oversight of City Council by committee appoints and allow the waterfront docks to flourish; and

WHEREAS, said advisory committee, representing stakeholder interests, can greatly assist in making recommendations, clarifying positions on issues, identify opportunities for development, and help achieve goals and objectives of the Washington waterfront;

NOW, THEREFORE BE IT RESOLVED that the Waterfront Advisory Committee is hereby established as an advisory committee to the Mayor and the City Council; and

BE IT FURTHER RESOLVED that:

1. The Waterfront Advisory Committee shall consist of five (5) members representing a variety of knowledge of waterfront water based activities.
2. The City Council shall appoint the 5 members of the Waterfront Advisory Committee, 2 of which shall be members of the Washington Harbor District Alliance's Maritime Committee, for an indefinite term after appropriate consultation between members of Council and the Mayor.
3. Staff assistance to the Waterfront Advisory Committee shall be managed by the Department of Community and Cultural Services with assistance from other staff as needed.
4. The Waterfront Advisory Committee shall meet on a monthly basis and will be formed for specific activities with the expectation that they will report to City Council on a monthly basis.

BE IT FURTHER RESOLVED that this motion shall take effect upon adoption.

Adopted this the _____ day of _____, 2013 in Washington, North Carolina.

N. Archie Jennings III, Mayor

ATTEST:

Cynthia Bennett, Clerk



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 09-27-13
Subject: Adopt Budget Ordinance Amendment in the Airport Fund (\$15,752).
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council adopt a budget ordinance amendment from fund balance in the airport fund for the purchase of a flex wing mower.

BACKGROUND AND FINDINGS:

Approval of this budget ordinance amendment will allow for the purchase of a flex wing or "bat-wing" mower to be used in conjunction with an existing tractor we have in Public Works. This mower has a 15' cutting span and will be used to mow the infield at the airport where finish mowing is not necessary.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

See attached Budget Ordinance Amendment.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *Am* Concur _____ Recommend Denial _____ No Recommendation 10/2 Date
October 7, 2013
Page 107 of 208

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That the following accounts of the Airport Fund revenue budget be increased by the respective amounts indicated for the purchase of a flex wing mower:

37-90-3991-9910	Fund Balance Appropriated	\$ 15,752
-----------------	---------------------------	-----------

Section 2. That the following accounts of Airport Fund appropriations budget be increased by the respective amounts indicated:

37-90-4530-7400	Capital Outlay	\$ 15,752
-----------------	----------------	-----------

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 7th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 09-26-13
Subject: Authorize manager to sign the attached FY 2014-2020 TIP submission for Warren Field.

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council authorize the manager to sign the attached FY 2014-2020 TIP submission for Warren Field.

BACKGROUND AND FINDINGS:

This submission is being made to allow the Division of Aviation to prioritize airport improvement projects throughout the state of North Carolina. Only if the Division of Aviation awards grant funds to an airport sponsor will the City be asked to secure the local matching funds. The attached form has been reviewed by Talbert & Bright, our airport engineers, as well as the Airport Advisory Board. Again, signing this document does not commit the City to providing any funds for the projects listed on this form.

PREVIOUS LEGISLATIVE ACTION

04-09-12 - Approved FY 2013-2017 TIP submission for Warren Field.

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Warren Field TIP 2014-2020 Project Listing

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *End* Concur _____ Recommend Denial _____ No
 Recommendation 10/2 Date _____

**WARREN FIELD
TRANSPORTATION IMPROVEMENT PROGRAM (TIP)
2014-2020 PROJECT LISTING**

	DESCRIPTION	FISCAL YEAR	TOTAL EST. COST
Division of Aviation Minimums:			
1. Runway 5 RPZ Land Acquisition for Existing RPZ and Future Runway Extension RPZ	Purchase remaining portion of existing Runway 5 RPZ in fee and purchase RPZ land for future runway extension in either fee simple or avigation easement for extended runway.	2016	\$ 300,000
Total Cost to bring airport up to Division of Aviation minimums:			
Division of Aviation Recommended:			
2. Runway 5-23 Pavement Rehabilitation - Overlay (Design)	Design Overlay for Runway 5-23 to rehabilitate the pavement surface and strengthen existing pavement to accommodate aircraft up to 60,000 lb.	2014	\$ 150,000
3. Runway 5-23 Lighting Rehabilitation (Design and Construction)	Rehabilitation on Runway 5-23 Lighting will include new lights, conduit, cable, and signs.	2014	\$ 295,000
4. Runway 5-23 Rehabilitation (Construction)	Construction of Overlay for Runway 5-23 to rehabilitate the pavement surface and strengthen existing pavement to accommodate aircraft up to 60,000 lb.	2015	\$ 2,230,000
5. EA & Justification for Future Runway Extension to 5,500'	Perform Justification Study to extend Runway 5-23 to 5,500' and complete necessary Environmental Assessment for the Runway 5-23 Extension	2016	\$ 150,000
6. Runway Extension & Parallel Taxiway (Design)	Includes subsurface investigation, survey and design of a 500' extension of Runway 5-23 to provide 5,500' runway length and design of a parallel taxiway between the new end of Runway 5 and Taxiway C	2017	\$ 140,000
7. Runway Extension & Parallel Taxiway (Construction)	Includes construction of a 600' extension of Runway 5-23 to provide 5,500' of runway length and construction of a parallel taxiway between the new end of Runway 5 and Taxiway C	2018	\$ 2,035,000
8. Taxiway Edge Lighting	New Taxiway Lighting for existing Taxiway A and C which serve Runway 5-23 and do not currently have taxiway edge lighting	2019	\$ 300,375
Total Cost to bring airport up to Division of Aviation recommended:			
Additional Airport Requested Projects:			
9. Sewer Line Extension to Terminal Area	Project involves installation of approximately 2,400 LF of new gravity sanitary sewer line from the intersection of Airport Road and Market Street to the terminal area to serve existing and future corporate hangar tenants and the maintenance hangar.	2016	\$ 250,000
10. Maintenance Hangar	Project includes design and construction of new 100'x100' maintenance hangar. The airport requests the ability to reserve FY 14, 15 and 16 Vision 100 Funds to complete this project	2016	\$ 650,000
11. Runway 17 & 35 Land Acquisition for RPZ	Purchase Runway 17 & 35 RPZ in fee	2016	\$ 150,000
12. T-Hangar	Includes Construction of new 6-Unit T-Hangar, site prep, and necessary taxiway located south of the existing T-Hangar development. The airport requests the ability to reserve FY 17, 18 and 19 Vision 100 Funds to complete this project	2019	\$ 560,000
13. Clearing on Airport Property	Project includes removal of trees on airport property within the airport perimeter fence to eliminate habitat for wildlife which could be a hazard to aircraft landing at the airport.	2019	\$ 385,000
14. Approach Lights	Install an ODALS for Runway 5 to improve visibility minimums	2020	\$ 500,000
Total Cost for airport requested projects:			
Total all improvements			\$ 8,095,375

I CERTIFY THAT THE PROJECTS REQUESTED IN THIS 2014 – 2020 TIP SUBMISSION HAVE BEEN REVIEWED BY THE GOVERNING BOARD OF THE SPONSOR RESPONSIBLE FOR FUNDING THE LOCAL SHARE OF THE PROJECT AND THAT SAID BOARD HAS FORMALLY APPROVED THE SUBMISSION OF THESE REQUESTS FOR STATE AID TO AIRPORTS (AND THE STATE BLOCK GRANT PROGRAM WHERE APPLICABLE)

Signed _____

Date _____

Name & Title (print) _____



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director
Date: 09-26-13
Subject: Authorize Manager to Execute a Lease Agreement with Eastern Flying Service, Inc., for the Lease of the Corporate Hangar at Warren Field Airport.

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council authorize the manager to execute the attached lease agreement with Eastern Flying Service, Inc., for the lease of the corporate hangar at Warren Field Airport.

BACKGROUND AND FINDINGS:

Please find attached a copy of the Corporate Hangar Lease Agreement with Eastern Flying Service, Inc. As you know, this hangar has been vacant since the storm that damaged it hit the airport on July 1, 2012. Repairs are being completed and we now have a new tenant to lease the facility.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires Additional Appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Corporate Hangar Lease Agreement

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: October 7, 2013 (if applicable)
City Manager Review: 10/2 Date Concurred Recommend Denial No Recommendation

**NORTH CAROLINA
BEAUFORT COUNTY**

CORPORATE HANGAR LEASE AGREEMENT

THIS CORPORATE HANGAR LEASE AGREEMENT (“Lease”), is made, entered into, and executed in duplicate originals as of the 1st day of _____, 2013, by and between **THE CITY OF WASHINGTON**, a body politic and corporate under Chapter 160A of the North Carolina General Statutes and having a principal address of P.O. Box 1988, Washington, NC 27889 (“LESSOR”), and **EASTERN FLYING SERVICE, INC.**, a North Carolina corporation, having a principal address of 1911 Dover Fort Barnwell Road, Dover, NC 28526 (“LESSEE”).

WITNESSETH:

That, pursuant to Chapter 63 of the North Carolina General Statutes, including but not limited to North Carolina General Statute § 63-53 and other relevant statutory authority, and for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants contained herein as well as the valuable consideration paid and to be paid, LESSOR does hereby demise and lease unto LESSEE, and LESSEE does hereby accept from LESSOR, that certain tract or parcel of land, including corporate hangar situated thereon, (“premises”) lying and being at Warren Field Airport (“Airport”) in Washington Township, Beaufort County, North Carolina, more particularly described as follows:

MEASURING 80 feet by 66 feet, containing approximately 5,280 square feet and being the footprint of the hangar, specifically exclusive of all adjacent and nearby taxiways, access ramps, aprons, parking areas or other paved surfaces or grounds, more particularly shown on Exhibit “A” attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said land and premises together with all privileges and appurtenances thereto belonging to it, LESSEE, upon the following terms and conditions.

**SECTION ONE
Use of Airport**

Subject to the express conditions contained in Section 7, Part B hereof, LESSOR grants LESSEE the non-exclusive use, in common with others similarly authorized, of the Airport, together with all adequate space and facilities consisting of sufficient ground area to permit the efficient taxiing, servicing, taking off; equipment; improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, floodlights, landing lights, beacons, signals, radio aids, and any and all other conveniences for flying, landing, and takeoff.

LESSOR grants LESSEE the non-exclusive right, in common with others similarly authorized, to load and unload persons and property as is customary in said Airport so long as the normal routine of Airport operations is not interfered with or made burdensome and to install, maintain, and operate radio communications, meteorological and aerial navigations and such other equipment and facilities, in, on or about the premises herein leased, as may be necessary and convenient for LESSEE's operation so long as all applicable city, county and governmental regulations are complied with.

LESSOR grants LESSEE, its employees, customers, passengers, guests, and other licensees or invitees (collectively, "LESSEE's permittees"), the non-exclusive use, in common with others similarly authorized, of all public space in the terminal building of the Airport as well as all additional public space that may hereafter be made available therein and any additions thereto, including, but not limited to, the lobby, passenger lounges, waiting rooms, hallways, rest rooms, rooms for flight personnel and other public and passenger conveniences.

SECTION TWO

Acceptance, Maintenance and Use of Premises

LESSEE agrees to accept the premises and the grounds immediately adjacent thereto in the physical condition in which the same now is. LESSEE further agrees to maintain the premises and the grounds immediately adjacent thereto in at least a like condition during the term of this Lease, normal wear and tear excepted. Said maintenance shall include mowing such that any grass shall not reach a height of more than six (6) inches and other customary upkeep. LESSEE further agrees to maintain the premises and the grounds immediately adjacent thereto in a clean, neat and orderly manner so as to promote the use of the Airport, and further agrees to abide by such reasonable requests as may be made by LESSOR for the proper use and maintenance of the Airport to the end that the general welfare of the public may be promoted and served thereby, and that there not be permitted any accumulation of non-aviation equipment or discarded junk or the discharge of hazardous or regulated chemicals onto the Airport. LESSEE further agrees to surrender the premises and the grounds immediately adjacent thereto back to LESSOR in as good a condition as the same now is, ordinary wear and tear excepted, upon termination of this Lease. The parties expressly understand that LESSOR may develop the grounds immediately adjacent to the premises; in which case, the maintenance obligation described herein shall decrease as directed by LESSOR. As used herein "grounds immediately adjacent" shall mean the areas between the hangar and the pavement located generally to the north, the taxiway located generally to the west, the middle of the ditch located generally to the south, and the fence located generally to the east.

The premises are to be used only for aircraft related operations and limited to the storage of private aircraft owned or leased by LESSEE as well as for the repair and maintenance of LESSEE'S private aircraft or aeronautical equipment only. In addition to the foregoing, LESSEE is specifically authorized to store in the hangar equipment necessary for LESSEE to fulfill its maintenance obligation hereunder and a seed auger truck, two forklifts, and a compact tractor which serve as support equipment for the aircraft that are stored in the hangar. Only licensed and airworthy private aircraft owned or leased by LESSEE may occupy the hangar located on the premises (spare aircraft parts excepted). No other use of the premises will be permitted without a

separate written agreement between the parties. Specifically, LESSEE shall not offer or permit any commercial sale, repair service or other aeronautical services, including the rebuilding, restoring, or maintaining of a succession of aircraft, to be offered to, rendered in, on or from any hangar or premises without a separate written agreement between the parties. Aircraft to be hangared at the premises may be inspected by a representative of LESSOR prior to signing this Lease and during the Lease period. Should an aircraft become unairworthy during the Lease period, a determination by LESSOR may terminate this Lease.

SECTION THREE
Parking Space

LESSOR grants LESSEE, and LESSEE's permittees, without charge, adequate vehicular parking space located as near as practicable to the premises. LESSOR shall designate the area to be used, which area shall be maintained and kept in good order and condition by LESSOR.

SECTION FOUR
Right of Ingress and Egress

LESSEE shall have at all times the full and free right of ingress to and egress from the premises and facilities referred to in this Lease for LESSEE and LESSEE's permittees. Such rights also extend to persons or organizations supplying materials or furnishing services to LESSEE, to include vehicles, machinery and equipment reasonably required by such persons or organizations.

SECTION FIVE
Term

The term of this Lease shall be for a period of one (1) year, beginning on the 1st day of _____, 2013 and ending on the ____ day of _____, 2014.

SECTION SIX
Rental

LESSEE agrees to pay LESSOR for the use of the premises, facilities, rights, services, and privileges granted in this Lease the sum of \$1.894 per square foot of hangar space for 5,280 square feet (\$10,000), due and payable on or before _____ 1, 2013.

SECTION SEVEN
Rights, Privileges, Obligations, and Responsibilities

- A. LESSOR shall be responsible for normal repairs, if any, as the same may be required as a result of ordinary wear and tear during the term of this Lease.
- B. In its use of the Airport and related facilities, LESSEE is granted the following specific rights and privileges:

- (1) LESSEE has the right to add any additional capital improvements on the premises under the exclusive control of LESSEE, including the right to install, maintain, and remove additional adequate storage facilities and appurtenances for the purpose of carrying out any of the activities provided for herein, subject to advance approval from LESSOR as well as any other conditions herein generally or particularly set forth. All capital improvements so added by LESSEE will be and become the property of LESSOR at the termination of this Lease without cost to LESSOR. Any improvements that involve alterations to other Airport premises under the non-exclusive control of LESSEE shall be subject to approval in advance by LESSOR and all improvements so added by LESSEE will be and become the property of LESSOR at the termination of this Lease without cost to LESSOR.

C. In its use of the Airport and related facilities, LESSEE accepts the following obligations and responsibilities:

- (1) The use and occupancy of the premises and the use and maintenance of the grounds immediately adjacent thereto by LESSEE shall be without cost or expense to LESSOR. It is understood and agreed that LESSOR is not obligated to furnish any utility services such as light, water, sewer and gas to LESSEE during the period of occupancy. If LESSOR operates or maintains utility services to the premises, it will continue to furnish such utility services at the request of LESSEE provided that LESSEE shall assume and pay for necessary meters for measuring said service and the charges for providing such service.

LESSEE shall save LESSOR harmless of and from any and all costs or charges for utility services furnished to or required by LESSEE during the term hereof and shall provide, at its own cost or expense, such services as may be necessary or required in the operation and maintenance of the premises to any and all storm and sanitary sewers, water, and utility outlets at its own expense and shall pay for any and all service charges incurred or used on the premises.

- (2) LESSEE shall maintain and be responsible for all repairs to the hangar located on the premises as may be required as a result of LESSEE's or LESSEE's permittees actions, including but not limited to activities on the premises. LESSEE agrees, at its own expense, to cause the premises and the buildings, improvements, and appurtenances thereto, including grounds immediately adjacent thereto, to be maintained in a presentable condition and equal in appearance and character to other similar improvements on said Airport. All tools, machines, parts and maintenance equipment shall be stored in the hangar.
- (3) LESSEE agrees, at its own expense, to cause all waste, garbage and rubbish to be removed from the premises and agrees not to deposit the same on any of the Airport premises, except LESSEE may temporarily deposit the same on the premises in an approved container or enclosure in connection with their collection or removal. LESSEE agrees it will not allow the accumulation of rubbish, waste,

foul material, contaminant or otherwise create an unhealthy or hazardous condition on the premises.

- (4) LESSEE will not suffer or permit to be maintained upon the outside of any improvements located on the premises any billboards or advertising signs unless previously approved in writing by the LESSOR. A normal company identification sign will be permissible on the premises subject to the approval of LESSOR and consistency with any applicable ordinance.
- (5) LESSEE will make no unlawful, improper or offensive use of the premises.
- (6) Any and all improvements to, use of, or activities upon the premises shall conform to and be consistent with the then current Airport plan as well as the minimum standards, rules and regulations adopted for the Airport by LESSOR, as amended.
- (7) LESSEE, in its use, improvement, or operation of the premises and facilities of the Airport including premises, shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise use the premises in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, as may be amended.

SECTION EIGHT Taxes and Assessments

LESSEE shall be responsible for and promptly pay before default any and all real and personal property taxes or special assessments, if any, that may be levied or assessed against the premises or any improvements or other property situated thereon, it being the mutual intention of the parties that LESSOR shall not be required to pay any taxes on either real or personal property by reason of permitting LESSEE to use said real property as herein described. LESSEE also agrees to indemnify LESSOR against any loss or liability resulting from any and all claims or liens in connection with such taxes and assessments.

LESSEE must verify, if requested, that the hangared aircraft, including any spare parts and other equipment stored in the hangar, are listed on the tax rolls of Beaufort County, North Carolina, for the current year.

SECTION NINE
Maintenance and Utilities

Except as otherwise specified herein, during the term of this Lease, LESSOR shall maintain and keep in good repair so much of the Airport premises as are not under the exclusive control of the individual operators and lessees, including, but not limited to the terminal building; vehicle parking areas and all roadways, runways, aprons and taxiways. Subject to the conditions expressly set forth in Section 7, Part B hereof, LESSOR shall also maintain and operate all sewage and water facilities, electrical and electronic facilities and such other appurtenances and services as are now or hereafter connected with the operation of the Airport.

SECTION TEN
Rules and Regulations

LESSEE agrees to comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, assurances and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Airport including premises or any part thereof, or any of the adjoining property, or any use or condition of the premises or any part thereof. Further, LESSEE shall comply with any and all local, state, federal or other rules and regulations as well as all applicable environmental rules and regulations, including, but not limited to, such rules and regulations regulating hazardous or similar substances or conditions, their storage and disposal.

LESSEE agrees to observe and obey the rules and regulations with respect to the use of the Airport premises, including premises; provided, however, that such rules and regulations shall be consistent with all rules, regulations, and orders of the Federal Aviation Administration; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this Lease or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to LESSEE's use of the Airport premises, including premises. LESSEE further agrees to indemnify and hold LESSOR harmless for any and all damage of any kind arising from LESSEE's failure to comply with the aforementioned rules and regulations, including, but not limited to, the cost of clean-up, restoration fees, mitigation costs, and attorney's fees caused or occasioned by LESSEE, or LESSEE's permittees.

LESSEE agrees to abide by and cooperate with LESSOR in the enforcement and implementation of applicable Airport security regulations, safety plan standards, and measures as may be adopted by LESSOR.

SECTION ELEVEN
Subordination

This Lease shall be subject to and subordinate to the provisions of any existing or future agreement between LESSOR and the United States, the State of North Carolina, or any agencies

thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development or operation of the Airport or as a condition precedent to the acquisition of the Airport facilities by the LESSOR. It is specifically understood by LESSEE that this Lease is subject to the recapture clause and other conditions of grant agreements and or assurances with the Federal Aviation Administration, Navy Department, the Civil Aeronautics Administration, and the State of North Carolina, respectively. LESSOR shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of LESSEE in and to the premises, and to compensation for the taking thereof, interference therewith and damage thereto, caused by such agreements or by actions pursuant thereto by LESSOR or the other parties named hereinabove.

SECTION TWELVE

Indemnification

LESSOR shall stand indemnified by LESSEE as hereinafter provided. It is expressly understood and agreed by and between the parties hereto that LESSEE herein is and shall be deemed to be an independent contractor, responsible to all parties for its respective acts or omissions as well as the acts or omissions of LESSEE's permittees and LESSOR shall in no way be responsible therefor. It is further agreed that, in the use of the Airport, the maintenance, erection, or construction of any improvements thereon and the exercise or enjoyment of the privileges herein granted, LESSEE agrees to indemnify and save harmless LESSOR from any negligence of LESSEE or LESSEE's permittees.

LESSEE agrees to indemnify LESSOR against any and all liability for injuries to persons or damage to property caused by LESSEE's or LESSEE's permittees negligent use or occupancy of the premises; provided, however, that LESSEE shall not be liable for any injury, damage, or loss occasioned by the negligence of LESSOR or its agents or employees; and provided further that LESSOR shall give to LESSEE prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly, contingent or otherwise, affects or might affect LESSEE, and LESSEE shall have the right to compromise and defend the suit to the extent of its own interest.

SECTION THIRTEEN

Insurance

LESSEE shall procure and maintain in force necessary liability insurance coverage for the premises and LESSEE'S activities thereon, including those activities of LESSEE's permittees, in the minimum amount of \$1,000,000.00 for personal injury, death and property damage, including any environmental damage as well as any damages related to or arising from any hazardous material or product, resulting from each occurrence and \$1,000,000 aggregate to indemnify and hold harmless LESSOR from any and all liability for claims of loss, damage, or injury to persons or property caused or occasioned by the use of the premises by LESSEE or LESSEE's permittees during the term of this Lease. All insurance shall be carried by a responsible company and shall be in a form satisfactory to LESSOR. LESSOR shall be furnished copies of any and all insurance policies obtained by LESSEE in compliance with this requirement on or before LESSEE begins occupancy. LESSEE agrees to maintain sufficient

coverage on a current status and that all such insurance policies obtained by LESSEE in compliance with this requirement name LESSOR as additional insured and provide a thirty (30) day written notice to LESSOR of termination, material change in the terms thereof or non-renewal of such policies.

SECTION FOURTEEN Termination and Default

- A. This Lease shall terminate at the end of its original term, unless sooner terminated as provided for herein. No holding over by LESSEE after the expiration or earlier termination of this Lease shall operate to extend or renew this Lease for any further term whatsoever; but LESSEE will, by any such holding over, become the tenant at will of LESSOR. After any written notice by LESSOR to vacate the premises, continued occupancy thereof by LESSEE shall constitute LESSEE a trespasser.
- B. This Lease shall be subject to termination by LESSEE in the event of any one or more of the following events:
- (1) The abandonment of the Airport as an airport or airfield for any type, class, or category of aircraft.
 - (2) The default by LESSOR in the performance of any of the terms, covenants, or conditions of this Lease and the failure of LESSOR to remedy, or to undertake to remedy, such default for a period of thirty (30) days after receipt of notice from LESSEE to remedy the same.
 - (3) Damage to or destruction of all or a material part of the premises or Airport facilities necessary for the LESSEE's use of the premises.
 - (4) The lawful assumption by the United States, or the State of North Carolina or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially LESSEE from using the premises for a period in excess of ninety (90) days.
- C. This Lease shall be subject to termination by LESSOR in the event of any one or more of the following events:
- (1) The default by LESSEE in the performance of any of the terms, covenants, or conditions of this Lease, and the failure of LESSEE to remedy or undertake to remedy such default for a period of thirty (30) days after receipt of written notice from LESSOR to remedy the same. Notwithstanding the foregoing, if LESSEE abandons the premises for any period of time, allows the hangar thereon to remain vacant (unoccupied by aircraft) for a period in excess of ninety (90) days, or fails or neglects to make any payment of rental when due, or fails to have the aircraft and equipment that are stored in the hangar listed on the tax rolls of Beaufort County at any time during the term LESSOR, at its option and without any other

notice, demand, or legal proceeding, may declare this Lease void, terminate this Lease, require LESSEE to vacate, enter the premises, and eject LESSEE therefrom or may pursue any other lawful right or remedy.

- (2) LESSEE files a voluntary petition in bankruptcy including a reorganization plan; makes a general or other assignment for the benefit of creditors; is adjudicated as bankrupt or if a receiver is appointed for the property or affairs of LESSEE and such receivership is not vacated within thirty (30) days after the appointment of such receiver.

SECTION FIFTEEN Surrender of Possession

Upon termination by expiration of the original term of this Lease or upon earlier termination under any circumstances, LESSEE's right to use the premises, facilities, and services described in this Lease shall cease, and LESSEE shall vacate the premises without unreasonable delay. Upon termination by expiration of the original term of this Lease or upon earlier termination under any circumstances, LESSEE shall have no further right or interest in any of the premises or the improvements thereon. It is mutually agreed the title to any and all improvements currently situated, hereafter erected, or hereafter constructed upon the premises shall remain, revert to or become owned and possessed, as the case may be, by LESSOR upon the expiration or earlier termination of this Lease, without any additional payment or consideration to LESSEE therefor, free and clear of all claims or liens through or on the part of LESSEE on account of any repair or improvement work. The vesting of title in LESSOR at the time specified is part of the consideration for this Lease.

SECTION SIXTEEN Inspection by LESSOR

LESSOR may enter the premises now or hereafter leased exclusively to LESSEE at any reasonable time for any purpose necessary or incidental to the performance of its obligations under this Lease. LESSEE will provide access to the premises including the hangar located thereon for inspection by LESSOR. This inspection may be made at least semi-annually with a fire department official. Any discrepancies or violations must be corrected within thirty (30) days or this Lease may be terminated.

SECTION SEVENTEEN Assignment and Subletting

LESSEE shall not at any time sublease, assign, or in any manner surrender personal control of any part of the property or rights herein leased without the written consent of LESSOR, which consent may be withheld in LESSOR's sole discretion. Provided, however, that the foregoing shall not prevent the assignment or subletting of such rights to any corporation with which LESSEE may merge or consolidate, or which may succeed to the business of LESSEE, or to the United States Government or any agency thereof. No such assignment or subletting contemplated hereunder shall release LESSEE from its obligations to pay any and all of the

waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

SECTION TWENTY TWO
Arbitration

In the event of any disagreement as to whether there has been a breach of contract under this Lease, the questions shall be submitted to arbitration, each party hereto selecting one arbitrator and the two so selected selecting a third arbitrator (but if no agreement can be reached as to the third arbitrator, he shall be appointed by the Clerk of Superior Court of Beaufort County), which board of arbitrators shall sit within two weeks following the date of their appointment, and after proper notice to both parties, shall hear the evidence presented by both sides and render their decision. The decision of the majority of the board of arbitrators shall be binding on both LESSOR and LESSEE, and it shall be made and announced as soon as possible, and in no event later than two weeks after the aforementioned hearing. Each party shall pay the arbitrator appointed by it, and the third arbitrator shall be paid jointly by LESSOR and LESSEE. In this connection, attention is invited to the fact of the management of said Airport, its general appearance and the manner in which the general public is met and served is of paramount importance to the LESSOR, and in the event of any disagreement requiring adjustment or adjudication by arbitration, as herein provided, said arbitrators shall give particular attention to these considerations to the extent that LESSEE shall comply with all requirements of this Lease.

SECTION TWENTY THREE
Effect of Lease

All covenants, conditions, or provisions in this Lease shall extend to and bind the legal representatives, successors and assigns of the respective parties. This Lease is in lieu of any lease heretofore executed between the parties hereto and any such prior lease is hereby cancelled and no longer in effect.

SECTION TWENTY FOUR
Attorney's Fees

In the event any action is filed in relation to this Lease, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay under this Lease, a reasonable sum for the successful party's attorney's fees.

SECTION TWENTY FIVE
Entire Agreement

This Lease shall constitute the sole agreement between the parties hereto and it is understood that the provisions contained herein shall not be altered, modified or changed in any manner except by written agreement executed by LESSOR and LESSEE, and no oral contract or agreement, or informal memorandum shall have the effect of so modifying, altering or changing this Lease. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

Notwithstanding anything herein to the contrary, this Lease shall be interpreted and, if necessary, amended, to insure and preserve its compliance with any applicable federal obligation. If LESSEE refuses to effectuate any amendment that may be required to insure and preserve the compliance with any applicable federal obligation, such refusal shall constitute an event of default and this Lease may be terminated as a result thereof upon notice from LESSOR to LESSEE.

SECTION TWENTY SIX
Modification of Lease

Any modification of this Lease or additional obligations assumed by either party in connection with this Lease shall be binding only if in writing signed by each party or an authorized representative of each party.

(SIGNATURES ON THE FOLLOWING PAGE.)

IN WITNESS WHEREOF, each party to this Lease has caused it to be duly and properly executed as evidenced by the authorized signatures below.

PRE-AUDIT CERTIFICATE

This Lease has been pre-audited pursuant to North Carolina General Statute § 159-28 in the manner required by the Local Governmental Budget and Fiscal Control Act.

Matt Rauschenbach, Chief Financial Officer
City of Washington

(SEAL)

LESSOR:

CITY OF WASHINGTON

(corporate seal)

By: _____
Brian Alligood, City Manager

ATTEST:

Cynthia S. Bennett, City Clerk

DATE: _____

LESSEE:

EASTERN FLYING SERVICE, INC.

(corporate seal)

By: _____
James Brinkley, President

ATTEST:

_____, Secretary

DATE: _____

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

WITNESS my hand and official seal, this the _____ day of _____, 2013.

NOTARY PUBLIC

My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, _____, a Notary Public of the State and County aforesaid, certify that _____ personally appeared before me this day and acknowledged that he/she is ___ Secretary of **EASTERN FLYING SERVICE, INC.**, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by JAMES BRINKLEY, its President, sealed with its corporate seal and attested by himself/herself as its Secretary.

WITNESS my hand and official seal, this the ___ day of _____, 2013.

NOTARY PUBLIC

My Commission expires: _____.

EXHIBIT "A"





REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *AL*
Date: 09-26-13
Subject: Amend Section 32-50 – Permit Required.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council adopt an ordinance to amend Chapter 32, Section 32-50 – Permit Required, requiring permits prior to any excavation within public right-of-ways.

BACKGROUND AND FINDINGS:

The Public Works department has recently experienced several disruptions of utility services due to utility contractors (telephone, cable TV, gas) burying cables within public rights-of-way. This ordinance did not specifically address excavations in rights-of-ways, only within pavement and sidewalk. This proposed amendment is suggested to provide the City a clearer means to address these types of situations and to help us prevent them from happening in the future.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Ordinance to amend Chapter 32, Section 32-50 – Permit Required.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: *AL* Concur _____ Recommend Denial _____ No Recommendation *10/2* Date
 October 7, 2013

**AN ORDINANCE TO AMEND CHAPTER 32: STREETS AND SIDEWALKS,
ARTICLE II: EXCAVATIONS, SECTION 32-50: PERMIT REQUIRED,
OF THE WASHINGTON CITY CODE**

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

Section 1. That Chapter 32 Section 32-50 – Permit Required, be amended to remove the following:

It shall be unlawful for any person to dig any hole, ditch or excavation of any kind whatsoever on any street or sidewalk in the city without first securing a permit therefor in writing from the Director of Public Works.

Section 2. That Chapter 32 Section 32-50 – Permit Required, be amended to add the following:

It shall be unlawful for any person to dig any hole, ditch or excavation of any kind whatsoever on any street, sidewalk and/or public right-of-way in the city without first securing a permit therefor in writing from the Director of Public Works or his designee.

Section 3. All ordinances in conflict with this ordinance are hereby repealed.

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

This the 7th day of October 2013.

Mayor

ATTEST:

City Clerk



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *AL*
Date: 09-26-13
Subject: Adopt an Ordinance to Delete Chapter 39 – Wastewater/SUO and Replace it With the Attached New Chapter 39 – Wastewater/SUO.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

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

BACKGROUND AND FINDINGS:

As in 2011, Public Works staff has been working with the State to implement a SUO, Sewer Use Ordinance, which would meet their new criteria. These changes are required by the State to meet their latest requirements.

PREVIOUS LEGISLATIVE ACTION

May 2, 2011 – adopted current SUO

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Ordinance to amend Chapter 39 – Wastewater/SUO

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: *10/2* Date Concur: *AL* Recommend Denial _____ No Recommendation _____

**AN ORDINANCE TO AMEND CHAPTER 39, WASTEWATER/SUO, OF THE
CODE OF ORDINANCES OF THE CITY OF WASHINGTON**

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

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

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

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

**Chapter 39
WASTEWATER/SUO**

Sec. 39-1. - Purpose and policy.

This chapter sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for the City of Washington, hereafter referred to as the city, and enables the city to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code § 1251 et seq.) and the General Pretreatment Regulations (40 CFR, Part 403).

The objectives of this chapter are:

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

This chapter provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through

enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-2. - Definitions and abbreviations.

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
- (1) *Act* or "*the Act*". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq.
 - (2) *Ammonia nitrogen*. The total amount of nitrogen in wastewater in the form of ammonia or ammonium.
 - (3) *Approval authority*. The Director of the Division of Water Resources of the North Carolina Department of Environment and Natural Resources or his designee.
 - (4) *Authorized representative of the industrial user*.
 - a. If the industrial user is a corporation, authorized representative shall mean:
 1. The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 2. The manager of one (1) or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

- c. If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - d. The individuals described in section 39-2(a)(4)c. above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the city.
 - e. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to POTW Director prior to or together with any reports to be signed by an authorized representative.
- (5) *Billable biochemical oxygen demand.* The discharge in pounds of BOD calculated using the billable flow and concentration of BOD in the wastewater in excess of two hundred fifty (250) mg/l.
 - (6) *Billable total suspended solids.* The discharge in pounds of TSS calculated using the billable flow and concentration of TSS in the wastewater in excess of two hundred fifty (250) mg/l.
 - (7) *Biochemical oxygen demand (BOD).* The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at twenty (20) degrees centigrade, usually expressed as a concentration (e.g. mg/l).
 - (8) *Building drain.* That part of the lowest horizontal piping of a drainage system which receives wastewater and is located inside the walls of a building and conveys the wastewater to the building sewer, which begins five (5) feet outside the building wall.
 - (9) *Building sewer.* A sewer conveying wastewater from the premises of a user to the POTW.
 - (10) *Bypass.* The intentional diversion of waste streams from any portion of a user's treatment facility.
 - (11) *Categorical standards.* This means the National Categorical Pretreatment Standards or Pretreatment Standard.
 - (12) *Chemical oxygen demand.* The total amount of oxygen required to oxidize the organic matter in waste as described in standard methods.
 - (13) *City.* The City of Washington or, where the context so indicates, the City Council.
 - (14) *Color.* This represents the true color due to the substances in solution.
 - (15) *Concentration based limit.* A limit based on the relative strength of a pollutant in wastewater, usually expressed in mg/l.
 - (16) *Control Authority.* Refers to the POTW organization if the POTW organization's Pretreatment Program approval has not been withdrawn.
 - (17) *Direct discharge.* The discharge of wastewater directly to the waters of the state.

- (18) *Environmental Protection Agency or EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
- (19) *Grab sample.* A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (20) *Holding tank waste.* Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
- (21) *Indirect discharge or discharge.* The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
- (22) *Industrial user or user.* Any person which is a source of indirect discharge.
- (23) *Instantaneous measurement.* Represents a single reading, observation or measurement of the discharge.
- (24) *Interference.* The inhibition, or disruption of the POTW collection system, treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the Control Authority's (and/or POTW's, if different from the Control Authority) NPDES, collection system, or Nondischarge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. § 6901 et seq.), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
- (25) *Local limits.* Concentration or mass-based limits developed by the director for controlling the discharge of pollutants.
- (26) *Mass-based limit.* A limitation based on the actual quantity of a pollutant in a discharge, usually expressed in pounds per unit of production.
- (27) *Medical waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
- (28) *National categorical pretreatment standard or categorical standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405—471.
- (29) *National Pollution Discharge Elimination System or NPDES Permit.* A permit issued pursuant to section 402 of the Act (33 U.S.C. § 1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.

- (30) *National prohibitive discharge standard or prohibitive discharge standard.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 39.26 of this chapter and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
- (31) *Natural outlet.* Any outlet into a watercourse, pond, ditch, lake, or other surface water or groundwater.
- (32) *New source.*
- a. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
 1. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
 2. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 3. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section (a)(2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
 - c. For purposes of this definition, construction of a new source has commenced if the owner or operator has:
 1. Begun, or caused to begin, as part of a continuous on-site construction program:
 - (i) Any placement, assembly, or installation of facilities or equipment; or
 - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility,

engineering, and design studies do not constitute a contractual obligation under this definition.

- (33) *Noncontact cooling water.* Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (34) *Nondischarge permit.* A permit issued by the State pursuant to G.S. 143-215.1(d) for a waste which is not discharged directly to surface waters of the State or for a wastewater treatment works which does not discharge directly to surface waters of the State.
- (35) *Operation and maintenance.* All costs, direct and indirect, not including debt service and capital related expenditures, but inclusive of expenditures attributable to administration, monitoring, inspections, reviewing applications, maintenance of equipment, and treatment and collection of wastewater, necessary to assure adequate wastewater collection and treatment on a continuing basis which conforms to applicable regulations and assures optimal long-term facility management.
- (36) *Pass through.* A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the Control Authority's (and/or POTW's, if different from the Control Authority) NPDES, collection system, or Nondischarge Permit [or a downstream water quality standard even if not included in the permit].
- (37) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
- (38) *pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (39) *Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, metals, BOD, COD, toxicity, and odor).
- (40) *POTW Director.* The city administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance.
- (41) *POTW treatment plant.* That portion of the POTW designed to provide treatment to wastewater.
- (42) *Pretreatment or treatment.* This is the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

- (43) *Pretreatment program.* The program for the control of pollutants introduced into the POTW from nondomestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- (44) *Pretreatment requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (45) *Pretreatment standard.* Any prohibited discharge standard, categorical standard, or local limits which applies to an industrial user.
- (46) *Publicly Owned Treatment Works (POTW) or municipal wastewater system.* A treatment works as defined by section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.
- (47) *Qualified laboratory.* Laboratories currently certified by the state to perform water and wastewater analyses.
- (48) *Severe property damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (49) *Significant industrial user or SIU.* Any industrial user that discharges wastewater into a publicly owned treatment works and that:
- a. Discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); or
 - b. Contributes process wastewater which makes up five percent or more of the NPDES Non-discharge permitted flow limit or organic capacity of the POTW treatment plant. In this context, organic capacity refers to BOD, TSS, Ammonia: Total Phosphorus, and Total Nitrogen; or
 - c. Is subject to Categorical Pretreatment Standards under 40 CFR Part 403.6 and 40 CFR Chapter 1, Subchapter N, Parts 405-471; or
 - d. Is designated as such by the Control Authority on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation, or for violating any Pretreatment Standard or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, or for contributing to violations of the POTW's receiving stream standard, or for limiting the POTW's sludge disposal options.
 - e. Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraphs

- (a) and (b) above has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirement, or for contributing to violations of the POTW's effluent limitations and conditions in its NPDES or non-discharge permit, [or for contributing to violations of the POTW's receiving stream standard,] or for limiting the POTW's sludge options, and thus is not a Significant Industrial User.
- f. Subject to Division approval under 15A NCAC 02H .0907(b), the Control Authority may determine that an Industrial User meeting the criteria in paragraph (c) above meets the requirements of 40 CFR Part 403.3(v)(2) and this is a Non-Significant Categorical Industrial User.
- (50) *Significant noncompliance or SNC* is the status of noncompliance of a Significant Industrial User when one or more of the following criteria are met. Additionally, any Industrial User which meets the criteria in Subparagraph (a)(50), Parts (c), (d), or (h) shall also be SNC.
- (a) Chronic violations of wastewater discharge limits, defined here as those which sixty-six (66) percent or more of all the measurements taken for the same pollutant parameter (not including flow) during a six month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement including instantaneous limits, as defined by 40 CFR Part 403.3(1);
- (b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three (33) percent or more of all the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the numeric Pretreatment Standard or Requirement including instantaneous limits as defined by 40 CFR Part 403.3(1) multiplied by the applicable TRC; (TRC = 1.4 for BOD, TSS, fats, oil and grease, 1.2 for all other pollutants (except flow and pH);
- (c) Any other violation of a Pretreatment Standard or Requirement as defined by 40 CFR Part 403.3(1) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the Control Authority and/or POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);
- (d) Any discharge of a pollutant or wastewater that has caused imminent endangerment to human health, welfare or to the environment or has resulted in either the Control Authority's or the POTW's, if different from the Control Authority, exercise of its emergency authority under 40 CFR Part 403.8(f)(1)(vi)(B) and Section 39-112 (e) of this SUO to halt or prevent such a discharge;
- (e) Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.
- (f) Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, ninety (90) day compliance reports, and periodic compliance reports within thirty (30) days from the due date.

- (g) Failure to accurately report noncompliance.
 - (h) Any other violation or group of violations that the Control Authority and/or POTW determines will adversely affect the operation or implementation of the local pretreatment program.
- (51) *Slug load or discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature, a noncustomary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in section 39-26 of this chapter.
 - (52) *Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
 - (53) *Standard methods.* The laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation or another procedures recognized by the DWR, DPH, and EPA.
 - (54) *State.* Refers to the State of North Carolina.
 - (55) *Storm sewer.* A sewer that carries only stormwater, surface runoff, street wash, and drainage, and to which wastewater is not intentionally admitted.
 - (56) *Stormwater.* Any flow occurring during or following any form of natural precipitation and resulting therefrom.
 - (57) *Total Kjeldahl nitrogen.* The sum of organic nitrogen and ammonia nitrogen content of a wastewater as determined by standard methods.
 - (58) *Total nitrogen.* The sum of TKN, nitrates, and nitrites content of a wastewater as determined by standard methods.
 - (59) *Total phosphorus.* All orthophosphates and condensed phosphates both dissolved and particulate, organic and inorganic.
 - (60) *Total suspended solids.* The total suspended matter that either floats on the surface of, or is suspension with, wastewater and is removable by laboratory filtration as described in standard methods.
 - (61) *Toxic substances.* Any substances whether gaseous, liquid, or solid, which when discharged to the POTW in sufficient quantities may tend to interfere with any wastewater treatment process, or to constitute a hazard to the environment or recreation in the receiving waters of the effluent from the POTW. These substances include but are not limited to those pollutants listed as toxic in regulations promulgated by the EPA under the provisions of 307(a) of the Act, or other acts.
 - (62) *Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.

- (63) *User*. Any person, who discharges, caused or permits the discharge of wastewater to the POTW.
 - (64) *User charge system*. The system charges levied on users for the operation and maintenance costs of the water or wastewater.
 - (65) *Wastewater*. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, mobile sources, treatment facilities and institutions, together with any groundwater, surface water, and storm water that may be present, whether treated or untreated, which are contributed into or permitted to enter the POTW.
 - (66) *Wastewater Permit*. As set forth, in section 39-62 of this chapter.
 - (67) *Waters of the State*. All streams, rivers, brooks, swamps, sounds, tidal estuaries, bays, creeks, lakes, waterways, reservoirs and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.
- (b) This chapter is gender neutral and the masculine gender shall include the feminine and vice-versa.
 - (c) Shall is mandatory; may is permissive or discretionary.
 - (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
 - (e) The following abbreviations when used in this chapter shall have the designated meanings:
 - (1) BOD—Biochemical Oxygen Demand.
 - (2) CFR—Code of Federal Regulations.
 - (3) COD—Chemical Oxygen Demand.
 - (4) CWA—Clean Water Act.
 - (5) DENR—NC Department of Environment and Natural Resources.
 - (6) DPH NC—Division of Public Health.
 - (7) DWR NC—Division of Water Resources.
 - (8) EPA—Environmental Protection Agency.
 - (9) gpd—Gallons per day.
 - (10) l—Liter.
 - (11) mg—Milligrams.
 - (12) mg/l—Milligrams per liter.
 - (13) NCAC—North Carolina Administrative Code.
 - (14) N.C.G.S.—North Carolina General Statutes.
 - (15) NPDES—National Pollution Discharge Elimination System.
 - (16) O & M—Operation and Maintenance.
 - (17) POTW—Publicly Owned Treatment Works.
 - (18) RCRA—Resource Conservation and Recovery Act.
 - (19) SIC—Standard Industrial Classification.
 - (20) SWDA—Solid Waste Disposal Act.
 - (21) TKN—Total Kjeldahl Nitrogen.
 - (22) TSS—Total Suspended Solids.
 - (23) USC—United States Code.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-3. - Authority.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-4. - Visiting utility stations.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-5. - Connections and meters.

- (a) *Connections.* All meters, meter boxes, pipes and other equipment furnished and used by the city in installing any sewer connection shall be and remain the property of the city.
- (b) *Maintenance of meters.* All meters, except such as are required to be furnished by specified users of water, shall be kept in good repair and working order by and at the expense of the city. Meters for measuring the flow of wastewater, where required, shall be provided and maintained by and at the expense of the customer.
- (c) *Connections—Work to be done by the city.* The construction of laterals for the connection of the public sewer lines on any lot with public sewer lines in any street and the necessary excavation thereof shall be done only by the city.
- (d) *Connections—Application.*
 - (1) No connection shall be made to any public sewer line except after approval of the written application therefore.
 - (2) Every application for a sewer connection shall state the name of the owner of the lot, the name of the street on which lot is situated, the number of the house, if there is one (1) on the lot or, if not, a description of the location of the lot, the number and kind of connections required and the character of surface of the abutting street. Every such application shall be signed by the person making the application and shall be accompanied by the proper fee for making the connection applied for.
 - (3) No person shall make any connection of roof downspouts, exterior foundation drains, area drains, or other sources of inflow, groundwater, or other unpolluted waters to a building sewer or building drain which in turn is connected, directly or indirectly, to a public sanitary sewer.
- (e) *Connections—Separate connections required; exceptions.* Every house or building abutting any public sewer shall have a separate connection.
- (f) *Connections—Where required.* Within thirty (30) days after the time when any public sanitary sewer in any street is completed and ready for use, the owner of any abutting lot having thereon

improvements for occupancy shall cause a sanitary closet and sink to be installed and to be connected with the sanitary sewer; provided, that where a house adjacent to a sanitary sewer is connected to an existing septic tank, a connection shall not be required as long as the septic tank operates properly or if the director determines that it is not feasible to connect. When, in the opinion, of the county health officer, the septic tank does not work properly or becomes a health hazard, he shall notify the owner in writing and send a copy of the notice to the director. The owner shall then be required to connect to the sanitary sewer within thirty (30) days from the date of the notice.

(g) *Connections—Where connection inside.*

- (1) Sewer connections shall be made into existing connections constructed by the city to serve a lot. If a connection does not exist, one shall be provided as close as possible to the location requested by the customer. The building sewer shall be constructed to the cleanout at approximately the start of the right-of-way or property line.
- (2) Old building sewers may be used in connection with new buildings only when they are found, upon examination and testing by the director, to meet all requirements of the city and this chapter. All new building sewers including necessary replacement of existing building sewers shall comply with the state building code, volume II, plumbing.
- (3) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may, directly or indirectly, be occasioned by the installation of the building sewer provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of the city.
- (4) It shall be the responsibility of the owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the director that repairs are necessary. Should the owner fail to repair the building sewer within fifteen (15) days after receiving written notification that such repairs are necessary, the city may make the necessary repairs and shall assess the owner for the cost of the repairs.
- (5) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain may be lifted by a means approved by the city and discharged to the building sewer. The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes and other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures shall be approved by the city before installation.

- (h) *Connections—Connections beyond the city limits.* Any person owning or controlling premises located beyond the corporate city limits and desiring to install a plumbing system for the purpose of discharging wastewater into the public sewer may do so by complying with the requirements of this article and paying all applicable fees and charges.

(Ord. No. 11-6, § 1, 5-2-2011)

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

- (a) *Standards for sewer system.* Plans for additions or alterations to the existing sewer system shall be approved by the director or DWR. Septic tanks shall not be constructed within the city limits. Existing septic tanks may be used until any type of cleaning or repair is required, at which time the structure shall be connected to the public sewer and the septic tank removed or filled with dirt.
- (b) *Provisions of sewer service.*
- (1) *Area outside city.*
- a. *With adequate public sewer existing.* Upon receipt of a request for sewer service and payment of all fees and charges, the city may construct a sewer connection to serve the property. The property owner shall pay the then existing connection fee and capital investment fee prior to receiving a tap.
 - b. *Public sewer not existing.*
 1. Upon receipt of a request for sewer service, the city may approve the request and authorize construction of a line to serve the property. When a public sewer is constructed, it shall extend across the entire frontage of the property to be served.
 2. The party requesting service shall pay the entire cost of construction, including materials, labor, equipment and necessary lift stations.
 3. If the city determines that sufficient advantages exist, it may choose to bear the cost of constructing a public sewer from the nearest adequately sized public sewer to the property to be served.
 4. Each property requesting service and abutting a public sewer constructed according to subsection (b)(1)b.1. or 2. of this section shall comply with subsection (b)(1)a. of this section.
 - c. *Charges after annexation into city.* After annexation into the city, property which abuts an existing public sewer shall pay the then existing inside capital investment fee and connection fee prior to receiving a connection.
 - d. *Sewer rates.* Customers outside the city shall be charged the regular outside rate.
- (2) *Area inside city.*
- a. *With adequate public sewer existing.* The city shall construct a sewer connection after receipt of the then existing connection fee.
 - b. *Public sewer not existing.* When a property owner within the city requests sewer service, the city may order the extension of a public sewer to serve the property and assess all abutting property owners an amount equal to the cost of materials, but such assessments shall not exceed fifteen dollars (\$15.00) per front foot. The city shall pay the cost of all lift stations and force mains.
 - c. *Other conditions.* When a subdivision or developer requests sewer service and conditions in subsection (1) or (2) of this section do not apply, or if an unusually large amount of construction is required, the conditions of payment shall be determined through negotiations and established in a contract between the property owner and city.

- (c) *Outdoor privies.* It shall be unlawful to construct, maintain, or use any outdoor privy; or use any device for collecting wastewater within the city limits which is not connected to the public sewer.

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-7—39-25. - Reserved.

ARTICLE II. - GENERAL SEWER USE REQUIREMENTS

DIVISION 1. - GENERAL SEWER USE REQUIREMENTS

Sec. 39-26. - Prohibited discharge standards.

- (a) *Discharging wastewater to natural outlet prohibited; discharge of stormwater or unpolluted water.* wastewater shall not be discharged to a natural outlet in the limits of the city. All stormwater shall be discharged to the storm sewer system. Unpolluted water may be discharged to the storm sewer system with approval of DWR.
- (b) *Prohibited discharges into sewers—Generally.* No person shall pour, throw or discharge any substance, or other solid or liquid, into any sanitary or storm sewer at any manhole or at any opening therein other than a sewer connection, nor shall any person discharge into any sanitary or storm sewer any substance likely to obstruct or to cause undue injury to the same or any substance of such high causticity or of a sufficiently acid nature to interfere materially with the equipment used in connection therewith.
- (c) *Prohibited discharges into sewers—Specified waters and wastes.*
- (1) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
 - (2) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater:
 - a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than one hundred forty (140) degrees F (sixty (60) degrees C) using the test methods specified in 40 CFR 261.21.
 - b. Solid or viscous substance in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case, solids greater than one-half (½) inch in any dimension.
 - c. Any wastewater having a pH less than 5.0 or more than ten (10) or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.

- d. Wastewater containing pollutants in sufficient quantity either singly or by interaction with other pollutants which cause interference, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the POTW.
- e. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- f. Any wastewater having a temperature greater than one hundred fifty (150) degrees F (sixty-six (66) degrees C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed one hundred four (104) degrees F (forty (40) degrees C).
- g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- h. Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with section 39-33 of this chapter.
- i. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- j. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
- k. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable State or Federal regulations.
- l. Stormwater, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW Director.
- m. Petroleum oil, nonbiodegradable cutting oil, solvents, or products of mineral oil origin in amounts that may cause interference or pass through.
- n. Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- o. Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit.

- p. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
 - q. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director.
 - r. Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B.0200.
 - s. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - t. Recognizable portions of the human or animal anatomy.
 - u. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
 - v. At no time, shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter.
 - w. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
- (d) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (e) When the POTW Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW Director shall:
- (1) Advise the user(s) of the potential impact of the contribution on the POTW in accordance with Article II, Division 7 of this chapter.
 - (2) Take appropriate actions in accordance with section 39-61 and section 39-62 for such user to protect the POTW from interference or pass through.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-27. - National Categorical Pretreatment Standards.

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

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

factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

- (d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
- (e) A user may request a removal credit adjustment to a categorical standard in accordance with 40 CFR 403.7..

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-28. - Local limits.

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

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

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-29. - Right of revision.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-30. - Dilution.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-31. - Pretreatment of wastewater.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

- (a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in section 39-2(a)(51). All SIUs must be evaluated within one (1) year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.
- (b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a noncustomary batch discharge, or a slug load. Also see section 39-75 and section 39-76
- (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
 - (1) Description of discharge practices, including non-routine batch discharges;
 - (2) Description of stored chemicals;
 - (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by section 39-76 of this chapter; and
 - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
- (d) Wastewater which constitutes a slug as defined herein will have a surcharge at the discretion of the POTW Director.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-33. - Hauled wastewater.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-34—39-41. - Reserved.

DIVISION 2. - FEES

Sec. 39-42. - Purpose.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-43. - General requirements within city.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

- (a) Sewer connection fees are fees for the installation of a tap at the right-of-way. These fees shall be adopted by the city council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the fee schedule will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of

the city's sewer system. The fees shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager. Minimum fees shall be paid prior to construction of the tap. Any additional fees to equal the total actual construction cost shall be paid prior to customer making tie-in to the tap. For any tap larger than listed on the fee schedule, the cost shall be estimated by the POTW Director at the time of the request. Any additional cost to equal the total actual construction costs shall be paid prior to customer making tie-in to the tap. For taps requiring more than the usual construction work, the city may require customer to employ an outside contractor to make the tap. Contractors shall obtain a permit for the public works department and all work shall be in accordance to city specifications.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-46. - Service fees—Transfers.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-47. - Sewer rates and bills.

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

(a) *Residential service.*

- (1) This service is available for the collection and treatment of domestic sewage from single-family residences within the city and outside the city limits where the city's collection facilities are extended.

- (2) Service is not available under this schedule for any nondomestic sewage; such as from business operated in the residence, for commercial for multifamily use, such as, master metered apartments, motels, inns, and mobile home parks; or for resale.
 - (3) This service is applicable when the customer's residence is served by a water service tap up to one (1) inch in diameter.
 - (4) The minimum monthly charge for city customers will be determined by the current rate schedule.
 - (5) Commodity charges will be based on the customer's total water consumption during the billing period. Water consumption will be metered and rounded to nearest cubic foot for billing. Except when the amount of water used is not registered because of a defective meter, the method described in section 39-50 will be used.
 - (6) Existing customers not receiving water service shall provide a meter to measure total use. When total use is not known, bills will be rendered on the basis of estimates by the POTW Director.
 - (7) The sewer service charge shall be billed to each customer at the same time the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.
- (b) *General service.*
- (1) This service is available for the collection and treatment of sewage discharged by commercial, industrial, institutional and other customers within the city and outside the city limits where the city's collection facilities are extended. Service is not available for resale service.
 - (2) The minimum monthly charge for inside city customers will be determined by the current rate schedule.
 - (3) Charges will be established periodically for billing of some costs attributable to wastewater with greater pollutant concentrations than normal domestic sewage. The following rates are applicable for five-day BOD and suspended solids:
 - a. BOD: \$0.24/pound for concentration in excess of 300 mg/l.
 - b. TSS: \$0.29/pound for concentration in excess of 300 mg/l.
 Charges for additional costs attributable to other pollutants will be assessed to each customer, as applicable. All nondomestic customers that utilize two (2) inch or greater meters shall be charged an additional \$0.00414 per cubic foot for administration of the industrial pretreatment program.
 - (4) Commodity charges will be based on the customer's total water consumption during the billing period, except when the customer's water consumption significantly exceeds the discharge into the wastewater collection system. When applicable, the customer may pay the cost of installing and maintaining the necessary equipment to monitor the flow not returned to the wastewater collection system, and has the billing use reduced accordingly.
 - (5) The sewer service charge shall be billed to each customer at the same time that the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-48. - Wastewater surcharges.

- (a) All persons discharging industrial wastewater into the public sanitary sewer shall be rendered a monthly bill as a surcharge covering the entire costs to the city incurred by treating all wastewater having pollutants in excess of those defined as billable. Such surcharge shall be evoked as herein provided in addition to the existing service charge if such charge is now imposed or in addition to any sewer charge imposed after the adoption of this article. The surcharge shall include:
 - (1) All fixed charges and amortization costs of plant capacity required for treating such wastewater.
 - (2) A charge covering the operational cost incurred by the city in treating such wastewater.
- (b) A surcharge in amounts established from time to time by ordinance per one hundred (100) pounds of billable biochemical oxygen demand and suspended solids shall be made to cover the fixed charges and amortization cost of plant capacity. The POTW Director shall recommend a surcharge for the other billable pollutants.
- (c) The surcharge covering operational costs shall be fixed at the beginning of the fiscal year and shall be computed from the actual costs per pound of pollutant removed from the wastewater as experienced at the wastewater treatment plant during the preceding fiscal year.
- (d) The combined surcharge as set forth in subsections (b) and (c) of this section shall be billed and payable monthly on a separate bill rendered by the city. Such bill shall be sent through the United States mail notifying all persons of the amount and date due. Failure to receive notice is not an excuse for nonpayment of bills. Delinquencies shall be handled in accordance with the provisions of this section.
- (e) In case a person discharging wastewater into the public sanitary sewer does not procure his water supply from the city and becomes delinquent on his payment of the surcharge, his connection with the wastewater system may be severed and may only be reconnected at his expense.

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

customer, a service fee in an amount as established from time to time by ordinance will be charged on that date, whether services are disconnected or not.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-51. - Adjustment of sewer bills.

- (a) If the city determines that it has overcharged or undercharged a customer on account of its error, the city shall refund or recover the difference, subject to the following:
 - (1) The adjustment period shall be limited to the lesser of the actual period during which the error occurred or twelve (12) months;

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-52. - Sewer facilities impact fees.

- (a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - (1) *Capital equipment* means equipment with an expected use life of three (3) years or more.
 - (2) *Connection to the sewer system* means the physical connect of a building, structure or use of land to the city's sewer lines, no matter if such connection is made through or by intermediate lines.
 - (3) *Development order* means a regulatory approval by city.
 - (4) *Fee payer* means a person applying for connection to the city's sewer system.
 - (5) *Sewer system* means the physical public collection and treatment facilities of the city administrative adjuncts to such system and the planned future improvements to such system.
 - (6) *Sewer facilities* means physical public collection and treatment facilities of the city.
- (b) *Legislative findings.* The city finds, determines and declares that:
 - (1) The city has expanded and must further expand and upgrade its sewer facilities in order to maintain current and meet anticipated future standards of public health if new development is to be accommodated without decreasing current standards of health.
 - (2) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of sewer facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
 - (3) Connecting to the city sewer system will create a need for the construction, equipping, expansion, and upgrading of sewer facilities.
 - (4) The fees established by this section are derived from, are based upon, and do not exceed the costs of providing additional and/or upgraded sewer facilities necessitated by the connection to the city's sewer system.
- (c) *Short title, authority, and applicability.*
 - (1) The ordinance from which this article is derived shall be known and may be cited as the "City of Washington Sewer Facilities Impact Fee Ordinance."

- (2) The City Council has the authority to adopt the ordinance from which this article is derived pursuant to its general police powers and its obligation to protect the health, welfare, safety of its residents.
 - (3) This article shall apply in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (d) *Intent and purposes.*
- (1) This article is intended to assist in the implementation of the city comprehensive plan.
 - (2) The purpose of this article is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide sewer facilities in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (e) *Rules of construction.*
- (1) The provisions of this article shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, and welfare.
 - (2) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article:
 - a. In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
 - b. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 - c. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - d. The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
 - e. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
 - f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction "and", "or", "either or", the conjunction shall be interpreted as follows:
 1. The term "and" indicates that all the connected terms, conditions, provisions or events shall apply.
 2. The term "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 3. The term "either or" indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
 - g. The word "includes" shall not limit a term to the specific example but is intended to extend its meaning to all other instances or circumstances of like kind or character.
 - h. The term "City Manager" means the Washington City Manager or municipal officials he may designate to carry out the administration of this article.

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

- (1) Funds collected from sewer facility impact fees shall be used solely for the purpose of acquiring, equipping, and/or making capital improvements to sewer facilities under the jurisdiction of the city, and shall not be used for maintenance or operations.
 - (2) Funds from the Sewer Facilities Impact Fee Trust Fund may only be used for sewer facilities purposes. Funds shall be expended in the order in which they are collected.
 - (3) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which sewer facilities impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (b) of this section.
 - (4) At least once each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for sewer facilities, assigning funds, including any accrued interest, from the several Sewer Facilities Impact Fee Trust Fund to specific sewer facilities improvements projects and related expenses, monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Sewer Facilities Impact Fee Trust Fund until the next fiscal period, except, as provided by the refund provisions of this article.
 - (5) Funds may be used to provide refunds as described in subsection (k) of this section.
 - (6) Funds may be funded to rebate developer costs for providing sewer capital facilities in excess of the capacity required for the individual developer making the provision. Any rebates must be pursuant to a refunding agreement between the developer and the city after the effective date of the ordinance from which this article is derived. Prior refunding agreements may be renegotiated in order to bring such agreements into accord with the provisions of this article.
- (k) *Refund of fees paid.* Any funds not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date the sewer facilities impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at the rate of five (5) percent annually, provided that the landowner submits an application for a refund to the City Clerk within one hundred eighty (180) days of the expiration of the six-year period.
- (l) *Exemptions and credits.*
- (1) The following shall be exempted from payment of the impact fee:
 - a. Alterations or expansions of an existing building where no additional or larger sewer connections are requested and where the use is not changed.
 - b. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger sewer connections are requested and where the use is not changed.
 - c. The installations of a replacement mobile home on a lot or other such site when sewer capital facilities impact fee for such mobile home site has previously been paid pursuant to this article or where a mobile home legally existed on such site on or prior to the effective date of the ordinance from which this article is derived.
 - d. Any claim of exemption must be made no later than the time of application for connection to the city's sewer system. Any claim not so made shall be deemed waived.

(2) *Credits.*

- a. Sewer facilities capital improvements may be offered by the fee payer as total or partial payment of the required impact fee. The offeror must request a sewer facilities impact fee credit. If the City Manager accepts such an offer, whether the acceptance is before or after the effective date of the ordinance from which this article is derived, the credit shall be determined and provided in the following manner:
 1. Credit for the dedication of land shall be valued at:
 - (i) One hundred ten (110) percent of the most recent assessed value by the county tax assessor;
 - (ii) By such other appropriate method as the City Council may have accepted prior to the effective date of the ordinance from which this section is derived for particular sewer facilities improvements; or
 - (iii) By fair market value established by private appraisers acceptable to the city. Credit for the dedication of sewer facilities land shall be provided when the property has been conveyed at no charge to; and accepted by, the city in a manner satisfactory to the City Council.
 2. Applicants for credit for construction of sewer facilities improvements shall submit acceptable engineering drawings and specification and construction cost estimates to the City Manager. The City Manager shall determine credit for construction based upon either these cost estimates or upon alternated engineering criteria and construction cost estimates if the City Manager determines that such estimates submitted by the applicant are either unreliable or inaccurate. The City Manager shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the sewer facilities impact fee component to which the credit will apply the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of a duplicate copy of such letter or certificate and return such signed document to the City Manager before credit will be given. Failure of the applicant to sign, date and return such document within sixty (60) days shall nullify the credit.
 3. Except as provided in subsection (1) of this section, credit against impact fees otherwise due will not be provided until:
 - (i) The construction is completed and accepted by the city; or
 - (ii) A suitable maintenance and warranty bond is received and approved by the City Clerk, when applicable.
 4. Credit may be provided before completion of specified sewer facilities improvements if adequate assurances are given by the applicant that the standards set out in this section will be met and if the fee payer posts

security, as provided in this subsection, for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the City Clerk in an amount determined by the City Manager. If the sewer facilities construction project will not be constructed in one (1) year of acceptance of the offer by the City Manager, the amount of the security shall be increased by ten (10) percent compounded, for each year of the life of the security. The security shall be reviewed and approved by the City Clerk of the City Council prior to acceptance of the security by the City Clerk. If sewer facilities construction project is not to be completed within five (5) years of the date of the fee payer's offer, the City Council must approve the sewer facilities construction project and its scheduled completion date prior to the acceptance of the offer by the City Manager.

- b. Any claim for credit must be made no later than the time of application for connection. Any claim not so made shall be deemed waived.
 - c. Credits shall not be transferable from one project or development to another without the approval of the City Council.
 - d. Credits shall not be transferable from one (1) component of the water and sewer facilities impact to another component of this fee.
 - e. Determination made by the City Manager, pursuant to the credit provisions of this section, may be appealed to the City Council by filing a written request with the City Manager within ten (10) days of the City Manager's determination.
- (m) *Review.* The fees contained in subsection (g)(1) of this section shall be reviewed by City Council at least once each fiscal biennium at the time of adoption of the city budget.
- (n) *Penalty provision.* A violation of this section 39-52 of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution city shall have the power to sue in civil court to enforce the provisions of this section.

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-53—39-60. - Reserved.

DIVISION 3. - WASTEWATER DISCHARGE PERMIT APPLICATION AND ISSUANCE

Sec. 39-61. - Wastewater dischargers.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-62. - Wastewater permits.

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

- (a) *Significant industrial user determination.* All persons proposing to discharge nondomestic wastewater, or proposing to change the volume or characteristics of an existing discharge of nondomestic wastewater shall request from the POTW Director a significant industrial user determination. If the POTW Director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.
- (b) *Significant industrial user permit application.* Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within ninety (90) days after notification of the POTW Director's determination in section 39-62(a) above. The application shall include at a minimum.
 - (1) Name, address, and location, (if different from the address);
 - (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
 - (3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in Article II Division 1 of this chapter, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in section 39-80 and section 39-81
 - (4) Time and duration of the indirect discharge;
 - (5) Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
 - (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
 - (7) Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
 - (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O &

- M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
- (9) If additional pretreatment and/or O & M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
- a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
 - b. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.
- (10) Each product produced by type, amount, process or processes and rate of production;
- (11) Type and amount of raw materials processed (average and maximum per day);
- (12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
- (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in section 39-71 of this chapter.
- (14) Description of current and projected waste reduction activities in accordance with N.C.G.S. 143-215.1(g).
- (15) Description of existing on-site pretreatment facilities and practices.
- (16) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.
- (c) *Application signatories and certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in section 39-2(a)(3) and contain the following certification statement:
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

- (d) *Application review and evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.
 - (1) The POTW Director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
 - (2) Within thirty (30) days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (e) *Tentative determination and draft permit.*
 - (1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
 - (2) If the staff's tentative determination in paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
 - a. Proposed discharge limitations for those pollutants proposed to be limited;
 - b. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.
 - (3) The staff shall organize the determinations made pursuant to paragraphs (1) and (2) above and the general permit conditions of the city into a significant industrial user permit.
- (f) *Permit supporting documentation.* The Control Authority staff shall prepare the following documents for all Significant Industrial User permits.
 - (1) An allocation table (AT) listing permit information for all Significant Industrial Users, including but not limited to permit limits, permit effective and expiration dates, and a comparison of total permitted flows and loads with Division approved maximum allowable loadings of the POTW, including flow, on forms or in a format approved by the Division. The AT shall be updated as permits are issued or renewed, and as permits are modified where the permitted limits or other AT information is revised.
 - (2) The basis, or rationale, for the pretreatment limitations, including the following:
 - a. Documentation of categorical determination, including documentation of any calculations used in applying categorical pretreatment standards; and
 - b. Documentation of the rationale of any parameters for which monitoring has been waived under 40 CFR Part 403.12(e)(2).
- (g) *Final action on significant industrial user permit applications.*
 - (1) The POTW Director shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
 - (2) The POTW Director is authorized to:

- a. Issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this chapter and N.C.G.S. 143-215.1;
 - b. Issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - c. Modify any permit upon not less than sixty (60) days notice and pursuant to section 39-62(i) of this chapter;
 - d. Revoke any permit pursuant to section 39-112 of this chapter;
 - e. Suspend a permit pursuant to section 39-112 of this chapter;
 - f. Deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of N.C.G.S. 143-215.1.
- (h) *Adjudicatory hearings.*
- (1) An applicant whose permit is denied, terminated or is granted subject to conditions he deems unacceptable, a permittee/user assessed a civil penalty under section 39-112 shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer appointed by the POTW director upon making written demand, identifying the specific issues to be contested, to the POTW Director within thirty (30) days following receipt of the significant industrial user permit, civil penalty assessment, or administrative order. Unless such written demand is made within the time specified herein, the action shall be final and binding and further appeal is barred. For modified permits, only those parts of the permit being modified may be adjudicated. The POTW Director, or other hearing officer, as appropriate, shall make a decision upon said demand and, within forty-five (45) days of receipt of said demand, transmit a copy of the decision to the petitioner by registered or certified mail.
 - a. *New permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - b. *Renewed or modified permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed or modified permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - c. *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.

- (2) Any decision of a hearing officer, or the POTW Director, made as a result of an adjudicatory hearing held hereunder, may be appealed to the City Manager or other unbiased entity designated by the City Manager, upon filing written demand within ten (10) days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The City Manager, or other unbiased entity designated by the City Manager, shall make a final decision on the appeal within ninety (90) days and transmit a copy of the decision to the petitioner by registered or certified mail. This decision is the final decision for the purposes of judicial review. Appeal hearings shall be conducted in accordance with applicable provisions of the city regulations.
 - (3) Official record. When a final decision for the purposes of judicial review is issued under paragraph (1) above, the Hearing Officer, shall prepare an official record of the case that includes all notices, motions, and other like pleadings; a copy of all documentary evidence introduced; a certified transcript of all testimony taken, if testimony is transcribed, or, if testimony is taken and not transcribed, then a narrative summary of any testimony taken; and a copy of the final decision of the Hearing Officer.
 - (4) Judicial Review. Any person against whom a final order or decision of the Hearing Officer is entered pursuant to the hearing conducted under paragraph (1) above, may seek judicial review of the order or decision by filing a written request for review by the Superior Court of justice within thirty (30) days after receipt of notice by registered or certified mail of the order or decision, but not thereafter, along with a copy to the city. Within thirty (30) days after receipt of a copy of the written request for review by the Court, the Hearing Officer shall transmit to the reviewing court the original or a certified copy of the official record.
- (i) *Permit modification.*
- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below:
 - a. Changes in the ownership of the discharge when no other change in the permit is indicated,
 - b. A single modification of any compliance schedule not in excess of four (4) months,
 - c. Modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
 - d. Modifications of the monitoring requirements in the permit.

Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
 - (2) Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National

Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by section 39-62(b), the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.

- (3) A request for a modification by the permittee shall constitute a waiver of the sixty-day notice required by N.C.G.S. 143-215.1(b) for modifications.

(j) *Permit conditions.*

- (1) The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this chapter and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to containing, the following:
- a. A statement of duration (in no case more than five (5) years);
 - b. A statement of nontransferability;
 - c. Applicable effluent limits based on categorical standards or local limits or both;
 - d. Applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
 - e. Requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in section 39-2
 - f. Requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in section 39-2(a)(51), if determined by the POTW Director to be necessary for the user;
 - g. Requirements for immediately notifying the POTW Director of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in section 39-2(a)(51). Also see section 39-75 and section 39-76; and
 - h. A statement of applicable civil and/or criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
- (2) In addition, permits may contain, but are not limited to containing, the following:
- a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
 - b. Limits on the instantaneous, daily and/or monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 - c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.

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

(Ord. No. 11-6, § 1, 5-2-2011)

DIVISION 4. - REPORTING REQUIREMENTS

Sec. 39-71. - Baseline monitoring reports.

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

(b) Users described above shall submit the information set forth below:

- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
- (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
- (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
- (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
- (5) *Measurement of pollutants.*
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 39-80 of this chapter.
 - c. Sampling must be performed in accordance with procedures set out in section 39-81 of this chapter and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
- (6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in section 39-2(a)(4) and certified by a qualified professional, indicating whether

pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

- (7) *Compliance schedule.* If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 39-72 of this chapter.
- (8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with section 39-62(c) of this chapter.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-72. - Compliance schedule progress reports.

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the POTW Director a report containing the information described in section 39-71(b)(4)–(6) of this chapter. For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 39-62(c) of this chapter.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-74. - Periodic compliance reports.

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-75. - Reports of changed conditions.

Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. The permittee shall not begin the changes until receiving written approval from the Control Authority and/or Municipality. See section 39-76(d) for other reporting requirements.

- (a) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 39-62 of this chapter.
- (b) The POTW Director may issue a wastewater discharge permit under section 39-62 of this chapter or modify an existing wastewater discharge permit under section 39-62 of this chapter in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of twenty (20) percent or greater, and the discharge of any previously unreported pollutants. [increases or decreases to production; increases in discharge of previously reported pollutants; discharge of pollutants not previously reported to the Control Authority and/or Municipality; new or changed product lines; new or changed manufacturing processes and/or chemicals; or new or changed customers.]

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-76. - Reports of potential problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a noncustomary batch discharge, or a slug load as defined in section 39-2(a)(51), that may cause potential problems for the POTW, the user shall immediately

telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-77. - Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require. All users classified as Non-Significant Categorical Industrial Users under Section 39-2 (49) (f) shall provide appropriate reports to the POTW Director as the POTW Director may require. At a minimum, this shall include the Annual Certification of continuing to meet the Non-Significant Categorical Industrial User criteria as required under 40 CFR 403.12(q).

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

- (2) The POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
- (3) The POTW Director requires the user to perform sampling and submit the results to the POTW Director within the thirty-day deadline of the POTW becoming aware of the violation.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-79. - Notification of the discharge of hazardous waste.

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

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

Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued thereunder, or any applicable Federal or State law.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-80. - Analytical requirements.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-82. - Timing.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-83. - Record keeping.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-84—39-91. - Reserved.

DIVISION 5. - COMPLIANCE MONITORING

Sec. 39-92. - Monitoring facilities.

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

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

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-93. - Inspection and sampling.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-94. - Search warrants.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-95—39-102. - Reserved.

DIVISION 6. - CONFIDENTIAL INFORMATION

Sec. 39-103. - Confidential information.

- (a) Information and data provided by an industrial user to the POTW Director pursuant to this ordinance identifying the nature and frequency of a discharge, shall be available to the public without restriction. All other information which may be so submitted by an industrial user to the POTW Director in connection with any required reports shall also be available to the public unless the industrial user or other interested person specifically identifies the information as confidential upon submission and is able to demonstrate to the satisfaction of the POTW Director that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.
- (b) Information provided by an industrial user to the POTW Director that is determined to be entitled to confidential treatment shall be made available upon written request to the Division of Water Resources or any state agency for uses related to the Pretreatment Program, the National Pollutant Discharge Elimination System (NPDES) Permit collection system, stormwater permit,

and/or Non-discharge permit, and for uses related to judicial review or enforcement proceedings involving the person furnishing the report.

- (c) Information and data received by the Division or other state agency under paragraph (b) above shall be subject to the processes set forth in G.S. 143-215.3C.

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-104—39-111. - Reserved.

DIVISION 7. - ENFORCEMENT

Sec. 39-112. - Administrative remedies.

- (a) *Notification of violation.* Whenever the POTW Director finds that any industrial user has violated or is violating this chapter, wastewater permit, or any prohibition, limitation or requirements contained therein or any other pretreatment requirement the POTW Director may serve upon such a person a written notice stating the nature of the violation. Within thirty (30) days from the date of this notice, an explanation for the violation and a plan for the satisfactory correction thereof shall be submitted to the city by the user. Submission of this plan does not relieve the discharger of liability for any violations occurring before or after receipt of the notice of violation.
- (b) *Consent orders.* The POTW Director is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with the person responsible for the noncompliance. Such orders will include specific action to be taken by the discharger to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as an administrative order issued pursuant to section 39-112(d), below.
- (c) *Show cause hearing.* The POTW Director may order any industrial user who causes or is responsible for an unauthorized discharge, has violated this chapter or is in noncompliance with a wastewater discharge permit to show cause why a proposed enforcement action should not be taken. In the event the POTW Director determines that a show cause order should be issued, a notice shall be served on the user specifying the time and place for the hearing, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the hearing shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.
The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

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

- (d) *Administrative orders.* When the POTW Director finds that an industrial user has violated or continues to violate this chapter, permits or orders issued hereunder, or any other pretreatment requirement the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:
- (1) Immediately comply with all requirements;
 - (2) Comply in accordance with a compliance time schedule set forth in the order;
 - (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
 - (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.

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

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

- (f) *Termination of permit or permission to discharge.*
- (1) The POTW Director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:
 - a. Failure to accurately report the wastewater constituents and characteristics of his discharge;
 - b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
 - c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
 - d. Violation of conditions of the permit or permission to discharge, conditions of this chapter, or any applicable State and Federal regulations;
 - e. Tampering with or deliberately altering monitoring equipment;
 - f. Changes in POTW NPDES permit, receiving stream water quality standards, POTW treatment plant process, sludge disposal practices or requirements, or other modifications of similar nature that impact the city's ability to accept industrial wastewater;

- g. For causes necessitating an emergency suspension;
 - h. Failure to show cause; or
 - i. Nonpayment of sewer user charges.
- (2) A user whose permission to discharge has been revoked may apply for new permission to discharge and shall pay all delinquent fees, charges, penalties, and such other sums as may be due to the city.
- (3) Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under Article II, section 39-112(c) of this chapter why the proposed action should not be taken.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-113. - Civil penalties.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-114. - Other available remedies.

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

- (a) *Criminal violations.* The District Attorney for the applicable Judicial District may, at the request of the city, prosecute noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (N.C.G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (N.C.G.S. 143-215.6B(i)).
- (b) *Injunctive relief.* Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, the POTW Director, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (c) *Discontinuance of sewer.*
- (1) The POTW Director shall have the right to discontinue sewer service to the property of a user of such service in the event of nonpayment of sewer charges; provided that no discontinuation shall be made until the user shall have been given notice of his right to be heard in person or by counsel on the question of discontinuation before the city or any person designated by the city after not less than five (5) days written notice specifying the basis of the discontinuation. Any user whose permit has been terminated or who has failed to pay the user charge or any other charge imposed by the city shall be subject to termination of service by disconnection of the property from the sewer service. The city shall have the right of entry in and upon the premises and the right of ingress and egress to determine the location of the service line or to dig it up to uncover it for the purpose of disconnecting the service line from the property, or sealing, or plugging such line, or any collection line, upon the notice as provided under the city's regulations.
 - (2) Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (d) *Public nuisances.* Any violation of the prohibitions or effluent limitations of this chapter or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the city governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.

- (e) *Judicial remedies.* If any person discharges wastewater contrary to the provisions of this chapter or any order or permit issued hereunder, or otherwise violates provisions of this chapter or any order or permit issued hereunder, the POTW, through the city's attorney, may commence an action for appropriate legal or equitable relief in the appropriate general court of justice.
- (f) If a public sewer becomes obstructed or damaged because of any substances improperly discharged into it, the person responsible for such discharge shall be billed and shall pay for the expenses incurred by the city in cleaning out, repairing or rebuilding the sewer as well as damages incurred by the city arising from claims of private property owners which are caused by such obstruction or damage.

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-115. - Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The POTW Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one (1) enforcement action against any noncompliant user.

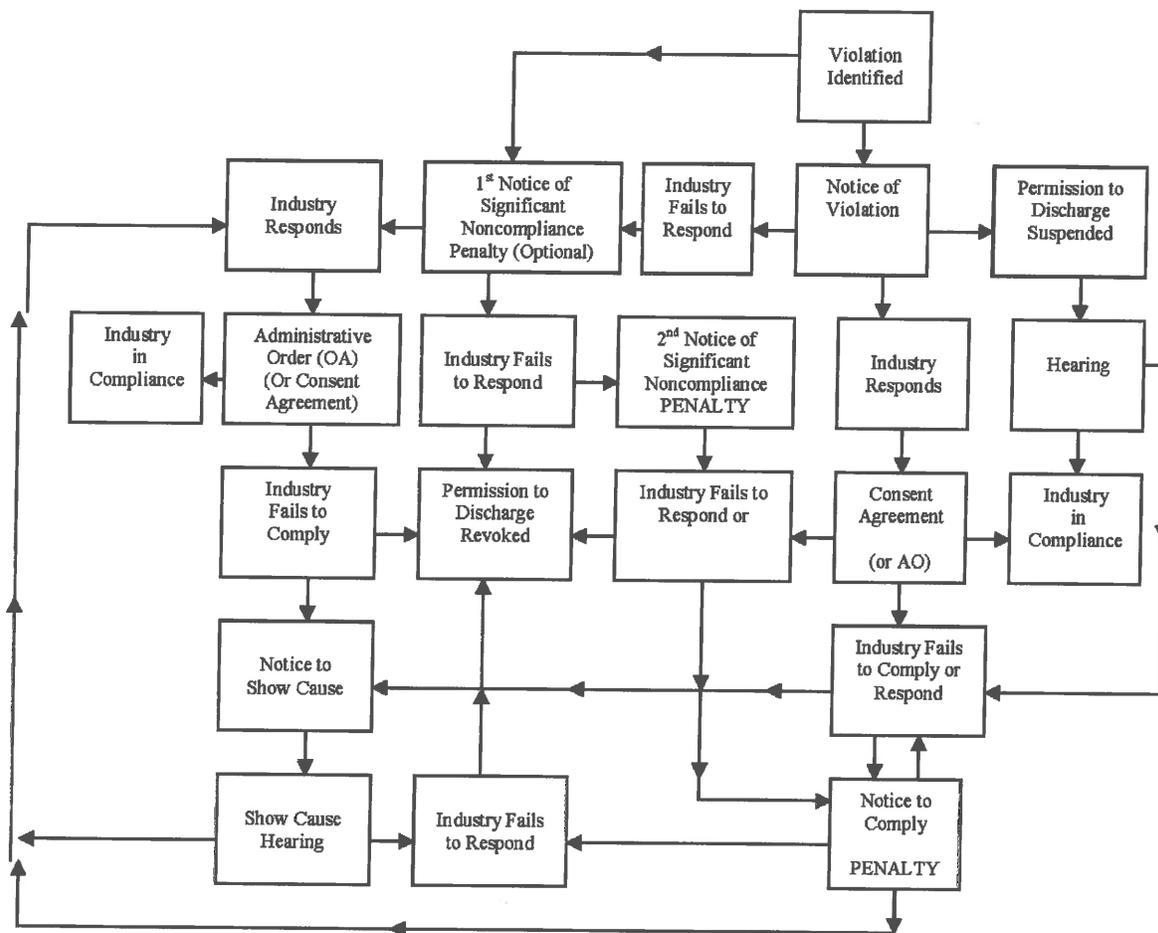
(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-116. - Adjudicatory hearings.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-117. - Enforcement management strategy plan for the City of Washington.



(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-118—39-124. - Reserved.

DIVISION 8. - ANNUAL PUBLICATION OF SIGNIFICANT NONCOMPLIANCE

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

At least annually, the POTW Director shall publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of those industrial users which were found to be in significant noncompliance, also referred to as reportable noncompliance, in 15A NCAC 2H .0903(b)(34), with applicable pretreatment standards and requirements, during the previous twelve (12) months.

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-126—39-133. - Reserved.

DIVISION 9. - AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

Sec. 39-134. - Upset.

- (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of paragraph (b), below, are met.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-135. - Prohibited discharge standards defense.

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 39-26(c)(1) of this chapter or the specific prohibitions in section 39-26 (c)(2)(b), (m), (d-g),(i-l), and (n-w) of this chapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

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

(Ord. No. 11-6, § 1, 5-2-2011)

Sec. 39-136. - Bypass.

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

- (b) Notification.
 - (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW Director, at least ten (10) days before the date of the bypass, if possible.
 - (2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.
- (c) Exceptions to enforcement action.
 - (1) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The user submitted notices as required under paragraph (b) of this section.
 - (2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three (3) conditions listed in paragraph (c)(1) of this section.

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-137—39-144. - Reserved.

DIVISION 10. - SEVERABILITY

Sec. 39-145. - Severability.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-146—39-153. - Reserved.

DIVISION 11. - CONFLICT

Sec. 39-154. - Conflict.

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

(Ord. No. 11-6, § 1, 5-2-2011)

Secs. 39-155—39-162. - Reserved.

DIVISION 12. - EFFECTIVE DATE

Sec. 39-163. - Effective date.

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

(Ord. No. 11-6, § 1, 5-2-2011)

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

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

Adopted this the 7th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 09-26-13
Subject: Adopt an Ordinance to Delete Chapter 8 – Cemeteries and Replace it With the Attached New Chapter 8 – Cemeteries.

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council adopt an ordinance to repeal Chapter 8 – Cemeteries in its entirety and replace it with the new Chapter 8 – Cemeteries attached.

BACKGROUND AND FINDINGS:

Staff has been working for sometime on amendments to this chapter of the Code of Ordinances in attempt to codify policies to allow for consistent management of the City-owned cemeteries. For example: allowing two sets of cremated remains on one plot, burial of said remains done under the direction of cemetery staff, disallowance of plastic vaults that easily collapse, and various guidelines regarding monuments and markers, etc. Amongst other things, the proposed changes within this revised ordinance will help in the appearance of the cemeteries for burials taken place from the day it is passed, forward.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Ordinance to amend Chapter 8 – Cemeteries

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: 10/2 Date Concur *hwt* Recommend Denial _____ No Recommendation _____

**AN ORDINANCE TO AMEND CHAPTER 8, CEMETERIES, OF THE
CODE OF ORDINANCES OF THE CITY OF WASHINGTON**

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

Section 1: That Chapter 8, Cemeteries is hereby repealed in its entirety and a new Chapter 8, Cemeteries be inserted as follows:

**Chapter 8
CEMETERIES**

Sec. 8-1. Supervision.

The cemeteries shall be under the supervision of the General Services Superintendent overseeing the day to day operation of the cemeteries or such person as he/she may designate, and shall be and is hereby vested with police authority within the limits of the cemeteries. The General Services Superintendent shall be under the direction of the Director of Public Works.

Sec. 8-2. Powers and duties of General Services Superintendent.

The duties and powers of the General Services Superintendent shall be as follows:

- (a) To enforce all laws and regulations governing the use of the cemeteries contained in these and any other rules which may be adopted with respect to the cemeteries.
- (b) To have charge of the maintenance of all lots, drives and walks.
- (c) To have overall supervision of all funerals and to act as agent for the city in all matters pertaining to the use of the cemeteries.
- (d) To sell all plots and lots within the cemeteries.
- (e) To keep a map of the cemeteries showing thereon all burial plots.

Sec. 8-3. Opening and closing graves; burial limit per grave lot.

- (a) All graves shall be opened and closed by permission of and under supervision of the General Services Superintendent. Only one (1) human body shall be buried in each cemetery grave lot or two (2) cremations per full size grave plot.
- (b) The burial or placement of cremated remains shall be performed by city cemetery employees, contractors employed by the city, funeral homes approved by the city, or by family members with cemetery staff present.

- (c) All vaults used for full burials must be concrete, metal or a type of material approved by the General Services Superintendent. No plastic or similar type material for grave vaults will be allowed in any city-owned cemetery.

Sec. 8-4. Permit for disinterment.

No body may be disinterred from any lot in either cemetery without first obtaining written consent from the owner or heirs of such owner of the lot, and fully complying with applicable state law.

Sec. 8-5. Lots.

- (a) The city shall not sell more than one (1) lot to any one (1) person unless such person can show the need for the same. No certificate of interment to a cemetery lot may be delivered to the purchaser until the full purchase price has been paid.
- (b) All certificates of interment for cemetery lots executed by the city shall contain a reference to existing rules and regulations, and all of such certificates shall contain an appropriate restriction making the ownership of any cemetery lot subject to all valid rules and regulations described in this chapter.
- (c) No cemetery lot may be sold or transferred by its owner to any other party. If the owner finds that he has no use for a lot, the city will buy it back at the same price originally paid for same; provided no interments have been made thereon. Perpetual care paid to the city for said lot will not be returned.
- (d) In the event the city sold a cemetery lot fifty (50) years or more ago and no interments have been made therein and the city cannot now determine, after reasonable inquiry, the present owner or claimant of such lot, then the city shall have the right to resell such lot.
- (e) The General Services Superintendent shall perform all maintenance of graves, turf and streets. Lot owners desiring to maintain their lots shall do so only with the permission and under the supervision of the General Services Superintendent. The city shall not provide maintenance on markers, monuments or mausoleums.
- (f) The city shall provide perpetual care for all lots located within the city cemeteries.

Sec. 8-6. Fees.

Lot prices, internment fees, monument permit fees, disinterment fees, and all criteria associated with such prices and fees, shall be as established from time to time.

Sec. 8-7. Obstructions prohibited; exception for grave markers.

- (a) No obstruction of any kind other than grave monuments, grave markers and mausoleums may be placed upon any cemetery lot.
- (b) The installation of grave ledgers or vault lids used to mark a grave site must be set flush with the ground and only after the grave site has had time to properly settle. The General Services Superintendent will have to approve the setting of such grave markers.
- (c) Vault lids are not allowed as grave markers or monuments in Oakdale Cemetery.

Sec. 8-8. Planting trees and shrubbery.

All landscaping, tree planting, shrubbery planting, and flower planting will be designed and planted by city personnel. Individuals may not plant on any lot.

Sec. 8-9. Limits on flowers, wreaths or decoration remaining on graves.

No flowers, wreaths or decorations, whether natural or artificial, shall be permitted to remain on graves for more than thirty (30) days.

Sec. 8-10. Removal and disposal of flowers, designs and frames.

Cemetery staff shall remove and dispose of all flowers, designs and frames from graves within thirty (30) days, or earlier if natural flowers deteriorate. The family may collect flowers, designs and frames, if a request is submitted to the General Services Superintendent within two (2) days after they are placed.

Sec. 8-11. Brickwork on graves.

Where a grave is bricked up, no brickwork shall extend above the surface of the ground.

Sec. 8-12. Approval required for installation and removal of monuments and markers.

- (a) Construction plans for monuments and markers must be approved by the General Services Superintendent. Written permission shall be obtained from the General Services Superintendent before any monument or marker is installed or removed on any cemetery lot.
- (b) Monuments and markers shall be installed only during cemetery hours, Monday through Friday. No monuments or markers shall be set on city observed holidays or weekends.
- (c) The cemetery staff is responsible for collecting the marker or monument permit fee. The city accepts no responsibilities for the quality of work by contractors hired by lot/plot owners to install the marker or monument.

Sec. 8-13. Base to be placed under new monument.

A base of concrete or granite, not less than four (4) inches thick and extending six (6) inches outside and installed flush with the ground level, must be placed under all monuments which are not installed flush with the ground.

Sec. 8-14. Permission required for entering after sunset.

No person shall enter the limits of the cemeteries between sunset and sunrise, except with permission of the General Services Superintendent.

Sec. 8-15. Restrictions on children visiting cemeteries.

No children may visit the cemeteries except when accompanied by adults or by permission of the General Services Superintendent.

Sec. 8-16. Traffic regulations.

No person shall operate any vehicle within the limits of the cemeteries at a greater rate of speed than fifteen (15) miles per hour. No person shall use the drives or walks of the cemeteries as a public thoroughfare.

Sec. 8-17. Riding bicycles.

No bicycles may be ridden in the cemeteries except by permission of the General Services Superintendent.

Sec. 8-18. Animals restricted.

No person shall permit any animal onto city-owned cemetery property whether restrained or at large.

Sec. 8-19. Installation of monuments and grave markers.

- (a) A monument is a stone marker which when installed protrudes above the ground level. A grave marker is installed flush with the ground. A monument may be installed only in areas designated as monument areas. A monument may be installed on no less than four (4) graves, in sections K, L, M & N unless approved by the General Services Superintendent.
- (b) Monuments may be installed in any location of the cemeteries, except the following single-grave and no-monument areas:
 - (1) Oakdale Cemetery, section O, section P and section R.

(2) Cedar Hill Cemetery, section B, section C, section D, section E, one section of F, and section G.

(c) Should a monument or marker in the city-owned cemeteries at any time become unsafe or in need of repair or resetting, the cemetery staff shall notify the owner that such condition exists. The General Services Superintendent shall make necessary improvements to eliminate unsafe conditions until owner has conditions corrected. If cemetery staff cannot contact owner, the staff will make necessary repairs at their discretion to eliminate the unsafe conditions.

Sec. 8-20. Responsibility of parents and guardians.

Parents and guardians shall be responsible for minors violating the provisions of this chapter.

Sec. 8-21. Hours of operation.

Normal hours of operation are 7:00 a.m. until 4:00 p.m. Monday through Friday. Requests for interment on Saturday must be received by 12:00 p.m. the preceding Friday. Requests for interment on Sunday must be received by 10:00 a.m. the preceding Saturday. Holidays granted to city employees that fall on Monday shall be considered as a Sunday, and requests for interment on that holiday must be received by 10 a.m. the preceding Saturday. Requests for interment on a holiday that occurs Tuesday through Friday shall be received by 12:00 p.m. the preceding day.

Sec. 8-22. Mausoleums.

A mausoleum is any interment structure constructed above ground level. A mausoleum may be constructed only in a monument section of a cemetery. A mausoleum interring a single body shall occupy no less than two (2) and not more than four (4) grave plots. A mausoleum constructed to inter more than one (1) body shall occupy a minimum of four (4) plots plus two (2) plots for each interment space. A mausoleum may not be constructed closer than one (1) foot to the plot boundary. Plans for construction of a mausoleum must be approved by the Director of Public Works before any construction begins. Plans presented must be detailed showing dimensions, construction methods and materials to be used.

Sec. 8-23. Metal detectors.

The use of metal detectors in the city-owned cemeteries shall be prohibited. Only City cemetery staff will be allowed to use detectors to locate grave plots.

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

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

Adopted this the 7th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK

Chapter 8 – CEMETERIES

Sec. 8-1.	Supervision.	
Sec. 8-2.	Powers and duties of cemetery supervisor.	
Sec. 8-3.	Opening and closing graves; burial limit per grave lot.	Comment [TB1]: Additions
Sec. 8-4.	Permit for disinterment.	
Sec. 8-5.	Lots.	
Sec. 8-6.	Fees.	
Sec. 8-7.	Obstructions prohibited; exception for grave markers.	
Sec. 8-8.	Planting trees and shrubbery.	
Sec. 8-9.	Limits on flowers, wreaths or decoration remaining on graves.	
Sec. 8-10.	Removal and disposal of flowers, designs and frames.	
Sec. 8-11.	Brickwork on graves.	
Sec. 8-12.	Approval required for installation and removal of monuments and markers.	Comment [TB2]: Addition
Sec. 8-13.	Base to be placed under new monument.	Comment [TB3]: Additions
Sec. 8-14.	Permission required for entering after sunset.	
Sec. 8-15.	Restrictions on children visiting cemeteries.	
Sec. 8-16.	Traffic regulations.	
Sec. 8-17.	Riding bicycles.	
Sec. 8-18.	Animals restricted.	
Sec. 8-19.	Installation of monuments and grave markers.	Comment [TB4]: Additions
Sec. 8-20.	Responsibility of parents and guardians.	
Sec. 8-21.	Hours of operation.	Comment [TB5]: Revisions of hours
Sec. 8-22.	Mausoleums.	
Sec. 8-23.	Metal detectors.	Comment [TB6]: ADDED b/c from time to time people are found using them in the older sections

Sec. 8-1. Supervision.

The cemeteries shall be under the supervision of the General Services Superintendent overseeing the day to day operation of the cemeteries or such person as he/she may designate, and shall be and is hereby vested with police authority within the limits of the cemeteries. The General Services Superintendent shall be under the direction of the Director of Public Works.

Sec. 8-2. Powers and duties of General Services Superintendent.

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- (b) To have charge of the maintenance of all lots, drives and walks.
- (c) To have overall supervision of all funerals and to act as agent for the city in all matters pertaining to the use of the cemeteries.
- (d) To sell all plots and lots within the cemeteries.
- (e) To keep a map of the cemeteries showing thereon all burial plots.

Sec. 8-3. Opening and closing graves; burial limit per grave lot.

(a) All graves shall be opened and closed by permission of and under supervision of the General Services Superintendent. Only one (1) human body shall be buried in each cemetery grave lot or two (2) cremations per full size grave plot.

Comment [TB7]: Addition/Cremations were not addressed in current ordinance; therefore, staff wanted to address guidelines for cremations.

(b) The burial or placement of cremated remains shall be performed by city cemetery employees, contractors employed by the city, funeral homes approved by the city, or by family members with cemetery staff present.

Comment [TB8]: Addition/Guidelines were needed for cremations

(c) All vaults used for full burials must be concrete, metal or a type of material approved by the General Services Superintendent. No plastic or similar type material for grave vaults will be allowed in any city-owned cemetery.

Comment [TB9]: Addition/The plastic or similar material for vault lids does not need to be allowed b/c of them collapsing when ground settles around them or mowers go over them.

Sec. 8-4. Permit for disinterment.

No body may be disinterred from any lot in either cemetery without first obtaining written consent from the owner or heirs of such owner of the lot, and fully complying with applicable state law.

Sec. 8-5. Lots.

(a) The city shall not sell more than one (1) lot to any one (1) person unless such person can show the need for the same. No certificate of interment to a cemetery lot may be delivered to the purchaser until the full purchase price has been paid.

(b) All certificates of interment for cemetery lots executed by the city shall contain a reference to existing rules and regulations, and all of such certificates shall contain an appropriate restriction making the ownership of any cemetery lot subject to all valid rules and regulations described in this chapter.

(c) No cemetery lot may be sold or transferred by its owner to any other party. If the owner finds that he has no use for a lot, the city will buy it back at the same price originally paid for same; provided no interments have been made thereon. Perpetual care paid to the city for said lot will not be returned.

(d) In the event the city sold a cemetery lot fifty (50) years or more ago and no interments have been made therein and the city cannot now determine, after reasonable inquiry, the present owner or claimant of such lot, then the city shall have the right to resell such lot.

(e) The General Services Superintendent shall perform all maintenance of graves, turf and streets. Lot owners desiring to maintain their lots shall do so only with the permission and under the supervision of the General Services Superintendent. The city shall not provide maintenance on markers, monuments or mausoleums.

(f) The city shall provide perpetual care for all lots located within the city cemeteries.

Sec. 8-6. Fees.

Lot prices, interment fees, monument permit fees, disinterment fees, and all criteria associated with such prices and fees, shall be as established from time to time.

Sec. 8-7. Obstructions prohibited; exception for grave markers.

(a) No obstruction of any kind other than grave monuments, grave markers and mausoleums may be placed upon any cemetery lot.

(b) The installation of grave ledgers or vault lids used to mark a grave site must be set flush with the ground and only after the grave site has had time to properly settle. The General Services Superintendent will have to approve the setting of such grave markers.

(c) Vault lids are not allowed as grave markers or monuments in Oakdale Cemetery.

Comment [TB10]: Addition/Setting of lids/ledgers improperly as markers create extra maintenance work for cemetery staff. They become a hazard and unsightly.

Comment [TB11]: Addition/This is a standard/precedent at Cedar Hill and staff feels should continue to be allowed.

Sec. 8-8. Planting trees and shrubbery.

All landscaping, tree planting, shrubbery planting, and flower planting will be designed and planted by city personnel. Individuals may not plant on any lot.

Sec. 8-9. Limits on flowers, wreaths or decoration remaining on graves.

No flowers, wreaths or decorations, whether natural or artificial, shall be permitted to remain on graves for more than thirty (30) days.

Sec. 8-10. Removal and disposal of flowers, designs and frames.

Cemetery staff shall remove and dispose of all flowers, designs and frames from graves within thirty (30) days, or earlier if natural flowers deteriorate. The family may collect flowers, designs and frames, if a request is submitted to the General Services Superintendent within two (2) days after they are placed.

Sec. 8-11. Brickwork on graves.

Where a grave is bricked up, no brickwork shall extend above the surface of the ground.

Sec. 8-12. Approval required for installation and removal of monuments and markers.

Comment [TB12]: Added the word "removal"

(a) Construction plans for monuments and markers must be approved by the General Services Superintendent. Written permission shall be obtained from the General Services Superintendent before any monument or marker is installed or removed on any cemetery lot.

Comment [TB13]: Added the word "removed"

(b) Monuments and markers shall be installed only during cemetery hours, Monday through Friday. No monuments or markers shall be set on city observed holidays or weekends.

Comment [TB14]: Staff currently finds monument companies have installed monuments/markers after hours. Had one stone set in the wrong place/staff needs to be present.

(c) The cemetery staff is responsible for collecting the marker or monument permit fee. The city accepts no responsibilities for the quality of work by contractors hired by lot/plot owners to install the marker or monument.

Comment [TB15]: Addition/Not in current ordinance.

Sec. 8-13. Base to be placed under new monument.

Comment [TB16]: Deleted "concrete" and deleted "around" and replaced with "under"

A base of concrete or granite, not less than four (4) inches thick and extending six (6) inches outside and installed flush with the ground level, must be placed under all monuments which are not installed flush with the ground.

Comment [TB17]: Added "or granite"/Staff has found that either works and some customers prefer the granite.

Sec. 8-14. Permission required for entering after sunset.

No person shall enter the limits of the cemeteries between sunset and sunrise, except with permission of the General Services Superintendent.

Sec. 8-15. Restrictions on children visiting cemeteries.

No children may visit the cemeteries except when accompanied by adults or by permission of the General Services Superintendent.

Sec. 8-16. Traffic regulations.

No person shall operate any vehicle within the limits of the cemeteries at a greater rate of speed than fifteen (15) miles per hour. No person shall use the drives or walks of the cemeteries as a public thoroughfare.

Sec. 8-17. Riding bicycles.

No bicycles may be ridden in the cemeteries except by permission of the General Services Superintendent.

Sec. 8-18. Animals restricted.

No person shall permit any animal onto city-owned cemetery property whether restrained or at large.

Sec. 8-19. Installation of monuments and grave markers.

(a) A monument is a stone marker which when installed protrudes above the ground level. A grave marker is installed flush with the ground. A monument may be installed only in areas designated as monument areas. A monument may be installed on no less than four (4) graves, in sections K, L, M & N unless approved by the General Services Superintendent.

Comment [TB18]: Added/for clarity

(b) Monuments may be installed in any location of the cemeteries, except the following single-grave and no-monument areas:

(1) Oakdale Cemetery, section O, section P and section R.

Comment [TB19]: Added/Update

(2) Cedar Hill Cemetery, section B, section C, section D, section E, one section of F, and section G.

Comment [TB20]: Added/Update

(c) Should a monument or marker in the city-owned cemeteries at any time become unsafe or in need of repair or resetting, the cemetery staff shall notify the owner that such condition exists. The General Services Superintendent shall make necessary improvements to eliminate unsafe conditions until owner has conditions corrected. If cemetery staff cannot contact owner, the staff will make necessary repairs at their discretion to eliminate the unsafe conditions.

Comment [TB21]: Added to clarify

Sec. 8-20. Responsibility of parents and guardians.

Parents and guardians shall be responsible for minors violating the provisions of this chapter.

Sec. 8-21. Hours of operation.

Normal hours of operation are 7:00 a.m. until 4:00 p.m. Monday through Friday. Requests for interment on Saturday must be received by 12:00 p.m. the preceding Friday. Requests for interment on Sunday must be received by 10:00 a.m. the preceding Saturday. Holidays granted to city employees that fall on Monday shall be considered as a Sunday, and requests for interment on that holiday must be received by 10 a.m. the preceding Saturday. Requests for interment on a holiday that occurs Tuesday through Friday shall be received by 12:00 p.m. the preceding day.

Comment [TB22]: Revised/Current ordinance "8:00 am until 5:00 pm"

Comment [TB23]: Revised/Current ordinance "2:00"

Comment [TB24]: Revised/Current ordinance "2:00"

Sec. 8-22. Mausoleums.

A mausoleum is any interment structure constructed above ground level. A mausoleum may be constructed only in a monument section of a cemetery. A mausoleum interring a single body shall occupy no less than two (2) and not more than four (4) grave plots. A mausoleum constructed to inter more than one (1) body shall occupy a minimum of four (4) plots plus two (2) plots for each interment space. A mausoleum may not be constructed closer than one (1) foot to the plot boundary. Plans for construction of a mausoleum must be approved by the Director of Public Works before any construction begins. Plans presented must be detailed showing dimensions, construction methods and materials to be used.

Sec. 8-23. Metal detectors.

The use of metal detectors in the city-owned cemeteries shall be prohibited. City cemetery staff will be allowed to use detectors to locate grave plots.

Comment [TB25]: Added/People have been seen searching for war mementos, coins, etc and city staff does use them for locating corners.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 09-27-13
Subject: Adopt Budget Ordinance Amendment in the Stormwater Fund (\$1,000).
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council adopt a budget ordinance amendment from fund balance in the stormwater fund for the purchase of grass carp to stock Jack's Creek.

BACKGROUND AND FINDINGS:

On September 23, 2013, staff met with Mr. Steve Gabel of the North Carolina Cooperative Extension Service to discuss the problem we have been experiencing with aquatic vegetation in Jack's Creek. Mr. Gabel recommending stocking the creek with grass carp as you can tell in the attached letter from him dated September 16, 2013. This budget ordinance will appropriate the funds necessary to stock the creek with grass carp per Mr. Gabel's recommendations.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

See attached Budget Ordinance Amendment and September 16, 2013, letter from Mr. Steve Gabel.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *lut* Concur October 7, 2013 and Denial _____ No Recommendation 10/2 Date _____

NC STATE UNIVERSITY

Chowan County Center
730 N. Granville St., Suite A
Edenton, NC 27932
phone: 252-482-6585
FAX: 252-482-6590

September 16, 2013

Mr. Allen Lewis
Public Works Director
P.O. Box 1988
Washington, NC 27889

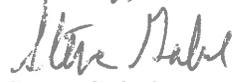
Dear Mr. Lewis,

I am writing to you about my observations while visiting the retention pond in Washington, NC on September 12, 2013. As we discussed, the stocking of grass carp would be a good, long-term option in controlling the Hydrilla. Hydrilla is one of the grass carp's preferred foods and since you have a screened outflow of water from the pond, NC Wildlife Resources Commission should not have a concern with any escapement of grass carp into the Pamlico River. However, you may want to confirm this with Mr. Chad Thomas, District 2 supervisor (chad.thomas@ncwildlife.org, 252-335-4961 (office), 252-339-5898 (cell)), or Mr. Justin Homan, District 2 Biologist (Justin.homan@ncwildlife.org, 252-746-6739 (office), 252-229-0170 (cell)).

My recommendation would be to stock 15 to 20, 8 to 10-inch grass carp per infested acre prior to November 1, 2013 to insure that there is something for the fish to eat prior to the onset of winter. If this could not be accomplished, then the fish should be stocked in April or May after the Hydrilla begins to sprout and grow again in the spring. Plan on an additional stocking at a rate of 20% of the original stocking rate the following fall or spring to account for any mortalities that may have occurred with the original stocking. An additional third stocking of 20% may also be needed, depending on the efficacy and estimated survival of the previously stocked fish. Considering the pond was reported to me as being about 10 acres in size, I would estimate that your area of infestation is around three to five acres. Therefore, your initial stocking should be about 60 to no more than 100 fish. With good survival, these fish should give you a pretty good measure of control of the Hydrilla for the next five to ten years.

I have included some additional information about grass carp along with some sources for the triploid grass carp fingerlings. If you need more information, please do not hesitate to contact me.

Sincerely,



Steve Gabel
Area Specialized Agent, Ag-Aquaculture

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That the following accounts of the Storm Water Fund revenue budget be increased by the respective amounts indicated to purchase grass carp for Jack's Creek:

34-90-3991-9910	Fund Balance Appropriated	\$ 1,000
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Section 2. That the following accounts of the Storm Water Fund appropriations budget be increased by the respective amounts indicated:

34-90-5710-7000	Non-Capitalized Purchases	\$ 1,000
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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 7th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 09-27-13
Subject: Amend Section 22-97(d) – Prohibited Acts, Fishing.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council adopt an ordinance to amend Chapter 22, Section 22-97(d) – Prohibited Acts, Fishing, prohibiting fishing in Jack’s Creek between John Small Avenue and Park Drive.

BACKGROUND AND FINDINGS:

Due to stocking Jack’s Creek in this area with grass carp to help control aquatic vegetation, staff feels that it is necessary to also prohibit fishing in this same area. The attached ordinance amendment accomplishes this.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Ordinance to amend Chapter 22, Section 22-97(d) – Prohibited Acts, Fishing.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *ALL* Concur October 7, 2013 and Denial ___ No Recommendation 10/2 Date

**AN ORDINANCE TO AMEND CHAPTER 22: PARKS AND RECREATION,
SECTION 22-97(d): PROHIBITED ACTS, FISHING,
OF THE WASHINGTON CITY CODE**

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

Section 1. That Chapter 22 Section 22-97(d) – Prohibited Acts, Fishing, be amended to remove the following:

Fishing. It shall be unlawful to fish on the Boardwalk.

Section 2. That Chapter 22 Section 22-97(d) – Prohibited Acts, Fishing, be amended to add the following:

Fishing. It shall be unlawful to fish on the Boardwalk and in Jack’s Creek between John Small Avenue and Park Drive.

Section 3. All ordinances in conflict with this ordinance are hereby repealed.

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

This the 7th day of October 2013.

Mayor

ATTEST:

City Clerk



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: October 7, 2013
Subject: Release of Lots in Northgate Subdivision
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council authorize the Mayor and the City Attorney to execute the release of lots 64 and 81 in the Northgate Subdivision upon Washington Housing Nonprofit, Inc.'s deposit of \$12,000 into the City Attorney's trust account.

BACKGROUND AND FINDINGS:

Lots 64 and 81 have been sold in the Northgate Subdivision and are part of the CDBG Affordable Housing Grant. The Washington Housing Nonprofit, Inc. intends to deposit \$12,000.00 into the City Attorney's trust account pursuant to and consistent with the Legally Binding Commitment by and between the City of Washington and Washington Housing Nonprofit, Inc.

PREVIOUS LEGISLATIVE ACTION

2013-2014 adopted budget and amended budget.

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Release

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

10/2 Date October 7, 2013
Page 202 of 208

PREPARED BY and RETURN TO:
RODMAN, HOLSCHER, PECK & EDWARDS, P.A.
Attorneys at Law
320 North Market Street
Post Office Box 1747
Washington NC 27889
Telephone: (252) 946-3122

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

THIS RELEASE is made and entered into this the ____ day of _____, 2013,
by and between **THE CITY OF WASHINGTON**, a North Carolina Body Politic, and
FRANZ F. HOLSCHER, as Trustee, Grantors, to **WASHINGTON HOUSING
NONPROFIT INC. d/b/a WASHINGTON HOUSING INCORPORATED**, a North
Carolina nonprofit corporation, Grantee.

WITNESSETH

That the Grantors, for and in consideration of the sum of Ten and no/100 Dollars
(\$10.00) and other good and valuable consideration to them paid by the Grantee, the receipt
and legal sufficiency of which is hereby acknowledged, do hereby release from the lien and
operation of that certain Deed of Trust recorded in the Beaufort County Registry in Deed
Book 1749, Page 675 that portion of land therein described as follows:

LYING AND BEING IN WASHINGTON TOWNSHIP, BEAUFORT COUNTY,
NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT BEING ALL OF Lot No. EIGHTY-ONE (81) of NORTHGATE SUBDIVISION as the
same is shown on the survey prepared by Rivers & Associates, Inc. entitled "Final Plat

Northgate Subdivision Addition” of record in Plat Cabinet G, Slide 34-4 through 34-8, Beaufort County Registry, to which survey plats reference is herein made and incorporated for a more complete and detailed description.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors or assigns, free and discharged of the lien of said Deed of Trust, but the lien thereof as to the remaining properties therein described is expressly retained.

IN WITNESS WHEREOF, the said FRANZ F. HOLSCHER, as Trustee, has hereunto set his hand and adopted as his seal, the typewritten word “SEAL” appearing beside his name, and the said THE CITY OF WASHINGTON, a municipal corporation, Grantor, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereto affixed, all by proper corporate authority duly given, this the day and year first above written.

CITY OF WASHINGTON

(corporate seal)

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

ATTEST:

Cynthia S. Bennett, City Clerk

BY: _____ (SEAL)
Franz F. Holscher, Trustee

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

WITNESS my hand and official seal, this the _____ day of _____, 2013.

NOTARY PUBLIC

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, this day personally appeared **FRANZ F. HOLSCHER**, as Trustee, and acknowledged the due execution by him of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the _____ day of _____, 2013.

NOTARY PUBLIC

My Commission expires: _____

PREPARED BY and RETURN TO:
RODMAN, HOLSCHER, PECK & EDWARDS, P.A.
Attorneys at Law
320 North Market Street
Post Office Box 1747
Washington NC 27889
Telephone: (252) 946-3122

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

THIS **RELEASE** is made and entered into this the ____ day of _____, 2013,
by and between **THE CITY OF WASHINGTON**, a North Carolina Body Politic, and
FRANZ F. HOLSCHER, as Trustee, Grantors, to **WASHINGTON HOUSING
NONPROFIT INC. d/b/a WASHINGTON HOUSING INCORPORATED**, a North
Carolina nonprofit corporation, Grantee.

WITNESSETH

That the Grantors, for and in consideration of the sum of Ten and no/100 Dollars
(\$10.00) and other good and valuable consideration to them paid by the Grantee, the receipt
and legal sufficiency of which is hereby acknowledged, do hereby release from the lien and
operation of that certain Deed of Trust recorded in the Beaufort County Registry in Deed
Book 1749, Page 675 that portion of land therein described as follows:

LYING AND BEING IN WASHINGTON TOWNSHIP, BEAUFORT COUNTY,
NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT BEING ALL OF Lot No. SIXTY-FOUR (64) of NORTHGATE SUBDIVISION as the
same is shown on the survey prepared by Rivers & Associates, Inc. entitled "Revised Plat

Northgate Subdivision Addition” of record in Plat Cabinet H, Slide 41-6, Beaufort County Registry, to which survey plat reference is herein made and incorporated for a more complete and detailed description.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors or assigns, free and discharged of the lien of said Deed of Trust, but the lien thereof as to the remaining properties therein described is expressly retained.

IN WITNESS WHEREOF, the said FRANZ F. HOLSCHER, as Trustee, has hereunto set his hand and adopted as his seal, the typewritten word “SEAL” appearing beside his name, and the said THE CITY OF WASHINGTON, a municipal corporation, Grantor, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereto affixed, all by proper corporate authority duly given, this the day and year first above written.

CITY OF WASHINGTON

(corporate seal)

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

ATTEST:

Cynthia S. Bennett, City Clerk

BY: _____ (SEAL)
Franz F. Holscher, Trustee

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

WITNESS my hand and official seal, this the _____ day of _____, 2013.

NOTARY PUBLIC

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, this day personally appeared **FRANZ F. HOLSCHER**, as Trustee, and acknowledged the due execution by him of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the _____ day of _____, 2013.

NOTARY PUBLIC

My Commission expires: _____