

October 28, 2013
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval/Amendments to Agenda

1. **Authorize**: Mayor to sign Assignment and Assumption of Hangar Ground Site Lease and Fixed Base Operation – Air Medical Operation Agreement (**page 2**)
2. **Authorize**: City Manager to sign Terminal Building Annex Lease and Fixed Base Operation – Jump School Agreement – Skydive Little Washington (**page 25**)
3. **Adopt**: Ordinance to Repeal Chapter 39 – Wastewater/SUO in its entirety and replace with the new Chapter 39 – Wastewater/SUO (**page 43**)
4. **Memo**: LSTA NC Cardinal Grant (**page 98**)
5. **Memo**: Fire Escape Access (**page 105**)
6. **Memo**: 2013 AFG Grant Application Alteration (**page 113**)
7. **Discussion**: Scheduling for November Council meeting
8. **Closed Session**: Under NCGS 143-318.11(a)(3) Attorney Client Privilege – including James L. Davis vs. City of Washington (09-OSP-06499)
9. **Adjourn** – Until Monday, November _____, 2013 at 5:30pm in the Council Chambers at the Municipal Building.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Brian M. Alligood, City Manager
Date: October 28, 2013
Subject: Assignment and Assumption of Hanger Ground Site Lease and Fixed Base Operation – Air Medical Operations Agreement

Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

I move Council authorize the Mayor to sign the attached Assignment and Assumption of Hanger Ground Site Lease and Fixed Base Operation – Air Medical Operations Agreement between the City, Craig Goess and Metro Aviation, Inc.

BACKGROUND AND FINDINGS:

Metro Aviation, Inc. has been awarded a contract to provide air medical services to Vidant Health and wishes to assume the hanger ground site lease of Craig Goess and enter into a fixed base operation agreement at Warren Field. The terms of the master lease will generally remain the same with the exception of the new scope of operations. The attached agreement is for your approval.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Hangar Ground Site Lease & FBO – Air Medical Operation Agreement

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

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

**ASSIGNMENT AND ASSUMPTION OF HANGAR GROUND SITE LEASE AND FIXED
BASE OPERATION – AIR MEDICAL OPERATION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF HANGAR GROUND SITE LEASE AND FIXED BASE OPERATION – AIR MEDICAL OPERATION AGREEMENT (“Agreement”) is made, entered into and executed in triplicate originals as of the 1st day of November, 2013 by and between Craig Goess, an individual having an address of 3615 S. Memorial Drive, Greenville, North Carolina (“Assignor”); Metro Aviation, Inc., a Louisiana corporation authorized to conduct business in the State of North Carolina, whose address is Post Office Box 7008, Shreveport, Louisiana 71137 (“Assignee” or “Operator”); and the City of Washington, a body politic and corporate under Chapter 160A of the North Carolina General Statutes, whose address is Post Office Box 1988, 102 East Second Street, Washington, North Carolina 27889 (“Lessor” or “City”).

WITNESSETH

WHEREAS, by a Hangar Ground Site Lease Agreement dated October 1, 2009 (“Master Lease”), Lessor leased to Assignor certain real property described therein (“Premises”), a copy of which Master Lease is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth.

WHEREAS, Assignor is the current Tenant under said Master Lease and desires to assign to Assignee all of its right, title and interest under the Master Lease, and Assignee desires to assume the Assumed Obligations (as hereinafter defined).

WHEREAS, the City is the owner of the Warren Field Airport (“Airport”) with improvements thereon, which is located in Washington Township, Beaufort County, North Carolina and desires to contract with Operator to provide a certain fixed base operation at the Airport.

WHEREAS, Operator desires to provide a certain fixed base operation at the Airport.

WHEREAS, Operator has represented that Operator is fully capable of performing the fixed base operation described in this Agreement and the City has relied on such representations to select Operator to perform this Agreement.

NOW, THEREFORE, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein as well as valuable consideration paid and to be paid, Assignor does hereby assign unto Assignee, and Assignee does hereby accept from Assignor, that certain tract or parcel of land more particularly described in said Master Lease, and Operator as well as City agree as follows.

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

I. ASSIGNMENT.

A. Assignment of Master Lease. Effective as of November 1, 2013 (“Agreement Commencement Date”), Assignor does hereby assign, transfer, and set over unto Assignee all of the right, title and interest of Assignor in, to and under the Master Lease as herein modified. Assignor, simultaneously herewith, assigns to Assignee, all of Assignor’s right, title, and interest in and to the leasehold improvements and all remaining tangible personal property (if any) located in or on the Premises including, without limitation, hangar, equipment, office supplies, furniture and fixtures (collectively, the “Assigned Property”).

Assignee hereby assumes and accepts the foregoing assignments on the terms and conditions set forth herein and, effective upon the Agreement Commencement Date, Assignee assumes and agrees to keep, observe and perform all of the terms, covenants, agreements, conditions and obligations of the Master Lease, as herein modified, on the part of the Assignor to be kept, observed and performed, including, without limitation, the payment of all rent, additional costs, payments and charges which accrue after the date hereof (collectively, the “Assumed Obligations”), with the same force and effect as if the Assignee instead of Assignor had originally signed the Master Lease, and agrees that it shall from and after the Agreement Commencement Date be liable to Lessor and its respective successors and assigns, for any failure to keep, observe or perform the same.

B. Assignee agrees to indemnify, defend and hold harmless Assignor and all its affiliates, subsidiaries, related corporations, related partnerships, officers, directors, employees and agents from and against any and all liabilities, claims, suits, actions, losses, damages, penalties, costs and expenses (including, without limitation, attorneys’ fees and disbursements) due to or arising out of or related to Assignee’s use, possession or occupancy of the Premises and/or the Assigned Property; the exercise of any rights with respect to the Master Lease, the Premises and/or the Assigned Property; and/or any failure to keep, observe and perform the Assumed Obligations with respect to any period from and after the Agreement Commencement Date.

C. Assignor agrees to indemnify, defend and hold harmless Assignee and all its affiliates, subsidiaries, related corporations, related partnerships, officers, directors, employees and agents from and against any and all liabilities, claims, suits, actions, losses, damages, penalties, costs and expenses (including, without limitation, attorneys’ fees and disbursements) due to or arising out of or related to Assignor’s use, possession or occupancy of the Premises and/or the Assigned Property; the exercise of any rights with respect to the Master Lease, the Premises and/or the Assigned Property; and/or any failure to keep, observe and perform the terms, covenants, agreements, conditions and obligations of the Master Lease on the part of the Assignor to be kept, observed and performed with respect to any period prior to the Agreement Commencement Date.

D. This Agreement shall bind and inure to the benefit of Assignor, Assignee, Lessor and their respective, permitted successors and assigns.

E. Assignor represents and warrants that the Master Lease is currently in full force and effect and constitutes the entire agreement between Lessor and Assignor.

F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original hereof and all of which shall be considered one and the same instrument.

G. The parties hereto expressly acknowledge that Lessor joins in the execution of this Agreement for the purposes of 1) acknowledging Lessor's written consent to this Agreement, 2) establishing privity of contract with Assignee in order for Lessor to have the legal right, in its discretion, to enforce the terms of the Master Lease against Assignee, and 3) entering a fixed base operation agreement with Operator.

II. MODIFICATIONS TO MASTER LEASE.

A. The term "aircraft" as used throughout the Master Lease shall include "helicopter(s)".

B. The term "plane" as used in Paragraph 4 of Section One of the Master Lease, or elsewhere in the Master Lease, shall include "helicopter(s)".

C. Notwithstanding anything to the contrary in the Master Lease, including Section Two therein, the parties hereto expressly agree and acknowledge that Assignee may utilize the hangar and hangar ground site for the storage, maintenance, and operation of air medical helicopters, including but not limited to positioning of flight, maintenance and medical crews ("Air Medical Operation"). The helicopters stored at the hangar may be owned or leased by a third party, but shall be utilized in conjunction with said Air Medical Operation. Repair and maintenance of said helicopters conducted at the hangar or hangar ground site shall be performed by employees of Assignee. Assignee expressly acknowledges that Assignee shall not utilize the hangar or hangar ground site for or in conjunction with any aeronautical service, business or other operation except as specifically permitted herein unless the same is authorized by a fixed base operation agreement with Lessor.

D. Notwithstanding anything to the contrary in the Master Lease, including Section Eight therein, the parties hereto expressly agree and acknowledge that Assignee shall list all applicable property owned by Assignee in accordance with North Carolina tax laws and Assignee shall abide by all North Carolina real and personal property tax laws with regard to the property it owns. Assignee must verify, if requested, that any hangared aircraft owned by Assignee, including any spare parts, is listed on the tax rolls of Beaufort County, North Carolina, for the current year; however, Assignee shall have no obligation to insure or verify that any hangared aircraft owned by Vidant (as hereinafter defined) is listed on said tax rolls.

E. Without limiting the terms and conditions contained in Section Fourteen of the Master Lease, the parties hereto expressly acknowledge that the use and definition of the term “vacant” in Subsection C.(1) of said Section Fourteen shall include “unoccupied by an aircraft”.

Notwithstanding anything to the contrary herein or in the Master Lease, including Section Fourteen therein, Assignee may at any time terminate the Master Lease and this Agreement upon thirty (30) days written notice to Lessor. Upon such termination, the conditions and obligations of the Master Lease which by their nature would be required to survive such termination shall survive such termination except Assignee shall not be obligated to pay any rent that would have come due but for said termination. Upon such termination, the provisions of Section Fifteen of the Master Lease shall apply, including but not limited to the provisions that require the title to the hangar to revert to Lessor without any consideration from Lessor.

F. Assignee covenants and agrees that it will abide by, fulfill, and not violate the provisions, conditions, and obligations set forth in Section Seventeen of the Master Lease. In addition to and without limiting the foregoing and except as specifically provided for herein below, Assignee expressly acknowledges that Assignee shall not at any time sell the hangar or sublease, assign, or in any manner surrender personal control of any part of the property or rights herein assigned without the written consent of Lessor, which consent may be withheld in Lessor’s sole discretion.

Notwithstanding anything to the contrary herein or in the Master Lease, including Section Seventeen therein, Lessor hereby authorizes Assignee to sell the hangar and assign its rights in the Master Lease at any time to PITT COUNTY MEMORIAL HOSPITAL INCORPORATED, doing business as VIDANT MEDICAL TRANSPORT, a North Carolina nonprofit corporation (“Vidant”) and its successors so long as the sale and assignment are simultaneous and so long as Assignor has final approval authority concerning the form and substance of the written assignment, which written assignment shall be substantially similar to this Agreement.

G. The Master Lease and this Agreement are subject to the conditions of grant agreements and/or assurances of Lessor with and to the Federal Aviation Administration and Division of Aviation.

H. Notwithstanding anything to the contrary herein or in the Master Lease, including Sections Twenty-Five and Twenty-Six therein, the Master Lease and this Agreement shall be interpreted and, if necessary, amended, to insure and preserve compliance with any applicable federal obligation. If Assignee refuses to effectuate any amendment to the Master Lease or this Agreement that may be required to insure and preserve compliance with any applicable federal obligation, such refusal shall constitute an event of default under the terms of the Master Lease.

III. FIXED BASE OPERATION – AIR MEDICAL OPERATION.

A. The City hereby grants Operator the non-exclusive privilege to engage in and Operator agrees to engage in, the operation of an Air Medical Operation as described hereinabove from the hangar ground site that Operator occupies by virtue of this Agreement and the Master Lease which is incorporated herein by reference as if fully set forth. To the extent

there is any conflict in the provisions contained in this Section III and the other provisions contained in this Agreement or the Master Lease, the provisions in this Section III shall control. This Agreement does not authorize Operator to engage in any other fixed base operation or to provide any other aeronautical service to third parties. If Operator desires to engage in any other fixed base operation or to provide any other aeronautical service to third parties, a separate fixed base operation agreement would be required.

Said Air Medical Operation shall meet any and all applicable Federal Aviation Administration (“FAA”), North Carolina Division of Aviation (“NCDOA”), and Airport Rules and Regulations requirements and shall be operated in a business-like manner. By virtue of the interest of the public in, and the efficient operation of, the Airport and the responsibility reposed in the City to see that such interest is protected as nearly as may be, the City reserves the right, during the term of this Agreement, to authorize additional operators to enter upon the Airport and use the buildings and properties situated thereon, saving and excepting said hangar ground site that Operator occupies.

B. Term. Operator’s authority to operate an Air Medical Operation shall continue in full force and effect from the full execution of this Agreement until the date Operator’s rights as a tenant under the Master Lease terminate or expire.

C. Operator’s Rights, Privileges, Obligations, and Responsibilities.

1) Operator shall conduct its Air Medical Operation in accordance with the applicable Airport Rules and Regulations, as may be amended.

2) In performing Air Medical Operation services and activities contemplated herein which may affect the overall operation of the Airport, Operator shall consult as well as coordinate with the City’s designated Airport operator, as necessary and appropriate, and advise as well as report to the City’s designated Airport operator, as necessary or appropriate, such compliance or other matters that come to its attention with respect to any FAA, NCDOA, or other regulatory agencies.

3) Assignee shall abide by all applicable anti-discriminatory laws, grant assurances, and federal obligations.

D. Insurance. In addition to the insurance requirements contained in Section Thirteen of the Master Lease, Operator shall procure and maintain in force necessary insurance coverage as follows: 1) \$1,000,000.00 – products/completed operational aggregate limit, 2) \$1,000,000.00 – personal/advertising injury aggregate limit, and 3) statutory worker’s compensation insurance in amounts required by law and, unless exempted by applicable law, employer’s liability insurance at a minimum of \$500,000.00 for bodily injury by accident each employee and \$500,000.00 for bodily injury by disease each employee and \$500,000.00 bodily injury by disease policy limit. All insurance shall be carried by a responsible company and shall be in a form satisfactory to the City. The City shall be furnished any and all copies of all insurance policies obtained by Operator in compliance with this requirement on or before Operator begins the operation of the Air Medical Operation. Operator agrees to maintain

sufficient coverage on a current status and that all such insurance policies obtained by Operator in compliance with this requirement, with the exception of statutory worker's compensation or employer's liability insurance, name the City as additional insured as respects the operations of the named insured and provide a thirty (30) day written notice to the City of termination, material change in the terms thereof, or non-renewal of such policies.

E. Confidentiality. All books, records, information, and data that are exchanged or received between the parties shall remain confidential and shall not be disclosed to any other person, except as specifically authorized or as may be required by law.

F. Negation of Membership or Joint Venture. Nothing contained in this Agreement shall constitute, or be construed to be or create, a partnership or joint venture between Operator and the City.

IN WITNESS WHEREOF, each party to this Agreement caused it to be executed by their duly authorized officers and/or agents as of the date referenced hereinabove.

[Signatures Begin On Following Page]

PRE-AUDIT CERTIFICATE

This Agreement 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.

THE CITY OF WASHINGTON

MATT RAUSCHENBACH,
Chief Financial Officer

ASSIGNOR:

By: _____
Craig Goess

ASSIGNEE:

Metro Aviation, Inc.,
a Louisiana corporation

(corporate seal)

ATTEST:

By: _____
Name: Thomas M. Stanburry
Title: President

Name: Milton K. Geltz
Title: Secretary

LESSOR:

CITY OF WASHINGTON,
a North Carolina municipal corporation

(corporate seal)

ATTEST:

By: _____
N. Archie Jennings, III, Mayor

Cynthia S. Bennett, City Clerk

[Notary Acknowledgements Begin On Following Page]

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that **Craig Goess**, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged the execution of the foregoing instrument.

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

NOTARY PUBLIC

My Commission expires: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of the County and State aforesaid, certify that Milton K. Geltz, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged that he is Secretary of the **Metro Aviation, Inc.**, a Louisiana corporation, and that by authority duly given and as the act of the limited liability corporation, the foregoing instrument was signed by Thomas M. Stanburry, as President.

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

NOTARY PUBLIC

My Commission expires: _____

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

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

EXHIBIT A

COPY

**NORTH CAROLINA
BEAUFORT COUNTY**

HANGAR GROUND SITE LEASE AGREEMENT

THIS HANGAR GROUND SITE LEASE AGREEMENT ("Lease"), made, entered into and executed in duplicate originals as of the 1st day of October, 2009, by and between THE CITY OF WASHINGTON, a body politic and corporate under Chapter 160A of the North Carolina General Statutes, ("LESSOR") and CRAIG GOESS, having an address of 3615 South Memorial Drive, Greenville, North Carolina, ("LESSEE").

WITNESSETH:

That pursuant to Chapter 63 of the General Statutes of North Carolina, 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 ("hangar ground site") lying and being at Warren Field Airport ("Airport") in Washington Township, Beaufort County, North Carolina, more particularly described as follows:

MEASURING 80 feet by 60 feet, containing 4,800 square feet and being the footprint of the hangar LESSEE currently occupies (formerly occupied by Public Relations Transportation, L.L.C.) and specifically exclusive of all adjacent and nearby taxiways, access ramps, aprons, parking areas or other paved surfaces or grounds, and 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, control tower, 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, 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.

Notwithstanding anything herein to the contrary, the parties hereto recognize and understand that LESSEE shall have the exclusive right to park his plane on the apron in front of his hangar.

SECTION TWO Acceptance, Maintenance and Use of Hangar Ground Site

LESSEE agrees to accept the hangar ground site in the physical condition in which the same now is. LESSEE further agrees to maintain the same and the grounds immediately adjacent thereto in at least a like condition during the term of this Lease, normal wear and tear excepted. LESSEE further agrees to maintain the hangar ground site 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 discharge of hazardous or regulated chemicals onto the airport. LESSEE further agrees to surrender the hangar ground site 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 hangar ground site; 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 middle of the ditch 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 hangar ground site is 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. Only licensed and airworthy private aircraft owned or leased by LESSEE may occupy the hangar located on the hangar ground site (spare aircraft parts excepted). No other use of the hangar ground site will be permitted. Specifically, LESSEE shall not offer or permit any commercial sale, repair service or

other services, including the rebuilding, restoring, or maintaining of a succession of aircraft, to be offered to, rendered in, on or from any hangar or hangar ground site. Aircraft to be hangared at the hangar ground site 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, its employees, customers, passengers, suppliers, and other licensees or invitees, without charge, adequate vehicular parking space located as near as practicable to the hangar ground site. 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 hangar ground site and facilities referred to in this Lease for LESSEE, its employees, customers, passengers, guests, and other licensees or invitees. 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 twenty-five (25) years, beginning on the 1st day of October, 2009, and ending on the 30th day of September, 2034, unless sooner terminated as provided for herein.

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 seventy-two cents (\$0.72) per square foot of hangar space for 4,800 square feet per year (\$3,456.00 annually), due and payable each year in one lump sum, beginning on or before October 1, 2010 (LESSOR expressly waives any rent for the October 1, 2009 – September 30, 2010 year as an incentive for the occupancy of the hangar located on the hangar ground site by a jet aircraft), and on or before the same date each and every year thereafter until the termination of this Lease. The annual rental amount due hereunder (initially \$0.72 per square foot of hangar space per year) shall be reestablished following every fifth year to reflect the average adjustment in the Consumer Price Index (CPI All Urban Consumers, South - Size Class D, All items) over the previous five year period. The readjusted annual amount due hereunder shall be applicable for the next five years until the next readjustment consistent herewith. The rental amount shall also be adjusted to reflect any change in the square footage of the hangar space during the period of this Lease. Any change in the

rental amount attributable to a change in square footage shall be applicable beginning with the first, full year following such change in square footage and in each succeeding year thereafter. As used herein, square footage will be based upon the footprint of the hangar.

No charges, fees, or tolls other than those expressly provided for in this Lease, including Section 7, Part B and Section 8 hereof, shall be charged or collected by LESSOR from LESSEE or any other persons for the privilege of entering or leaving the Airport or, within the limits of the Airport, for the privilege of transporting, loading, unloading, or handling persons, cargo, property, or mail in connection with LESSEE's use of the leased premises.

SECTION SEVEN Rights, Privileges, Obligations, and Responsibilities

A. 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 and remove any additional capital improvements on the hangar ground site 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 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 any 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.

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

(1) The use and occupancy of the hangar ground site and 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 hangar ground site, 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 hangar ground site 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 hangar ground site.

(2) LESSEE shall maintain and be responsible for all repairs to the hangar located on the hangar ground site. LESSEE agrees, at its own expense, to cause the hangar ground site 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 hangar ground site and agrees not to deposit the same on any of the Airport premises, except LESSEE may temporarily deposit the same on the hangar ground site in an approved container or enclosure in connection with their collection or removal.

(4) LESSEE will not suffer or permit to be maintained upon the outside of any improvements located on the leased premises any billboards or advertising signs unless previously approved in writing by LESSOR. A normal company identification sign will be permissible on the hangar ground site.

(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 hangar ground site 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 hangar ground site, shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise use the premises in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964 and as said regulations may be amended.

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 hangar ground site 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, is listed on the tax roles 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 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 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 leased 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 hangar ground site; 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 hangar ground site. 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, its employees, customers, passengers, guests, and other licensees or invitees.

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 a grant agreement by the Navy

Department or Civil Aeronautics Administration, 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 agreement or by actions of LESSOR or the United States pursuant thereto.

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 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 the LESSOR from any negligence of LESSEE.

LESSEE agrees to indemnify LESSOR against any and all liability for injuries to persons or damage to property caused by LESSEE's negligent use or occupancy of the leased 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 leased premises and LESSEE'S activities thereon 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 to indemnify and hold harmless LESSOR from any and all liability of claims for loss, damage, or injury to persons or property caused or occasioned by the use of the leased premises by LESSEE during the term of this Lease. All insurance shall be carried by a responsible company licensed to do business in the State of North Carolina and shall be in a form satisfactory to LESSOR. LESSOR shall be furnished any and all copies of 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 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.

The minimum amount of insurance due hereunder (initially \$1,000,000.00) shall be reestablished following every fifth year through good faith negotiations regarding the same. Said readjustment(s) shall be applicable for the next five (5) years until the next readjustment

consistent herewith. Notwithstanding the foregoing, the minimum amount of insurance due hereunder shall not be less than \$1,000,000.00 at any time during the period of this Lease.

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 hangar ground site, 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 hangar ground site.

(4) The lawful assumption by the United States, the State of North Carolina or any authorized agencies 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 hangar ground site 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 hangar ground site for any period of time, allows the hangar thereon to remain vacant for a period in excess of Ninety (90) days, or fails or neglects to make any payment of rental when due, 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 hangar ground site, 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: Title to Improvements and Repairs

Upon termination by expiration of the original term of this Lease or upon earlier termination under any circumstances, LESSEE's rights 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 leased premises or the improvements thereon. It is mutually agreed that title to any and all improvements, including hangar, currently situated, hereafter erected, or hereafter constructed upon the premises shall remain the property of LESSEE for so long as this Lease shall remain in effect, but such improvements, including hangar, shall revert to or become owned and possessed 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 on the part of LESSEE on account of any repair or improvement work. The vesting of title in LESSOR at the time specified is a part of the consideration for this Lease. LESSOR shall not be liable to LESSEE or LESSEE's contractors or sub-lessees for the value of such improvements, including hangar, currently situated on, hereafter erected, or hereafter constructed upon the premises.

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 hangar ground site 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. 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 rentals and charges set forth in this Lease. It is recognized that the interest of all parties will be promoted and served by the increased use of the Airport facilities and it is not the intention of this provision to so restrict this use, but rather to insure that the same is accomplished with the view of serving the public interest invested in LESSOR.

SECTION EIGHTEEN
Notices

Notices provided for in this Lease shall be sufficient if sent by registered mail, postage prepaid, and addressed as follows:

TO LESSOR: Attn: City Manager
 City of Washington
 Post Office Box 1988
 Washington, NC 27889

TO LESSEE: Craig Goess
 3615 South Memorial Drive
 Greenville, NC 27834

Any notice so given to either party hereunder shall be conclusively considered to have been received on the third business day following the proper mailing thereof. Each party shall give written notice to the other of any change of address at least thirty (30) days in advance of the date such change is to become effective, whereupon the address so given shall control.

SECTION NINETEEN
Governing Law

This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

SECTION TWENTY
Severability

Any covenant, condition, or provision of this Lease that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Lease, but such deletions shall in no way effect any other covenant, condition or provision of this Lease, so long as such deletion does not materially prejudice LESSOR or LESSEE in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Lease.

SECTION TWENTY ONE
Effect of Waiver

The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a 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 majority vote 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 LESSEE serves and meets the general public is of paramount importance to the LESSOR, and in the event of any disagreement requiring adjustment or adjudication by arbitration, as herein provided, said arbitrator 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 agreement. 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.

**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.

IN WITNESS WHEREOF, each party to this Lease has caused it to be executed by their duly authorized officers and/or agents on the date indicated below.

PRE-AUDIT CERTIFICATE

This Agreement 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.

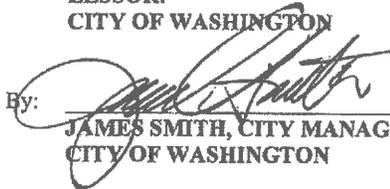
THE CITY OF WASHINGTON


**MATT RAUSCHENBACH,
CHIEF FINANCE OFFICER**

**LESSOR:
CITY OF WASHINGTON**

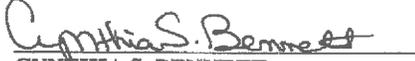
(CORPORATE SEAL)

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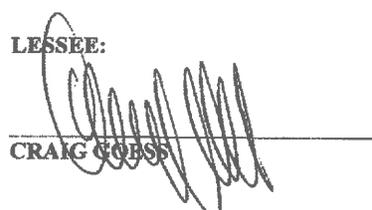

**JAMES SMITH, CITY MANAGER
CITY OF WASHINGTON**

DATE: 1/20/10

ATTEST:


**CYNTHIA S. BENNETT,
CITY CLERK**

LESSEE:

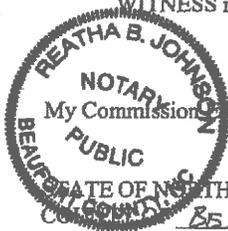

CRAIG GOSS

DATE: 1-14-10

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Reatha B. Johnson, 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 JAMES C. SMITH, its City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the 20 day of January, 2010.



My Commission Expires: 12/14/2014

Reatha B. Johnson
NOTARY PUBLIC

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 CRAIG GOESS, who being by me duly sworn says that he executed the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 14 day of January, 2010.

Cornelius T. Partrick Jr
NOTARY PUBLIC

My Commission Expires: 27 November 2010

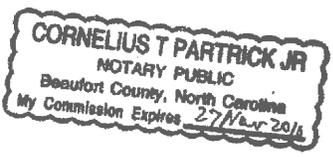


EXHIBIT "A"





REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *AL*
Date: 10-23-13
Subject: Authorize the Manager to Sign the Attached Jump School Agreement with Skydive Little Washington, LLC.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council authorize the Manager to sign the attached Jump School Agreement on behalf of the City with Skydive Little Washington, LLC.

BACKGROUND AND FINDINGS:

For your information, staff has been working with John Hayes and Ingrid Stephan regarding their desire to start a jump school at Warren Field Airport. They met with the Airport Advisory Board on October 8, 2013 and answered questions regarding their proposed operations. The Airport Advisory Board voted to recommend that they be allowed to operate a jump school at Warren Field. They will be operating, at least initially, out of the terminal annex building with the drop zone near the overflow parking lot for the sports complex off Airport Road. The attached agreement is for your approval.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Jump School Agreement with Skydive Little Washington, LLC.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: 10/24 Date 10/24 Concur KL Recommend Denial _____ No Recommendation _____

**NORTH CAROLINA
BEAUFORT COUNTY**

**TERMINAL BUILDING ANNEX LEASE AND
FIXED BASE OPERATION – JUMP SCHOOL AGREEMENT
(Parachute Operations Under FAR Part 105 and 91.307)**

THIS TERMINAL BUILDING ANNEX LEASE AND FIXED BASE OPERATION – JUMP SCHOOL AGREEMENT (“Agreement”) is made, entered into and executed in duplicate originals as of the ____ day of _____, 201__, by and between the **CITY OF WASHINGTON**, a body politic and corporate under Chapter 160A of the North Carolina General Statutes having a principal address of P.O. Box 1988, Washington, North Carolina, 27889, (“Lessor”) and Skydive Little Washington, LLC, a North Carolina limited liability company having a principal address of _____, _____, North Carolina, _____, (“Operator”).

WITNESSETH:

WHEREAS, Lessor is the owner of the Warren Field Airport (“Airport”), with improvements thereon, which is located in Washington Township, Beaufort County, North Carolina and desires to contract with Operator to lease certain portions of said Airport as well as provide a certain fixed base operation at the Airport.

WHEREAS, Operator desires to lease certain portions of said Airport as well as provide a certain fixed base operation at the Airport.

WHEREAS, Operator has represented that Operator is fully capable of performing the fixed base operation described in this Agreement and Lessor has relied on such representations to select Operator to perform this Agreement.

NOW THEREFORE, 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 are 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 Operator, and Operator does hereby accept from Lessor, that certain building known by the parties hereto as the Terminal Building Annex (“Annex” or “premises”), as more particularly shown on an excerpt from the Airport Layout Plan, which excerpt is attached hereto as Exhibit A and incorporated herein by reference for a more complete and accurate description.

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

SECTION I Use of Airport

Subject to the express conditions contained in Section VII, Part B hereof, Lessor grants Operator 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 efficient taxiing, servicing, and 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 Operator 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 Operator's fixed base operation so long as all applicable city, county and governmental regulations are complied with.

Lessor grants Operator, its employees, contractors, customers, passengers, guests, and other licensees or invitees (collectively, "Operator'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 II Acceptance, Maintenance and Use of Premises

Operator agrees to accept the premises in the physical condition in which the same now is. Operator further agrees to maintain the same and the grounds immediately adjacent thereto in at least a like condition during the term of this Agreement, normal wear and tear excepted. Operator 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. Operator further agrees to surrender the premises back to Lessor in as good a condition as the same now is, ordinary wear and tear excepted, upon termination of this Agreement.

Lessor hereby grants Operator the non-exclusive privilege to engage in, and Operator agrees to engage in, the operation of a jump school, including but not limited to a parachute rigging facility, classroom facility, and/or sky diving/parachute school instruction in and from the Annex. No other use of the premises will be permitted without the written consent of Lessor

and this Agreement does not authorize Operator to engage in any other fixed base operation or to provide any other aeronautical service to third parties. If Operator desires to engage in any other fixed base operation or to provide any other aeronautical service to third parties, a separate fixed base operation agreement would be required.

Said jump school shall meet any and all applicable Federal Aviation Administration (“FAA”), North Carolina Division of Aviation (“NC DOA”), and Airport Rules and Regulations requirements and shall be operated in a businesslike manner. In this regard, Operator shall perform its fixed base operation in a manner such that Operator serves as an ambassador of and to Lessor. All parachute jumps onto or intended to be onto the Airport shall be required to be conducted in accordance with the latest publication of Federal Aviation Regulation (FAR) Part 105, Parachute Jumping, the Basic Safety Regulations (BSR) of the United States Parachuting Association (USPA), and the policy and procedures of the Airport as set forth in the Airport Rules and Regulations, as the same may be amended.

By virtue of the interest of the public in, and the efficient operation of, the Airport and the responsibility reposed in Lessor to see that such interest is protected as nearly as may be, Lessor reserves the right, during the term of this Agreement, to authorize additional operators to enter upon the Airport and use the buildings and properties situated thereon, saving and excepting therefrom the premises leased to Operator and the other areas or grounds specifically identified herein.

SECTION III Parking Space

Operator and Operator’s permittees may utilize such parking areas and/or parking spaces as are provided by Lessor at the Airport. Lessor reserves the right for Lessor’s Airport Operations Technician or other personnel designated by the City Manager (“Lessor’s designated Airport operator”) to designate the specific parking areas and/or parking spaces that are to be utilized by Operator and Operator’s permittees. First consideration and priority shall be given to the general public’s use of such parking areas and/or parking spaces, their convenience, and their use of the Airport.

SECTION IV Right of Ingress and Egress

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

SECTION V

Term

Subject to earlier termination as provided herein, the term of this Agreement shall be for a period of five (5) years, commencing on the ___ day of _____, 201__ and ending on the ___ day of _____, 201__.

Either party hereto shall have the right and option to terminate this Agreement, without recourse from or by the other party, by giving the other party written notice of such termination at least thirty (30) days prior to such termination.

SECTION VI

Rental and Royalty

A. Operator shall pay Lessor for the use of the premises, facilities, rights, services, and privileges granted in this Agreement the sum of \$4,800.00 annually. Said sum shall be due and payable each year in monthly installments of \$400.00, beginning on or before _____, 201__ and on or before the _____ day of each and every month thereafter until the termination of this Agreement.

B. The annual rental amount due hereunder shall be subject to an annual rental increase not to exceed the annual percentage increase in the Bureau of Labor Statistics CPI (South Class Size D Series Id. CUURD300SA0) or five percent (5%), whichever is less. The readjusted annual amount due hereunder shall be applicable for the next year until the next readjustment consistent herewith.

C. In addition to any specific sums required to be paid by Operator to Lessor hereunder, Operator shall pay to Lessor a royalty in the amount of \$5.00 for every tandem jump taken by a customer of Operator and \$2.00 for every non-tandem jump taken by a customer of Operator. Operator shall pay this royalty to Lessor on a monthly basis beginning on the ___ day of _____, 201__ and ending on the ___ day of _____, 201__.

SECTION VII

Rights, Privileges, Obligations, and Responsibilities

A. In its use of the Airport as well as related facilities, Operator is granted the following specific rights and privileges.

(1) Operator has the right to add any additional capital improvements on the premises under the exclusive control of Operator, 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. Unless removal is authorized by Lessor, all improvements so added by Operator will be and become the property of Lessor at the termination of this Agreement without cost to Lessor. Any improvements that involve alterations to other Airport premises under the

non-exclusive control of Operator shall be subject to approval in advance by Lessor and all improvements so added by Operator will be and become the property of Lessor at the termination of this Agreement without cost to Lessor as further consideration hereof unless removal is authorized by Lessor.

B. In its use of the Airport as well as related facilities and in conjunction with Operator's fixed base operation, Operator accepts the following obligations and responsibilities.

- (1) Operator shall provide a jump school program as more specifically described herein.
- (2) Operator shall require each participant in its jump school program to initial and sign a release of liability agreement which indemnifies and holds harmless Warren Field Airport, the City of Washington, its officers, employees, agents, and representatives from any and all injuries and/or damages to the participant or any other person, and any and all damages to property belonging to the participant or any other person, that may occur during or incidental to each participant's participation in the jump school program, including but not limited to parachuting jumps conducted by the participant onto or intended to be onto the Airport. Said release of liability agreement, its form, substance and any revision thereof, shall be subject to Lessor's approval. Operator shall conduct its fixed base operation in accordance with the applicable Airport Rules and Regulations, as may be amended. Said Airport Rules and Regulations, as may be amended, are incorporated herein by reference as if fully set forth.
- (3) Operator shall provide at least one aircraft for sky diving/parachute operations.
- (4) Operator shall coordinate all jump school activities with Lessor's designated Airport operator.
- (5) Operator shall publish, maintain, and keep regular hours of operation.
- (6) The use and occupancy of the premises and the use and maintenance of the grounds immediately adjacent thereto by Operator shall be without cost or expense to Lessor. It is understood and agreed that Lessor is obligated to furnish utility services such as electricity, water, and sewer to Operator 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 Operator provided that Operator shall assume and pay any and all costs or charges for any meters that are necessary for measuring said service and the charges for providing such service. Operator also shall assume and pay any and all costs or charges for additional utility services furnished to or required by Operator during the term hereof, including any and all extensions or connections of such services as may be necessary or required in the operation and maintenance of the premises to any and all existing storm and sanitary sewers, water, and utility outlets and shall otherwise pay for any and all service charges incurred or used on the premises.

(7) Operator shall maintain and be responsible for all minor repairs to the Annex. Operator 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 the Airport. Unless specifically provided for herein or expressly permitted by Lessor's designated Airport operator, all of Operator's tools, machines, parts and maintenance equipment shall be stored in the Annex.

(8) Operator 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 Operator may temporarily deposit the same on the premises in an approved container or enclosure in connection with their collection or removal. Operator agrees it will not allow the accumulation of rubbish, waste, foul material, contaminant, or otherwise create an unhealthy or hazardous condition on the premises.

(9) Subject to the approval of Lessor's designated Airport operator and consistency with any applicable ordinance, Operator shall be permitted to establish as well as maintain a normal company identification sign on the premises and a sign or other posting on the Airport premises that describes Operator's services and the location of Operator's fixed base operation. Operator will not suffer or permit to be maintained upon the outside of any improvements located on the leased premises any billboards or advertising signs except as specifically provided for hereinabove.

(10) Operator will make no unlawful, improper or offensive use of the premises.

(11) Any and all activities in furtherance of the jump school and any and all improvements to and use of the premises or Airport shall conform to and be consistent with the then current Airport plan, the minimum standards, and the Rules and Regulations adopted for the Airport by Lessor, as may be amended.

(12) Operator shall keep, or cause to be kept, and provide to Lessor such monthly records or reports as may be required by Lessor and as are necessary in order to account for all tandem and non-tandem jumps that are taken by customers of Operator so that the royalty provided for hereinabove can be calculated and confirmed.

(13) Operator, in its operation of the jump school and its use of and improvements to the premises and facilities of the Airport 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.

(14) In performing jump school services and activities contemplated by this Agreement which may affect the overall operation of the Airport, Operator shall consult as well as coordinate with Lessor's designated Airport operator, as necessary and appropriate, and advise as well as report to Lessor's designated Airport operator, as

necessary or appropriate, such compliance or other matters that come to its attention with respect to any FAA, NC DOA, USPA or other regulatory agencies.

(15) Operator shall provide the jump school services and activities contemplated by this Agreement on a reasonable, and not unjustly discriminatory, basis to all users thereof, and charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Operator may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume customers and purchasers.

C. Lessor accepts the following obligations and responsibilities.

(1) It is understood by the parties hereto that the major structural and maintenance aspects of the Annex shall remain the responsibility of Lessor. Lessor's repair and maintenance obligation shall include structural repairs and replacements, including the replacement of any currently existing building parts, doors, and installations (electrical, heating and air conditioning, gas, water and sewer) that may become necessary. In the event there is damage to or destruction of all or a material part of the Annex due to a calamity or an act of God, Lessor may elect, in its sole discretion and without any recourse on the part of Operator, whether to repair or replace the Annex. In the event Lessor elects not to repair or replace the Annex, this Agreement shall terminate upon Operator's receipt of Lessor's written notice without recourse from Operator.

(2) Consistent with the Airport Layout Drawing, Lessor's designated Airport operator shall designate the area to be utilized by Operator at the Airport as a drop zone, which drop zone shall be the point of intended landing for all jumps onto, or intended to be onto, the Airport. Upon receiving advance approval from Lessor's designated Airport operator, Operator may make certain alterations to, and maintain, the drop zone or portions thereof. Notwithstanding the foregoing, Lessor's designated Airport operator shall retain full authority over the drop zone and any such alterations and maintenance shall be kept, altered, removed, continued or discontinued, as the case may be, at the direction of, and in the discretion of, Lessor's designated Airport operator.

SECTION VIII Taxes and Assessments

Operator 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 real or personal property by reason of permitting Operator to use the premises as herein described. Operator 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.

Operator shall insure that Operator's aircraft that are utilized in Operator's jump school operation are listed on the tax rolls of Beaufort County, North Carolina. Operator shall verify, if

requested, that any of Operator's personal property that is located on the premises or Airport and that is required to be listed on the tax rolls of Beaufort County, North Carolina for the current year and any of Operator's aircraft that are utilized in Operator's jump school operation are listed on the tax rolls of Beaufort County, North Carolina for the current year.

SECTION IX Maintenance and Utilities

Except as otherwise specified herein, during the term of this Agreement, 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 (if and when the same is reconstructed); vehicle parking areas and all roadways, runways, aprons and taxiways. Subject to the conditions expressly set forth in Section VII 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 X Rules and Regulations

Operator 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 jump school; 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, Operator 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.

Operator agrees to observe and obey the rules and regulations with respect to the operation of the jump school and 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 FAA; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this Agreement or the procedures prescribed or approved from time to time by the FAA with respect to Operator's jump school or Operator's use of the Airport, including premises. Operator further agrees to indemnify and hold Lessor harmless for any and all damage of any kind arising from Operator'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 Operator and Operator's permittees.

Operator 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 XI
Subordination**

This Agreement shall be subject 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 Lessor. It is specifically understood by Operator that this Agreement is subject to the recapture clause and other conditions of grant agreements and/or grant assurances with the Department of Navy, FAA, 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 Operator in the jump school 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 XII
Indemnification**

Lessor shall stand indemnified by Operator as hereinafter provided. It is expressly understood and agreed by and between the parties hereto that Operator herein is and shall be deemed to be an independent contractor, responsible to all parties for its acts or omissions as well as the acts or omissions of Operator'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, Operator agrees to indemnify, defend and hold harmless Lessor from any negligence of Operator or Operator's permittees.

Operator specifically agrees to indemnify, defend and hold harmless Lessor against any and all liability for injuries to persons or damage to property caused by, arising from, or in any way related to Operator's jump school or caused or occasioned by Operator's or Operator's permittees' negligent use or occupancy of the premises or Airport; provided, however, that Operator 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 Operator 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 Operator, and Operator shall have the right to compromise and defend such claim or suit to the extent of its own interest.

**SECTION XIII
Insurance**

Operator shall procure and maintain in force necessary commercial general liability insurance, including contractual liability, coverage for the premises and Operator's activities thereon in the minimum amount of \$1,000,000.00 for personal injury, death and property damage resulting from each occurrence and \$1,000,000.00 aggregate to indemnify and hold

harmless Lessor from any and all liability for claims of loss, damage, or injury to persons or property caused by, arising from, or in any way related to the use of the premises or the Airport by Operator or Operator's permittees or their respective activities on or at the Airport during the term of this Agreement. In addition, Operator shall procure and maintain in force necessary insurance coverage as follows: 1) a minimum of \$300,000.00 each occurrence and \$600,000.00 aggregate for jump school, skydiving, and parachute operation; 2) \$1,000,000.00 – products/completed operational aggregate limit; 3) \$1,000,000.00 – personal/advertising injury aggregate limit; and 4) statutory worker's compensation insurance in amounts required by law and, unless exempted by applicable law, employer's liability insurance at a minimum of \$500,000.00 for bodily injury by accident each employee, \$500,000.00 for bodily injury by disease each employee, and \$500,000.00 bodily injury by disease policy limit. All insurance shall be carried by a responsible company and shall be in a form satisfactory to Lessor. Lessor shall be furnished any and all copies of all insurance policies obtained by Operator in compliance with this requirement on or before Operator begins operation of the jump school. Operator agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by Operator in compliance with this requirement, with the exception of statutory worker's compensation or employer's liability insurance, 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 XIV Termination and Default

A. This Agreement shall terminate at the end of its original term, unless sooner terminated as provided for herein. No holding over by Operator after the expiration or earlier termination of this Agreement shall operate to extend or renew this Agreement for any further term whatsoever; but Operator 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 Operator shall constitute Operator a trespasser.

B. This Agreement shall be subject to termination by either party 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) Damage to or destruction of all or a material part of the premises or Airport facilities necessary for the Operator's jump school.
- (3) The lawful assumption by the United States, 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 Operator from operating a jump school for a period in excess of ninety (90) days.

C. This Agreement shall be subject to termination by Operator in the event of any one or more of the following events.

(1) The default by Lessor in the performance of any of the terms, covenants, or conditions of this Agreement 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 Operator to remedy the same.

D. This Agreement shall be subject to termination by Lessor in the event of any one or more of the following events.

(1) The default by Operator in the performance of any of the terms, covenants, or conditions of this Agreement, and the failure of Operator 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 Operator abandons the premises for any period of time or fails or neglects to make any payment of rental when due, Lessor may, at its option and without any other notice, demand, or legal proceeding, declare this Agreement void, terminate this Agreement, require Operator to vacate, enter the premises, and eject Operator therefrom or may pursue any other lawful right or remedy.

(2) Operator has a petition filed against it for an involuntary proceeding under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect and such petition shall not have been dismissed within sixty (60) days of filing.

(3) A Court having jurisdiction shall have appointed a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of such party for any substantial portion of its property or ordered the winding up or liquidation of its affairs.

(4) Operator files a voluntary proceeding or reorganization plan under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect; shall have made a general or other assignment for the benefit of creditors; shall have failed generally to pay its debts as they become due; or is adjudicated as bankrupt.

SECTION XV

Surrender of Possession: Title to Improvements and Repairs

Upon termination by expiration of the original term of this Agreement or upon earlier termination under any circumstances, Operator's rights to use the premises, facilities, and services described in this Agreement shall cease, and Operator shall vacate the premises without unreasonable delay. Operator shall surrender the premises in approximately the same condition as upon taking of possession, allowing for reasonable wear and tear. Upon any such above termination, Operator shall have no further right or interest in any of the premises, Airport, or the improvements thereon. It is mutually agreed that title to any and all improvements currently situated, hereafter erected, or hereafter constructed upon the premises or Airport shall remain, revert to, or become owned and possessed, as the case may be, by Lessor upon the expiration or earlier termination of this Agreement, without any additional payment or consideration to Operator therefor, free and clear of all claims or liens through or on the part of Operator on

account of any repair or improvement work. The vesting of title in Lessor at the time specified is a part of the consideration for this Agreement. Lessor shall not be liable to Operator or Operator's contractors or subcontractors for the value of such improvements currently situated on, hereafter erected, or hereafter constructed upon the premises.

**SECTION XVI
Inspection by Lessor**

Lessor may enter the premises now or hereafter leased exclusively to Operator at any reasonable time for any purpose necessary or incidental to the performance of its obligations under this Agreement. Operator will provide access to the premises including the Annex 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 Agreement may be terminated.

**SECTION XVII
Assignment and Subletting**

Operator shall not at any time sublease, assign, or in any manner surrender personal control of any part of the property or rights herein contracted for without the written consent of Lessor. Provided, however, that the foregoing shall not prevent the assignment or subletting of such rights to any corporation with which Operator may merge or consolidate, or which may succeed to the business of Operator, or to the United States government or any agency thereof. No such assignment or subletting contemplated hereunder shall release Operator from its obligations to pay any and all of the rentals and other charges set forth in this Agreement. It is recognized that the interest of all parties will be promoted and served by the increased use of the Airport facilities and it is not the intention of this provision to so restrict this use, but rather to insure that the same is accomplished with the view of serving the public interest vested in Lessor.

**SECTION XVIII
Notices**

Notices provided for in this Agreement shall be sufficient if sent by registered mail, postage prepaid, and addressed as follows:

TO LESSOR: Attn: City Manager
 City of Washington
 Post Office Box 1988
 Washington, NC 27889

TO OPERATOR: Attn: _____
 Skydive Little Washington, LLC

Any notice so given to either party hereunder shall be conclusively considered to have been received on the third business day following the proper mailing thereof. Each party shall give written notice to the other of any change of address at least thirty (30) days in advance of the date such change is to become effective, whereupon the address so given shall control.

SECTION XIX Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

SECTION XX Severability

Any covenant, condition, or provision of this Agreement that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletions shall in no way effect any other covenant, condition or provision of this Agreement, so long as such deletion does not materially prejudice Lessor or Operator in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

SECTION XXI Effect of Waiver

The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

SECTION XXII Arbitration

In the event of any disagreement as to whether there has been a breach of contract under this Agreement, 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 Operator, 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 Operator. In this connection, attention is invited to the fact that 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 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 Operator shall comply with all requirements of this Agreement.

SECTION XXIII
Effect of Agreement

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

SECTION XXIV
Attorney's Fees

In the event any action is filed in relation to this Agreement, 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 Agreement, a reasonable sum for the successful party's attorney's fees.

SECTION XXV
Entire Agreement

This Agreement 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 Operator, and no oral contract or agreement, or informal memorandum shall have the effect of so modifying, altering or changing this Agreement. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

SECTION XXVI
Modification of Agreement

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

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

**SECTION XXVII
Confidentiality**

All books, records, information, and data that are exchanged or received between the parties shall remain confidential and shall not be disclosed to any other person, except as specifically authorized or as may be required by law.

**SECTION XXVIII
Negation of Membership or Joint Venture**

Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership or joint venture between Operator and Lessor.

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

PRE-AUDIT CERTIFICATE

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

CITY OF WASHINGTON

Matt Rauschenbach,
Chief Financial Officer

**LESSOR:
CITY OF WASHINGTON**

(CORPORATE SEAL)

ATTEST:

Cynthia S. Bennett, City Clerk

By: _____
Brian M. Alligood, City Manager
Date: _____

**OPERATOR:
SKYDIVE LITTLE
WASHINGTON, LLC**

By: _____
_____, Owner/Manager
Date: _____

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

WITNESS my hand and Notarial Seal, this the ___ day of _____, 2013.

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

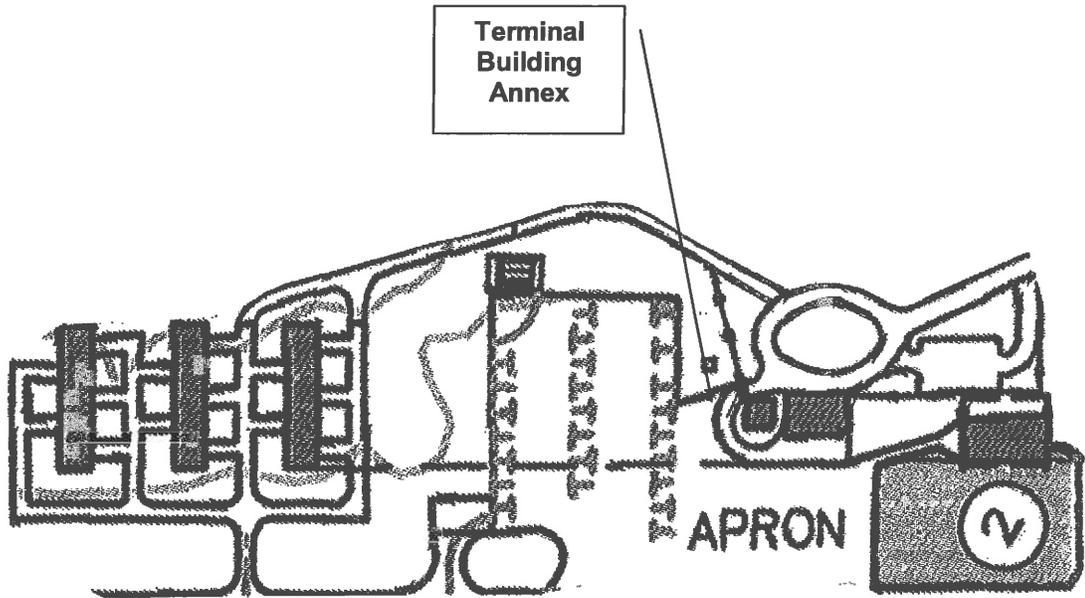
Before me, a Notary Public in and for the County and State aforesaid, this day personally appeared _____ and acknowledged that he is Owner/Manager of **SKYDIVE LITTLE WASHINGTON, LLC**, and acknowledged the due execution by him of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial 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 *Allen Lewis*
Date: 10-21-13
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: *10/24* Date Concur *RLJ* 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 thus 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 in 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, or his designee, 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, the following.
 - (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 when 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 and 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 and 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 the purposes of this requirement, significant changes include, but are not limited to, flow or pollutant increases of twenty (20) percent or greater, 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, and 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 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.

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.

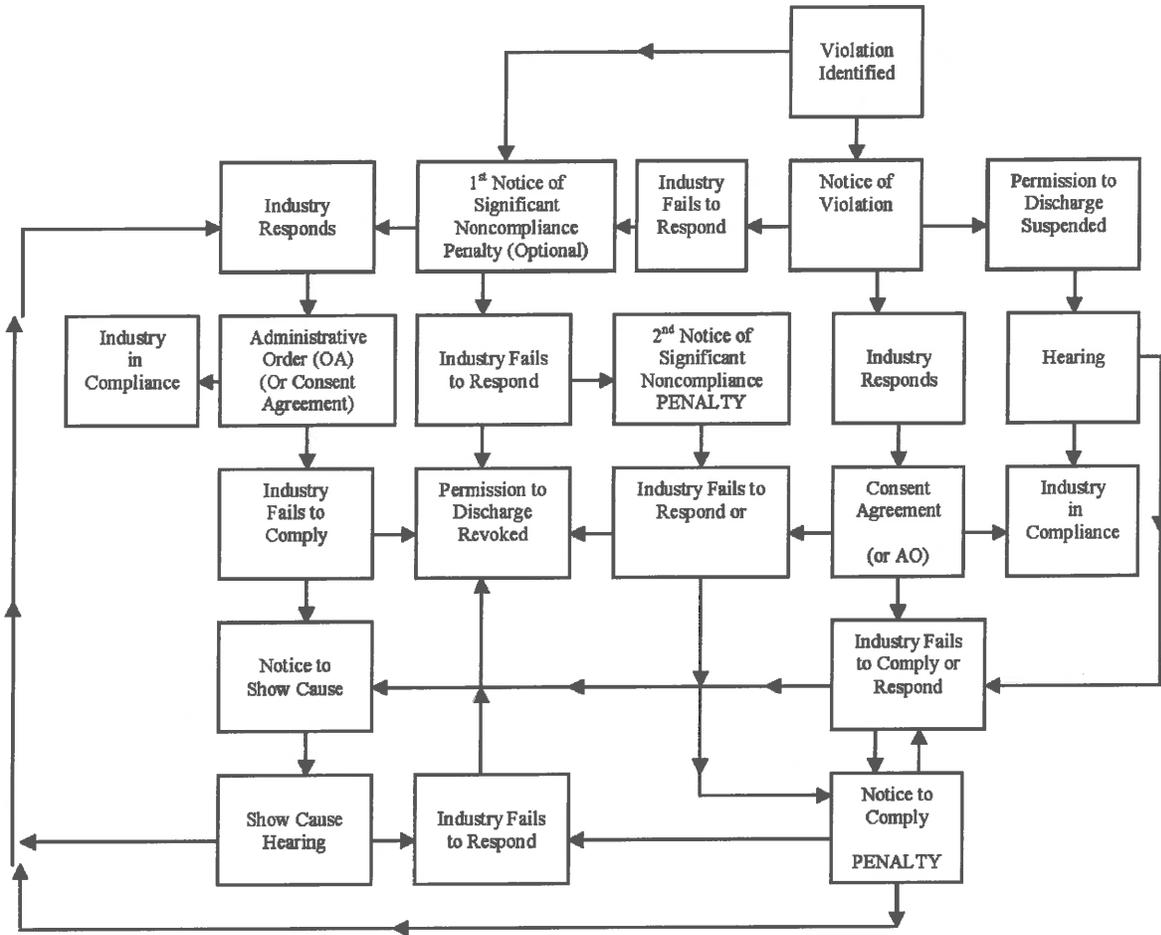
(Ord. No. 11-6, § 1, 5-2-2011)

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 28th day of October, 2013.

MAYOR

ATTEST:

CITY CLERK

Mayor
Archie Jennings

City Manager
Brian M. Alligood



Washington City Council
Richard Brooks
Doug Mercer
Edward Moultrie
William Pitt
Bobby Roberson

MEMORANDUM

Date: October 28, 2013
To: Mayor Jennings & Members of City Council
From: Gloria J. Moore, Library Director
RE: LSTA NC Cardinal Grant

Please find attached information on NC Cardinal.

This year, we propose to apply for the Library Services and Technology Act (LSTA) NC Cardinal grant. Applications are due on February 28, 2014. No local matching funds are required.

The State Library pays the total cost for the first two years including shipping; then Brown Library begins cost sharing with the other members. After the first two years, Brown Library will pay an estimated \$1,800 per year. We currently pay Library Corporation \$13,916 annually. This would be a savings of \$27,832 in a two year period. The State Library will pay for the shipping of library materials for 6 months as they investigate the cost of this service.

The library patron will be able to place a hold (or make a request) for material from any of the libraries. The system will provide the patron's home library materials first. If there are no available copies in the home library, it will look farther afield. Brown Library patrons would be able to request materials from any of the Cardinal Libraries. Those libraries would receive the request as if the patron were their patron and ship the item to us for pickup. The patron can then return it to the owning library. The State Library covers the shipping cost.

The library patron can also walk into any of the Cardinal libraries and check out materials using their home card. The circulating library will accept any NC Cardinal Library cards. If Brown decided to become a member, the project manager would discuss with the Library Director when would be the best time to migrate Brown Library's data. Once that is established, State Library will negotiate a price and send us a grant agreement for the migration cost (free) and an agreement between Brown and Equinox for the migration.

Attachments

NC Cardinal: sharing library resources and expanding opportunities



NC Cardinal is a consortium of North Carolina public libraries that share an online catalog and integrated library system (ILS), and share resources with other member libraries. The program's mission is to maintain and continually develop a working, efficient, and sustainable ILS for public libraries and library staff within North Carolina. It is a program of the State Library of North Carolina, supported by grant funds from the Institute of Museum and Library Services under the provisions of the Federal Library Services and Technology Act. The State Library of North Carolina supports this consortium by providing initial startup/migration funding to join the consortium and after migration, funding for State Library consultants to facilitate system support, workshops, training, project management guidance, and consortium oversight on a variety of cataloging and circulation issues. NC Cardinal has been operating since July 2010.

The State Library's goals for the project are:

- to create a single vision for North Carolina libraries that have varying policies and workflows;
- to provide an alternative to higher-priced third party ILS vendors;
- to enable public libraries to re-allocate their monies from financially supporting an ILS to other, patron-focused needs;
- to enable resource sharing among participating libraries; and
- to more effectively and efficiently support library patron needs between participating libraries, expanding their library use in terms of greater offerings and services.

Consortium Advantages

One of the most exciting aspects of NC Cardinal is the sharing of items across our state. More than 60,000 items move among the member libraries each month. Resource sharing, which launched in February 2013, has had two immediate impacts on patrons: (1) member libraries have seen hold request wait times cut from an average of 6.5 days to 1.8 days, and (2) patrons now have access to numerous materials they previously didn't. Each morning, NC Cardinal libraries pull a list of hold requests from the ILS, package these items, and ship them to their partner libraries in the consortium through a shared shipping account. Patrons of member libraries enjoy this service at no cost.

One of the most practical advantages to being part of the NC Cardinal consortium is the leveraging of LSTA funds to improve efficiency and provide cost savings to NC libraries. Costs for NC Cardinal are shared between the State Library of North Carolina and Member Libraries.

Other NC Cardinal Consortium advantages:

- Collaborative collection development
- Open source community – ability to direct and customize ILS system
- Responsibility of ILS support shifted to State Library
- Opportunity for participating in advisory/steering committees; greater authority:
 - Three existing task forces: Governance, Cataloging, and Resource Sharing
 - Plans for a fourth task force on Reports
 - Consortium pricing on various vendor services (future goal)
 - Shared electronic resource management (future goal)

Issues to consider when migrating to NC Cardinal are:

- Disruption during migration period
- Staff time commitment to new system
- Additional activities, for example, commitment to participate in consortium activities and consideration of consortium circulation policies
- Additional staff time for transiting library items to and from other libraries across the state
- Loss of some control on decisions that affect all consortium members

Consortium Membership

The members of the Consortium are those eligible organizations which have submitted applications to and been approved through the LSTA NC Cardinal Grant process.

Membership Qualifications

1. Public libraries that qualify for grants from the Aid to Public Libraries Fund are eligible to apply.
2. Public Libraries who meet basic hardware and network speed requirements are eligible to apply.

Membership Terms

NC Cardinal LSTA Grant applicants must agree to:

- Participate in the NC Cardinal consortium and share their bibliographic and patron databases;
- Participate in NC Cardinal consortium decision making and abide by Governance Committee consortium decisions;
- Provide in-person services to all patrons of NC Cardinal libraries in the same manner as to their own patrons;
- Allow the use of the library name in NC Cardinal official documents and informational sites.

Member Levels (PROPOSED)

Membership is effective on the date the NC Cardinal LSTA Grant Agreement is fully executed.

There are three (3) levels of membership within NC Cardinal:

- Level 1 – Migrating member – fiscal year cycle in which member library is migrated
- Level 2 – First Year member – first full fiscal year cycle after library migration
- Level 3 – Member – second fiscal year cycle after library migration

Member Fees (PROPOSED)

Membership fees are not required until a participating library is a Member Level 3. For Level 3, membership costs are based upon two calculations:

1. The percent of a member's number of items as related to the Consortium's total item count.
2. The number of eligible branches

Level 1 Migrating member

State library pays Base Subscription, Branch Subscriptions, Migration costs
Migration member = no cost

Level 2 1st Year member

State library pays 100% Base Subscription, Branch Subscription, Migration costs
1st year member = no cost

Level 3 Member

State library pays Migration costs and Development Projects
Member pays Base + Eligible Branch Subscription;

Eligible branches are defined as locations that:

1. Are open over 18 hours a week
2. Store and circulate items to the general public
3. Act as a circulating branch as their primary responsibility

Member fees are based upon the formula:

(# eligible branches * Vendor-negotiated location price) + (% of items Vendor-negotiated hardware/service price)

By the Numbers

NC Cardinal current statistics include...

- 19 library systems (roughly 1/4 of our 80 public library systems)
- 94 branch locations
- 26 counties and 2 municipalities
- 9.7 million North Carolinians served
- 4.2 million library items
- 8 million circulations to date
- 370,000 transits among member libraries (in the first 6 months alone!)

Current Members

- Albemarle Regional Library (Bertie, Gates, Hertford, and Northampton counties)
- Appalachian Regional Library (Ashe, Watauga, and Wilkes counties)
- BHM Regional Library (Beaufort, Hyde, and Martin counties)
- Buncombe County Library
- Caldwell County Public Library
- Caswell County Public Library
- Cleveland County Library
- Cumberland County Public Library & Information Center
- Davidson County Public Library
- Davie County Public Library
- Farmville Public Library—Pitt County
- Fontana Regional Library (Jackson, Macon, and Swain counties)
- Forsyth County Public Library
- Franklin County Library
- Haywood County Library
- Lee County Public Library

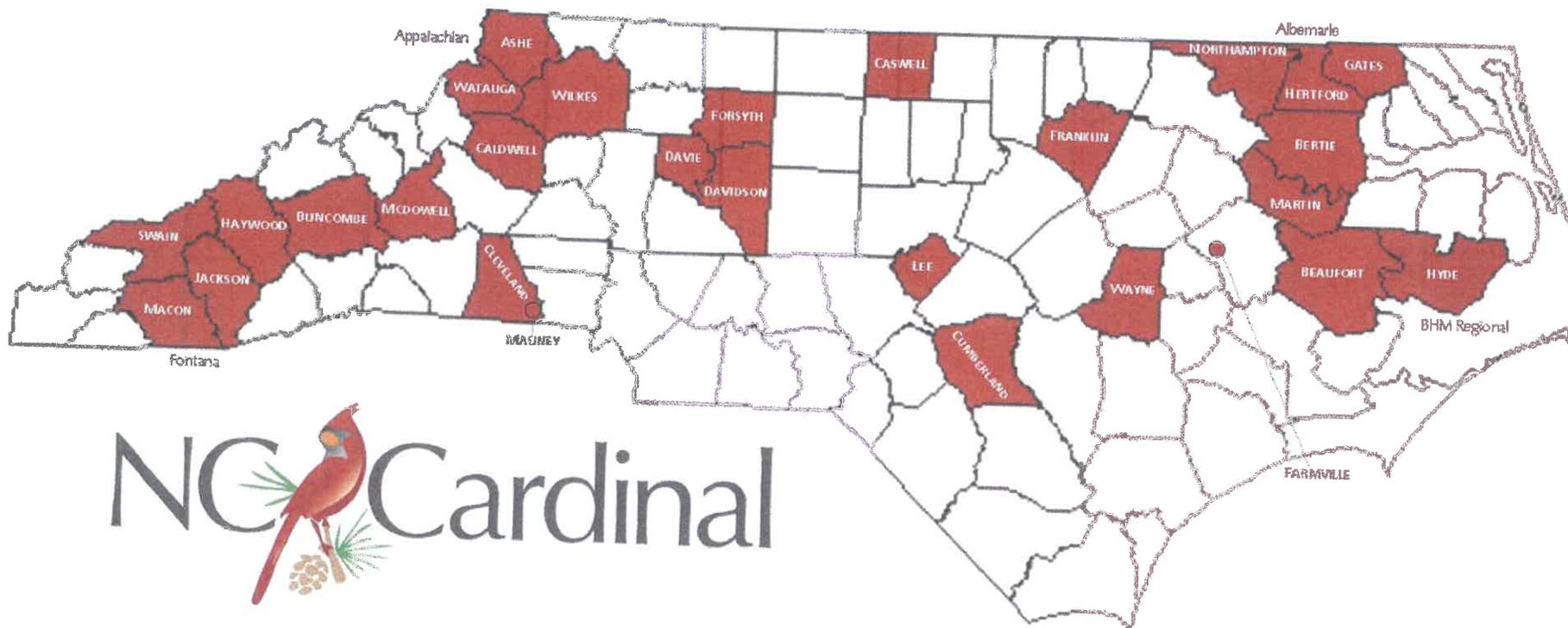
- Mauney Memorial Library—Kings Mountain
- McDowell County Public Library
- Wayne County Public Library

Evergreen

NC Cardinal's ILS system is called Evergreen, an open source ILS used by more than a thousand libraries around the world. Evergreen provides a public catalog interface as well as management back-of-house operations such as circulation, cataloging, reports, acquisition, and sharing resources among groups of libraries.

The Evergreen Project was initiated by the Georgia Public Library System in 2006 to serve its need for a scalable catalog. Evergreen has since been adopted by a number of library consortia and independent libraries in the US and Canada as well as internationally.

Member Libraries



- Albemarle Regional Library (July)**
 - ◆ Bertie, Gates, Hertford, Northampton
- Appalachian Regional Library**
 - ◆ Ashe, Watauga, Wilkes
- BHM Regional Library (February)**
 - ◆ Beaufort, Hyde, Martin
- Buncombe County Library**
- Caldwell County Public Library (April)**
- Caswell County Public Library**
- Cleveland County Library**
- Cumberland County Public Library (December)**
- Davidson County Public Library (October)**

- Davie County Public Library**
- Farmville Public Library—Pitt County**
- Fontana Regional Library**
 - ◆ Jackson, Macon, Swain
- Forsyth County Public Library (October)**
- Franklin County Public Library**
- Haywood County Public Library**
- Lee County Public Library**
- Mauney Memorial Library—Kings Mountain**
- McDowell County Public Library (June)**
- Wayne County Public Library**

MEMORANDUM

Date: October 21, 2013

To: Mayor and City Council

From: John Rodman, Community and Cultural Services

RE: Fire Escape Access

Mr. John Logelfo, owner of La Bella Italian Restaurant, located at 126 West Main Street, has plans to construct three 2nd floor apartments above the restaurant. In order to meet the building code requirements for ingress and egress a 2nd exit has to be added to the building. The only location available for an additional exit would be to construct a fire escape within the right-of-way of Ayers Lane. The alley is located on the western side of the building. The proposed fire escape would be a counterbalanced fire escape whose stairs would only descend in times of an emergency. At times of non-emergency the stairs would be 10 + feet above the alley way. Since Ayers Lane is a public right-of-way and after speaking with the City Attorney we feel an agreement between John Logelfo and the City is warranted in order to construct the fire escape. There are several of these types of fire escapes that are still in existence today. I am seeking authorization from City Council to allow the attorney to begin working on an encroachment agreement for the construction of the proposed fire escape.

Mr. Logelfo appeared before the Historic Preservation Commission in October seeking a Certificate of Appropriateness for the construction of the fire escape. Approval was granted by the Commission.





PROPOSED COUNTERBALANCED
FIRE ESCAPE STAIRS
FOR JOHN LOBELFO

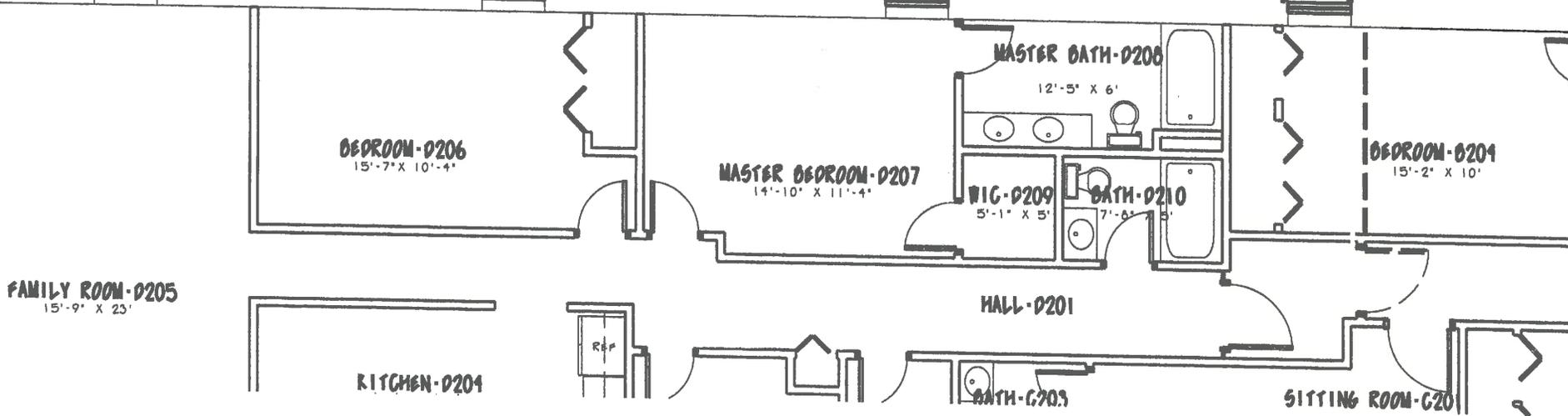
ADJACENT STRUCTURE

APPROXIMATELY 43'

APPROXIMATELY 26'

3'-6" 5'-8"

9'-2" ALLEY WIDTH



LA Bella Slices & Ices
126 - w. main Street







October 28, 2013
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Bloom
ESTUARIUM





MEMORANDUM

To: Mayor Jennings & City Council
From: Robbie Rose, Fire Chief
Subject: 2013 AFG Grant Application Alteration
Date: October 18, 2013

In reference to the approval by council for the 2013 FEMA AFG grant process; we will not be including the two thermal image cameras in the roll over from the 2012 grant process as previously indicated. We recently had one of our two existing cameras fail and it was replaced with a new one by the Auxiliary. As a result the grant writer indicated the request justification for the two in the 2012 grant would not qualify. To that end we will not include them in the roll over but will most likely increase the funding request in the other areas to cover price increases but not exceed the original amount of \$70,000 total for the 2012 part of the application.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Robbie Rose, Fire Chief *RR*
Date: September 26, 2013
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 blt Recommend Denial _____ No Recommendation _____