



City of
Washington
NORTH CAROLINA
Council Agenda
JULY 13, 2015
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval of minutes from June 22, 2015 **(page 3)**

Approval/Amendments to Agenda

I. Consent Agenda:

A. Endorse – Beaufort County’s application of a Building Reuse Grant for Project Acorn **(page 18)**

II. Comments from the Public:

III. Public Hearing – Zoning:

A. None -

IV. Public Hearing - Other:

A. Adopt – Ordinance to amend Chapter 40. Article VI, Section 40-93, Table of Uses **(page 20)**

V. Scheduled Public Appearances:

A. None –

VI. Correspondence and Special Reports:

A. Memo – Reporting of Reallocation of Funding for FY 2014/2015 **(page 37)**

VII. Reports from Boards, Commissions and Committees:

A. Human Relations Council **(page 38)**

VIII. Appointments:

A. Appointment – to the Board of Commissioners of the North Carolina Eastern Municipal Power Agency **(page 40)**

B. Appointments – Various Boards, Commissions, and Committees **(page 42)**

IX. Old Business:

A. Approve – Purchase of New EMS Truck **(page 49)**

- B. Approve – Contracts with Davey Tree Expert Service for FY 2015-16 for the Electric Fund and **Approve** Corresponding purchase orders **(page 50)**
 - C. Adopt/Amend – Contract and RFP to allow cart vendors on Stewart Parkway (3 locations); and **Amend** the City Code Chapter 22, Article I, Section 22-5 **(page 52)**
 - D. Adopt – Budget Ordinance Amendment to provide funding for Keys Landing CDBG Grant Claw Back **(page 72)**
 - E. Adopt – Grant Project Ordinance for CWSRF Sewer Improvement Program **(page 74)**
 - F. Discussion – Recommendation for process used to fill vacancy on City Council
- X. New Business:
- A. Authorize – Recreation Manager to apply for the Recreational Trails Program Grant Pre-Application 2016 **(page 79)**
 - B. Amend – Chapter 18, Section 123 – Designated Prohibited Parking Areas **(page 80)**
 - C. Authorize – the Manager to Execute Professional Services Agreement with Ark Consulting Group, PLLC for Drainage Improvements **(page 82)**
 - D. Adopt – Declaration of Official Intent to Reimburse for Fiscal Year 2015/2016 installment purchase expenditures incurred prior to the issuance of debt **(page 135)**
- XI. Any other items from City Manager:
- A. Discussion – Proposed Police/Fire/EMS Station **(page 137)**
 - B. Discussion – Vehicles in CIP **(page 144)**
- XII. Any other business from the Mayor or other Members of Council:
- A. Discussion – July 27th Council Meeting **(page 145)**
- XIII. Closed Session: Under NCGS § 143-318.11(a)(6) Personnel
- XIV. Adjourn – Until Monday, _____, 2015 at 5:30 pm, in the Council Chambers

**CITY COUNCIL MINUTES
WASHINGTON, NORTH CAROLINA**

June 22, 2015

The Washington City Council met in a regular session on Monday, June 22, 2015 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Mac Hodges, Mayor; Doug Mercer, Mayor Pro tem; William Pitt, Councilman; Richard Brooks, Councilman; Larry Beeman, Councilman; Bobby Roberson, Interim City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney.

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

APPROVAL OF MINUTES:

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council approved the minutes of June 8, 2015 as presented.

APPROVAL/AMENDMENTS TO AGENDA:

Mayor Hodges reviewed the requested amendments to the agenda:

- **Add – Under Old Business Item C:** Revised Chamber Easement and Easement Agreement
- **Add – Under Any other business from the Mayor or other Members of Council:**
Updates/comments from Mayor Pro tem Mercer regarding Electricities

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

CONSENT AGENDA:

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council approved the Consent Agenda as a presented.

- A. **Declare Surplus/Authorize** – Electronic Auction of vehicle through GovDeals

<u>Vehicle #</u>	<u>Make/Model</u>	<u>Department</u>	<u>Serial Number</u>	<u>Odometer</u>
6001	1600A Vermeer Chipper	Electric	1BRC14183J130141	N/A

- B. **Adopt** – Capital Project Ordinance and a Budget Ordinance Amendment for the Washington Downtown Properties Development project

**A CAPITAL PROJECT ORDINANCE FOR WASHINGTON DOWNTOWN PROPERTIES
CITY OF WASHINGTON, N.C. FOR FISCAL YEAR 2014-2015**

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

- Section 1.** The project authorized is for the acquisition and development of two downtown properties.
- Section 2.** The officers of this unit are hereby directed to proceed with the project within the terms of the development.
- Section 3.** The following amounts are appropriated for the project:

53-60-4930-0400	Professional Services	\$40,000
53-60-4930-0401	Legal	3,000
53-60-4930-0405	Engineering	19,500
53-60-4930-7100	Acquisition(ernest deposit)	<u>23,000</u>
	Total	\$85,500

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

53-60-3480-0000	Developer Fee	\$57,500
53-60-3480-1000	Transfer from General Fund	3,000
53-60-3480-2000	Committee of 100	<u>25,000</u>
	Total	\$85,500

Section 5. The Finance Director is hereby directed to maintain within the Capital Project Fund sufficient specific detailed accounting records to satisfy the requirements of the developer agreements.

Section 6. Funds may be advanced by the General Fund for the purpose of making payments as due.

Section 7. The Finance Director is directed to report, on a monthly basis, on the financial status of each project element in Section 3 and on the total capital project revenues received or claimed.

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

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

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

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

Adopted this the 22nd day of June, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Mac Hodges
Mayor

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2014-2015

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

Section 1. That the Estimated Revenues in the General Fund be increased for the Washington Downtown Property Development project in the following account:

10-00-3991-9910 Fund Balance Appropriated \$3,000

Section 2. That the General Fund appropriations budget be increased or decreased in the following account:

10-00-4400-6200 Transfer to Capital Project Fund \$3,000

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

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

Adopted this the 22nd day of June, 2015.

ATTEST:
s/Cynthia S. Bennett
City Clerk

s/Mac Hodges
Mayor

COMMENTS FROM THE PUBLIC: NONE

PUBLIC HEARING – ZONING: NONE

PUBLIC HEARING: NONE

SCHEDULED PUBLIC APPEARANCES: JAMES PATTERSON – FUNDRAISING EVENT

Mr. Patterson explained the event he envisioned is a half marathon and will be part of the event “Cure for Epilepsy”. He continued by saying he will need approval for the City permits.

Mayor Hodges inquired what would be included in the event and Mr. Patterson suggested half and full marathon to be run at the same time. He noted he has been working with Teresa Hamilton, Parks and Recreation as well as the Police and Fire Services Director.

Interim City Manager, Bobby Roberson advised Mr. Patterson to schedule a meeting with the City Manager’s office in order to get pre-clearance for the race routes.

CORRESPONDENCE AND SPECIAL REPORTS:

DISCUSSION – GRANT UPDATES

Councilman Pitt requested an update on Keys Landing in which Mr. Roberson provided. Mr. Roberson said it was his understanding that the project was moving along. If the July 1st deadline is not met, the City is responsible for \$75,000 repayment of the grant.

Grant Executive Summary
as of 5/31/2015

Fund	Grant Description	Dates			Financials				Deliverable				Notes
		Award	Expiration	Completion	Revenue		Expense		Metric	Total	Achieved	Bal.	
					Budget	Actual	Budget	Actual					
50	CDBG Affordable Housing	04/09/10	10/31/14	09/30/15	227,700	185,719	227,700	185,719	LMI homes	10	6	4	6 completed, 2 lots released June 3rd
52	Comprehensive Bicycle Plan	05/26/11	12/31/13	06/30/15	35,000	30,430	35,000	35,000				0	Pending final DOT approval
55	IdX Impressions NC One Grant	09/30/13	09/30/16		300,000	-	300,000	-	Jobs/investment	160	0	160	Jobs created but not since award date
59	IdX Building Reuse	12/18/15	12/18/16		512,500	4,000	512,500	2,500	Jobs/investment	50			50 Grant agreements executed, Mid-East administering
61	Pedestrian Plan Grant	05/20/13	09/30/13	12/31/14	10,000	10,000	10,000	-				0	Committee formed and meeting
66	Airport Terminal Grant	04/04/13	07/01/15	03/31/15	1,254,488	1,073,036	1,254,488	1,020,015				0	Terminal opened Memorial Day
67	Facade Grant Program	07/01/13	06/30/14	06/30/14	20,000	20,030	20,000	12,912				0	In progress, 7 reimbursed, 3 pending
69	Way Finding		04/01/15		150,000	150,398	150,000	14,913					Reviewing w/ DOT, cost estimate & recommendation in progress
71	Airport Lighting Rehab				460,121	82,353	460,121	43,114					Contract signed, construction to commence mid July
72	Municipal Pier Access Grant	07/01/14	11/30/15		135,000	15,000	135,000	-					Piling driving moratorium, complete by Nov 30th
75	Firefighter's Assistance- Exhaust	08/08/14	08/07/15		50,000	30,933	50,000	38,920					Exhaust system complete, other equipment being ordered
76	EDA Water Projects	09/11/13	03/11/17	02/28/17	1,428,262	706,133	1,428,262	42,140				0	Construction begun on 16" water line
77	EDA Sewer Grants	09/11/13	03/11/17	02/28/17	1,423,894	703,974	1,423,894	177,459				0	Bid awarded January 2015, notice to proceed Feb. 23
	CDBG Keyville Rd.	2005	6/4/2013	06/30/16	320,000	320,000	320,000	320,000				0	Lot 1 does not qualify for LMI. Construction on lot 2 & 3 near compl.
32	TAG- Sanitary sewer study	05/12/14		09/09/14	35,000	-	35,000	35,000					Completed, reimbursement approved
37	Airport Approach Survey	07/01/14	07/01/16		16,986	14,161	16,986	15,734					Survey completed
10	NC Cardinal	07/01/14		06/30/15	22,345	9,252	22,345	20,366					Grant awarded, complete by 6/30/15
10	Historic Preservation Grant	07/01/14	08/21/15		11,000	-	15,000	1,000					PO issued to update National Registry Inventory

Applications	Pre-App	Selected	Final App	Grant	Match	Total	
FEMA AFG Fire Engine/Resc. Tools	11/30/14			353,929	18,571	372,500	Application submitted
Havens Garden PARTF				250,000	250,000	500,000	Application submitted, award notification July
EZ Technology Library Grant	6/9/15			5,000	0	5,000	Application submitted
Sewer I&I rehab/CWSRF				2,000,000		2,000,000	\$1.5 million 0% interest, \$.5 million principal forgiveness

DISCUSSION – PROJECT UPDATES

Fund/Department	Account	Description	Budget \$	Spent	Open PO	Balance	Status	Notes
General Fund:								
IT								
	10-00-4132-7400	Wireless Bridge- sewer plant	1,204	1,168	0	36	Completed PY, TDA phone move CR	1
		Redundant PRI	6,917	6,909	0	8	Complete	1
		Redundant Cisco phone svr.	19,063	19,017	0	46	Complete	1
		IP addressing	1,520	1,520	0	0	Complete	1
		Total IT	28,704	28,614	0	90		
Police								
	10-10-4310-7400	Vehicles	134,000	113,906	19,219	875	4 received, equipment on order	
Fire								
	10-10-4340-7400	Thermal imaging camera	8,105	8,094	0	11	Complete	1
		Support vehicle 1	30,164	30,161	0	3	Complete	
		Total Fire	38,269	38,255	0	14		
Planning								
	10-10-4910-7400	Streetscape	25,000	(4,600)	29,600	0	PO issued for design	
	10-10-4910-0400	Havens Garden Master Plan	7,200	7,200	0	0	Completed	
Powell Bill								
	10-20-4511-4500	Street Paving	251,820	243,580	8,240	0	Contract complete	2
Street Maintenance								
	10-20-4510-7400	Dump truck #454	63,915	63,816	0	99	Complete	
Library								
	10-40-6110-7400	PC virtualization	12,471	12,471	0	0	Complete	
Outside Agency								
	10-40-6170-9113	Veterans Park Sign	6,920	3,946	0	2,974	Complete	1,2
Rec. Maintenance								
	10-40-6130-7400	3rd St ball field RR	59,620	59,620	0	0	Complete	1
		Utility trucks # 807 & 810	65,213	65,213	0	0	Complete	
		Total Rec. Maintenance	124,833	124,833	0	0		
Total General Fund			693,132	632,020	57,059	4,052		
Water:								
Water Meter Svc.								
	30-90-7250-7000	AMR meters	110,000	77,285	30,696	2,019	Complete	1
Water Treatment								
	30-90-8100-7400	Van #562 & pickup #565	40,000	39,241	0	759	Complete	
Water Maintenance								
	30-90-8140-7400	Truck #414 body	8,402	8,399	0	3	Complete	1
Water Construction								
	30-90-8180-0400	18" WL engineering	62,653	6,765	54,940	948	Design compl., construction has begun	1
	30-90-8180-7400	Summit Ave. water line	168,806	75,035	0	93,771	Complete	1,2
		Total Water Fund	389,861	206,725	85,636	97,500		
Sewer:								
Wastewater Treatment								
	32-90-8220-7000	Blast & paint clarifiers 1&2	14,600	14,600	0	0	Complete	1
	32-90-8220-7400	Vehicle #548	24,974	24,911	0	63	Complete	
	32-90-8220-7400	Effluent control panel	20,510	20,510	0	0	Complete	
	32-90-8220-7400	Tractor equipment	15,816	15,816	0	0	Complete	
Lift Stations								
	32-90-8230-7400	Rebuild 5th&Respass pump c	40,000	39,771	0	229	Complete	
	32-90-8230-7400	Fountain L.S. generator	1,663	913	0	750	Complete	1
		Total Sewer Fund	117,563	116,520	0	1,043		

Fund/Department	Account	Description	Budget \$	Spent	Open PO	Balance	Status	Notes
Electric:								
Electric Director	35-90-7220-0400	Peak Shaving Rate Study	8,962	8,962	0	0	Complete	1
		Total Electric Director	8,962	8,962	0	0		
Electric Meter Service	35-90-7250-7400	Test Switches	1,740	1,740	0	0	Complete	1
		Meters & handholds	79,195	24,866	54,325	4	Complete	
		Total Electric Meter Sec.	80,935	26,606	54,325	4		
Substation Maint.	35-90-8370-7400	Eastern substation breaker	46,512				Complete	1
		VQA recloser	20,000				Complete	
		Distribution reclosers	20,000				Complete	
		Capacitors	8,000				Complete	
		E. substation security system	2,500				Reevaluating project	
		FRHL & Whar St. bus metering	5,500				Complete	
		Chocowinity breaker rebuild	100,000				Complete	
		2nd/5th Feeder	100,000				Acquiring materials labor to be bid out	
		Main substation rebuild	250,000	0	0		Acquiring materials labor to be bid out	
		Total Substation	552,512	282,896	1,391	268,225		
Load Management	35-90-8375-7400	Load management switches	69,550	65,835	3,700	15	Complete, awaiting last of material	
Power Line Construction	35-90-8390-7400	2nd St./5th St Rebuild Engine	71,538				Complete	2
		High School Feeder relocation	114,332				Complete	1,2
		Grimesland Feeder Engineering	73,226				Complete	1,2
		NC 32 Feeder Engineering	32,299				Complete	1,2
		White Post/Statestone Feeder	0				Delayed to FY 16	2
		NC 32 Feeder rebuild	325,000				Under construction, 2nd mile matl. ordered	
		2nd St./5th St Rebuild	300,000				Materials are in	
		Line truck #617	230,000				PO #52951 expected delivery 09/15	
		Dually F350 #613	50,000				Complete	
		Portable air compressor	20,000				Delayed to FY 16	
		Total Power Line Construct	1,216,395	389,396	348,802	478,197		
Total Electric Fund			1,928,354	773,695	408,218	746,441		
Solid Waste Collection:	38-90-4710-7400	Two leaf machines	51,100	51,042	0	58	Complete	
		Total Solid Waste	51,100	51,042	0	58		
Cemetery:								
Cemetery Fund	39-90-4740-5600	Storm drain repairs	7,223	7,223	0	0	Complete	2
	39-90-4740-7400	Two equipment sheds	30,000	29,925	0	75	Complete	
		Total Cemetery	37,223	37,148	0	75		
Grand Total		Grand Total	3,217,233	1,817,150	550,913	849,169		

Notes:
 1. PO carryforward
 2. Project carryforward

**MEMO – CLEAN WATER STATE REVOLVING FUND (CWSRF) –
 LETTER OF INTENT TO FUND**

(memo accepted as presented) Allen Lewis, Public Works Director

At the February 23, 2015 Council meeting, Council granted staff permission to apply for a loan with CWSRF for an amount not to exceed \$2 million with the intent of performing sewer rehab work. We were not only successful in being awarded the amount which we applied for, but \$500,000 was awarded in the form of principal forgiveness which will not have to be paid back. The other \$1.5 million will be 0% interest loan.

Mayor Pro tem Mercer inquired about the scope of the project? Mr. Lewis advised we currently do not have the specific scope of the project. Mr. Lewis stated the ad will run in the Sunday newspaper for the engineering piece of the project. The majority of the funding will be used for lining gravity sewer pipes.

MEMO – REPORTING OF REALLOCATION OF FUNDING FOR FY 2014-2015

(memo accepted as presented) Matt Rauschenbach, C.F.O

The following reallocations of funding between divisions within the General Fund, Water Fund, Sewer Fund, Solid Waste Fund, and Cemetery Fund have been approved by the City Manager in order to cover overspent departments with inter-departmental funds, thus avoiding additional appropriations.

General Fund:

-Increased City Manager’s Department	19,000
-Decreased City Council Department	(4,250)
-Increased Municipal Building Department	4,250
-Increased Human Resources Department	14,405
-Increased Purchasing Department	2,160

-Increased Information Technology Department	1,345
-Increased Customer Service Department	27,000
-Increased Legal Services Department	12,000
-Decreased Code Enforcement Department	(25,000)
-Decreased Planning/Zoning Department	(20,000)
-Increased Equipment Services Department	4,514
-Increased Street Maintenance Department	4,425
-Decreased Powell Bill Department	(15,146)
-Increased Street Lighting Department	4,500
-Increased Recreation Administration Department	1,000
-Increased Aquatic Center Department	28,501
-Increased Buildings & Grounds Maint. Department	10,310
-Decreased Police Department	(49,000)
-Decreased E-911 Communications Department	(25,000)
-Increased EMS Department	40,776
-Decreased Economic Development Department	(40,000)
-Increased Debt Service Department	<u>4,210</u>
Total	\$ 0

Water Fund:

-Increased Public Works Administration Department	\$ 6,835
-Decreased Water Treatment Department	<u>(6,835)</u>
Total	\$ 0

Sewer Fund:

-Decreased Miscellaneous Non-Departmental	\$ (7,800)
-Increased Public Works Administration Department	6,950
-Decreased Wastewater Construction Department	(15,000)
-Decreased Wastewater Treatment Department	(4,750)
-Increased Sewer Lift Stations Department	<u>20,600</u>
Total	\$ 0

Electric Fund:

-Increased Debt Service Department	\$ 7,555
-Increased Electric Administration Department	5,455
-Increased Meter Services Department	9,195
-Decreased Load Management Department	(20,000)
-Increased Power Line Maint. Department	93,876
-Decreased Power Line Construction Department	<u>(96,081)</u>
Total	\$ 0

NCGS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes.

REPORTS FROM BOARDS, COMMISSIONS AND COMMITTEES: NONE

APPOINTMENTS: NONE

Discussion was held regarding the remaining vacancies on the various boards and commissions and the need to fill those positions.

OLD BUSINESS:

ADOPT – RESOLUTION APPROVING/AUTHORIZING THE INTERIM CITY MANAGER TO SIGN THE LEASE AGREEMENT BETWEEN THE CITY AND SOUND RIVERS INC. FOR USE OF THE SECOND FLOOR OF THE OLD TRAIN DEPOT

The City of Washington has allowed the Pamlico-Tar River Foundation, Inc. (PTRF) to use the second floor of the Old Train Depot for its offices. PTRF recently joined with the Neuse River Foundation and is now known as Sound Rivers, Inc. This lease agreement renews the lease for another year and changes the name to Sound Rivers, Inc. Mr. Roberson noted the agreement has been reviewed by the Sound Rivers Executive Director.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adopted a Resolution to approve/authorize the Interim City Manager to sign the lease agreement between the City and Sound Rivers Inc. for use of the second floor of the Old Train Depot.

(copy attached)

RESOLUTION AUTHORIZING THE LEASE OF CERTAIN REAL PROPERTY AND APPROVING THE LEASE OF SAID REAL PROPERTY PURSUANT TO NORTH CAROLINA GENERAL STATUTE § 160A-272

WHEREAS, the City of Washington (hereinafter may be referred to as “City”) owns the building located at 108 North Gladden Street, Washington, North Carolina commonly known as the Old Depot (hereinafter referred to as “Old Depot”).

WHEREAS, North Carolina General Statute § 160A-272 authorizes a city to lease any property owned by a city for such terms and upon such conditions as the council may determine so long as the council determines the property will not be needed by the city for the term of the lease and the council approves a resolution authorizing its execution (no public notice is required for a lease for a term of one year or less).

WHEREAS, Sound Rivers, Inc. (hereinafter referred to as “Sound Rivers”) is a non-profit corporation whose purpose is to monitor, protect, and enhance the Tar-Pamlico River and watershed while promoting environmental justice.

WHEREAS, Sound Rivers has occupied as well as utilized an existing first floor entrance dedicated to Sound Rivers, an existing stairway dedicated to Sound Rivers, and the second story of the Old Depot for a number of years (hereinafter referred to as “Premises”).

WHEREAS, Sound Rivers has leased the Premises from the City from the City for a number of years, has negotiated with the City, and desires to lease said Premises from the City for another year, which Premises will be utilized to further Sound Rivers’ above stated purposes.

WHEREAS, said Premises currently are surplus to the City and its City Council desires to lease the same.

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

1. The Premises are hereby declared to be surplus to the needs of the City for the term of the proposed lease.
2. The City Manager is authorized to further negotiate, if necessary, and execute the lease attached hereto.

Adopted this the 22nd day of June, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Mac Hodges
Mayor

ADOPT – 2015 YEAR END BUDGET AMENDMENT

The budget amendments are necessary to provide funds to close out the fiscal year.

1. Local Occupancy revenues and subsequent payments to the TDA are higher than expected.
2. TDA reimbursements to the City for Civic Center expenses are higher than expected.
3. Airport fund balance needs to be appropriated to cover additional operational expenses for the year.
4. June installment note payment in the Cemetery Fund was not originally budgeted (11 monthly payments budgeted instead of 12).
5. Library and Cemetery Trust Fund interest earned was higher than budgeted.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council adopted a Budget Ordinance Amendment to true up budget funding in preparation of the fiscal year closeout.

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2014-2015**

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

Section 1. That the Estimated Revenues in the General Fund be increased by the following amounts, in the accounts indicated.

10-00-3270-1110	Local Occupancy Tax	\$40,000
10-00-3970-1700	Adm. Charges from Civic Ctr.	<u>14,100</u>
		\$54,100

Section 2. That the following account number in the Miscellaneous Department of the General Fund appropriations budget be increased in the amount indicated.

10-00-4400-5705	Tourism Authority Pmts.	\$40,000
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Section 3. That the following account number in the Civic Center Department of the General Fund appropriations budget be increased in the amount indicated.

10-40-6125-0300	Salaries – Part Time	\$12,600
10-40-6125-0600	Group Insurance	1,500

Section 4. That the Estimated Revenues in the Airport Fund be increased by the following amount, in the account indicated.

37-90-3991-9910	Fund Balance Appropriated	\$12,000
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Section 5. That the following account numbers in the Airport Fund appropriations budget be increased in the amounts indicated.

37-90-4530-1100	Telephone	\$2,000
37-90-4530-1300	Water & Electric Services	2,000
37-90-4530-1500	Maint/Repair Buildings	<u>8,000</u>
		\$12,000

Section 6. That the Estimated Revenues in the Cemetery Fund be increased by the following amount, in the account indicated.

39-90-3991-9910	Fund Balance Appropriated	\$617
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Section 7. That the following account numbers in the Cemetery Fund appropriations budget be increased in the amounts indicated.

39-90-4020-8300	Principle Installment Pmts.	\$592
39-90-4020-8301	Interest Installment Pmts.	<u>25</u>
		\$617

Section 8. That the Estimated Revenues in the Library Trust Fund be increased in the amount of \$50 in the account Interest Earned, account number 11-40-3831-0000, to recognize additional interest earnings.

Section 9. That the following account number in the Library Trust Fund appropriations budget be increased in the amount indicated.

11-40-6300-9200	Admin. Charges to General Fund	\$ 50
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Section 10. That the Estimated Revenues in the Cemetery Trust Fund be increased in the amount of \$1,000 in the account Interest Earned, account number 12-30-3831-0000, to recognize additional interest earnings.

Section 11. That the following account number in the Cemetery Trust Fund appropriations budget be increased in the amount indicated.

12-30-6400-9205	Admin. Charges to Cemetery Fund	\$ 1,000
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Section 12. That the following account numbers in the Airport Terminal Grant appropriations budget be increased or decreased in the amount indicated.

66-90-4530-2102	Rental Building	\$ 4,350
66-90-4530-4500	Construction	(4,350)

Section 13. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 14. This ordinance shall become effective upon its adoption.

Adopted this the 22nd day of June, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Mac Hodges
Mayor

NEW BUSINESS:

DISCUSSION – TOURNAMENT FEES

Councilman Beeman noted there are a couple of State tournaments coming up (one for baseball and one for softball). The State tournaments are an extension of the current recreation league program.

Councilman Beeman made a motion that Council waive any fees needed by the Leagues that are associated with the upcoming two State tournaments being hosted in Washington at the sports complex. Discussion held.

Mayor Pro tem Mercer asked who’s going to pay the expenses for the work that has to be done during those tournaments? Councilman Beeman stated the funds will have to come out of the respective departments’ budgets.

Mayor Pro tem Mercer continued by saying, “we have never waived fees, that I’m aware of. I have known members of this Council to sit right here and say, ‘We do not want to waive fees. We will make a donation to cover those expenses.’ Every one of us has pulled money out of our pockets to avoid waiving fees. To run a tournament that’s going to run four or five days ... there’s going to be a substantial amount of money that’s going to be required to maintain those fields during that tournament. I cannot see that the City should shoulder all that expense.”

Councilman Beeman noted, “I think with the amount of revenue generated off the taxes that these tournaments will bring in, with the amount of people that are coming in, staying in motels, eating in the city, the gas that they buy, any purchases they make while they’re here, that will certainly more than cover any expenses.”

Councilman Beeman and Mayor Hodges said fees for this type of tournament have been waived in the past. Mayor Hodges said former Mayor Jennings waived this type of fee about two years ago. Mayor Hodges did not feel comfortable waiving the fees and decided to let Council discuss this issue.

Chip Edwards, representing the local Cal Ripken baseball league, said the tournament would cost the organizers around \$4,600 in fees. The fees would cover City staff for the event, field rental and lighting cost. Mr. Edwards also said the fees that spectators are charged help cover expenses for umpires as well as tournament organizers. Some of those funds pay for improvements at the complex such as additional dirt on the fields and concrete near the concession stand.

Mayor Pro tem Mercer said waiving the fees would set a bad precedent and that others will ask for their fees to be waived as well.

Chip Edwards said that 45 teams are expected to play in the Cal Ripken league tournament at the end of July, including 25 teams that will drive at least 90 minutes to play in Washington.

Mayor Pro tem Mercer stated he didn't think \$1,600 would cover the expense for the required field work for the length of the tournament. He estimated the City would be contributing \$20,000 - \$30,000 for the two tournaments.

Kristi Roberson, Parks and Recreation Manager, said that in recent years, the City has not charged fees for any district, regional or state tournaments organized by leagues based in Washington. A new fee schedule taking effect July 1 calls for charging fees for such tournaments.

Councilman Brooks seconded the motion made by Councilman Beeman to waive any fees needed by the Leagues that are associated with the upcoming two State tournaments (baseball & softball) being hosted in Washington at the sports complex. Mayor Pro tem Mercer and Councilman Pitt voted against the motion resulting in a tie. Mayor Hodges voted for the motion. Motion carried 3-2.

APPROVE – REVISED CHAMBER EASEMENT AND EASEMENT AGREEMENT

Franz Holscher, City Attorney explained that the revised Deed of Easement and Easement Agreement regarding the Chamber of Commerce includes a change to "Section O, Chambers Default". This section now allows a 30 day period after written notice to cure any default. This is a change from the original agreement the Council approved on June 8th.

By motion of Councilman Brooks, seconded by Councilman Beeman, Council approved the revised Deed of Easement and Easement Agreement with the Chamber of Commerce as presented.

(copy attached)

AMEND – CHAPTER 18, SECTION 123 – DESIGNATED PROHIBITED PARKING AREAS

Allen Lewis, Public Works Director explained that during the June Airport Advisory Board meeting, the issue of parking around the circle at the end of Airport Road was discussed, specifically, parking in front of the terminal annex building. Upon investigating the referenced ordinance, it was

determined that the ordinance needed to be changed to prohibit parking around the entire circle on either side. The presented ordinance makes the suggested parking changes.

Mayor Pro tem Mercer suggested that there should be at least two loading/unloading spaces adjacent to the front door of the terminal for those needing to load/unload luggage. This designated parking area could be limited to a maximum time of 15-30 minutes.

Mr. Lewis noted that he could take this item back to the Airport Advisory Board to discuss the suggested amendments made by Mayor Pro tem Mercer.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council continued this item until further review and additional recommendations are presented by the Airport Advisory Board.

ADOPT – RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN APPLICATION FOR A NC RURAL INFRASTRUCTURE GRANT FOR A HOTEL AND ENTER INTO AN AGREEMENT WITH MID-EAST COMMISSION

A developer has plans to build a hotel and generate 20 jobs in Washington. The sewer and road infrastructure of the project is estimated to cost \$424,000 with \$100,000 being funded by the grant. The local government match is \$5,000 and will be paid by the developer. The Mid-East pre-application and administration fee of \$2,500 and expected \$10,000 respectively will be split with Beaufort County.

By motion of Councilman Beeman, seconded by Councilman Brooks, Council adopted a resolution authorizing the Mayor to execute an application for a NC Rural Infrastructure grant for a hotel and enter into an agreement with the Mid-East Commission to prepare the application.

**AUTHORIZING RESOLUTION BY GOVERNING BODY OF THE CITY OF WASHINGTON
Economic Infrastructure Grants Program**

WHEREAS, the North Carolina Rural Infrastructure Authority (RIA) has authorized the awarding of grants from appropriated funds to aid eligible units of government in financing the cost of infrastructure activities needed to create jobs; and

WHEREAS, the City of Washington needs assistance in financing an infrastructure project that may qualify for Rural Grants/Programs funding; and

WHEREAS, the City of Washington intends to request grant assistance for the Hotel project from the Economic Infrastructure Grants Program;

NOW THEREFORE BE IT RESOLVED, BY THE CITY COUNCIL OF THE CITY OF WASHINGTON:

That the City of Washington will arrange financing for all remaining costs of the project, if approved for a grant.

That Jay MacDonald Hodges, Mayor, and successors so titled, is hereby authorized to execute and file an application on behalf of the City of Washington with the Rural Grants/Programs Section for a grant to assist in the above named infrastructure project.

That Jay MacDonald Hodges, Mayor, and successors so titled, is hereby authorized and directed to furnish such information as Rural Grants/Programs Section may request in connection with an application or with the project proposed; to make assurances as contained in the application; and to execute such other documents as may be required in connection with the application.

That the City of Washington has substantially complied or will substantially comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the project and to the grants pertaining thereto.

Adopted this the 22nd day of June, 2015.

ATTEST:

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

**s/Jay MacDonald Hodges
Mayor**

June 22, 2015

This agreement between the Mid-East Commission and the City of Washington is for the preparation of a North Carolina Department of Commerce Rural Economic Development Division Economic Infrastructure grant application for the City of Washington – Hotel Project.

The Mid-East Commission agrees to prepare and submit the required full application to the NC Department of Commerce Rural Economic Development Division.

The City of Washington hereby agrees to pay the Mid-East Commission \$2,500.00 for the completion of the previously mentioned item.

s/City of Washington Representative

s/Bryant Buck, Interim Executive Director
Mid-East Commission

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

s/Matt Rauschenbach
City Finance Officer

ADOPT/AUTHORIZE – BUDGET ORDINANCE AMENDMENT AND AUTHORIZE THE INTERIM CITY MANAGER TO EXECUTE DOCUMENT TO CLOSE PURCHASE TRANSACTION OF PROPERTY LOCATED AT 415 W. 2ND STREET

The City of Washington purchased the property located at 415 W. 2nd Street during the June 11th auction for \$80,000. We have provided a 10% bid bond and added the property to our insurance. The bid has to be approved by the bankruptcy judge before it can be closed and this will take approximately 60-90 days to confirm through the courts.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council ratified the Mayor's authority to participate in the auction for the above referenced property as well as to execute the attached Sale Agreement Offer to Purchase, 2) adopted the attached budget ordinance amendment, and 3) authorized the Interim City Manager and/or Mayor to execute the documents necessary to close the purchase transaction of property located at 415 W. 2nd Street.

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2014-2015

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

Section 1. That the Estimated Revenues in the General Fund be increased for the purchase of 415 W. 2nd Street.

10-00-3991-9910	Fund Balance Appropriated	\$80,000
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Section 2. That the General Fund appropriations budget be increased or decreased in the following account:

10-00-4400-7100	Land Acquisition	\$80,000
-----------------	------------------	----------

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

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

Adopted this the 22nd day of June, 2015.

ATTEST:
s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

ANY OTHER ITEMS FROM CITY MANAGER: MEETING DATES FOR JULY
 Council will discuss the possibility of cancelling the July 27th Council meeting on July 13th.

ANY OTHER BUSINESS FROM THE MAYOR OR OTHER MEMBERS OF COUNCIL:
UPDATE ELECTRICITIES

Mayor Pro tem Mercer provided updates regarding ElectriCities, noting the sale may be delayed until late July or even early August. The City's current debt of \$100 million will be reduced to \$30 million. A reduction in the wholesale rate will be about 14% - 15%. After the sale is complete, Council should pass part of the reduction onto customers, after the Cost of Service Study.

Mayor Pro tem Mercer said residential load management is saving the City money and the commercial load management is not saving the City money. Fund Balance in the Electric Fund has dropped over the last three (3) years.

Mayor Pro tem Mercer will come back to Council at a future meeting with an update from ElectriCities.

Councilman Beeman mentioned the spike in revenues generated from tournaments and asked staff to bring this information to Council (90 days from July from the tournaments). Mr. Rauschenbach will bring back sales tax, occupancy tax, etc. for tournament events.

Mr. Rauschenbach voiced sales tax had a positive impact on City of Washington.

CLOSED SESSION: UNDER NCGS§143-318.11(a)(6) PERSONNEL AND 143-318.11(a)3)
ATTORNEY CLIENT PRIVILEGE

By motion of Councilman Pitt, seconded by Mayor Pro tem Mercer, Council agreed to enter into closed session under NCGS § 143-318.11(a)(6) Personnel and 143-318.11(a)(3) Attorney Client Privilege at 6:48pm.

By motion of Councilman Beeman, seconded by Councilman Brooks, Council agreed to come out of closed session at 7:20pm.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council adopted the contract for hiring of Interim City Manager Bobby Roberson as presented in closed session with the conditions and specifications as contained in the contract.

ADJOURN:

By motion of Councilman Beeman, seconded by Councilman Brooks, Council adjourned the meeting at 7:25pm until Monday, July 13, 2015 at 5:30 pm, in the Council Chambers.

(Subject to the Approval of the City Council)

Cynthia S. Bennett, MMC
City Clerk



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: July 13, 2015
Subject: Project Acorn
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council endorse the County's application of a Building Reuse Grant for Project Acorn and fund one half of the grant application and administration cost.

BACKGROUND AND FINDINGS:

Funds are available in the Economic Development departmental budget to support the estimated expenditure of \$9,250.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Memo

City Manager Review: MR Concur _____ Recommend Denial _____ No Recommendation
7/7 Date

Economic Development Grant – Project Acorn

Project Acorn is a proposed economic development project for Oak Ridge Metal Works. Oak Ridge Metal Works is located in the Washington/Beaufort County Industrial Park and has been in operation for approximately 2.5 years. It currently employs approximately 45 employees. The proposed project is a 15,000 SF expansion of the current 22,000 SF facility and will create an additional 34 jobs. The average weekly wage for the new jobs will be \$1,044. The County will be the applicant for a Building Reuse Grant through the Rural Grant/Programs Section of the NC Department of Commerce. The cost of the building expansion is estimated at \$671,250 with \$335,625 being funded by the grant. The company will reimburse the County for the required 5% local match. The grant is forgivable based on creating the new 34 jobs within 18 months and maintaining them for 6 months. The building owner will sign a promissory note as security for any claw-back if all the jobs are not created and maintained as required by the grant. The estimated total capital expansion and equipment investment for the project is \$1.5M.

The Mid-East Commission will prepare the grant application and will administer the grant if it is awarded. The cost to prepare the application is \$3,500 and the cost to administer the grant is \$15,000. We are proposing that the City of Washington cover half the costs because the project is located in the City. It is anticipated that the City will consider this request at its next regular meeting. A budget amendment, attached, is required to fund this project at a cost of \$9,250.

Recommendation: Approving the submission of a building reuse grant application in support of Project Acorn as described above and approving the attached budget amendment to fund the project.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: John Rodman, Community & Cultural Services
Date: June 29, 2015
Subject: Public Hearing: Adopt an ordinance to amend Chapter 40, Article VI, Section 40-93, Table of Uses.
Applicant Presentation: Joe Davis, Jr.
Staff Presentation: John Rodman, Community and Cultural Services

RECOMMENDATION:

I move that the City Council accept the recommendation of the Planning Board and **not** approve the Ordinance to amend **Chapter 40, Article VI, Section 40-93, Table of Uses**, by adding that **Private Dormitories** as a Special Use Permit within the R-9S Residential Classification.

or

I move that the City Council **not** accept the recommendation of the Planning Board and approve the Ordinance to amend **Chapter 40, Article VI, Section 40-93, Table of Uses**, by adding that **Private Dormitories** as a Special Use Permit within the R-9S Residential Classification in conjunction with the set forth specific criteria.

BACKGROUND AND FINDINGS:

A request has been made by Joe Davis, Jr, representing ScoutsFocus, to allow Private Dormitories as a Special Use in the R-9S Residential District. Mr. Davis plans to operate a post high school graduate prep school on the property located at 1110 North Market Street. The dormitory would be used to house the students attending the proposed school. By a 4-0 margin, the Planning Board voted to recommend to City Council to **not** amend the Zoning Ordinance to allow Private Dormitories in the R-9S Zoning District.

PREVIOUS LEGISLATIVE ACTION

Planning Board – preliminary review – April 28, 2015
 Planning Board – formal review – June 23, 2015

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Application
Ordinance Amendment
Planning Board Review

City Manager Review: 7/7/15 Date Concur Bill Recommend Denial _____
No Recommendation _____

Text Amendment
W. Joe Davis
1110 North Market Street



City of Washington

DEPARTMENT OF PLANNING AND DEVELOPMENT REQUEST FOR AN AMENDMENT TO THE ZONING ORDINANCE

Date May 4, 2015 Fee \$100

TO THE CITY OF WASHINGTON PLANNING BOARD AND CITY COUNCIL

I, Joe Davis hereby request that Section 40-93 Table of Uses

Of the Zoning Ordinance be amended as follows:

The Table of Uses be amended to allow Private Dormitories as a Special Use
R-95
in the ~~R-95~~ Residential Zoning Classification in conjunction with Section
40-120 Specific Criteria (g).

Reason for Request:

The reason for the request is to allow group sleeping quarters for persons not
from the same family as a private dormitory intended for use by college age
students.

I certify that all the information presented by me in this application is accurate to the best of my knowledge, information, and belief.

W. Joe Davis
Signature of Applicant

[Handwritten Signature]
Witness

Private Dormitories

Section 40-25. Words and terms defined.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the content clearly indicates a different meaning:

Dormitory. A building or group of buildings where group sleeping accommodations are provided with or without meals for persons not members of the same family group, in (1) room, or in a series of closely associated rooms under joint occupancy and single management, such as a college dormitory or privately owned dormitory intended for use by college students.

Section 40-120. Listed Uses; Specific Criteria.

The specific criteria for the listed uses, referred to in Section 40-118, are as follows:

(g) Fraternity or Sorority, Private Dormitories.

- (1) The minimum lot size shall be 20,000 square feet.
- (2) The gross floor area of the structure or structures shall be no less than two hundred fifty (250) square feet per resident.
- (3) The total amount of land devoted to structures and parking shall not exceed seventy (70) percent of the total lot area.
- (4) No part of any principal structure or accessory structure shall be located within fifteen (15) feet of any property line or street right-of-way for new construction and conversions.

Table of Uses

USE TYPES P = Permitted Use S = Special Use D = Subject to Developmental Standards Blank = Not Permitted	REF SIC	R A 2 0	R 1 5 S	R 9 S	R 6 S	R M F	R M H	R H D	O & I	B 1 H	B 2	B 3	B 4	I 1	I 2	A P	C P
AGRICULTURAL USES																	
Agricultural Production (crops)	0100	P	P	P	P											P	P
Agricultural Production (livestock)	0200	D															
Animal Feeder/Breeder	0210	D															
Animal Services (livestock)	0751	D															
Animal Services (other)	0752	D															
Fish Hatcheries	0920	P															
Forestry	0810	P														P	P
Horticultural Specialties	0180	P															
Veterinary Services (livestock)	0741	P															
Wayside Stand - Farm Produce - Produced on Site	0000	P															
RESIDENTIAL USES																	
Boarding & Rooming Houses (4 or less)	7021					D			D								
Common Area Recreation & Service Facilities	0000	P	P	P	P	P	P	P	P								
Congregate Care Facilities	0000			S	S			S	P								
Family Care Homes (6 or less)	0000	D	D	D	D	D	D	D	D								
Group Care Facilities	0000			S	S				P								
Home Occupation	0000	D	D	D	D	D	D	D	D	D							
Mobile Homes	0000						P										
Mobile Home Park	0000	S					P										
Multifamily Dwellings	0000		S	S	S	P	P	S	P	P							
Private Dormitories	0000					S											



- Parcels
- Property Land Owners
- Interior Tract Lines
- Centerlines
- County Line
- County Line (Solid)
- State

<u>OBJECTID</u>	<u>PIN</u>	<u>GPIN</u>
12696	01024144	5686-01-3677
<u>GPIN LONG</u>	<u>OWNER NAME</u>	<u>OWNER NAME2</u>
5686-01-3677	DAVIS W JOE	DAVIS SANDRA
<u>MAILING ADDRESS</u>	<u>MAILING ADDRESS2</u>	<u>CITY</u>
PO BOX 1652		WASHINGTON
<u>STATE</u>	<u>ZIP</u>	<u>PROPERTY ADDRESS</u>
NC	27889	1110 N MARKET ST
<u>ACRES</u>	<u>ACCT NBR</u>	<u>MAP SHEET</u>
0	18993	568617
<u>NBR BLDG</u>	<u>DATE</u>	<u>DEED BOOK and PAGE</u>
3		820/924
<u>LAND VAL</u>	<u>BLDG VAL</u>	<u>DEFR VAL</u>
105768	137017	0
<u>TOT VAL</u>	<u>NBHD CDE</u>	<u>NBHD DESC</u>
242785	A1	ZONE1 AVERAGE
<u>SUB CDE</u>	<u>SUB DESC</u>	<u>STAMPS</u>
<u>SALE PRICE</u>	<u>ZONE</u>	<u>LAND USE</u>
	R8	
<u>DISTRICT</u>	<u>PROP DESC</u>	<u>MBL</u>
1	2 LOTS 1110 N MKT ST & 106 W 11TH ST	568617420
		<u>EXEMPT AMT</u>
<u>ROAD TYPE</u>	<u>YR BUILT</u>	<u>SQ FT</u>
P	1907	4745
<u>NBR BED</u>	<u>NBR BATHS</u>	<u>EFF YR</u>
4	2	1970
<u>EXEMPT PROP</u>	<u>CENSUS BLOCK</u>	<u>FLOOD PLAIN</u>
OA		
<u>NBR STORIES</u>	<u>NBR HALF BATHS</u>	
3	1	

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Beaufort County Property Photos

PIN: 01024144

Photo: 01024144.jpg



Photo: 01024144.1.JPG

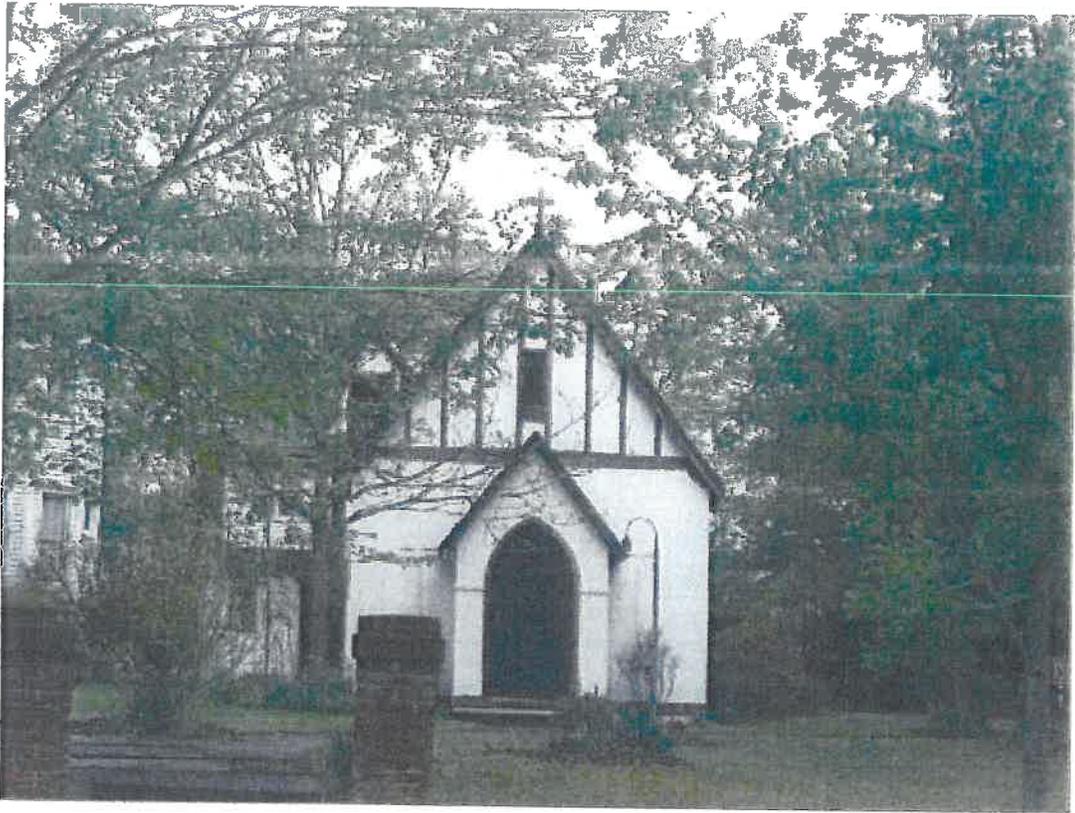
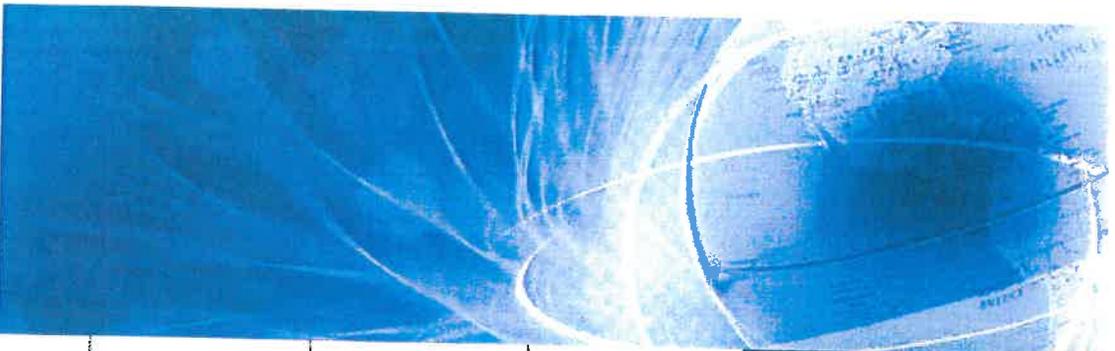
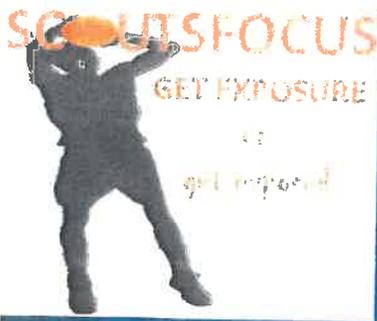


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Mission Statement:

ScoutsFocus is dedicated to identifying and providing a platform for underexposed players across the United States. Our NCAA approved scouting service also provides a platform for top ranked players in the country to take the next step in their recruitment and development.

Our events offer athletes in attendance the opportunity to be viewed by highly acclaimed scouting services. In addition, every college basketball coach in the country receive our reports whether in person or via email.

Staff:

Joe Davis, National Recruiting Director
 Charles Battle, Basketball Ops/Video Coordinator
 Asante Porter, Recruiting Analyst
 Alex Marion, Ast. Director of Basketball Ops

Follow us on 

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Contact Information:

ScoutsFocus
 105B East 11th Street
 Greenville, NC 27858

elite80@scoutsfocus.com
 Text us at: 252.389.9777
 Fax: 888.380.8149


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WORKSHEET FOR REZONING REQUESTS

Applicant:	Joe Davis, Jr. ScoutsFocus
Property Location:	1110 North Market Street
Parcel ID:	5686-01-3677
Lot Size:	3.47 acres
Existing Zoning Designation:	R-9S (Residential)
Proposed Amendment:	Add private Dormitories as a Special Use
Meeting Date:	June 23, 2015

REASONABLE FINDINGS OF FACT

A. Size of the tract- The overall size of the tract of land proposed for the amendment is reasonable when compared to the size of the zoning district in which the subject property is located.	<input checked="" type="radio"/> Yes	No
B. Compatibility with a comprehensive plan- The proposed amendment is consistent with any comprehensive plan, area plan or elements thereof.	<input checked="" type="radio"/> Yes	<input type="radio"/> No
C. Impact- The impact to the adjacent property owners and the surrounding community is reasonable, and the benefits of the amendment outweigh any potential inconvenience or harm to the community.	Yes	<input type="radio"/> No
D. Comparison of uses- The proposed special use within the zoning district are similar or compatible to the surrounding area and zoning district.	Yes	<input type="radio"/> No

GRANTING THE TEXT AMENDMENT

Motion to grant the amendment request upon finding that the request is reasonable considering one or more of the above findings of fact A-D being found in the affirmative and that the amendment advances the public interest.

X DENYING THE TEXT AMENDMENT

Motion to deny the amendment upon finding that the proposed request does not advance the public interest and is unreasonable due to the following:

- A. The size of the tract.
- B. Incompatibility with the comprehensive plan or other adopted plan.
- C. Impact to surrounding community and immediate neighbors
- D. Permitted or special uses are not consistent with surrounding uses.

PLANNING BOARD REPORT

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the City Council within thirty (30) days of referral of the amendment to the Planning Board, or the City Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the City Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the City Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the City Council.

PLANNING BOARD RECOMMENDATIONS

 Approval – the application is consistent with all of the objectives and policies for growth and development contained in the City of Washington Land Use Plan and Comprehensive Plan.

 Approval with conditions – the application is not fully consistent with all the objectives and policies for growth and development of the City of Washington Land order to make it fully consistent:

 X **Denial** – this project or application is not consistent with all the objectives and policies for growth and development of the City of Washington Land Use Plan and Comprehensive Plan.

 Continued – the application as presented requires additional information to be determined by the staff in order for the Planning Board to determine if the project is consistent with all the objectives for growth and development contained in the Washington Land Use Plan and Comprehensive Plan.

This report reflects the recommendation of the Planning Board, this the 23rd day of June , 2015.

Attest:

John Tate
Planning Board Chair

John Rodman
Director, Planning & Development

An Ordinance to Amend Chapter 40, Zoning, Article IV,
Section 40-93, of the Washington City Code

WHEREAS, NCGS 160A-385 authorizes local governments to amend ordinances regulating land use within their jurisdiction; and

WHEREAS, the amendment set out below is made in accordance with NCGS 160A-364; and

WHEREAS, the amendment set out below is intended to promote the public health, safety, and welfare by amending the City Code to define and regulate **Private Dormitories**, and to add prescribed conditions for such uses.

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

Section 1. That **Chapter 40. Article VI, Section 40-93, Table of Uses**, be amended by adding that **Private Dormitories** will be permitted only by Special Use Permit issued by the City of Washington Board of Adjustment within the R-15S Residential Classification in conjunction with the set forth specific criteria.

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

Section 5. All Ordinances or parts in conflict herein are repealed.

Adopted this _____ 13th _____ day of ___July___, 2015.

Jay MacDonald Hodges, Mayor

ATTEST:

Cynthia S. Bennett, City Clerk

Mayor
Mac Hodges

City Manager
Brian M. Alligood



Washington City Council

Richard Brooks
Doug Mercer
Larry Beeman
William Pitt
Bobby Roberson

June 29, 2015

Subject: Zoning Ordinance Amendment – W. Joe Davis, Jr.

Dear Adjoining Property Owner:

The Department of Planning and Development has received a request from Mr. W. Joe Davis, Jr. of 1110 North Market Street to amend the Zoning Ordinance, Article VI Section 40-93, Table of Uses, to include Private Dormitories as a Special Use in the R-15S (Residential) Zoning District.

The Washington City Council will hold its public hearing on the rezoning request at the following date and time:

Date: Monday, July 13, 2015

Place: City Council Chambers - City Hall - Municipal Building, 102 East Second Street. Enter from the Market Street side of the building and go to the second floor.

Time: 6:00 P.M.

The public is welcome to attend this hearing and present evidence either in support of or in opposition to the request.

During the meantime, should you have any questions, please feel free to call the Department of Planning and Development at 975-9317 during normal working hours Monday through Friday, 8:00 A.M. to 5:00 P.M.

Sincerely,

A. Glen Moore

A. Glen Moore
Planning Administrator

Adjacent Property Owners – 1110 North Market Street

Robert Byrum
1040 North Market Street
Washington, NC 27889

Marion Ray Pippin Jr.
1125 North Market Street
Washington, NC 27889

Lacy R. Boyd
1115 North Market Street
Washington, NC 27889

Dean Henson
1109 North Market Street
Washington, NC 27889

Charles Bowen
1105 North Market Street
Washington, NC 27889

Ronald L. Cuthrell
1101 North Market Street
Washington, NC 27889

Norman Koestline
1005 North Market Street
Washington, NC 27889

Oliver A. Thomas
1038 North Market Street
Washington, NC 27889

Michael Tahaney
111 West 11th Street
Washington, NC 27889

Karen Marie Dodd
113 West 11th Street
Washington, NC 27889

James Skillen
118 West 11th Street
Washington, NC 27889

Catherine Oestreich
624 Council Street Apt.301
Wilmington, NC 28403

Beaufort Co. Developmental Center
1534 west 5th Street
Washington, NC 27889

Philip Rosch
268 Bond Creek
Aurora, NC 27806



MEMORANDUM

To: Mayor Hodges & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: July 13, 2015
Subject: Reporting of Reallocation of Funding for FY 2014/2015

The following reallocations of funding between divisions within the Electric Fund has been approved by the City Manager in order to cover overspent departments with inter-departmental funds, thus avoiding additional appropriations.

Electric Fund:

-Increased Power Line Maint Department	\$15,010
-Decreased Non-departmental	(15,010)

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

Matt Rauschenbach
7/17/15



HUMAN RELATIONS COUNCIL

Human Relations Council (HRC) report for the month of June Monday July 13, 2015 City Council Meeting

MISSION STATEMENT

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

SCHEDULED PUBLIC APPEARANCES: None

OLD BUSINESS:

Update – Housing Symposium: Board member Recko provided the following updates:

City of Washington/Washington Housing Symposium “A Home is more than Bricks and Mortar!”

- Event scheduled on Thursday, July 30, 2015
- Tentative time from 8:30am – 1:30pm
- Keynote speaker will include a representative from HUD and/or NCHFA and a Realtor
- Welcome/Introductions: Contact Mayor and or County Commissioner for their availability
- Next meeting scheduled for Housing Coalition – key planning/strategies Wednesday, July 1, 2015.

FYI – Appointments made by City Council on June 8, 2015: Chairman Hughes reviewed the following appointments made by City Council on Monday, June 8, 2015: Reappointed Remanda F. St. Clair and appointed Kelly J. Hammonds and Norman V. Hawn; terms to expire on June 30, 2018.

Board members acknowledged Board member Howard for her twelve (12) years of service to the Human Relations Council. Board member Howard stated she was happy to have worked with the Board and will continue to help in any way possible.

Appointment – of Chair and Vice-chair for Fiscal year 2015-2016:

By motion of Board member O’Pharrow seconded by Board member Recko, Council appointed Remanda F. St. Clair as Chair to the Human Relations Council for Fiscal Year 2015-2016.

By motion of Vice-chair St. Clair, seconded by Board member O’Pharrow, Council appointed Bonita Wright as Vice-chair to the Human Relations Council for Fiscal Year 2015-2016.

7/7/15
[Handwritten signature]

NEW BUSINESS: None

OTHER BUSINESS:

FYI – All FYI items and reminders were discussed inclusive of the May 12, 2015 report submitted to City Council, and financial report, and invoice for the Housing Symposium.

Interim City Manager, Bobby Roberson tasked the Human Relations Council Board members to consider exploring the issue that occurred in Ferguson and noted this will be discussed later during the year regarding what plan of action is required to move forward. Also, look into emergency housing for our citizens when and if we are hit by a Hurricane.

OPEN DISCUSSION: NONE



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Keith Hardt, P.E., Electric Director
Date: 30 June 2015
Subject: Appointment to the Board of Commissioners of the North Carolina Eastern Municipal Power Agency
Applicant Presentation: None
Staff Presentation: Keith Hardt, P.E., Electric Director

RECOMMENDATION

I recommend that Interim City Manager Bobby Roberson be appointed as Second Alternate Commissioner to the North Carolina Eastern Municipal Power Agency Board of Commissioners.

BACKGROUND AND FINDINGS

None

PREVIOUS LEGISLATIVE ACTION

None

FISCAL IMPACT

Currently Budgeted (Account _____) Requires Additional Appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

None

OATH

I, _____, do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith, and that I will faithfully and impartially execute and discharge the duties of my office as Second Alternate Commissioner of North Carolina Eastern Municipal Power Agency, and that I will adhere to and abide by the Electricities' Ethical and Professional Code of Conduct, so help me God.

Second Alternate Commissioner

Sworn to and subscribed before me,
this _____ day of _____, 2015.

Notary Public

My Commission Expires:

(NOTARY SEAL HERE)



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Cynthia S. Bennett, City Clerk
Date: June 30, 2015
Subject: Appointments to Various Boards, Commissions, and Committees
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

Recreation Advisory Committee --(Richard Brooks – Liaison)

I move that the City Council appoint _____ to the Recreation Advisory Committee to fill a vacant (**inside**) position, term to expire June 30, 2018.

I move that the City Council appoint _____ to the Recreation Advisory Committee to fill a vacant(**inside**) position, term to expire June 30, 2018.

Enlarged Planning Board- (Richard Brooks – Liaison)

I move that the City Council appoint _____ to the Enlarged Planning Board, to fill a vacant position, term to expire June 30, 2018.

Historic Preservation Commission – (Larry Beeman –Liaison)

I move that the City Council appoint _____ to the Historic Preservation Commission to fill a vacant position, term to expire June 30, 2016

BACKGROUND AND FINDINGS:

Nominations will be made by the Council liaisons at the July 13, 2015 Council meeting.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Board Applications

City Manager Review: 7/7 Date Concur 130 Recommend Denial ___ No recommendation ___

Requested Board Parks + Recreation

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

NAME Ray Midgett

ADDRESS 108 Simmons Street, Washington, NC

PHONE (WORK) _____ (HOME) 704-813-8197

E-MAIL ADDRESS rlmidgett@gmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 10 YEARS

YEARS OF EDUCATION Masters Degree

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

IF YES, PLEASE INDICATE Washington Waterfront Docks

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

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

I am interested in representing the interests of all the citizens of Washington in regard to park and recreational facilities, especially in the historic district and along the waterfront.

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

June 23, 2015
Date

Ray Midgett
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: _____

Requested Board Recreation

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

NAME Dr. David C. Mays

ADDRESS 108 Minuteman Lane Wash

PHONE (WORK) 252 946 5721 (HOME) 252 946 2018

E-MAIL ADDRESS doc.mays@a9mail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 4.3 YEARS

YEARS OF EDUCATION 20

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

IF YES, PLEASE INDICATE _____

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

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

Member Aquatic center 15 yrs. Familiar with needs of community & needs of center. Realize we must increase usage and money. Aware center needs to be part of solution, not part of the problem. Coached Baseball 6 yrs - soccer - 4 yrs. Built grounds myself and maintained fields for two yrs. Bought sprinkler system for National Spinning fields - watered fields each night

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

over

July 1, 2015
Date

[Signature]
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: _____

I maintained fields along with the City for those years.
I was selected to be the All Star coach for 10-12 age group.
I'm interested in learning what is going on at the present.
Being a good listener to Recreation events and needs and
offering any constructive ideas is my idea of serving.

Sincerely,
D. Man

Requested Board **Planning Board**

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

NAME Patrick C. Griffin (Pat)

ADDRESS 414 Lodge Rd, Washington

PHONE (WORK) 252-946-6129 cell (HOME) _____

E-MAIL ADDRESS patgriffin4@aol.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 37 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE Downtown Development Commission

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

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

Will own property in district, have done project in district at One Commerce Square.

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

6-30-15
Date

Patrick C. Griffin
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: _____

Requested Board Historic Preservation Comm.

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

NAME Monica Ferrari

ADDRESS 117 Arbor Dr., Washington, NC / 604 W. 2nd St., Wash.

PHONE (WORK) 975-1698 (HOME) _____

E-MAIL ADDRESS Ferrarisports07@suddenlink.net

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 7 years YEARS

YEARS OF EDUCATION 16 BS Elementary Ed

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

IF YES, PLEASE INDICATE Parks and Recreation, Animal Control Appeals

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

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

I moved into the Historic District of Washington in 2008 and renovated our 100+ year home while keeping most elements in it's original character. I understand the importance to maintaining the historical aspects of our local architecture in our homes, businesses and cityscape. I will strive to be a fair member of this

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

19 May 2015
Date

Monica Ferrari
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: _____

board and abide by the codes and guidelines
to the best of my ability.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Robbie Rose, Fire Chief
Date: June 29, 2015
Subject: Purchase of New EMS Truck
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION: I move that the City Council approve the purchase and purchase order in the amount of \$148,066 for the 2015 EMS truck from Select Custom Apparatus.

BACKGROUND AND FINDINGS:

We are requesting the approval to purchase an EMS Truck from Select Custom Apparatus through a piggyback of the Florida Sheriffs' Association in accordance with statute G.S. 143-129(g). This purchase is the same method and vendor that was used on the replacement of the previous EMS vehicle and will be of the same make and model. The primary justifications for the piggy back are: consistent with existing EMS vehicles, close proximity of vendor, and ability to have vehicle serviced locally. Purchasing of this vehicle now will also avoid additional costs that will be incurred with upcoming changes in standards for stretcher mounts in truck, as well as modifications to existing stretcher for new mounting systems.

PREVIOUS LEGISLATIVE ACTION:

FISCAL IMPACT:

XX Currently Budgeted (Account 10-10-4341-7400 \$150,000)

Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS:

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

7/7 Date



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Keith Hardt, P.E., Electric Director
Date: 3 July 2015
Subject: Approve Contracts
Applicant Presentation: None
Staff Presentation: Keith Hardt, P.E., Electric Director

RECOMMENDATION

I motion that the City Council approve contracts with Davey Tree Expert Service for fiscal year FY 2015-16 in the amount of \$260,000 for the entire year and in the amount of \$72,000 for a 13-week period for the Electric Fund and approve the corresponding purchase orders.

BACKGROUND AND FINDINGS

In October of 2014 due to safety, performance and personnel management concerns we replaced Asplundh Tree Expert Company with Davey Tree Expert Company for right-of-way maintenance on the City’s electric system.

Prices were solicited from the ElectriCities of North Carolina tree trimming bid schedule for as well as Davey Tree Expert Service.

Description	Asplundh	Carolina Tree	Davey Tree
Working Foreman	\$29.85	\$34.15	\$35.19
Climber	\$26.91	\$29.39	\$31.28
Groundman	\$23.02	\$21.96	\$23.46
65 foot Aerial Device	\$41.09	N/A	\$29.63
Chipper	\$6.80	\$7.12	\$4.51
Estimated Annual Cost	\$265,553	Non Responsive *	\$258,066
* Carolina Tree Service is not able to supply the 65 foot aerial device			

I recommend that we continue our right-of-way maintenance service with Davey Tree Expert Company. This recommendation is based on the current experience on the City’s electric system with Davey Tree Expert Service, our past poor experience with Asplundh, and that Carolina Tree cannot supply the 65 foot aerial device that is needed to reach our right-of-way overhangs.

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

I recommend that the City Council approve a contract to Davey Tree Expert Service fiscal year 2015-16 in the amount of \$260,000 for the entire year and in the amount of \$72,000 for a 13-week period and approve the corresponding purchase orders.

PREVIOUS LEGISLATIVE ACTION

2015-16 Budget Ordinance.

FISCAL IMPACT

Additional expenditures in excess of budgeted amount.

Currently Budgeted (Account _____) Requires Additional Appropriation No Fiscal Impact

SUPPORTING DOCUMENTS



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Kristi Roberson, Parks and Recreation Manager
Date: July 13, 2015
Subject: Cart Vendors on Stewart Parkway
Applicant Presentation: none
Staff Presentation: none

RECOMMENDATION:

I recommend City Council adopt an amendment to Chapter 22, Article I, Section 22-5 of the City Code to allow peddling on the waterfront. I further recommend City Council adopt the contract and RFP to allow cart vendors on Stewart Parkway (3 locations).

BACKGROUND AND FINDINGS:

In 2002 a vending contract was created for two locations on Stewart Parkway and one location on Havens Gardens for food vendors. The City sent out RFP's and a contract was entered into with Jimbo Jumbo's.

The Recreation Department has received another request for vending on Stewart Parkway. Currently section 22-5 of the City Code prohibits peddling on the waterfront.

During the May 11, 2015 Council Meeting, by motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council voted to allow up to three vendors on Stewart Parkway and instructed staff to follow the RFP process as established in 2002.

PREVIOUS LEGISLATIVE ACTION

In 2002 a contract was entered into with Jimbo Jumbo's.

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Contract, RFP, and revised section 22-5 of City Code.

City Manager Review: Concur Recommend Denial No Recommendation
_____ Date

**AN ORDINANCE AMENDING
CHAPTER 22, PARKS AND RECREATION, ARTICLE I, IN GENERAL, OF THE
CODE OF THE CITY OF WASHINGTON, NORTH CAROLINA TO MAKE IT
LAWFUL TO OPERATE CERTAIN FOOD AND BEVERAGE VENDING
OPERATIONS**

WHEREAS, North Carolina General Statute Chapter 160A, Cities and Towns, Article 18, Parks and Recreation, authorizes cities and towns to, among other things, operate parks and recreation programs.

WHEREAS, North Carolina General Statute Chapter 160A, Cities and Towns, Article 8, Delegation and Exercise of the General Police Power, authorizes cities and towns to, among other things, regulate certain acts.

WHEREAS, the Charter of the City of Washington grants the City of Washington the authority to exercise all of the powers, duties, rights, privileges and immunities conferred upon it by North Carolina General Statute Chapter 160A.

WHEREAS, the Washington City Council has adopted Rules and Regulations for parks and recreation areas as well as facilities and desires to amend the same.

NOW THEREFORE, BE IT ORDAINED by the City Council for the City of Washington, North Carolina that Chapter 22, Parks and Recreation, Article I, In General, of the Code of the City of Washington shall be amended as follows.

Section 1. Section 22-5, Rules and regulations, is hereby amended by deleting subsection (m) in its entirety and replacing it with the following subsection (m).

(m) There shall be no peddling or soliciting on parks or recreation properties or facilities, except on the site of and as a part of a permitted special event or pursuant to a contract entered into with the City.

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

Section 3. Should any provision of this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

Section 4. This ordinance shall take effect and be enforced from and after the date of its adoption.

This the 13th day of July, 2015.

Jay MacDonald Hodges, Mayor
City of Washington

ATTEST:

Cynthia S. Bennett, City Clerk
City of Washington

CITY OF WASHINGTON
PARKS AND RECREATION DEPARTMENT

REQUEST FOR PROPOSALS
FOR
STEWART PARKWAY FOOD AND
BEVERAGE VENDING

CITY OF WASHINGTON
PO BOX 1988
WASHINGTON, NC 27889

CITY OF WASHINGTON

PARKS AND RECREATION DEPARTMENT

Purpose

The City of Washington (City) is seeking qualified and competent food and beverage vendors to operate on Stewart Parkway and the accompanying promenade, as more particularly described herein, and is hereby requesting proposals from all persons interested in providing, and qualified to provide, such services.

Stewart Parkway

The City's Parks and Recreation Department operates and maintains Stewart Parkway and the promenade in downtown Washington. Stewart Parkway and the promenade include approximately 1,900 feet bordering the Pamlico River. Stewart Parkway features sitting areas, a visitor's center, a dock attendant's station, and public restrooms. Forty six (46) boat docking spaces are available along the promenade.

Vending Location

There will be up to three (3) vending sites located along Stewart Parkway and the promenade at the following general locations: Stewart Parkway #1 - area located near the dock attendant's station, Stewart Parkway #2 - area located near Respass Street, Stewart Parkway #3 - area located near the Chamber of Commerce (see attached map for general locations). The Manager of the Parks and Recreation Department, through his designee, will establish the precise area within each vending site location from which the vendor may operate. A successful applicant will offer for sale to the public those food and beverage concessions that are permitted under their contract and none other. Such food and beverage concessions may include the sale of hot dogs, ice cream, yogurt, soft drinks, and any other food or beverage items specifically authorized by a contract.

Reason For Service

The opportunity for food and beverage vendors to operate on Stewart Parkway and the promenade is offered and managed by the City in order to provide a public service for visitors in the park area. These food and beverage vendor operations should blend agreeably with the other amenities available in the park to provide an attractive environment for visitors.

Contract

Any person or firm that may be selected to provide such services **will** be required to enter a contract with the City, which contract will set forth the terms and conditions for the food and beverage vending operation. The food and beverage vendor will be referred to in the contract as the "Licensee." Items such as insurance, regulations, hours of operation, etc., will be addressed in the contract. A sample contract is attached to this Request for Proposals and may be modified by the City in its sole discretion.

Supervision and Inspection

The Manager of the Parks and Recreation Department, through his designee, will, from time to time, monitor the food and beverage vendor's operation in an effort to determine that the vendor is

complying with all of the provisions of their contract. The monitoring will include, but not be limited to, monitoring the quality of service rendered, the nature of the items offered for sale to the public, and the neatness of the premises as well as the vendor's employees. The vendor and vendor's employees will be required to adhere to all applicable park as well as vending rules and regulations and to cooperate with the Parks and Recreation Department in meeting the demands of the public.

Vending Rules & Regulations

Before submitting a proposal, an applicant should review thoroughly all applicable rules and regulations for vendors, including but not limited to all applicable rules and regulations of the Beaufort County Health Department. Interested parties are urged to visit Stewart Parkway to familiarize themselves with the physical conditions in the surrounding area and to become acquainted with any potential issues that may arise. Applicants who have questions concerning the food and beverage vending operations, the contract, or the development of the park facilities, should contact the Manager of the Parks and Recreation Department or his designee in advance to make an appointment.

Selection of Applicant

The criteria to be used in selecting a food and beverage vendor are as follows, but not necessarily in the following order:

- 1) Qualifications of the applicant, including personnel - preference shall be given to those applicants with specific experience in the service proposed and demonstrated familiarity with the area;
- 2) References;
- 3) Type and quality of food and beverage items to be offered;
- 4) Schedule, including hours of operation;
- 5) Type and quality of vending cart or other equipment to be utilized;
- 6) Proposed license fee;
- 7) Support vehicle parking plans; and
- 8) Operation of a restaurant or similar business in the City.

The City shall, in its sole discretion, select the applicant(s) deemed most suitable to provide the requested service. The City reserves the right, in its sole discretion, to reject any and all proposals.

License Fee

The license fee required to be paid by a successful applicant will be paid in advance in monthly installments. The first payment will be due upon the execution of a contract and will be prorated for any partial month. Thereafter, monthly installments will be paid on the 1st of each month and will be prorated for any partial month. It is suggested that a minimum annual license fee of \$1,800 be proposed by each vendor for each vending site location desired.

Submission of Proposals

In order for a proposal to be considered, the Bid Proposal Form and Bid Information Sheet (attached) must be submitted. Information considered supplemental to and supporting any item on the Bid Proposal Form or the Bid Information Sheet should also be included. Supplemental material might include photographs and supporting documents.

The Bid Proposal Form, Bid Information Sheet, and any supporting material must be received in one package not later than the deadline time/date.

Special Events

A vendor will not be allowed to occupy its vending site or operate its food and beverage vending operation during any event deemed by the City, in its sole discretion, to be a "Special Event", unless the vendor has rented a vending spot through the planner of that particular Special Event. Currently, such Special Events include:

1. EC Wildlife Arts Festival
2. Marine Market
3. Summer Festival
4. July 4th Festival
5. Smoke on the Water

Stewart Parkway Vending Locations

Established 2015



BID PROPOSAL FORM

STEWART PARKWAY FOOD AND BEVERAGE VENDING

The undersigned hereby makes a proposal to operate a food and beverage vending operation on Stewart Parkway and proposes to pay the following license fee, \$ _____ (1 year), for the privilege and use of the following vending site location: Stewart Parkway # _____.

This proposal is submitted with the knowledge that the City of Washington (City) reserves the right, in its sole discretion, to reject any and all proposals submitted hereunder or to make any counter-proposal which may be considered reasonable or desirable.

I make this proposal on behalf of myself and no others, on a competitive basis without collusion. No other person, firm, or corporation has an interest, directly or indirectly, in this proposal. The undersigned certifies that no City representative has any financial interest, directly or indirectly, in this proposal, the proposed license, or any portion of the profits thereof, and that no promises or inducements have been made or received on behalf of the undersigned in connection with the making of this proposal.

The undersigned further certifies that the contract documents contained within the related Request for Proposals have been carefully examined. The undersigned proposes to commence the food and beverage vending operation on _____, 20____. Please find attached the following documents and material to support my proposal to provide a food and beverage vending operation on Stewart Parkway:

1. Bid Proposal Form
2. Bid Information Sheet
3. Experience/Reference Information
4. Any other documentation

Business Name _____ Date _____
Name _____ Title _____
Address _____ Phone _____
_____ Zip _____

BID INFORMATION SHEET
STEWART PARKWAY FOOD AND BEVERAGE VENDING

1. Name and mailing address of applicant: _____

2. Name of current business and current business address (if any): _____

3. Type of current business: _____

4. State the number of years the applicant has been engaged in business under the current business name: _____
5. List all pertinent information indicating the ability of the applicant and its management personnel to operate a food and beverage vending operation at Stewart Parkway:

6. Other relevant experience: _____

7. Proposed food and beverage vending site location, Stewart Parkway: 1___ 2___ 3___
8. List food and/or beverage items proposed to be sold: _____

9. State plan for support vehicle parking that identifies the location for such vehicle: _____

10. State vending cart or other equipment description and attach photograph or drawing that includes cart or other equipment specifications: _____

11. List operation schedule that includes hours per day, days per week, and holiday schedule: _____

CITY OF WASHINGTON
PARKS AND RECREATION DEPARTMENT
STEWART PARKWAY FOOD AND BEVERAGE VENDING CONTRACT

THIS AGREEMENT ("License") is made and entered into as of the ____ day of _____, 2015, by and between the City of Washington ("City") and _____ ("Licensee"), having an address of _____.

WITNESSETH

WHEREAS, the City Parks and Recreation Department ("Department") has jurisdiction over the park and recreation areas as well as facilities of the City, including Stewart Parkway and the accompanying promenade, and desires to provide food and beverage vendors on Stewart Parkway as well as the accompanying promenade for the accommodation of the public, and Licensee desires to obtain permission to provide such services.

NOW THEREFORE, for and in consideration of the foregoing and for and in consideration of the mutual covenants as well as promises contained herein and other good and valuable consideration paid and to be paid, the receipt and legal sufficiency of which consideration is hereby acknowledged, the parties hereby agree as follows.

1. The City hereby grants to Licensee and Licensee hereby accepts from the City a license to operate a food and beverage vending operation for the period stated herein subject to the terms and conditions set forth herein at Stewart Parkway # _____ as shown on Exhibit "A" which is attached hereto and incorporated herein by reference as if fully set forth. It is agreed between the parties hereto that this License is personal to Licensee and shall not inure to the successors or assigns of Licensee. Licensee agrees that it does not possess and shall not claim at any time an interest or estate of any kind or extent whatsoever by virtue of this License or Licensee's exercise or use of the same and the City conveys no interest in property to Licensee by virtue of this License.

Licensee shall offer for sale to the public the following food and/or beverage concessions from the above referenced vending location.

- a. _____
- b. _____
- c. _____
- d. _____

The provision of alcoholic beverages is prohibited by this License.

2. Licensee shall commence said food and beverage vending operation on the ____ day of _____, 2015 and shall terminate said operation on the ____ day of _____, 2016 unless sooner terminated as provided herein. This License may be terminated by the City, with or without cause, upon thirty (30) days written notice to Licensee.

Licensee may terminate this License, with or without cause, as long as a) Licensee has complied with and is current on all obligations required of Licensee under this License and b) Licensee provides thirty (30) days written notice to the City.

3. Licensee shall operate such concessions for the accommodation of the public using the above referenced vending location during such seasons and at such times and in such a manner as the City may reasonably prescribe.

Licensee must receive advance approval for Licensee's hours of operation from the Manager of the Department or his designated representative ("Manager"). Licensee shall not deliver to, or remove Licensee's vending cart or other equipment proposed for use from, its location on Stewart Parkway during the hours of 11:00 am to 1:00 pm by means of a motor vehicle. Licensee shall not drive on a sidewalk or other non-vehicular area when delivering or removing Licensee's vending cart or other equipment. Licensee's vending cart and any other equipment shall be removed daily and shall not be left overnight or unattended for any period of time.

Licensee shall have the right to make written application to the Manager for a change in the hours of operation. Any such change in the hours of operation approved by the Manager shall become the temporary hours of operation for Licensee. Manager reserves the right to revoke this License if Licensee does not adhere to the approved hours of operation.

4. Licensee shall pay a monthly license fee in the amount of \$ _____. The first monthly payment shall be due on the date this License is entered and shall be prorated for any partial month. Thereafter the monthly license fee shall be paid on the 1st day of each month and will be prorated for any partial month. Payments by Licensee shall be made to the Manager. Should Licensee discontinue the operation authorized hereunder during the term of this License, Licensee shall forfeit any monies paid and shall not be entitled to any refund from the City. If any monthly license fee is not paid on the first of any month, the City shall be entitled to assess a late fee of 1.5% of the amount then due and, in addition to the late fee, the amount then due shall bear interest at the rate of 18% per annum or the maximum legal rate, whichever is less, from the date due until the same shall be paid.

5. Licensee shall provide the City with a security deposit in the amount of \$ _____ prior to commencing the vending operation authorized hereunder.

Comment [R1]: Amount of deposit, if any, needs to be determined.

6. Licensee shall provide and utilize a vending cart or container that shall be limited to one self-contained unit not larger than four feet by six feet in size and six and one half feet in height for the purpose of serving the approved food and beverage items. "Self-contained" as used herein shall mean that the vending cart or container is not connected or attached to any building or other structure and does not receive water or power from any building or public outlet by means of wires, hoses, or other connection. Licensee may utilize other equipment, including up to two ice chests, of a type and size that are approved by the Manager. Any vending cart or other container utilized by Licensee shall

be equipped with at least two wheels and designed for easy movement, but shall not be motorized or propelled in any manner other than by the walking motion of the operator thereof, with the exception that a person with a disability may use other appropriate means of movement. Any vending cart or container used by Licensee shall be enclosed on all sides and covered with appropriate material as well as cover to prevent exposure of the food or beverage products to wind, dust, insects and the elements, and shall otherwise meet all other applicable regulations as may be required by the Beaufort County Health Department. Licensee shall not use the above referenced vending location for any purpose other than the purposes stated herein. Licensee shall perform the operation authorized hereunder in such a manner that such operation does not interfere with, hinder, or any way impair the public's use of Stewart Parkway as well as the accompanying promenade. Licensee agrees to cooperate in all respects with all of the parties, including the public, who presently utilize or may in the future be utilizing Stewart Parkway as well as the promenade and agrees to coordinate its operation in so far as possible to achieve an orderly, safe, and harmonious joint usage thereof by all parties.

Licensee shall not possess, utilize, or have attached to any vending cart or other equipment any bell, siren, horn, loud speaker or other similar device that could be used to attract the attention of possible customers or the public generally. Licensee shall not use any sign or advertising except for the posting of prices, the names of the products, and the name of the Licensee's vending operation upon Licensee's vending cart or other equipment. Free standing signs of any kind are not permitted.

Licensee hereby accepts the condition of the above referenced vending location as well as the surrounding area "AS IS", with all faults, dangerous conditions and attributes, whether known to the City and/or Licensee or not. Licensee acknowledges that the City has made and makes no warranties, express, implied, or otherwise of any kind regarding the condition of the same. Licensee covenants to satisfy itself that the above referenced vending location is adequate for its operation. Licensee shall exercise due caution in the occupation of the above referenced vending location as well as surrounding areas, shall take good care of the same and, at the expiration or earlier termination of this License, shall surrender and deliver the same in as good condition as when received by Licensee from the City, ordinary wear and tear excepted. The City may elect to retain or dispose of, in any manner, Licensee's personal property that is not removed from the above referenced vending location by Licensee at the expiration or earlier termination of this License. Licensee waives all claims against the City for any damage to Licensee resulting from the City's removal of Licensee's personal property at the expiration or earlier termination of this License. Licensee shall be liable to the City for the City's cost for storage, removal, or disposal of Licensee's personal property. Licensee shall keep the above referenced vending location and surrounding areas clean as well as litter free and in a presentable, acceptable and aesthetically pleasing appearance satisfactory to the City, in the City's sole discretion. Licensee shall provide a suitable receptacle approved by the Manager for refuse and trash either attached to any vending cart or other equipment or within 10 feet thereof. Prior to leaving the above referenced vending location or moving the vending cart or other equipment, the operator or person responsible for the same shall remove or dispose of any and all refuse or trash within forty feet of the above referenced

vending location. Licensee shall be solely responsible for the proper and prompt disposal of any and all refuse or trash that may be produced by its operation authorized hereunder.

7. Licensee shall obtain approval from the Manager for any vending cart and all other equipment to be utilized by Licensee, including but not limited to an umbrella or other cover, one trash receptacle, one stool or chair for the use of the operator, and two approved coolers. No other equipment or items may be utilized by Licensee without advance approval from the Manager, except for such items or articles that may be in, on, or under the vending cart or other container.
8. Licensee shall procure at its own cost and expense all required permits or licenses that may be necessary for the proper operation of the services contemplated hereunder, including but not limited to any permit or approval that may be required by the Beaufort County Health Department.
9. Licensee shall not sell or vend any items that have been determined to cause or result in an unsafe health or environmental condition, or that contribute to maintenance or sanitation problems, as determined by the Manager. The sale of peanuts and popcorn is expressly prohibited.
10. Licensee shall not sell or vend any items to individuals in parked vehicles (temporary or otherwise). Special consideration may be given to individuals with disabilities.
11. Licensee shall post in a conspicuous place inside the concession area a price list of all articles offered for sale.
12. This License is not transferrable or assignable and runs to Licensee only. Licensee may not assign this License or sublicense the same. Licensee shall not otherwise sell, mortgage, rent, or assign the license herein granted, or any interest therein, without first obtaining the written consent of the Manager, nor shall the license be transferred by operation of law. It being the purpose and spirit of this License to grant this license and privilege personally and solely to the Licensee named herein.
13. Licensee agrees that free access will be given at all times to representatives of the City, the Beaufort County Health Department, and any other municipal, county, state, or federal officials having jurisdiction over the operation authorized hereunder for inspection or other official purposes. Licensee further agrees that, if notified by the Manager that any part of the licensed operation is unsatisfactory, Licensee shall suspend all operations authorized hereunder until the Manager confirms the operation is satisfactory.
14. Licensee shall utilize the above referenced vending location at Licensee's own risk and assumes all risks related to this License. Licensee does for itself, its agents, successors, assigns, customers, clients, guests and invitees, hereby unconditionally release, hold harmless, and will indemnify, defend, acquit, and forever discharge the City,

its respective present and former employees and elected officials, in both their individual and official capacities, agents, representatives, contractors, attorneys, insureds, successors, and assigns, and each of them, respectively, of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, attorneys' fees, and consequential, general, special, and punitive damages or liabilities, known or unknown, on account of, or in any way related to or growing out of this License, including but not limited to Licensee's operation authorized hereunder, Licensee's services and/or Licensee's use of the above referenced vending location. It is the intent and understanding of the parties that this indemnification shall include but not be limited to 1) any injury, including death, to any person; 2) any claim arising from any accident, fire, or casualty from any cause whatsoever, including negligence; and 3) any claim of Licensee's customers, clients, invitees, and/or guests caused by, related to, or arising from Licensee's operation authorized hereunder, Licensee's contemplated services or this License. Licensee expressly waives any and all claims for any and all losses or damage resulting from fire, flood, explosion, civil commotion or riot, or any act of God and Licensee expressly releases the above referenced parties from any and all such claims, demands, actions and causes of actions arising from any of the causes aforesaid and agrees to hold the above referenced parties harmless therefor including attorneys' fees, if any.

15. In the event the City or the Manager closes Stewart Parkway or the accompanying promenade or authorizes a Special Event thereon, Licensee shall not occupy the above referenced vending location or operate Licensee's food and beverage operation for such time periods as the Manager shall prescribe or require. Licensee shall not occupy the above referenced vending location or operate its food and beverage operation during any event deemed by the Manager to be a "Special Event" unless Licensee has rented a vending spot through the planner of that particular Special Event. Such Special Events include but are not limited to the East Carolina Wildlife Arts Festival, Marine Market, Summer Festival, July 4th Festival, and Smoke on the Water events.

The City reserves the right, in its sole discretion, to permit nonprofit organizations to hold events, conduct activities, and sell food, beverages, etc., either directly or indirectly through concessionaires of their own choice on Stewart Parkway as well as the accompanying promenade. Notwithstanding anything to the contrary herein, the City reserves the right, in its sole discretion, to grant additional licenses for concessions on Stewart Parkway as well as the accompanying promenade.

16. Licensee shall comply with any and all applicable rules, regulations, and ordinances of the City as the same may be amended from time to time. If Licensee or those under the responsibility of Licensee fail to comply with the rules, regulations, and ordinances of the City or otherwise cause disorder, depredations or indecorous conduct that might injure a person, cause damage to property, or harm the City's reputation, the same shall be cause for termination of this License, without prejudicing the City's right to damages and any financial obligation of Licensee to the City. Licensee agrees to comply with any and all applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and

requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or anytime hereafter may be applicable to the operation authorized hereunder, including but not limited to the services contemplated hereby and the related enterprise as well as business, and the above referenced vending location. Licensee shall indemnify and hold the City harmless for any and all damage of any kind arising from Licensee's failure to comply with the aforementioned rules and regulations, including attorneys' fees.

17. Licensee shall, throughout the term of this License and any renewal thereof, at its own expense, obtain and maintain in full force and effect the following insurance coverage.

a. Statutory workers' compensation insurance in amounts required by law and, unless exempted by applicable law, employer's liability insurance at a minimum of \$100,000.00 for each accident, \$100,000.00 for bodily injury by disease each employee, with a policy limit of \$500,000.00 for bodily injury by disease.

b. Commercial general liability insurance, including contractual liability, personal and bodily injury, property damage, advertising injury, premises, and operations coverage at a minimum of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate.

At the option of the City, the above limits may be less than stipulated herein so long as Licensee obtains and maintains an excess policy providing the additional limits needed. This form of coverage must be approved by the City and will only be acceptable if both the primary and excess policies include the coverage and endorsements required herein.

c. Licensee shall maintain fire, extended coverage, and vandalism as well as malicious mischief insurance on personal property of Licensee that is located in or on the vending site and surrounding grounds. It is expressly understood by the parties hereto that the City does not and shall not maintain any insurance coverage with regard to the property of Licensee and, if Licensee is damaged for any reason such that the same is no longer usable by Licensee, Licensee shall have and make no claim against the City arising therefrom.

With the exception of workers' compensation and fire as well as extended coverage insurance referenced above, each such policy shall list the City as additional insured and provide that it is not subject to cancellation or reduction in coverage except after 30 days following notice to the City. Licensee shall deliver to the Manager certificates of insurance for all insurance policies required hereunder. Licensee shall, within a reasonable time prior to the expiration of any such policy, furnish the City with certificates of insurance evidencing renewal thereof. The City may, in its sole discretion, require Licensee to expand the form and/or increase the amounts of all such insurance.

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

19. Licensee shall be in default of this License if any of the following occur.

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

b. Licensee violates any rule, regulation, or ordinance of the City or any other law, ordinance, or regulation related to the selling or distribution of food and beverages, including but not limited to any Beaufort County Health Department rule or regulation.

c. Licensee violates, breaches, or fails to keep or perform any provision, covenant, term or condition of this License.

Upon any such above described default, the City shall have the absolute right, in its sole discretion, to terminate this Agreement.

20. The Manager may revoke this License, without notice, if Manager finds that the Licensee or any person having a beneficial interest in Licensee's vending operation has:

a. Fraudulently misrepresented or provided false information in Licensee's proposal, including but not limited to the Bid Proposal Form or Bid Information Sheet;

b. Been convicted of a felony, any violation of any laws relating to the possession, sale or transportation of intoxicating liquors or controlled substances, or a violation of any law, including fraudulent business practices or moral turpitude;

c. Conducted the vending operation authorized hereunder in such a manner as to create a public nuisance or constitute a hazard to the public health, safety or welfare;

- d. Offered for sale any food, beverages, or other items other than those specified herein;
- e. Engaged in conduct that is rude or disruptive, or harassed or interfered in any way with the operation of any other vendor authorized by the City to operate;
- f. Failed to permit any lawfully requested inspection or failed to comply with any lawful request of a police officer; and/or
- g. Been convicted of a crime relating to or affecting the operation of the concession authorized hereunder.

21. Should the Manager, in his sole discretion, determine that Licensee is not operating the license herein granted in a satisfactory manner, then the Manager shall have the right, but not the obligation, to suspend this License upon written notice to Licensee. Such written notice shall state the reasons for the suspension and provide a definite review period during which Licensee may respond with an explanation or justification and/or undertake any reasonable remedial action required by the City. If, in the opinion of the Manager, Licensee remains in violation of this License at the completion of the suspension period, the Manager shall have the right to terminate this License immediately. In the event this License terminates as aforesaid or for any other reason whatsoever as elsewhere provided for in this License, all rights of Licensee hereunder shall be forfeited without any claim for damage, compensation, refund of its investment, if any, or any other payment whatsoever against the City, its agents, officials and employees.

- a. The notice provisions contained in this numbered paragraph twenty-one (21) shall not be applicable to any other termination provisions contained elsewhere in this License.

22. Where provision is made herein for notice to be given in writing, the same may be given by mailing a copy of such notice to Licensee by registered mail, addressed to the address hereinabove or any such address as shall be filed with the Manager, or by delivering a copy of said notice to Licensee or any other person in charge of the vending operation authorized hereunder.

23. Upon the expiration or earlier termination of this License, Licensee shall quit, surrender, and deliver the vending location as well as surrounding areas in as good condition as when received and remove all personal property from the same.

24. Licensee, may, in the discretion of the Manager, be relieved in whole or in part of any or all obligations of this License for such periods of time as the Manager may deem proper upon written application showing circumstances beyond Licensee's control and warranting such relief.

25. In carrying out the terms and conditions of this License, Licensee is an independent contractor and is not an agent or employee of the City. Nothing contained in this License shall create or be construed as creating a partnership, joint venture, or employee relationship between the City and Licensee. No employee or other representative of the City shall have a personal or financial interest, direct or indirect, as a contracting party or otherwise, in the performance of this License.
26. The City shall not be deemed to have waived any right, power, privilege, or remedy unless such waiver is in writing and duly executed by the City. No failure or delay in the exercise of any right or remedy shall be construed as a waiver of such right or remedy, and no partial exercise of any right or remedy shall preclude the further exercise of such right or remedy.
27. Should Licensee fail to comply with any of the provisions of this License, the City may institute any action, suit or proceeding to enforce the terms of this License or to collect any amounts due hereunder, and the City shall be entitled to reimbursement from Licensee for all costs and expenses reasonably incurred in enforcing its rights hereunder, including but not limited to, collection of all court costs and reasonable attorneys' fees.
28. If any provision of this License shall be declared illegal, void, or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect. This License shall be governed by and construed in accordance with the laws of North Carolina.
29. This License shall not be modified or otherwise amended except in writing signed by the parties hereto.
30. Licensee shall not, on the grounds of race, color, creed, sex, age, religion, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise comply with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, as may be amended.
31. Licensee shall pay or discharge prior to delinquency all taxes and other charges assessed against or levied upon it or its personal property.
32. Licensee shall keep or cause to be kept complete records of the business it conducts or transacts arising from this License as well as any additional records reasonably requested by the Manager and, upon request, provide any such records or reports that may be required by the Manager.

IN WITNESS WHEREOF, after due authority given, the parties hereto have executed this License the day and year first above written.

CITY OF WASHINGTON

LICENSEE

City Manager

Manager of Parks and Recreation Department

Stewart Parkway Vending Locations

Established 2015





REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: July 13, 2015
Subject: Keys Landing CDBG Grant Claw Back
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Budget Ordinance Amendment to provide funding for the Keys Landing CDBG Grant claw back.

BACKGROUND AND FINDINGS:

The third installment of the Keys Landing CDBG grant claw back in the amount of \$75,000 was due July 1, 2015. Construction is complete on one non-qualifying LMI household and construction on two homes is nearing completion.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Budget Ordinance Amendment

City Manager Review: MR Concur _____ Recommend Denial _____ No Recommendation
7/7 Date

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2015-2016**

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$75,000 in the account Fund Balance Appropriated, account number 10-00-3991-9910.

Section 2. That the following account number in the Miscellaneous department of the General Fund appropriations budget be increased in the amount indicated to pay the CDBG grant claw back for the Keys Landing project:

10-00-4400-5701	Miscellaneous Expense	\$ 75,000
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Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

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

Adopted this the 13th day of July, 2015.

MAYOR

ATTEST:

CITY CLERK



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: July 13, 2015
Subject: CWSRF Sewer Grant Project Ordinance
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Grant Project Ordinance for the recently awarded Clean Water State Revolving Fund sewer improvement program.

BACKGROUND AND FINDINGS:

The City applied for and was awarded a \$2,000,000 loan from the CWSRF program. \$500,000 of the total loan will be in the form of principal forgiveness, with the balance being at 0% interest.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Grant Project Ordinance
Award Letter

City Manager Review: *Bar* Concur _____ Recommend Denial _____ No Recommendation
2/7 Date

**A GRANT PROJECT ORDINANCE FOR
CWSRF SEWER GRANT
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2015-2016**

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

Section 1. The project authorized is for the Clean Water State Revolving Fund sewer improvement program.

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

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

74-90-4930-0405	Engineering	\$300,000
74-90-4930-0401	Loan fee	2,000
74-90-4930-4500	Construction	<u>1,698,000</u>
	Total	<u>\$2,000,000</u>

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

74-90-3480-8900	CWSRF Principal Forgiven	\$500,000
74-90-3480-3400	CWSRF Loan	<u>1,500,000</u>
	Total	<u>\$2,000,000</u>

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

Section 6. Funds may be advanced by the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grant agencies in an orderly and timely manner.

Section 7. The Finance Director is directed to report, on a monthly basis, on the financial status of each project element in Section 3 and on the total grant revenues received or claimed.

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

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

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

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

This the 13th day of July, 2015.

Mayor

Attest:

City Clerk



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Donald R. van der Vaart
Secretary

June 3, 2015

The Honorable Mac Hodges, Mayor
City of Washington
PO Box 1988
Washington, NC 27889

**SUBJECT: Clean Water State Revolving Fund
Letter of Intent to Fund
Sanitary Sewer
March 2015 Application Cycle
Project No.: CS370521-06**

Dear Mayor Hodges:

The Division of Water Infrastructure has reviewed your application to the Clean Water State Revolving Fund (CWSRF) program, and the State Water Infrastructure Authority has approved your project as eligible to receive a low-interest loan. The total loan amount will be \$2,000,000. \$500,000 of the total loan will be in the form of principal forgiveness, with the balance being at 0% interest. A loan fee of 2% will be invoiced after bids have been received.

Please note that this intent to fund is contingent on approval of the loan through the Local Government Commission and on meeting all of the following milestones:

<u>Milestone</u>	<u>Date</u>
Engineering Report Submittal	October 1, 2015
Engineering Report Approval	March 1, 2016
Bid and Design Package Submittal	September 1, 2016
Bid and Design Package Approval	January 3, 2017
Advertise Project, Receive Bids, Submit Bid Information, <u>and</u> Receive Authority To Award	May 1, 2017
Execute Construction Contract(s)	June 1, 2017

The first milestone is the submittal of an Engineering Report by close of business on October 1, 2015. The Engineering Report must be developed using the updated guidance found on our website (<http://portal.ncdenr.org/web/wi/cleanwater>). This updated version will only be available after June 1, 2015. **Failure to meet any milestone may result in the forfeiture of CWSRF funding for the proposed project.**

The Honorable Mac Hodges, Mayor
June 3, 2015
Page Number 2

Upon detailed review of the project during the funding process, it may be determined that portions of your project are not eligible for CWSRF funding and the total loan amount may be reduced. Additionally, changes in the scope or priority points awarded – based on additional information that becomes apparent during project review – may also result in changes to the total loan amount and loan terms.

CWSRF Project Process Training on June 24, 2015 at Rural Economic Development Center

Please note that we will be offering training on the funding process with detailed information on Engineering Report development. This training will be held on Wednesday, June 24, 2015 at 1.00 p.m. at the Rural Economic Development Center (4021 Cary Drive, Raleigh, NC). While this is an optional training, we strongly encourage you (or your representative) and your engineer to attend as we will be discussing the changes to the program including requirements mandated by 2014 Water Resources Reform Development Act (WRRDA).

Davis-Bacon Requirements and American Iron and Steel Provisions

Projects funded through the CWSRF program must comply with Davis-Bacon wage requirements and American Iron and Steel provisions. You can find standard specifications covering these requirements on our website (<http://portal.ncdenr.org/web/wi/cleanwater/design>).

Brooks Act Compliance

Projects funded through the CWSRF program must comply with the federal Brooks Act for the selection of architectural and engineering services. CWSRF projects cannot be exempted from qualification based selection of these services under N.C.G.S. 143-64.32. Any services provided that were not selected in compliance with federal requirements will be ineligible for reimbursement.

General Assembly Notification Requirements

In accordance with G.S. 120-157.1 through 157.9, enacted on June 24, 2011, local government units with projects that require debt to be issued greater than \$1,000,000 must submit a letter to Committee Chairs, Committee Assistant, and the Fiscal Research Division of the General Assembly at least 45 days prior to presentation before the Local Government Commission. You are responsible for submitting this letter and providing a copy to the Division of Water Infrastructure upon receipt of this approval letter.

An overview of our CWSRF funding process is available on our website (<http://portal.ncdenr.org/web/wi/cleanwater>). If you have questions, please contact Seth Robertson, PE, Chief, State Revolving Fund Section at 919-707-9175.

Sincerely,



Kim H. Colson, P.E., Director
Division of Water Infrastructure, NCDENR

CC: Mr. M. Blaine Humphrey, PE, Rivers & Associates, Inc.
Seth Robertson, PE
Mark Hubbard, PE
CWSRF File



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Kristi Roberson, Parks & Recreation Manager
Date: July 13, 2015
Subject: Authorize Recreation Manager to apply for the Recreational Trails Program Grant Pre-Application 2016
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that City Council authorize the Recreation Manager to apply for the Recreational Trails Program Grant Pre-Application in the amount of \$26,000. This grant pre-application is to construct a canoe/kayak launch at the Havens Gardens Boat Ramp. This would be an access point for the Tar-Pamlico Blue Trail and connect two existing trails. The grant requires a 25% cash or in-kind match.

The pre-application is due on July 14, 2015, if approved we will be invited to complete the full application, and grants will be awarded in December 2015.

BACKGROUND AND FINDINGS:

The Recreation Department has been working diligently with Sound Rivers Inc, formally PTRF, the Beaufort County Chamber of Commerce, and the Tourism Development Authority. We have applied for this grant and similar funding sources. The project is ready to build and we already have the CAMA permit for this project.

There is a 25% cash or in-kind match.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

City Manager Review: 150 Concur ___ Recommend Denial ___ No Recommendation
7/7 Date



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 07-02-15
Subject: Amend Chapter 18, Section 123 – Designated Prohibited Parking Areas.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move Council adopt an ordinance to amend Chapter 18, Section 123, Designated prohibited parking areas, in reference to no parking on West Main Street adjacent to the Peterson Building parking lot, as outlined in the attached ordinance, with an effective date of July 14, 2015.

BACKGROUND AND FINDINGS:

This request is to prohibit parking on the north side of Main Street twenty (20) feet west of the driveway to the Peterson Building parking lot. Currently it is extremely difficult to see oncoming traffic west of this driveway when exiting the parking lot.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Attached ordinance amendment.

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

**AN ORDINANCE TO AMEND CHAPTER 18, ARTICLE V,
SECTION 18-123: DESIGNATED PROHIBITED PARKING AREAS,
OF THE WASHINGTON CITY CODE**

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

Section 1. That Chapter 18 Section 18-123 – Designated prohibited parking areas, be amended to add the following:

Main Street (north side), twenty (20) feet west of the driveway to the Peterson Building.

Section 2. All ordinances in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall become effective July 14, 2015.

This the 13th day of July 2015.

Mayor

ATTEST:

City Clerk



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Allen Lewis, Public Works Director *aw*
Date: 07-02-14
Subject: Authorize the Manager to Execute Professional Services Agreement with Ark Consulting Group, PLLC for Drainage Improvements (\$53,300).

Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that Council authorize the Manager to execute the attached Professional Services Agreement with Ark Consulting Group, PLLC for drainage improvements and approve the corresponding purchase order.

BACKGROUND AND FINDINGS:

The 2015-2016 budget included funding for additional needed drainage improvements around Washington. These included improvements in the Jack's Creek drainage basin between 7th and 9th Streets and near Willow Street as well as improvements between Alderson Road and Reed Drive in Smallwood. The areas between 7th and 9th Streets and Alderson Road and Reed Drive were previously identified in the drainage study that was done in 2007. The area just south of Willow Street is proposed to be done due to a deteriorated retaining wall on either side of a gut off of Jack's Creek. With the execution of this agreement, Ark Consulting Group will perform the engineering services necessary including design, bid and construction observation and administration services necessary for this work to be completed.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account 34-90-5710-7400) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Attached professional services agreement.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: July 13, 2015 (if applicable)
 City Manager Review: *AWL* Concur _____ ~~Page 82 of 152~~ Denial _____ No Recommendation 7/7 Date

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AMERICAN SOCIETY OF CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A Practice Division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of June 19 , 2015 (“Effective Date”) between
City of Washington, NC (“Owner”) and
Ark Consulting Group, PLLC (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

2015 Drainage Improvements (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

Provide Engineering services for the design of storm drainage improvements in Smallwood Subdivision, Jack’s Creek between 7th Street and 9th Street and Jack’s Creek southwest of Willow Street.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.

- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.

- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer’s services.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer’s services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and regulations.
 - 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner’s responsibilities or to Engineer’s scope of services, times of performance, or compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the “Standard General Conditions of the Construction Contract” as prepared by the Engineers Joint

Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree to use other general conditions by specific reference in Exhibit J.

- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.

6.03 *Use of Documents*

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.

- B. Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- F. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.

- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Engineer shall deliver certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

- A. *Suspension:*
 - 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
 - 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.
- B. *Termination:* The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

- 1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
- 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly

attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
 - 3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."

- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

- E. *Accrual of Claims*: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative.
- E. Exhibit G, Insurance.
- F. Exhibit I, Limitations of Liability.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: City of Washington

Engineer: Ark Consulting Group, PLLC

By: Mac Hodges

By: Bryan C. Fagundus

Title: Mayor

Title: Principal

Date: _____

Date: June 19, 2015

Signed: _____

Signed: 

Engineer License or Firm's Certificate No. P-1199

State of: North Carolina

Address for giving notices: _____

Address for giving notices: _____

102 E. Second Street

3280 Charles Blvd. | Suite B

Washington, NC 27889

Greenville, NC 27858

Designated Representative (Paragraph 8.03.A):

Allen Lewis

Title: Public Works Director

Phone Number: 252-975-9302

Facsimile Number: _____

E-Mail Address: alewis@washingtonnc.gov

Designated Representative (Paragraph 8.03.A):

Bryan C. Fagundus

Title: Principal

Phone Number: 252-558-0888

Facsimile Number: 252-565-8839

E-Mail Address: bryan@arkconsultinggroup.com

APPROVED AS TO FORM:

Franz F. Holscher, City Attorney

PRE-AUDIT CERTIFICATION:

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

Matt Rauschenbach, Chief Financial Officer, Assistant City Manager

This is **EXHIBIT A**, consisting of 13 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 19, 2015.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 Preliminary Design Phase

- A. After acceptance by Owner of the Report and any other deliverables, selection by Owner of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by Owner, and upon written authorization from Owner, Engineer shall:
1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project.
 2. Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 3. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
 4. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in collating the various cost categories which comprise Total Project Costs.
 5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
 - a. Topographic Survey
 - b. Preliminary Design Drawings
 - c. Preliminary Technical Specifications
 - d. Preliminary Front End Specifications
 6. Furnish 3 review copies of the Preliminary Design Phase documents and any other deliverables to Owner within 75 calendar days of authorization to proceed with this phase, and review them with Owner. Within 21 calendar days of receipt, Owner shall submit to Engineer any comments regarding the Preliminary Design Phase documents and any other deliverables.

7. Revise the Preliminary Design Phase documents and any other deliverables in response to Owner's comments, as appropriate, and furnish to Owner 3 copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables within 30 calendar days after receipt of Owner's comments.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other deliverables have been delivered to Owner.

A1.02 *Final Design Phase*

- A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.
 3. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.
 4. Perform or provide the following additional Final Design Phase tasks or deliverables:
 - a. Final Design Plans
 - b. Final Technical Specifications
 - c. Final Front End Specifications
 - d. Permit Documents for Owner Execution
 5. Prepare and furnish Final Design Phase documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents within 60 calendar days of authorization to proceed with this phase. Within 30 days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.
 6. Revise the Final Design Phase documents in accordance with comments and instructions from the Owner, as appropriate, and submit 3 final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within 30 calendar days after receipt of Owner's comments and instructions.

- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by Paragraph A1.03.A.6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.03 *Bidding or Negotiating Phase*

- A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and upon written authorization by Owner to proceed, Engineer shall:
 - 1. Assist Owner in advertising for and obtaining bids or proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.
 - 2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.
 - 3. Provide information or assistance needed by Owner in the course of any negotiations with prospective contractors.
 - 4. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 - 5. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
 - 6. Attend the Bid opening, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
 - 7. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:

- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.04 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D.
 3. *Selecting Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the services identified in Exhibit B, Paragraph B2.01.0.
 4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
 5. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
 6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
 7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but

rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.

- b. The purpose of Engineer's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents

and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

12. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests*: Require such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.
14. *Disagreements between Owner and Contractor*: Render formal written decisions on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each duly submitted Claim by Owner or Contractor, and in writing either deny such Claim in whole or in part, approve such Claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate. In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
15. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents).

- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.05.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such review by Engineer will be limited as provided in Paragraph A1.05.A.11.
17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Project to determine if the Work is substantially complete. If after considering any objections of Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor.
18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables: *None*.
19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.05.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written

recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.

- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

PART 2 – ADDITIONAL SERVICES

A2.01 Additional Services Requiring Owner's Written Authorization

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Engineer or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in Paragraph A1.01.A.4.
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.

6. Providing renderings or models for Owner's use.
7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Services attributable to more prime construction contracts than specified in Paragraph A1.03.D.
10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office.
11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
15. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.
18. Preparation of operation and maintenance manuals.

19. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
20. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
21. Assistance in connection with the adjusting of Project equipment and systems.
22. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
23. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
24. Overtime work requiring higher than regular rates.
25. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.

A2.02 Additional Services Not Requiring Owner's Written Authorization

- B. Engineer shall advise Owner in advance that Engineer is will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.
 1. Services in connection with work change directives and change orders to reflect changes requested by Owner.
 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
 3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.
6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
7. Services during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.
8. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.

While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

Ark Consulting Group, PLLC will provide the following Engineering, Surveying and Technical Services as may be deemed necessary in the design and development of the project.

Provide professional representation in those areas or phases of the project to which this agreement applies and will give consultation and advice to OWNER and/or OWNER'S representatives during the performance of each phase as ENGINEER may deem necessary.

Topographic Survey (Survey Limits are delineated and attached to this agreement)

1. Location of existing structures within the project area.
2. Locate and describe fences, walls and other above ground features.
3. Show recorded or otherwise known easements and/or rights-of-way and identify owners (holders) if known.
4. One foot contour interval; error shall not exceed one-half contour interval.
5. Spot elevations to be taken at intersections and at 50 feet on center along curb, sidewalks, edge of pavement and natural ground within survey limits.
6. Provide location of existing structures, paving and improvements from above ground features, including top elevation and spot elevations at corners.
7. Provide utility information from record drawing and above ground features including size and type within the survey limits.
8. Provide location of existing trees and landscape features.
9. Vertical Datum to be NAVD 88 for the work in the Jack's Creek basin
10. Horizontal Datum to be a magnetic bearing for work in the Jack's Creek basin.
11. Vertical Datum to be tied to the prior work performed in Smallwood Subdivision.
12. Horizontal Datum in the Smallwood Subdivision to be tied to the subdivision boundary.

Construction Documents

1. Provide construction drawings for grading, drainage and ditch improvements.
2. Provide contract documents and technical specifications for proposed improvements including allowance items, alternate items and/or unit costs items.
3. Meet with Owner for project coordination meetings.
4. Provide Opinion of Probable Construction Cost.
5. Meet with Owner to review Construction Documents and make revisions deemed necessary.
6. Secure necessary permits and approvals.

Bidding and Negotiations Phase:

1. Solicit Contractor Bids on behalf of Owner.
2. Conduct Pre-Bid Conference with Owner and Contractors.
3. Provide clarifications as required.
4. Conduct Bid Opening.
5. Prepare Owner / Contractor contract documents.

Construction Administration Phase (4 month duration):

1. Conduct Pre-Construction Conference with Owner and Contractor.
2. Provide a Resident Project Representative for part-time inspection (two – 8 hour days per week) of site during construction, as well as be available to meet contractor on-site to review questions.
3. Attend 8 bi-weekly Progress Meetings.
4. Meet with Owner and Contractor to review pricing for Change Order Requests.
5. Prepare Change Order documents.
6. Attend the pre-final and final inspections for each phase of the project.

Project Closeout

1. Provide record drawings and information associated with project close-out.

Additional Services

1. Submittal / Permit Fees.
2. Design of off-site improvements such as utility, storm drainage or roadway improvements.
3. Geotechnical and/or environmental services.
4. Easement Mapping or Acquisition.

SUBCONSULTANTS

Surveying

Spruill and Associates, Inc.
Stephen N. Spruill, PLS
2747 East Tenth Street
Greenville, North Carolina 27858

Structural Engineering

RPA Engineering, PA
Mark S. Roy, PE
102 Regency Boulevard
Greenville, NC 27834

City of Washington

2015 Storm Drainage Improvements
Smallwood Subdivision

Legend

 Block Group: 370139904004



Google earth

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Image U.S. Geological Survey

July 13, 2015
Page 118 of 152

1000 ft



City of Washington

2015 Storm Drainage Improvements
Upper Jack's Creek

Legend

 Block Group: 370139904004



Project Area

Google earth

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400 ft

City of Washington

2015 Storm Drainage Improvements
Willow Street Canal

Legend

 Block Group: 370139904004



Project Area

Google earth

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Image U.S. Geological Survey

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100 ft

This is **EXHIBIT B**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 19, 2015.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 - 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- J. Place and pay for advertisement for Bids in appropriate publications.
- K. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
- M. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.

- N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- O. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- Q. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- R. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- S. Perform or provide the following additional services: *[Here list any such additional services]*.
 - 1. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.
- A. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 375 days. If such period of service is extended, the compensation amount for Engineer's services shall be appropriately adjusted.

This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated June 19, 2015.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01.1 Compensation for Basic Services (other than Resident Project Representative) -Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A **and Paragraph C2.01.1**, except for services of Engineer’s Resident Project Representative, if any, as follows:

1. A Lump Sum amount of \$ 53,300.00 based on the following estimated distribution of compensation:

- | | |
|----------------------------------|---------------------|
| a. Study and Report Phase | \$ <u>N/A</u> |
| b. Preliminary Design Phase | \$ <u>22,590.00</u> |
| c. Final Design Phase | \$ <u>9,930.00</u> |
| d. Bidding and Negotiating Phase | \$ <u>1,900.00</u> |
| e. Construction Phase | \$ <u>18,880.00</u> |
| f. Post-Construction Phase | \$ <u>N/A</u> |

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period.

B. *Period of Service:* The compensation amount stipulated in Compensation Packet BC-1 is conditioned on a period of service not exceeding 375 calendar days. If such period of service is extended, the compensation amount for Engineer’s services shall be appropriately adjusted.

**COMPENSATION PACKET AS-1:
Additional Services – Standard Hourly Rates**

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

C2.05 Compensation for Additional Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Additional Services, if any, as follows:

1. *General:* For services of Engineer's personnel engaged directly on the Project pursuant to Paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under Paragraph A2.01.A.20, (which if needed shall be separately negotiated based on the nature of the required consultation or testimony) an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus related Reimbursable Expenses and Engineer's Consultant's charges, if any.

B. *Compensation For Reimbursable Expenses:*

1. For those Reimbursable Expenses that are not accounted for in the compensation for Basic Services under Paragraph C2.01 and are directly related to the provision of Additional Services, Owner shall pay Engineer at the rates set forth in Appendix 1 to this Exhibit C.
2. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment.
3. The amounts payable to Engineer for Reimbursable Expenses, if any, will be the Additional Services-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to such Additional Services, the latter multiplied by a factor of 1.15.
4. The Reimbursable Expenses Schedule will be adjusted annually (as of January 1) to reflect equitable changes in the compensation payable to Engineer.

C. *Other Provisions Concerning Payment For Additional Services:*

1. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor of 1.15.

2. *Factors:* The external Reimbursable Expenses and Engineer's Consultant's Factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.
3. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This is **Appendix 1 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 19, 2015.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are:

8.5" x 11" Black & White Copies	<u>\$0.06</u> /each
8.5" x 14" Black & White Copies	<u>\$0.10</u> /each
11" x 17" Black & White Copies	<u>\$0.25</u> /each
All above listed sizes of Color Copies	<u>\$1.00</u> /each
Color Plot all sizes	<u>\$2.50</u> per square foot
18" x 24" Black & White Bond Prints	<u>\$1.25</u> /each
18" x 24" Black & White Scans	<u>\$1.25</u> /each
24" x 36" Black & White Bond Prints	<u>\$2.00</u> /each
24" x 36" Black & White Scans	<u>\$2.00</u> /each
30" x 42" Black & White Bond Prints	<u>\$3.00</u> /each
30" x 42" Black & White Bond Scans	<u>\$3.00</u> /each
Larger size Plan Prints	<u>\$0.50</u> per square foot
Mylar Prints - 18" x 24"	<u>\$12.50</u> /each
Mylar Prints - 24" x 36"	<u>\$20.00</u> /each
Mylar Prints - 30" x 42"	<u>\$30.00</u> /each
CD of Scans	<u>\$5.00</u> /each
Meals and Lodging	at cost
Miscellaneous Expenses	at cost
External Reimbursable Expenses	at cost x 1.15

This is **Appendix 2 to EXHIBIT C**, consisting of 1 page, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 19, 2015.

Standard Hourly Rates Schedule

A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 2 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. *Schedule:*

Hourly rates for services performed on or after the date of the Agreement are:

<u>EMPLOYEE CLASSIFICATION:</u>	<u>HOURLY RATES:</u>
Principal	\$135.00
Project Manager	\$120.00
Project Engineer	\$110.00
Design Engineer	\$95.00
Designer	\$75.00
CAD Technician	\$55.00
Project Surveyor	\$90.00
Party Chief	\$60.00
Surveyor Technician	\$45.00
Resident Project Representative	\$60.00
Intern Tech	\$30.00
Administrative Assistant	\$40.00

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree.
- B. Through RPR's observations of Contractor’s work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor’s work in progress, supervise, direct, or have control over Contractor’s Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor’s work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor’s performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor’s failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer’s representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR’s actions. RPR’s dealings in matters pertaining to the Contractor’s work in progress shall in general be with Engineer and Contractor. RPR’s dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 - 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 - 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. *Liaison:*

- a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
- a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
- a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer. Daily reports shall be kept based upon observed daily operations of the contractor per NCDOT standards and specifications. All needed forms will be identified and supplied by Owner prior to performing work to insure correct documentation is used.
- c. Record all materials received per NCDOT standard specifications and in accordance with the NCDOT Construction Manual.
- d. Maintain a pay record book documenting pay items per NCDOT standards, specifications, and the NCDOT Construction Manual.
- e. Coordinate all testing with a certified lab from the provided contract information from the Owner.
- f. Conduct all contractor and subcontractor wage interviews that are working on the site from form identified by Owner.
- g. Where appropriate and identified by scope, conduct verification testing per NCDOT standards, specifications and the NCDOT Construction Manual.
- h. Observe and inspect subgrade operations, including density tests (if necessary).

- i. Provide concrete testing, where appropriate and identified by scope, per NCDOT standards and specifications. All testing technicians will be certified by NCDOT. Concrete laboratory testing is included in this scope.
- j. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- k. Maintain records for use in preparing Project documentation.
- l. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

- a. Follow design plans to calculate quantities and document material received in accordance with NCDOT standard practices and will be based upon the latest version of the Standard Specifications and Project Special Provisions (2012).
- b. Owner to provide the project special provisions for the project using the most up-to-date version available.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including “or-equal” items).
2. Exceed limitations of Engineer’s authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor’s work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated June 19, 2015.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- | | |
|--|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident: | <u>\$1,000,000</u> |
| 2) Disease, Policy Limit: | <u>\$1,000,000</u> |
| 3) Disease, Each Employee: | <u>\$1,000,000</u> |
| c. General Liability -- | |
| 1) Each Occurrence (Bodily Injury and Property Damage): | <u>\$1,000,000</u> |
| 2) General Aggregate: | <u>\$2,000,000</u> |
| d. Excess or Umbrella Liability -- | |
| 1) Each Occurrence: | <u>\$2,000,000</u> |
| 2) General Aggregate: | <u>\$2,000,000</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident | <u>\$1,000,000</u> |
| f. Professional Liability -- | |
| 1) Each Claim Made | <u>\$1,000,000</u> |
| 2) Annual Aggregate | <u>\$2,000,000</u> |
| g. Other (specify): | \$ <u> </u> N/A |

B. *Additional Insureds:*

1. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

Limitations of Liability

Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties:

- A. *Limitation of Engineer's Liability*
1. *Engineer's Liability Limited to Amount of Insurance Proceeds:* Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$50,000.00.
- B. *Indemnification by Owner:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the Owner with respect to this Agreement or to the Project.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Matt Rauschenbach, Administrative Services Director/C.F.O.
Date: July 13, 2015
Subject: Declaration of Official Intent to Reimburse
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Declaration of Official Intent to Reimburse for Fiscal Year 2015/2016 installment purchase expenditures incurred prior to the issuance of debt.

BACKGROUND AND FINDINGS:

Installment financing is budgeted for January 2016. This declaration authorizes the City to reimburse itself for Council approved expenditures prior to the issuance of debt. It is anticipated that requests will be made for some purchases prior to the issuance of debt due to necessity, the ability to complete this fiscal year, and to avoid price increases.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

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

SUPPORTING DOCUMENTS

Declaration of Official Intent to Reimburse

City Manager Review: *MR* Concur Recommend Denial No Recommendation
7/7 Date

DECLARATION OF OFFICIAL INTENT TO REIMBURSE

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

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

1. **Expenditures to be Incurred.** The issuer anticipates incurring expenditures (the "Expenditures") for budgeted installment purchases (the "Projects").
2. **Plan of Finance.** The issuer intends to finance the costs of the Projects with the proceeds of debt to be issued by the Issuer (the "Borrowing"), the interest on which is to be excluded from gross income for Federal income tax purposes.
3. **Maximum Principal Amount of Debt to be Issued.** The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Projects is \$527,500.
4. **Declaration of Official Intent to Reimburse.** The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

Adopted this the 13th day of July, 2015

Mayor

Seal:

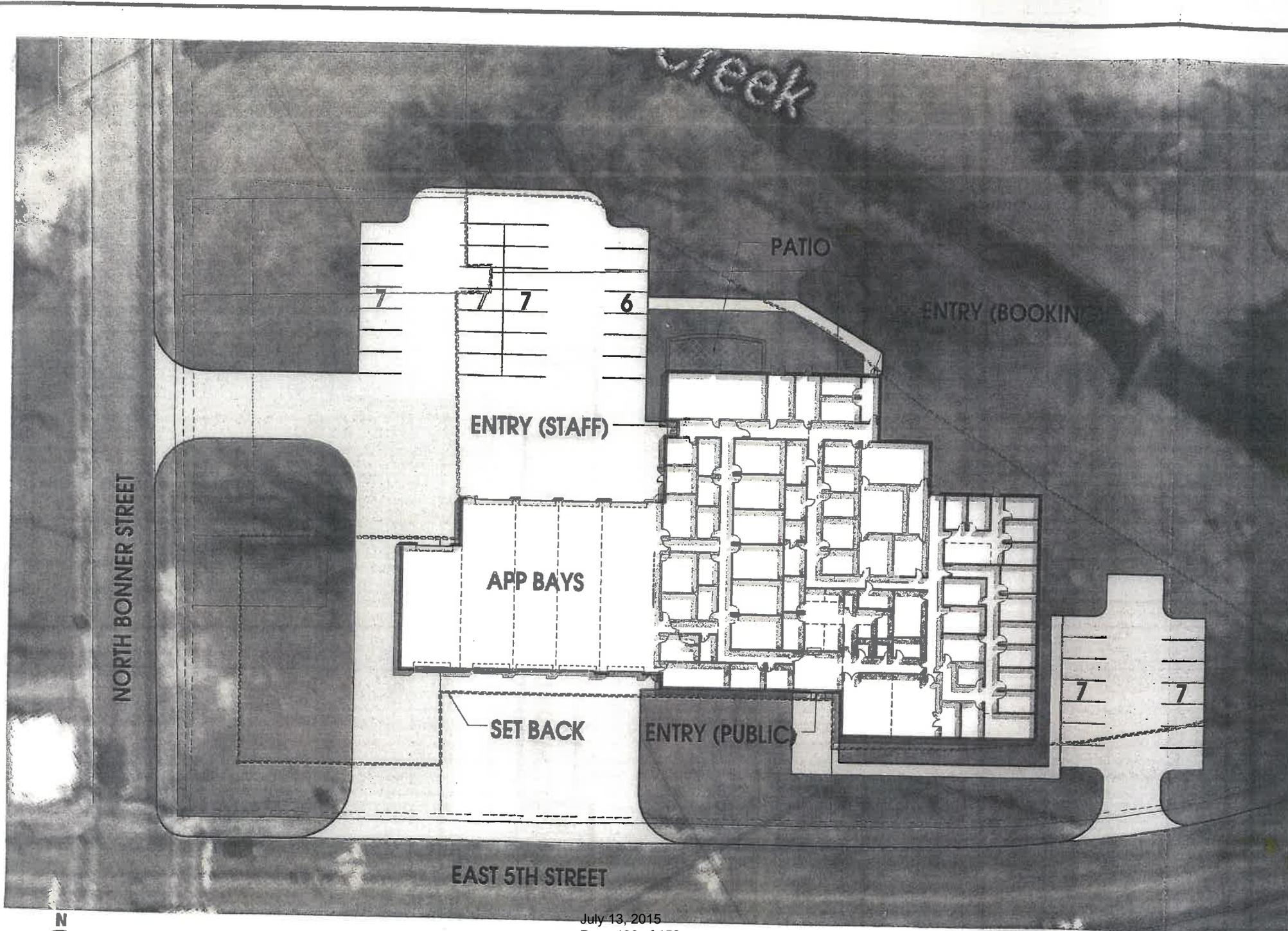
City Clerk

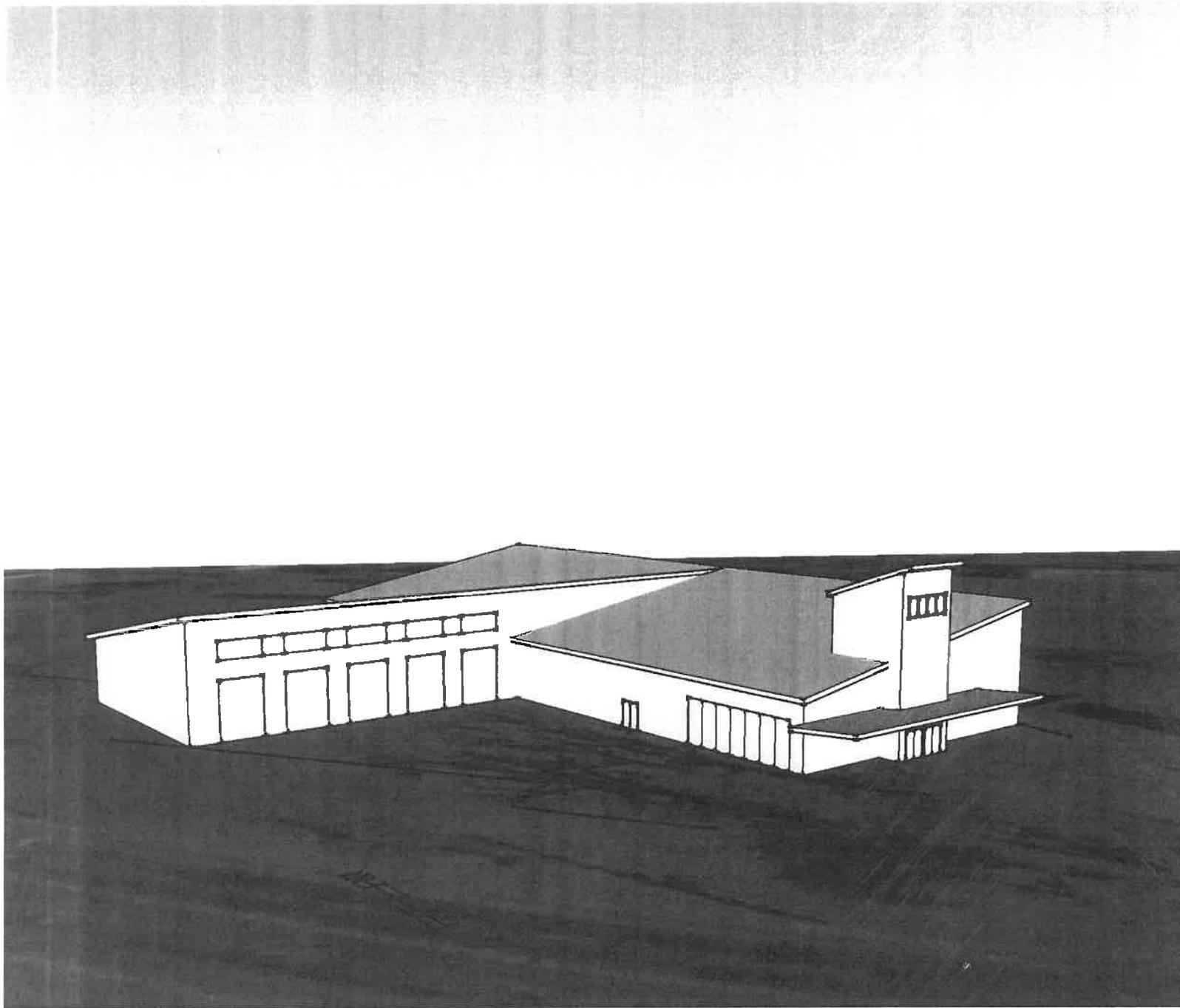


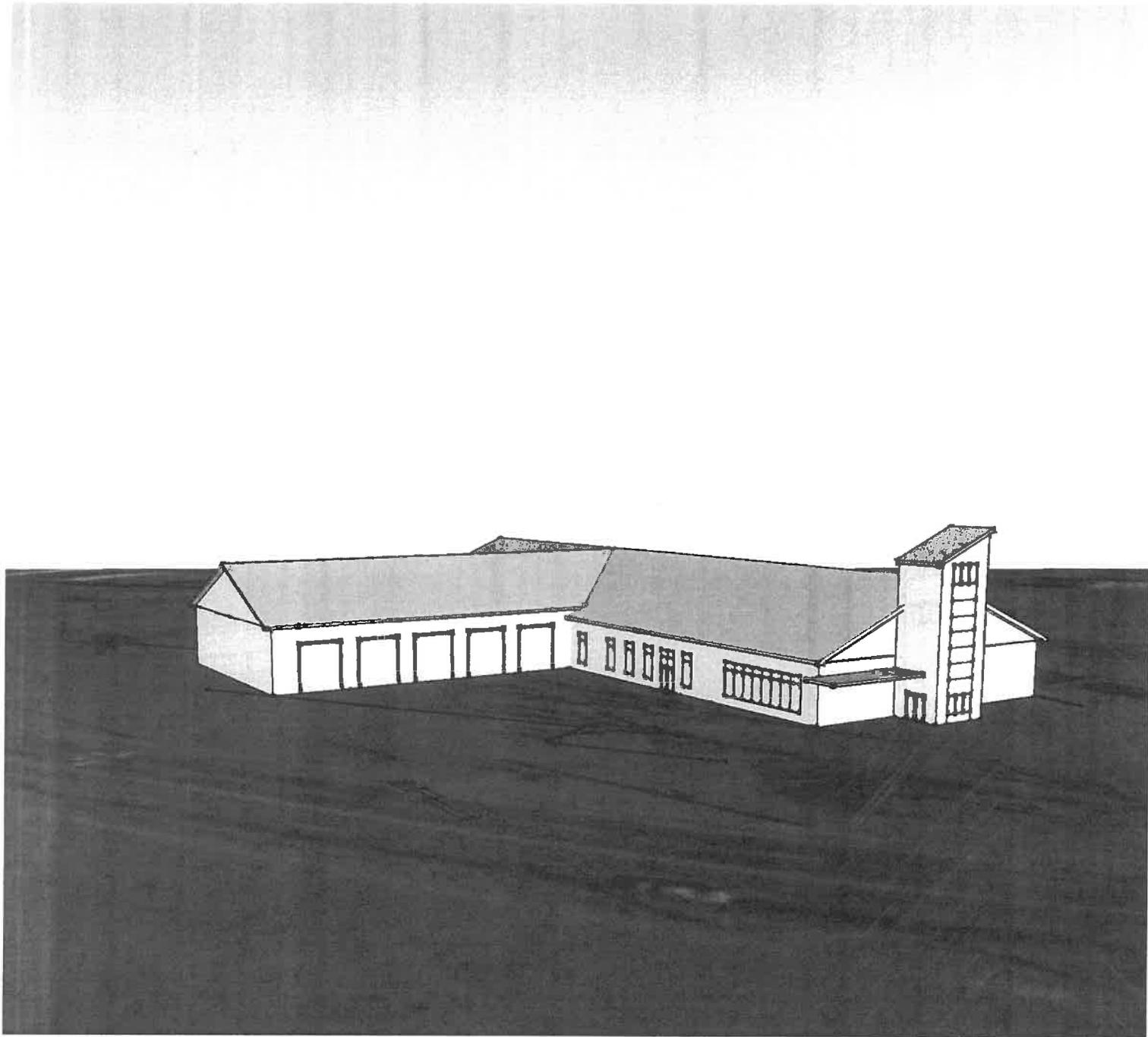
MEMORANDUM

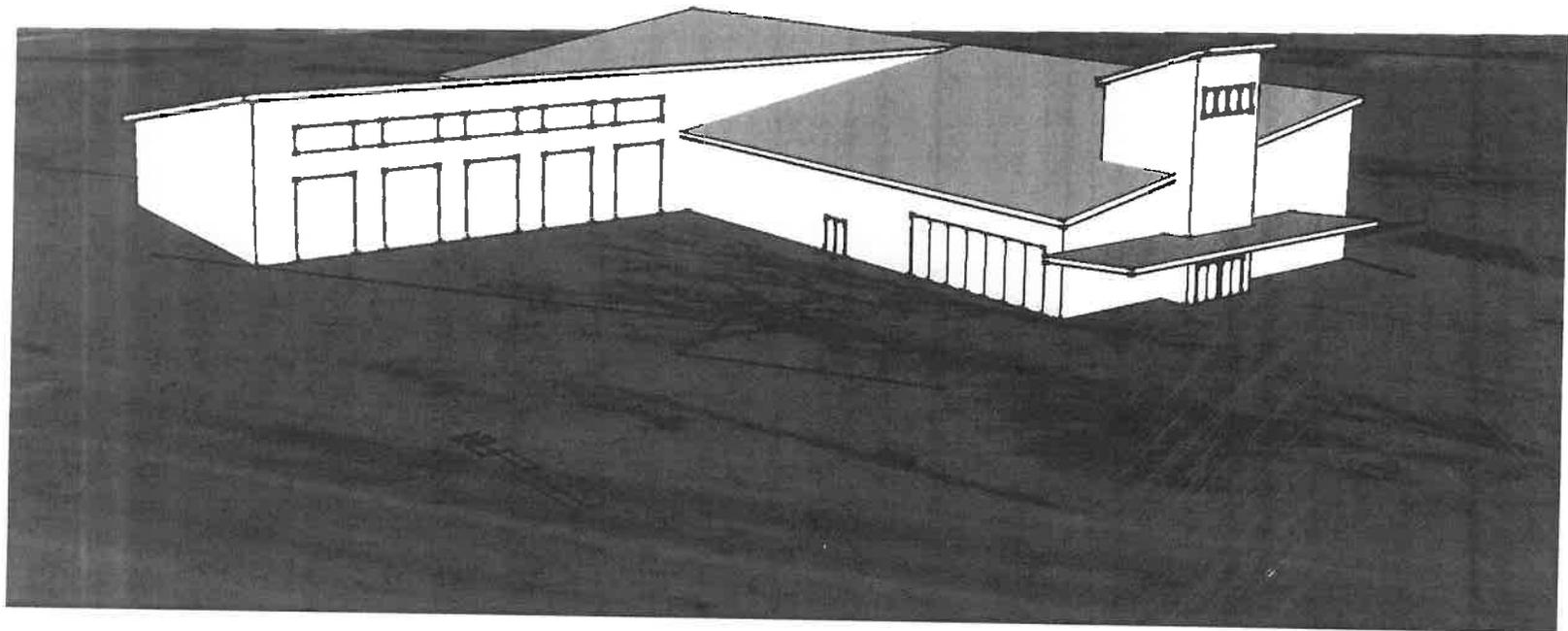
To: Mayor Hodges & Members of City Council
From: Bobby Roberson, Interim City Manager *BR*
Date: July 7, 2015
Subject: Proposed Police/Fire/EMS Station

The report has been completed for the proposed new facility at the intersection of North Bonner and East 5th Streets. I have included several front elevations for your review along with a proposed estimated budget. All of the property is owned by the City and was purchased through CDBG and the FEMA buy out programs. The discussion should focus on the next step to implement the next phase for the building. This proposed structure is to house both the Police and Fire/Rescue/EMS, as submitted.











MEMORANDUM

To: Mayor Hodges & Members of City Council
From: Bobby Roberson, Interim City Manager *BR*
Date: July 7, 2015
Subject: Vehicles in CIP

The City of Washington will be purchasing vehicles in the up-coming fiscal year 2015-2016. In years past, we have purchased the majority of our automobiles under State contract below the \$20,000 amount. Because the price has been below the \$20,000 threshold, the City has purchased the automobiles and report the purchase as consent agenda items.

The City staff would like to continue this process in the up-coming fiscal year.



MEMORANDUM

To: Mayor Hodges & Members of City Council
From: Bobby Roberson, Interim City Manager *BR*
Date: July 7, 2015
Subject: Monday, July 27, 2015 Council meeting

The City staff is recommending that the regular July 27, 2015 meeting of City Council not be scheduled. The majority of the outstanding action items have been presented in this agenda.



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Bobby Roberson, Interim City Manager
Date: July 10, 2015
Subject: Renew Agreement with Retail Strategies, LLC
Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I move that the City Council authorize the Interim City Manager to renew and sign “An Agreement to Provide Professional Consulting and Related Services” with Retail Strategies, LLC to assist the City of Washington in retail recruitment and retention efforts for a cost of \$15,000 for fiscal year 2015-2016.

BACKGROUND AND FINDINGS:

As discussed in previous City Council meetings, it is our intention to develop a retail/commercial recruitment and retention program. Retail Strategies is a highly successful and diverse entity and is very capable of assisting the City as well as commercial entities to locate to the Washington area. The request renews the current agreement for one additional year. The current agreement is set to expire on July 31, 2015.

PREVIOUS LEGISLATIVE ACTION

Previous agreement approved on July 23, 2012 with term to end July 31, 2015.

FISCAL IMPACT

Currently Budgeted (Account 10-00-4650-0400) Requires additional appropriation No Fiscal Impact



REQUEST FOR CITY COUNCIL ACTION

To: Mayor Hodges & Members of the City Council
From: Bobby Roberson, Interim City Manager
Date: July, 13 2015
Subject: Post-Offer Employment Testing (POET) & Post Employment Fit for Duty Testing

Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

I move that the City Council authorize the Interim City Manager to sign the Agreement with Select Physical Therapy Holdings, Inc. and RehabClinics, Inc. to provide functional employment testing for the City of Washington.

BACKGROUND AND FINDINGS:

On June 8, 2015 the City Council approved adoption of the Post-Offer Employment Testing (POET) & Post Employment Fit for Duty Testing Policies. The testing will be conducted within the protocols and procedures of the WorkSTEPS corporation by Select Physical Therapy.

PREVIOUS LEGISLATIVE ACTION:

FISCAL IMPACT:

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

SUPPORTING DOCUMENTS:

Agreement by and between Select Physical Therapy Holdings, Inc. and RehabClinics, Inc and the City of Washington.

City Manager Review: Concur Recommend Denial No Recommendation
_____ Date

AGREEMENT

THIS AGREEMENT is by and between Select Physical Therapy Holdings, Inc. and RehabClinics, Inc. for and on behalf of its subsidiaries and affiliates, (“Provider”), WorkSTEPS[®], Inc., a Texas corporation located at University Business Park, 3019 Alvin Devane, Suite 150, Austin, Texas, 78741 (“WorkSTEPS”), and City of Washington, NC located at 102 E 2nd St, Washington, NC 27889 (“COMPANY”), collectively (“THE PARTIES”).

WHEREAS: COMPANY is desirous of implementing a functional employment testing program as a part of its work injury and disability management program, to, among other reasons, effectuate a reduction of on-the-job injuries by trying to determine if an applicant or employee can safely perform the essential functions of the job.

WHEREAS: WorkSTEPS has developed functional employment testing protocols and procedures that COMPANY desires to utilize for its functional employment testing program, and

WHEREAS: WorkSTEPS desires to assist COMPANY in implementing the WorkSTEPS functional employment-testing program,

THEREFORE THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS: Based on the functional employment test(s) and services that have been identified below the price for the test(s) and services shall be:

◆ Comprehensive Post Offer Functional Employment Test	\$175
◆ No Show Fee (24 hour cancellation required)	\$65

COMPANY agrees to pay Provider within thirty (30) days of receipt of an invoice for completed tests.

1. Job Analyses. Job Analyses is the foundation of the COMPANY’S functional employment testing program. A job analyses is a measurement of the physical demands and requirements of the essential functions of a specific job. Accurate and current job analyses are the COMPANY’S responsibility. Job Specific Authorization Forms that document essential function requirements must be executed by COMPANY’S representative and provided to WorkSTEPS before testing can begin. COMPANY managers should use professionals experienced in assisting with job analyses or other trained and certified ergonomic assessment specialists to assist in the preparation of job analyses and documentation of essential functions. The job analyses should be based on a close, careful examination of the specific job by an individual trained and competent in making the physical measurements of the essential functions of the specific job. The job analyses provides specific job content validity to COMPANY’s functional employment testing program, which seeks to simulate the specific physical demands necessary to perform essential job functions. Accurate and up-to-date job analyses help ensure that employment decisions are based on objective, sound, individual, and job specific information. Likewise, accurate and up-to-date job analyses helps ensure that no individual or group of individuals is discriminated against. COMPANY agrees to enter into an agreement in the form attached hereto as Exhibit “1” with the provider that will perform the job analysis.

2. Terms. The term of this Agreement shall be for a term of one (1) year. The Agreement shall be automatically renewed each year for additional one (1) year terms, unless terminated by either Party.

3. Termination. This Agreement may be terminated by either Party hereto. The termination shall be effective five (5) business days after receipt of notice thereof. Receipt shall be deemed effective upon actual delivery to the noticed Party. Upon termination, COMPANY shall be responsible to pay for any employment tests that have actually been performed prior to the termination.

4. Ownership. All data and information generated by the WorkSTEPS Functional Employment Testing Program for Company shall be the property of WorkSTEPS and Company. WorkSTEPS shall use best

efforts to keep such data or information in a legally compliant manner pursuant to all state or federal laws affecting such data or information. COMPANY may keep copies of data or information for use in its normal course of business, but COMPANY hereby agrees that should it have possession of any WorkSTEPS materials, forms, procedures, protocols, or information, that such shall be deemed proprietary and confidential and kept strictly confidential. COMPANY shall use best efforts to see that such is not utilized for any purpose that would reasonably be deemed in competition with WorkSTEPS.

5. Confidentiality. WorkSTEPS shall keep all information or materials received by COMPANY strictly confidential, and shall not divulge any such information or materials without the express written consent of COMPANY.

6. Third Party Claims. In the event of any third party claims associated with the services provided under this Agreement, the party receiving notice of the claim shall immediately inform the other party of such claim. WorkSTEPS[®] and COMPANY shall timely make available to each other such information and assistance as reasonably requested in connection with the defense of any potential claim or action.

7. Release of Data. Notwithstanding any prohibition contained within this Section, WorkSTEPS or COMPANY may release data or information as contemplated herein should a state or federal court of law require it. WorkSTEPS may also release data or information received from the testing of COMPANY's employees for any legitimate business purpose, provided that (i) any personal information is kept confidential, and (ii) that all state and federal laws regarding such data or information are strictly followed.

8. Proprietary Marks. COMPANY acknowledges that it has been advised that WorkSTEPS believes the WorkSTEPS name, and its marks and proprietary software, protocols and testing process are federally trademarked and copyrighted. COMPANY agrees that WorkSTEPS proprietary software, protocols, processes, procedures, including modifications thereto, are, and shall be considered "proprietary" and "confidential information." WorkSTEPS confidential and proprietary information will be provided to COMPANY for the sole purpose of having the WorkSTEPS Provider provide functional employment testing services to the COMPANY. COMPANY acknowledges, agrees and confirms that COMPANY's disclosure or misappropriation of WorkSTEPS proprietary information could cause irreparable injury to WorkSTEPS, and COMPANY hereby expressly agrees that it will not use the confidential and proprietary information provided to COMPANY, except for the express purposes described in this Agreement.

9. Protected Health Information. WorkSTEPS may receive from Company health information that is protected under applicable state and/or federal law, including without limitation, protected health information ("PHI") as defined in the regulations at 45 C.F.R. Parts 160 and 164 (the "Privacy Standards") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). WorkSTEPS agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards if the PHI were used or disclosed by Company in the same manner. WorkSTEPS shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

Use of PHI. WorkSTEPS will use PHI solely for Company's benefit and only (i) for the purpose of performing services for Company and (ii) as necessary for the proper management and administration of the Company or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Company shall retain all rights in the PHI not granted herein.

Disclosure of PHI. WorkSTEPS may disclose PHI as necessary to perform its obligations under this Agreement and as permitted by law, provided that WorkSTEPS shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Company of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and (c) ensure that all disclosures of PHI are subject to the principle of "minimum and necessary use and disclosure," i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. If WorkSTEPS discloses PHI received from

Company, or created or received by WorkSTEPS on behalf of Company, to agents, including a subcontractor (collectively, "Recipients"), WorkSTEPS shall require Recipients to agree in writing to the same restrictions and conditions that apply to the WorkSTEPS under this Agreement.

10. Remedies. THE PARTIES agree that (i) the covenants and restrictions contained herein are of material consideration to this Agreement and are reasonable and necessary to protect and preserve the interest of both PARTIES; (ii) irreparable loss and damage will result from any breach hereof; (iii) monetary damages will not be sufficient to compensate a PARTY for any such default or breach by the other party; and (iv) in addition to all other remedies provided at law or in equity, a PARTY shall be entitled to seek and obtain temporary, preliminary and permanent injunctive relief in a court of law to prevent and restrain any breach or contemplated or threatened breach of and to specifically enforce the provisions of this Section, and neither PARTY will be obligated to post a bond or other security in seeking such relief or to provide proof of irreparable harm. Such remedies shall be in addition to and not in limitation of any injunctive relief or other rights or remedies to which a PARTY is or may be entitled at law or in equity or under this Agreement.

11. Exclusivity and Performance of Test. For as long as this Agreement is in effect, COMPANY shall not acquire the same or similar functional testing services from anyone other than WorkSTEPS or its' duly licensed providers. COMPANY acknowledges and understands that the tests are to be performed by medical providers that are independent contractors that have been licensed by WorkSTEPS to perform the tests identified.

12. Non-Solicitation of Employees and Use of Proprietary Network. COMPANY acknowledges that WorkSTEPS has invested considerable time and financial resource in the training, education, and certification of the professional staff necessary to deliver the services set forth on Exhibit A to this Agreement. During the term of this Agreement, and for a period of one year after its termination, COMPANY agrees that it shall not actively or knowingly solicit or make an offer of employment to any of WorkSTEPS employees or WorkSTEPS licensed Providers associated with the delivery of these services to COMPANY nor shall COMPANY utilize the proprietary WorkSTEPS Network to perform any other competitive product to the WorkSTEPS Testing Program.

13. Use of Information after Termination. Without limiting the generality of this Section, THE PARTIES agree that after the termination or expiration of this Agreement, such PARTIES will not use the proprietary, confidential information of the other PARTY to provide the same or similar services to any person (unless and until such information ceases to be proprietary and confidential through no fault of the PARTY seeking to use the same), however, nothing in this Section shall prohibit Company or its affiliates, after termination of this Agreement, from providing a service to COMPANY similar to the services provided by Provider hereunder as long as neither COMPANY nor its affiliates uses the proprietary, confidential information of WorkSTEPS in so doing.

14. Employment Decision. COMPANY acknowledges and understands that this Agreement contemplates the functional employment testing of prospective employees and/or actual employees of COMPANY. That COMPANY, as employer of the individuals tested have a significant role, both before and after the test, including, but not limited to, selection of the essential functions of the applicable job, the writing of job descriptions, if any, in communicating with the individuals to be tested in a consistent manner, in making appropriate employment decisions based on test results and in properly processing and advising those individuals tested.

15. Adherence to Laws. COMPANY agrees to follow state and federal employment laws, regulations and practices including, but not limited to, appropriate procedures related to employment testing as set forth in the Americans' With Disabilities Act and any and all applicable laws. COMPANY further acknowledges that the Company, not the Provider or WorkSTEPS, is responsible for making employment decisions concerning any post employment candidates' or current employees' suitability for employment or continued employment and for making decisions concerning reasonable accommodations.

This Agreement shall be governed by the laws of the State of Texas. Jurisdiction for any claim or action arising out of this Agreement shall be in an appropriate state or federal court of law in the State of Texas.

AGREED TO THIS 29th DAY OF May, 2015.

WorkSTEPS[®], Inc.

COMPANY

By, _____

By, _____

It's _____

It's _____

Printed Signature _____

Printed Signature _____

Provider:

By, _____

It's _____

Printed Signature _____

**“Attachment A”
Description of Services**

Post Offer Testing to Include:

Medical History – The job candidate is asked to complete a comprehensive medical history administered by an occupational healthcare professional that has been trained and certified in the WorkSTEPS Program. This history includes information gathering on previous injuries and/or surgeries, previous physical therapy/chiropractor visits, etc. The employee also signs a statement that falsification of the information he/she has provided could result in the withdrawal of the conditional job offer.

Musculoskeletal Examination – A WorkSTEPS certified clinician completes this portion of the exam. The exam looks at all major joints and muscle groups. Thirty (30) baseline measurements are documented. The muscle groups are checked for strength as well as any atrophy. The shoulders, elbows, wrists, back, ankles, knees and hips are checked for signs of crepitus as well as ligament stability. In addition, the lumbar and the cervical spine is also checked. Flexion, extension, side bending and twisting are all measured. Visual inspection of the spine for signs of surgery is performed. Deep tendon reflexes of the biceps, triceps, patellar tendon and Achilles tendon are performed to further check for spinal cord problems. Shoulder range of motion is checked and measured as well for movement in the internal and external rotational planes. The rotator cuff is also thoroughly checked.

Static Grip - This portion of the tests measures grip strength and gathers baseline strength readings on the employee.

Dynamic Lifting - This portion of the test gathers baseline, full motion, and strength readings. The employee is asked to lift a NIOSH box from 4 different positions. These 4 positions are lifting the box from floor to knuckle height, 12 inches off the floor to knuckle height, knuckle height to shoulder and shoulder to overhead. With each of these lifts, the employee is asked to lift the box. After the lift, they are asked if they can safely handle more weight. The employee is asked at the beginning to try and lift their maximum safe lift. The employee is shown and instructed on the proper lifting techniques for each of these lifting positions.

Job Specific Tasks - This portion tests assesses the job candidate's ability to perform the essential functions of the job he/she is applying for. The essential functions for a job description are created through job analysis that is performed by a qualified vendor of the employer's choosing (this can be the WorkSTEPS Provider who will be providing testing service but is not required). The employer is obligated to participate in the job analysis process by approving and verifying that the essential functions have been properly identified and are accurate.

Upper Quadrant/Carpal Tunnel Test - A series of baseline upper extremity tests utilized to identify carpal tunnel syndrome ("CTS"). This test consists of a brief musculoskeletal examination focusing primarily on the upper extremities, grip, pinch, and forearm strength and endurance tests, an optional nerve conduction test, and essential functions tests if applicable. The results are compared to recognized norms and an employment recommendation is given to the employer. The Upper Quadrant/Carpal Tunnel Test is NOT used to diagnose CTS. It is performed only as a baseline test to identify abnormalities that have resulted in strength, motion, or sensory loss that correlates to pain or other symptoms consistent with common upper extremity problems and cumulative traumas like CTS. When symptoms or loss of function are identified during the testing process, a "Refer for "Additional Medical Clearance" recommendation is given.

Company Representative/Title

Date

WorkSTEPS Representative /Title

Date