

The Washington City Council met in a regular session on Monday, May 2, 2011 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Gil Davis, Councilman; Bobby Roberson, Mayor Pro tem; Pete Connet, Interim City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Mick Reed, Police Chief; Philip Mobley, Parks and Recreation Director; Susan Hodges, Human Resources Director; Lynn Lewis, Tourism Director; Mike Voss, of the Washington Daily News and Delma Blinson of the Beaufort Observer.

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

Mayor Jennings acknowledged the passing of former Councilman Ed Gibson on 4/30/11. Mayor Jennings extended the invitation for Council to sit together when attending the memorial service.

APPROVAL OF MINUTES

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the minutes of April 11, 19, & 25, 2011 as presented.

APPROVAL/AMENDMENTS TO AGENDA

Councilman Mercer suggested the following amendments to the agenda:

1. Moving: Item C under Old Business – Award contract for Bucket Truck Purchase and Approve Purchase Order \$173,275 to the Consent Agenda as Item E. (the \$26,000 may not be used for the acquisition of the truck but be paid back on the principle debt service immediately. This will reduce the debt service approximately \$5,100 a year for the next five years.)

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council unanimously approved moving the contract award for the Bucket Truck to the Consent Agenda.

2. Move purchase orders: 1.) T & D Solutions., \$85,493 and 2.) Ramey Kemp & Assoc., \$58,710 under Old Business for discussion and clarification.
3. Remove New Business A: Adopt Resolution supporting the nomination of the North Market Street Historic District to the National Register. The Historic Preservation Commission has a public hearing tomorrow evening and feels Council should receive their recommendation before acting upon it tonight. Mr. Rodman noted that the application needs to be presented to the National Register by June 9th. This item was originally scheduled to come before Council on May 9th but the Council meeting was moved to May 2nd. Mayor Jennings suggested Council consider some limited action at the Committee of the Whole meeting.

Mayor Jennings suggested that Old Business Item G – Adopt – Resolution Authorizing Filing of an Application for Approval of a Financing Agreement be moved to section IV. Public Hearing, the advertising requirements have been met.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council approved the agenda as amended.

CONSENT AGENDA

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council approved the consent agenda as amended.

- A. Adopt – Budget Ordinance Amendment for Purchase of Water Meters for the Beaufort Pointe Development

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

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

Section 1. That account number 3 1-90-3991-9910, Fund Balance Appropriated, portion of the Water Capital Reserve Fund revenue budget be increased in the amount of \$2,700.

Section 2. That account number 31-90-4492-3000, Transfer to Water Fund, portion of the Water Capital Reserve appropriations budget be increased in the amount of \$2,700.

Section 3. That account number 30-90-3980-2100, Transfer from Capital Reserve, portion of the Water Fund revenue budget be increased in the amount of \$2,700.

Section 4. That account number 30-90-7250-7000, Non-capitalized Purchases, portion of the Water Meter Services department of the Water Fund appropriations budget be increased in the amount of \$2,700.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

ATTEST:

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

**s/N. Archie Jennings, III
Mayor**

B. Adopt – Budget Ordinance Amendment E911

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

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

Section 1. That the following accounts and amounts in the E-911 Department portion of the General Fund appropriations budget be decreased for allowable PSAP expenses:

10-10-4311-4500	Contract Services	(\$31,022)
10-10-4311-1100	Telephone	(211)
10-10-4311-1400	Employee Devl.	(534)
	Total	(\$31,767)

Section 2. That the following accounts and amounts in the Police Department portion of the General Fund appropriations budget be decreased for allowable PSAP expenses:

10-10-4310-1100	Telephone	(\$ 211)
10-10-4310-1604	Maint. & Repair	(189)
10-10-4310-7402	Installment Purchases	(4,148)
	Total	(\$ 4,548)

Section 3. That account number 10-10-4311-4500, Contract Services, E-911 Department portion of the General Fund appropriations budget be decreased \$72,000 for the County console purchase and one half year County salary.

Section 4. That account number 10-00-3991-9910, Fund Balance Appropriated, portion of the General Fund revenue budget be decreased in the amount of \$108,315.

Section 5. That the Estimated Revenues in the E-911 Surcharge Fund be increased in the amount of \$43,385 in the account E-911 Surcharge Collections, account number 14-70-3255-8900.

Section 6. That account number 14-70-4310-4501, Contract Services – E-911 System, portion of the E-911 Surcharge Fund appropriations budget be increased in the amount of \$43,385 to provide for payment of eligible expenses.

Section 7. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 8. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

C. Approve – Purchase Orders over \$20,000

*Requisition #9009, Concrete Conservation Inc., \$41,925, line sewer man holes. Account 32-90-8210-4500.

(moved to Old Business for discussion)*Requisition #9062, T A Loving Co., \$3,800,902, storm water drainage improvements. Account 58-90-5710-4500.

*Requisition #9071, EMA Resources., \$47,375, sludge removal. Account 32-90-8220-4500.

*Requisition #9077, Ramey Kemp & Assoc., \$58,710, remaining engineering work for Brown St. bridge project. Account 10-20-4511-7300.

*Requisition #9099, Petroleum Traders., \$120,000, balance of the year gasoline purchases. Account 10-20-4250-3101.

(moved to Old Business for discussion)*Requisition #9094, T&D Solutions., \$85,493, DOT reimbursable Hwy 17 utility relocation. Account 35-90-7220-0411.

Authorize – City Manager to sign Release, Hold Harmless & Indemnification Agreement With Bridge Harbor, LLC (Fireworks)

NORTH CAROLINA
BEAUFORT COUNTY

RELEASE, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

WHEREAS, the City of Washington (“City”) has contracted with East Coast Pyrotechnics, Inc. to provide a fireworks show for the public on July 4, 2011;

WHEREAS, the City has requested Bridge Harbor, LLC to allow its property to be used in conjunction with the above; and

WHEREAS, Bridge Harbor, LLC desires to permit its property to be used in conjunction with the above upon the condition that the City furnish it with this Release, Hold Harmless and Indemnification Agreement (“Release”).

NOW THEREFORE, know all persons by these presents, upon execution of this Release and in consideration of the foregoing, which consideration is acknowledged to be sufficient and legally binding, the City does hereby agree to unconditionally release, hold harmless, indemnify, acquit and forever discharge Bridge Harbor, LLC, and its respective agents, representatives, insurers, 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, attorney’s 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 the use of Bridge Harbor, LLC’s property to produce a firework show for the public on July 4, 2011 as more particularly described hereinabove.

IN WITNESS WHEREOF, the City has caused this instrument to be executed in its name by its Interim City Manager, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given.

This the 2nd day of May, 2011.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Peter T. Connet
Interim City Manager

- D. **Moved from Old Business Item C - Award** – Contract For Bucket Truck Purchase And Approve Purchase Order

**GARY CERES – OWNER, “I CAN’T BELIEVE IT’S A BOOKSTORE” –
GRAFFITI DOWNTOWN AREA**

Mr. Ceres expressed his concern pertaining to the graffiti in the downtown area. Mr. Ceres stated approximately two weeks ago he noticed on the back of the building downtown a very offensive racial slur. Mr. Ceres voiced his concern by calling both the Police Department and several other City agencies and was told there was nothing that could be done because it was private property. He then contacted two members of the Council (Mayor Pro tem Roberson & Councilman Moultrie). Mayor Pro tem Roberson contacted the business owner and had the Public Works department remove the graffiti by morning.

Mr. Ceres provided Council with photos displaying numerous amounts of graffiti downtown. Tourist, families and our community should not be subjected to graffiti any longer. Some of this graffiti is located in Union Alley, the Hotel Louise, Washington Jewelers and the Belk Tyler Building.

Mr. Ceres is requesting City Council assign a department to take care of the graffiti. Once the City takes care of the initial problem the business owners which are now aware of the problem will be able to take care of it every time it pops up.

Mayor Jennings thanked Mr. Ceres for making Council aware of this issue and stated they will find a way to fix this because it is a City and public problem. Mayor Jennings asked Chief Reed if graffiti is against the law and Chief Reed responded ‘yes’. Chief Reed noted he has requested of business owners whenever graffiti appears to call the PD and the PD documents the graffiti. They then try to go to the owner of the business and urge them to remove it as quickly as possible (seeking the business owner participation). Chief Reed noted they will work with any business and do all they can to help.

Mayor Jennings directed Mr. Connet to formulate an official strategy to deal with this issue. Mr. Connet stated he would contact Beth Byrd, WHDA as well because in some communities this is handled in conjunction with a main street program.

BILL FORMAN – BAY DESIGN GROUP BIG P PROJECT PRESENTATION

Bill Forman, Bay Design Group, Project Engineer for Phase 3 of the Waterfront Docks Project explained the project includes construction of 14 additional slips as fixed docks on the ends of docks A & B under a BIG Grant. Mr. Forman provided Council with the status of the project:

- Project started in late March
- 84 piles to be driven before the end of an environmental moratorium - dated April 1st but were able to get a two week extension
- Contractor ran into some conditions that he was not able to drive piles through and now we are in the process of doing an investigation regarding driving pilings. Mr. Forman reminded Council that they drove upward of 200 piles 10 years ago with Phases 1 & 2 which was very much in the same place (never having a complaint or request for claim or additional compensation).
- Additional Cost information but would like to fine tune it before presenting to Council

- Process of getting Geotechnical conditions
- Ultimate goal is to work within monetary confines of existing contract
- Contract constraints - Contractor equipment not adequate to do task
- Start on October 1st and finish by end of year as required by grant/contract

Councilman Mercer inquired if he had difficulties with rock 10 years ago and Mr. Forman stated only with riprap. He has checked his documentation and they did not have any claims or request for additional compensation.

Mayor Jennings requested Mr. Forman submit findings concerning specifications in a memo format at the Committee of the Whole meeting. Also, Mr. Forman stated he will come back at the June meeting when everything should be resolved.

BILL SYKES – WHDA PICKIN’ ON THE PAMLICO ALCOHOL REQUEST

Bill Sykes, Treasurer WHDA noted this year will be there 6th year Annual Pickin’ on the Pamlico. The event is primarily a food event but the beer and wine garden is a supplement to the fundraising effort.

WHDA requests Council approve the sale and consumption of alcohol at Pickin’ on the Pamlico. A special events permit has been granted through Kristi Hardison and located at a well controlled area.

By motion of Councilman Davis, seconded by Councilman Pitt, Council allowed the consumption of alcohol at WHDA’s 6th Annual Pickin’ on the Pamlico. Motion carried 3-2. Voting for the motion: Councilman Davis, Pitt & Moultrie, against: Councilman Mercer and Mayor Pro tem Roberson.

COMMENTS FROM THE PUBLIC

No public comments at this time.

CONSIDER – NORTH ACADEMY STREET PARKING RECOMMENDATIONS

Mayor Jennings opened the public hearing. Mayor Jennings noted that Mr. Prichard and his wife could not be here tonight but they have presented a letter and have requested the letter be read into the record as part of the public hearing. Mayor Jennings allowed the letter in its entirety be taken into the record as written but also shared some of the spirit of the letter.

(begin letter) Unfortunately, we have a prior commitment in Charlotte and will not be able to attend the public hearing now that it has been moved to May 2, 2011. We would like our thoughts read during the public hearing.

We would like to take this opportunity to thank First Christian Church. For the past 2-3 weeks, we have noticed that some of their membership and leadership have begun to park in their parking area between 2nd and 3rd streets instead of North Academy. This change is greatly appreciated. As we’ve stated previously, our biggest concerns are not on Sunday’s. Most of the problems occur M-Th with Pre-school pick up and drop off and in the evenings where 3-4 different groups meet in the Social Hall between 5-9pm.

We would also like to thank the Mayor for asking city officials to look into the parking and traffic issues on North Academy. We appreciate Chief Reed, Chief Rose, Allen Lewis, and John Rodman for their study of North Carolina laws, city codes and ordinances, for their time and for offering their expertise in seeking to remedy the problems.

We wholeheartedly support City Manager Pete Connet’s recommendations as published in the Washington Daily News:

1. The west side of North Academy being marked as a “no Parking” zone. This means we will still have nineteen parking spaces available on the east side of a street with only three residences and all three have large driveways.
2. Mark curbs at the intersections 25 feet back from intersecting curb lines at East Second and East Main. This follows North Carolina State law and will enable vehicles to turn onto North Academy instead of frequently facing head on traffic with room for only one lane. Currently,

drivers attempting to turn have to put their vehicles in reverse and back onto Second St. to allow oncoming traffic to clear North Academy before making their turn.

3. Remove yellow curbed line on the south side of East Second St. and create a new crosswalk in front of First Christian Church between the church's parking lot and their front entrance. Erect pedestrian-crossing signs as needed on East Second. This should eliminate vehicles stopping in the middle of North Academy and blocking driveways during Preschool drop off and pick up. Currently, North Academy is used as a "drive through" to drop off and pick up. Further, we see this as an opportunity for volunteers to serve as Crossing Guards during drop off and pick up from Pre-school to further ensure safety.
4. Mark all curbs on North Academy St. five feet on each side of driveway entrances. This will enable residents to get in and out of their driveways and follows NC State law.

We would also like to remind all concerned that there are two distinct areas (maps provided) in the Historic District:

1. B1H – The Central Business District from Bridge to Bonner Streets
2. RHD – The Residential Historic District – There are only two churches located within the RHD – First Christian and First Baptist. First Christian is located deeper within the Residential Historic District than any other and owns more parking space than any other downtown church.

Finally, we would like to ask City Council to consider the motivations of those opposed to these recommendations. Are their concerns related to public safety? Are they North Academy residents? Are they motivated to follow **the City of Washington's GENERAL PROVISIONS as outlined in ARTICLE I:**

- A) **To lessen congestion in the streets**
- B) **To secure safety from FIRE, panic and other hazards**
- C)
- D)
- E)
- F)
- G) **To promote desirable living conditions and the sustained stability of neighborhoods?"**
- H) **To conserve property values**
- I) **To encourage the most appropriate use of land throughout the city**

Public hearings are wonderful part of the democratic process and everyone is entitled to an opinion. It is our hope that those who have safety as their primary motivation, those who used their expertise to form opinion, those who have weighed all possibilities and those with **studied** opinions would be heard above the rest.(end letter)

s:/Tim & Teresa Prichard 120 North Academy St.

Mr. Connet reviewed his recommendations presented to Council in a Memorandum on April 21, 2011 and then brought to the City Council meeting for consideration and deciding to hold a public hearing was as follows:

1. The west side of North Academy Street between East Main and East Second streets be marked as a "no parking" zone. (Goal was to get as much parking as possible for both residents and the church – with a total of approximately 19 spaces).
2. Direct Public Works Department to mark all curbs at the intersections of East Main and North Academy, and East Second Street and North Academy Street, 25 feet back from the intersecting curb-lines. (This gives a line of site from each intersection and allows turning traffic to make safe movement). At the intersection of Second and Academy there will be a loss of 1 handicapped space that can be relocated to the East Second side of the Street. Remove the yellow-marked curb on the south side of East Second Street, except for the area needed as sight distance from its intersection with North Academy Street.
3. The yellow curb on south side of East Second Street will be removed, except for that area needed as site distance from its intersection with North Academy.
4. Mark the curbs on North Academy Street five feet each side of the driveway entrances.

5. Create/mark a new crosswalk on East Second Street from the First Christian Church parking lot to the front entrance area of First Christian Church. Erect Pedestrian Crossing signs as needed on East Second Street.

Mr. Connet noted these recommendations came from staff following consultation with Chief Reed, Chief Rose, Mr. Rodman and Mr. Lewis. These recommendations are up for consideration along with the comments from the public for City Council.

Several North Academy Street residents and church members attended the public hearing.

Mr. James Coke, who lives at 323 East Second Street, suggested putting two crosswalks on East Second Street to serve pedestrian traffic to and from the church and voiced concerns about the suggestion to ban parking on the west side of North Academy Street. Mr. Cook cited it would take away 10 parking places on that street, parking places needed by residents on that street. He wanted to be sure that all handicapped spaces be moved from Academy Street allowing more parking by the general public. Mr. Coke suggested three spaces be put in front of the church for handicapped parking.

Ms. Katherine Simpson, who lives at 322 East Main Street, was here tonight speaking on behalf of Ms. Briley, Ms. King & Ms. Finnerty. They support the no parking on the west side of the street. One concern is the trailer Mr. Prichard owns and parks in front of his house. They are seeking support from the City in enforcing parking regulations.

First Christian Church member Clyde Roberson opposed placing handicapped parking spaces on the south side of East Second Street, directly in front of the church. He expressed his concern for youth and darting in and out. Mr. Connet understood this concern and stated they could reduce the handicapped parking to two spaces. Mayor Jennings suggested allowing the church to work together to come up with the best solution for handicapped parking.

First Christian Church member Lee Latham addressed moving the handicapped parking over to Second Street citing moving any parking at all in front of the church will just create more congestion. Also, he shared that Second Street is a very busy street and would advise against putting anything on Second Street that would create more havoc in the road.

First Christian Church member Mike Alligood expressed concern about limiting parking to the east side of North Academy Street and Mr. Prichard using several parking spaces on that side of the street to accommodate his two vehicles, a truck, a motorcycle and a trailer. If that happens, it would hinder others from parking on that side of the street, he said. Mr. Alligood would like this to be taken into consideration.

Senior Minister of First Christian Church, Dr. Michael Price stated they have trusted in the democratic process and requested Council resolve this tonight.

There being no further public comments, the public hearing was closed.

Mayor Pro tem Roberson stated he has a problem with painting all the curbs.

Mayor Jennings reminded everyone to not personalize this issue and noted he appreciated the church's willingness to work on the issue.

Chief Rose read the memo he forwarded to Mr. Connet concerning emergency vehicle access. Yes, it is a tight fit and an array of challenges overall but it is this way everywhere in the Historic District. North Academy is a 29 ft. street but he can't single out North Academy Street only because all the streets are narrow in that district. The ladder truck requires a 19 ft. wide area to set up a full spread with placing the jacks out.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council unanimously agreed to observe the State Statue and paint the intersections of Second and Academy Street back through the required 25 feet from the corners, and if that requires the removal of one of the handicapped

spaces on Academy Street then remove that handicapped space. Recommends installing a cross walk at the City's discretion with the proper signs and that everything else remains the same (the street will remain a two-way street with parking on both sides of the street). *Note: this is a modified solution as recommended by staff.

ADOPT – RESOLUTION AUTHORIZING FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT

Mayor Jennings opened the public hearing. Mr. Rauschenbach stated this issue had been addressed numerous times. The item is to consider the building improvements at Impressions costing approximately \$770,000. This is a resolution of findings which is part of the steps before going to LGC for debt approval.

There being no further public comments, the public hearing was closed.

Councilman Mercer inquired information regarding an installment contract. Mr. Rauschenbach stated typically the City uses 59 month financing to get under the LGC's five year window on non property type improvements. All real property improvements require LGC's approval regardless of the term. Mr. Holscher noted the lease has a provision allowing the readjustment of the payment schedule.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council authorized the filing of an application for approval of financing arrangements under General Statute 160A-20.

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20

WHEREAS, the City of Washington, North Carolina desires to finance building maintenance improvements to the City property located on 234 Springs Road in Washington, NC (the "Project") with the proceeds from the issuance of an Installment Purchase Contract purchased by a single financing institution to better serve the citizens of Washington; and

WHEREAS, The City of Washington desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the City Council of Washington, North Carolina, meeting in regular session on the 2nd day of May, 2011, make the following findings of fact:

1. The proposed contract is necessary and expedient because building improvements are required to repair and replace the roof, replace and improve the fire protection system, and provide other improvements necessary for the continued use of this facility. The improvements are included in the City's lease with Impressions Marketing Group, Inc. that includes supplemental rent for these improvements and related debt service. This facility has not been well maintained for several years and these improvements will extend its useful life.
2. The proposed contract is preferable to a bond issue for the same purpose because the issuance cost and interest rate is higher for general obligation bonds and the issuance of an Installment Purchase Contract can be done in a more expedient manner.
3. Based upon information provided to the Council, the costs of the financing described above is favorably comparable to the costs associated with other alternative means of financing and is acceptable to the Council.
4. The City of Washington's debt management procedures and policies have been carried out in strict compliance with law.
6. No increase in ad valorem taxes is necessary to service this debt.
7. The City of Washington is not in default under any obligation for repayment of borrowed money.

8. The supplemental rent in the Impressions Marketing Group, Inc. lease is adequate to service the debt of this financing.
9. The attorney for the City of Washington will render an opinion that the proposed Project is authorized by law and that lease payment funds may be expended pursuant to the Constitution and laws of North Carolina.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Mayor is hereby authorized to act on behalf of the City of Washington in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this 2nd day of May, 2011.

The motion to adopt this resolution was made by Councilman Mercer, seconded by Mayor Pro tem Roberson, and passed by a vote of 5 to 0.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

MEMO

REQUEST FOR PARKING ACCOMODATIONS – SELECT BANK & TRUST

(Begin memo): We are in receipt of a letter, from Clyde F. “Sonny” Swanner with Select Bank & Trust located at 155 North Market Street, Suite 103. As you can tell from the letter, Mr. Swanner is primarily requesting some changes in parking in and around their newly opened branch at this location. If the timed parking is something you wish to favorably consider, I would recommend a one (1) hour maximum for the parking along the south of 2nd Street from its intersection with Market Street, eastward for a distance of approximately one-hundred (100) feet. This will more or less mirror the parking on the north side of 2nd Street in front of City Hall. I would recommend the same maximum in the parking lot behind the building if you wish to favorably consider that as well.

The request for the handicapped parking space is no longer an issue. The spot he was requesting is already marked for handicapped parking.

We already have plans to restripe the parking lot as he requested. We will try to work this into our schedule by the end of July. As for restriping the intersection and directional arrows at 2nd and Market, this was just done this past fall upon completion the resurfacing of Market Street between 2nd and 3rd. As such, I do not recommend this being redone at this time. (end memo)

Councilman Davis suggested Council look at the north side of 2nd Street from the beginning of the City property to the courthouse stating it should all be one hour parking. Select Bank is requesting that the south side of 2nd Street be the same type of parking. Councilman Davis suggested there is a problem with people from the City, BHM Library and other individuals parking there all day.

By motion of Councilman Davis, seconded by Councilman Moultrie, Council unanimously agreed to one hour parking on the south side of 2nd Street.

MEMO – FAITH, LOVE, AND VICTORY CHURCH 605 PARK DRIVE

(Begin memo): Proper notice of the formal complaint for the conditions of the structure located at 605 Park Drive (the proposed Faith, Love, and Victory Church) has been served and the proof of service has been returned. Based on the conditions of the structure and the findings of fact the said structure has been determined to be unfit for human habitation and deemed dilapidated. An order to remove or demolish the structure and fill material within sixty (60) days has been served on the property owner. A timeline for the compliance of the structure is as follows:

Complaint	1/30/2011
Notice of hearing	2/1/2011
Proof of service	2/9/11
Hearing	2/15/2011

Order to demolish	3/2/2011 (gave 60 days from date of signature)
Proof of service	3/9/2011
Sixty (60) days expire	5/9/2011

If Faith, Love, and Victory Church fails to comply with the order to demolish within the specified timeframe the Planning and Development Department will submit to City Council at its next regular scheduled meeting an ordinance ordering the City to have said structure brought into compliance with the order. The costs of any removal or demolition done by the City shall constitute a lien against the subject property and shall also constitute a lien on any other real property of the owner with the City limits or within one mile thereof except for the owner's primary residence.(end memo)

MEMO – HISTORIC PRESERVATION MONTH

Mayor Jennings noted there was one omission in the Historic Preservation Month Memo (the involvement of the Washington Historic Foundation).

(Begin memo): Citizens in Washington, NC will join thousands of individuals across the country to celebrate National Preservation Month, this May. *“Celebrating America’s Treasures”* is the theme of the month-long celebration.

Since the National Trust for Historic Preservation created Preservation Week in 1971 to spotlight grassroots preservation efforts in America, it has grown into an annual celebration observed by small towns and big cities with events ranging from architectural and historic tours and award ceremonies, to fundraising events, educational programs and heritage travel opportunities. Due to its overwhelming popularity, in 2005, the National Trust for Historic Preservation extended the celebration to the entire month of May and declared it Preservation Month to provide an even longer opportunity to celebrate the diverse and unique heritage of our country's cities and states and enable more Americans to become involved in the growing preservation movement.

Here in Washington, Preservation Month 2011 will be observed with the following actions:

1. Proclamation to declare May Preservation Month by Mayor Jennings on May 2nd at 5 pm.
2. Rena K. Terrell award will be presented on a weekly basis to residential or commercial properties in Washington's historic district that reflect the on-going maintenance efforts, a compatible addition, rehabilitation and restoration, and the good neighbor award – reflecting compatibility and harmony with existing neighbors.
3. Preservation briefs and Public Service Announcements aired on public access channel.

PRESERVATION MONTH PROCLAMATION

WHEREAS, Historic Preservation is an effective tool for managing growth and sustainable development, revitalizing neighborhoods, fostering local pride and maintaining community character while enhancing livability; and,

WHEREAS, Historic Preservation is relevant for communities across the nation, both urban and rural, and for Americans of all ages, all walks of life and all ethnic backgrounds; and,

WHEREAS, it is important to celebrate the role of history in our lives and the contributions made by dedicated individuals in helping to preserve the tangible aspects of the heritage that has shaped us as a people; and,

WHEREAS, “Celebrating America’s Treasures” is the theme for National Preservation Month 2011, cosponsored by City of Washington, Scott Campbell, Century 21 and the National Trust for Historic Preservation.

NOW, THEREFORE, I, N. Archie Jennings III, Mayor of the City Washington, North Carolina, do hereby proclaim May 2011 as National Preservation Month, and call upon the people of Washington, North Carolina to join their fellow citizens across the United States in recognizing and participating in this special observance.

MEMO – CITY HALL BUDGET TRANSFER

(Begin memo): The Budget Officer transferred \$11,000 of funding between divisions of the General Fund to complete the maintenance project for the exterior of City Hall. The maintenance includes cleaning and painting exterior metal, pressure washing the building, and painting the balcony.

NC GS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes. Transfer request is attached. (end memo)

REPORT – HUMAN RELATIONS COUNCIL

Update – Multicultural Festival

Board member Castro reported the following:

- Turnage not available; therefore will host at the Civic Center
- Meeting planned with the Cultural Program Director from ECU
- Following the meeting, will set a date during the month of October

Update – Conclusion of Ed Peed Commemoration

Update – Recognition of Honoree’s & revisited date – date changed to 3-29-11

Update – ‘Hope for the Future’

Still working on proposal to present to City Council

Discuss – Appreciation letter to be presented to Mayor and City Council members

REPORT – WASHINGTON TOURISM DEVELOPMENT AUTHORITY

March-April 2011

- participated in a regional heritage tourism workshop presented by Hanbury Preservation. This is part of a 3-region effort to earn the federal designation of National Heritage Area for all of eastern North Carolina. The purpose of the workshop was to describe the project, timeline, and opportunities for involvement from communities and community leaders in the region.
- Attended the Historic Albemarle Tour meeting in Columbia
- Attended the Greenville Business Expo. Virginia Finnerty had a booth promoting her business and the Washington Civic Center.
- Met with a representative from a technology company to discuss new instant messaging technology and a way to promote packages and special offers
- Met with Bobby Roberson, Jackie Woolard, Pete Connet and Donna Bailey Taylor (Johnston County CVB) to discuss countywide tourism and how it is done/set up in other counties, and what (if any) action is needed on the part of the City or WTDA.
- Hosted a mini-familiarization tour for hotel operators. Tour stops included the Estuarium, portions of the walking tour, Rocky Hock Playhouse, Washington Civic Center, and local restaurants.
- Toured representatives from the NC Division of Tourism around Bath to assist with development of a Blackbeard Trail intended to attract visitors following the release of the new Pirates of the Caribbean 4 movie in May.
- As new members of the Historic Albemarle Tour, Washington is now featured as a destination in the 2011 HAT brochures that are in circulation now.
- Advertisements appeared in Southern Living, Our State, and Carolina Country for April and May. Response to Southern Living advertising is very high.
- New billboard campaign is in place. The feedback on the new, more visible signage has been great. A recent update from NCDOT indicates their signage along the bypass will be up by mid-May.
- Response has been good relative to the last minute marketing push for the Civic Center. The effort involved direct mail, development of a new website, and personal contact.
- Operations plan being developed by the SBI students at ECU will be presented in late April or early May. I anticipate their report to be very thorough as they have asked a lot of questions to better understand tried the present operations. Recommendations/suggestions will be made based on all aspects of operations (staffing, marketing, signage, energy efficiency, technology).
- A list of possible improvements (both health/safety and aesthetic) is being developed for budgetary purposes. During this process I have been meeting with contractors and other service providers.
- A committee has been formed to explore the development of an inclusive branding campaign for Washington. Partners in the project are WTDA, Washington Harbor District Alliance, City of Washington, Washington-Beaufort County Chamber of Commerce. We have received two proposals and are awaiting a third before making a recommendation about company to use for the process.

- Distributed an RFP to determine if outsourcing visitor services was a possibility to help reduce expenses in the FY2011-12.

REPORT – FINANCIAL REPORTS

Council accepted the report as emailed.

DISCUSSION – TWO PURCHASE ORDERS FROM THE CONSENT AGENDA

Mayor Jennings stated these two purchase orders were moved from the consent agenda and yielded the floor to Councilman Mercer. Councilman Mercer requested to pull: – 1: T & D Solutions for Highway 17 relocations – account code # 35-90-7220-0411 and 2: Engineering for Brown Street Bridge Project – account code # 10-20-4511-7300 because there are no monies budgeted in the account that the purchase order is written for. Also, he realizes Council agreed to do the work for the Brown Street project but this is \$58,709.80 expenditure and the Powell Bill monies only have \$58,000 left in that account for the remainder of the year. Therefore, he is requesting an amendment to show where the money is coming from.

Chief Financial Officer, Matt Rauschenbach clarified the two issues by stating the T & D Solutions for Highway 17 relocations is for DOT reimbursable projects and the budget ordinance amendments would be brought to Council between now and the close of the fiscal year and the revenue would be DOT reimbursement. Mr. Hardt advised that after construction is finished it takes 2 months for closure.

By motion of Councilman Mercer, seconded by Councilman Pitt, Council unanimously agreed to approve the two purchase orders moved from the consent agenda.

APPROVE & AUTHORIZE – DIRECTOR OF PARKS AND RECREATION TO EXECUTE THE WATERFRONT DOCKING AGREEMENT WITH LITTLE WASHINGTON SAILING CLUB

City Attorney, Franz Holscher and Parks and Recreation Director, Philip Mobley have worked out the key issue of the ability to negotiate contract. Mr. Holscher agreed citing that the Parks and Recreation Director would have the authority to enter into this agreement in the future only if there are no changes. If there are any changes, it would require Council approval.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously approved and authorized the Director of Parks and Recreation to execute the attached Waterfront Dock Agreement with Little Washington Sailing Club and further authorize the Director of Parks and Recreation to enter and execute future Waterfront Dock Agreements with Little Washington Sailing Club so long as such future Agreements are substantially similar to the Agreement approved hereby and Council receives an annual report concerning the relationship with Little Washington Sailing Club, including a notice regarding the intention to enter for such future Agreements and a request for advance approval from Council prior to any change being incorporated into such future Agreements.

APPROVE – CIVIC CENTER MANAGEMENT AGREEMENT

Tourism Director, Lynn Lewis explained the documentation placed in front of Council. Ms. Lewis shared that for the last five years the Tourism Authority has been managing the Civic Center and for those five years they worked very cooperatively with the City. However, the Tourism Authority would like to make the following request that the amount of funds allocated by the City on an annual basis for a period of the contract be changed to \$65,000 rather than \$50,000 due to pertinent numbers for the last four years. Ms. Lewis stated the center has been operating at a deficit of approximately \$10,000 (excluding maintenance projects).

Councilman Mercer requested removing the wording on item #3 (up to a maximum of \$15,000 per year) and leaving the budget at \$50,000. Also the \$15,000 request for maintenance does not guarantee the \$15,000 will be used for maintenance. Councilman Mercer would prefer the City continue with its \$50,000 per year allocation to help the Tourism Authority run the Civic Center and address additional maintenance items on an annual basis. Councilman Mercer suggested the Tourism Authority submit a list of maintenance-related requests at the beginning of the budget process each year and Council will review and address those requests. Ms. Lewis shared this has been discussed at one of the Board meetings but they have received quotes that will exceed the \$15,000 for health and safety issues

related to the use of the facility. Mayor Jennings stated Council would take out the budget restraint clause that basically limits the maintenance to \$15,000. Mayor Jennings also stated the original discussions and agreement of the Civic Center lease concerning whether it should be a three year lease at \$50,000 a year commitment or a five year \$50,000 a year commitment with a clear understanding that eventually there would not be any \$50,000.

Councilman Moultrie inquired if this doesn't happen will a person be out of a job? Ms. Lewis stated now they have one full time position at the Civic Center and this may mean it will become a part time position. Mayor Jennings mentioned over the five years there has not been one year that the City allocated only \$50,000 to the Civic Center citing the 1st year \$120,000, 2nd year \$77,000, 3rd year \$66,000 and the 4th year was \$57,000. Mayor Jennings noted this has been a good partnership and the Tourism Authority has been good stewards. The commitment the Council is willing to make is to keep the current \$50,000 and have the opportunity to discuss anything outside the \$50,000.

By motion of Councilman Mercer, seconded by Councilman Pitt, Council agreed to leave the contract as is (\$50,000) but delete the wording following (items up to a maximum of \$15,000 per year – the last 9 words allowing a period after the word maintenance) and the monthly payments would remain at \$4,166.67.

City Attorney, Franz Holscher stated decking is a major item and the City of Washington is responsible. Mayor Pro tem Roberson mentioned the need to speak with the Tourism Development Authority Board and discuss the long range direction and future for the Civic Center (looking at the overall cost).

Recess at 7:10 pm.

**AWARD – CONTRACT FOR LABOR & EQUIPMENT FOR THE
LIGHTING RETROFIT PROJECT**

Mr. Lewis stated the City received five bids last week. Of the five, the two lowest bids were determined to be unresponsive, responsible and with the third lowest bid being as high as it was there was not enough room to negotiate. Staff is requesting to start the bidding process over.

By motion of Councilman Mercer, seconded by Councilman Pitt, Council unanimously agreed to reject all bids and allow Council to take action on this at the May 23rd meeting (the Committee of the whole).

**ADOPT – ORDINANCE AMENDMENT DELETING CHAPTER 38 – WATER AND
WASTEWATER AND ADOPT CHAPTER 38 – WATER AND
CHAPTER 39 – WASTEWATER/SUO**

Councilman Mercer explained why this was moved from last month's agenda. Staff, Attorney along with additional comments from Mayor Pro tem Roberson has all been incorporated in the revised documents.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council unanimously approved adopting the ordinance deleting Chapter 38 – Water and Wastewater and adopted Chapter 38 - Water and Chapter 39 – Wastewater/SUO

**AN ORDINANCE TO AMEND CHAPTER 38, WATER AND WASTEWATER, OF THE CODE
OF ORDINANCES OF THE CITY OF WASHINGTON**

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

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

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

Section 1: Chapter 38, Water and Wastewater Code of Ordinances be and is hereby repealed in its entirety and a new Chapter 38, Water, and a new Chapter 39, Wastewater/SUO, be inserted as follows:

**CHAPTER 38
WATER**

ARTICLE I. GENERAL PROVISIONS

Sec. 38-1. Purpose and Policy.

This chapter sets forth uniform requirements for direct and indirect contributors into the water distribution and treatment system for the City of Washington, hereafter referred to as the city, and enables the city to comply with all applicable State and Federal laws. This policy provides for the setting of fees for the equitable distribution of expenditures and the cost of the water. This chapter shall apply to the city and to persons who are, by permit or agreement with the city; except as otherwise provided herein, the Director shall administer the provisions of this chapter.

The objectives of this chapter are:

- (a) To ensure that the municipality complies with all Federal and State laws to which the municipal water system is subject, and
- (b) To provide for equitable distribution of the cost of operation, maintenance and improvement of the municipal water system,

Sec. 38-2. Definitions and Abbreviations.

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
 - (1) *City*. The City of Washington or, where the context so indicates, the City Council.
 - (2) *Color*. This represents the true color due to the substances in solution.
 - (3) *Customer*. The person that contracts with the city for provision of water service.
 - (4) *Director*. The Director of Public Works or his/her authorized representative.
 - (5) *Operation and Maintenance*. All costs, direct and indirect, not including debt service and capital related expenditures, but inclusive of expenditures attributable to administration, monitoring, inspections, reviewing applications, maintenance of equipment, and treatment and distribution of water, necessary to assure adequate water distribution and treatment on a continuing basis which conforms to applicable regulations and assures optimal long-term facility management.
 - (6) *Person*. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
 - (7) *pH*. A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
 - (8) *Pollution*. This means any material that causes the alteration of the chemical, physical, biological, and radiological integrity of water.
 - (9) *Public Water System*. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances serving fifteen (15) or more service connections or which regularly serves twenty-five (25) or more individuals. Plans and specifications must be approved by the DENR.
 - (10) *Qualified Laboratory*. Laboratories currently certified by the state to perform water and wastewater analyses.
 - (11) *Standard Methods*. The laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation or another procedures recognized by the DWQ, DPH, and EPA.
 - (12) *State*. Refers to the state of North Carolina.
- (b) This chapter is gender neutral and the masculine gender shall include the feminine and vice-versa.
- (c) Shall is mandatory; may is permissive or discretionary.
- (d) The use of the singular shall be construed to include the plural and the plural shall include the singular as indicated by the context of its use.
- (e) The following abbreviations when used in this chapter shall have the designated meanings:
 - (1) CFR Code of Federal Regulations
 - (2) CWA Clean Water Act
 - (3) DENR NC Department of Environment and Natural Resources
 - (4) DPH NC Division of Public Health
 - (5) DWQ NC Division of Water Quality
 - (6) EPA Environmental Protection Agency
 - (7) gpd Gallons per day
 - (8) l Liter

(9)	mg	Milligrams
(10)	mg/l	Milligrams per liter
(11)	N.C.G.S.	North Carolina General Statutes
(12)	NCAC	North Carolina Administrative Code
(13)	O & M	Operation and Maintenance
(14)	USC	United States Code.

Sec. 38-3. Authority.

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

Sec. 38-4. Visiting utility stations.

No visitor shall be permitted to enter the water treatment plant or any worksite unless accompanied by the Director or his designee, and under no circumstances shall any visitor handle or in any way come in contact with any part of the machinery.

Sec. 38-5. Connections and meters.

- (a) *Connections.* All meters, meter boxes, pipes and other equipment furnished and used by the city in installing any water connection shall be and remain the property of the city.
- (b) *Maintenance of Meters.* All meters, except such as are required to be furnished by specified users of water, shall be kept in good repair and working order by and at the expense of the city.
- (c) *Connections – Work to be done by the city.* The construction of taps for the connection of the public water lines on any lot with public water lines in any street and the necessary excavation thereof shall be done only by the city.
- (d) *Connections—Application.*
 - (1) No connection shall be made to any public water line except after approval of the written application therefor.
 - (2) Every application for a water connection shall state the name of the owner of the lot, the name of the street on which lot is situated, the number of the house, if there is one (1) on the lot or, if not, a description of the location of the lot, the number and kind of connections required and the character of surface of the abutting street. Every such application shall be signed by the person making the application and shall be accompanied by the proper fee for making the connection applied for.
- (e) *Connections— separate connections required; exceptions.* Every house or building abutting any public water line shall have a separate connection. The city may construct a single water line of sufficient size to the curblin; provided each house or business is connected through a separate water meter. Approved projects may be served with a single master water meter if approved by the city.
- (f) *Connections — where connection inside.* Water connections shall be made into existing connections constructed by the city to serve a lot. If a connection does not exist, one shall be provided as close as possible to the location requested by the customer.

Sec. 38-6. Standards and provisions for water systems.

- (a) *Provisions of water service.*
 - (1) *Area outside city.*
 - a. *With adequate public water existing.* Upon receipt of a request for water service and payment of all fees and charges, the city may construct a water connection to serve the property. The property owner shall pay the then existing connection fee and capital investment fee prior to receiving a tap.
 - b. *Public water not existing.*
 - 1. Upon receipt of a request for water service, the city may approve the request and authorize construction of a line to serve the property. When a water line is constructed, it shall extend across the entire frontage of the property to be serviced.
 - 2. The owner or developer shall bear the cost of all materials and right-of-way to construct a water line from the nearest adequately sized line to serve the property, and to construct all distribution lines required and approved by the city to serve the property to be developed. The city may bear the cost of labor and equipment to construct the line. The city may order that the construction be accomplished by a contractor, in which case the party requesting such service shall pay the full cost.
 - 3. If the city determines that sufficient advantages exist, it may choose to bear the cost of materials, labor and equipment to construct a line from the nearest adequately sized water line to the property to be served.
 - 4. Each property requesting service and abutting a water line constructed according to subsection 38-6(a)(1)(b) 1 or 2 of this section shall comply with subsection 38-6(a)(1)a of this section.
 - c. *Charges after annexation into city.* After annexation into the city, property which is not already connected and abuts an existing water line shall pay the then existing inside capital investment fee and water connection fee prior to receiving a tap.

- d. *Fire hydrants.* The city shall not install fire hydrants outside the corporate limits, except where arrangements are made to pay for construction of the hydrant, pay an annual fee, measure water flow and pay for water used.
 - e. *Water rates.* Customers outside the city shall be charged the regular outside rate.
- (2) *Area inside city.*
- a. *With adequate water lines existing.* The city shall construct a water tap after receipt of the then existing water connection fee.
 - b. *Water lines not existing.* When a property owner within the city requests water service, the city may order the extension of a water main to serve the property and assess all abutting property owners, who do not already have access to a water line, an amount equal to the cost of materials, but such assessments shall not exceed an amount as established from time to time by ordinance.
 - c. *Other conditions.* When a subdivision or developer requests water service and conditions in subsection (1) or (2) of this section do not apply, or if an unusually large amount of construction is required, the conditions of payment shall be determined through negotiations and established in a contract between the property owner and city.

Sec. 38-7. Taking water from public fire hydrants and inspection of fire hydrants.

No person, except the Director or Chief of the Fire-Rescue-EMS Department or a person in charge of street cleaning, shall take or in any way use water for private use from public fire hydrants, unless such person pay for a hydrant meter, as stated in Sec. 38-16, for the privilege and receive the usual permit to do so.

It shall be the duty of the Director to examine, or cause to be examined, all fire hydrants in the city at least once every six (6) months.

Sec. 38-8. Tampering with equipment.

- (a) It shall be unlawful for any person to tamper with, remove or otherwise interfere with the water meters or any other water utility equipment, apparatus or materials belonging to the distribution system of the city, with the exception of those licensed plumbing contractors so designated to do so by the city, and then only in the event of necessary repairs or emergency service to the property of the water consumers of the city, and with proper notification to the city by such licensed plumbing contractor. It shall be unlawful for any reason to remove or damage property of any kind belonging to the city.
- (b) A reward of up to two-hundred and fifty dollars (\$250.00) shall be offered to any person furnishing information leading to the arrest and conviction of any person violating this section.
- (c) A fee, in an amount established from time to time by ordinance, shall be charged for the city's cost in investigating customers who tamper with their water service without permission of the city. Service may be discontinued if this fee is not paid.
- (d) For customers who tamper with the water meters, fees shall be charged, in amounts and according to criteria as established from time to time by ordinance, to cover the additional costs to the city. Service may be discontinued if these fees are not paid.
- (e) Water utility customers shall protect water meters and related equipment on their premises from vandalism or being tampered with in any way, and shall promptly report to the city's Public Works Department any such vandalism or tampering. If any such vandalism or tampering is not so reported, the same shall constitute prima facie evidence that such vandalism or tampering was by the customer.

Sec. 38-9. Right to shut off water for repairs and no claim for damages on account of accident.

The city reserves the right at any time to shut off the water, in case of an accident, for the purpose of making connections or repairs.

It is expressly agreed between the city, users, and customers that no claim for damages shall be made against the city on account of accidental failure to supply water, whether by quantity or quality.

ARTICLE II - OPERATION OF SYSTEM

Division 1. General Water Use Requirements

Sec. 38-10. Public water system defined; approval of plans and specifications.

A public water system is a system for the provision to the public of water for human consumption through pipes or other constructed conveyances serving fifteen (15) or more service connections or which regularly serves twenty-five (25) or more individuals. Plans and specifications must be approved by the State Department of Environment, Division of Environmental Health, and Public Water Supply Section.

Sec. 38-11. Water system.

- (a) The water system shall be considered as made up of two parts: the city water system and the customer's system.
- (b) The city system shall consist of the source facilities and the distribution system and shall include all those facilities of the water system under the complete control of the city, up to and including the water meter; at which point, the customer's system customarily begins.
- (c) The source shall include all components of the facilities utilized in the production, treatment, storage and delivery of water to the distribution system.

- (d) The distribution system shall include the network of conduits used for the delivery of water from the source to the customer's system.
- (e) The customer's system shall include those parts of the facilities beyond the termination of the city's distribution system which are utilized in conveying potable water to points of use.

Division 2. Operation of System

Sec. 38-12. Cross-connections.

- (a) No potable water supply shall be connected, by any means whatever to another source of water supply or to a storage facility unless such connection has been previously approved by the Public Water Supply Section and the Director.
- (b) No person shall introduce any water into the distribution system or the potable water supply through any means other than from a source of supply duly approved by the Public Water Supply Section and the Director, or make a physical connection between an approved supply and unapproved supply unless authorized in an emergency by the State Division of Environmental Health, and Public Water Supply Section and the Director.
- (c) All cross-connections between potable water supplies and nonpotable or unprotected supplies which are not specifically covered in the categories in this section shall be considered as special problems and the protective devices required shall be determined by the Public Water Supply Section and the Director on the basis of the degree of health hazard involved.
- (d) No person shall fill special tanks or tankers containing pesticides, fertilizers, other toxic chemicals, or their residues from the potable water system; except at a location with an over-the-rim free discharge of water or an approved reduced pressure backflow preventer properly installed on the potable water supply. The city shall not permit the filling of such special use containers except at locations so equipped.

Sec. 38-13. Facilities that require assemblies.

- (a) Any customer either operating or planning to operate facilities identified by the city as having a potential for backflow into the city's public water supply system, shall install an approved backflow prevention assembly on all such service connections according to the degree of hazard present. The following facilities have been identified by the city as having a potential for backflow and require backflow prevention assemblies as indicated: These guidelines are supplemental to section 1006(b) of the Rules Governing Public Water Supplies.
- (b) *Degree of hazard.*
 - (1) Severe: Actual or potential threat of contamination that presents an imminent danger to the public health with consequence of serious illness or death.
 - (2) Moderate: One that presents foreseeable and significant potential for pollution, nuisance, aesthetically objectionable or other undesirable alterations of the drinking water supply.
- (c) *Backflow prevention assembly requirements.*

	RPZ	DCVA	
<u>Degree Of Hazard</u>	<u>Reduced Pressure Zone</u>	<u>Double Check Valve Assembly</u>	<u>Air gap</u>
Severe	X	-----	X
Moderate	-----	X	-----

Facilities that require installation of Backflow Preventer and this list is not intended to be an exhaustive list.

- (1) Automotive Service Station, Dealerships
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard (e.g. wash pits, hydraulic equipment): RP
- (2) Bakeries: DCVA
- (3) Beauty Shops/Barber
 - a. Moderate Hazard (e.g. hair cuts): DCVA
 - b. Severe Hazard (e.g. washing hair, chemical treatment): RP
- (4) Beverage Bottling Plants or Breweries: RP
- (5) Canneries, Packing Houses or Rendering Plants: RP
- (6) Chemical Processing Plants: RP
- (7) Church Baptismal: DCVA
- (8) Commercial Car Wash Facilities: RP
- (9) Commercial Establishments using processed water:
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: RP
- (10) Commercial Greenhouses: RP
- (11) Concrete/Asphalt Plants: RP
- (12) Dairies or Cold Storage Plants: RP
- (13) Dentist or Orthodontist: RP

- (14) Dye Works: RP
 - (15) Film Laboratories or Photo Processing: RP
 - (16) Fire Systems
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard (e.g. foam, antifreeze, booster pump): RP
 - (17) Funeral Homes: RP
 - (18) Hospital, Medical Buildings or Medical Clinics: RP
 - (19) Laboratories: RP
 - (20) Laundries
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: (e.g. Dry Cleaners): RP
 - (21) Lawn Irrigation Systems:
 - a. Moderate Hazard: RP
 - b. Severe Hazard: (e.g. booster pump, chemical system): RP
 - (22) Metal Manufacturing, Cleaning, Processing or Fabricating Plants: RP
 - (23) Morgues, Mortuaries, or Autopsy Facilities: RP
 - (24) Multi-Story Buildings:
 - a. (Three or Four stories) Moderate Hazard: DCVA
 - b. (Five or more stories) Severe Hazard: RP
 - (25) Nursing and Convalescent Homes: RP
 - (26) Oil and Gas Production, Storage or Transmission Properties: RP
 - (27) Pest Control (exterminating or fumigating): RP
 - (28) Power Plants: RP
 - (29) Restaurants: DCVA
 - (30) Restricted, Classified or other Closed Facilities: RP
 - (31) Sand or Gravel Plants: RP
 - (32) Schools:
 - a. Moderate Hazard: DCVA
 - b. Severe Hazard: RP
 - (33) Sewage or Storm Drain Facilities: RP
 - (34) Swimming Pools: RP
 - (35) Veterinary Hospitals or Clinics: RP
 - (36) Wastewater Treatment Plants: RP
 - (37) Water Treatment Plants: RP
 - (38) Waterfront Commercial Facilities and Industries: RP
- (d) Other types of facilities not listed may also be required to install approved backflow prevention assemblies if determined necessary by the city.
- (e) Approved backflow prevention assemblies shall be installed on the customer's system at the point of service to any facility that the city identifies as having a potential for backflow.
- (f) Approved backflow preventer assemblies. Meets American Society of Sanitary Engineering (ASSE) standard and carries an ASSE seal or is on the University of Southern California approval list or is an assembly approved by the city.
- (g) *Backflow prevention assembly installation.* Backflow prevention must be located in a place where it is readily accessible for regular testing, maintenance and inspection. Bypass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly installed that is equal to that on the main line.
- (1) *Reduced pressure zone.*
 - a. Above ground installation preferred.
 - b. Below ground vault shall have positive drainage with adequate gravity drainage to atmosphere.
 - c. Twelve (12) inches minimum clearance with manufacturer's recommendations.
 - (2) *Double check valve assembly.*
 - a. Vertical or horizontal installation acceptable.
 - b. Adequate drainage shall be provided if installed below ground.

Sec. 38-14. Policy.

- (a) When it has been determined by the city, that a requested service requires the installation of a backflow prevention assembly, the customer shall, prior to receiving such service, submit for review and approval, plans and

specifications of the proposed facilities. The submittal shall include a description of proposed facilities. The submittal shall include a description of proposed processes, operations, etc., in such detail as needed to evaluate potential effects on the city's system. Proposed assemblies shall be identified by size, manufacturer and model number or by specification.

- (b) When it has been determined by the city, that an existing service may require the installation of a backflow prevention assembly, the customer shall submit for review such information as may be necessary to permit the city to evaluate the potential for undesirable effects on its system. Upon notification of the customer by the city that a backflow prevention assembly(ies) is necessary, the customer shall submit plans and specifications for approval and install or cause to be installed entirely at the customer's expense such assemblies as may be necessary.
- (c) If it has been determined by the city that an imminent health hazard exist, then the water service to the facility causing the imminent health hazard may be terminated.
- (d) All existing facilities which pose a potential severe hazard to the public water system shall install a reduced pressure principle backflow prevention assembly at the point of service within sixty (60) days of notification by the city at the customer's expense.
- (e) All existing industrial and commercial facilities that have or may have an actual or potential cross-connection, that are not identified as a "severe hazard" shall be considered moderate hazard facilities. All existing moderate hazard facilities shall install a double-check valve assembly at the point of service within ninety (90) days of notification by the city at the customer's expense.
- (f) When required, an approved backflow prevention assembly shall be installed on each service line to a customer's water system in accordance with the requirements of the city at the customer's expense.
- (g) Reduced pressure principle assemblies shall be installed at the point of service in a horizontal position and in a location in which no portion of the assembly will become submerged under any circumstance or be subjected to temperatures below freezing. Pit and/or below grade installations are prohibited. An RP shall be installed in accordance with detailed specifications provided by the city's manual of water system details.
- (h) All double-check valve assemblies shall be installed at the point of service in drainable pits wherever below ground installation is necessary, in accordance with detailed specifications provided by the city's manual of water system details. Double-check valve assemblies may be installed in a vertical position with prior approval from the city, provided the flow of water is in an upward direction.
- (i) Backflow prevention assemblies shall be installed such that periodic testing and necessary repairs can be conveniently performed by city approved backflow testers.
- (j) No water service shall be provided to any facility or service that requires the installation of a backflow prevention assembly until the installed assembly has passed the test performed by a certified tester, and the test results have been received by the city.
- (k) No new or existing water service connection to any premises shall be installed or maintained by the city unless the water supply is protected by an approved backflow prevention assembly(ies) as required by Federal and State Laws and Regulations, and this city ordinance.
- (l) Water mains served by the city but not maintained by the city shall be considered cross-connections. The degree of protection required shall be based upon the degree of hazard, as determined by the city.
- (m) No person shall fill special use tanks or tankers from the public water system except at a city approved location equipped with an air gap or an approved reduced pressure backflow prevention assembly properly installed on the city's water supply.
- (n) Ownership, testing, and maintenance of the assembly shall be the responsibility of the customer.
- (o) It shall be the customer's responsibility to notify the city if the customer's water system becomes contaminated or polluted or if there is reason to believe that a backflow incident has occurred from the customer's water system into the public water system.
- (p) Upon notification to the customer by the city that the existing backflow prevention assembly is not in compliance with these regulations, the customer shall replace the existing backflow prevention assembly with an approved backflow prevention assembly in accordance with the requirements of the city.
- (q) Removal of an approved backflow prevention assembly from a service connection that has been deemed a hazard by the city may result in immediate disconnection from the city's public water system.
- (r) No person shall connect a hose to a fire hydrant unless an approved backflow prevention assembly is connected to the hydrant, unless otherwise approved by the city.
- (s) The customer's system shall be open for inspection at all reasonable times to city personnel to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the city may deny or immediately discontinue service to the premise. The city shall bear no liability for direct or indirect damages caused by discontinuance of service. Should an inspection of the premise be refused, the city reserves the right to discontinue service until the customer has granted access to the premise. The customer may be subject to civil penalties outlined in item (v) of this section for refusing access or being in noncompliance of this chapter.
- (t) Backflow prevention assemblies that shall be connected to the city's public water system shall be limited to those assemblies approved by the city, or the Foundation for Cross-Connection Control and Hydraulic Research, University of Southern California, or meets the American Society of Sanitary Engineering (ASSE) Standard and carries an ASSE seal.

- (u) Installation of all backflow assemblies shall be the customer's responsibility unless otherwise stated by the city. Backflow prevention assemblies shall be located downstream of the meter, at the point of service or at a location approved by the city.
- (v) Any facility or customer found to be in noncompliance with the provisions of these regulations will receive a notice of violation by certified mail with a time limit addressed to correct any deficiencies. If the customer neglects to correct a violation, they will be charged a civil penalty that shall not exceed one hundred dollars (\$100.00) per day of each continuous day of violation for moderate hazards. The civil penalty for willful neglect of moderate and severe hazard violations of any provision in this section shall not exceed five hundred dollars (\$500.00) per day for each day of continuous violation. The civil penalty will be assessed by the director of public works upon recommendation of the operator in responsible charge (ORC) of the water distribution system.

Sec. 38-15. Testing and repair of assemblies.

- (a) Testing of backflow prevention assemblies shall be performed by a certified backflow prevention assembly tester. Such tests shall be conducted upon installation, prior to receiving service, and annually thereafter. A record of all testing and repairs is to be retained by the customer. Copies of the records shall be provided to the city within ten (10) business days after the completion of any testing, and/or repair work.
- (b) Any time that repairs to backflow prevention assemblies are deemed necessary, whether through annual or required testing, or routine inspection by the consumer or by the city, these repairs shall be completed within a specified time in accordance with the degree of hazard. In no case shall this time period exceed:
 - (1) Moderate Hazard Facilities – fifteen (15) business days
 - (2) Severe Hazard Facilities – ten (10) business days
- (c) Submission of falsified test results or material that is incomplete in any manner by a certified tester may result in the tester being removed from the city's tester list.
- (d) Only original manufactured parts may be used to repair an assembly.
- (e) All backflow prevention assembly testers shall submit a copy of their tester's certification to the city prior to testing any backflow prevention assembly(s) connected to the city's public water system.
- (f) All equipment used to test backflow prevention assemblies within the city's public water system shall be properly maintained and calibrated annually in accordance to the manufacturer's guidelines. A copy of the calibration certificate shall be submitted to the city.
- (g) Backflow prevention must be located in a place where it is readily accessible for regular testing, maintenance and inspection. By pass lines parallel to a backflow prevention assembly shall have an approved backflow prevention assembly installed that is equal to that on the main line.
 - (1) *Reduced Pressure Zone.*
 - a. Above ground installation preferred.
 - b. Below ground vault shall have positive drainage with adequate gravity drainage to atmosphere.
 - c. Twelve (12) inches minimum clearance with manufacturer's recommendations.
 - (2) *Double Check Valve Assembly.*
 - a. Vertical or Horizontal installation acceptable.
 - b. Adequate drainage shall be provided if installed below ground.

Sec. 38-16. Temporary water service.

Persons needing temporary water service for construction purposes only may apply for a hydrant meter. If hydrants and hydrant meters are available, temporary service will be provided under the following conditions:

- (a) The application fee for a hydrant meter shall be in an amount established from time to time by ordinance, for each ninety (90) days of usage or portion thereof plus the cost of the water used.
- (b) The customer shall be responsible for all damages to the meter and hydrant which occur as a result of their being used to provide a temporary water service;
- (c) The city will remove the hydrant meter at the end of the ninety (90) days unless requested to do so earlier. Hydrant meters will not be reinstalled in the same location if permanent water service is available.
- (d) City personnel shall install the hydrant meter with the fire hydrant valve left open. The customer shall not operate the fire hydrant. Unauthorized operation of a fire hydrant shall be cause for removal of the hydrant meter.
- (e) Only city personnel shall be allowed to move a hydrant meter. Unauthorized relocation of a hydrant meter shall be cause for removal of the hydrant meter.
- (f) A request to relocate a hydrant meter will be handled the same as a new application.

Secs. 38-17 – 38-41. Reserved.

Division 3. Fees

Sec. 38-42. Purpose.

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

Sec. 38-43. General requirements within city.

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

Sec. 38-44. Water connection fees and capital investment fees.

- (a) Water connection fees are minimum fees for the installation of a tap at the right-of-way. These minimum fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the fee schedule will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's water system. The fees shall be reviewed and adjusted by the City Council, as needed. Minimum fees shall be paid prior to construction of the tap. If the city anticipates that the total actual construction cost will exceed the minimum fee, the city shall provide the customer with a written estimate of such cost as well as associated work, and receive written approval from the customer, prior to commencing such work. Any additional fees to equal the total actual construction cost shall be paid prior to customer making tie-in to the tap. For any tap larger than listed on the fee schedule, the Director shall provide the customer with a written estimate therefor, and receive written approval thereof from the customer, prior to commencing such work. Any additional cost to equal the total actual construction costs shall be paid prior to customer making tie-in to the tap. For taps requiring more than the usual construction work, the city may require customer to employ an outside contractor to make the tap. Contractors shall obtain a permit for the public works department and all work shall be in accordance to city specifications.
- (b) Capital investment fees are charges for the construction of water lines which, at the time of construction, abut property outside the corporate limits. Fees shall be charged as established from time to time by ordinance. Property which is annexed into the city and abuts an existing water line, and has not previously paid a capital investment fee, shall pay the capital investment fee before service is provided. Property owners within the corporate limits may pay their capital investment fees in ten (10) equal annual installments, if requested by the property owners. Such capital investment fees will bear interest at the highest rate provided by state law per annum on the unpaid balance, with the first payment coming due and payable ninety (90) days after the date the capital investment fee charge is made and subsequent installments shall be due and payable annually on the same day of each subsequent year until paid in full.

Sec. 38-45. Service fees — new customers.

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

Sec. 38-46. Service fees – transfers.

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

Sec. 38-47. Water rates and bills.

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

- (a) *Residential service.*
 - (1) This service is available for the supply of drinking water to single family residences within the city and outside the city limits where the city's water supply facilities are extended.
 - (2) Service is not available under this schedule for any nondomestic use; such as from business operated in the residence, for commercial for multifamily use, such as, master metered apartments, motels, inns, and mobile home parks; or for resale.
 - (3) This service is applicable when the customer's residence is served by a water service tap up to one (1) inch in diameter.
 - (4) The minimum monthly charge for city customers will be determined by the current rate schedule.
 - (5) Commodity charges will be based on an assumed minimum consumption or the customer's total water consumption, whichever is greater, during the billing period. Water consumption will be metered and

rounded to nearest cubic foot for billing, except when the amount of water used is not registered because of a defective meter, the method described in Sec. 38-50 will be used.

- (6) The water service charge shall be billed to each customer at the same time the sewer bills are rendered and shall be collected at the same time and in the same manner as sewer accounts.

(b) *General service.*

- (1) This service is available for the supply of drinking water to commercial, industrial, institutional and other customers within the city and outside the city limits where the city's water facilities are extended. Service is not available for resale service.
- (2) The minimum monthly charge for inside city customers will be determined by the current rate schedule.
- (3) Commodity charges will be based on the customer's total water consumption during the billing period, except when the amount of water used is not registered because of a defective meter; the method described in Sec. 38-50 will be used.
- (4) Water consumption will be metered and rounded to the nearest cubic foot for billing.

Sec. 38-48. Billing, payments, and late payment penalties.

- (a) All water meters shall be read monthly, and bills shall be mailed on a cycle basis.
- (b) Every bill shall be due when mailed to the customer at the last address provided by the customer. A bill shall reflect a due date of fifteen (15) days from the billing date shown on the bill. The same notice will serve as a notice of possible disconnect if payment is not received within thirty-two (32) days of the billing date, allowing greater than the statutory minimum
- (c) A late payment penalty in the amount of five percent (5%) per month shall be imposed upon any outstanding unpaid balance twenty-five (25) days after the billing date shown on the bill. The late payment penalty will be reflected on the bill rendered the following month.
- (d) An automated telephone reminder system will attempt to contact all delinquent accounts prior to disconnection as a courtesy if the customer has provided a phone number.
- (e) If payment has not been received within thirty-two (32) days from the original billing date, services will be disconnected on the thirty-third (33rd) day. After payments in the night deposit are posted and the cutoff person has left the office for the purpose of disconnecting a delinquent customer, a service fee in an amount as established from time to time by ordinance will be charged on that date, whether services are disconnected or not.
- (f) A customer whose services are disconnected for such delinquency may have services restored during regular working hours by the payment of the bill in full plus the twenty-dollar (\$25.00) service fee. If a customer requests that services be reconnected after regular working hours, their service fee shall be in an amount as established from time to time by ordinance. Payment must be received by 11:00 a.m. the following day or services will be disconnected.
- (g) The customer shall pay all billed utility charges before transferring service from one location to another. The final bill shall be mailed to the customer's new billing address. If a customer fails to pay his utility bills for any account where he is listed as the customer and such account becomes delinquent, the city may transfer the amount owed to any other account where the customer is a primary recipient of utilities and cutoff utilities to such account for nonpayment. The city may also refuse to transfer an account to a new customer's name or connect services to a new account where the delinquent customer will be a primary recipient of utilities. A customer is a primary recipient of utilities wherever he is listed as a customer, resides as a head of household or conducts a trade or business. The city's determination that a customer is primary recipient of utilities shall be effective until the customer proves otherwise.
- (h) Any customer who has a check or draft returned from a financial institution because of insufficient funds or closed account shall be charged a service fee in accordance with N.C.G.S. 25-3-506.
- (i) Customers requesting alternate payment due dates must make such request of the city and utilize the city's bank draft service. The customer may choose one of the following periods of the month for their bill to be drafted:
- (1) Between the 7th and 16th of the month
 - (2) Between the 14th and 24th of the month
 - (3) Between the 22nd and 31st of the month
 - (4) Between the 28th and 9th of the month.

Sec. 38-49. Meter testing; protested bills.

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

Sec. 38-50. Adjustment of water bills.

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

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

Sec. 38-51. Water facilities impact fee.

- (a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (1) *Capital equipment* means equipment with an expected use life of three (3) years or more.
 - (2) *Connection to the water system* means the physical connect of a building, structure or use of land to the city's water lines, no matter if such connection is made through or by intermediate lines.
 - (3) *Development order* means a regulatory approval by the city.
 - (4) *Fee payer* means a person applying for connection to the city's water system.
 - (5) *Water system* means the physical public distribution and plant facilities of the city, administrative adjuncts to such system and the planned future improvements to such system.
 - (6) *Water facilities* means physical public distribution and plant facilities of the city.
- (b) *Legislative findings.* The city finds, determines and declares that:
- (1) The city has expanded and must further expand and upgrade its water facilities in order to maintain current and meet anticipated future standards of public health if new development is to be accommodated without decreasing current standards of health.
 - (2) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of water facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
 - (3) Connecting to the city water system will create a need for the construction, equipping, expansion, and upgrading of water facilities.
 - (4) The fees established by this section are derived from, are based upon, and do not exceed the costs of providing additional and/or upgraded water facilities necessitated by the connection to the city's water system.
- (c) *Short title, authority, and applicability.*
- (1) The ordinance from which this article is derived shall be known and may be cited as the "City of Washington Water Facilities Impact Fee Ordinance."
 - (2) The City Council has the authority to adopt the ordinance from which this article is derived pursuant to its general police powers and its obligation to protect the health, welfare, safety of its residents.
 - (3) This article shall apply in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its water system.
- (d) *Intent and purposes.*
- (1) This article is intended to assist in the implementation of the city comprehensive plan.
 - (2) The purpose of this article is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide water facilities in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its water system.
- (e) *Rules of construction.*
- (1) The provisions of this article shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, and welfare.
 - (2) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article:
 - a. In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.
 - b. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
 - c. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - d. The phrase "used for" includes "arranged for", "designed for", "maintained for", or "occupied for".
 - e. The word "person" includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

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- f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, either or”, the conjunction shall be interpreted as follows:
1. The term “and” indicates that all the connected terms, conditions, provisions or events or events shall apply.
 2. The term “or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 3. The term “either or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
- g. The word “includes” shall not limit a term to the specific example but us intended to extend its meaning to all other instances or circumstances of like kind or character.
- h. The term “City Manager” means the Washington City Manager or municipal officials he may designate to carry out the administration of this article.
- (f) *Imposition of water facilities impact fee.* Any person who, after the effective date of the ordinance from which this article is derived seeks to connect to the city water system is hereby required to pay a water facilities impact fee in the manner and amount set forth in this article.
- (g) *Computation of the amount of water facilities impact fee.*
- (1) Water facilities impact fees shall be established from time to time by ordinance. A schedule of these fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the Director, and copies shall be made available to the customers of the city’s water system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon the recommendation of the City Manager.
 - (2) If a fee payer opts not to have the impact fee determined according to subsection (b) of this section, then the fee payer shall prepare and submit to the City Manager an independent fee calculation study for the land development activity for which a connection to the city’s water system is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for water demand prescribed by the North Carolina Department of Environment and Natural Resources (DENR). The documentation submitted shall show the basis upon which the independent fee calculation was made. The City Manager shall consider the documentation submitted by the fee payer but is not required to accept such documentation as he shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. If an acceptable independent fee calculation study is not presented, the fee payer shall pay water facilities impact fees based upon the current fee schedule. If an acceptable independent fee calculation study is presented, the City Manager may adjust the fee to that appropriate to the particular development. Determination made by the City Manager pursuant to this subsection may be appealed to the Washington City Council by filing a written request with the City Manager within ten (10) days of the City Manager’s determination.
- (h) *Payment of fee.*
- (1) The fee payer shall pay the water facilities impact fee required by this article to the city division of Revenue Collections prior to the connection to the city’s water system.
 - (2) All fines collected shall be properly identified by and promptly transferred for deposit in the appropriate Water Facilities Impact Fee Trust Fund to be held in separate accounts as determined in this article and used solely for the purposes specified in this article.
- (i) *Water Facilities Impact Fee Trust Funds established.*
- (1) There are hereby established two (2) separate Water and Sewer Facilities Impact Fee Trust Funds:
 - a. The Water Facilities Impact Fee Trust Fund; and
 - b. The Sewer Facilities Impact Fee Trust Fund
 - (2) Funds withdrawn from these accounts must be used in accordance with the provisions of this article.
- (j) *Use of funds.*
- (1) Funds collected from water facility impact fees shall be used solely for the purpose of acquiring, equipping, and/or making capital improvements to water facilities under the jurisdiction of the city, and shall not be used for maintenance or operations.
 - (2) Funds from the Water Facilities Impact Fee Trust Fund may only be used for water facilities purposes. Funds shall be expended in the order in which they are collected.
 - (3) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which water facilities impact fees may be expended, impact fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (b) of this section.
 - (4) At least once each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for water facilities, assigning funds, including any accrued interest, from the several Water Facilities Impact Fee Trust Fund to specific water facilities improvements projects and related expenses, monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Water Facilities Impact Fee Trust Fund until the next fiscal period, except, as provided by the refund provisions of this article.

(5) Funds may be used to provide refunds as described in subsection (k) of this section.

(6) Funds may be funded to rebate developer costs for providing water capital facilities to excess of the capacity required to the individual developer making the provision. Any rebates must be pursuant to a refunding agreement between the developer and the city after the effective date of the ordinance from which this article is derived. Prior refunding agreements may be renegotiated in order to bring such agreements into accord with the provisions of this article.

(k) *Refund of fees paid.*

Any funds not expended or encumbered by the end of the calendar quarter immediately following six (6) years from the date the water facilities impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at the rate of five percent (5%) per annum, provided that the landowner submits an application for a refund to the City Clerk within one hundred eighty (180) days of the expiration of the six (6) year period.

(l) *Exemptions and credits.*

(1) The following shall be exempted from payment of the impact fee:

- a. Alterations or expansions of an existing building where no additional; or larger water connections are requested and where the use is not changed.
- b. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger water connections are requested and where the use is not changed.
- c. The installations of a replacement mobile home on a lot or other such site when water capital facilities impact fee for such mobile home site has previously been paid pursuant to this article or where a mobile home legally exited on such cite on or prior to the effective date of the ordinance from which this article is derived.
- d. Any claim of exemption must be made no later than the time of application for connection to the city's water system. Any claim not so made shall be deemed waived.

(2) *Credits.*

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

amount determined by the City Manager. If the water facilities construction project will not be constructed in one (1) year of acceptance of the offer by the City Manager, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the City Clerk of the City Council prior to acceptance of the security by the City Clerk. If water facilities construction project is not to be completed within five (5) years of the date of the fee payer's offer, the City Council must approve the water facilities construction project and its scheduled completion date prior to the acceptance of the offer by the City Manager.

- a. Any claim for credit must be made no later than the time of application for connection. Any claim not so made shall be deemed waived.
 - b. Credits shall not be transferable from one project or development to another without the approval of the City Council.
 - c. Credits shall not be transferable from one (1) component of the water and sewer facilities impact to another component of this fee.
 - d. Determination made by the City Manager, pursuant to the credit provisions of this section, may be appealed to the City Council by filing a written request with the City Manager within ten (10) days of the City Manager's determination.
- (m) *Review.* The fees contained in this section shall be reviewed by City Council at least once each fiscal biennium at the time of adoption of the city budget.
- (n) *Penalty Provision.* A violation of this Sec. 38-52 of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution city shall have the power to sue in civil court to enforce the provisions of this section.

Secs. 38-52 – 38-60. Reserved.

Division 11. Conflict

Sec. 38-61. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this ordinance are hereby repealed to the extent of such inconsistency or conflict.

Secs. 38-62 - 38-80. Reserved.

Division 12. Effective Date

Sec. 38-81. Effective date.

This chapter shall be in full force and effect from and after its passage, approval and publication, as provided by law.

CHAPTER 39

WASTEWATER/SUO

ARTICLE I. GENERAL PROVISIONS

Sec. 39-1. Purpose and policy.

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

The objectives of this chapter are:

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

This chapter provides for the regulation of direct and indirect contributors to the municipal wastewater system, through the issuance of permits to certain non-domestic users and through enforcement of general requirements for the other users, authorizes monitoring and enforcement activities, requires user reporting and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

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

Sec. 39-2. Definitions and abbreviations.

- (a) Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:
- (1) *Act or "the Act"*. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. §1251, et seq.
 - (2) *Ammonia nitrogen*. The total amount of nitrogen in wastewater in the form of ammonia or ammonium.
 - (3) *Approval authority*. The Director of the Division of Water Quality of the North Carolina Department of Environment and Natural Resources or his designee.
 - (4) *Authorized representative of the industrial user*.
 - a. If the industrial user is a corporation, authorized representative shall mean:
 1. the president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or
 2. the manager of one or more manufacturing, production, or operation facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. If the industrial user is a partnership or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.
 - c. If the industrial user is a Federal, State or local government facility, an authorized representative shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.
 - d. The individuals described in Sec. 39-2(a)(4)-(c) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company and the written authorization is submitted to the city.
 - e. If the designation of an authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section must be submitted to POTW Director prior to or together with any reports to be signed by an authorized representative.
 - (5) *Billable Biochemical Oxygen Demand*. The discharge in pounds of BOD calculated using the billable flow and concentration of BOD in the wastewater in excess of two-hundred fifty (250) mg/l.
 - (6) *Billable Total Suspended Solids*. The discharge in pounds of TSS calculated using the billable flow and concentration of TSS in the wastewater in excess of two-hundred fifty (250) mg/l.
 - (7) *Biochemical Oxygen Demand (BOD)*. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20° centigrade, usually expressed as a concentration (e.g. mg/l).
 - (8) *Building drain*. That part of the lowest horizontal piping of a drainage system which receives wastewater and is located inside the walls of a building and conveys the wastewater to the building sewer, which begins five (5) feet outside the building wall.
 - (9) *Building sewer*. A sewer conveying wastewater from the premises of a user to the POTW.
 - (10) *Bypass*. The intentional diversion of waste streams from any portion of a user's treatment facility.
 - (11) *Categorical standards*. This means the National Categorical Pretreatment Standards or Pretreatment Standard.
 - (12) *Chemical Oxygen Demand*. The total amount of oxygen required to oxidize the organic matter in waste as described in standard methods.
 - (13) *City*. The City of Washington or, where the context so indicates, the City Council.
 - (14) *Color*. This represents the true color due to the substances in solution.

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- (15) *Concentration based limit.* A limit based on the relative strength of a pollutant in wastewater, usually expressed in mg/l.
 - (16) *Direct discharge.* The discharge of wastewater directly to the waters of the state.
 - (17) *Environmental Protection Agency or EPA.* The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the Administrator or other duly authorized official of said agency.
 - (18) *Grab sample.* A sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
 - (19) *Holding tank waste.* Any waste from holding tanks, including but not limited to such holding tanks as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.
 - (20) *Indirect discharge or discharge.* The discharge or the introduction from any nondomestic source regulated under section 307(b), (c), or (d) of the Act, (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).
 - (21) *Industrial user or user.* Any person which is a source of indirect discharge.
 - (22) *Instantaneous measurement.* Represents a single reading, observation or measurement of the discharge.
 - (23) *Interference.* The inhibition, or disruption of the POTW treatment processes, operations, or its sludge process, use, or disposal, which causes or contributes to a violation of any requirement of the POTW's NPDES or Non-discharge Permit or prevents sewage sludge use or disposal in compliance with specified applicable State and Federal statutes, regulations, or permits. The term includes prevention of sewage sludge use or disposal by the POTW in accordance with section 405 of the Act, (33 U.S.C. 1345) or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA) (42 U.S.C. §6901, *et seq.*), the Clean Air Act, the Toxic Substances Control Act, the Marine Protection Research and Sanctuary Act (MPRSA) or more stringent state criteria (including those contained in any State sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the POTW.
 - (24) *Local limits.* Concentration or mass-based limits developed by the director for controlling the discharge of pollutants.
 - (25) *Mass-based limit.* A limitation based on the actual quantity of a pollutant in a discharge, usually expressed in pounds per unit of production.
 - (26) *Medical waste.* Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.
 - (27) *National categorical pretreatment standard or categorical standard.* Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. §1317) which applies to a specific category of industrial users, and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405-471.
 - (28) *National Pollution Discharge Elimination System or NPDES Permit.* A permit issued pursuant to section 402 of the Act (33 U.S.C. §1342), or pursuant to N.C.G.S. 143-215.1 by the State under delegation from EPA.
 - (29) *National prohibitive discharge standard or prohibitive discharge standard.* Absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 39.26 of this chapter and are developed under the authority of 307(b) of the Act and 40 CFR, section 403.5.
 - (30) *Natural outlet.* Any outlet into a watercourse, pond, ditch, lake, or other surface water or groundwater.
 - (31) *New source.*
 - a. Any building, structure, facility, or installation from which there may be a discharge of pollutants, the construction of which commenced after the publication of proposed categorical pretreatment standards under section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with section 307(c), provided that:
 1. the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 2. the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
 3. the production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.
 - b. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of section (a)(2) or (3) above but otherwise alters, replaces, or adds to existing process or production equipment.
 - c. For purposes of this definition, construction of a new source has commenced if the owner or operator has:

1. Begun, or caused to begin, as part of a continuous on-site construction program:
 - i. Any placement, assembly, or installation of facilities or equipment; or
 - ii. Significant site preparation work including clearing, excavation, or removal of existing buildings, structures or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
 2. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.
- (32) *Noncontact cooling water.* Water used for cooling which does not come into direct contact with any raw material, intermediate product, waste product, or finished product.
- (33) *Non-discharge permit.* A disposal system permit issued by the State pursuant to N.C.G.S. 143-215.1.
- (34) *Operation and maintenance.* All costs, direct and indirect, not including debt service and capital related expenditures, but inclusive of expenditures attributable to administration, monitoring, inspections, reviewing applications, maintenance of equipment, and treatment and collection of wastewater, necessary to assure adequate wastewater collection and treatment on a continuing basis which conforms to applicable regulations and assures optimal long-term facility management.
- (35) *Pass through.* A discharge which exits the POTW into waters of the State in quantities or concentrations which, alone or with discharges from other sources, causes a violation, including an increase in the magnitude or duration of a violation, of the POTW's NPDES or Non-discharge Permit, or a downstream water quality standard.
- (36) *Person.* Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, State, and local government entities.
- (37) *pH.* A measure of the acidity or alkalinity of a substance, expressed as standard units, and calculated as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (38) *Pollutant.* Any "waste" as defined in N.C.G.S. 143-213(18) and dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).
- (39) *POTW Director.* The city administrator designated with the responsibility for the pretreatment program and enforcement of this Sewer Use Ordinance.
- (40) *POTW treatment plant.* That portion of the POTW designed to provide treatment to wastewater.
- (41) *Pretreatment or treatment.* This is the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollution into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes or other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.
- (42) *Pretreatment program.* The program for the control of pollutants introduced into the POTW from non-domestic sources which was developed by the city in compliance with 40 CFR 403.8 and approved by the approval authority as authorized by N.C.G.S. 143-215.3(a)(14) in accordance with 40 CFR 403.11.
- (43) *Pretreatment requirements.* Any substantive or procedural requirement related to pretreatment, other than a pretreatment standard.
- (44) *Pretreatment standards.* Prohibited discharge standards, categorical standards, and local limits.
- (45) *Publicly Owned Treatment Works (POTW) or municipal wastewater system.* A treatment works as defined by section 212 of the Act, (33 U.S.C. §1292) which is owned in this instance by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to the POTW treatment plant. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewaters to the POTW from persons outside the city who are, by contract or agreement with the city, or in any other way, users of the POTW of the city.
- (46) *Qualified laboratory.* Laboratories currently certified by the state to perform water and wastewater analyses.
- (47) *Severe property damage.* Substantial physical damage to property, damage to the user's treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (48) *Significant industrial user.* Any industrial user of the wastewater disposal system who
 - a. has an average daily process wastewater flow of twenty-five thousand (25,000) gallons or more, or
 - b. contributes more than five percent (5%) of any design or treatment capacity (i.e., allowable pollutant load) of the wastewater treatment plant receiving the indirect discharge, or

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- c. is required to meet a National categorical pretreatment standard, or
 - d. is found by the city, the Division Of Water Quality or the U.S. Environmental Protection Agency (EPA) to have the potential for impact, either singly or in combination with other contributing industrial users, on the wastewater treatment system, the quality of sludge, the system's effluent quality, or compliance with any pretreatment standards or requirements.
- (49) *Significant noncompliance or reportable noncompliance.* A status of noncompliance defined as follows:
- a. *Violations of wastewater discharge limits.*
 - 1. *Chronic Violations.* Sixty-six (66) percent or more of the measurements exceed (by any magnitude) the same daily maximum limit or the same average limit in a six (6) month period.
 - 2. *Technical Review Criteria (TRC) violations.* Thirty-three percent (33%) or more of the measurements equal or exceed the TRC times the limit (maximum or average) in a six (6) month period. There are two groups of TRCs:
 - i. For the conventional pollutants: BOD, TSS, fats, oil and grease TRC = 1.4
 - ii. For all other pollutants TRC = 1.2
 - 3. Any other violation(s) of an effluent limit (average or daily maximum) that the control authority believes has caused, alone or in combination with other discharges, interference or pass-through; or endangered the health of the sewage treatment plant personnel or the public.
 - 4. Any discharge of a pollutant that has caused imminent endangerment to human health/welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
 - b. Violations of compliance schedule milestones, contained in a pretreatment permit or enforcement order, for starting construction, completing construction, and attaining final compliance by ninety (90) days or more after the schedule date.
 - c. Failure to provide reports for compliance schedule, self-monitoring data, baseline monitoring reports, ninety (90) day compliance reports, and periodic compliance reports within thirty (30) days from the due date.
 - d. Failure to accurately report noncompliance.
 - e. Any other violation or group of violations that the control authority considers to be significant.
- (50) *Slug load or discharge.* Any discharge at a flow rate or concentration which has a reasonable potential to cause Interference or Pass-Through, or in any other way violates the POTW's regulations, local limits, or Industrial User Permit conditions. This can include but is not limited to spills and other accidental discharges; discharges of a non-routine, episodic nature, a non-customary batch discharge; or any other discharges that can cause a violation of the prohibited discharge standards in Sec. 39-26 of this chapter.
- (51) *Standard Industrial Classification (SIC).* A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987.
- (52) *Standard methods.* The laboratory procedures set forth in the latest edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation or another procedures recognized by the DWQ, DPH, and EPA.
- (53) *State.* Refers to the state of North Carolina.
- (54) *Storm sewer.* A sewer that carries only stormwater, surface runoff, street wash, and drainage, and to which wastewater is not intentionally admitted.
- (55) *Storm water.* Any flow occurring during or following any form of natural precipitation and resulting there from.
- (56) *Total Kjeldahl nitrogen.* The sum of organic nitrogen and ammonia nitrogen content of a wastewater as determined by standard methods.
- (57) *Total nitrogen.* The sum of TKN, nitrates, and nitrites content of a wastewater as determined by standard methods.
- (58) *Total phosphorus.* All orthophosphates and condensed phosphates both dissolved and particulate, organic and inorganic.
- (59) *Total suspended solids.* The total suspended matter that either floats on the surface of, or is suspension with, wastewater and is removable by laboratory filtration as described in standard methods.
- (60) *Toxic substances.* Any substances whether gaseous, liquid, or solid, which when discharged to the POTW in sufficient quantities may tend to interfere with any wastewater treatment process, or to constitute a hazard to the environment or recreation in the receiving waters of the effluent from the POTW. These substances include but are not limited to those pollutants listed as toxic in regulations promulgated by the EPA under the provisions of 307(a) of the Act, or other acts.
- (61) *Upset.* An exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities lack of preventive maintenance, or careless or improper operation.

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

Sec. 39-3. Authority.

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

Sec. 39-4. Visiting utility stations.

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

Sec. 39-5. Connections and meters.

- (a) *Connections.* All meters, meter boxes, pipes and other equipment furnished and used by the city in installing any sewer connection shall be and remain the property of the city.
- (b) *Maintenance of Meters.* All meters, except such as are required to be furnished by specified users of water, shall be kept in good repair and working order by and at the expense of the city. Meters for measuring the flow of wastewater, where required, shall be provided and maintained by and at the expense of the customer.

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- (c) *Connections – work to be done by the city.* The construction of laterals for the connection of the public sewer lines on any lot with public sewer lines in any street and the necessary excavation thereof shall be done only by the city.
- (d) *Connections — Application.*
- (1) No connection shall be made to any public sewer line except after approval of the written application therefore.
 - (2) Every application for a sewer connection shall state the name of the owner of the lot, the name of the street on which lot is situated, the number of the house, if there is one (1) on the lot or, if not, a description of the location of the lot, the number and kind of connections required and the character of surface of the abutting street. Every such application shall be signed by the person making the application and shall be accompanied by the proper fee for making the connection applied for.
 - (3) No person shall make any connection of roof downspouts, exterior foundation drains, area drains, or other sources of inflow, groundwater, or other unpolluted waters to a building sewer or building drain which in turn is connected, directly or indirectly, to a public sanitary sewer.
- (e) *Connections — separate connections required; exceptions.* Every house or building abutting any public sewer shall have a separate connection.
- (f) *Connections — where required.* Within thirty (30) days after the time when any public sanitary sewer in any street is completed and ready for use, the owner of any abutting lot having thereon improvements for occupancy shall cause a sanitary closet and sink to be installed and to be connected with the sanitary sewer; provided, that where a house adjacent to a sanitary sewer is connected to an existing septic tank, a connection shall not be required as long as the septic tank operates properly or if the director determines that it is not feasible to connect. When, in the opinion, of the county health officer, the septic tank does not work properly or becomes a health hazard, he shall notify the owner in writing and send a copy of the notice to the director. The owner shall then be required to connect to the sanitary sewer within thirty (30) days from the date of the notice.
- (g) *Connections — where connection inside.*
- (1) Sewer connections shall be made into existing connections constructed by the city to serve a lot. If a connection does not exist, one shall be provided as close as possible to the location requested by the customer. The building sewer shall be constructed to the cleanout at approximately the start of the right-of-way or property line.
 - (2) Old building sewers may be used in connection with new buildings only when they are found, upon examination and testing by the director, to meet all requirements of the city and this chapter. All new building sewers including necessary replacement of existing building sewers shall comply with the state building code, volume II, plumbing.
 - (3) All costs and expenses incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may, directly or indirectly, be occasioned by the installation of the building sewer provided, however, that such indemnification shall not extend to loss or damage due solely to willful misconduct or negligence on the part of the city.
 - (4) It shall be the responsibility of the owner to keep and maintain the building sewer connected to the public sewer in good repair. The owner shall be responsible for making necessary repairs, at his own expense, to the building sewer when notified in writing by the director that repairs are necessary. Should the owner fail to repair the building sewer within fifteen (15) days after receiving written notification that such repairs are necessary, the city may make the necessary repairs and shall assess the owner for the cost of the repairs.
 - (5) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, wastewater carried by such building drain may be lifted by a means approved by the city and discharged to the building sewer. The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes and other applicable rules and regulations of the city. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures shall be approved by the city before installation.
- (h) *Connections—Connections beyond the city limits.* Any person owning or controlling premises located beyond the corporate city limits and desiring to install a plumbing system for the purpose of discharging wastewater into the public sewer may do so by complying with the requirements of this article and paying all applicable fees and charges.

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

- (a) *Standards for sewer system.*

Plans for additions or alterations to the existing sewer system shall be approved by the director or DWQ. Septic tanks shall not be constructed within the city limits. Existing septic tanks may be used until any type of cleaning or repair is required, at which time the structure shall be connected to the public sewer and the septic tank removed or filled with dirt.

- (b) *Provisions of sewer service.*

- (1) *Area outside city.*

- a. *With adequate public sewer existing.* Upon receipt of a request for sewer service and payment of all fees and charges, the city may construct a sewer connection to serve the property. The property owner shall pay the then existing connection fee and capital investment fee prior to receiving a tap.

- b. *Public sewer not existing.*
 - 1. Upon receipt of a request for sewer service, the city may approve the request and authorize construction of a line to serve the property. When a public sewer is constructed, it shall extend across the entire frontage of the property to be served.
 - 2. The party requesting service shall pay the entire cost of construction, including materials, labor, equipment and necessary lift stations.
 - 3. If the city determines that sufficient advantages exist, it may choose to bear the cost of constructing a public sewer from the nearest adequately sized public sewer to the property to be served.
 - 4. Each property requesting service and abutting a public sewer constructed according to subsection (b)(1)b. 1 or 2 of this section shall comply with subsection (b)(1)a. of this section.
 - c. *Charges after annexation into city.* After annexation into the city, property which abuts an existing public sewer shall pay the then existing inside capital investment fee and connection fee prior to receiving a connection.
 - d. *Sewer rates.* Customers outside the city shall be charged the regular outside rate.
- (2) *Area inside city.*
- a. *With adequate public sewer existing.* The city shall construct a sewer connection after receipt of the then existing connection fee.
 - b. *Public sewer not existing.* When a property owner within the city requests sewer service, the city may order the extension of a public sewer to serve the property and assess all abutting property owners an amount equal to the cost of materials, but such assessments shall not exceed fifteen dollars (\$15) per front foot. The city shall pay the cost of all lift stations and force mains.
 - c. *Other conditions.* When a subdivision or developer requests sewer service and conditions in subsection (1) or (2) of this section do not apply, or if an unusually large amount of construction is required, the conditions of payment shall be determined through negotiations and established in a contract between the property owner and city.
- (c) *Outdoor Privies.* It shall be unlawful to construct, maintain, or use any outdoor privy; or use any device for collecting wastewater within the city limits which is not connected to the public sewer.

Secs. 39-7 – 39-25. Reserved.

ARTICLE II. GENERAL SEWER USE REQUIREMENTS

Division 1. General Sewer Use Requirements

Sec. 39-26. Prohibited discharge standards.

- (a) *Discharging wastewater to natural outlet prohibited; discharge of stormwater or unpolluted water.* Wastewater shall not be discharged to a natural outlet in the limits of the city. All stormwater shall be discharged to the storm sewer system. Unpolluted water may be discharged to the storm sewer system with approval of DWQ.
- (b) *Prohibited discharges into sewers—generally.* No person shall pour, throw or discharge any substance, or other solid or liquid, into any sanitary or storm sewer at any manhole or at any opening therein other than a sewer connection, nor shall any person discharge into any sanitary or storm sewer any substance likely to obstruct or to cause undue injury to the same or any substance of such high causticity or of a sufficiently acid nature to interfere materially with the equipment used in connection therewith.
- (c) *Prohibited discharges into sewers — specified waters and wastes.*
 - (1) *General prohibitions.* No user shall contribute or cause to be contributed into the POTW, directly or indirectly, any pollutant or wastewater which causes interference or pass through. These general prohibitions apply to all users of a POTW whether or not the user is a significant industrial user or subject to any National, State, or local pretreatment standards or requirements.
 - (2) *Specific prohibitions.* No user shall contribute or cause to be contributed into the POTW the following pollutants, substances, or wastewater;
 - a. Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21.
 - b. Solid or viscous substance in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case, solids greater than one half inch (1/2”) in any dimension.
 - c. Any wastewater having a pH less than 5.0 or more than 10 or wastewater having any other corrosive property capable of causing damage to the POTW or equipment.
 - d. Wastewater containing pollutants in sufficient quantity either singly or by interaction with other pollutants which cause interference, constitute a hazard to humans or animals, or create a toxic effect in the receiving waters of the POTW.
 - e. Any noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

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- f. Any wastewater having a temperature greater than 150° F (66° C), or which will inhibit biological activity in the POTW treatment plant resulting in Interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104° F (40° C).
 - g. Any pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
 - h. Any trucked or hauled pollutants, except at discharge points designated by the POTW Director in accordance with Sec. 39-33 of this chapter.
 - i. Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the POTW cause the POTW to be in noncompliance with sludge use or disposal regulations or permits issued under section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
 - j. Any wastewater which imparts color which cannot be removed by the treatment process, including, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts sufficient color to the treatment plant's effluent to render the waters injurious to public health or secondary recreation or to aquatic life and wildlife or to adversely affect the palatability of fish or aesthetic quality or impair the receiving waters for any designated uses.
 - k. Any wastewater containing any radioactive wastes or isotopes except as specifically approved by the POTW Director in compliance with applicable State or Federal regulations.
 - l. Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water and unpolluted industrial wastewater, unless specifically authorized by the POTW Director.
 - m. Petroleum oil, nonbiodegradable cutting oil, solvents, or products of mineral oil origin in amounts that may cause interference or pass through.
 - n. Any sludges, screenings or other residues from the pretreatment of industrial wastes.
 - o. Any medical wastes, except as specifically authorized by the POTW Director in a wastewater discharge permit.
 - p. Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.
 - q. Any material that would be identified as hazardous waste according to 40 CFR Part 261 if not disposed of in a sewer except as may be specifically authorized by the POTW Director.
 - r. Any wastewater causing the treatment plant effluent to violate State Water Quality Standards for toxic substances as described in 15A NCAC 2B.0200.
 - s. Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.
 - t. Recognizable portions of the human or animal anatomy.
 - u. Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.
 - v. At no time, shall two successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.
 - w. Fats, oils, or greases of animal or vegetable origin in concentrations greater than one hundred (100) mg/l.
- (e) Pollutants, substances, wastewater, or other wastes prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the municipal wastewater system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system.
- (f) When the POTW Director determines that a user(s) is contributing to the POTW, any of the above enumerated substances in such amounts which may cause or contribute to interference of POTW operation or pass through, the POTW Director shall:
- (1) advise the user(s) of the potential impact of the contribution on the POTW in accordance with Article II, Division 7 of this chapter.
 - (2) take appropriate actions in accordance with Sec. 39-61 and Sec. 39-62 for such user to protect the POTW from interference or pass through.

Sec. 39-27. National Categorical Pretreatment Standards.

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

- (a) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the POTW Director may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).
- (b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the POTW Director shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(c) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by EPA when developing the categorical pretreatment standard.

(d) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.

Sec. 39-28. Local limits.

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

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

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

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

Sec. 39-29. Right of revision.

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

Sec. 39-30. Dilution.

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

Sec. 39-31. Pretreatment of wastewater.

(a) Users shall provide pretreatment as required to comply with this chapter or discharge permit, and shall achieve compliance with all local limits and pretreatment standards within the specified time limitations. Any facilities required to pretreat wastewater shall be constructed, operated, and maintained at the expense of the owner. Detailed plans showing the pretreatment facilities and operating procedure shall be submitted to and approved by the director before construction of the facilities. Submission and approval of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the director under the provisions of this chapter. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to the director prior to the initiation of the changes.

(b) *Additional Pretreatment Measures.*

(1) Whenever deemed necessary, the POTW Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this chapter.

(2) In order to equalize flows over a twenty-four hour period, each user discharging in excess of forty thousand (40,000) gallons in any one (1) day shall construct and maintain at user's own expense a suitable storage tank. Such tank shall have a capacity of at least eighty percent (80%) of the normal volume of one (1) twenty-four (24) hour production period of waste and an outlet to the sewer which is controlled by a waterworks type rate controller or other approved devices, the setting of which shall be directed by the city. The POTW Director shall approve all plans prior to construction. A wastewater discharge permit may be issued solely for flow equalization.

(3) Grease, oil, and sand interceptors shall be provided when, in the opinion of the POTW Director, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the POTW Director and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the user at their expense.

(4) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

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

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- (a) The POTW Director shall evaluate whether each significant industrial user needs a plan or other action to control and prevent slug discharges and accidental discharges as defined in Sec. 39-2(a)(50). All SIUs must be evaluated within one year of being designated an SIU. The POTW Director may require any user to develop, submit for approval, and implement such a plan or other specific action. Alternatively, the POTW Director may develop such a plan for any user.
 - (b) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load. Also see Sec. 39-75 and Sec. 39-76.
 - (c) An accidental discharge/slug control plan shall address, at a minimum, the following:
 - (1) Description of discharge practices, including non-routine batch discharges;
 - (2) Description of stored chemicals;
 - (3) Procedures for immediately notifying the POTW Director of any accidental or slug discharge, as required by Sec. 39-76 of this chapter; and
 - (4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.
 - (d) Wastewater which constitutes a slug as defined herein will have a surcharge at the discretion of the POTW Director.

Sec. 39-33. Hauled wastewater.

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

Secs. 39-34 – 39-41. Reserved.

Division 2. Fees

Sec. 39-42. Purpose.

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

Sec. 39-43. General requirements within city.

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

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

(a) Sewer connection fees are fees for the installation of a tap at the right-of-way. These fees shall be adopted by the city council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the fee schedule will be on file in the office of the City Clerk and the office of the Public Works Director, and copies shall be made available to the customers of the city's sewer system. The fees shall be reviewed and adjusted by the City Council, as needed, or upon recommendations of the City Manager. Minimum fees shall be paid prior to construction of the tap. Any additional fees to equal the total actual construction cost shall be paid prior to customer making tie-in to the tap. For any tap larger than listed on the fee schedule, the cost shall be estimated by the POTW Director at the time of the request. Any additional cost to equal the total actual construction costs shall be paid prior to customer making tie-in to the tap. For taps requiring more than the usual construction work, the city may require customer to employ an outside contractor to make the tap. Contractors shall obtain a permit for the public works department and all work shall be in accordance to city specifications.

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

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

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

Sec. 39-46. Service fees – transfers.

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

Sec. 39-47. Sewer rates and bills.

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

(a) *Residential service.*

- (1) This service is available for the collection and treatment of domestic sewage from single family residences within the city and outside the city limits where the city's collection facilities are extended.
- (2) Service is not available under this schedule for any nondomestic sewage; such as from business operated in the residence, for commercial for multifamily use, such as, master metered apartments, motels, inns, and mobile home parks; or for resale.
- (3) This service is applicable when the customer's residence is served by a water service tap up to one (1) inch in diameter.
- (4) The minimum monthly charge for city customers will be determined by the current rate schedule.
- (5) Commodity charges will be based on the customer's total water consumption during the billing period. Water consumption will be metered and rounded to nearest cubic foot for billing. Except when the amount of water used is not registered because of a defective meter, the method described in Sec. 39-50 will be used.
- (6) Existing customers not receiving water service shall provide a meter to measure total use. When total use is not known, bills will be rendered on the basis of estimates by the POTW Director.
- (7) The sewer service charge shall be billed to each customer at the same time the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.

(b) *General service.*

- (1) This service is available for the collection and treatment of sewage discharged by commercial, industrial, institutional and other customers within the city and outside the city limits where the city's collection facilities are extended. Service is not available for resale service.
- (2) The minimum monthly charge for inside city customers will be determined by the current rate schedule.
- (3) Charges will be established periodically for billing of some costs attributable to wastewater with greater pollutant concentrations than normal domestic sewage. The following rates are applicable for five-day BOD and suspended solids:

- a. BOD: \$0.24/pound for concentration in excess of 300 mg/l
- b. TSS: \$0.29/pound for concentration in excess of 300 mg/l

Charges for additional costs attributable to other pollutants will be assessed to each customer, as applicable. All nondomestic customers that utilize two inch or greater meters shall be charged an additional \$0.00414 per cubic foot for administration of the industrial pretreatment program.

- (4) Commodity charges will be based on the customer's total water consumption during the billing period, except when the customer's water consumption significantly exceeds the discharge into the wastewater collection system. When applicable, the customer may pay the cost of installing and maintaining the

necessary equipment to monitor the flow not returned to the wastewater collection system, and has the billing use reduced accordingly.

- (5) The sewer service charge shall be billed to each customer at the same time that the water bills are rendered and shall be collected at the same time and in the same manner as water accounts.

Sec. 39-48. Wastewater surcharges.

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

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

- (a) All wastewater meters shall be read monthly, and bills shall be mailed on a cycle basis.
- (b) Every bill shall be due when mailed to the customer at the last address provided by the customer. A bill shall reflect a due date of fifteen (15) days from the billing date shown on the bill. The same notice will serve as a notice of possible disconnect if payment is not received within thirty-two (32) days of the billing date, allowing greater than the statutory minimum
- (c) A late payment penalty in the amount of five percent (5%) per month shall be imposed upon any outstanding unpaid balance twenty-five (25) days after the billing date shown on the bill. The late payment penalty will be reflected on the bill rendered the following month.
- (d) An automated telephone reminder system will attempt to contact all delinquent accounts prior to disconnection as a courtesy if the customer has provided a phone number.
- (e) If payment has not been received within thirty-two (32) days from the original billing date, services will be disconnected on the thirty-third (33rd) day. After payments in the night deposit are posted and the cutoff person has left the office for the purpose of disconnecting a delinquent customer, a service fee in an amount as established from time to time by ordinance will be charged on that date, whether services are disconnected or not.
- (f) A customer whose services are disconnected for such delinquency may have services restored during regular working hours by the payment of the bill in full plus the twenty-dollar (\$25.00) service fee. If a customer requests that services be reconnected after regular working hours, their service fee shall be in an amount as established from time to time by ordinance. Payment must be received by 11:00 a.m. the following day or services will be disconnected.
- (g) The customer shall pay all billed utility charges before transferring service from one (1) location to another. The final bill shall be mailed to the customer's new billing address. If a customer fails to pay his utility bills for any account where he is listed as the customer and such account becomes delinquent, the city may transfer the amount owed to any other account where the customer is a primary recipient of utilities and cutoff utilities to such account for nonpayment. The city may also refuse to transfer an account to a new customer's name or connect services to a new account where the delinquent customer will be a primary recipient of utilities. A customer is a primary recipient of utilities wherever he is listed as a customer, resides as a head of household or conducts a trade or business. The city's determination that a customer is primary recipient of utilities shall be effective until the customer proves otherwise.
- (h) Any customer who has a check or draft returned from a financial institution because of insufficient funds or closed account shall be charged a service fee in accordance with N.C.G.S. 25-3-506.
- (i) Customers requesting alternate payment due dates must make such request of the city and utilize the city's bank draft service. The customer may choose one of the following periods of the month for their bill to be drafted:
 - (1) Between the 7th and 16th of the month
 - (2) Between the 14th and 24th of the month
 - (3) Between the 22nd and 31st of the month
 - (4) Between the 28th and 9th of the month.

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

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

Sec. 39-51. Adjustment of sewer bills.

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

Sec. 39-52. Sewer facilities impact fees.

- (a) *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
- (1) *Capital Equipment* means equipment with an expected use life of three (3) years or more.
 - (2) *Connection to the sewer system* means the physical connect of a building, structure or use of land to the city's sewer lines, no matter if such connection is made through or by intermediate lines.
 - (3) *Development order* means a regulatory approval by city.
 - (4) *Fee payer* means a person applying for connection to the city's sewer system.
 - (5) *Sewer system* means the physical public collection and treatment facilities of the city administrative adjuncts to such system and the planned future improvements to such system.
 - (6) *Sewer facilities* means physical public collection and treatment facilities of the city.
- (b) *Legislative findings.* The city finds, determines and declares that:
- (1) The city has expanded and must further expand and upgrade its sewer facilities in order to maintain current and meet anticipated future standards of public health if new development is to be accommodated without decreasing current standards of health.
 - (2) The imposition of impact fees is one of the preferred methods of ensuring that development bears a proportionate share of the cost of sewer facilities necessary to accommodate such development. This must be done in order to promote and protect the public health, safety, and welfare.
 - (3) Connecting to the city sewer system will create a need for the construction, equipping, expansion, and upgrading of sewer facilities.
 - (4) The fees established by this section are derived from, are based upon, and do not exceed the costs of providing additional and/or upgraded sewer facilities necessitated by the connection to the city's sewer system.
- (c) *Short title, authority, and applicability.*
- (1) The ordinance from which this article is derived shall be known and may be cited as the "City of Washington Sewer Facilities Impact Fee Ordinance."
 - (2) The City Council has the authority to adopt the ordinance from which this article is derived pursuant to its general police powers and its obligation to protect the health, welfare, safety of its residents.
 - (3) This article shall apply in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (d) *Intent and purposes.*
- (1) This article is intended to assist in the implementation of the city comprehensive plan.
 - (2) The purpose of this article is to regulate the use and development of land to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide sewer facilities in the incorporated and extraterritorial jurisdiction (ETJ) areas of city served by its sewer system.
- (e) *Rules of construction.*
- (1) The provisions of this article shall be liberally construed to effectively carry out its purpose in the interest of the public health, safety, and welfare.
 - (2) For the purposes of administration and enforcement of this article, the following rules of construction shall apply to the text of this article:
 - a. In case of any difference of meaning or implication between the text of this article and any caption, illustration, summary table, or illustrative table, the text shall control.

- b. The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
 - c. Words used in the present tense shall include the future; and words used in the singular number shall include the plural, and the plural the singular, unless the context clearly indicates the contrary.
 - d. The phrase “used for” includes “arranged for”, “designed for”, “maintained for”, or “occupied for”.
 - e. The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.
 - f. Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions, or events connected by the conjunction “and”, “or”, either or”, the conjunction shall be interpreted as follows:
 - 1. The term “and” indicates that all the connected terms, conditions, provisions or events or events shall apply.
 - 2. The term “or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - 3. The term “either or” indicates that the connected items, conditions, provisions or events shall apply singly but not in combination.
 - g. The word “includes” shall not limit a term to the specific example but us intended to extend its meaning to all other instances or circumstances of like kind or character.
 - h. The term “City Manager” means the Washington City Manager or municipal officials he may designate to carry out the administration of this article.
- (f) *Imposition of sewer facilities impact fee.* Any person who, after the effective date of the ordinance from which this article is derived seeks to connect to the city sewer system is hereby required to pay a sewer facilities impact fee in the manner and amount set forth in this article.
- (g) *Computation of the amount of sewer facilities impact fee.*
- (1) Sewer Facilities Impact Fees shall be established from time to time by ordinance. A schedule of these fees shall be adopted by the City Council and made a part of the minutes of the meeting in which the action was taken. Certified copies of the rates will be on file in the office of the City Clerk and the office of the POTW Director, and copies shall be made available to the customers of the city’s sewer system. The rates shall be reviewed and adjusted by the City Council, as needed, or upon the recommendation of the City Manager.
 - (2) If a fee payer opts not to have the impact fee determined according to subsection (b) of this section, then the fee payer shall prepare and submit to the City Manager an independent fee calculation study for the land development activity for which a connection to the city’s sewer system is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for sewer demand prescribed by the North Carolina Department of Environment and Natural Resources (DENR). The documentation submitted shall show the basis upon which the independent fee calculation was made. The City Manager shall consider the documentation submitted by the fee payer but is not required to accept such documentation as he shall reasonably deem to be inaccurate or not reliable and may, in the alternative, require the fee payer to submit additional or different documentation for consideration. If an acceptable independent fee calculation study is not presented, the fee payer shall pay sewer facilities impact fees based upon the current fee schedule. If an acceptable independent fee calculation study is presented, the City Manager may adjust the fee to that appropriate to the particular development. Determination made by the City Manager pursuant to this subsection may be appealed to the Washington City Council by filing a written request with the City Manager within ten (10) days of the City Manager’s determination.
- (h) *Payment of fee.*
- (1) The fee payer shall pay the sewer facilities impact fee required by this article to the city division of Revenue Collections prior to the connection to the city’s sewer system.
 - (2) All fines collected shall be properly identified by and promptly transferred for deposit in the appropriate Sewer Facilities Impact Fee Trust Fund to be held in separate accounts as determined in this article and used solely for the purposes specified in this article.
- (i) *Sewer Facilities Impact Fee Trust Funds established.*
- (1) There are hereby established two (2) separate Water and Sewer Facilities Impact Fee Trust Funds:
 - a. The Water Facilities Impact Fee Trust Fund; and
 - b. The Sewer Facilities Impact Fee Trust Fund
 - (2) Funds withdrawn from these accounts must be used in accordance with the provisions of this article.
- (j) *Use of funds.*
- (1) Funds collected from sewer facility impact fees shall be used solely for the purpose of acquiring, equipping, and/or making capital improvements to sewer facilities under the jurisdiction of the city, and shall not be used for maintenance or operations.
 - (2) Funds from the Sewer Facilities Impact Fee Trust Fund may only be used for sewer facilities purposes. Funds shall be expended in the order in which they are collected.
 - (3) In the event that bonds or similar debt instruments are issued for advanced provision of capital facilities for which sewer facilities impact fees may be expended, impact fees may be used to pay debt service on such

bonds or similar debt instruments to the extent that the facilities provided are of the type described in subsection (b) of this section.

- (4) At least once each fiscal period the City Manager shall present to the City Council a proposed capital improvement program for sewer facilities, assigning funds, including any accrued interest, from the several Sewer Facilities Impact Fee Trust Fund to specific sewer facilities improvements projects and related expenses, monies, including any accrued interest, not assigned in any fiscal period shall be retained in the same Sewer Facilities Impact Fee Trust Fund until the next fiscal period, except, as provided by the refund provisions of this article.
 - (5) Funds may be used to provide refunds as described in subsection (k) of this section.
 - (6) Funds may be funded to rebate developer costs for providing sewer capital facilities in excess of the capacity required for the individual developer making the provision. Any rebates must be pursuant to a refunding agreement between the developer and the city after the effective date of the ordinance from which this article is derived. Prior refunding agreements may be renegotiated in order to bring such agreements into accord with the provisions of this article.
- (k) *Refund of fees paid.* Any funds not expended or encumbered by the end of the calendar quarter immediately following six years (6) from the date the sewer facilities impact fee was paid shall, upon application of the then current landowner, be returned to such landowner with interest at the rate of five percent (5%) annually, provided that the landowner submits an application for a refund to the City Clerk within one hundred eighty (180) days of the expiration of the six (6) year period.
- (l) *Exemptions and credits.*
- (1) The following shall be exempted from payment of the impact fee:
 - a. Alterations or expansions of an existing building where no additional or larger sewer connections are requested and where the use is not changed.
 - b. The replacement of a building or structure with a new building or structure of the same size and use where no additional or larger sewer connections are requested and where the use is not changed.
 - c. The installations of a replacement mobile home on a lot or other such site when sewer capital facilities impact fee for such mobile home site has previously been paid pursuant to this article or where a mobile home legally existed on such site on or prior to the effective date of the ordinance from which this article is derived.
 - d. Any claim of exemption must be made no later than the time of application for connection to the city's sewer system. Any claim not so made shall be deemed waived.
 - (2) *Credits.*
 - a. Sewer facilities capital improvements may be offered by the fee payer as total or partial payment of the required impact fee. The offeror must request a sewer facilities impact fee credit. If the City Manager accepts such an offer, whether the acceptance is before or after the effective date of the ordinance from which this article is derived, the credit shall be determined and provided in the following manner:
 1. Credit for the dedication of land shall be valued at:
 - a) One hundred ten percent (110%) of the most recent assessed value by the county tax assessor;
 - b) By such other appropriate method as the City Council may have accepted prior to the effective date of the ordinance from which this section is derived for particular sewer facilities improvements; or
 - c) By fair market value established by private appraisers acceptable to the city. Credit for the dedication of sewer facilities land shall be provided when the property has been conveyed at no charge to; and accepted by, the city in a manner satisfactory to the City Council.
 2. Applicants for credit for construction of sewer facilities improvements shall submit acceptable engineering drawings and specification and construction cost estimates to the City Manager. The City Manager shall determine credit for construction based upon either these cost estimates or upon alternated engineering criteria and construction cost estimates if the City Manager determines that such estimates submitted by the applicant are either unreliable or inaccurate. The City Manager shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the sewer facilities impact fee component to which the credit will apply the reason for the credit, and the legal description or other adequate description of the project or development to which the credit may be applied. The applicant must sign and date a duplicate copy of a duplicate copy of such letter or certificate and return such signed document to the City Manager before credit will be given. Failure of the applicant to sign, date and return such document within sixty (60) days shall nullify the credit.
 3. Except as provided in subsection (1) of this section, credit against impact fees otherwise due will not be provided until:
 - a. The construction is completed and accepted by the city; or

- b. A suitable maintenance and warranty bond is received and approved by the City Clerk, when applicable.
- 4. Credit may be provided before completion of specified sewer facilities improvements if adequate assurances are given by the applicant that the standards set out in this section will be met and if the fee payer posts security, as provided in this subsection, for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with and approved by the City Clerk in an amount determined by the City Manager. If the sewer facilities construction project will not be constructed in one (1) year of acceptance of the offer by the City Manager, the amount of the security shall be increased by ten percent (10%) compounded, for each year of the life of the security. The security shall be reviewed and approved by the City Clerk of the City Council prior to acceptance of the security by the City Clerk. If sewer facilities construction project is not to be completed within five (5) years of the date of the fee payer's offer, the City Council must approve the sewer facilities construction project and its scheduled completion date prior to the acceptance of the offer by the City Manager.
 - b. Any claim for credit must be made no later than the time of application for connection. Any claim not so made shall be deemed waived.
 - c. Credits shall not be transferable from one project or development to another without the approval of the City Council.
 - d. Credits shall not be transferable from one (1) component of the water and sewer facilities impact to another component of this fee.
 - e. Determination made by the City Manager, pursuant to the credit provisions of this section, may be appealed to the City Council by filing a written request with the City Manager within ten (10) days of the City Manager's determination.
- (m) *Review.* The fees contained in subsection (g)(1) of this section shall be reviewed by City Council at least once each fiscal biennium at the time of adoption of the city budget.
- (n) *Penalty Provision.* A violation of this Sec. 39-52 of this chapter shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, the violator shall be punishable according to law. However, in addition to or in lieu of any criminal prosecution city shall have the power to sue in civil court to enforce the provisions of this section.

Secs. 39-53 – 39-60. Reserved.

Division 3 - Wastewater Discharge Permit Application and Issuance

Sec. 39-61. Wastewater dischargers.

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

Sec. 39-62. Wastewater permits.

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

- (a) *Significant Industrial User Determination.* All persons proposing to discharge non-domestic wastewater, or proposing to change the volume or characteristics of an existing discharge of non-domestic wastewater shall request from the POTW Director a significant industrial user determination. If the POTW Director determines or suspects that the proposed discharge fits the significant industrial user criteria he will require that a significant industrial user permit application be filed.
- (b) *Significant Industrial User Permit Application.* Users required to obtain a significant industrial user permit shall complete and file with the city, an application in the form prescribed by the POTW Director, and accompanied by an application fee in the amount prescribed in the schedule of charges and fees. Significant industrial users shall apply for a significant industrial user permit within ninety (90) days after notification of the POTW Director's determination in Sec. 39.62(a) above. In support of the application, the user shall submit, in units and terms appropriate for evaluation, the following information:
 - (1) Name, address, and location, (if different from the address);
 - (2) Standard Industrial Classification (SIC) codes for pretreatment, the industry as a whole, and any processes for which categorical pretreatment standards have been promulgated;
 - (3) Analytical data on wastewater constituents and characteristics including but not limited to those mentioned in Article II Division 1 of this chapter, any of the priority pollutants (section 307(a) of the Act) which the applicant knows or suspects are present in the discharge as determined by a reliable analytical laboratory, and any other pollutant of concern to the POTW; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 CFR, Part 136, as amended and as required in Sec. 39-80 and Sec. 39-81;

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- (4) Time and duration of the indirect discharge;
 - (5) Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations if any;
 - (6) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, floor drains, sewer connections, direction of flow and appurtenances by the size, location and elevation;
 - (7) Description of activities, facilities and plant processes on the premises including all materials which are or could be accidentally or intentionally discharged;
 - (8) Where known, the nature and concentration of any pollutants in the discharge which are limited by any city, State, or Federal Pretreatment Standards, and a statement regarding whether or not the pretreatment standards are being met on a consistent basis and if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
 - (9) If additional pretreatment and/or O & M will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - a. The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards. No increment in the schedule shall exceed nine (9) months.
 - b. No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the POTW Director including, at a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the POTW Director.
 - (10) Each product produced by type, amount, process or processes and rate of production;
 - (11) Type and amount of raw materials processed (average and maximum per day);
 - (12) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system;
 - (13) If subject to a categorical standard, a baseline monitoring report in accordance with 40 CFR 403.12(b) and 15A NCAC 2H .0908(a), as outlined in Sec. 39-71 of this chapter.
 - (14) Description of current and projected waste reduction activities in accordance with N.C.G.S. 143-215.1(g).
 - (15) Description of existing on-site pretreatment facilities and practices.
 - (16) Any other information as may be deemed by the POTW Director to be necessary to evaluate the permit application.
- (c) *Application Signatories and Certification.* All wastewater discharge permit applications and user reports must be signed by the current authorized representative of the user on file with the Control Authority and/or Municipality as defined in Sec. 39-2(a)(3) and contain the following certification statement:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”
- (d) *Application Review and Evaluation.* The POTW Director will evaluate the data furnished by the user and may require additional information.
- (1) The POTW Director is authorized to accept applications for the city and shall refer all applications to the POTW staff for review and evaluation.
 - (2) Within thirty (30) days of receipt the POTW Director shall acknowledge and accept the complete application; or if not complete, shall return the application to the applicant with a statement of what additional information is required.
- (e) *Tentative determination and draft permit.*
- (1) The POTW staff shall conduct a review of the application and an on-site inspection of the significant industrial user, including any pretreatment facilities, and shall prepare a written evaluation and tentative determination to issue or deny the significant industrial user permit.
 - (2) If the staff's tentative determination in paragraph (1) above is to issue the permit, the following additional determinations shall be made in writing:
 - a. Proposed discharge limitations for those pollutants proposed to be limited;
 - b. A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed limitations; and
 - c. A brief description of any other proposed special conditions which will have significant impact upon the discharge described in the application.

- (3) The staff shall organize the determinations made pursuant to paragraphs (1) and (2) above and the general permit conditions of the City into a significant industrial user permit.
- (f) *Permit Synopsis.* A fact sheet providing a brief synopsis of the application shall be prepared by the POTW staff for submission to the applicant and the approval authority and shall be made available to the public upon request. The contents of such fact sheets shall include at least the following information:
 - (1) a sketch and detailed description of the industrial facilities and pretreatment facilities including the location of all points of discharge to the POTW and all established compliance monitoring points.
 - (2) a quantitative description of the discharge described in the application which includes at least the following:
 - a. the rate or frequency of the proposed discharge; if the discharge is continuous, the average daily flow;
 - b. the actual average daily discharge in pounds per day of any limited pollutant and any pollutant identified in the application as known or suspected present; and,
 - c. the basis for the pretreatment limitations including the documentation of any calculations in applying categorical pretreatment standards.
- (g) *Final action on Significant Industrial User permit applications.*
 - (1) The POTW Director shall take final action on all applications not later than ninety (90) days following receipt of a complete application.
 - (2) The POTW Director is authorized to:
 - a. issue a significant industrial user permit containing such conditions as are necessary to effectuate the purposes of this ordinance and N.C.G.S. 143-215.1;
 - b. issue a significant industrial user permit containing time schedules for achieving compliance with applicable pretreatment standards and requirements;
 - c. modify any permit upon not less than sixty (60) days notice and pursuant to Sec. 39-62(i) of this chapter;
 - d. revoke any permit pursuant to Sec. 39-112 of this chapter;
 - e. suspend a permit pursuant to Sec. 39-112 of this chapter;
 - f. deny a permit application when in the opinion of the POTW Director such discharge may cause or contribute to pass-through or interference of the wastewater treatment plant or where necessary to effectuate the purposes of N.C.G.S. 143-215.1.
- (h) *Adjudicatory hearings.*
 - (1) Any significant industrial user whose permit is denied, terminated or is granted subject to conditions he deems unacceptable shall have the right to an adjudicatory hearing before the POTW Director or other hearing officer appointed by the POTW director upon making written demand, identifying the specific issues to be contested, to the POTW Director within thirty (30) days following notice of the final decision regarding any of the above. Unless such written demand is made, the above described decisions shall be final and binding, subject to review by the Division of Water Quality, Department of Environment and Natural Resources, pursuant to 15A NCAC 02H .0917, as may be amended. For modified permits, only those parts of the permit being modified may be adjudicated. The POTW Director, or other hearing officer, as appropriate, shall make a decision upon said demand and, within thirty (30) days of receipt of said demand, transmit a copy of the decision to the petitioner by registered or certified mail.
 - a. *New permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a newly issued permit, the terms and conditions of the entire permit are stayed and the permit is not in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - b. *Renewed or modified permits.* Upon appeal, including judicial review in the General Courts of Justice, of the terms or conditions of a renewed or modified permit, the terms and conditions of the existing permit remain in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - c. *Terminated permits.* Upon appeal, including judicial review in the General Courts of Justice, of a terminated permit, no permit is in effect until either the conclusion of judicial review or until the parties reach a mutual resolution.
 - (2) Any decision of a hearing officer, or the POTW Director, made as a result of an adjudicatory hearing held hereunder, may be appealed to the City Manager or other unbiased entity designated by the City Manager, upon filing written demand within ten (10) days of receipt of notice of the decision. Failure to make written demand within the time specified herein shall bar further appeal. The City Manager, or other unbiased entity designated by the City Manager, shall make a final decision on the appeal within ninety (90) days and transmit a copy of the decision to the petitioner by registered or certified mail. This decision is the final decision for the purposes of judicial review. Appeal hearings shall be conducted in accordance with applicable provisions of the city regulations.
 - (3) *Official record.* When a final decision for the purposes of judicial review is issued, the city shall cause to be prepared an official record of the case that includes all notices, motions, and other like pleadings; a copy of all documentary evidence introduced; a certified transcript of all testimony taken, if testimony is transcribed, or, if testimony is taken and not transcribed, then a narrative summary of any testimony taken;

and a copy of the final decision. Any person against whom a final decision for the purposes of judicial review is entered may seek judicial review of the decision by filing a written petition within thirty (30) days after receipt of notice by registered or certified mail of the final decision, but not thereafter, to the appropriate Superior Court of justice along with a copy to the city. Within thirty (30) days after receipt of a copy of the petition for judicial review, the city shall transmit to the reviewing court the original or a certified copy of the official record.

(i) *Permit modification.*

- (1) Modifications of permits shall be subject to the same procedural requirements as the issuance of permits except as listed below.
 - a. changes in the ownership of the discharge when no other change in the permit is indicated,
 - b. a single modification of any compliance schedule not in excess of four (4) months,
 - c. modification of compliance schedules (construction schedules) in permits for new sources where the new source will not begin to discharge until control facilities are operational.
 - d. modifications of the monitoring requirements in the permit.Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
- (2) Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the wastewater discharge permit of users subject to such standards shall be revised to require compliance with such standard within the time frame prescribed by such standard. Where a user, subject to a National Categorical Pretreatment Standard, has not previously submitted an application for a wastewater discharge permit as required by Sec. 39-62(b), the user shall apply for a wastewater discharge permit within one hundred eighty (180) days after the promulgation of the applicable National Categorical Pretreatment Standard.
- (3) A request for a modification by the permittee shall constitute a waiver of the sixty (60) day notice required by N.C.G.S. 143-215.1(b) for modifications.

(j) *Permit conditions.*

- (1) The POTW Director shall have the authority to grant a permit with such conditions attached as he believes necessary to achieve the purpose of this chapter and N.C.G.S. 143-215.1. Wastewater permits shall contain, but are not limited to containing, the following:
 - a. a statement of duration (in no case more than five (5) years);
 - b. a statement of non-transferability;
 - c. applicable effluent limits based on categorical standards or local limits or both;
 - d. applicable monitoring, sampling, reporting, notification, and record keeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on Federal, State and local law;
 - e. requirements for notifying the POTW in the event of an accidental discharge or slug load as defined in Sec. 39-2;
 - f. requirements to implement a Plan or other controls for prevention of accidental discharges and/or slug loads as defined in Sec. 39-2(a)(51), if determined by the POTW Director to be necessary for the user and,
 - g. requirements for immediately notifying the POTW Director of any changes at its facility affecting the potential for spills and other accidental discharges, or slug load as defined in Sec. 39-2(a)(51). Also see Sec. 39-75 and Sec. 39-76;
 - h. a statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements and any applicable compliance schedule.
- (2) In addition, permits may contain, but are not limited to containing, the following:
 - a. Limits on the average and/or maximum rate of discharge, and/or requirements for flow regulation and equalization.
 - b. Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
 - c. Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
 - d. Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system.
 - e. The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the system.
 - f. Requirements for installation and maintenance of inspection and sampling facilities and equipment.
 - g. Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules.
 - h. Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).

- i. Compliance schedules for meeting pretreatment standards and requirements.
 - j. Requirements for submission of periodic self-monitoring or special notification reports.
 - k. Requirements for maintaining and retaining plans and records relating to wastewater discharges as specified in Sec. 39-83 and affording the POTW Director, or his representatives, access thereto.
 - l. Requirements for prior notification and approval by the POTW Director of any new introduction of wastewater pollutants or of any significant change in the volume or character of the wastewater prior to introduction in the system.
 - m. Requirements for the prior notification and approval by the POTW Director of any change in the manufacturing and/or pretreatment process used by the permittee.
 - n. A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable Federal and State pretreatment standards, including those which become effective during the terms of the permit.
 - o. Other conditions as deemed appropriate by the POTW Director to ensure compliance with this ordinance, and State and Federal laws, rules, and regulations.
- (k) *Permit duration.* Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than a year or may be stated to expire on a specific date.
- (l) *Permit transfer.* Wastewater permits are issued to a specific user for a specific operation. A wastewater discharge permit shall not be reassigned or transferred or sold to a new owner, new user, different premises, or a new or changed operation.
- (m) *Permit reissuance.* A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with Sec. 39-62 a minimum of one hundred eighty (180) days prior to the expiration of the existing permit.

Secs. 39-63 - 39-70. Reserved.

Division 4. Reporting Requirements

Sec. 39-71. Baseline monitoring reports.

- (a) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the POTW Director a report which contains the information listed in paragraph (b), below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the POTW Director a report which contains the information listed in paragraph (b), below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged.
- (b) Users described above shall submit the information set forth below.
- (1) *Identifying information.* The name and address of the facility, including the name of the operator and owner.
 - (2) *Environmental permits.* A list of any environmental control permits held by or for the facility.
 - (3) *Description of operations.* A brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.
 - (4) *Flow measurement.* Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).
 - (5) *Measurement of pollutants.*
 - a. The categorical pretreatment standards applicable to each regulated process.
 - b. The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the standard or by the POTW Director, of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long-term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 39-80 of this chapter.
 - c. Sampling must be performed in accordance with procedures set out in Sec. 39-81 of this chapter and 40 CFR 403.12(b) and (g), including 40 CFR 403.12(g)(4).
 - (6) *Certification.* A statement, reviewed by the user's current authorized representative as defined in Sec. 39-2(a)(4) and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.
 - (7) *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in Sec. 39-72 of this chapter.

- (8) *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with Sec. 39-62(c) of this chapter.

Sec. 39-72. Compliance schedule progress reports.

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

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

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

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

Sec. 39-74. Periodic compliance reports.

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

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

Sec. 39-75. Reports of changed conditions.

Each user must notify the POTW Director of any planned significant changes to the user's operations or system which might alter the nature, quality, or volume of its wastewater at least thirty (30) days before the change. See Sec. 39-76(d) for other reporting requirements.

- (a) The POTW Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Sec. 39-62 of this chapter.
- (b) The POTW Director may issue a wastewater discharge permit under Sec. 39-62 of this chapter or modify an existing wastewater discharge permit under Sec. 39-62 of this chapter in response to changed conditions or anticipated changed conditions.
- (c) For purposes of this requirement, significant changes include, but are not limited to, flow increases of twenty percent (20%) or greater, and the discharge of any previously unreported pollutants.

Sec. 39-76. Reports of potential problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Sec. 39-2(a)(51), that may cause potential problems for the POTW, the user shall immediately telephone and notify the POTW Director of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.
- (b) Within five (5) days following such discharge, the user shall, unless waived by the POTW Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties, or other liability which may be imposed pursuant to this chapter.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph (a), above. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.

- (d) All SIUs are required to notify the POTW immediately of any changes at its facility affecting the potential for spills and other accidental discharge, discharge of a non-routine, episodic nature, a non-customary batch discharge, or a slug load as defined in Sec. 39-2(a)(51).

Sec. 39-77. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW Director as the POTW Director may require.

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

(a) If sampling performed by a user indicates a violation, the user must notify the POTW Director within twenty-four (24) hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the POTW Director within thirty (30) days after becoming aware of the violation. If allowed by the POTW Director, the user is not required to resample:

- (1) if the POTW Director monitors at the user's facility at least once a month; or
- (2) if the POTW Director samples between the user's initial sampling and when the user receives the results of this sampling.

(b) If the POTW Director does not require the user to perform any self-monitoring and the POTW sampling of the user indicates a violation, the POTW Director shall repeat the sampling and obtain the results of the repeat analysis within thirty (30) days after becoming aware of the violations, unless one of the following occurs:

- (1) the POTW Director monitors at the user's facility at least once a month; or
- (2) the POTW Director samples the user between their initial sampling and when the POTW receives the results of this initial sampling; or
- (3) the POTW Director requires the user to perform sampling and submit the results to the POTW Director within the thirty (30) day deadline of the POTW becoming aware of the violation.

Sec. 39-79 Notification of the Discharge of Hazardous Waste

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

- (a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than one hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharge during the calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharge. However, notifications of changed conditions must be submitted under Sec. 39-75 of this chapter. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of Sec. 39-71, Sec. 39-73 and Sec. 39-74, of this chapter.
- (b) Dischargers are exempt from the requirements of paragraph (a), above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specific in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.
- (c) In the case of any new regulation under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW Director, the EPA Regional Waste Management Waste Division Director, and State hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this chapter, a permit issued there under, or any applicable Federal or State law.

Sec. 39-80. Analytical Requirements.

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

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

- (a) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

- (b) Grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, volatile organic compounds, and any other pollutants as required by 40 CFR 136. The POTW shall determine the number of grabs necessary to be representative of the User's discharge. See 40 CFR 403.12(g)(5) for additional grab sample number requirements for BMR and 90 Day Compliance Reports. Additionally, the POTW Director may allow collection of multiple grabs during a twenty-four (24) hour period which are composited prior to analysis as allowed under 40 CFR 136.
- (c) *Composite samples.* All wastewater composite samples shall be collected with a minimum of hourly aliquots or grabs for each hour that there is a discharge. All wastewater composite samples shall be collected using flow proportional composite collection techniques, unless time-proportional composite sampling or grab sampling is authorized by the POTW Director. When authorizing time-proportional composites or grabs, the samples must be representative and the decision to allow the alternative sampling must be documented.

Sec. 39-82. Timing.

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

Sec. 39-83. Record keeping.

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

(2) The POTW Director may develop procedures for receipt of electronic reports for any reporting requirements of this chapter. Such procedures shall comply with 40 CFR Part 3. These procedures shall be enforceable under Division 7-Enforcement of this chapter.

Secs. 39-84 -39-91. Reserved.

Division 5. Compliance Monitoring

Sec. 39-92. Monitoring facilities.

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

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

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

Sec. 39-93. Inspection and sampling.

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

Sec. 39-94. Search warrants.

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

Secs. 39-95 -39-102. Reserved.

Division 6. Confidential Information

Sec. 39-103. Confidential information.

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public or other governmental agency without restriction unless the user

specifically requests and is able to demonstrate to the satisfaction of the POTW Director that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data.

When requested by the person furnishing a report, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available upon written request to governmental agencies for uses related to this chapter, the National Pollutant Discharge Elimination System (NPDES) Permit, Non-discharge permit and/or the pretreatment programs; provided, however, that such portions of a report shall be available for use by the State or any state agency in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics will not be recognized as confidential information.

All records relating to compliance with Pretreatment Standards shall be made available to officials of the approval authority and EPA upon request.

Secs. 39-104 -39-111. Reserved.

Division 7. Enforcement

Sec. 39-112. Administrative Remedies.

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

The POTW Director shall review the evidence presented at the hearing and determine whether the proposed enforcement action is appropriate.

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

- (d) *Administrative orders.* When the POTW Director finds that an industrial user has violated or continues to violate this chapter, permits or orders issued hereunder, or any other pretreatment requirement the POTW Director may issue an order to cease and desist all such violations and direct those persons in noncompliance to do any of the following:
 - (1) Immediately comply with all requirements;
 - (2) Comply in accordance with a compliance time schedule set forth in the order;
 - (3) Take appropriate remedial or preventive action in the event of a continuing or threatened violation;
 - (4) Disconnect unless adequate treatment facilities, devices or other related appurtenances are installed and properly operated within a specified time period.
- (e) *Emergency suspensions.* The POTW Director may suspend the wastewater treatment service and/or wastewater permit when such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment, interferes with the POTW or causes the POTW to violate any condition of its NPDES or Non-discharge permit.

Any user notified of a suspension of the wastewater treatment service and/or the wastewater permit shall immediately stop or eliminate the contribution. A hearing will be held within fifteen (15) days of the notice of suspension to determine whether the suspension may be lifted or the user's waste discharge permit terminated. In the event of a failure to comply voluntarily with the suspension order, the POTW Director shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to any individuals. The POTW Director shall reinstate the wastewater permit and the wastewater treatment service upon proof of the elimination of the noncompliant discharge. The industrial user shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the POTW Director prior to the date of the above-described hearing.
- (f) *Termination of Permit or Permission to Discharge.*
 - (1) The POTW Director may revoke a wastewater discharge permit or permission to discharge for good cause, including, but not limited to, the following reasons:
 - a. Failure to accurately report the wastewater constituents and characteristics of his discharge;

- b. Failure to report significant changes in operations, or wastewater constituents and characteristics;
 - c. Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring; or,
 - d. Violation of conditions of the permit or permission to discharge, conditions of this chapter, or any applicable State and Federal regulations;
 - e. Tampering with or deliberately altering monitoring equipment;
 - f. Changes in POTW NPDES permit, receiving stream water quality standards, POTW treatment plant process, sludge disposal practices or requirements, or other modifications of similar nature that impact the city's ability to accept industrial wastewater;
 - g. For causes necessitating an emergency suspension;
 - h. Failure to show cause; or
 - i. Nonpayment of sewer user charges
- (2) A user whose permission to discharge has been revoked may apply for new permission to discharge and shall pay all delinquent fees, charges, penalties, and such other sums as may be due to the city.
- (3) Noncompliant industrial users will be notified of the proposed termination of their wastewater permit and will be offered an opportunity to show cause under Article II, Sec. 39-112(c) of this chapter why the proposed action should not be taken.

Sec. 39-113. Civil penalties.

- (a) Any user who is found to have failed to comply with any provision of this chapter, or the orders, rules, regulations and permits issued hereunder, may be fined up to twenty-five thousand dollars (\$25,000.00) per day per violation.
- (1) Penalties between ten thousand dollars (\$10,000) and twenty-five thousand dollars (\$25,000.00) per day per violation may be assessed against a violator only if:
- a. For any class of violation, only if a civil penalty has been imposed against the violator within the five (5) years preceding the violation, or
 - b. In the case of failure to file, submit, or make available, as the case may be, any documents, data, or reports required by this chapter, or the orders, rules, regulations and permits issued hereunder, only if the POTW Director determines that the violation was intentional and a civil penalty has been imposed against the violator within the five (5) years preceding the violation.
- (b) In determining the amount of the civil penalty, the POTW Director shall consider the following:
- (1) The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
 - (2) The duration and gravity of the violation;
 - (3) The effect on ground or surface water quantity or quality or on air quality;
 - (4) The cost of rectifying the damage;
 - (5) The amount of money saved by noncompliance;
 - (6) Whether the violation was committed willfully or intentionally;
 - (7) The prior record of the violator in complying or failing to comply with the pretreatment program;
 - (8) The costs of enforcement to the city.
- (c) Appeals of civil penalties assessed in accordance with this section shall be as provided in Sec. 39-116.

Sec. 39-114. Other available remedies.

Remedies, in addition to those previously mentioned in this chapter, and are available to the POTW Director who may use any single one or combination against a noncompliant user. Additional available remedies include, but are not limited to:

- (a) *Criminal violations.* The District Attorney for the applicable Judicial District may, at the request of the city, prosecute noncompliant users who violate the provisions of N.C.G.S. 143-215.6B. [Note: Under North Carolina law, it is a crime to negligently violate any term, condition, or requirement of a pretreatment permit, or negligently fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(f)), to knowingly and willfully violate any term, condition, or requirement of a pretreatment permit, or knowingly and willfully fail to apply for a pretreatment permit, issued by local governments (N.C.G.S. 143-215.6B(g)), to knowingly violate any term, condition, or requirement of a pretreatment permit issued by local governments, or knowingly fail to apply for a pretreatment permit, knowing at the time that a person is placed in imminent danger of death or serious bodily injury, (N.C.G.S. 143-215.6B(h)), and to falsify information required under Article 21 of Chapter 143 of the General Statutes (N.C.G.S. 143-215.6B(i)).
- (b) *Injunctive relief.* Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, the POTW Director, through the City Attorney, may petition the Superior Court of Justice for the issuance of a restraining order or a preliminary and permanent injunction which restrains or compels the activities in question.
- (c) *Discontinuance of sewer.*
- (1) The POTW Director shall have the right to discontinue sewer service to the property of a user of such service in the event of nonpayment of sewer charges; provided that no discontinuation shall be made until the user shall have been given notice of his right to be heard in person or by counsel on the question of discontinuation before the city or any person designated by the city after not less than five (5) days written notice specifying the basis of the discontinuation. Any user whose permit has been terminated or who has

failed to pay the user charge or any other charge imposed by the city shall be subject to termination of service by disconnection of the property from the sewer service. The city shall have the right of entry in and upon the premises and the right of ingress and egress to determine the location of the service line or to dig it up to uncover it for the purpose of disconnecting the service line from the property, or sealing, or plugging such line, or any collection line, upon the notice as provided under the city's regulations.

- (2) Whenever a user is in violation of the provisions of this chapter or an order or permit issued hereunder, water service to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated ability to comply.
- (d) *Public Nuisances.* Any violation of the prohibitions or effluent limitations of this chapter or of a permit or order issued hereunder, is hereby declared a public nuisance and shall be corrected or abated as directed by the POTW Director. Any person(s) creating a public nuisance shall be subject to the provisions of the appropriate ordinances of the city governing such nuisances, including reimbursing the POTW for any costs incurred in removing, abating or remedying said nuisance.
- (e) *Judicial remedies.* If any person discharges wastewater contrary to the provisions of this chapter or any order or permit issued hereunder, or otherwise violates provisions of this chapter or any order or permit issued hereunder, the POTW, through the city's attorney, may commence an action for appropriate legal or equitable relief in the appropriate general court of justice.
- (f) If a public sewer becomes obstructed or damaged because of any substances improperly discharged into it, the person responsible for such discharge shall be billed and shall pay for the expenses incurred by the city in cleaning out, repairing or rebuilding the sewer as well as damages incurred by the city arising from claims of private property owners which are caused by such obstruction or damage.

Sec. 39-115. Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive. The POTW Director may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the city's enforcement response plan. However, the POTW Director may take other action against any user when the circumstances warrant. Further, the POTW Director is empowered to take more than one enforcement action against any noncompliant user.

Sec. 39-116 Adjudicatory hearings.

Any person jointly or severally aggrieved by any decision, including but not limited to order, requirement, determination, fine, violation, grant, denial, approval or finding, made or based in whole, in part, or otherwise pursuant to the provisions of this chapter, by the city or representative thereof, shall have the right to an adjudicatory hearing concerning said decision upon making written demand therefor as more specifically provided for in, and thereafter utilizing the procedures contained in, the section of this chapter concerning adjudicatory hearings, which section is 39-62(h), as may be amended. As more particularly provided for in Sec. 39-62(h), all such decisions are final and binding unless said written demand is filed within thirty (30) days of the date such decision is made.

- (d) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
- (e) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

Sec. 39-135. Prohibited discharge standards defense.

A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 39-26(a) of this chapter or the specific prohibitions in Sec. 39-26(b)(2), (3), and (5-7) of this chapter if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference and that either:

- (a) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass through or interference; or
- (b) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the city was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

Sec. 39-136. Bypass.

(a) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of paragraphs (b) and (c) of this section.

(b) *Notification.*

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW Director, at least ten (10) days before the date of the bypass, if possible.
- (2) A user shall submit oral notice to the POTW Director of an unanticipated bypass that exceeds applicable pretreatment standards within twenty-four (24) hours from the time it becomes aware of the bypass. A written submission shall also be provided within five (5) days of this time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The POTW Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(c) *Exceptions to enforcement action.*

- (1) Bypass is prohibited, and the POTW Director may take an enforcement action against a user for a bypass, unless
- a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The user submitted notices as required under paragraph (b) of this section.
- (2) The POTW Director may approve an anticipated bypass, after considering its adverse effects, if the POTW Director determines that it will meet the three conditions listed in paragraph (c)(1) of this section.

Secs. 39-137 -39-144. Reserved.

Division 10. Severability

Sec. 39-145. Severability.

If any provision, paragraph, word, section or article of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections, and chapters shall not be affected and shall continue in full force and effect.

Secs. 39-146 -39-153. Reserved.

Division 11. Conflict

Sec. 39-154. Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this chapter are hereby repealed to the extent of such inconsistency or conflict.

Secs. 39-155 -39-162. Reserved.

Division 12. Effective Date

Sec. 39-163. Effective date.

This chapter shall be in full force and effect from and after its passage, approval and publication, as provided by law.

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

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

ATTEST:
s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

**APPROVE – ALDERBROOK POINTE DEVELOPER’S SANITARY SEWER FORCE MAIN,
SERVICE AND EASEMENT AGREEMENT**

Mr. Lewis stated this agreement binds the developer to make improvements with a downstream force main that doesn’t have the capacity to handle the flow from their site. In summary, a new force main will be installed by the developer from the sewer lift station near 13th and Bridge Streets to the sewer lift station at 5th and Respass Streets.

Mr. Holscher requested if Council approved this agreement to please authorize the Attorney to revise it to address a concern raised by a Council member (adding a paragraph that states: parties expressly acknowledge that any approval previously or subsequently issued by the City to the Owner for or anyway associated with the development was or will be issued contingent upon the owner entering this agreement and proceeding with due diligence in fulfilling the same, the parties understand that the final certificate of occupancy will not be issued by the City for the development until developers fulfilled its obligation hereunder).

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously authorize the City Manager to execute the attached Sanitary Sewer Force Main, Service and Easement Agreement with Alderbrook Pointe, L.P., in addition, authorize the City Attorney to make the necessary amendments to the agreement as stated.

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

SANITARY SEWER FORCE MAIN,
SERVICE AND EASEMENT AGREEMENT

THIS SANITARY SEWER FORCE MAIN, SERVICE AND EASEMENT AGREEMENT (the “Agreement”) is entered into and made as of the 12th day of May, 2011, by and between the **CITY OF WASHINGTON, NORTH CAROLINA**, a municipal corporation (hereinafter referred to as the “City”), and **ALDERBROOK POINTE L.P.**, a North Carolina limited partnership, whose address is 5309 Transportation Boulevard, Cleveland, Ohio 44125 (hereinafter referred to as the “Owner”).

W I T N E S S E T H

WHEREAS, **Owner** intends to acquire the property described in Paragraph 2 below (hereinafter referred to as the “Subject Property”).

WHEREAS, if **Owner** acquires the Subject Property, **Owner** intends to develop the Subject Property as a 64 unit multiple building, apartment project (hereinafter referred to as the “Development”).

WHEREAS, the Subject Property is situated in the **City**.

WHEREAS, the **City** has conditioned the issuance of its development approvals and other assistance, as more specifically provided for herein, for the Development on **Owner** entering into an agreement for the construction of a certain, new sanitary sewer force main.

WHEREAS, **Owner** desires that the **City** provide water and sanitary sewer service to the Subject Property, in compliance with the laws and regulations of the **City** and of all other governmental authorities.

WHEREAS, the **City** is authorized to enter into contracts for providing as well as making improvements to public enterprises, including sanitary sewer service systems and sanitary sewer force mains pursuant to Article 16 of Chapter 160A of the North Carolina General Statutes.

WHEREAS, the **City** has made a determination that this Agreement, including the sanitary sewer force main improvements hereunder required to be made by **Owner**, is not subject to Article 8 of Chapter 143 of the North Carolina General Statutes.

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

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows.

1. **Incorporation**. The recitals herein contained are true and correct and are incorporated herein by reference.
2. **Ownership**. **Owner** represents that it is or will be, prior to commencing the sanitary sewer force main improvements hereunder, the owner of the Subject Property located on North Pierce Street at or near West Fifteenth Street, Washington, North Carolina, and being a portion of the property currently having a Beaufort County Tax Office parcel identification number of 15026704 as well as a portion of the property described in Deed Book 1576, Page 897 of the Beaufort County Registry. The parties hereto expressly acknowledge that **Owner's** obligation hereunder to make or construct sanitary sewer force main improvements shall not be triggered unless and until **Owner** acquires fee simple title to the subject property.
3. This section intentionally left blank.
4. This section intentionally left blank.
5. **Sanitary Sewer Improvements and Sewer Service**.
 - 5.1 **New Eight (8) Inch Sewer Force Main**. Subject to the provisions contained in Section 5.1.a., **Owner** will design, construct and install, at its expense, a new eight (8) inch ductile iron (see below for *possible* alternative) sewer force main

(hereinafter referred to as the “force main”), as approved by the Inspecting Engineers (as defined in Section 5.2), between the existing pump station located at West 13th Street and North Bridge Street (hereinafter referred to as the “13th Street Pump Station”) and the existing pump station at West 5th Street and North Respass Street (hereinafter referred to as the “5th Street Pump Station”) (hereinafter collectively referred to as the “Pump Stations”) in the **City**. The anticipated location and route of the force main path shall be as shown on Exhibit “A” attached hereto and incorporated herein by reference, as determined on February 2, 2011 by **Owner’s** engineer and Mr. Allen Lewis, the **City’s** Public Works Director. The parties recognize that, in the event the force main path is required to be moved or altered, any such movement or alteration of the force main path shall require approval from the **City**. **Owner’s** obligation to construct and install the force main is conditioned upon a) **Owner’s** ability to do such work in the streets and rights of way of the **City** on an open cut basis and the **City** or other appropriate governmental body issuing appropriate permits therefor, and b) there being no requirement for either the **City** or **Owner** to competitively bid the work. Notwithstanding the foregoing, **Owner** must provide to the **City** and receive prior approval from the **City** for any requests for proposals or similar documents, any bids received by **Owner**, and any contract for the force main improvements.

In regard to the requirements above that **Owner** utilize ductile iron material when constructing the force main referenced above and that **Owner** receive approval from the **City** for any bid or contract for the force main improvements, **Owner** shall solicit and receive bids or quotes that would require the contractor submitting the bid or quote to use solely ductile iron material for said force main. **Owner** may also solicit and receive bids or quotes that would allow the contractor submitting the bid or quote to use C-900 PVC pipe for the force main instead of ductile iron material. If **Owner** solicits and receives quotes or bids for both ductile iron material and C-900 PVC pipe, **Owner** shall provide both quotes or bids to the City Public Works Director, Allen Lewis, who may consult with the Inspecting Engineers and, after such consultation, if any, shall decide, in his sole

discretion and without any recourse from **Owner** whatsoever, which material (ductile iron or C-900 PVC pipe) shall be used.

Owner's responsibility is limited to the construction as well as installation of the force main and the **City** shall be responsible for all connections, controls, electronics and such improvements to the Pump Stations as are described in Section 5.1.b. below. **Owner** shall not be required to remove the existing force main system (or appurtenances thereto) and shall be permitted to abandon such existing mains and pipes and appurtenances in place without filling or grouting of those mains and pipes. **Owner's** design engineer for the force main shall be required to certify that the capacity of the downstream system is sufficient to convey the additional peak hourly wastewater flow generated by the 13th Street Pump Station.

- 5.1.a. Transfer of Force Main Improvements Obligation. If the Inspecting Engineers (as defined in Section 5.2) find that **Owner** has expended \$500,000.00 toward the construction as well as installation of said force main improvements and that said expenditures were legitimate, reasonable, and in accordance with the design approved by them, then **Owner's** obligation to construct as well as install, at its expense, the force main improvements shall be transferred to the **City** and the **City** thereafter shall be responsible for completion of the same so long as adequate funding is provided for in the then current budget. Notwithstanding the foregoing, the **City** and **Owner** will use their respective best efforts to complete said force main improvements if **Owner** has expended \$500,000.00 toward the construction as well as installation of said force main improvements and said expenditures were legitimate, reasonable, and in accordance with the design approved by the Inspecting Engineers.
- 5.1.b. Pump Stations Improvements. The **City** will design, construct and install, at its expense, any and all improvements and upgrades necessary at the Pump Stations, including the installation of new pumps and other systems as needed, to accommodate the new force main to be constructed as well as installed by **Owner** (such improvements and upgrades to be constructed and installed by the **City**

shall be referred to hereinafter as the "Pump Stations Improvements"). The construction as well as installation of the Pump Stations Improvements shall be coordinated by the **City** and/or its contractors in conjunction with the force main improvements to be made by **Owner** and its contractors, and the parties agree that the force main will be constructed as well as installed prior to the construction as well as installation by the **City** of the Pump Stations Improvements and the connection by **Owner** of the force main to the Pump Stations.

- 5.2 General Construction Requirements. The force main improvements shall be constructed or caused to be constructed (i) at the sole cost and expense of **Owner** and its successors, except as specifically provided for herein; (ii) pursuant to designs and engineering drawings and specifications which are to be reviewed and are subject to approval from the **City's** selected engineers (herein referred to as the "Inspecting Engineers"); and (iii) in accordance with all applicable local, state and federal environmental and public health laws, ordinances and regulations.

The cost of the Inspecting Engineers for their work in reviewing the designs and engineering drawings and specifications as well as for their work in inspecting the construction of the force main improvements shall be borne by **Owner** in accordance with the fees provided for in the Short Form of Agreement Between Owner and Engineer for Professional Services for the 13th and Bridge Service Area Study and Design/Construction Review (Alderbrook Pointe) (hereinafter referred to as the "Inspecting Engineers Contract") attached hereto as Exhibit "B" and incorporated herein by reference. **Owner** shall deposit the amount contained in the Inspecting Engineers Contract that is estimated to be the total compensation for services and reimbursable expenses of the Inspecting Engineers in connection herewith (currently \$40,000.00) into the trust account of Rodman, Holscher, Francisco & Peck, P.A. (hereinafter referred to as "Law Firm"). \$15,000.00 of said \$40,000.00 will be so deposited simultaneously with **Owner's** execution of this Agreement. The balance (\$25,000.00) will be disbursed directly to said trust account from the proceeds of the closing through which **Owner** receives financing to fund its obligations hereunder to design, construct and install the

force main improvements contemplated hereby. Law Firm shall receive invoices from the Inspecting Engineers and issue corresponding payments in satisfaction thereof to the Inspecting Engineers unless Law Firm has received a written notice of dispute from the **Owner** or **City** that contains a specific dollar amount that is in dispute. Law Firm will withhold payment of such specific dollar amount until said dispute is withdrawn in writing. Notwithstanding the foregoing, Law Firm, in its sole discretion, reserves and shall have the right, power, and authority, at any time, to pay any disputed amount into the Superior Court Clerk of Beaufort County. Any balance remaining in said deposit after all invoices have been satisfied shall be refunded by Law Firm to **Owner**. The amount deposited by **Owner** with Law Firm shall be counted and included for all purposes as part of **Owner's** obligation to expend \$500,000.00 for the construction as well as installation of the force main improvements. By execution hereof and in exchange for as well as in consideration of Law Firm processing said payments, the parties hereto expressly release, hold harmless, and will indemnify Law Firm from and against any and all claims, demands, disputes, damages, costs, expenses (including attorney's fees) the parties hereto may have against or that are incurred by Law Firm as a result, directly, indirectly, or otherwise, from Law Firm's performance of the Law Firm's role in processing said payments as more fully described hereinabove.

At no cost to **Owner**, as a condition of this Agreement, and so long as the same are in proper form as well as contain proper content, the **City** shall grant to **Owner** and its contractors all required construction and operational permits, including street opening permits, as well as all easements, licenses and/or rights-of-way necessary for the location, installation, maintenance or repair of the force main, including such easements, licenses and rights-of-way granted to or which shall be obtained by the **City** from third parties for the installation of such improvements including, without limitation, any easement that may be required over a portion of any property owned by the Beaufort County Board of Education. All costs incurred in connection with such easements shall be borne by the **City**.

- 5.3 Inspections. **Owner** shall provide reasonable access at all times to Inspecting Engineers to permit thorough inspections of all work contemplated by this Section 5 in order to ensure that the work is being done in accordance with the approved designs and engineering drawings and specifications as well as all applicable laws, ordinances and regulations.
- 5.4 Completion of Plan Review and Construction. The **City** has provided to **Owner** copies of all designs and engineering drawings and specifications the **City** is aware of that are available to the **City** and relate to the existing force main system between the Pump Stations, including upstream and downstream connections and mains connecting into and out from those Pump Stations. **Owner** shall present the **City** with a complete set of all designs and engineering drawings and specifications for the force main improvements by June 1, 2011. The **City** will complete its review of **Owner's** complete set of all designs and engineering drawings and specifications for the force main improvements within twenty-one (21) days of the **City's** receipt thereof from **Owner**. The parties shall use their best efforts to complete any required revision, subsequent review, and ultimate approval of the same. In any event, **Owner** shall complete its obligation, as more specifically described and limited herein, to construct the force main improvements by March 15, 2012. In the event **Owner** fully completes the construction of the force main improvements and no such obligation to complete the same has been transferred to and accepted by the **City**, the **City** shall complete the Pump Stations Improvements by March 15, 2012 or within two (2) months of the completion of the force main improvements by **Owner**, whichever is later. Thereafter, **Owner** shall complete any connection of the force main to the Pump Stations that may be necessary with due diligence. In the event **Owner** does not fully complete the construction of the force main improvements and said obligation to complete the same is transferred to and accepted by the **City** as more specifically provided for herein, the **City** shall complete any obligation transferred to it for the completion of the force main improvements and the Pump Stations Improvements within a reasonable period of time and so long as adequate funding is provided for in the then current budget.

5.5 Ownership, Maintenance, and Repair of Force Main Improvements. Upon completion of the installation of the force main improvements or when **Owner** has expended \$500,000.00 for said force main improvements as more specifically described in Section 5.1.a. and subject to approval of the same by the Inspecting Engineers as more specifically provided for hereinabove, those force main improvements and any related facilities shall be conveyed to the **City** for the sum of One Dollar (\$1.00) and shall become part of the **City's** public sewer system. From and after the date of such conveyance, the **City** will be responsible for all maintenance, repair and replacement obligations with respect to the force main improvements and related facilities that are not warranted by **Owner** as more specifically provided for hereinafter. **Owner** warrants and guarantees that all force main improvements constructed by it or through its direction shall be in accordance with the applicable designs and engineering drawings and specifications referred to herein, will not be defective, and will be suitable for its intended purpose for at least twelve (12) months from conveyance thereof to the **City**.

5.6 Rights and Charges. **Owner** shall be required to pay all fees customarily charged by the **City** in conjunction with the Development.

5.A. Contribution to Sidewalk Construction.

Prior to the issuance of any building permits for the Subject Property by the **City**, **Owner** shall make a one-time contribution to the **City** in the amount of \$15,000.00, which amount shall be dedicated exclusively to the future construction of sidewalks in the **City**. The **City** may utilize said \$15,000.00 for the construction of any sidewalk it sees fit, in its discretion, subject to the following. If the Development is developed, the properties located to the north and/or west of the Development are developed and the Planning Director as well as Planning Board deem it to be an appropriate as well as necessary feature of such development of the properties to the north and west of the Development, then, in those events, the **City** shall contribute \$15,000.00 toward the construction of a sidewalk as part of said development of the properties located to the north and west of the Development. Said \$15,000.00 contribution to sidewalk construction shall be separate

and apart from the \$500,000.00 expenditure more specifically provided for herein for the force main improvements.

6. **Obligations.** **Owner** shall furnish performance and payment bonds, in a form satisfactory to the **City**, in its sole discretion, each in an amount at least equal to the amount for which any contract is let by **Owner** to construct the force main improvements. Said performance and payment bonds shall be security for the faithful performance and payment of all of **Owner's** obligations hereunder.
7. **Enforcement.** In the event that enforcement of this Agreement by the **City** becomes necessary and the **City** is successful in such enforcement, **Owner** shall be responsible for all costs and expenses, including attorneys' fees, whether or not litigation is necessary and, if necessary, both at trial and on appeal, incurred in enforcing or ensuring compliance with the terms and conditions of this Agreement. Interest on unpaid, overdue sums shall accrue at the rate of eighteen percent (18%), compounded annually, or at the maximum rate allowed by law.
8. **Conditions.** **Owner's** obligations under this Agreement are contingent upon the occurrence of the following no later than August 1, 2011: (a) (i) closing on all financing (upon reasonable terms), (ii) obtaining all permits and necessary approvals and (iii) acquiring all easements for the force main improvements, and (b) obtaining binding commitments for all financing and the purchase of all tax credits in an amount necessary for the Development to be constructed on the Subject Property.

The parties hereto expressly acknowledge that any approval previously or subsequently issued by the **City** to the **Owner** for or in any way associated with the Development was or will be issued contingent upon the **Owner** entering this Agreement and proceeding with due diligence in fulfilling the same. The parties understand that a final certificate of occupancy will not be issued by the **City** for the Development until the **Owner** has fulfilled its obligations hereunder.

9. **Indemnification.** **Owner** shall indemnify and hold harmless the **City** and its Inspecting Engineers from and against all claims, demands, disputes, damages, costs, expenses (to include attorneys' fees whether or not litigation is necessary and, if necessary, both at trial and on appeal) incurred by the **City** as a result, directly or indirectly, of the design,

construction and installation of the force main improvements, except those claims or liabilities caused by or arising from the negligence of the **City**, or its employees or agents.

10. **Release of Owner.** With the exception of the warranty hereinbefore provided for, upon (i) the completion of all of the improvements to be constructed by **Owner** hereunder as evidenced by certification from the Inspecting Engineers that such improvements are complete and in compliance with all requirements set forth herein and (ii) the payment of all costs by **Owner** as required under this Agreement, the **City** will release, in writing if requested, **Owner** from all of **Owner's** continuing obligations hereunder.
12. **Notices.** Where notice is herein required to be given, it shall be by certified mail return receipt requested, hand delivery or by reputable overnight courier service. Any notice given pursuant to the provisions hereof shall be deemed given on the date such notice is received if delivered by hand or by reputable overnight courier service and on the second business day after it is mailed if sent by certified mail, return receipt requested. Said notice shall be sent to the following, as applicable:

OWNER'S REPRESENTATIVES:

Alderbrook Pointe LP
Attn: Ted Einhorn
5309 Transportation Boulevard
Cleveland, Ohio 44125

CITY'S REPRESENTATIVES:

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

LAW FIRM:

Rodman, Holscher, Francisco & Peck, P.A.
Attn: Franz Holscher
P.O. Box 1747
Washington. NC 27889

Should any party identified above change or should a party's address change, it shall be said party's obligation to notify the remaining parties of the change in a fashion as is required for notices herein.

13. **Captions.** The captions used herein are for convenience only and shall not be relied upon in construing this Agreement.
14. **Binding Effect.** This Agreement shall run with the land, shall be binding upon and inure to the benefit of **Owner** and its assigns and successors in interest and the **City** and its assigns and successors in interest. This Agreement does not, and is not intended to, prevent or impede the **City** from exercising its legislative authority as the same may affect the Subject Property.
15. **Severability.** If any part of this Agreement is found invalid or unenforceable in any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be affected.
16. **Construction of Agreement.** This Agreement concerns property situated in the State of North Carolina and shall be deemed to be a contract made under the laws of said State and interpreted in accordance with said laws.
17. **Amendment and Waiver.** This Agreement may not be amended or modified in any way except by instrument in writing executed by all parties hereto.
18. **Counterparts.** This Agreement may be executed in counterparts which when signed by both parties and delivered to the other party shall constitute one agreement.
19. **City Legal Fees.** **Owner** agrees to pay the cost of recording this document in the public records of Beaufort County, North Carolina. **Owner** also shall be responsible for all of the reasonable fees and expenses of counsel for the **City** incurred in connection with the negotiation and preparation of this Agreement up to an amount equal to \$5,000.00, which amount shall be separate and apart from the \$500,000.00 expenditure more specifically provided for hereinbefore for the force main improvements.

IN WITNESS WHEREOF, Owner and the City have caused this instrument to be executed by proper authority duly given as of the day and year first above written.

ALDERBROOK POINTE L.P.

By: NRP ALDERBROOK POINTE LLC,
general partner

Alan F. Scott

Signature

Alan F. Scott

Printed Name

Managing Member

Title

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared ALDERBROOK POINTE L.P., an Ohio limited partnership, by NRP ALDERBROOK POINTE LLC, its General Partner, by Alan F. Scott its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said limited partnership, and his free act and deed personally and as such Managing Member of the General Partner.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cuyahoga County, Ohio, this 12th day of May, 2011.



AMANDA M. KLONOWSKI
Notary Public, State of Ohio
My Commission Expires
April 6, 2014

Amanda M. Klonowski

Notary Public

My commission expires: _____

PRE-AUDIT CERTIFICATE

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



Cynthia S. Bennett

Cynthia S. Bennett, City Clerk

Matt Rauschenbach

Matt Rauschenbach, Chief Financial Officer
City of Washington

CITY OF WASHINGTON

Peter T. Connet

Peter T. Connet, Interim City Manager

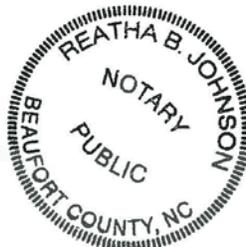
COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, *Reatha B. Johnson*, a Notary Public of the State and County aforesaid, certify that Cynthia S. Bennett personally appeared before me this day and acknowledged that she is City Clerk of the City Of Washington, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Peter T. Connet, its Interim City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the 6 day of May, 2011.

Reatha B. Johnson
NOTARY PUBLIC

My Commission expires: 4/2/2012.



**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of March 11, 2011 ("Effective Date") between
CITY OF WASHINGTON ("Owner")
and RIVERS & ASSOCIATES, INC. ("Engineer")

Engineer agrees to provide the services described below to Owner for (Project Description):
13th & BRIDGE SERVICE AREA STUDY & DESIGN/ CONSTRUCTION REVIEW (ALDERBROOK POINTE)
(See Attachment 2 Item A: "Project Description") ("Project").

Description of Engineer's Services (Scope of Work): See Attachment 2 Item B: "Scope of Work".

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any.

4.01 Termination

A. 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 Agreement's terms through no fault of the terminating party.

1 of 5

Document Based on

EJCDC E-520 Short Form of Agreement Between Owner and Engineer for Professional Services

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b. By Engineer:

1) upon seven days written notice if Engineer believes that Engineer is being requested by Owner to 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 as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; 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, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 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 Project 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.

5.01 Controlling Law

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

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party

to this Agreement and to the partners, 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.

7.01 General Considerations

A. 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. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any 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 any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. 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 (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, 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, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, 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: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. Engineer will not provide or offer to provide services inconsistent with or contrary to the standard of care described in 7.01.A above nor make any warranty or guarantee, expressed or implied, nor have any agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, Engineer will not accept those terms and conditions offered by the Owner in its purchase order, requisition, or notice of authorization to proceed, except as set forth herein or expressly accepted in writing. Written acknowledgment of receipt

or the actual performance of services subsequent to receipt, of any such purchase order, requisition, or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

J. If required in the agreement, the Engineer will provide electronic files of drawings in PDF format or AutoCad DWG or DXF format for the Owner's use under the conditions indicated above. The Engineer will not be responsible for the data in the electronic files after 60 days. The files will be submitted on CD. The Engineer's name and seal may be removed from the drawings. 7.01.F applies to all electronic files.

K. Any reuse of the design documents without written verification or adaptation by Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Engineer, or to Engineer's independent professional associates or consultants, and Owner shall indemnify and hold harmless Engineer and Engineer's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefore. Any such verification or adaptation will entitle Engineer to further compensation at rates to be agreed upon by Owner and Engineer.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated attachments), 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.

B. The following Attachments are included:

- | | |
|--------------|-------------------------------------|
| Attachment 1 | Standard Rates |
| Attachment 2 | Project Description & Scope of Work |

9.01 Payment (Lump Sum Basis)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. A Lump Sum amount of \$ N/A .

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding -- months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

9.02 Payment (Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.

2. Engineer's Standard Rates are attached as Attachment 1.

3. The total compensation for services and reimbursable expenses is estimated to be \$40,000.00 *
 *See Attachment 2 Item B: "Scope of Work".

B. The Engineer's compensation is conditioned on the time to complete construction not exceeding 1.5 months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.

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: RIVERS & ASSOCIATES, INC.

By: _____
(Signature)

By: _____
(Signature) *Gregory J. Churchill*

Typed Name: _____

Typed Name: Gregory J. Churchill, P.E.

Title: _____

Title: Vice President

Date: _____

Date: March 1, 2011

Attest: _____

Attest: _____
F. Durward Tyson, Jr.

Name:
Title:
(SEAL)

Name: F. Durward Tyson, Jr. P.E.
Title: Secretary
(SEAL)

Designated Representative:

Designated Representative: M. Blaine Humphrey, P.E.

Title: _____

Title: Project Manager

Address for giving notices:

Address for giving notices:

107 East Second Street

P. O. Box 929

Phone No: _____

Greenville, NC 27858 (Street) or 27835 (P.O. Box)

Fax No: _____

Phone No: (252) 72-4135

E-Mail: _____

Fax No: (252) 752-3974

E-Mail: bhumphrey@riversandassociates.com

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

By: (Signature) _____

Finance Officer

Typed Name: _____

Date: _____

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ATTACHMENT I
 RIVERS AND ASSOCIATES, INC.
 STANDARD RATES
 Effective April 12, 2008

<u>EMPLOYEE CLASSIFICATION:</u>	<u>HOURLY RATES:</u>
Principal	\$165.00
Sr. Project Manager	\$155.00
Project Manager II	\$140.00
Project Manager I	\$130.00
Project Engineer II	\$120.00
Project Engineer I	\$105.00
Design Engineer II	\$95.00
Design Engineer I	\$85.00
Landscape Architect	\$100.00
Landscape Designer	\$90.00
Project Planner I	\$90.00
Planner II	\$80.00
Planner I	\$70.00
Designer IV	\$115.00
Designer III	\$105.00
Designer II	\$90.00
Designer I	\$75.00
CAD Technician III	\$70.00
CAD Technician II	\$65.00
CAD Technician I	\$60.00
Project Surveyor II	\$105.00
Project Surveyor I	\$90.00
Party Chief III	\$80.00
Party Chief II	\$60.00
Party Chief I	\$55.00
Surveyor Technician II	\$50.00
Surveyor Technician I	\$45.00
1-Man Robotic II	\$135.00
1-Man Robotic I	\$100.00
Resident Project Representative III	\$85.00
Resident Project Representative II	\$70.00
Resident Project Representative I	\$60.00
Intern Tech	\$35.00
Administrative Assistant	\$65.00
Sub-Consultants and Fees	1.15 x Cost
Travel	Current IRS Rate
Miscellaneous Expenses	Cost

ATTACHMENT 2

CITY OF WASHINGTON
ALDERBROOK POINTE
13th & BRIDGE SERVICE AREA STUDY & DESIGN/ CONSTRUCTION
REVIEW

A. PROJECT DESCRIPTION

The project includes evaluation of the service area for the 13th & Bridge Pump Station and design/ construction review for the Alderbrook Pointe Development Project.

B. SCOPE OF WORK

Engineering services required to implement the project shall include:

1. **Meetings with City to discuss project as needed:** \$3,000 Est.
2. **Meeting with Rice & Assoc. to discuss project design:** \$2,000 Est.
3. **Evaluate flow from complete build-out of Service Area:** \$1,000 Est.
 - A. Get data from Rice & Assoc. about Alderbrook Pointe flow.
 - B. Update 201 Facilities Plan (2003) flow data for current situation.
 - C. Review with City.
4. **Preliminary evaluation for sewer force main for 13th & Bridge with complete development:** \$2,000 Est.
 - A. Analyze force main to 5th and Respass.
 - B. Evaluate effect on 5th and Respass Pump Station.
 - C. Review with City.
5. **Establish design criteria for force main:** \$2,000 Est.
 - A. Prepare list of design criteria for force main. Include sample plans and specifications.
 - B. Review with City and Rice & Assoc.
6. **Review Alderbrook Pointe Dev.'s sewer plans & specs:** \$5,000 Est.
 - A. Review plans, specs and computations at 50% and 100% complete.
 - B. Review permit application to DENR for force main facilities to be owned and operated by the City, if applicable.
7. **Review Alderbrook Pointe Dev. Sewer Project during construction:** \$15,000 Est.
 - A. Review City's copy of shop drawings for force main prior to approval by Developer's Engineer.

City of Washington
13th & Bridge Service Area and Design/ Construction Review

Page 2

- B. Review construction work periodically with the City and Contractor
(Assume 30 working days construction period).
- C. Assist the City in final inspection.

Subtotal **\$30,000 Est.**

- 8. **Additional Cost for Multiple Reviews and Resolving Problems:** **\$10,000 Est.**
- 9. **The review of the work by the City's Engineer is for the City's benefit and assistance only, and is not intended to relieve the Developer's Engineer and Contractor of their responsibilities.**

ESTIMATED TOTAL BASED ON HOURLY RATES: **\$40,000 Est.**

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**APPROVE – WARREN FIELD AIRPORT FIRE DISTRICT AGREEMENT WITH
BEAUFORT COUNTY**

Mr. Connet stated this puts into agreement form the Letter of Understanding dated October 17, 2009 between the City and the County. The City de-annexed the property and the County is to share the tax revenues above a base line of \$8,128 for tax year 2010 in exchange for the City providing fire protection within the new district. The County Manger has reported that this 1st year payment will be in the range of \$13,000 which will be reported in the final agreement. Mr. Holscher added that the County Manager wants to add sentence that will establish the amount of the grant for the 1st year.

By motion of Mayor Pro tem Roberson, seconded by Councilman Pitt, Council unanimously approved the Warren Field Airport Fire District Agreement between the City of Washington and Beaufort – effective January 1, 2011 and adding the amendments suggested by the County Manager in accordance with the City's Attorney approval.

**NORTH CAROLINA
BEAUFORT COUNTY**

This Agreement is made and entered into effective as of the 1st day of January, 2011, by and between the County of Beaufort, a political subdivision of the State of North Carolina established and operating pursuant to the laws of the State of North Carolina (hereinafter referred to as the "County") and the City of Washington, a municipal corporation organized and existing under the laws of the State of North Carolina (hereinafter referred to as the "City").

WITNESSETH

WHEREAS, North Carolina General Statute § 69-25.5 and § 153A-301 authorize counties to provide for fire protection in a designated response district by contracting with any incorporated city or town for the same.

WHEREAS, North Carolina General Statute § 160A-11, § 160A-293, and § 160A-461 authorize incorporated cities and towns to contract and be contracted with for fire protection, and to send firemen and equipment outside the corporate limits of a municipality to provide fire protection to rural or unincorporated areas pursuant to agreements between municipalities and counties.

WHEREAS, North Carolina General Statute § 159-13(a) provides that, subject to certain enumerated exceptions, local governments authorize all financial transactions through budget ordinances, which budget ordinances "may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source."

WHEREAS, the City is the owner of equipment, land and buildings necessary for the operation of its Fire Department.

WHEREAS, the County has negotiated with the City to obtain fire protection for the district named below under the terms and conditions contained herein.

NOW, THEREFORE, pursuant to said relevant statutory authority, and for and in consideration of the mutual covenants and agreements hereinafter contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows.

1. The County has established or hereby establishes, as the case may be, a rural fire protection district designated as the Warren Field Airport Fire District, specifically a portion of the Warren Field Airport property as more specifically shown on that survey map entitled "Asbuilt Survey of Chainlink Fence – Washington Warren Field Airport" by Burgess Land Surveying P.A. dated July 22, 2009 and attached hereto as Exhibit A. Reference is herein made to said survey map and the same is incorporated herein for a more complete and accurate description. The fire protection for said Warren Field Airport Fire District shall be provided by the Washington Department of Fire-Rescue-EMS Services (hereinafter referred to as "City Fire Department") as more specifically provided

for herein. For the City Fire Department's operational guidelines and policy purposes, said Warren Field Airport Fire District and the corporate limits of the City shall be treated as one.

2. Any employee or member of the City Fire Department shall have all of the jurisdiction, authority, rights, privileges, and immunities, including coverage under the workers' compensation laws, which they have within the corporate limits of the City while and when they are engaged in any duty or activity outside the corporate limits of the City pursuant to orders of the Fire Chief or City Council.
3. The City shall provide fire protection services to the extent of the certifications of the responding crew(s) within said Warren Field Airport Fire District. Upon receipt of a request for fire protection services in the aforementioned area, the City shall dispatch the appropriate, primary resources, if available. The dispatched primary resources shall render said fire protection to the limit of their certifications. If the appropriate primary resources are unavailable, the City shall follow the mutual aid protocol then in effect. The City shall furnish said fire protection services without charge to persons and property located in the Warren Field Airport Fire District in an efficient and workmanlike manner.
4. The City agrees to use its best efforts to maintain a minimum of 9S rating or better with the North Carolina Department of Insurance, State Fire Marshal's Office for its established fire insurance boundaries, including said Warren Field Airport Fire District.
5. The obligation of the City to respond to calls under this Agreement shall be included in its primary duty to furnish and provide services within the corporate city limits.
6. The County and City have heretofore partnered and shall continue to partner in their mutual efforts to provide incentives for increased aviation activity at Warren Field Airport and the economic benefits thereof. In pursuit of this effort, the parties hereto previously participated in the deannexation of the Warren Field Airport property described herein from the City's corporate limits to reduce the taxation burden upon those who have located, or who may locate, their personal property and other assets therein. In furtherance of these pursuits, the parties entered a letter of understanding regarding future County grant appropriations to the City for future Airport operation and recruitment efforts as a result of said deannexation, which letter of understanding was executed by the respective managers of the parties. The parties hereto desire to memorialize and be bound by the understandings of said letter of understanding, and related to said letter of understanding, by incorporating such understandings into this Agreement.
 - a. As more specifically provided for herein, the parties desire to establish how the County has made and shall make future grant appropriations to the City in return for the City's efforts to operate and recruit new users of the City's airport and to attract additional as well as higher valued property to be located at the Airport.

- b. Using the then newest tax scrolls for calendar year 2009, the parties estimated the baseline measurement of the total Airport tax base for calendar year 2010 and agreed that a total Airport tax base of \$1,354,635.00 represented a fair baseline measurement for the first tax year (calendar year 2010) in which the Airport's tax rate would benefit from said deannexation.
- c. The County and the City hereby acknowledge that the Airport was removed from the City limits for the purposes of reducing taxation and attracting tax base as more fully described herein and the County has continued and will continue to benefit from tax revenue no more and no less than the sum produced by the baseline measurement identified above at the fiscal year 2009-2010 County tax rate of sixty cents (\$.60). As a result, the County has benefited and will benefit from no more and no less than the sum of \$8,128.00 (hereinafter may be referred to as "baseline sum") from Airport property tax revenue beginning in tax year 2010, which tax year begins on January 1, 2010 (which is the fiscal year that begins in July of 2010 and ends in June of 2011).
- d. The County has continued and will continue the aggressive collection of property tax revenues from the total tax base at the Airport utilizing the County's tax rate from and after tax year 2010. The City's efforts to attract, and then retain, new tax base (in the form of new aircraft, real estate, etc.) to the Airport on or before January 1, 2010 resulted in the collection of County property tax revenues which exceeded the baseline sum of \$8,128.00, which excess the County has retained or will retain in tax year 2010 (fiscal year July of 2010 through June of 2011).
- e. The County shall appropriate an "airport grant" to the City in the month of June 2011 (which is tax year 2010) equal to the value of property tax revenue the County has collected/retained or will collect/retain in excess of the baseline sum of \$8,128.00 for the tax year 2010 (which is fiscal year July of 2010 through June of 2011). The County will provide the City with this same "airport grant" in June of each subsequent fiscal year (2012, 2013, 2014, and so on). The parties will determine the amount of the "airport grant" each subsequent fiscal year by comparing the baseline sum (\$8,128.00) each such year to the product of the then current total airport tax base when multiplied by the then current County tax rate. The amount of the "airport grant" shall be the amount that said product exceeds said baseline sum (\$8,128.00). On or before April 30th of each succeeding year beginning with April 30th of 2012, the Finance Officer for the County will provide the Chief Financial Officer for the City with the amount of the then current total Airport tax base for the corresponding calendar year, the County tax rate for the corresponding fiscal year, and the proposed amount of the "airport grant" for that particular year. The parties shall meet and resolve any discrepancy concerning said amounts and rate, including the calculation of the "airport grant", within thirty (30) days of the date on which the Chief Financial Officer for the City receives such information from the Finance Officer for the County. The County will provide the City with this same "airport grant" in this same manner each year until the value of the "airport grant" reaches \$100,000.00 for any given year. If at

any point in time the "airport grant" reaches a value of \$100,000.00 for any given year, the City and the County will meet to discuss the expenses associated with operating the Airport and negotiate in good faith the "airport grant" as well as the calculation thereof. Exhibit C, which is attached hereto and incorporated herein by reference, contains the amount (\$10,422.00) and calculation of the "airport grant" for tax year 2010 due to the City in June of 2011.

- f. The parties understand that this "airport grant" arrangement as described above put the City in a "risk/reward" scenario from October 27, 2009 through January 1, 2010 as more particularly described hereafter. In the event the baseline measurement of the total airport tax base (defined above at an amount of \$1,354,635.00) remained the same after January 1, 2010, then, in that event, the revenues from property tax collections would be sufficient only for the purpose of funding the County's baseline sum of \$8,128.00 in tax year 2010. If, however, the total airport tax base increased prior to January 1, 2010, the City would benefit from an "airport grant" in June of 2011 equal to the dollar for dollar increase in property tax revenues collected for the tax year 2010 above the baseline sum of \$8,128.00. Thereafter, the City will similarly benefit from any other additional revenues that accumulate year by year beyond the County's baseline sum of \$8,128.00. This relationship will continue until the value of the "airport grant" reaches \$100,000.00 for any given year; at which time, the parties will meet and negotiate in good faith as hereinbefore provided. Exhibit C, which is attached hereto and incorporated herein by reference, contains the amount (\$10,422.00) and calculation of the "airport grant" for tax year 2010 due to the City in June of 2011.
 - g. The term "airport" as used from time to time herein shall, depending upon the context, mean and refer to that real property located at Warren Field Airport and deannexed by the General Assembly of North Carolina, effective January 1, 2010. Said area is commonly referred to as that area within the current Airport fence line and is specifically described in Section 1 hereinabove.
7. Either party may propose an amendment to this Agreement by submitting the amendment in writing to the other party at least sixty (60) days in advance of the amendment's proposed effective date. Any amendment proposed by one party is subject to and contingent upon prior written approval by the other party.
 8. This Agreement is not intended to serve for the benefit of any third party. The rights and obligations contained herein belong exclusively to the entities that are parties hereto and no third party shall rely upon anything contained herein as a benefit to that third party.
 9. The terms and provisions herein contained constitute the entire Agreement by and between the County and the City and are intended to, among other things, establish as well as designate the Warren Field Airport Fire District and implement the understandings of said letter of understanding into binding, contractual obligations. A copy of said "Letter of understanding regarding future County grant appropriations to the

City for future airport operations and recruitment efforts as a result of deannexation” dated October 27, 2009 is attached hereto as Exhibit B.

- 10. This Agreement is effective as of the day and year first above written and shall remain effective subject to the continued legal existence of the Warren Field Airport Fire District.

IN WITNESS WHEREOF, after due authority given, the County has caused this Agreement to be signed in its name by its Manager, and attested by its Clerk, and the City has caused this Agreement to be signed in its name by its Manager, and attested by its Clerk.

PRE-AUDIT CERTIFICATE

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



Sharon Singleton
Sharon Singleton, Clerk

Jim W. Chrisman
Jim W. Chrisman, Finance Officer
Beaufort County

BEAUFORT COUNTY
Paul Spruill
Paul Spruill, Manager

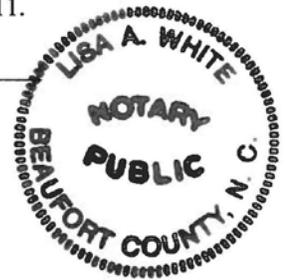
COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, Lisa A. White, a Notary Public of the State and County aforesaid, certify that Sharon Singleton personally appeared before me this day and acknowledged that she is Clerk of Beaufort County, a political subdivision of the State of North Carolina, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Paul Spruill, its Manager, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal, this the 14th day of June, 2011.

Lisa A. White
NOTARY PUBLIC

My Commission expires: MY COMMISSION EXPIRES DECEMBER 23, 2011



PRE-AUDIT CERTIFICATE

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



Cynthia S. Bennett
Cynthia S. Bennett, City Clerk

Matt Rauschenbach
Matt Rauschenbach, Chief Financial Officer
City of Washington

CITY OF WASHINGTON
Peter T. Connet
Peter T. Connet, Interim City Manager

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

I, Dianna J. Toler, a Notary Public of the State and County aforesaid, certify that Cynthia S. Bennett personally appeared before me this day and acknowledged that she is City Clerk of the City Of Washington, a North Carolina municipal corporation, and by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by Peter T. Connet, its Interim City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the 6th day of June, 2011.

Dianna J. Toler
NOTARY PUBLIC

My Commission expires: 11/15/15.



EXHIBIT B

BOARD OF COMMISSIONERS

Jay McRoy, Chairman
Jerry Langley, Vice Chairman
Ed Booth
Robert Cayton
Stan Deatherage
Al KJemm
Hood Richardson



COUNTY OFFICIALS

Paul G. Spruill, County Manager
Sharon C. Singleton, Clerk to the Board
William P. Mayo, County Attorney
Jim Chrisman, Asst. County Manager

**BEAUFORT COUNTY
NORTH CAROLINA**

October 27, 2009

City of Washington
Mr. Jim Smith, City Manager
102 East 2nd Street
Washington, NC 27889

Re: Letter of understanding regarding future County grant appropriations to the City for future airport operation and recruitment efforts as a result of deannexation

Dear Mr. Smith:

Please accept this correspondence and attach your signature in order to indicate our understanding regarding future County grant appropriations to the City in return for the City's efforts to operate and recruit new users of the City's airport.

Using the newest tax scrolls for calendar year 2009, we can now estimate the baseline measurement of the total airport tax base for calendar year 2010. We agree a total airport tax base of \$1,354,635 represents a fair baseline measurement for the first tax year (calendar year 2010) in which the airport's tax rate will benefit from a newly approved deannexation.

The County and the City agreed that provided the airport was removed from the City limits for purpose of taxation, the County would continue to benefit from tax revenue no more and no less than the sum produced by the baseline measurement identified above at today's County tax rate of sixty cents. As a result, the County will benefit from no more and no less than the sum of \$8,128 from airport property tax revenue beginning in tax year 2010 which begins on January 1, 2010 (which is the fiscal year that begins July, 2010 and ends June, 2011).

The County will, however, continue the aggressive collection of property tax revenues from the total tax base at the airport utilizing the County's tax rate beginning in tax year 2010. The City's efforts to attract new tax base (in the form of new aircraft, real estate, etc) to the airport on or before January 1, 2010 will result in collection of County property tax revenues which exceed the baseline sum of \$8,128 that the County will keep for itself in tax year 2010 (FY 2010-2011).

The County will appropriate an "airport grant" to the City in the month of June, 2011 (which is tax year 2010) equal to the amount of property tax revenue the County has collected in excess of the baseline sum of \$8,128. The City will receive this same "airport grant" in June of each subsequent fiscal year (2012, 2013, 2014, and so on) until the value of the "airport grant" reaches \$100,000 annually. If at any point in time the "airport grant" reaches a value of \$100,000 annually, the City and the County will revisit the issue and expense of airport operations.

BEAUFORT COUNTY ADMINISTRATION BUILDING
121 West 3rd Street • Washington, North Carolina 27889 • Phone (252) 946-0079 • Fax (252) 946-7722

We both wish to clarify that this letter of understanding puts the City in a 'risk/reward' scenario between the date of this letter and January 1, 2010. Should the baseline measurement of the total airport tax base (*defined above at an amount of \$1,354,635*) remain the same after January 1, 2010, the revenues from property tax collections will be sufficient only for the purpose of funding the County's baseline sum of \$8,128 in tax year 2010. Should, however, the total airport tax base increase as a result of the relocation of new aircraft to our local airport prior to January 1, 2010, the City would benefit from an "airport grant" in June, 2011 equal to the dollar for dollar increase in property tax revenues collected above the sum of \$8,128.

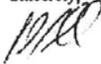
For example, the City is currently negotiating the lease of a vacant hangar that may result in the relocation of an aircraft before January 1, 2010 valued for purposes of taxation at an estimated \$2.0 million. Should the City succeed in relocating such an aircraft to Beaufort County before this date, the County will collect sufficient property tax revenues such that the City will benefit from an "airport grant" in June, 2011 estimated at \$10,000 or greater depending on the County's tax rate at that time. The City will exclusively benefit in future years not only from the estimated \$10,000 "airport grant" resulting from a successful relocation of the aircraft mentioned in the above example, but will also benefit from any other additional revenues that accumulate year by year beyond the County's baseline sum of \$8,128. Again, this relationship will continue until the value of the "airport grant" reaches \$100,000 annually.

Had the City and the County taken no action regarding the deannexation of the airport and continued to levy their respective tax rates against the baseline measurement of the total airport tax base as defined above, the City would have collected no more than \$8,128 in June, 2011 utilizing its current tax rate of sixty cents. Moreover, the City would lack the tool of utilizing the incentive of a much lower property tax rate for the purpose of recruiting future aircraft to the facility.

Finally, the City and County understand that a separate document may be necessary between the date of this letter and January 1, 2010 regarding the issue of providing Fire Protection Service to the airport via the City's Fire Department for the purpose of controlling the fire insurance rating at the airport.

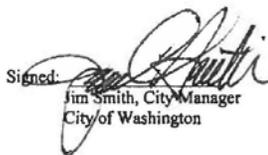
Please indicate below (as I have already) the City's understanding of this arrangement by completing the appropriate signature.

Sincerely,



Paul Spruill,
County Manager

Signed:



Jim Smith, City Manager
City of Washington

EXHIBIT C

(Prepared May 17, 2011 as documentation of future grant appropriations to the City from the County for operation of Warren Field)

The City and the County executed by signature of the City Manager and the County Manager a "Letter of Understanding" on October 27, 2009 regarding future grant appropriations to the City from the County in June of each year in exchange for "deannexation" of Warren Field Airport.

The City and the County defined in said letter a total airport tax base for Tax Year 2009 in the amount of \$1,354,635 that would serve as a **baseline** for calculating future annual grant appropriations to the City.

The two parties arrived at the baseline of \$1,354,635 by first identifying the total value of all Warren Field Airport business personal property (*including airplanes*) billed for Tax Year 2009. The two parties then subtracted from this total value the estimated sum of a jet formerly owned by PR TRANSPORTATION, a subsidiary of FOUNTAIN POWERBOATS. The two parties both agreed that the jet would disappear from City and County tax scrolls as of its pending relocation to the Middle East. After the calculations described above, the City and the County agreed to the baseline of \$1,354,635.

The two parties agreed that at the annual tax rate of 60 cents for the County and 60 cents for the City each party (*as of Tax Year 2009*) was receiving total annual tax revenue of \$8,128.

The "Letter of Understanding" further clarified that both parties understood the letter put the City in a 'risk/reward' scenario. Should the baseline measurement of the total airport tax base defined above remain the same after January 1, 2010, the total annual tax revenue for Tax Year 2010 would be sufficient only for the purpose of funding the County's baseline revenue sum of \$8,128 annually. Should, however, the total airport tax base increase as a result of the City's efforts to relocate new aircraft to Warren Field Airport, the City would benefit from an airport grant each year equal to the dollar for dollar increase in property tax revenues collected above the sum of \$8,128. The County agreed to this annual relationship until the value of the annual "airport grant" reaches the sum of \$100,000 annually.

As of this date (May 17, 2011), the two parties agree that the total airport tax base for Tax Year 2010 measures \$3,710,000 or an increase of \$2,355,365 above the **baseline** established for Tax Year 2009. The County's tax rate in Tax Year 2010 is 50 cents and will produce total annual tax revenue for Tax Year 2010 of \$18,550. As a result, the County will forward the first annual "airport grant" to the City in the amount of \$10,422 in June, 2011. Subsequent annual "airport grant" payments shall be calculated in May of each year as defined above.

APPROVE – CONTRACT AMENDMENT FOR HOLLAND CONSULTING PLANNERS FOR THE ADMINISTRATIVE SERVICES WITH THE FY 09 CDBG HD GRANT (\$5,000)

Planning and Development Director, John Rodman noted this was FY 09 CDBG grant that was with the City of Washington in conjunction with Washington Housing Authority Inc. Originally eleven lots were to be purchased from Mr. Jason Briley and Northgate. This was with a gentleman's agreement. With those eleven lots the City went out with grant funds and did the following:

- Surveys
- Title Search
- Environmental Reviews

When the time came to purchase the lots, Mr. Briley had sold the lots to someone else after the agreement. There was only one lot remaining to be purchased at that time. The City had to find seven additional lots in Northgate to purchase and that required doing the surveys and additional

Environmental Review. Holland is requesting to amend their contract to include that additional work. Mr. Rodman noted this is not City money but will be coming out of grant funds.

Mayor Pro tem Roberson explained the understanding between the Washington Housing Authority & Mr. Jason Briley stating they actually went up and designated each one of the lots in which Mr. Briley had promised to save for the Housing Authority.

Ms. Gentile stated in doing her research, the City did have an offer to purchase that was included with the grant when it was submitted. Ms Gentile was not sure if the contract was fully executed.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously approved the contract amendment for an increase of \$5,000 with Holland Consulting Planners for administrative services related to the FY 09 CDBG Housing Development Project.

**ADOPT – GRANT PROJECT BUDGET ORDINANCE FOR ADMINISTRATIVE SERVICES
WITH THE FY09 CDBG HD GRANT (\$5,000)**

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council unanimously adopted a budget ordinance amendment for \$5,000 for administrative services related to FY 09 CDBG Housing Development Project as attached budget ordinance amendment.

**AN ORDINANCE TO AMEND THE GRANT PROJECT ORDINANCE FOR THE CDBG-
AFFORDABLE HOUSING GRANT
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2010-2011**

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

Section 1. That the following accounts in the CDBG- Affordable Housing Grant be increased or decreased by the following amounts:

50-60-4930-0400	Administration	\$ 5,000
50-60-4930-0401	Planning	(5,000)

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

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 2nd day of May, 2011.

ATTEST:

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

**s/N. Archie Jennings, III
Mayor**

DISCUSSION – CROSSWALKS LEADING OVER TO STEWART PARKWAY

Public Works Director, Allen Lewis followed up on his email forwarded to Council concerning the ongoing problem with the brick crosswalks at Respass Street and Stewart Parkway with the intent of replacing those crosswalks with concrete. The crosswalk in question is located on the east side and not the west side as stated in his email. The concrete will allow the following:

- Cost less than \$3,000
- Last longer than the brick
- Less maintenance
- Ties in with the concrete from either side of Stewart Parkway
- City can make their own repairs

Councilman Davis inquired if the work the City did with the bricks was supposed to correct that problem and Mr. Lewis stated that was the intent but it did not hold up. Mr. Lewis shared that the repair work was done less than a year ago and already been repaired twice. Councilman Mercer expressed his concern over the one crosswalk being problematic and the other two holding up. Mayor Pro tem Roberson inquired the cost of stamped concrete and Mr. Lewis stated it would cost 4 times more (somewhere in the neighborhood \$10,000 - \$12,000). Mayor Jennings noted you would essentially

have the same appearance with stamped concrete. Mr. Lewis stated that with the stamped concrete you would have to hire that same contractor to make any repairs because the City doesn't have the ability to stamp the concrete. Mayor Pro tem Roberson stated he has three contractors that can do the stamp concrete work and think it can be done cheaper. Mayor Jennings mentioned this is the show case of the City and the appearance will matter greatly for both the City and the County. Mr. Lewis mentioned that dyed concrete can be purchased locally in sections like a sidewalk and the City staff can do this work themselves and the price should still be around \$3,000. Mr. Connet inquired as to the cost of the stamped dyed and Mr. Lewis wasn't sure.

By consensus, Mayor Jennings directed Mr. Lewis to work up three solutions around concrete and Councilman Davis requested the information be available for action on May 23rd, 2011.

CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council entered into Closed Session under NCGS 143-318.11 (a)(6) Personnel at 7:42pm.

By motion of Councilman Davis, seconded by Councilman Pitt, Council agreed to come out of closed session at 8:30pm.

APPOINTMENT – OF JOSHUA L. KAY AS CITY MANAGER

By motion of Mayor Pro tem Roberson, seconded by Councilman Pitt, Council unanimously agreed to appoint Joshua L. Kay of Clinton, South Carolina as the City Manager and approved the employee agreement between the City of Washington and Mr. Kay as presented.

ADJOURN

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council adjourned the meeting at 8:35pm until May 16, 2011 at 5:30pm in the Council Chambers at the Municipal Building.

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