AGENDA

Meeting Type:	BUSINESS
Date:	04/25/1994

City of Charlotte, City Clerk's Office

CHARLOTTE

Mayor Richard Vinroot	*Mayor Pro Tem Patrick McCrory*
Charles Baker	*Hovle H Martin*
Stan Campbell	*Don D Reid*
Patrick D Cannon	*Ella Butler Scarborough*
Mike Jackson	*Sara Spencer*
Nasif Rashad Majeed	*Lynn M Wheeler*

Council Agenda

CITY COUNCIL MEETING
Monday, April 25, 1994

5:00 p.m. — **Conference Center**

- **Report from Personnel and Finance Committee· Human Resources Philosophy and Employee Incentive Program**

- **Report from Public Services Committee MWBE Policy**

6:30 p.m — **Meeting Chamber**

- **Invocation**
- **Pledge of Allegiance**
- **Citizens Hearing**

7 00 p m. — **Formal Business Meeting**

CITY COUNCIL AGENDA
Monday, April 25, 1994
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PUBLIC HEARING

1. Grier Heights Economic Foundation - Sale of Land and Loan

Action:

A. Conduct a public hearing to consider the sale of 10 parcels of City-owned land in the Grier Heights neighborhood to the Grier Heights Economic Foundation (GHEF) for the combined appraised value of $48,700.

B. Approve the sale of 10 parcels to the GHEF for $48,700

C. Approve a $238,690 revolving loan to the GHEF for interim financing to build the first 4 houses

D. Approve a Memorandum of Agreement between Wachovia Bank and the City regarding the permanent financing of the houses.

E. Authorize $96,406 of HOME funds for the City's 15% second mortgage financing when 85% first mortgage financing is provided by Wachovia Bank.

Staff Resource: J W Walton

Policy: Charlotte's Comprehensive Affordability Strategy (CHAS) approved by City Council on October 25, 1993 listed Strengthening Neighborhoods and Community-Based Organizations as one of its priorities, and the City agreed to provide financing to housing projects sponsored by community-based organizations

State law requires the City to
- conduct a public hearing prior to selling City-owned land
- sell the land at its appraised value

Item No

Explanation of Request:

- The sale of the 10 parcels of City-owned land in Grier Heights for the combined appraised value of $48,700 will provide the land needed by GHEF to build 10 single-family houses (Maps indicating the location of the parcels are included in the Attachment) As each house is built, it will be sold to a low-to-moderate income family for homeownership (Low-to-moderate income family is defined as a family earning 80% of less of the Charlotte area's median income. For a family of 4 the current median income is $32,500)

- The City will convey the 10 parcels to GHEF and secure the indebtedness by a promissory note and purchase money deed of trust, with the City receiving payment for the land at the time each house is sold

- The $238,690 revolving loan to GHEF will finance
  - construction of the first 4 houses ($226,400)
  - GHEF's 5% construction contingency and development fee ($12,290)

  A table showing the total development cost by parcel is provided in the Attachment

- After the first 4 houses are built, 2 of the houses will be sold before construction on the 5th and 6th houses begins This pattern will be followed throughout construction of the 10 houses

- GHEF will enter into a contract with the Walter B Davis Company, a certified MBE contractor, to provide a turnkey construction project for up to 10 single-family houses This company was selected through a Request for Proposals process.

- Proceeds from the sale of the first 2 houses will repay the debt owed the City for those 2 houses The proceeds will revolve back into an account to fund 2 additional houses. This process will continue until all 10 houses are completed and sold

- The sales price of the houses range from $63,000 to $66,360. (With each house containing 1,124 sq ft , the square foot price ranges from $56 05 to $59 04 per sq ft) The sales price for each house is listed in the table provided in the Attachment The properties will be appraised by Wachovia Bank prior to construction to confirm the sales prices

- Wachovia Bank and GHEF have already begun pre-qualifying buyers for the houses

- The City will be the lender of last resort for the permanent or "take-out" financing for each of the houses (See Wachovia's letter in the Attachment)

  - Wachovia Bank has agreed to provide permanent financing to GHEF's buyers through its Neighborhood Revitalization Program (NRP) to repay GHEF's loan from the City

  - Borrowers qualified under Wachovia's NRP will pay 3% down and closing costs

  - Borrowers not qualified for Wachovia's NRP will use a program whereby Wachovia and the City will finance 85% and 15%, respectively, of the selling price of the house, with the City's loan at 0% interest being deferred until the first mortgage is repaid

Background: See attachment for additional background

Attachment 1
Background
GHEF's Board of Directors
Table - Total Development Cost by Parcel
Wachovia's Letter
Map

Consent: All but
Approve 28 + 29
Whel Comm
unan

CONSENT ITEMS

2. **Agenda items 13 through 32 may be considered in one motion except for those items removed from the consent agenda as a result of a Councilmember making such a request of the City Clerk prior to the meeting.**

Staff Resource Julie Burch

POLICY

3. **MWBE Policy**

MOTIONS →

Action:

A. **Approve City Council Public Services Committee report on proposed policy framework for the MWBE Business Development Program.**

B. **Direct staff to finalize the detailed MWBE Business Development Program that is incorporating the policy framework.**

C **Approve recommended timetable for finalizing MWBE Business Development Program**

Committee Chair: Don Reid

Staff Resource: Dave Cooke, Mike High, Anthony Fox

Mike High
Purchasing

Item No

Explanation of Request:

- On January 10, the City Council referred the development of a new and/or modified MWBE policy to the Public Services Committee
- Since January 10, the Public Services Committee met six times to review issues and develop this policy framework
- The process has included extensive public input and comment Options and comments were requested and received from representatives of the MWBE Advisory Committee, the Charlotte Chamber, the Disparity Alliance, the Metro-Charlotte Minority Chamber, the Carolinas Associated General Contractors, and the Metrolina Minority Contractors' Association
- On February 24, the Public Services Committee approved six new MWBE Business Development program objectives The objectives are as follows

1 To maintain or increase minority-owned business utilization

2 To maintain or increase women-owned business utilization

3 To maintain or increase small local business utilization

4 To encourage private sector utilization of MBE, WBE, and/or small local business

5 To promote existing MBE, WBE, and/or small local business growth and profitability.

6. To promote MBE, WBE and/or small local business start-up and development

MOTION 1: McC/Camp to accept concept of Committee's recommendations including a three year objective, having a women's program with SK. II sets not consistently meeting the goals, include All inclusive TRAINING, and quarterly and annual reports, recognizing organizational issues with direct reporting to the top

VOTE (Below)

MOTION 2 (Substitute) MAJ/Scar to adopt Study excluding any reference to Small businesses including managers recommendation to come back with a program for Small businesses at a later date.

Baker Amended main motion to adopt the provision that the consortium would be responsible for training - (pg. 15, in Attachment 2)

Scarborough Amended Substitute to include taking out incentives for general contractors and take out the word capacity but use as a benchmark per RFP or contract

Vote on Substitute: FAILS 6-5 - Spencer
5 yes - Scar MAJ MART CANNON
Vote on main motion - FAILS 6-5
5 yes - JACK WHE McC Baker Camp

New motion
Reid / Baker
Accept main motion
but include women
for a 3 year period
Fails 7-4
4 yes - Reid Baker
Whe - Mart

Substitute:
Scan / Maj
Exclude small bus.nesses,
include all other
minorities and take
out incentives
Fails 6-5
5- Scan Maj Connor
Spencer Mart

New motion
Jack / McC
take back to Comm Hea for
more info on women's
participation -
5 yes Jack - Whe -
Reid. Baker
Mc

6 no

motion to Defer
10-1 - no
majeo

- Committee Chair Don Reid shared the objectives with the entire Council on February 28, 1994

With these objectives as the guide, staff

- worked with all concerned groups and presented a revised program which reflects the objectives and encompasses program options/modifications which were discussed in committee meetings.

- On April 11, the Public Services Committee reviewed the following policy framework, and decided to proceed to Council with its report

- The policy framework describes 12 policy issues which received much discussion and debate during the review process

- Council is requested to review and approve the six objectives and policy framework as identified under the column "Staff Recommended Program "

- The policy framework is described in the table on the following pages which illustrates in brief terms —

  1 The policy issue
  2 The current program
  3 Recommended changes as proposed by staff, and
  4 Public Services Committee comments

(A more detailed description of each policy issue is included as an Attachment.)

Issues	Current Program	Staff Recommended Program (which meets the six objectives)	Committee Member Comments/Questions
Scope of All Program Elements • What groups are included in the program?	African Americans, Asian Americans, Native Americans, Hispanics, Women	Same	
Training and Technical Assistance	Provided on a limited basis. Open to any business wanting to conduct business with the City	• Increase Training efforts • Targeted to all small businesses	Should small businesses be included in the MWBE Program?
Basis of Program	Race-conscious program as supported by Senate Bill 290	Same	
Self-Performance by the Prime Contractor	Yes, as required by Senate Bill 290	Yes	Should the City pursue legislation to restrict "Self- Performance" as an option in order to assist MWBE's secure sub-contracting opportunities?
Goal Setting	Goals are set by individual projects for MBE and WBE firms	Goals will be set by individual projects for each ethnic group and for women-owned firms No goals will be set for small local business	How practical is it to set goals by each ethnic group and for each contract?

Issues	Current Program	Staff Recommended Program (which meets the six objectives?)	Committee Member Comments/Questions
Overall City Goal(s)	No Overall goals were removed from the program in 1987 when the program went to project specific goals However, the goals of 10% MBE and 3% WBE have been used as a measurement of program performance	Yes A benchmark will be established for minimum participation levels city-wide	Should City-wide goals be established without a basis of determining "capacity"?
Goal Attainment Strategies	• "Good Faith" effort applies on projects which are subcontracted • Utilize informal contracts	• "Good Faith" effort to include 3 new criteria • Proposing to increase informal contract limits (requires enabling legislation) • Incentives for participation • Improve communication among participants • Improve tracking by MWBE Program Director and Key Businesses	

Issues	Current Program	Staff Recommended Program (which meets the six objectives?)	Committee Member Comments/Questions
Mandatory Goals	**No**	**No**	
Set Asides	No	No However, the program can be strengthened in stressing opportunities for MWBE's with informal contracts	
Certification	Verifies ownership and control of the company only	Expanded process to include "Business Profiles" to address capacity issues	Should the City expand assessment of its firms capacity to perform various contracting activities?
Citizens Advisory Committee	City Manager Appointed	City Council Appointed	
Duration of the Program	Unspecified	Program will be reviewed after five years to determine if disparity exists	

- Council is also requested to approve the recommended timetable for finalizing the MWBE Business Development Program

The timetable is outlined below

May 9	Council's Public Services Committee Review of proposed MWBE Business Development Program (review of program)

May 23·	Receive Recommended MWBE Program with resolution containing legislative findings and set Public Hearing and Final Adoption of Program
June 13	Public Hearing and final adoption of MWBE Business Development Program and Resolution with Legislative findings

Background:

Since 1981, the City has had an MWBE program Over the years, the program has been amended on several occasions.

In 1989, a Supreme Court decision involving the City of Richmond, Virginia caused many governments to review the basis of their MWBE programs

In 1991, City Council chose to conduct a study to provide data and analysis which would document the need, if any, for race and gender preference in the award of City contracts The study was completed in October 1993

The current program is staffed by two employees in the MWBE office and supported by staff in the other key businesses The program as described in the policy framework will require more resources than available today

Resource estimates will be presented as part of detailed program review in May

Attachment 2
MWBE Business Development Program Policy Issues Description

Item No.

4. Human Resources Philosophy

Martinez

Action:	**Approve the recommendation of the Council Personnel and Finance Committee to adopt a human resources philosophy.**
Committee Chair:	Hoyle Martin
Staff Resource:	William H Wilder
Policy:	**The 1993 Mayor's Compensation Task Force identified a need for the City to develop a total compensation philosophy. The proposed human resources philosophy incorporates a total compensation philosophy but also links all human resource activities to the City's core values and business strategies**
Explanation of Request:	The recommended philosophy will align the City's human resource strategies with other business and financial strategies of the organization and provide a comprehensive and consistent yardstick against which to judge its human resource actions
Funding:	No funding is required
	Attachment 3 Human Resources Philosophy

Wilder Human Resources

5. Employee Incentive Program

Wilder/Martinez

Action:	**Approve the recommendation of the Council Personnel and Finance Committee to establish an employee incentive program**
Committee Chair:	Hoyle Martin
Staff Resource:	William H Wilder

Wilder Human Resources

April 25, 1994

Request for Council Action DENIED

JACKSON / MARTIN

1 NO - MAJEED

#6. **Cityfair Sale**

Action: **Consider The Keith Corporation's proposal for Cityfair and other options.**

Staff Resource: Del Borgsdorf, Glen Hardymon (Special Counsel), Richard Martin, Larry Rosenstrauch

Explanation of Request:

At Council's April 11th meeting, The Keith Corporation presented a proposal to acquire Cityfair from its current owner, American Fidelity Property Company.

Council directed staff to pursue alternatives and suggested certain financial issues they wished the Keiths and American Fidelity to address. Following Council's direction, City staff made the following requests of the Keiths and American Fidelity:

City Requests to Keiths

- Garage and Carolina Theater purchase options: Terminate options to purchase the parking deck and Carolina Theater site. Instead City would grant a right of first refusal through 2004. This would give the City the right to the market value of these sites, while the Keiths would still be first in line for their acquisition.

Keiths' Response: Rejected.

- Participation in Future Profits: Provide the City 15% participation in any sale or refinancing of the property after the Keiths receive a 12% non-compounded return.

Keiths' Response: Provide City a 10% participation in any sale or refinancing of the property after the Keiths receive a 12% compounded return on their investments.

City Request to American Fidelity

• Portion of Cityfair's sale proceeds Share American Fidelity's proceeds from the sale to the Keiths with the City in proportion to the amounts the City and American Fidelity invested during their terms of ownership. Under this concept the City would be entitled to approximately $650,000.

American Fidelity's Response· Rejected.

Council's Options

■ Approve The Keith Corporation Proposal.

The most significant financial benefit of this would be to allow the City to refinance the parking deck, saving an estimated $125,000 annually. This would cut the projected losses in about half. These annual savings would be worth about $1.2 million over the remaining life of the bonds. However, the City would be required to continue to make up the remaining losses and the Keiths would have the option to purchase the deck through 2004 for the amount of the outstanding debt. The City would also provide 100 free parking spaces for Cityfair office tenants, while the Keiths would restripe the deck to create additional spaces.

In addition, the City would cancel its $3.5 mortgage on Cityfair, which has little value. In return, the Keiths would pay the City $300,000 over three years plus 10% of the proceeds of any future sale. Chemical Bank's approval of this mortgage cancellation will be required.

■ Consider Other Options.

Context: The City's sale of Cityfair to American Fidelity took place in 1990 when the real estate market was weak and flooded with opportunities from the savings & loan crisis. The buyers' market dictated the conditions of the sale which was recommended by a Blue Ribbon Committee. The real estate industry is recovering nationally and locally. Uptown vacancy rates are about half what they were 12-18 months ago.

Option - Repurchase: The City has the absolute right as part of its contract with American Fidelity to repurchase Cityfair for American Fidelity's cost plus 12%, which is estimated to be $2.3 -$2.6 million. Should Council reject the Keiths' proposal, staff could be directed to pursue the repurchase.

Several private sector developers and a parking deck operator have inquired about purchasing Cityfair, the Theater, and/or the Parking Deck.

Option - Reject: The Council can reject the Keiths' proposal for City concessions American Fidelity can still sell Cityfair to the Keiths or anyone they choose by selling the stock in their company, but only under their current contract with the City and without the concessions the Keiths have requested While the City would not be able to refinance the parking deck now, it could sell or refinance the deck in 1998 when American Fidelity's option expires. The American Fidelity option on the Carolina Theater also expires in 1998 and could then be sold by the City Approximately $500,000 in parking deck losses would be incurred during this period.

Funding: Fund Balance of the General Fund or Debt Service Fund

Responsible Dept. Economic Development

Agenda Date Req. April 25, 1994

Consequences if Agenda Date is Delayed or Action is Deferred.

This is the last scheduled Council meeting that would still allow the Keiths to meet their option requirements to purchase Cityfair from American Fidelity.

Contact Person for Questions from the City Manager's Office: Del Borgsdorf, ext. 2241, Larry Rosenstrauch or Tom Warshauer, ext. 3399

Attachment __

City's Letter to The Keith Corporation

Keith Corporation response

Letter of Intent from The Keith Corporation
April 6, 1994

Hardymon Comparison of Contracts
April 5, 1994

CHARLOTTE

April 20, 1994

Mr Graeme Keith
The Keith Corporation
2719 Coltsgate Road
Charlotte, NC 28211

Dear Graeme,

We appreciate your meeting with us and your willingness to continue to explore modifications to your proposal in order to meet the objections raised by City Council. We have given consideration to the input you provided this morning and would like to propose the following specific modifications to your proposal:

1. The option on the Theater Site and the Parking Garage would be terminated. In lieu of the option, the City would grant to Keith Corporation a right of first refusal on both sites. The right of first refusal will begin with the opening of Cityfair and continue until December 31, 2004. The right of first refusal shall provide that the Keiths' will have a period of ninety days after receipt of notification from the City of its intent to sell either site to a third party within which to purchase the same on the same terms and conditions as set forth in the notice; provided however, if the notice as to the Theater Site is given prior to May 31, 1998 the Keith Corporation will have the option of electing to finance the purchase of the Theater Site by use of a promissory note (secured by a deed of trust on the site) bearing interest at the City's then cost of funds, payable monthly in arrears with a single balloon payment of principal being due and payable on June 1, 1998.

2. The Keith Corporation, in consideration of the cancellation by the City of the existing $3.5 million dollar note will agree to give the City a participation in the net proceeds of sale or refinance of Cityfair. Such participation will be 15% of the net proceeds of a sale or refinance but only after the Keith Corporation has received a return of all of its actual invested cash in Cityfair plus a 12% cumulative, but noncompounded return thereon. The City would not however have any right to participate in operating revenues.

We believe that the above modifications will meet the objections raised by Council and yet will not increase your risk or materially impair the Keith Corporations ability to make Cityfair a success. We note that the proposals do not require any additional investment of capital by Keith Corporation Additionally, we have tried to meet your objections to a right of first refusal as relates to the Theater Site by allowing you very favorable financing terms during the early years The participation requested is structured so that the City will benefit only after the Keith Corporation has been fully reimbursed for its equity investment plus an appropriate return

As you know, we need to communicate to Council no later than Friday. We will need information from you no later than 12 00 noon to include it in the Council package

Sincerely,

Del Borgsdorf
Assistant City Manager

xc. Glen Hardymon
Larry Rosenstrauch
Richard Martin

THE KEITH CORPORATION

April 20, 1994

Mr. Del Borgsdorf
Assistant City Manager
600 E. 4th St., 14th Floor
Charlotte, NC 28202-2865

Dear Del:

We appreciated the opportunity to meet with you and your associates yesterday to explore various modifications of our proposal in order to meet some of the concerns raised by the City Council at their last meeting. We have given this matter our most serious consideration, and we hereby modify our letter of intent dated April 6, 1994, by adding the following at the end of Paragraph 2:

(e) The Buying Entity, in consideration of the cancellation by the City of the existing $3.5 million dollar note, will agree to give the City a one-time participation in the net proceeds of the sale of the Cityfair Buildings. Such participation will be ten percent (10%) of the net proceeds of a sale, but only after The Keith Corporation has received all of its actual invested cash in Cityfair plus a twelve percent (12%) cumulative and compounded return thereon. The City would not have any right to participate in any operating revenues. The City's rights will be subordinate to the rights of any existing and future lenders on the project and the City will execute any documents requested by any such lender to confirm this subordination.

It was obvious that several Council members wanted to make every effort to receive a percentage of the sale of Cityfair if a "windfall" was obtained by The Keith Corporation at a later date. If that occurs through a sale of Cityfair, we are willing to share a portion of these proceeds with the City.

We sincerely hope this modification of our proposal will have a positive impact on all members of the City Council and provide them with further assurances that you and they have negotiated an excellent proposal for the City of Charlotte and all of its tax payers.

With kindest personal regards I am,

Sincerely,

Graeme

Graeme M. Keith

GK/lpa

Real Estate Development/Brokerage/Property Management
1710 Collegate Road
Charlotte, North Carolina 28211 704-365-6000
Fax 704-365-9788

LETTER OF INTENT

April 6, 1994

Mr. Del Borgsdorf
Assistant City Manager
City of Charlotte
600 East Fourth Street
Charlotte, North Carolina 28202

Dear Del:

1. Purpose of Letter of Intent. This letter will confirm our most recent discussions and serve as a letter of intent from The Keith Corporation to restructure the loan relationship and loan documentation that now exist between the City of Charlotte and American Fidelity Property Company of North Carolina, Inc. ("American Fidelity") as relates to the building known as "Cityfair" and the adjoining Carolina Theatre (the "Carolina Theatre") and parking garage (the "Garage") properties, all in accordance with the general terms and conditions described below. This Letter of Intent replaces the Letter of Intent dated March 28, 1994. As you know, The Keith Corporation has entered into an agreement for the purchase of Cityfair and the rights and options of American Fidelity relating to the Carolina Theatre and the Garage. One of the conditions to The Keith Corporation's obligations to close the purchase pursuant to the purchase contract is that The Keith Corporation enter into an acceptable agreement with the City of Charlotte as relates to the matters described in this letter.

2. Agreements of The Keith Corporation. The Keith Corporation will form a North Carolina limited liability company comprised of certain principals of The Keith Corporation (the "Buying Entity") which will agree to perform the following in consideration of the City of Charlotte's agreements outlined in the later portions of this letter:

(a) Reopen Cityfair as a combined office/retail/restaurant facility and to guarantee that Cityfair will remain open for at least the time period required to pay the City the $300,000 referred to in subparagraph (b) of this Section 2.

(b) So as to reimburse the City of Charlotte for money the City contributed toward the operating expenses of Cityfair after the City sold Cityfair to American Fidelity, the Buying Entity will agree to pay the City a total of

$300,000 in three equal annual installments of $100,000 each, payable on December 31, 1995, December 31, 1996 and December 31, 1997. The Buying Entity's obligation to pay the $300,000 will be evidenced by its promissory note on the current form of promissory note of the North Carolina Bar Association with the appropriate blanks completed as described in this letter. The note will not be secured by a deed of trust or other interest in the Cityfair property; rather, the payment of these amounts will be secured by an unconditional standby letter of credit issued by a bank in Charlotte, North Carolina that is reasonably acceptable to the City of Charlotte. The amount of the letter of credit will be decreased annually as payments are made on the note so that the amount available under the letter of credit always equals the amount of principal outstanding under the note. The note will provide that any failure by the Buying Entity to make any payment required by the note or any cessation in the operation of Cityfair prior to payment in full of the note will permit the City of Charlotte to accelerate the remaining payments under the note and to call upon the letter of credit for all amounts owed under the note. The note will not bear interest.

(c) The Buying Entity will allow the existing option in favor of American Fidelity for the purchase of the Garage to be terminated (and replaced by a new option described in subparagraph (c) of Section 3 below) so as to allow the City of Charlotte to refinance the existing bond indebtedness relating to the Garage.

(d) The Buying Entity will require that American Fidelity, on or before closing, complete the work on the overstreet walkway between the Cityfair building and the NationsBank Corporate Center and that American Fidelity open the overstreet walkway for full pedestrian use.

3. <u>City Agreements</u>. In consideration of the agreements of the Buying Entity described above, the City of Charlotte will agree to the following:

(a) The City will cancel the existing Purchase Money Note, Purchase Money Deed of Trust, Assignment of Leases, Rents and Profits, UCC Financing Statements, Escrow Agreement and other documents evidencing or securing the existing nonrecourse, "cash flow payment" loan (the "Purchase Money Loan") from the City of Charlotte to American Fidelity. The $300,000 note and the letter of credit referenced in subparagraph (b) of Section 1 above

will replace the Purchase Money Loan documentation. The City will also execute and deliver a Termination Agreement sufficient to terminate any remaining rights the City may have to repurchase Cityfair. The documents necessary to cancel the Purchase Money Loan and terminate any such remaining option rights will be held in escrow pending the opening of Cityfair. From the date of closing until such cancellation, the Purchase Money Loan and any remaining rights of the City to repurchase Cityfair will be subordinated to Buying Entity's third party financing.

(b) The Buying Entity will, at its expense, restripe the upper floors of the Garage to obtain as many additional spaces in the Garage as reasonably possible. The City of Charlotte will supplement these newly created spaces, if and to the extent necessary, so as to provide the Buying Entity, at no charge to the Buying Entity, a total of 100 parking spaces for ten years for use by the tenants and employees of tenants in Cityfair. The parking spaces will be available on the top two levels of the parking deck. The City agrees to maintain a reasonable number of unreserved parking spaces in the Garage to accommodate transient parkers in the Garage who will visit Cityfair, with the number to be agreed upon by the Buying Entity and the City of Charlotte.

(c) The existing option between the City of Charlotte and American Fidelity on the parking garage will be terminated effective as of the date that the Buying Entity acquires record title to Cityfair so as to permit the City of Charlotte to refinance the existing bond debt on the parking garage. The City of Charlotte will grant to the Buying Entity, its successors and assigns, a new option to purchase the parking garage at any time on or after December 31, 1988 through December 31, 2004, at a price equal to the then outstanding bond indebtedness at the time of the closing of the purchase of the Garage including any prepayment penalties or other costs that the City is required to pay to redeem the bonds (either directly or by means of an advance refunding). Inasmuch as the indebtedness (either directly or through an advance refunding to the extent permitted by the Internal Revenue Service), the option will provide that the Buying Entity is not permitted to purchase the Garage during any period in which the bonds are subject to a prohibition against prepayment (unless such prepayment may be accomplished through an advance refunding); provided however, in no event will the Buying Entity have any rights to purchase the Garage prior to December 31, 1998 and during such period the

City shall be prohibited from selling the same to any other person, firm or corporation. In the event that an advance refunding is not available so as to permit prepayment of the bonds (and, therefore, to permit the exercise of the option) by November 30, 2004, then the option shall automatically be extended to the date thirty (30) days after the bonds become prepayable (including prepayment through an advance refunding), although the price will not be less than the price that would be payable if the option were not extended. The closing of the purchase shall be accomplished within thirty (30) days after the exercise of the option. The documents necessary to grant the option to the Buying Entity shall be held in escrow pending the opening of Cityfair.

(d) The City will consent to an assignment by American Fidelity to Buying Entity of the existing option heretofore granted by the City to American Fidelity ont he Carolina Theatre Suite (which option by its terms expires on May 31, 1998). Additionally, the City will grant to the Buying Entity, its successors and assigns, a right of first refusal to purchase the Carolina Theatre site beginning at the expiration date of the existing option (May 31, 1998) and continuing through the expiration of the option on the Garage. Such right of first refusal shall provide that the Buying Entity, its successors and assigns, will have a period of ninety (90) days after receipt of notification from the City of its intent to sell the Carolina Theatre to a third party (the "Notice") within which to purchase the Theatre site ont he same terms and conditions as set forth in said Notice. Such Notice shall disclose the purchase price which the City proposes to sell the Theatre site, the terms of payments thereof, the time of closing and other material provision of the proposed sale. In the event that the Buying Entity does not exercise its right of first refusal within such ninety (90) day period following the giving of such Notice, then the City shall be free to sell the Theatre Site to the party, and on the same terms as set forth in the Notice for a period of sixty (60) days after the expiration of the above-described ninety (90) day period (after which time the City shall again comply with the foregoing requirements before being entitled to sell the Carolina Theatre).

4. Miscellaneous Provisions and Considerations. The Buying Entity and the City of Charlotte will enter into such documents as legal counsel to the parties shall reasonably require. The documents will be executed and delivered when the Buying Entity acquires title to Cityfair from American Fidelity.

Sincerely,

THE KEITH CORPORATION

By: _____
Greg Keith, President

MEMORANDUM

RE: Comparison of Existing American Fidelity Structure to Restructure Proposed by The Keith Corporation

DATE: April 5, 1994

Set forth below is a comparison of the economic arrangement between the City and American Fidelity and as proposed to be modified by Keith.

AMERICAN FIDELITY	PROPOSED RESTRUCTURE BY KEITH
$3,500,000 Promissory Note: Non-interest bearing non-recourse. Payable only out of net cash flow from Cityfair and only after (i) American Fidelity has been reimbursed $500,000 of operating losses initially funded by American Fidelity plus 12% interest; (ii) the City has been reimbursed for $300,000 of operating losses funded by the City plus 12% interest; (iii) American Fidelity is reimbursed for all other operating losses funded plus 12% interest (estimated at $896,000). After such priority reimbursements, 70% of the net cash flow is paid to the City until the City's $3,500,000 note is paid in full.	$3,500,000 note to be cancelled contingent upon Keith reopening Cityfair.
The City would be reimbursed for $300,000 (plus 12% interest) of operating losses funded by the City out of the net cash flow derived from Cityfair but only after American Fidelity has first been reimbursed for its $500,000 of initial operating	City guaranteed reimbursement of full $300,000 (without interest) in three annual installments secured by an irrevocable letter of credit.

loss funding plus interest at 12%.	
The Deed of Trust securing the City's $3,500,000 non-interest bearing non-recourse promissory note is to be subordinated to financing secured by American Fidelity in order to fund the cost of capital improvements to Cityfair, tenant upfitting and costs and expenses associated with acquisition of adjoining properties.	No longer applicable: $3,500,000 promissory note and deed of trust to be cancelled conditioned upon reopening of Cityfair
Assurances of opening of Cityfair by American Fidelity: None.	Modification to existing financial structure and options conditioned upon Cityfair being opened by Keith. Lease agreements secured by Keith from Soft Play and UNC-Charlotte reported to be for ten year terms thereby providing possibility of long term viability of Cityfair.
American Fidelity has option to purchase theater property at purchase price of $1,450,000 less costs, if any, incurred in demolition of theater facade. A credit of up to $450,000 may be earned if the property is developed 90% for retail use. Option expires May 31, 1998.	Keith will be assigned the option to purchase the theater on the same terms and conditions as presently exist. Additionally, the City will grant to Keith a right of first refusal to purchase the theater property for the period commencing with the expiration of the theater option through December 31, 2004.
American Fidelity has an option to purchase the Cityfair parking garage through May 31, 1998 at a purchase price corresponding to the balance of bond financing outstanding on the parking garage at the time the option is exercised and the property purchased by American Fidelity. This option has	American Fidelity's option on the parking garage will be cancelled so as to permit the City to refinance this bond financing. Estimated savings on refinancing are $125,000 per year. The City will grant to Keith a new option to purchase the

prevented the City from refinancing the bond indebtedness on the parking garage in order to take advantage of lower interest rates.	parking garage beginning January 1, 1999 through December 31, 2004 at a purchase price corresponding to the outstanding indebtedness on the parking garage at the time the option is exercised and the garage purchased by Keith.
Free parking space requirement: None. Various incentives were required to be provided by the City relative to parking but all such incentives terminated when Cityfair was closed in September of 1991.	100 free parking spaces for employees of Soft Play. Keith obligated to fund the costs of restriping of upper levels in order to achieve the necessary number of additional spaces (with any shortfall in spaces being provided by the City).
Crosswalk: To be constructed by American Fidelity without cost to the City. The City is required to own and maintain.	Crosswalk has not yet been completed. Keith requiring completion of crosswalk as a condition of its closing. The City will continue to be obligated to own and maintain.
Repurchase option: The City has the option to repurchase Cityfair from American Fidelity through May 31, 1998. City's option to repurchase exists only if American Fidelity notifies City that it no longer intends to operate Cityfair primarily for retail purposes. The City's right to purchase pursuant to the option is at a price corresponding to American Fidelity's unrecovered investment in Cityfair plus a 12% return thereon. This is presently estimated to total approximately $1,948,180 plus interest at 12%.	The repurchase option of the City would be terminated.

MEMORANDUM

RE: Background: Cityfair Sale to American Fidelity

DATE: April 5, 1994

Effective June 1, 1990 the City of Charlotte sold the Cityfair Retail Center project to American Fidelity Property Company of North Carolina, Inc. ("American Fidelity") at a purchase price of $3,500,000 payable entirely by a non-interest bearing, non-recourse promissory note. Additionally, the City granted two options to American Fidelity:

(a) an option to purchase the Cityfair parking garage at a price corresponding to the unpaid bond financing at the date of the purchase of garage, and

(b) an option to acquire the theater parcel located at the corner of North Tryon Street and East Sixth Street at a purchase price of $1,450,000 (with credits available for costs of demolition and up to an additional $450,000 if used 90% for retail). Both options expire May 31, 1998.

As a part of the transaction the City was required to fund up to $300,000 of operating losses incurred by Cityfair but only after American Fidelity had funded the first $500,000 of operating losses. The City was also required to expend up to $100,000 in connection with renovations to the Cityfair parking garage.

In connection with the City's original acquisition of control of the Cityfair project, Chemical Bank and its holding company, Denmont Holding Corp. and the City entered into a settlement agreement pursuant to which the City agreed that upon a sale of the Cityfair project the first $1,500,000 of net sale price as and when received would be paid 50% to Denmont to be credited against its unreimbursed "embedded operational costs" and 50% to the City to reimburse it for its unreimbursed embedded operational costs; and to the extent that the parties still had unreimbursed embedded operational costs the next funds were to be paid to the City until it had been made whole, then to Denmont until it had been made whole, with any remaining balance to the City. Denmont's embedded operational costs total $1,100,000 and the City's totalled $498,800.

American Fidelity, as the record title holder to the Cityfair project has entered into a contract to sell Cityfair to The Keith Corporation ("Keith"). As a part of such transaction American

Fidelity further proposes to assign its option on the theater parcel and the Cityfair parking garage.

Keith has requested the City to modify the arrangement between the City and American Fidelity in the following respects:

(i) the existing $3,500,000 non-interest bearing nonrecourse promissory note of American Fidelity would be cancelled;

(ii) Keith would over a three year period reimburse the City for the $300,000 the City paid to fund operating costs of Cityfair;

(iii) the City would consent to the assignment of the theater option to American Fidelity and provide for a right of first refusal to purchase the theater parcel for the period commencing at the end of the existing option (May 31, 1998) through December 31, 2004;

(iv) the existing option of American Fidelity to purchase the parking garage would be cancelled and would be replaced by a new option that would give to Keith the option to purchase the Cityfair parking garage commencing January 1, 1999 through December 31, 2004 at a purchase price corresponding to the outstanding loan on the parking garage at the time of the purchase of the garage;

(v) Keith would restripe the upper levels of the Cityfair parking garage in order to increase the number of spaces and the City would make available, at no cost to Keith, 100 spaces on the upper levels for employee parking of tenants at Cityfair; and

(vi) the cancellation of the $3,500,000 non-interest bearing non-recourse purchase money indebtedness and the modification of the options would be conditioned upon Keith opening Cityfair.

#6

Request for Council Action

Denied
Jackson | Martin
1, No, MA Jaad

__. **Cityfair Sale**

Action: **Consider The Keith Corporation's proposal for Cityfair and other options.**

Staff Resource: Del Borgsdorf, Glen Hardymon (Special Counsel), Richard Martin, Larry Rosenstrauch

Explanation of Request:

At Council's April 11th meeting, The Keith Corporation presented a proposal to acquire Cityfair from its current owner, American Fidelity Property Company.

Council directed staff to pursue alternatives and suggested certain financial issues they wished the Keiths and American Fidelity to address. Following Council's direction, City staff made the following requests of the Keiths and American Fidelity:

City Requests to Keiths

- Garage and Carolina Theater purchase options: Terminate options to purchase the parking deck and Carolina Theater site. Instead City would grant a right of first refusal through 2004. This would give the City the right to the market value of these sites, while the Keiths would still be first in line for their acquisition.

Keiths' Response: Rejected.

- Participation in Future Profits: Provide the City 15% participation in any sale or refinancing of the property after the Keiths receive a 12% non-compounded return.

Keiths' Response: Provide City a 10% participation in any sale or refinancing of the property after the Keiths receive a 12% compounded return on their investments.

City Request to American Fidelity

- Portion of Cityfair's sale proceeds Share American Fidelity's proceeds from the sale to the Keiths with the City in proportion to the amounts the City and American Fidelity invested during their terms of ownership Under this concept the City would be entitled to approximately $650,000.

American Fidelity's Response: Rejected.

Council's Options

- **Approve The Keith Corporation Proposal.**

The most significant financial benefit of this would be to allow the City to refinance the parking deck, saving an estimated $125,000 annually. This would cut the projected losses in about half. These annual savings would be worth about $1 2 million over the remaining life of the bonds. However, the City would be required to continue to make up the remaining losses and the Keiths would have the option to purchase the deck through 2004 for the amount of the outstanding debt. The City would also provide 100 free parking spaces for Cityfair office tenants, while the Keiths would restripe the deck to create additional spaces.

In addition, the City would cancel its $3.5 mortgage on Cityfair, which has little value. In return, the Keiths would pay the City $300,000 over three years plus 10% of the proceeds of any future sale. Chemical Bank's approval of this mortgage cancellation will be required.

- **Consider Other Options.**

Context: The City's sale of Cityfair to American Fidelity took place in 1990 when the real estate market was weak and flooded with opportunities from the savings & loan crisis. The buyers' market dictated the conditions of the sale which was recommended by a Blue Ribbon Committee. The real estate industry is recovering nationally and locally. Uptown vacancy rates are about half what they were 12-18 months ago.

Option - Repurchase: The City has the absolute right as part of its contract with American Fidelity to repurchase Cityfair for American Fidelity's cost plus 12%, which is estimated to be $2.3 -$2.6 million. Should Council reject the Keiths' proposal, staff could be directed to pursue the repurchase.

Several private sector developers and a parking deck operator have inquired about purchasing Cityfair, the Theater, and/or the Parking Deck.

Option - Reject: The Council can reject the Keiths' proposal for City concessions. American Fidelity can still sell Cityfair to the Keiths or anyone they choose by selling the stock in their company, but only under their current contract with the City and without the concessions the Keiths have requested While the City would not be able to refinance the parking deck now, it could sell or refinance the deck in 1998 when American Fidelity's option expires. The American Fidelity option on the Carolina Theater also expires in 1998 and could then be sold by the City Approximately $500,000 in parking deck losses would be incurred during this period.

Funding: Fund Balance of the General Fund or Debt Service Fund

Responsible Dept. Economic Development

Agenda Date Req. April 25, 1994

Consequences if Agenda Date is Delayed or Action is Deferred.

This is the last scheduled Council meeting that would still allow the Keiths to meet their option requirements to purchase Cityfair from American Fidelity.

Contact Person for Questions from the City Manager's Office: Del Borgsdorf, ext. 2241, Larry Rosenstrauch or Tom Warshauer, ext. 3399

Attachment __

City's Letter to The Keith Corporation

Keith Corporation response

Letter of Intent from The Keith Corporation
April 6, 1994

Hardymon Comparison of Contracts
April 5, 1994

CHARLOTTE

April 20, 1994

Mr Graeme Keith
The Keith Corporation
2719 Coltsgate Road
Charlotte, NC 28211

Dear Graeme,

We appreciate your meeting with us and your willingness to continue to explore modifications to your proposal in order to meet the objections raised by City Council. We have given consideration to the input you provided this morning and would like to propose the following specific modifications to your proposal:

1. The option on the Theater Site and the Parking Garage would be terminated. In lieu of the option, the City would grant to Keith Corporation a right of first refusal on both sites. The right of first refusal will begin with the opening of Cityfair and continue until December 31, 2004. The right of first refusal shall provide that the Keiths' will have a period of ninety days after receipt of notification from the City of its intent to sell either site to a third party within which to purchase the same on the same terms and conditions as set forth in the notice; provided however, if the notice as to the Theater Site is given prior to May 31, 1998 the Keith Corporation will have the option of electing to finance the purchase of the Theater Site by use of a promissory note (secured by a deed of trust on the site) bearing interest at the City's then cost of funds, payable monthly in arrears with a single balloon payment of principal being due and payable on June 1, 1998.

2. The Keith Corporation, in consideration of the cancellation by the City of the existing $3.5 million dollar note will agree to give the City a participation in the net proceeds of sale or refinance of Cityfair. Such participation will be 15% of the net proceeds of a sale or refinance but only after the Keith Corporation has received a return of all of its actual invested cash in Cityfair plus a 12% cumulative, but noncompounded return thereon. The City would not however have any right to participate in operating revenues.

We believe that the above modifications will meet the objections raised by Council and yet will not increase your risk or materially impair the Keith Corporations ability to make Cityfair a success We note that the proposals do not require any additional investment of capital by Keith Corporation Additionally, we have tried to meet your objections to a right of first refusal as relates to the Theater Site by allowing you very favorable financing terms during the early years The participation requested is structured so that the City will benefit only after the Keith Corporation has been fully reimbursed for its equity investment plus an appropriate return

As you know, we need to communicate to Council no later than Friday. We will need information from you no later than 12 00 noon to include it in the Council package

Sincerely,

Del Borgsdorf
Assistant City Manager

xc. Glen Hardymon
Larry Rosenstrauch
Richard Martin

THE KEITH CORPORATION

April 20, 1994

Mr. Del Borgsdorf
Assistant City Manager
600 E. 4th St., 14th Floor
Charlotte, NC 28202-2865

Dear Del:

We appreciated the opportunity to meet with you and your associates yesterday to explore various modifications of our proposal in order to meet some of the concerns raised by the City Council at their last meeting. We have given this matter our most serious consideration, and we hereby modify our letter of intent dated April 6, 1994, by adding the following at the end of Paragraph 2:

(e) The Buying Entity, in consideration of the cancellation by the City of the existing $3.5 million dollar note, will agree to give the City a one-time participation in the net proceeds of the sale of the Cityfair Buildings. Such participation will be ten percent (10%) of the net proceeds of a sale, but only after The Keith Corporation has received all of its actual invested cash in Cityfair plus a twelve percent (12%) cumulative and compounded return thereon. The City would not have any right to participate in any operating revenues. The City's rights will be subordinate to the rights of any existing and future lenders on the project and the City will execute any documents requested by any such lender to confirm this subordination.

It was obvious that several Council members wanted to make every effort to receive a percentage of the sale of Cityfair if a "windfall" was obtained by The Keith Corporation at a later date. If that occurs through a sale of Cityfair, we are willing to share a portion of these proceeds with the City.

We sincerely hope this modification of our proposal will have a positive impact on all members of the City Council and provide them with further assurances that you and they have negotiated an excellent proposal for the City of Charlotte and all of its tax payers.

With kindest personal regards I am,

Sincerely,

Graeme

Graeme M. Keith

GK/pa

Real Estate Development/Brokerage/Property Management
170 Collegate Road
Charlotte, North Carolina 28211 704-365-6000
Fax 704-365-0780

LETTER OF INTENT

April 6, 1994

Mr. Del Borgsdorf
Assistant City Manager
City of Charlotte
600 East Fourth Street
Charlotte, North Carolina 28202

Dear Del:

1. Purpose of Letter of Intent. This letter will confirm our most recent discussions and serve as a letter of intent from The Keith Corporation to restructure the loan relationship and loan documentation that now exist between the City of Charlotte and American Fidelity Property Company of North Carolina, Inc. ("American Fidelity") as relates to the building known as "Cityfair" and the adjoining Carolina Theatre (the "Carolina Theatre") and parking garage (the "Garage") properties, all in accordance with the general terms and conditions described below. This Letter of Intent replaces the Letter of Intent dated March 28, 1994. As you know, The Keith Corporation has entered into an agreement for the purchase of Cityfair and the rights and options of American Fidelity relating to the Carolina Theatre and the Garage. One of the conditions to The Keith Corporation's obligations to close the purchase pursuant to the purchase contract is that The Keith Corporation enter into an acceptable agreement with the City of Charlotte as relates to the matters described in this letter.

2. Agreements of The Keith Corporation. The Keith Corporation will form a North Carolina limited liability company comprised of certain principals of The Keith Corporation (the "Buying Entity") which will agree to perform the following in consideration of the City of Charlotte's agreements outlined in the later portions of this letter:

(a) Reopen Cityfair as a combined office/retail/restaurant facility and to guarantee that Cityfair will remain open for at least the time period required to pay the City the $300,000 referred to in subparagraph (b) of this Section 2.

(b) So as to reimburse the City of Charlotte for money the City contributed toward the operating expenses of Cityfair after the City sold Cityfair to American Fidelity, the Buying Entity will agree to pay the City a total of

$300,000 in three equal annual installments of $100,000 each, payable on December 31, 1995, December 31, 1996 and December 31, 1997. The Buying Entity's obligation to pay the $300,000 will be evidenced by its promissory note on the current form of promissory note of the North Carolina Bar Association with the appropriate blanks completed as described in this letter. The note will not be secured by a deed of trust or other interest in the Cityfair property; rather, the payment of these amounts will be secured by an unconditional standby letter of credit issued by a bank in Charlotte, North Carolina that is reasonably acceptable to the City of Charlotte. The amount of the letter of credit will be decreased annually as payments are made on the note so that the amount available under the letter of credit always equals the amount of principal outstanding under the note. The note will provide that any failure by the Buying Entity to make any payment required by the note or any cessation in the operation of Cityfair prior to payment in full of the note will permit the City of Charlotte to accelerate the remaining payments under the note and to call upon the letter of credit for all amounts owed under the note. The note will not bear interest.

(c) The Buying Entity will allow the existing option in favor of American Fidelity for the purchase of the Garage to be terminated (and replaced by a new option described in subparagraph (c) of Section 3 below) so as to allow the City of Charlotte to refinance the existing bond indebtedness relating to the Garage.

(d) The Buying Entity will require that American Fidelity, on or before closing, complete the work on the overstreet walkway between the Cityfair building and the NationsBank Corporate Center and that American Fidelity open the overstreet walkway for full pedestrian use.

3. <u>City Agreements</u>. In consideration of the agreements of the Buying Entity described above, the City of Charlotte will agree to the following:

(a) The City will cancel the existing Purchase Money Note, Purchase Money Deed of Trust, Assignment of Leases, Rents and Profits, UCC Financing Statements, Escrow Agreement and other documents evidencing or securing the existing nonrecourse, "cash flow payment" loan (the "Purchase Money Loan") from the City of Charlotte to American Fidelity. The $300,000 note and the letter of credit referenced in subparagraph (b) of Section 1 above

will replace the Purchase Money Loan documentation. The City will also execute and deliver a Termination Agreement sufficient to terminate any remaining rights the City may have to repurchase Cityfair. The documents necessary to cancel the Purchase Money Loan and terminate any such remaining option rights will be held in escrow pending the opening of Cityfair. From the date of closing until such cancellation, the Purchase Money Loan and any remaining rights of the City to repurchase Cityfair will be subordinated to Buying Entity's third party financing.

(b) The Buying Entity will, at its expense, restripe the upper floors of the Garage to obtain as many additional spaces in the Garage as reasonably possible. The City of Charlotte will supplement these newly created spaces, if and to the extent necessary, so as to provide the Buying Entity, at no charge to the Buying Entity, a total of 100 parking spaces for ten years for use by the tenants and employees of tenants in Cityfair. The parking spaces will be available on the top two levels of the parking deck. The City agrees to maintain a reasonable number of unreserved parking spaces in the Garage to accommodate transient parkers in the Garage who will visit Cityfair, with the number to be agreed upon by the Buying Entity and the City of Charlotte.

(c) The existing option between the City of Charlotte and American Fidelity on the parking garage will be terminated effective as of the date that the Buying Entity acquires record title to Cityfair so as to permit the City of Charlotte to refinance the existing bond debt on the parking garage. The City of Charlotte will grant to the Buying Entity, its successors and assigns, a new option to purchase the parking garage at any time on or after December 31, 1988 through December 31, 2004, at a price equal to the then outstanding bond indebtedness at the time of the closing of the purchase of the Garage including any prepayment penalties or other costs that the City is required to pay to redeem the bonds (either directly or by means of an advance refunding). Inasmuch as the indebtedness (either directly or through an advance refunding to the extent permitted by the Internal Revenue Service), the option will provide that the Buying Entity is not permitted to purchase the Garage during any period in which the bonds are subject to a prohibition against prepayment (unless such prepayment may be accomplished through an advance refunding); provided however, in no event will the Buying Entity have any rights to purchase the Garage prior to December 31, 1998 and during such period the

City shall be prohibited from selling the same to any other person, firm or corporation. In the event that an advance refunding is not available so as to permit prepayment of the bonds (and, therefore, to permit the exercise of the option) by November 30, 2004, then the option shall automatically be extended to the date thirty (30) days after the bonds become prepayable (including prepayment through an advance refunding), although the price will not be less than the price that would be payable if the option were not extended. The closing of the purchase shall be accomplished within thirty (30) days after the exercise of the option. The documents necessary to grant the option to the Buying Entity shall be held in escrow pending the opening of Cityfair.

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4. Miscellaneous Provisions and Considerations. The Buying Entity and the City of Charlotte will enter into such documents as legal counsel to the parties shall reasonably require. The documents will be executed and delivered when the Buying Entity acquires title to Cityfair from American Fidelity.

Sincerely,

THE KEITH CORPORATION

By: _____
Greg Keith, President

MEMORANDUM

RE: Comparison of Existing American Fidelity Structure to Restructure Proposed by The Keith Corporation

DATE: April 5, 1994

Set forth below is a comparison of the economic arrangement between the City and American Fidelity and as proposed to be modified by Keith.

AMERICAN FIDELITY	PROPOSED RESTRUCTURE BY KEITH
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The City would be reimbursed for $300,000 (plus 12% interest) of operating losses funded by the City out of the net cash flow derived from Cityfair but only after American Fidelity has first been reimbursed for its $500,000 of initial operating	City guaranteed reimbursement of full $300,000 (without interest) in three annual installments secured by an irrevocable letter of credit.

loss funding plus interest at 12%.	
The Deed of Trust securing the City's $3,500,000 non-interest bearing non-recourse promissory note is to be subordinated to financing secured by American Fidelity in order to fund the cost of capital improvements to Cityfair, tenant upfitting and costs and expenses associated with acquisition of adjoining properties.	No longer applicable: $3,500,000 promissory note and deed of trust to be cancelled conditioned upon reopening of Cityfair
Assurances of opening of Cityfair by American Fidelity: None.	Modification to existing financial structure and options conditioned upon Cityfair being opened by Keith. Lease agreements secured by Keith from Soft Play and UNC-Charlotte reported to be for ten year terms thereby providing possibility of long term viability of Cityfair.
American Fidelity has option to purchase theater property at purchase price of $1,450,000 less costs, if any, incurred in demolition of theater facade. A credit of up to $450,000 may be earned if the property is developed 90% for retail use. Option expires May 31, 1998.	Keith will be assigned the option to purchase the theater on the same terms and conditions as presently exist. Additionally, the City will grant to Keith a right of first refusal to purchase the theater property for the period commencing with the expiration of the theater option through December 31, 2004.
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prevented the City from refinancing the bond indebtedness on the parking garage in order to take advantage of lower interest rates.	parking garage beginning January 1, 1999 through December 31, 2004 at a purchase price corresponding to the outstanding indebtedness on the parking garage at the time the option is exercised and the garage purchased by Keith.
Free parking space requirement: None. Various incentives were required to be provided by the City relative to parking but all such incentives terminated when Cityfair was closed in September of 1991.	100 free parking spaces for employees of Soft Play. Keith obligated to fund the costs of restriping of upper levels in order to achieve the necessary number of additional spaces (with any shortfall in spaces being provided by the City).
Crosswalk: To be constructed by American Fidelity without cost to the City. The City is required to own and maintain.	Crosswalk has not yet been completed. Keith requiring completion of crosswalk as a condition of its closing. The City will continue to be obligated to own and maintain.
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MEMORANDUM

RE: Background: Cityfair Sale to American Fidelity

DATE: April 5, 1994

Effective June 1, 1990 the City of Charlotte sold the Cityfair Retail Center project to American Fidelity Property Company of North Carolina, Inc. ("American Fidelity") at a purchase price of $3,500,000 payable entirely by a non-interest bearing, non-recourse promissory note. Additionally, the City granted two options to American Fidelity:

(a) an option to purchase the Cityfair parking garage at a price corresponding to the unpaid bond financing at the date of the purchase of garage, and

(b) an option to acquire the theater parcel located at the corner of North Tryon Street and East Sixth Street at a purchase price of $1,450,000 (with credits available for costs of demolition and up to an additional $450,000 if used 90% for retail). Both options expire May 31, 1998.

As a part of the transaction the City was required to fund up to $300,000 of operating losses incurred by Cityfair but only after American Fidelity had funded the first $500,000 of operating losses. The City was also required to expend up to $100,000 in connection with renovations to the Cityfair parking garage.

In connection with the City's original acquisition of control of the Cityfair project, Chemical Bank and its holding company, Denmont Holding Corp. and the City entered into a settlement agreement pursuant to which the City agreed that upon a sale of the Cityfair project the first $1,500,000 of net sale price as and when received would be paid 50% to Denmont to be credited against its unreimbursed "embedded operational costs" and 50% to the City to reimburse it for its unreimbursed embedded operational costs; and to the extent that the parties still had unreimbursed embedded operational costs the next funds were to be paid to the City until it had been made whole, then to Denmont until it had been made whole, with any remaining balance to the City. Denmont's embedded operational costs total $1,100,000 and the City's totalled $498,800.

American Fidelity, as the record title holder to the Cityfair project has entered into a contract to sell Cityfair to The Keith Corporation ("Keith"). As a part of such transaction American

Fidelity further proposes to assign its option on the theater parcel and the Cityfair parking garage.

Keith has requested the City to modify the arrangement between the City and American Fidelity in the following respects:

(i) the existing $3,500,000 non-interest bearing nonrecourse promissory note of American Fidelity would be cancelled;

(ii) Keith would over a three year period reimburse the City for the $300,000 the City paid to fund operating costs of Cityfair;

(iii) the City would consent to the assignment of the theater option to American Fidelity and provide for a right of first refusal to purchase the theater parcel for the period commencing at the end of the existing option (May 31, 1998) through December 31, 2004;

(iv) the existing option of American Fidelity to purchase the parking garage would be cancelled and would be replaced by a new option that would give to Keith the option to purchase the Cityfair parking garage commencing January 1, 1999 through December 31, 2004 at a purchase price corresponding to the outstanding loan on the parking garage at the time of the purchase of the garage;

(v) Keith would restripe the upper levels of the Cityfair parking garage in order to increase the number of spaces and the City would make available, at no cost to Keith, 100 spaces on the upper levels for employee parking of tenants at Cityfair; and

(vi) the cancellation of the $3,500,000 non-interest bearing non-recourse purchase money indebtedness and the modification of the options would be conditioned upon Keith opening Cityfair.

Policy: The 1993 Mayor's Compensation Task Force identified the need for the City to develop employee incentive plans. The Task Force recommendation was accepted by City Council and, at the May 10, 1993 Council meeting, City Council approved allocating one half of hard dollar savings from the change to a point of service/managed care medical insurance plan to the funding of an employee incentive plan.

Explanation of Request: The recommended employee incentive program will reward employees for achieving savings goals and meeting business unit targets

Funding Plan will be self-funded from City budget savings

Attachment 4
Employee Incentive Program

BUSINESS

6. Cityfair Sale

Negotiations for the sale of Cityfair are continuing Staff will forward more information to City Council in Friday's Council/Manager Memo

7. Convention Center, Coopers and Lybrand Agreement

Action Approve an agreement for $58,000 with Coopers & Lybrand to provide monthly project assessment services during construction of the new Convention Center.

Nat \ Comm Urban

Staff Resource. Clark D Readling

Policy: Complete Convention Center on schedule and within budget.

Engineering

Item No.

Explanation of Request:

- Coopers & Lybrand will provide a monthly assessment of the project and assist City staff to develop strategies to minimize potential delay or cost overrun problems

- The City will benefit from using Coopers & Lybrand's services because they are

  - the City's auditor and will provide an unbiased assessment of the project

  - familiar with the project after a thorough review of the construction manager's recovery plan completed in March

  - experienced in providing similar services for public sector clients (See Attachment)

  - in the auditing business and are experienced in identifying trends and other issues

  - able to provide a fresh perspective monthly which may identify problems not apparent to those closely associated with the project

Background:

In March 1994, Coopers and Lybrand issued a report on the current status of the project with recommendations for improving the overall management of the project

To date, we have spent $17,250 for the initial evaluation and the first monthly report and are very satisfied with the services provided so far Coopers & Lybrand's fee for this agreement is $6,250 per month, plus an estimated $1,000 for expenses This fee was negotiated and is comparable to the fees charged by firms for similar services

This agreement will provide for monthly assessments of the project through December 1994, with the option to cancel at any time if the services are no longer necessary

Coopers & Lybrand will visit the site every month and provide a report of their analysis of the following

- Major issues that have occurred since the last project review.
- Variances in the projected schedule
- Status of the construction budget and the potential for change orders
- Communication, teamwork, and problem resolution amongst the City, Construction Manager, and Architect
- Significant findings or concerns discovered during their visit

Attachment 5
History of Similar Project Experience for Coopers & Lybrand

8. Community Development Block Grant Application

Action:

A. Approve filing a grant application with HUD for $4,853,000 in Community Development Block Grant (CDBG) funds for FY95, and

B. Approve the FY95 Final Statement of Objectives and the Projected Use of Funds

Staff Resource: J W Walton

Policy:

Charlotte's Comprehensive Housing Affordability Strategy (CHAS) approved by City Council on October 25, 1993 states that the City of Charlotte and local housing providers will pursue programs and activities which address the following priorities:

- **Preservation of Existing Housing**
- **Strengthening Neighborhoods and Community-Based Organizations**
- **Promoting Self-Sufficiency**
- **Promoting Housing Affordability**
- **Expanding Affordable Housing**

Explanation of Request:

- The City must apply yearly for Community Development Block Grant funds and submission of the application must be approved by City Council This is the 20th year the City has participated in the CDBG Program To date, Charlotte has received $100 47 million in CDBG funds

- The FY95 grant amount of $4,853,000 is an increase of $393,000 over FY95 grant of $4,460,000 This is due to an increase in the CDBG Program's appropriation by Congress

- A total of $5,521,951 from the following sources will be used to accomplish the CDBG program objectives for FY95.

FY95 CDBG Funds	$4,853,000
FY95 Projected Program Income	668,951
	$5,521,951

- The proposed FY95 CDBG activities for these funds are summarized as follows

Item No

Activities	Amount
Selective Rehabilitation	$1,247,454
Acquisition	594,349
Relocation	729,608
Homeownership Down-payment Assistance	20,000
Relocation/Replacement Housing	570,648
Public Services	644,974
Program Delivery	1,140,330
Program Administration	574,588
	$5,521,951

Final approval will occur in the FY95 Budget

Background:

A description of Community Development program activities is provided in the Background and the FY95 Final Statement in the Attachment A comparison of Charlotte's program administration percentage with HUD's national average and other NC entitlement cities is included in the Background

Additional information on the Public Services, Program Delivery and Program Administration items in the Budget section of the Final Statement is provided in the Attachment

See Attachment for additional background

Attachment 6
Background
FY95 Final Statement
Public Services, Program Delivery and Program Administration Information

Sub motion to change to 15 year loan Paid MCC

Item No

9. 2511 Columbus Circle - Demolition/New Construction Loan

Pass 6-5

Action:

A. Approve a $66,615 permanent loan to Clark McClain and wife, Brenda, for the purchase of a new house to be built at 2511 Columbus Circle and the demolition of their existing house;

B. Approve a Tri-Party Agreement between the City, Sunbelt Homes, Inc. and Clark McClain and wife, Brenda, to construct the new house;

C. Approve a Tri-Party Agreement between the City, Lee Grading and Clark McClain and wife, Brenda, to demolish their existing house for $3,350.

D. Of the $66,615, approve $53,775 to be used as a construction loan to Sunbelt Homes, Inc. to construct the new house for Clark McClain and wife, Brenda, at 2511 Columbus Circle.

5 No's Maj Spencer Lee Mart Cannon

Staff Resource: J W Walton

Policy:

original motion Mart/Spencer to approve

- At the July 12, 1993 Housing Workshop, City Council reviewed, affirmed and refined the City's current housing policies, programs and priorities.

- City Council approved a policy for local option relocation benefits on July 22, 1991. Persons eligible for benefits are

  - those families earning 80% or less of median income and being displaced from their homes due to governmental action such as code enforcement or locally-funded capital improvement projects, and

  - those families whose houses are not feasible to rehabilitate

Item No

Explanation of Request:

- The above actions are needed in order to provide Mr. and Mrs Clark affordable, standard housing

- Mr and Mrs. McClain's house was inspected on October 14, 1992 and was found to be in violation of the City's Housing Code It was determined that the house was not feasible to rehabilitate (See Feasibility Analysis in the Background) The McClains were added to the relocation workload on December 23, 1992

- The City's Local Option Policy provides relocation benefits in the form of a replacement housing loan when a homeowner wants to continue as a homeowner

- The McClains wish to remain homeowners and remain on their current site

- The property was purchased in 1974 and the house was 25 years old when purchased The McClains paid $12,100 for the property in 1974 (At that time, the tax value of the property was $7,810 Currently, tax value of the property is $31,170)

- The house at 2511 Columbus Circle is now 45 years old The expected life cycle of a house is approximately 50 years unless it has been very well maintained

- Although the McClains have been making repairs throughout the 20 years they have owned the house, major structural problems exist (roof, walls, piers, joists, sills) as well as electrical and plumbing problems which make the house not feasible to repair/rehabilitate

Options

Staff reviewed several options for the house These options are listed in the Attachment

Recommended Option:

- Based on staff's analysis, it was determined that new construction would be the most cost efficient approach to provide affordable, standard housing to the McClains. Staff's analysis is provided in the Background.

- New construction will

  - remove "slum and blight" from the neighborhood.

  - add to the on-going efforts of stabilizing the neighborhood by allowing continued homeownership by the McClains

  - add to the neighborhood's property values

- Breakdown of Total Costs

- Construction Cost	$53,775
- Demolition Cost	3,350
Sub-Total	$57,125
- Refinance 1st Mortgage	7,690
- Closing Costs	1,800
Total Loan Amount	$66,615

- The $66,615 permanent mortgage loan to Mr and Mrs McClain will be financed by the City The loan will be at 3% interest rate for term of 25 years

  Of the $66,615 a construction loan of $53,775 will be made to Sunbelt Homes, Inc The loan will be at 0% interest and will be repaid to the City through the permanent financing of the house Sunbelt Homes, Inc will be required to provide the City with an Irrevocable Letter of Credit for $53,775 to guarantee the construction of the house

Background: See Attachment for additional background

Attachment 7
Options
Background
Picture of Existing House
Rendering of New House
Map

10. May 2nd Workshop Agenda Whel mot una

Action: **Approve the following topics for inclusion on the May 2, 1994 Council Workshop agenda·**

- **City/Duke Power Parking Agreement**
- **Community Safety Plan**
- **CIP Workshop**

Jon Ellison

11. Alum Sludge Disposal Facilities - Vest and Franklin Water Treatment Plants

Council is being requested to approve five actions within this item These five actions include approval of a budget ordinance, amendment to the professional services contract, and contract award of the general construction, electrical construction and heating, ventilating, and air conditioning work at the proposed Alum Sludge Disposal Facilities at Vest and Franklin Water Treatment Plants

Action:

Ordinance # 4
#3857X Bk. 45, Pg. 297
Comm Campbell
Mon

A) Approve Budget Ordinance appropriating revenue from 1992 water bonds and proposed fund balance from capital project close-outs in the amount of $6,115,197.

B) Approve Amendment No. 2 to the agreement with Black & Veatch for $688,780 to provide construction engineering and resident inspection services for alum sludge disposal facilities at the Franklin and Vest Water Treatment Plants.

CmP

C) The Utility Director recommends that the bid of $5,890,242.00 by Crowder Construction Company of Indian Trail, North Carolina be accepted for Section I - General Construction

D) The Utility Director recommends that the bid of $1,287,534.00 by Ind-Com Electric Company of Charlotte, North Carolina be accepted for Section II - Electrical Construction.

E) The Utility Director recommends that the bid of $151,860.00 by Thompkins-Johnson Company of Charlotte, North Carolina be accepted for Section III - HVAC Construction

Project Description:

- The Alum Residuals Facilities project was initiated in 1992 as a result of new and more stringent National Pollutant Discharge Elimination System (NPDES) permit limits at the Irwin Creek Wastewater Treatment Plant that become effective in April of 1995, and pre-treatment regulations that limit the suspended solids content of discharges to the sanitary sewer system

- Alum residuals from the Vest and Franklin Water Treatment Plants are now discharged to the sanitary sewer and processed at the Irwin Creek Wastewater Treatment Plant.

- The facilities at Vest Water Treatment Plant will include solids removal equipment, a gravity thickening basin, a truck loading facility for thickened solids, and a washwater equalization tank Thickened solids will be trucked to the Irwin Creek Wastewater Treatment Plant and combined with wastewater bio-solids for beneficial use

- Facilities at the Franklin Water Plant will include a gravity thickening basin, a washwater clarifier, a belt filter press de-watering facility and truck loading facilities

The de-watered solids will be trucked to McAlpine Creek Wastewater Plant Residuals Management Facility now under construction, to be combined with de-watered wastewater bio-solids for beneficial use

- The total contract budget for this project is $10,335,197 as outlined below

Black & Veatch Contract (Study phase)	653,197
Black & Veatch Amendment No 1	1,030,958
Black & Veatch Amendment No 2	688,780
Ashbrook Corp (Belt Filter)	309,065
Crowder Construction (General)	5,890,242
Ind-Com Electric Company (Electric)	1,287,534
Thompkins Johnson Company (HVAC)	151,860
Sub-Total	10,011,636
In-House Charges, legal, travel & Contingency	323,561
TOTAL	10,335,197

- Funding was approved under the 1992 Water Bonds

Attachment 8

12 Appointments - Boards and Commissions

1 **AUDITORIUM-COLISEUM-CONVENTION CENTER AUTHORITY**

One three year appointment beginning April 26, 1994

(a) Mohammad Jenatian by Councilmember Cannon
(b) Barney Lawson by Councilmember Reid
(c) Dr Robert Seymour by Councilmember Jackson

(d) Cullie Tarleton by Councilmember McCrory
(e) R. Stanley Vaughan by Councilmember Wheeler

Attachment 9

2 **CERTIFIED DEVELOPMENT CORPORATION**
One appointment beginning May 1, 1994 to represent a business organization

(a) Carl Franklin Beal, III by Councilmember Wheeler
(b) Alrisa El-Almin by Councilmember Cannon
(c) Bill Gwaltney by Councilmember McCrory
(d) Warren Linde by Councilmember Campbell
(e) Samuel Long, III by Councilmember Jackson
(f) Norma McCormick by Councilmember Reid

One appointment to represent community organizations

(a) Bill Gwaltney by Councilmember McCrory
(b) Robert Stolz by Councilmember Wheeler

Two appointments to represent private lending institutions, one full term and one unexpired term

(a) Ellie McIntire by Councilmember Campbell
(b) Jerry McMurray, Sr. by Councilmember Reid

Attachment 10

3 **CLEAN CITY COMMITTEE**
Six appointments, five full terms and one unexpired term

(a) Carl Franklin Beal III by Councilmember Jackson
(b) Dawn DeArmon by Councilmember Campbell
(c) Kent Danzert by Councilmember Campbell
(d) *Les Green by Councilmember Cannon
(e) Jerry Hester by Councilmember McCrory
(f) Anna Hood by Councilmember Spencer
(g) Jennifer Miller by Councilmember Jackson
(h) Carl Mark Parker by Councilmember Wheeler
(i) Thomas Sowell by Councilmember Martin
(j) Michael Wilkinson by Councilmember Reid

*Already serving on Clean City Committee

Attachment 11

4 **HISTORIC DISTRICT COMMISSION**
One three year appointment beginning July 1, 1994

(a) Roger Dahnert by Councilmember Jackson
(b) John Patrick Harmon, Jr by Councilmember Wheeler
(c) Marion Redd by Councilmember Spencer

Attachment 12

5 **MINT MUSEUM BOARD OF TRUSTEES**
One appointment to fill an unexpired term beginning immediately and ending July 31, 1996

(a) Christy Crowder by Councilmember Campbell
(b) David Terry by Councilmember Jackson
(c) Joann Wheaton by Councilmember Cannon
(d) Nancy Williams by Councilmember McCrory

Attachment 13

6 **NEIGHBORHOOD MATCHING GRANTS COMMITTEE**
One appointment to fill an unexpired term in the non-profit category

(a) Wayne Collins by Councilmember Martin
(b) *Rev George Cook by Councilmember Cannon

*Nomination was withdrawn by Councilmember Cannon on 4/12/94

Attachment 14

7. **SISTER CITIES COMMITTEE**
Four regular two year appointments beginning May 1, 1994

(a) Robbie Bateman by Councilmember Scarborough
(b) Don Edwards by Councilmember Jackson
(c) Mindy Felcman by Councilmember Jackson
(d) Holly Fugate by Councilmember Reid
(e) Ann Hammond by Councilmember Martin
(f) Michael Wilkinson by Councilmember McCrory
(g) Raymond Worsley by Councilmember Cannon

Attachment 15

8 **TREE ADVISORY COMMISSION**
Two appointments to fill unexpired terms ending December 13, 1996

(a) Roger Braswell by Councilmember Wheeler
(b) Dwight Kiser by Councilmember Wheeler
(c) Samuel McDonald by Councilmember Jackson
(d) Ben Norwood by Councilmember Campbell
(e) Vicki Ray by Councilmember Cannon
(f) Steve Vermillion by Councilmember Campbell
(g) Michael Wilkinson by Councilmember McCrory

Attachment 16

9 **WASTE MANAGEMENT ADVISORY COMMITTEE**
One appointment to fill unexpired term ending September 30, 1994

(a) Adam Bernstein by Councilmember Jackson
(b) James McMullen by Councilmember Reid

Per conversation with Carroll Gray of the Chamber of Commerce, both of the nominees are members of the Chamber and are acceptable

Attachment 17

CONSENT

The consent portion of the agenda is divided into two sections Consent I and Consent II

Consent I consists of routine items that have been approved in the budget, are within the budget estimate, and have met MWBE criteria.

Consent II consists of items that have also been approved in the budget, but which may require additional explanation

Recommend adoption of the bid list as shown. the following contract awards are all low bid and within budget estimate unless otherwise noted Each project or purchase was authorized in the annual budget.

CONSENT I with Comm. mar.

13 Various Bids

A. 30th Street Bridge Sidewalks — Engineering and Property Mgt

Recommendation: The City Engineer recommends award to the low bidder, A Plus Construction, of Charlotte for $173,439 00

MWBE Status	Amount	% of Project	Proj. Goals
MBE	$17,166	10 4%	8%
WBE	$21,938	13 3%	5%

Engineering Compliance: Contractor has complied with the requirements and intent of the MWBE Program by exceeding the established contract goals

B. Airport Loading Bridges - Gates C3 and B2 — Aviation

Recommendation. The Aviation Director recommends that the low bid in the amount of $236,177 20 be awarded to Ameribridge for the Refurbishment and Installation of Loading Bridges for Gates C3 and B2

Aviation

MWBE Status	Amount	% of Project	Proj Goals
MBE	$ 9,000	3.8%	
WBE	$14,100	5.9%	
DBE Total	$23,100	10%	5%

Compliance: Yes

14. In Rem Remedy - 1916 Patton Avenue

Action:

Adopt an Ordinance authorizing the use of In Rem Remedy to repair the dwelling at 1916 Patton Avenue (McCrory Heights Neighborhood) which is located in the City Within a City boundaries.

Ordinance # 1
3854-X
Bk 45, Pg 294

Attachment 18
Background
Analysis
Picture
Map

CP

15. Charlotte Firefighters' Retirement System Annual Report

Action: Accept the Charlotte Firefighters' Retirement System Annual Report

Explanation of Request:

- The Board of Trustees of the Charlotte Firefighters' Retirement System (CFRS) submits its attached Annual Report to City Council for the fiscal year ended June 30, 1993, pursuant to section 45 of the Retirement Act
- The Annual Report is divided into four sections of information regarding the operations of the retirement system The first section contains a Letter of Transmittal which describes the organization and administration of the system and some highlights concerning the past year Also, contained in the first section is the summary of retirement system benefits.

Fire

- Section 2 contains the annual audit, completed by Coopers & Lybrand, in its entirety Coopers & Lybrand provided an unqualified opinion that the financial statements were prepared in accordance with generally accepted accounting principles and fairly presented the status of the system on June 30, 1993.

- Section 3 contains an excerpt of material taken directly from the actuarial valuation of the system completed by Towers, Perrin, Forster, and Crosby. The material included in this report was selected by the system administrator and the consulting actuary to provide a fair, but summarized picture of the CFRS actuarial condition The actuarial certification indicates that the system is adequately funded both currently and from a long range view

- Section 4 contains information relating to the investment of CFRS assets Included for information is an excerpt from the Investment Policy Statement explaining overall investment goals and objectives relating to both the total portfolio and segment portfolios, i e stocks, bonds, etc The investment performance of the assets have been satisfactory on both and absolute and relative basis over the most recent past

16 Refund of Certain Taxes

Action.

Res # 1
BK. 32, Pg 244-246

Adopt a resolution authorizing the refund of certain taxes assessed through clerical or assessor error in the amount of $19,849.26

Attachment 19

CONSENT II

17 Sanitary Sewer Easement Abandonment

Res # 2
Bk. 32, Pg. 247-250

Action: **Approve resolution to abandon a 15-foot sanitary sewer force main easement crossing Presbyterian Hospital property in Matthews.**

Explanation of Request: This resolution will benefit Presbyterian Hospital in removing an unused sewer easement from their property and will benefit the City by removing any further responsibility on the abandoned pipe within this easement.

Background: This right-of-way was deeded to the City by a previous owner for a sewer pumping station force main that served the Matthews Township Parkway in Matthews.

Construction of the Beards Creek Outfall eliminated the sewer pumping station and the force main was abandoned when the pump station was removed

CMUD has no further use of the 15-foot easement that the force main occupies

Presbyterian has executed a "Release and Hold Harmless Agreement" to the City for this abandonment

Funding: No funds will be required from the City Presbyterian will record the easement abandonment document in the Mecklenburg County Registry

CMUD

18. Mallard Creek Wastewater Treatment Plant - Construction Management Services - Contract Amendment #5 To Authorization No. 1

Action: **Approve Amendment No. 5 To Authorization No. 1 to the contract with Black & Veatch for $210,000 to provide construction management services for Phase II expansion at the Mallard Creek Wastewater Treatment Plant**

Explanation of Request:

- This amendment will provide additional administrative engineering and resident engineering services to staff the expansion project for five months until project completion

Amendment No 5 will provide supplemental startup and training services for three months to assist CMUD in the operation of an entirely new treatment process Also, provided will be design certification to the State of North Carolina as required at project completion and for one year thereafter.

The original contract with Black & Veatch included services related to the upgrade and expansion of the Mallard Creek and McDowell Creek Wastewater Treatment Plants Amendment No 5 will complete the work specified at the Mallard Creek WWTP Further amendment(s) will be required for upgrade and expansion of the McDowell Creek WWTP

Attachment 23
Background

19 Water Mains And Sanitary Sewer Trunks To 1993 Annexation Areas - Contract Amendment #2

Action **Approve Amendment No. 2 to the agreement with Hazen and Sawyer, P C for $284,500 to provide pre-construction and construction phase services for installation of sanitary sewer trunks and water mains in the 1993 Annexation Areas**

Item No.

Explanation of Request:

- Design of the 1993 Annexation Areas sanitary sewer trunks and water mains are near completion Amendment No 2 will provide pre-construction services, construction phase services including on-site inspection and record construction drawings.
- Amendment No 2 is paid on a cost plus fixed fee

Background.

City Council approved a professional services agreement with Hazen and Sawyer for design of water mains and sewer trunks in the 1993 Annexation Areas on November 9, 1992 - $947,000.

Amendment No. 1 was approved for design of additional water mains and sewer trunks to serve 1993 annexation areas, and to design the water and sewer street main extensions within the annexed areas on September 27, 1993 - $1,343,000.

The total amount of the agreement with Hazen and Sawyer, PC, including Amendment No 2, is $2,574,500

20 Physical Damage Repair Service - Vehicles

Action:

Approve the purchase of vehicle physical damage repair services for $350,000 from existing contract with National Fleet Service of Hicksville, New York.

Explanation of Request:

- In April 1993, bids were solicited for vehicle physical damage repair services with one bid being received The contract included a provision that repair services could be provided for an additional term if fees remained unchanged and the work was satisfactory With that criteria being met during the first year of the contract, a contract extension for a second year is now being requested

Purchasing

- There are currently no other service providers who offer this type of service

Background

Under the 1993 contract with National Fleet Service, the following is agreed upon:

Typically, National Fleet Service charges $25 per claim for handling vehicle damage repairs for the City

The remainder of the contract amount is paid to local body shops for the repair work performed

A list of authorized body shops located in the Charlotte area has been prepared by National Fleet Service based upon the City's criteria for selection of acceptable vendors When a claim occurs, National Fleet Service selects a body shop from this list on a rotational basis, so as to equalize the workload as much as possible between shops In addition, they consider as a factor, the City's priority that the work be performed by the shop that can more quickly return the vehicle to service

The City retains final approval on acceptance of the work performed by the body shops

Under this contract, Purchasing saves time and the expense of soliciting bids for all physical damage repairs needed by the City

The MWBE participation from the first year under this contract was 20 8%

21 Contract Extension - Sludge Treatment Polymer

Action: **Approve purchase of Polymer in the amount of $57,798.00 from American Cyanamid Company, Wayne, New Jersey, under existing contract.**

Explanation of Request:

- In November of 1992, bids were sent to 10 companies. Two bids were received American Cyanamid was the low bid The contract stated that it could be extended for one year. In this case, the price will increase 7¢ per pound going from 58¢ to 65¢ per pound. A true market test shows this same material selling at 88¢ to $1.00 per pound Polymer will be used to de-water sludge utilizing the belt process at the Irwin Creek Waste Treatment Plant.

- Purchasing under existing contract saves time and the expense of soliciting bids.

Attachment 20
Letter from Cytec Industries, Inc

22. Convention Center, Electrical, Change Order No. 4

Action:

Approve Change Order No. 4 to the contract with *Port City Electric Company for $90,837.00 to* perform additional electrical work on the new Convention Center increasing their contract from $8,275,042 to $8,365,879.

Explanation of Request:

This Change Order incorporates a number of changes to the electrical design which have been negotiated with Port City during the past five months The changes include additional light fixtures and the associated wiring, an additional transformer, installing temporary power to the building, and other miscellaneous changes and additions to the electrical design of the building

Background:

On January 11, 1993, City Council approved the contract with Port City Electric in the amount of $7,892,976

Change Orders No 1 and 2 have been previously approved by the City Engineer Together these items totaled $37,503

Engineering

On January 10, 1994, City Council approved Change Order #3 in the amount of $344,563 to incorporate telecommunications cable work

Attachment 21

23 Convention Center, Concrete-2, Change Order No. 5

Action: **That City Council approve Change Order No 5 to the Concrete-2 contract with Baker Concrete Construction for $116,149.00 to perform additional concrete work on the new Convention Center increasing their contract from $5,489,074 to $5,605,223.**

Staff Resource David L Garner

Explanation of Request:

- At the time the contract with Baker was awarded, the design of the project was not complete
- This Change Order incorporates items of work not in the original scope of Baker's contract due to design changes and additions made since the contract was awarded

Funding: Funds are available in the Convention Center Acct Center #371 00, Fund 2013, Object Code 35310

Background: On January 25, 1993, City Council approved the contract with Baker Concrete Construction for $5,230,356 for concrete construction consisting of slabs on grade, elevated slabs, stairs, and structural supports for the light rail corridor through the building

On November 8, 1993, City Council approved Change Order No 1 in the amount of $130,718 for additional concrete work

Engineering

Change Orders #2, 3 and 4 were previously negotiated and approved by the City Engineer Together, these items totaled $128,000

Attachment 21

24. Convention Center, Miscellaneous Steel, Change Order No. 6

Action: **Approve Change Order No. 6 to the contract with Owen Steel Company for $392,216 to incorporate miscellaneous steel changes to the new Convention Center project increasing their contract from $3,532,104 to $3,924,320**

Explanation of Request:

- The contracts for miscellaneous and ornamental metals was approved by Council on May 10, 1993 At that time the design of the project was not complete This change order represents the majority of the design changes that have occurred while finalizing the design.
- This change order incorporates design changes to steel stairs, operable wall support steel grating over mechanical openings, support steel for mechanical equipment, and additional steel to support miscellaneous light fixtures

Background: On May 10, 1992, City Council approved the miscellaneous steel contract with Owen Steel Company in the amount of $2,758,544

On November 8, 1993, City Council approved Change Order No 1 and 2 totaling $710,210 which removed miscellaneous metals from the masonry contractors work and included it with the Owen Steel contract

Change Orders 3, 4 and 5 totaling $63,350 have previously been approved by the City Engineer

Attachment 21

Engineering

200.00 86

Item No

25 Public Auction of City Surplus

Action: Declare the attached list of vehicles, 28 pieces of equipment, 5 pieces of fire apparatus and 26 lots of miscellaneous equipment, various parts and supplies as surplus and approve them for sale at public auction on Saturday, May 14, 1994, at 10:00 a.m. pursuant to G.S. 160A-270

Rev # 3 Bk. 32, Pg. 251

Explanation of Request: The method of public auction for disposal was chosen in the interest of fairness, and is economical in terms of actual cost and time savings

Background The vehicles and equipment listed on the enclosed attachment(s) have been replaced by new or upgraded items and are ready for disposal

Attachment 21 22
List(s) of items to be declared surplus

Purchasing

26 Contract Renewal - Purser Oil

Action: **Approve contract renewal with Purser Oil for one (1) additional year, as provided for in the contract, at the same prices Estimated value is $65,769**

Explanation of Request:

- Purchasing under existing contract saves time and expense
- This contract provide for motor oil, other lubricants and greases for equipment and vehicles

Purchasing

27. Contract Renewal - Tires

Action: **A. Approve contract renewal with Goodyear Tire for new and recapped tires at the same prices as last year. Estimated value is $244,256**

Purchasing

B Approve contract renewal with Parrish and Leonard for new and recapped tires at the same prices as last year. Estimated value is $138,400.

Explanation of Request:

- Bids were solicited last year. These vendors submitted the low bids
- Contracts contained provisions for two additional 12-month renewal periods.
- Purchasing under the existing contract saves time and expense.

28. Lower Speed Limit - One City Street

Order 2 BK 45, 385 pg. 295

Action: **Request adoption of ordinance to lower the speed limit on one Charlotte street.**

Explanation of Request: Request Council adopt an ordinance to lower the *speed limit, in accordance with Council's approved* policy on speed limits based on an engineering evaluation, on

Scan/Wter urnan

- China Grove Church Road (Sterling) 25 MPH

Background. This street is recommended for a lowered speed limit subsequent to an engineering evaluation which has determined that it is insufficient for a 35 MPH speed limit No petition is necessary, but residents of the street have been notified of the pending change

CDOT

29. Change Speed Limit - One City Street

Approved

Action: **Request adoption of an ordinance amending City Code Section 14-131(c) to change the speed limit on one Charlotte City street: South Tryon Street**

Deferred

CDOT

Scan/Wter

Item No.

Explanation of Request:

The requested change is on a thoroughfare street, in accordance with the Council Thoroughfare Speed Limit Policy. Engineering and safety evaluation have determined that the below listed speed limit is appropriate This action consolidates several past ordinances adopted due to annexations and provides a clear and consistent speed limit for a seven-mile long section of thoroughfare.

- South Tryon Street from Clanton Road to Southern RR Crossing, 1200' south of Nevada Boulevard 45 MPH

30 **Lower Speed Limit - Two City Streets**

Action: **Adopt an ordinance to lower the speed limit on two Charlotte streets.**

Explanation of Request:

Request Council adopt an ordinance to lower the speed limit, in accordance with Council's approved policy on the Neighborhood 25 MPH Program, on

- Highview Road (Mountainbrook) 25 MPH
- Penninger Circle (Mallard Creek) 25 MPH

ORD # 3
3854 BK 45
pg. 296

Background

On May 14, 1984, City Council approved a policy to permit a lowered speed limit on residential streets The policy requires that the residents submit a petition signed by 75 percent of the residents or property owners on the streets and that an engineering evaluation be conducted by the Department of Transportation to determine if the lowered speed limit is appropriate

cpoT

31. Special Officer Permit

Action: **Consider approval of Special Officer Permit for Eric W. Garrison for Airport Safety Officer I on the premises of Charlotte Douglas International Airport.**

AVIATION

32. Recommend Approval of the following property transactions and adoption of the condemnation resolutions.

Acquisition:

A. **Project** F A R Part 150 Land Acquisition
Owner(s) Mr Roland and Quessie Fields
Property Address 103 East Maple Lane
Property to be acquired 25 Acres
Improvements 2 Bedroom, 1 Bath, Ranch
Tax Value N/A
Purchase Price $11,000.00
Remarks The purchase price was determined by an independent appraiser and was reviewed by a second appraiser Each appraisal takes into consideration the specific quality and quantity of the house Residential property is acquired per Federal Guidelines 49 CFR Part 24 of the Uniform Acquisition and Relocation Act of 1970 The owners are eligible for relocation benefits Acquisition and relocation costs are eligible for Federal Aviation Administration reimbursement

AVIATION

B. **Project** F A R Part 150 Land Acquisition
Owner(s) Mr and Mrs Phillip G Helms
Property Address 7521 Byrum Drive
Property to be acquired 799 Acres
Improvements 3 Bedroom, 2 Bath, Ranch
Tax Value $76,420 00
Purchase Price $79,000 00
Remarks The purchase price was determined by an independent appraiser and was reviewed by a second appraiser Each appraisal takes into consideration the specific quality and quantity of the house The tax value is determined on a more generic basis and will be higher or lower for houses with

AVIATION

certain attributes. Residential property if acquired per Federal Guideline 49 CFR Part 24 of the Uniform Acquisition and Relocation Act of 1970. The owners are eligible for relocation benefits. Acquisition and relocation costs are eligible for Federal Aviation Administration reimbursement

C Project: **F.A.R Part 150 Land Acquisition**
Owner(s). Mr and Mrs Lawrence Leonhardt
Property Address· 3314 Willow Lane
Property to be acquired· .25 Acres
Improvements 2 Bedroom, 1 Bath, Ranch
Tax Value N/A
Purchase Price: $18,000 00
Remarks. The purchase price was determined by an independent appraiser and was reviewed by a second appraiser Each appraisal takes into consideration the specific quality and quantity of the house Residential property is acquired per Federal Guidelines 49 CFR Part 24 of the Uniform Acquisition and Relocation Act of 1970 The owners are eligible for relocation benefits Acquisition and relocation costs are eligible for Federal Aviation Administration reimbursement

Aviation

D Project: **Carmel Road Widening**, Parcel #13
Owner(s) Carmel View Associates, A North Carolina General Partnership
Property Address 6303 Carmel Road
Property to be acquired. 5,209 20 sq ft (0 11958 AC) of fee and permanent easement plus 3,861 5 sq ft (0 0888 AC) of Temporary Construction Easement
Improvements None
Purchase Price $12,500
Remarks This road widening project requires fee simple, permanent drainage and temporary easement acquisition causing a loss of right of way in addition to moving the road closer to their building.

Real Estate

Zoned. 0-1 Use Office (strip office center)
Tax Value: $757,760
Tax Code· 211-201-33

E **Project**: **Carmel Road Widening** , Parcel #16
Owner(s) The 51 Properties, A North Carolina General Partnership
Property Address 6211 Carmel Road
Property to be acquired 4,016 15 sq ft (0.0921 AC.) of fee and existing right of way plus 2,967.59 sq ft. of Temporary Construction Easement
Improvements Landscaping & shrubs
Purchase Price $20,400
Remarks. This road widening project requires fee simple and temporary easement acquisition causing a loss of landscaping in addition to moving the road closer to front of their office building

Zoned 0-1
Use Office (multiple office tenants)
Tax Value $586,210
Tax Code 211-322-55

Real Estate

F. **Project**: **Carmel Road, Parcel #12**
Owner(s) Walter J Klein Company, Ltd
Property Address 6311 Carmel Road
Property to be acquired 6,389 96 sq ft (0 1466 AC.) of fee and 4,981 11 sq ft (0 1144 AC.) of Temporary Construction Easement
Improvements Landscaping & large areas of bamboo
Purchase Price $29,400
Remarks This road widening project requires Fee Simple and Temporary Easement acquisition causing a loss of landscaping in addition to moving the road closer to the front of their building

Real Estate

Item No

Zoned 0-1 Use· Office
Tax Value $942,620
Tax Code: 211-201-02

G. **Project: Carmel Road Widening, Parcel #15**
Owner(s): Paul A Homoly & wf , Carolyn Homoly
Property Address 6219 Carmel Road
Property to be acquired 3,522 83 sq ft (0 0808 AC.) of fee and existing right of way plus 2,891.68 sq ft (0 0664 AC) of Temporary Construction Easement
Improvements Landscaping, fence, trees & shrubs
Purchase Price $22,200
Remarks This road widening project requires fee simple and temporary easement acquisition causing a loss of landscaping in addition to moving the road closer to front of their building

Real Estate

Zoned: 0-1 Use Doctor's Office
Tax Value $397,600
Tax Code 211-322-56