

The Washington City Council met in a regular session on Monday, August 8, 2011 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Gil Davis, Councilman; Bobby Roberson, Mayor Pro tem; Josh Kay, City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

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

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

INTRODUCTION AND APPRECIATION

Mayor Jennings introduced the new City Manager, Josh Kay and thanked Chief Financial Officer, Matt Rauschenbach for his month of service as Acting City Manager.

APPROVAL OF MINUTES

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the minutes of July 18, 2011 as submitted.

APPROVAL/AMENDMENTS TO AGENDA

Councilman Mercer suggested the following amendments to the agenda:

1. Move from Consent Item C. to Old Business: Adopt – Main Street II Grant Project Amendment
2. Move from Consent Item E. to New Business as I.: Operational Agreements with the Beaufort County Board of Education to provide School Resource Officers (SRO) for Washington High School and P.S. Jones Middle School for the school year 2011-2012

City Manager, Josh Kay requested the following amendments to the agenda:

1. Remove Item B. from Old Business: Authorize- City Manager to implement the Classification and Pay Grade changes for the positions in the Information Technology and Police departments as recommended by the MAPS Group
2. Correction Item C. under New Business – instead of “Award a Contract for Engineering” it should read “Adopt – Budget Ordinance Amendment for the Brown Street Bridge”
3. Correction Item D. under New Business – the Electric number will change from \$19,308 to \$13,073

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

PRESENTATION: EVELYNE ROBERSON, SIX YEARS AS CHAIR PERSON FOR THE WASHINGTON/BEAUFORT COUNTY HUMAN RELATIONS COUNCIL

Mayor Jennings recognized and commended Ms. Evleyne Roberson for her tireless service and outstanding leadership as chairwoman over the last six years. Mayor Jennings stated “I can say, having been brought in for several (HRC) projects, that this is probably the most active, prolific and progressive era of the Human Relations Council.”

Ms. Roberson said that although she is stepping aside as the HRC chair, she intends to see that HRC’s inaugural Multi-Cultural Festival event scheduled in October is successful. The planning “started on my watch” and I intend to “see it to completion.”

CONSENT AGENDA

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously accepted the consent agenda as amended.

A. Declare – Surplus/Authorize Electronic Auction of Vehicles through GovDeals

Vehicle Number	Make/Model Description	Serial Number	Odometer Reading
#138	2003 Ford Crown Vic	2FAFP7IW23X1 10786	126,255
#123	1993 Ford Ranger XL	1FTCR1OU8PUB19901	111,767
#416	1997 Ford F150 Pick Up	1FTDF1768VNC38768	159,734
#160	2005 Ford Crown Vic	2FAHP71WO5X1 00995	89,417
#8006	72" John Deer Mower	CH3010D103069	3342 hrs

B. Authorize – Notice of Residual Petroleum for 131 Bridge Street

**STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT**

NOTICE OF RESIDUAL PETROLEUM

Waters Oil Company/Banks Property (Former)
131 Bridge Street, Washington, Beaufort County, North Carolina

The property that is the subject of this Notice (hereinafter referred to as the "Site") contains residual petroleum and is an Underground Storage Tank (UST) incident under North Carolina's Statutes and Regulations, which consist of N.C. Gen. Stat. §143-215.94 and regulations adopted thereunder. This Notice is part of a remedial action for the Site that has been approved by the Secretary (or his/her delegate) of the North Carolina Department of Environment and Natural Resources (or its successor in function), as authorized by N.C. Gen. Stat. §§ 143B-279.9 and 143B-279.11. The North Carolina Department of Environment and Natural Resources shall hereinafter be referred to as "DENR".

NOTICE

Petroleum product was released and/or discharged at the Site. **Petroleum constituents remain on the Site, but are not a danger to public health and the environment, provided that the restrictions described herein, and any other measures required by DENR pursuant to N.C. Gen. Stat. §§ 143B-279.9 and 143B-279.11, are strictly complied with.** This "Notice of Residual Petroleum" is composed of a description of the property, the location of the residual petroleum and the land use restrictions on the Site. The Notice has been approved and notarized by DENR pursuant to N.C. Gen. Stat. §§143B-279.9 and 143B-279.11 and shall be/has been recorded in the office of the Beaufort County Register of Deeds at Deed Book ____, Page ____.

Source Property

The City of Washington, a North Carolina municipal corporation, is the owner in fee simple of all the Site, which is located in the County of Beaufort, State of North Carolina, and is known and legally described as:

Beginning at an iron pipe located on the curb line at the intersection of the eastern right-of-way line of Bridge Street and the southern right-of-way line of West Second Street, South 32° 35' 21" West 105.01 feet to an iron pipe; thence, South 56° 30' 00" East 72.18 feet to an iron pipe; thence North 33° 21' 50" East 104.10 feet to an iron pipe located adjacent to the curb line on the southern side of West Second Street; thence, continuing along the same line 0.90 feet to an iron pipe; thence running along the curb line and the southern side of West Second Street, North 56° 30' 00" West 73.60 feet to an iron pipe, the point of beginning. The same being 0.18 acre as shown upon a map prepared by Richardson & Associates, dated February 2, 1988, revised June 8, 1990, and recorded in Deed Book 928, Page 429, to which reference is made for a more perfect description. Further reference is also made to that deed of record in Book 1021, Page 793, Beaufort County Registry. Reference is also made to Tract Four of that deed of record in Book 1373, Page 545 of the Beaufort County Registry.

For protection of public health and the environment, the following land use restrictions required by N.C. Gen. Stat. § 143B-279.9(b) shall apply to all of the above described real property. These restrictions shall continue in effect as long as residual petroleum remains on the Site in excess of unrestricted use standards and cannot be amended or cancelled unless and until the Beaufort County Register of Deeds receives and records the written concurrence of the Secretary (or his/her delegate) of DENR (or its successor in function).

PERPETUAL LAND USE RESTRICTIONS

Soil: The Site shall be used for industrial/commercial use only. Industrial/commercial use means a use where exposure to soil contamination is limited in time and does not involve exposure to children or other sensitive populations such as the elderly or sick. The real property shall not be developed or utilized for residential purposes including but not limited to: primary or secondary residences (permanent or temporary), schools, daycare centers, nursing homes, playgrounds, parks, recreation areas and/or picnic areas.

Groundwater: Groundwater from the Site is prohibited from use as a water supply. Water supply wells of any kind shall not be installed or operated on the Site.

ENFORCEMENT

The above land use restrictions shall be enforced by any owner, operator, or other party responsible for the Site. The above land use restrictions may also be enforced by DENR through any of the remedies provided by law or by means of a civil action, and may also be enforced by any unit of local government having jurisdiction over any part of the Site. Any attempt to cancel this Notice without the approval of DENR (or its successor in function) shall be subject to enforcement by DENR to the full extent of the law. Failure by any party required or authorized to enforce any of the above restrictions shall in no event be deemed a waiver of the right to do so thereafter as to the same violation or as to one occurring prior or subsequent thereto.

IN WITNESS WHEREOF, the CITY OF WASHINGTON, has caused this instrument to be executed in its name by its City Manager, attested by its City Clerk, and its corporate seal to be hereunto affixed, all by proper corporate authority duly given, and in accordance with N.C. Gen. Stat. §§ 143B-279.9 and 143B-279.11, this 8th day of August, 2011.

(corporate seal)

Seal
ATTN: Cynthia S. Bennett
Cynthia S. Bennett, City Clerk

CITY OF WASHINGTON
BY: Joshua L. Kay
Joshua L. Kay,
City Manager

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

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

WITNESS my hand and official seal, this the 8th day of August, 2011.

Reatha B. Johnson
NOTARY PUBLIC

My Commission expires: 12/11/2011



- C. Moved to Old Business – Item D - Adopt Main Street II Grant Project Amendment
- D. Accept – Governor’s Crime Commission Grant and Adopt a Budget Ordinance Amendment (\$9,409.69)

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012

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

- Section 1. That account number 10-10-4310-0204, Overtime Street Drug Sales Grant, Police Department portion of the General Fund appropriations budget be increased in the amount of \$12,546 to provide funds for grant funded overtime.
- Section 2. That account number 10-10-4310-0201, Salaries Overtime, Police Department portion of the General Fund appropriations budget be decreased in the amount of \$3,137 to provide for the City’s required 25% matching funds.
- Section 3. That the Estimated Revenues in the General Fund be increased in the amount of \$9,409 in the account Street Drug Sales Grant, account number 10-10-3433-3305.
- Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of August, 2011.

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

E. **Moved to New Business – Item I** – Accept Operational Agreements with the Beaufort County Board of Education to provide School Resource Officers (SRO) for Washington High School and P.S. Jones Middle School for the school year 2011-2012

F. **Approve** – Purchase Orders >\$20,000

- Requisition #9853, Williams Fire Sprinkler System, mc, \$26,794, fire sprinkler system improvements at Impressions included in the building improvement project. Account 56-60-4930-4500.
- Requisition #9910, Utility Service Co., \$40,613, water tank maintenance contract. Account 30-90-8140-4500.

COMMENTS FROM THE PUBLIC:

No public comments at this time.

SCHEDULED PUBLIC APPEARANCES:

No scheduled public appearances.

MEMO – THE GRACE MARTIN HARWELL SENIOR CENTER PARTNERS, INC’S:

(Begin memo): In January 2011, the Grace Martin Harwell Senior Center Partners, Inc. received its 501 C 3 status. As a result, we have been actively searching for new funding avenues and partnerships in the community.

On Friday, July 15, the Grace Martin Harwell Senior Center Partners, Inc’s application was accepted by the Beaufort County United Way and we became a United Way Partner, eligible for funding in 2012.

We are not only pleased with the funding, but look forward to partnering with Beaufort County United Way. (end memo)

MEMO – JACK’S CREEK GREENWAY PROJECT (\$98,966):

(Begin memo): In January 2009 the City of Washington applied to the NCDENR National Recreational Trails Program Grant for funding of the construction of a Greenway along the south side of Jack’s Creek between Bonner Street to Brown Street. We received notification of approval from NCDENR on October 1, 2009 and the City Council authorized a contract with NCDENR on November 9, 2009 for the construction of this Jack’s Creek Greenway to be a partial connection in the Connectivity Plan for Downtown Washington and the City of Washington’s Park System.

The Project Fund is as follows:

\$ 74,206 -- State of North Carolina
18,570 -- City – Cash Match
6,190 -- In-Kind Match

\$ 98,966 -- Total Project

Now let me bring you up to date with this project:

In **August of 2010** the Parks & Recreation Department started to assemble our forces to lay out our initial points to lead up to the construction of the greenway. One of our points was to have a meeting with the local NCDENR Office to talk about this area and the regulatory requirements by the local NCDENR office. We called NCDENR and arranged a meeting on October 21, 2010 @ 2 pm at the NCDENR Office, this meeting with their interagency members of DWQ, DWQ-401, and Land Quality for the purpose of providing us with environmental regulatory guidance and direction for their proposed project. Our City Team was made up of Mr. Joe Taylor, Chairman of the WRAC, Mr. Mike Apple, City

of Washington Public Works Storm Water Technician, Mr. Russell Waters, future greenway site surveyor, Ms. Teresa Hamilton, Rec. Office Mgr. and myself as our spokesman.

At that meeting we learned of the City's Storm Water improvements and a part of that plan, to enlarge Jack's Creek Banks for more water retention. We left that meeting knowing that the proposed Greenway Trail was "off the table" because the 50' Storm Water limited restrictive line and the City of Washington's Storm Water requirements are more restrictive.

In another meeting with NCDENR dated January 25, 2011, they again informed us that the bank stabilization of Jack's Creek was included in the initial engineering for Jack's Creek is off the table. The NCDENR Office told me that in order for us to have this Greenway plan evaluated by the NCDENR Office, we would need to have a letter from the City's engineering firm saying that the bank stabilization project was out of the contract. It was April 2011 before we could get a letter written by the City's engineering firm to allow us to move on this Greenway Project.

In May 2011 we started the process again in talking with contractors, finding availability of materials and equipment, price of asphalt because of the cost of oil and the availability of department staff because of cutting grass/maintaining parks, the fall soccer, fall softball and baseball programs on schedule. Our Department Team again met with NCDENR Office on July 21, 2011, to talk about the Jack's Creek Project. Adam Waters were at this meeting. He advised that Public Works will review the City of Washington's Storm Water Plan to see if this project can qualify for action.

The reason for this memo is to alert Council of the fact that this Greenway Project has to be totally in place by November 15, 2011. I have contacted the Office of the State Trails Program Grants Manager, NC State Parks and Recreation Division of NCDENR. In talking with Mr. Newman-Brooks, they do not extend project in the NC National Recreational Trails Program. Again, we are under a very tight time table for the completion of the Greenway Trail along Jack's Creek by November 15, 2011. (end memo)

Councilman Mercer voiced several comments concerning this project: one being that we are in early August and receive this memo that states if we don't have this accomplish by November 15, we will lose our funding. Councilman Mercer felt there should have been more communication between staff and Council.

Mayor Pro tem Roberson inquired as to what would happen if we don't meet the November 15, 2011 deadline since we are in the middle of a contract. Mr. Kay stated the November deadline will be met.

REPORT – HUMAN RELATIONS COUNCIL

Scheduled Public Appearances: Robbie Rose, Fire Chief

Chief Rose addressed the Board concerning minorities in the Fire Department. Chief Rose distributed a pamphlet highlighting the requirements in becoming a Fire Fighter with the Washington Fire Department.

- Career Readiness Certificate
- Physical Agility Testing
- Oral Interview
- Chief's Interview
- Offers of Employment
- Eligibility List
- Eligibility Requirements
- Desirable Certifications

Chief Rose stated that out of thirty three (33) firefighters there are only two (2) minorities with one of those (female) being the Administrative Assistant. Also, he mentioned that Fire fighting and the EMT business have become more complex as time goes on and noted they received 2200 EMS calls last year alone.

Scheduled Public Appearances: April Corbett, PNS/Dream Camp Coordinator

Ms. Corbett advised the next National Night Out had been scheduled for August 2, 2011. The event will be held at Beebe Memorial Park from 4-8 pm

Update – Multicultural Festival:

- Distributing sponsorship letters
- Clarification concerning City permits

Discussion - Fair Housing Forum Participation

Latino Passport Project Discussion

Discuss – All reminders

REPORT – FINANCIAL REPORTS:

Councilman Mercer expressed concerns that Council has had over the last several months. He also commented that in reviewing the numbers in the monthly updates in the General Fund appears the income has fallen at least a million or more dollars below the projected budgeted number. The revenues and the general fund are in the order of \$1.6 million short of projections. If monies come in at 100%, it still appears we will be \$1.0 million below our revenues projections for the year. Councilman Mercer stated this is the 5th year running this has occurred and we cannot continue to operate our systems if we are going to spend more than we are making. Mayor Jennings stated it is critical we get the math right and requested Mr. Rauschenbach speak to this issue.

Chief Financial Officer, Matt Rauschenbach voiced as Councilman Mercer had mentioned, these are preliminary financials that came out in July and we are \$1.4 million short at that point. Mr. Rauschenbach addressed the time line in receiving funds and stated we are still receiving funds (sales tax revenue, utilities franchise tax, etc.). He is expecting approximately \$800,000 when receiving those funds. Mr. Rauschenbach noted there was some large projects budgeted and quoted examples of those projects. He stated “taking a look at that snapshot revenue did fall short of expenditures of about \$1.4 million” but once the sales tax revenue and the utilities franchise tax comes in the deficit will be knocked down to approximately \$600,000. There will be other adjustments to come in but concurs that the deficit will be somewhere around \$600,000-\$1.0 million.

Mayor Pro tem Roberson voiced we have to take the necessary steps to round up the numbers on our projections. Mayor Pro tem Roberson stated he would prefer to have a conservative number than get into May or June and say we have \$100,000.

APPOINTMENTS:

Mayor Jennings recommended Judith Hickson to be appointed to the Historic Preservation Commission.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council unanimously appointed Judith Hickson to the Historic Preservation Commission to fill the expired term of Chris Collier, term to expire June 30, 2014.

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council unanimously appointed Sandra Albritton to the Human Relations Council, to fill the expired term of Rick Gagliano, term to expire June 30, 2014.

**ACCEPT & ADOPT – ACCEPT THE RECOMMENDATION OF THE PLANNING BOARD
AND ADOPT THE ORDINANCE TO AMEND CHAPTER 20, ARTICLE 1, SECTION 20-17
GRAFFITI**

Planning Director, John Rodman stated with the help of the City Attorney, the Planning Board recommends City Council approve the Graffiti Ordinance.

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, Council unanimously accepted the recommendation of the Planning Board **and** adopted the Ordinance to amend Chapter 20, Article 1, of the City Code by adding Sec. 20-17 Graffiti as provided.

ORDINANCE AMENDING CHAPTER 20, OFFENSES AND MISCELLANEOUS
PROVISIONS, ARTICLE I, IN GENERAL, OF THE CODE
OF ORDINANCES OF THE CITY OF WASHINGTON

WHEREAS, North Carolina General Statute § 160A-174 authorizes a city to enact ordinances to define, prohibit, regulate, or abate acts, omissions, or conditions that are detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and to define and abate nuisances.

WHEREAS, the ordinance amendment set forth below is intended to promote and protect the health, safety, and welfare of the public as well as the peace and dignity of the City by amending the City Code to define and regulate graffiti as a public nuisance.

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

Section 1: The Code of the City of Washington, North Carolina, Chapter 20, Article I, is hereby amended by adding Section 20-17, Graffiti, as set forth below.

Sec. 20-17 Graffiti.

(a) *Graffiti defined.* Graffiti shall mean writings, drawings, inscriptions, figures, or marks of paint, ink, chalk, dye or other similar substances on public or private buildings, sidewalks, streets, structures, or places which are not authorized or permitted by the owner or person in possession of the property upon which the same are located. However, for the purposes of this section, graffiti shall not mean or include and this section shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on public or private sidewalks, streets or other paved surfaces which are used in connection with traditional children's activities such as drawings, or bases for stickball, kickball, handball, hopscotch or similar activities, or which are used in connection with any lawful business or public purpose or activity.

(b) *Graffiti prohibited.* It shall be unlawful for any person to write, paint, inscribe, scratch, scrawl, spray, place, draw, or locate graffiti of any type, or otherwise cause graffiti to appear, on any public or private building, street, sidewalk, structure or any other real or personal property. The existence of graffiti on public or private property in violation of this section is hereby declared to be a public nuisance and detrimental to the health, safety and welfare of the public as well as the peace and dignity of the city, and is therefore subject to removal, abatement and penalty as specifically set forth below.

(c) *Penalty for violation.* Except as specifically provided for hereinafter, it shall be a misdemeanor for any person to do any act forbidden by this section, fail to do or perform any act required by this section, or otherwise violate the provisions of this section. This Section 20-17(c) shall be inapplicable to Section 20-17(d)(3) and the matters provided for therein.

(d) *Removal of graffiti.* Any person owning property, acting as manager or agent, or in possession or control of property shall remove or effectively obscure any graffiti upon such property.

(1) *Notice to remove.* Upon determination that graffiti in violation of this section is present, the city shall deliver a *Notice to Remove* to the perpetrator of the graffiti, if known, and to the owner or person in possession of the property upon which the graffiti is located. A *Notice to Remove* shall include:

- a. the street address or description of the property sufficient for proper identification of such property;
- b. a description and general location of the graffiti;
- c. a statement that said graffiti is a public nuisance;
- d. an order that the graffiti must be removed or effectively obscured within ten (10) working days and that, if the nuisance is not so abated within such time, the city will abate the public nuisance at the cost of the property owner as set forth hereinbelow; and

e. information concerning procedures for appeal of the *Notice to Remove*.

(2) *Removal by perpetrator*. It shall be unlawful for any person placing graffiti on public or private property in violation of this section to fail to appropriately remove such graffiti and return such property to its original condition within forty-eight (48) hours of receipt of delivery of a *Notice to Remove* by the city. The removal of said graffiti by the person identified in said *Notice to Remove* as the person responsible for said graffiti (perpetrator) shall only be completed with the permission of, and consistent with the direction of, the owner or person in possession of the property upon which said graffiti is located.

(3) *Removal by the City*. If the city has delivered a *Notice to Remove* to the owner or person in possession of such property and that person fails or refuses to remove or effectively obscure such graffiti upon their property as directed in the *Notice to Remove*, the city is authorized to remove the graffiti and the cost to remove the same shall be charged to the owner or person in possession of said property. If the expenses of removing or obscuring the graffiti are not paid within thirty (30) days of receipt of a statement for the cost of such removal, the expense of the abatement actions by the city shall become a lien upon said property and shall be collected as unpaid taxes. Any violation of this Section 20-17(d)(3) is not a misdemeanor or unlawful and is not subject to criminal prosecution.

(4) *Appeal*. Any owner or person in possession of property who receives a *Notice to Remove* or obscure graffiti may appeal said *Notice to Remove* by filing a written appeal with the Planning Department to the Washington Board of Adjustment within seven (7) days of receipt of the *Notice to Remove*. Said written appeal shall state the reasons for the appeal. The Board of Adjustment shall conduct a hearing on the appeal during its next regularly scheduled meeting after the Planning Department's receipt of the notice of appeal. If the Board of Adjustment affirms the *Notice to Remove* as well as determines that the graffiti is in violation of this section and must be removed, the Director of Planning or his designee shall provide the owner or person in possession of the property a written copy of the Board of Adjustment's decision. The owner or person in possession of the property shall remove or effectively obscure said graffiti within ten (10) working days of receipt of the Board of Adjustment's decision, which decision shall be treated as a new *Notice to Remove* and shall be subject to the provisions of Section 20-17(d)(3).

(e) *Enforcement*. The City Manager shall designate staff person(s) who shall enforce this section.

Sec. 20-18 – 20-35. Reserved.

Section 2. This Ordinance shall become effective upon its adoption.

Section 3. All Ordinances or parts in conflict herein are repealed.

Adopted this 8th day of August, 2011.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

UPDATE – POLICE SAFETY FACILITIES

City Manager, Josh Kay explained the letter received from USDA concerning the application for a loan following discussion with staff. Mr. Kay, unfortunately, recommends we decline and withdraw the loan application for \$1 million.

The difficulty is meeting the August 31st deadline. Mr. Kay feels this is a very worthwhile project and request Council continue to allow staff to look into this project and come back in the future with a recommendation.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council unanimously agreed to support the recommendation made by City Manager, Josh Kay and point out in the letter to USDA the City is unable to meet the time constraints.

Councilman Pitt suggested when the City resumes the project; it does not have to start at the beginning and noted the work already completed in connection with the project should be revamped. Mayor Jennings said that was a good point. Mayor Jennings stated “we do have some design work we can always utilize and hopefully we will get a chance to do so.” Mayor Jennings reiterated the important message from Mr. Kay is their desire and the Council’s encouragement to move forward, looking for creative solutions to address this pressing need.

Mayor, City Council, and staff agreed to seek additional funding for the project and look at alternatives that would allow the City to build the new police station. It was clear they were not abandoning the project, emphasizing it would be one of Mr. Kay’s top priorities.

Councilman Moultrie stated he felt we wasted dollars on studies if we knew we weren’t serious moving forward.

City Attorney, Franz Holscher asked to clarify the motion to include withdrawing land release from FAA for site modifications.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council unanimously agreed to authorize the City Attorney to withdraw request from the FAA for the site modifications that had been requested for the Airport.

Mayor Pro tem Roberson voiced it is important to include the City Manager in that review.

Councilman Pitt suggested we still continue to work on the Vision 100 grant funds and Mayor Jennings stated this was a separate issue of funding.

ENDORSE & APPROVE – COMMUNITY BRANDING PROJECT

Tourism Director, Lynn Lewis introduced Mr. Bill Roberts with Eye Integrated Communications and stated about six months ago; discussion arose concerning cities having their own branding community. Ms. Lewis explained the process and noted a committee of community partners (WTDA, WHDA, the City, and WBC Chambers) has been working to determine the best next step in development of a comprehensive community “brand”. After consideration of several companies, the committee has selected the services of Eye Integrated Communications (Greenville, NC) to conduct the research needed for brand development and to facilitate the process. Eye Integrated Communications is presently the agency responsible for the WTDA’s marketing/advertising campaign.

The committee has identified the appropriate vendor and identified the community stakeholders involved in the one day workshop. Ms. Lewis noted this will be a very public process, where stakeholder input is highly valued (ranging from age 17-75 or older). Once the brand has been determined, the implementation process will begin. There will be several community input sessions regarding branding. All partners (WTDA, WHDA, the City, and WBC Chambers) are being asked to invest \$2,000 in the project.

Mayor Jennings inquired as to the time line. Mr. Roberts voiced it will depend on how fast input is received, maybe a week from workshop they can come back to Council with a recommendation. Input from the community should take approximately another week or two. Mayor Jennings asked by the end of calendar year and Mr. Roberts noted this would not be an issue. Mayor Jennings stated Ms. Lewis had mentioned this is the group that is currently engaged in providing marketing services and would assume we are not going into this project with a blank canvas but to go in with an open mind without any preconceived ideas. Mr. Robert stated the key thing about branding is that Eye Integrated Communication does not create the brand – stakeholders will create they brand, Eye Integrated Communications will facilitate.

Mayor Pro tem Roberson requested Mr. Roberts touch on the narrative branding. Mr. Roberts stated it is basically storytelling. People love to hear stories and can relate to stories.

Councilman Pitt inquired how the public will be involved in getting to know what branding is. Ms. Lewis stated this will be the second phase and will be different for each organization. TDA will be the marketing arm of Washington and will incorporate the brand into new marketing material, ad

campaigns, letterhead, business cards, etc. Ms. Lewis cited several examples of avenues beside advertising and marketing.

Councilman Mercer commented we were once “Little Washington” or the “Original Washington” for as long as he can remember and then 4-5 years ago we became “Washington on the Pamlico” and following that we became the “Heart of the InnerBanks.” Councilman Mercer suggested if we are to adopt an establish branding we need to stay with it and not continue changing every few years. Mayor Jennings suggested this is one of the reasons we are trying to get a universal brand established.

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council unanimously endorsed the proposed Community Branding Project in partnership with the Washington Tourism Development Authority, Washington Harbor District Alliance, and the Washington-Beaufort County Chamber of Commerce.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously appropriated \$2,000 along with the other organizations toward funding of the Community Branding Project.

APPROVE – ORDINANCE AMENDMENT CHAPTER 18, SECTION 77: STOP INTERSECTIONS AND SECTION 78: YIELD INTERSECTIONS

Public Works Director, Allen Lewis noted this action was in receipt of a request to change the yield condition at the intersection of Summit Avenue and 13th Street to a stop condition. Currently, when approaching the intersection from the east or west on 13th Street, there are yield signs.

The written request came from several residents in the area to change the yield signs to stop signs. The attached ordinance amendment will implement a stop condition for traffic on 13th Street at Summit Avenue. A copy of the letter from Ms. Jane de Vos who lives at 1211 Summit Avenue is attached.

(begin letter) I am writing to ask for you help in addressing a traffic safety issue in my neighborhood. Specifically, I am deeply concerned about a hazardous intersection at the corners of Summit Avenue and W. Thirteenth St.

There are currently yield signs on this corner for cars traveling in either direction on W. Thirteenth St. To lessen the chances of serious collisions(s) at this corner, I respectfully request that the yield signs on W. Thirteenth Street be changed to stop signs.

The number of cars traversing this intersection has increased dramatically in recent years. In addition, the driving habits of many who use both W. Thirteenth St. and Summit Avenue have changed.

It appears an increasing number of drivers use these street as “cut throughs” to avoid both traveling on Fifteenth St. and turning at the intersection of Market and Fifteenth Streets. The upcoming construction on Fifteenth Street will certainly result in more drivers using his alternate route.

The problem of the increased traffic is exacerbated by drivers who regularly speed on both Summit and W. Thirteenth. Also, the visibility approaching the intersection from either street is impeded by both homes and vegetation. I have witnessed several “near misses” and have almost been hit myself.

I, and many of my neighbors, would be happy to provide any additional information you may require as you review this request. Also, there is a list attached of other area residents who support this change. Thank you so much for your consideration of this issue. (end letter)

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously adopted an ordinance to amend Chapter 18, Section 77 and Chapter 18, Section 78 in reference to the intersection of Summit Avenue and 13th Street, as outlined in the attached ordinance, with an effective date of August 9, 2011.

**AN ORDINANCE TO AMEND CHAPTER 18,
SECTION 77: STOP INTERSECTIONS AND CHAPTER 18,
SECTION 78: YIELD INTERSECTIONS
OF THE WASHINGTON CITY CODE**

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

Section 1. That Chapter 18 Section 18-78 – Yield intersections, be amended to remove the following:

Sec. 18-78. Yield intersections.

Summit Avenue, from Thirteenth Street

Section 2. That Chapter 18 Section 18-77 – Stop intersections, be amended to add the following:

Sec. 18-77. Stop intersections.

Summit Avenue from Thirteenth Street

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

Section 4. This ordinance shall become effective August 9, 2011.

This the 8th day of August, 2011.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

**ADOPT – BUDGET ORDINANCE AMENDMENT FOR BROWN STREET BRIDGE
REPLACEMENT PROJECT (\$220,000)**

Public Works Director, Allen Lewis stated this was a budget ordinance amendment to allocate funds based on a new estimate that was received from North Carolina Department of Transportation last month as far as construction estimates and what they refer to as CEI (construction engineering inspection) work. The total project has reached \$820,000 with 80% being reimbursed with the existing agreement we originally had with NCDOT. This will leave the City with an expense of approximately \$164,000 which can be funded with Powell Bill funds. The original estimate of \$600,000 was from the drainage study that Rivers and Associates completed which also included an estimate between \$400,000-\$475,000 for construction. Ms. Lewis stated he was under the impression that City forces would be used to oversee the construction but that was not the case but noted that he still feels comfortable with the \$600,000 overall price with the City doing the inspection work .

Mayor Jennings inquired with this action would we be ready to put this out for bid and award a contract next month? Mr. Lewis stated he would award a contract next month for the CEI work and “if things turn around soon enough”, they will advertise for bids as well.

Mr. Lewis stated the agreement would be between the City of Washington and Summit Consulting. Mayor Pro tem Roberson asked who would Summit Consulting be reporting to and Mr. Lewis stated the City of Washington. Mayor Pro tem Roberson inquired if NCDOT would be on the invoice to sign along with the City of Washington and Mr. Lewis stated it would only be the City.

Councilman Mercer requested clarification on the budget ordinance amendment which suggests we are modifying the revenue line in the general fund for the receipt of \$220,000; one of those revenue lines doesn't exist in the budget. In addition, if there is an \$820,000 project then the revenue line should total \$820,000 or we should have a carry-over from the prior years. Looking at the carry-overs from Brown Street Bridge there was \$424,757 as encumbered money and \$148,000 which had been spent. Mr. Kay provided him with information that stated we had actually spent approximately \$38,000 in the prior year. This brought us up to the \$820,000. The \$600,000 project that was approved last year (a portion of which was reimbursed last year) and the \$220,000 addressed by this Council. The other

portion will be brought before Council in the next meeting and will equal the total of the \$820,000 (full reconciliation will be presented at that time).

By motion of Mayor Pro tem Roberson, seconded by Councilman Pitt, Council unanimously adopted a budget ordinance amendment to re-allocate funds for the Brown Street Bridge replacement project in the amount of \$220,000 with the understanding that the line item be correct.

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012**

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

- Section 1. That the Estimated Revenues in the General Fund be increased in the following accounts and amount:
10-20-3316-3400 DOT Reimbursement Brown St. \$176,000
10-00-3991-99 10 Fund Bal. Appropriated Powell Bill 44,000
- Section 2. That account number 10-20-45 11-7300, Property Improvements Brown Street portion of the General Fund appropriations budget be increased in the amount of \$220,000 to provide additional funds for completion of the Brown Street bridge replacement project.
- Section 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed.
- Section 4. This ordinance shall become effective upon its adoption.

Adopted this the 8th day of August, 2011.

ATTEST:

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

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

AWARD – MAIN STREET ENERGY FUND CONTRACT FOR LABOR, MATERIAL AND EQUIPMENT AND ALLOW THE MANAGER TO ISSUE THE NOTICE TO PROCEED TO AIR CARE FOR \$72,207 AND CONTOUR ELECTRIC FOR \$13,073 AND THE MAIN STREET PROJECT AMENDMENT

Planning Director, John Rodman stated this is the Main Street Energy Fund project and explained that initially they started out with seven businesses with three businesses remaining. The project was bid and came in at \$85,280. Of the \$85,280 the amount of \$72,207 is to Air Care to cover the HVAC and \$13,073 for Contour Electric for the electrical work.

In addressing the amendment Mr. Rodman stated originally the seven businesses had filled out applications to participate in these funds. With that being the case, we did energy audits, cost estimates for all seven businesses. The original contracted amount estimated was \$71,538 and that was the grant award. According to the State funds the City has to match those grant award. The budget was set up for those grant funds. This will bring the total budget to \$143,076.

Councilman Mercer requested clarification on the following: The original grant that was submitted to the State was for seven facilities. What was the total amount of the grant for the seven facilities? Mr. Rodman stated the total amount of the grant was \$71,538 and the total cost with the City matching those funds for the businesses was \$71,538 total funds \$143,076. Mr. Kay informed Council they will be sending approximately \$15,898 back to the State because they could not find a business.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council unanimously approved awarding the contract to Air Care in the amount of \$72,207 for the Main Street Energy Fund for labor, material and equipment.

By motion of Councilman Mercer, seconded by Councilman Pitt, Council unanimously approved awarding the contract for Contour Electric in the amount of \$13,073 for the Main Street Energy Fund for electrical work.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council unanimously adopted the Main Street Project Amendment.

**AN ORDINANCE TO AMEND THE GRANT PROJECT BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE MAIN STREET II ENERGY GRANT
FOR THE FISCAL YEAR 2011-2012**

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

Section 1. That the Estimated Revenues in the Main Street II Energy Grant be increased in the amount of \$71,538 in the account Owner's Contributions, account number 66-60-3352-0000.

Section 2. That account number 66-60-4930-4500 Rehabilitation line item of the Main Street II Energy Grant be increased in the amount of \$71,538.

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

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

Adopted this the 8th day of August, 2011.

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

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

CITY OF WASHINGTON
MAIN STREET ENERGY FUND - ENERGY EFFICIENCY IN PRIVATE BUILDINGS
CONTRACT FOR LABOR AND EQUIPMENT FOR HVAC IMPROVEMENTS

THIS CONTRACT FOR LABOR AND EQUIPMENT FOR HVAC IMPROVEMENTS ("Contract") is made as of the 19 day of August in the year 2011, by Air Care Service Co. ("Contractor") and the City of Washington, North Carolina (hereinafter may be called "the City"), (may be referred to singularly as "the Party" and collectively as "the Parties").

WITNESSETH

WHEREAS, the North Carolina Department of Commerce ("State") is the prime recipient of American Reinvestment and Recovery Act of 2009 ("ARRA") funds awarded by the U.S. Department of Energy ("DOE") under the Federally regulated State Energy Program ("SEP") through DOE Award Agreement DE-EE0000157 (CFDA #81.041) (the "DOE Award Agreement").

WHEREAS, the City is a sub-recipient of said ARRA funds under the State's Main Street Energy Fund, Round 2: **SOLICITATION NO. 2010MainStreet2** ("Award") to fund its Main Street Energy Fund – Energy Efficiency in Private Buildings Program ("MSEF Program or Program").

WHEREAS, said Award is governed by a Grant Agreement between the City and the State dated January 31, 2011 ("Grant Agreement"), which Grant Agreement incorporates provisions of the SEP's Main Street Energy Fund, Round 2 including all appendices and amendments thereto; the City's application/proposal as approved by the State; the above referenced DOE Award Agreement, as the same may be amended from time to time; SEP Special Terms and Conditions attached hereto as Exhibit B; 10 CFR Part 420, which may be reviewed at the website <http://ecfr.gpoaccess.gov>; DOE Financial Assistance Regulations as contained in 10 CFR Part 600, which may be reviewed at the website <http://ecfr.gpoaccess.gov>; North Carolina General Statute §143-6-21-23¹ and North Carolina Administrative Code section 09 NCAC 03M.0703. All of the above are incorporated herein by reference and may be referred to collectively as the "Grant Agreement Documents". Said Grant Agreement Documents that are not attached hereto or available for review at the above stated websites may be reviewed in the City Planning Department, 102 E. 2nd Street, Washington, North Carolina; on the North Carolina Department of Commerce, N.C. Energy Division's website at <http://www.nccommerce.com/energy>; and possibly on the City's website at www.washington-nc.gov.

¹ This citation was provided to the City by the State and is inaccurate. The City has brought this inaccuracy to the State's attention and requested the correct citation and/or clarification. The City shall forward the correct citation and/or clarification to Contractor upon the City's receipt of the same and the Parties hereto expressly agree that said corrected citation and/or clarification shall serve as an amendment to this Contract notwithstanding any provision herein to the contrary.

WHEREAS, the purpose of the City's MSEF Program is to assist certain owners of privately held, commercial buildings located in downtown Washington, North Carolina in making certain energy efficiency improvements to said buildings by utilizing Award funds to share in the cost of making said improvements.

WHEREAS, the City has selected three privately held, commercial buildings located in downtown Washington, North Carolina to participate in said Program on the basis of project proposals and budgets that the owners of said buildings previously submitted to the City and which the City has reviewed and accepted as meeting the criteria and objectives of the MSEF Program.

WHEREAS, the privately held, commercial buildings in downtown Washington, North Carolina that have been selected for participation in the City's MSEF Program are The Moss House Bed and Breakfast at 129 Van Norden Street, Carolina Wind Yachting Center at 411 West Main Street, and Edward Jones Investments at 258 West Main Street.

WHEREAS, the City shall enter or has entered separate Subaward Agreement(s) with the owners of said buildings ("Subgrantee(s)") governing their participation in the MSEF Program.

WHEREAS, under said Subaward Agreement(s) each Subgrantee is required to contribute at least fifty percent (50%) toward the cost of construction for each Subgrantee's respective project by depositing said amount with the City.

WHEREAS, the City has awarded a bid for **LABOR AND EQUIPMENT FOR HVAC IMPROVEMENTS** under the MSEF Program to Contractor at and for a sum equal to the aggregate cost of work to be done, including but not limited to labor, equipment, apparatus, supplies, and installation furnished at the prices and rates respectively named therefor in Contractor's bid, which bid is incorporated herein by reference, and as further described in Exhibit A attached hereto and incorporated herein by reference as if fully set forth ("Project").

WHEREAS, invoices for work completed by Contractor under the terms of this Contract as well as said Subaward Agreements, will be satisfied as described herein from said funds placed on deposit with the City by Subgrantees as well as with Award funds.

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

A. SCOPE OF WORK, SCHEDULE AND PAYMENT

1. **Scope of Work.** Contractor shall furnish and deliver all of the materials, fulfill all the requirements of, and perform all of the work to complete the Project in the manner and form provided by the following enumerated plans, specifications and documents, all of which are incorporated herein by reference as if fully set forth: the above referenced Subaward

2 | Labor & Equipment Contract with Air Care Service Co., FINAL

Agreements as well as the Invitation for Bids, including but not limited to *Introduction, Scope of Work, Technical Scope of Work, Bid Form, Pricing Sheet and Technical Specifications* (Exhibit A), *Performance Bond and Payment Bond Acknowledgment Form, Hold Harmless Agreements, Terms and Conditions* and other bid documents. Contractor shall perform all work required hereunder in accordance with, and shall otherwise comply with, all applicable Federal, State, and local, laws, rules, and regulations, including all applicable provisions of ARRA, SEP, MSEF Program, and Grant Agreement Documents, all of which are incorporated herein by reference as if fully set forth. All of the above named documents are binding on the Contractor with respect to the Contractor's completion of the Project. Said documents, including but not limited to this Contract, constitute the entire agreement between the Parties and supersede all prior oral or written statements, agreements, or understandings. Contractor should consult with the City on any questions concerning compliance with these requirements. Contractor shall fulfill all of its own, including any subcontractor's and the City's obligations, under said documents that are either directly or indirectly dependent upon the Contractor for fulfillment.

2. **Contractor Defined - Qualifications.** Contractor is licensed by the state of North Carolina as a NC Licensed Electrician, as defined and qualified by North Carolina General Statute §87-43 or a North Carolina Licensed General Contractor, as defined by North Carolina General Statute §87.1-15, working in conjunction with a North Carolina Licensed Electrical Contractor as defined by North Carolina General Statute §87-43.
3. **Compensation.** The amount available for work performed under this Contract shall not exceed \$72,207, which amount shall be provided in accordance with the terms of this Contract.
4. **Term.** This Contract shall be effective as of the day first above written and shall continue until June 30, 2012 or until such time as the State requires in order to close out the Grant Agreement. Notwithstanding the foregoing, any provision or obligation in this Contract that, by its nature, is required to survive the termination hereof in order to be fulfilled, including but not limited to recordkeeping, auditing, and access to the Contractor's records, shall survive the termination of this Contract.
5. **Work Schedule.** Contractor shall commence work to be performed under this Contract on a date to be specified in a written order of City and shall fully complete all work within the time specified in said written order. Contractor, as one of the considerations for the awarding of this Contract, has furnished to City a construction schedule setting forth planned progress of the work broken down by the various divisions or parts of the work and by calendar days. Notwithstanding anything herein to the contrary and without limiting other recourse and remedies, in the event that the progress of the work is not maintained on schedule by the Contractor or in the event the work is not completed within the time specified, City may, upon fifteen (15) days notice sent by Registered Mail to Contractor and his surety, declare this contract in default, and, thereupon, such surety shall promptly take over the said work and complete the performance of this Contract in the manner and within the time above specified,

and all funds due or to become due to Contractor shall be paid to the surety. In the event the surety shall fail to take over the work to be done under this Contract within fifteen (15) days after being so notified or fail to notify the City in writing, sent by Registered Mail, that it is taking the same over and stating that it will diligently pursue and complete the same, City shall have the right to let the work remaining to be done to some other contractor, either by public letting or negotiation, and thereupon Contractor, and the surety on the Contractor's bond, shall forthwith pay City all such default on the part of Contractor.

6. **Sufficiency of Surety(ies).** It is further mutually agreed between the Parties hereto that, if at any time after the execution of this contract, the City shall deem the surety or sureties upon any bond obtained by the Contractor hereunder to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the work, Contractor shall, at its expense, within five (5) days after the receipt of notice from City so to do, furnish any additional bond or bonds on such form and amount, and with such surety or securities as shall be satisfactory to the City.
7. **Liquidated Damages.**
 - a. The City and Contractor recognize that time is of the essence as to this Contract and the City will suffer financial loss if the work is not completed within the time(s) specified in the bid, established work schedule, and/or the above referenced written order of City, as may be applicable, plus any extensions thereof allowed in accordance herewith. The parties also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the City if the work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \$500 for each day that expires after the time specified for such work to be complete.
 - b. The Contractor shall also be liable for any and all additional costs and damages incurred by the City for said delay.
8. **Payment.** The City hereby agrees to pay to Contractor for the faithful performance of this Contract, subject to the installed quantities and unit prices attached hereto or as provided in the specifications or proposal referenced herein, in lawful money of the United States, up to the total amount of \$72,207.

Provided that invoices are submitted to the City in the manner described in section C.20. hereinbelow and received by the City no later than the twenty-fifth (25th) day of the preceding month, the City will make partial payments to the Contractor on or before the tenth (10th) day of each calendar month of this Contract. Said partial payments shall be made on the basis of duly certified and approved estimates of work performed during the relevant time by Contractor, less five percent (5%) of the amount of such estimates, which five percent (5%) is to be retained by City until final payments are made as hereinbelow provided. Approval for estimates of work

referenced above shall be in the City's sole discretion after consultation with the respective Subgrantees.

9. **Final Payments.** Upon submission by Contractor of evidence satisfactory to City, in its sole discretion, that all payrolls, material bills and other costs, including amounts owed to any subcontractors, incurred by Contractor in connection with the completion of construction of a project for a Subgrantee have been paid in full, final payment on account of such project for a Subgrantee shall be made within thirty (30) days after the completion by Contractor of all work on such project for a Subgrantee and the acceptance of such work as well as of said submission of evidence by City, in its sole discretion after consultation with the respective Subgrantee, and the State Energy Office, if applicable.
10. **Funds Availability.** Any and all payments contemplated to be made or made hereunder are contingent upon funds being provided to City solely for these purposes by, and not thereafter being recalled from City by, the State or ARRA. Payment of any invoice amount is dependent as well as contingent upon and subject to the appropriation, allocation, and continuing availability of funds for these purposes to the State and City.
11. **Recovery of Award Funds.** Contractor expressly acknowledges and accepts City's and the State's absolute right in their respective, sole discretion to withhold, discontinue, or recover in part or in full from Contractor any monies awarded and/or distributed pursuant to this Contract if it is determined that the Contractor has engaged in unlawful conduct or conduct which violates the spirit and intent or the terms of the Program, including but not limited to the Grant Agreement Documents, or if the Contractor fails to comply with the terms of this Contract. If an audit determines that Contractor expended or otherwise benefitted from any amount of this Contract improperly or that the Contractor has failed to comply with certifications, representations, warranties and covenants made for the Contractor or that the Contractor has failed to keep records and provide access to such records as required hereunder, Contractor shall, at a minimum, be required to reimburse the State, and the State may pursue such other action as it deems appropriate. Contractor further expressly acknowledges that the Federal government may also recover Award funds disbursed hereunder for failure to comply with applicable laws, regulations, or the DOE Award Agreement, and may pursue such other action as it deems appropriate.

B. INSURANCE AND SAFETY

Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of this project. Contractor and subcontractors may not begin work until these insurance provisions have been obtained and certificates of insurance verifying coverage have been provided to as well as accepted by the City, in its sole discretion.

1. **Workers' Compensation Insurance.** Insurance covering all employees meeting statutory limits in compliance with the applicable state and Federal laws. The coverage must include employer's liability with a minimum limit of \$100,000 bodily injury by accident, \$100,000 bodily injury by disease, \$500,000 bodily injury by disease policy limit.
2. **Commercial General Liability.** Coverage shall have minimum limits of \$1,000,000 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence.
3. **Business Auto Liability.** Coverage shall have minimum limits of \$300,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
4. **Builder's Risk.** Contractor shall have all risk coverage with limits of insurance equal to 100% of the completed value of the materials being installed for the City.
5. **Special Requirements.**
 - The City, **Carolina Wind Yachting Center, The Moss House Bed and Breakfast, and Edward Jones Investments** are to be included as additional insureds on the commercial general liability and business auto liability policies. If the Contractor carries umbrella/excess coverage then the City, **Carolina Wind Yachting Center, The Moss House Bed and Breakfast, and Edward Jones Investments** shall also be named as an additional insureds on this policy.
 - Contractor shall deliver to the City certificates of insurance for the insurance coverages Contractor is required to maintain in compliance with this document prior to the start of work.
 - Coverage shall remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective work.
 - Completed operations insurance shall remain in effect for at least two (2) years after final payment, and Contractor shall furnish the City evidence to show the continuation of such insurance.
 - Renewal certificates shall be sent to the City thirty (30) days prior to an expiration date. Policies shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City and Contractor.
 - Contractor shall report any obvious or suspected code issues to the project manager or his designee.
 - It shall be the responsibility of the Contractor to see that all subcontractors comply with these requirements.
6. **Contractor Safety Requirements.**

- Contractor is required to comply with all current NCOSHA Safety and Health Standards that are applicable to the work being performed by the Contractor for the City. Contractor shall name a safety representative for this project. This individual will be responsible for explaining compliance requirements to the Contractor's employees, communicating with the City's designated representative for safety when necessary, and communicating to City regarding all safety issues.
 - The City shall have the right, but not the obligation, to stop work if a condition is observed that is considered to be immediately dangerous to the life or health of a Contractor's employees. The job shall be closed until the situation is corrected. The City's representative shall attempt to first contact the Contractor's safety representative. However, the City does not have to allow this situation to persist to satisfy any requirement to contact this person. The City shall not be liable for any expense or damages incurred by the Contractor due to job closure that is the result of a condition that is immediately dangerous to life and health.
 - Prior to the start of any work performed by a Contractor for the City, the City's Risk Manager or designated representative will conduct a pre-job safety review with the Contractor's designated representative. The meeting will provide an opportunity for the City's representative to discuss with the Contractor's representative applicable safety rules, including work zone protection and an Emergency Action Plan if Contractor's employees may be affected by the plan, and provide for an open line of communication between both parties.
7. **Site Safety Audit.** The City's Risk Manager or his/her designee shall have the right, but not the obligation, to periodically audit Contractor's job site to ensure compliance with the provisions of this contract.
8. **Accident Reporting Requirement.** Accidents that occur on the job site of a Contractor working for the City shall be reported to the City's Risk Manager.
- C. **GENERAL PROVISIONS**
1. **Cleaning.** The Contractor will keep the site within and around the operations clean and neat and free of trash and debris accumulation at all times. Contractor will keep the same free from inflammable or dangerously stored materials at all times. If such is not done as directed, it may be done by the City and/or Subgrantee(s) and the costs associated therewith charged to, and satisfied by, the Contractor. Upon completion, all parts of the work shall be left clean and neat to present a finished appearance.
2. **City's Right to do Work.** If during the progress of the work or during the period of guarantee, Contractor fails to prosecute the work properly or to perform any provision of the contract, the City, after three (3) days written notice to the Contractor from the City, shall have the right, but not the obligation, to perform or have performed that portion of the work and may deduct the

cost thereof from any amounts due or to become due to the Contractor, such action and cost of same having been first approved by the City. Should the cost of such action of the City exceed the amount due or to become due the Contractor, then the Contractor or his surety, or both, shall be liable for, and shall pay, the City the amount of said excess.

3. **Interpretation of Specifications.** The specifications have been divided into sections for ready reference. It is the intention, however, that all applicable portions of the various sections shall apply to all sections unless specifically specified otherwise.
4. **Use Of Premises.** The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinance, permits or directions of the City and Subgrantee(s) and shall not exceed those established limits in his operations.
5. **Permits and Inspection Fees.** The Contractor shall obtain all necessary permits and shall pay all applicable fees.
6. **Adding to or Deleting From Contract.** The City reserves the right to decrease the estimated quantities by up to fifty percent (50%) or add, upon City Council approval, additional projects with estimated quantities of up to fifty percent (50%) of estimated quantities contained in the bid, at the unit price submitted by the Contractor in Contractor's bid. At the time of adding an additional project, the Contractor and the City's Project Manager shall agree on a number of days to extend the construction time for the project being added. The additional construction time must be given in writing to the Contractor, and acknowledged by the Contractor's signature. In addition, the City reserves the right to contract with the Contractor for other construction requirements for a period of up to one (1) year after the award of the bid. The Contractor will guarantee their unit prices for this one (1) year period.
7. **Uncorrected Faulty Work and Correction of Work after Final Payment.** In the event the correction of faulty or damaged work not be completed to the satisfaction of the City, the City shall be reimbursed by the Contractor that value as determined by the units proposed.

Neither the final certificate, final payment, acceptance of the premises by the City, nor any provisions of the Contract, nor any other act or instrument of the City shall relieve the Contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the terms, conditions and provisions of any and all contracts related to the City's MSEF Program. Contractor shall correct or make good any defects due thereto and repair any damage resulting therefrom which may appear during the period of the guarantee following final acceptance of the work by the City.

8. **Attorney's Fees.** Should the City, or Subgrantee(s) institute, and be the prevailing party(ies) in, any legal proceedings against the Contractor concerning a dispute arising from this Contract,

they or either of them, as the case may be, shall, in addition to any other recovery, be entitled to recover costs and expenses from Contractor, including reasonable attorney's fees.

9. **Guarantee.** The Contractor shall guarantee workmanship against defects due to the installation of faulty material or faulty workmanship or negligence for a period of twelve (12) months following the acceptance of work. Contractor shall be deemed to be due and obligated under this Agreement until such new or additional security for the faithful performance of such work shall be furnished in a manner and form satisfactory to City and Subgrantees.
10. **Third Party Beneficiary.** The State of North Carolina ("State") is a third party beneficiary of this Contract and may, at its option, enforce the terms of this Contract, or appear as a party in any litigation concerning it. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third party (other than the State, as specifically provided herein). It is the express intention of the State and City that any person or entity, other than the State or City, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
11. **Compliance with the Davis Bacon Act and Contract Work Hours and Safety Standards Act.** Contractor acknowledges that certain work necessary to perform the Project is subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act and that such work must be implemented pursuant to the applicable provisions of the Grant Agreement Documents. Among other things, Contractor shall permit the State to interview any officer or employee of the Contractor or subcontractors performing labor through said Project regarding compliance with the above Acts. In the event Contractor determines that the class of mechanic or laborer necessary for the completion of the Project is not included in the Prevailing Wage Determination, then, in that event, Contractor shall notify City and/or State as may be applicable.
12. **Reporting Requirements.** Upon the request of the City, Contractor shall provide information to assist the City in satisfying any applicable reporting requirements associated with the Award. Subgrantee shall comply with and satisfy any reporting requirements as may be revised including, but not limited to, the "State Grant Compliance Reporting Requirements" (Exhibit D). Contractor also shall submit any backup materials and supporting documentation as may be deemed necessary by City and/or the State. For all work that is subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act, Contractor shall submit Form WH-347 and original certified payrolls, as may be required, to the City no later than the fifth (5th) calendar day following each weekly payroll date so that City can timely submit said information to the State.
13. **Additional Notice of Particular Grant Agreement Requirements.** Contractor shall comply with the requirements of the Grant Agreement Documents, including but not limited to those requirements regarding reporting, records retention, access to books and records, audit, and insurance contained in the Grant Agreement Documents.

14. **Statement of No Overdue Tax Debts.** Prior to City disbursing Award funds to Contractor in furtherance of the Project, Contractor has caused a written State Grant Certification – No Overdue Tax Debts, prepared on Contractor’s letterhead, to be placed on file in the City’s Office of Planning and pursuant to North Carolina General Statute §143C-6-23(c) stating that the Contractor does not have any overdue tax debts, as defined by North Carolina General Statute §105-243.1, at the Federal, State, or local level.
15. **Debarment and Suspension.** Prior to City disbursing Award funds to Contractor in furtherance of the Project, Contractor has caused a Debarment Certification to be placed on file in the City’s Office of Planning. The City is restricted from granting Federal funds to, or for the benefit of, an entity who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. In addition, Contractor and subcontractors performing work contemplated hereunder are ineligible to receive, or benefit from, funds disbursed under this Contract if such entity(ies) are debarred pursuant to state law.
16. **No Assignment or Amendment.** Contractor shall not assign any of its rights or obligations under this Contract. This Contract may not be amended or revised without written approval of both Parties and appropriate concurrence from any third party that may be required.
17. **Choice of Law, Jurisdiction, Venue.** The validity of this Contract and all of its terms and provisions, as well as the rights and duties of the Parties, are governed by the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, if the State or Federal government is a party to a legal proceeding involving City, a Subgrantee or this Contract, that the exclusive venue for any such legal proceeding shall be Wake County, North Carolina. The place of the Contract and all transactions and agreements relating to it, and their situs and forum, for such sole purpose shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined herein by reference, as if set out in full, and are deemed to be material to this Contract. The above Wake County venue requirements shall apply only if the State or Federal government is a party to a legal proceeding arising hereunder.
18. **Limitation on State’s and City’s Liability.** Neither the State; any State entity, department, board, or subdivision; or City shall be liable in any manner whatsoever to any person with respect to commitments under this Contract. Contractor’s rights, if any, with respect to the Contract arise solely out of this Contract, and it has no independent right or claim to receive, or benefit from, Contract funds apart from any right or claim which may arise under this Contract. Contractor acknowledges that, in addition to the limitation on funds available as set forth hereinabove, funds available for the Contract are subject to and dependent on funding of the Award, which is dependent on City’s compliance with the Grant Agreement.

19. **Indemnification.** The Contractor agrees to indemnify and hold harmless the City, the State, and all their respective officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contract in connection with the performance of the Contract.
- a. City assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities related to this Contract, whether with respect to persons or property of Contractor or third parties. Contractor agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, Contractor agrees to indemnify, defend, and save harmless the City and its officers, agents and employees from any and all claims and losses arising from this Contract, including but not limited to those claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the work contemplated by this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by any and all Contractor(s) or subcontractors in the performance of the work contemplated by this Contract.
20. **Notice.** All notices permitted or required to be given by one Party to the other and all questions about this Contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the City:

Bianca Gentile, Planner
City of Washington
P.O. Box 1988
102 East 2nd Street
Washington, NC 27889
Telephone: 252-402-6888
Fax: 252-946-1965
Email: bgentile@washingtontnc.gov

For the Contractor:

William T. Edwards, II, President
Air Care Service Co.
134 W. 5th St.
Washington, NC 27889
Telephone: 252-946-7903
Fax: 866-837-8560
Email: OfficeAC@ComfortOnCall.com

21. **Relationship of Parties.** In carrying out the terms and conditions of this Contract, Contractor is an independent party from the City and is not an agent or employee of the City. Nothing in this Contract shall create or be construed as creating a partnership, joint venture, or employee relationship between the City and Contractor.
22. **Other.** Contractor shall, upon completion of all work awarded under this Contract, furnish to City invoices or copies of invoices for all materials and equipment purchased for said work and

such invoices shall state the amount of North Carolina Sales Tax paid for said materials and equipment, and Contractor shall also furnish City an affidavit certifying the total costs of materials and equipment purchased for all work performed under the Contract and the total amount of North Carolina Sales Tax paid for said materials and equipment.

23. **Execution.** This Contract may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same contract that shall be sufficiently evidenced by one such original counterpart.

(The Remainder of the Page Intentionally Left Blank.)

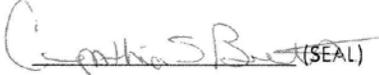
IN WITNESS WHEREOF, duly authorized representatives of City and Contractor have executed this Contract effective as of the date first above written. The Parties agree that this document is executed under seal for the purposes of any applicable statute of limitations.

PRE-AUDIT CERTIFICATE

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



ATTEST:

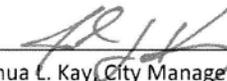
 (SEAL)
Cynthia S. Bennett, City Clerk

CITY OF WASHINGTON

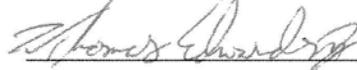
 (SEAL)
Matt Rauschenbach,
Chief Financial Officer

CITY:

CITY OF WASHINGTON

By:  (SEAL)
Joshua L. Kay, City Manager
Date: 8/19/11
Tax ID Number: 56-6001364
End of Fiscal Year: June 30th

**CONTRACTOR:
AIR CARE SERVICE CO.**

By:  (SEAL)
William T. Edwards, II President
Date: 8/19/11
Tax ID Number: 26-2932509
End of Fiscal Year: December 31st

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

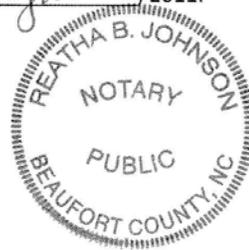
I, Reatha B. Johnson, a Notary Public of the State and County aforesaid, certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, Grantee, a North Carolina municipal corporation, and as the act of the corporation, the foregoing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

Witness my hand and official seal, this the 19 day of August, 2011.

Reatha B. Johnson

Notary Public

My Commission Expires: 12/14/2014



STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Heike Whitland, a Notary Public of the County and State aforesaid, certify that WILLIAM T. EDWARDS, II, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged that he is President of Air Care Service Co., Contractor, a North Carolina corporation, and that by authority duly given and as the act of the corporation, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the 19th day of August, 2011.

Heike Whitland

Notary Public

My Commission Expires: June 23, 2015

**CITY OF WASHINGTON
MAIN STREET ENERGY FUND - ENERGY EFFICIENCY IN PRIVATE BUILDINGS
CONTRACT FOR LABOR AND EQUIPMENT FOR LIGHTING FIXTURES IMPROVEMENTS**

THIS **CONTRACT FOR LABOR AND EQUIPMENT FOR LIGHTING FIXTURES IMPROVEMENTS** ("Contract") is made as of the 19 day of August in the year 2011, by Contour Construction LLC ("Contractor") and the City of Washington, North Carolina (hereinafter may be called "the City"), (may be referred to singularly as "the Party" and collectively as "the Parties").

WITNESSETH

WHEREAS, the North Carolina Department of Commerce ("State") is the prime recipient of American Reinvestment and Recovery Act of 2009 ("ARRA") funds awarded by the U.S. Department of Energy ("DOE") under the Federally regulated State Energy Program ("SEP") through DOE Award Agreement DE-EE0000157 (CFDA #81.041) (the "DOE Award Agreement").

WHEREAS, the City is a sub-recipient of said ARRA funds under the State's Main Street Energy Fund, Round 2: **SOLICITATION NO. 2010MainStreet2** ("Award") to fund its Main Street Energy Fund – Energy Efficiency in Private Buildings Program ("MSEF Program or Program").

WHEREAS, said Award is governed by a Grant Agreement between the City and the State dated January 31, 2011 ("Grant Agreement"), which Grant Agreement incorporates provisions of the SEP's Main Street Energy Fund, Round 2 including all appendices and amendments thereto; the City's application/proposal as approved by the State; the above referenced DOE Award Agreement, as the same may be amended from time to time; SEP Special Terms and Conditions attached hereto as Exhibit B; 10 CFR Part 420, which may be reviewed at the website <http://ecfr.gpoaccess.gov>; DOE Financial Assistance Regulations as contained in 10 CFR Part 600, which may be reviewed at the website <http://ecfr.gpoaccess.gov>; North Carolina General Statute §143-6-21-23¹ and North Carolina Administrative Code section 09 NCAC 03M.0703. All of the above are incorporated herein by reference and may be referred to collectively as the "Grant Agreement Documents". Said Grant Agreement Documents that are not attached hereto or available for review at the above stated websites may be reviewed in the City Planning Department, 102 E. 2nd Street, Washington, North Carolina; on the North Carolina Department of Commerce, N.C. Energy Division's website at <http://www.nccommerce.com/energy>; and possibly on the City's website at www.washington-nc.gov.

¹ This citation was provided to the City by the State and is inaccurate. The City has brought this inaccuracy to the State's attention and requested the correct citation and/or clarification. The City shall forward the correct citation and/or clarification to Contractor upon the City's receipt of the same and the Parties hereto expressly agree that said corrected citation and/or clarification shall serve as an amendment to this Contract notwithstanding any provision herein to the contrary.

WHEREAS, the purpose of the City's MSEF Program is to assist certain owners of privately held, commercial buildings located in downtown Washington, North Carolina in making certain energy efficiency improvements to said buildings by utilizing Award funds to share in the cost of making said improvements.

WHEREAS, the City has selected three privately held, commercial buildings located in downtown Washington, North Carolina to participate in said Program on the basis of project proposals and budgets that the owners of said buildings previously submitted to the City and which the City has reviewed and accepted as meeting the criteria and objectives of the MSEF Program.

WHEREAS, the privately held, commercial buildings in downtown Washington, North Carolina that have been selected for participation in the City's MSEF Program are The Moss House Bed and Breakfast at 129 Van Norden Street, Carolina Wind Yachting Center at 411 West Main Street, and Edward Jones Investments at 258 West Main Street.

WHEREAS, the City shall enter or has entered separate Subaward Agreement(s) with the owners of said buildings ("Subgrantee(s)") governing their participation in the MSEF Program.

WHEREAS, under said Subaward Agreement(s) each Subgrantee is required to contribute at least fifty percent (50%) toward the cost of construction for each Subgrantee's respective project by depositing said amount with the City.

WHEREAS, the City has awarded a bid for **LABOR AND EQUIPMENT FOR LIGHTING FIXTURE IMPROVEMENTS** under the MSEF Program to Contractor at and for a sum equal to the aggregate cost of work to be done, including but not limited to labor, equipment, apparatus, supplies, and installation furnished at the prices and rates respectively named therefor in Contractor's bid, which bid is incorporated herein by reference, and as further described in Exhibit A attached hereto and incorporated herein by reference as if fully set forth ("Project").

WHEREAS, invoices for work completed by Contractor under the terms of this Contract as well as said Subaward Agreements, will be satisfied as described herein from said funds placed on deposit with the City by Subgrantees as well as with Award funds.

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

A. SCOPE OF WORK, SCHEDULE AND PAYMENT

1. **Scope of Work.** Contractor shall furnish and deliver all of the materials, fulfill all the requirements of, and perform all of the work to complete the Project in the manner and form provided by the following enumerated plans, specifications and documents, all of which are incorporated herein by reference as if fully set forth: the above referenced Subaward

Agreements as well as the Invitation for Bids, including but not limited to *Introduction, Scope of Work, Technical Scope of Work, Bid Form, Pricing Sheet and Technical Specifications* (Exhibit A), *Performance Bond and Payment Bond Acknowledgment Form, Hold Harmless Agreements, Terms and Conditions* and other bid documents. Contractor shall perform all work required hereunder in accordance with, and shall otherwise comply with, all applicable Federal, State, and local, laws, rules, and regulations, including all applicable provisions of ARRA, SEP, MSEF Program, and Grant Agreement Documents, all of which are incorporated herein by reference as if fully set forth. All of the above named documents are binding on the Contractor with respect to the Contractor's completion of the Project. Said documents, including but not limited to this Contract, constitute the entire agreement between the Parties and supersede all prior oral or written statements, agreements, or understandings. Contractor should consult with the City on any questions concerning compliance with these requirements. Contractor shall fulfill all of its own, including any subcontractor's and the City's obligations, under said documents that are either directly or indirectly dependent upon the Contractor for fulfillment.

2. **Contractor Defined - Qualifications.** Contractor is licensed by the state of North Carolina as a NC Licensed Electrician, as defined and qualified by North Carolina General Statute §87-43 or a North Carolina Licensed General Contractor, as defined by North Carolina General Statute §87.1-15, working in conjunction with a North Carolina Licensed Electrical Contractor as defined by North Carolina General Statute §87-43.
3. **Compensation.** The amount available for work performed under this Contract shall not exceed \$13,073, which amount shall be provided in accordance with the terms of this Contract.
4. **Term.** This Contract shall be effective as of the day first above written and shall continue until June 30, 2012 or until such time as the State requires in order to close out the Grant Agreement. Notwithstanding the foregoing, any provision or obligation in this Contract that, by its nature, is required to survive the termination hereof in order to be fulfilled, including but not limited to recordkeeping, auditing, and access to the Contractor's records, shall survive the termination of this Contract.
5. **Work Schedule.** Contractor shall commence work to be performed under this Contract on a date to be specified in a written order of City and shall fully complete all work within the time specified in said written order. Contractor, as one of the considerations for the awarding of this Contract, has furnished to City a construction schedule setting forth planned progress of the work broken down by the various divisions or parts of the work and by calendar days. Notwithstanding anything herein to the contrary and without limiting other recourse and remedies, in the event that the progress of the work is not maintained on schedule by the Contractor or in the event the work is not completed within the time specified, City may, upon fifteen (15) days notice sent by Registered Mail to Contractor and his surety, declare this contract in default, and, thereupon, such surety shall promptly take over the said work and complete the performance of this Contract in the manner and within the time above specified,

and all funds due or to become due to Contractor shall be paid to the surety. In the event the surety shall fail to take over the work to be done under this Contract within fifteen (15) days after being so notified or fail to notify the City in writing, sent by Registered Mail, that it is taking the same over and stating that it will diligently pursue and complete the same, City shall have the right to let the work remaining to be done to some other contractor, either by public letting or negotiation, and thereupon Contractor, and the surety on the Contractor's bond, shall forthwith pay City all such default on the part of Contractor.

6. **Sufficiency of Surety(ies).** It is further mutually agreed between the Parties hereto that, if at any time after the execution of this contract, the City shall deem the surety or sureties upon any bond obtained by the Contractor hereunder to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the work, Contractor shall, at its expense, within five (5) days after the receipt of notice from City so to do, furnish any additional bond or bonds on such form and amount, and with such surety or securities as shall be satisfactory to the City.
7. **Liquidated Damages.**
 - a. The City and Contractor recognize that time is of the essence as to this Contract and the City will suffer financial loss if the work is not completed within the time(s) specified in the bid, established work schedule, and/or the above referenced written order of City, as may be applicable, plus any extensions thereof allowed in accordance herewith. The parties also recognize the delays, expense and difficulties involved in proving the actual loss suffered by the City if the work is not completed on time. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \$500 for each day that expires after the time specified for such work to be complete.
 - b. The Contractor shall also be liable for any and all additional costs and damages incurred by the City for said delay.
8. **Payment.** The City hereby agrees to pay to Contractor for the faithful performance of this Contract, subject to the installed quantities and unit prices attached hereto or as provided in the specifications or proposal referenced herein, in lawful money of the United States, up to the total amount of \$13,073.

Provided that invoices are submitted to the City in the manner described in section C.20. hereinbelow and received by the City no later than the twenty-fifth (25th) day of the preceding month, the City will make partial payments to the Contractor on or before the tenth (10th) day of each calendar month of this Contract. Said partial payments shall be made on the basis of duly certified and approved estimates of work performed during the relevant time by Contractor, less five percent (5%) of the amount of such estimates, which five percent (5%) is to be retained by City until final payments are made as hereinbelow provided. Approval for estimates of work

referenced above shall be in the City's sole discretion after consultation with the respective Subgrantees.

9. **Final Payments.** Upon submission by Contractor of evidence satisfactory to City, in its sole discretion, that all payrolls, material bills and other costs, including amounts owed to any subcontractors, incurred by Contractor in connection with the completion of construction of a project for a Subgrantee have been paid in full, final payment on account of such project for a Subgrantee shall be made within thirty (30) days after the completion by Contractor of all work on such project for a Subgrantee and the acceptance of such work as well as of said submission of evidence by City, in its sole discretion after consultation with the respective Subgrantee, and the State Energy Office, if applicable.
10. **Funds Availability.** Any and all payments contemplated to be made or made hereunder are contingent upon funds being provided to City solely for these purposes by, and not thereafter being recalled from City by, the State or ARRA. Payment of any invoice amount is dependent as well as contingent upon and subject to the appropriation, allocation, and continuing availability of funds for these purposes to the State and City.
11. **Recovery of Award Funds.** Contractor expressly acknowledges and accepts City's and the State's absolute right in their respective, sole discretion to withhold, discontinue, or recover in part or in full from Contractor any monies awarded and/or distributed pursuant to this Contract if it is determined that the Contractor has engaged in unlawful conduct or conduct which violates the spirit and intent or the terms of the Program, including but not limited to the Grant Agreement Documents, or if the Contractor fails to comply with the terms of this Contract. If an audit determines that Contractor expended or otherwise benefitted from any amount of this Contract improperly or that the Contractor has failed to comply with certifications, representations, warranties and covenants made for the Contractor or that the Contractor has failed to keep records and provide access to such records as required hereunder, Contractor shall, at a minimum, be required to reimburse the State, and the State may pursue such other action as it deems appropriate. Contractor further expressly acknowledges that the Federal government may also recover Award funds disbursed hereunder for failure to comply with applicable laws, regulations, or the DOE Award Agreement, and may pursue such other action as it deems appropriate.

B. INSURANCE AND SAFETY

Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of this project. Contractor and subcontractors may not begin work until these insurance provisions have been obtained and certificates of insurance verifying coverage have been provided to as well as accepted by the City, in its sole discretion.

1. **Workers' Compensation Insurance.** Insurance covering all employees meeting statutory limits in compliance with the applicable state and Federal laws. The coverage must include employer's liability with a minimum limit of \$100,000 bodily injury by accident, \$100,000 bodily injury by disease, \$500,000 bodily injury by disease policy limit.
2. **Commercial General Liability.** Coverage shall have minimum limits of \$1,000,000 general aggregate, products/completed operations aggregate, personal and advertising injury and each occurrence.
3. **Business Auto Liability.** Coverage shall have minimum limits of \$300,000 per occurrence, combined single limit for bodily injury liability and property damage liability. This shall include owned vehicles, hired and non-owned vehicles and employee non-ownership.
4. **Builder's Risk.** Contractor shall have all risk coverage with limits of insurance equal to 100% of the completed value of the materials being installed for the City.
5. **Special Requirements.**
 - The City, **Carolina Wind Yachting Center, The Moss House Bed and Breakfast, and Edward Jones Investments** are to be included as additional insureds on the commercial general liability and business auto liability policies. If the Contractor carries umbrella/excess coverage then the City, **Carolina Wind Yachting Center, The Moss House Bed and Breakfast, and Edward Jones Investments** shall also be named as an additional insureds on this policy.
 - Contractor shall deliver to the City certificates of insurance for the insurance coverages Contractor is required to maintain in compliance with this document prior to the start of work.
 - Coverage shall remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing or replacing defective work.
 - Completed operations insurance shall remain in effect for at least two (2) years after final payment, and Contractor shall furnish the City evidence to show the continuation of such insurance.
 - Renewal certificates shall be sent to the City thirty (30) days prior to an expiration date. Policies shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to the City and Contractor.
 - Contractor shall report any obvious or suspected code issues to the project manager or his designee.
 - It shall be the responsibility of the Contractor to see that all subcontractors comply with these requirements.
6. **Contractor Safety Requirements.**

- Contractor is required to comply with all current NCOSHA Safety and Health Standards that are applicable to the work being performed by the Contractor for the City. Contractor shall name a safety representative for this project. This individual will be responsible for explaining compliance requirements to the Contractor's employees, communicating with the City's designated representative for safety when necessary, and communicating to City regarding all safety issues.
 - The City shall have the right, but not the obligation, to stop work if a condition is observed that is considered to be immediately dangerous to the life or health of a Contractor's employees. The job shall be closed until the situation is corrected. The City's representative shall attempt to first contact the Contractor's safety representative. However, the City does not have to allow this situation to persist to satisfy any requirement to contact this person. The City shall not be liable for any expense or damages incurred by the Contractor due to job closure that is the result of a condition that is immediately dangerous to life and health.
 - Prior to the start of any work performed by a Contractor for the City, the City's Risk Manager or designated representative will conduct a pre-job safety review with the Contractor's designated representative. The meeting will provide an opportunity for the City's representative to discuss with the Contractor's representative applicable safety rules, including work zone protection and an Emergency Action Plan if Contractor's employees may be affected by the plan, and provide for an open line of communication between both parties.
7. **Site Safety Audit.** The City's Risk Manager or his/her designee shall have the right, but not the obligation, to periodically audit Contractor's job site to ensure compliance with the provisions of this contract.
8. **Accident Reporting Requirement.** Accidents that occur on the job site of a Contractor working for the City shall be reported to the City's Risk Manager.
- C. GENERAL PROVISIONS**
1. **Cleaning.** The Contractor will keep the site within and around the operations clean and neat and free of trash and debris accumulation at all times. Contractor will keep the same free from inflammable or dangerously stored materials at all times. If such is not done as directed, it may be done by the City and/or Subgrantee(s) and the costs associated therewith charged to, and satisfied by, the Contractor. Upon completion, all parts of the work shall be left clean and neat to present a finished appearance.
2. **City's Right to do Work.** If during the progress of the work or during the period of guarantee, Contractor fails to prosecute the work properly or to perform any provision of the contract, the City, after three (3) days written notice to the Contractor from the City, shall have the right, but not the obligation, to perform or have performed that portion of the work and may deduct the

cost thereof from any amounts due or to become due to the Contractor, such action and cost of same having been first approved by the City. Should the cost of such action of the City exceed the amount due or to become due the Contractor, then the Contractor or his surety, or both, shall be liable for, and shall pay, the City the amount of said excess.

3. **Interpretation of Specifications.** The specifications have been divided into sections for ready reference. It is the intention, however, that all applicable portions of the various sections shall apply to all sections unless specifically specified otherwise.
4. **Use Of Premises.** The Contractor shall confine his apparatus, the storage of materials and the operations of his workmen to limits indicated by law, ordinance, permits or directions of the City and Subgrantee(s) and shall not exceed those established limits in his operations.
5. **Permits and Inspection Fees.** The Contractor shall obtain all necessary permits and shall pay all applicable fees.
6. **Adding to or Deleting From Contract.** The City reserves the right to decrease the estimated quantities by up to fifty percent (50%) or add, upon City Council approval, additional projects with estimated quantities of up to fifty percent (50%) of estimated quantities contained in the bid, at the unit price submitted by the Contractor in Contractor's bid. At the time of adding an additional project, the Contractor and the City's Project Manager shall agree on a number of days to extend the construction time for the project being added. The additional construction time must be given in writing to the Contractor, and acknowledged by the Contractor's signature. In addition, the City reserves the right to contract with the Contractor for other construction requirements for a period of up to one (1) year after the award of the bid. The Contractor will guarantee their unit prices for this one (1) year period.
7. **Uncorrected Faulty Work and Correction of Work after Final Payment.** In the event the correction of faulty or damaged work not be completed to the satisfaction of the City, the City shall be reimbursed by the Contractor that value as determined by the units proposed.

Neither the final certificate, final payment, acceptance of the premises by the City, nor any provisions of the Contract, nor any other act or instrument of the City shall relieve the Contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the terms, conditions and provisions of any and all contracts related to the City's MSEF Program. Contractor shall correct or make good any defects due thereto and repair any damage resulting therefrom which may appear during the period of the guarantee following final acceptance of the work by the City.

8. **Attorney's Fees.** Should the City, or Subgrantee(s) institute, and be the prevailing party(ies) in, any legal proceedings against the Contractor concerning a dispute arising from this Contract,

they or either of them, as the case may be, shall, in addition to any other recovery, be entitled to recover costs and expenses from Contractor, including reasonable attorney's fees.

9. **Guarantee.** The Contractor shall guarantee workmanship against defects due to the installation of faulty material or faulty workmanship or negligence for a period of twelve (12) months following the acceptance of work. Contractor shall be deemed to be due and obligated under this Agreement until such new or additional security for the faithful performance of such work shall be furnished in a manner and form satisfactory to City and Subgrantees.
10. **Third Party Beneficiary.** The State of North Carolina ("State") is a third party beneficiary of this Contract and may, at its option, enforce the terms of this Contract, or appear as a party in any litigation concerning it. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third party (other than the State, as specifically provided herein). It is the express intention of the State and City that any person or entity, other than the State or City, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.
11. **Compliance with the Davis Bacon Act and Contract Work Hours and Safety Standards Act.** Contractor acknowledges that certain work necessary to perform the Project is subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act and that such work must be implemented pursuant to the applicable provisions of the Grant Agreement Documents. Among other things, Contractor shall permit the State to interview any officer or employee of the Contractor or subcontractors performing labor through said Project regarding compliance with the above Acts. In the event Contractor determines that the class of mechanic or laborer necessary for the completion of the Project is not included in the Prevailing Wage Determination, then, in that event, Contractor shall notify City and/or State as may be applicable.
12. **Reporting Requirements.** Upon the request of the City, Contractor shall provide information to assist the City in satisfying any applicable reporting requirements associated with the Award. Subgrantee shall comply with and satisfy any reporting requirements as may be revised including, but not limited to, the "State Grant Compliance Reporting Requirements" (Exhibit D). Contractor also shall submit any backup materials and supporting documentation as may be deemed necessary by City and/or the State. For all work that is subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act, Contractor shall submit Form WH-347 and original certified payrolls, as may be required, to the City no later than the fifth (5th) calendar day following each weekly payroll date so that City can timely submit said information to the State.
13. **Additional Notice of Particular Grant Agreement Requirements.** Contractor shall comply with the requirements of the Grant Agreement Documents, including but not limited to those requirements regarding reporting, records retention, access to books and records, audit, and insurance contained in the Grant Agreement Documents.

14. **Statement of No Overdue Tax Debts.** Prior to City disbursing Award funds to Contractor in furtherance of the Project, Contractor has caused a written State Grant Certification – No Overdue Tax Debts, prepared on Contractor’s letterhead, to be placed on file in the City’s Office of Planning and pursuant to North Carolina General Statute §143C-6-23(c) stating that the Contractor does not have any overdue tax debts, as defined by North Carolina General Statute §105-243.1, at the Federal, State, or local level.
15. **Debarment and Suspension.** Prior to City disbursing Award funds to Contractor in furtherance of the Project, Contractor has caused a Debarment Certification to be placed on file in the City’s Office of Planning. The City is restricted from granting Federal funds to, or for the benefit of, an entity who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. In addition, Contractor and subcontractors performing work contemplated hereunder are ineligible to receive, or benefit from, funds disbursed under this Contract if such entity(ies) are debarred pursuant to state law.
16. **No Assignment or Amendment.** Contractor shall not assign any of its rights or obligations under this Contract. This Contract may not be amended or revised without written approval of both Parties and appropriate concurrence from any third party that may be required.
17. **Choice of Law, Jurisdiction, Venue.** The validity of this Contract and all of its terms and provisions, as well as the rights and duties of the Parties, are governed by the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, if the State or Federal government is a party to a legal proceeding involving City, a Subgrantee or this Contract, that the exclusive venue for any such legal proceeding shall be Wake County, North Carolina. The place of the Contract and all transactions and agreements relating to it, and their situs and forum, for such sole purpose shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined herein by reference, as if set out in full, and are deemed to be material to this Contract. The above Wake County venue requirements shall apply only if the State or Federal government is a party to a legal proceeding arising hereunder.
18. **Limitation on State’s and City’s Liability.** Neither the State; any State entity, department, board, or subdivision; or City shall be liable in any manner whatsoever to any person with respect to commitments under this Contract. Contractor’s rights, if any, with respect to the Contract arise solely out of this Contract, and it has no independent right or claim to receive, or benefit from, Contract funds apart from any right or claim which may arise under this Contract. Contractor acknowledges that, in addition to the limitation on funds available as set forth hereinabove, funds available for the Contract are subject to and dependent on funding of the Award, which is dependent on City’s compliance with the Grant Agreement.

19. **Indemnification.** The Contractor agrees to indemnify and hold harmless the City, the State, and all their respective officers, agents and employees, from any claims of third parties arising out of any act or omission of the Contract in connection with the performance of the Contract.
- a. City assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities related to this Contract, whether with respect to persons or property of Contractor or third parties. Contractor agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, Contractor agrees to indemnify, defend, and save harmless the City and its officers, agents and employees from any and all claims and losses arising from this Contract, including but not limited to those claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the work contemplated by this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by any and all Contractor(s) or subcontractors in the performance of the work contemplated by this Contract.
20. **Notice.** All notices permitted or required to be given by one Party to the other and all questions about this Contract from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the City:

Bianca Gentile, Planner
City of Washington
P.O. Box 1988
102 East 2nd Street
Washington, NC 27889
Telephone: 252-402-6888
Fax: 252-946-1965
Email: bgentile@washingtonnc.gov

For the Contractor:

Christopher Smith, Member
Contour Construction LLC
2917 Laylah Drive
Winterville, NC 28590
Telephone: 252-702-0370
Fax: 252-756-2310
Email: chris@contourconstruction.com

21. **Relationship of Parties.** In carrying out the terms and conditions of this Contract, Contractor is an independent party from the City and is not an agent or employee of the City. Nothing in this Contract shall create or be construed as creating a partnership, joint venture, or employee relationship between the City and Contractor.
22. **Other.** Contractor shall, upon completion of all work awarded under this Contract, furnish to City invoices or copies of invoices for all materials and equipment purchased for said work and

such invoices shall state the amount of North Carolina Sales Tax paid for said materials and equipment, and Contractor shall also furnish City an affidavit certifying the total costs of materials and equipment purchased for all work performed under the Contract and the total amount of North Carolina Sales Tax paid for said materials and equipment.

23. **Execution.** This Contract may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same contract that shall be sufficiently evidenced by one such original counterpart.

(The Remainder of the Page Intentionally Left Blank.)

IN WITNESS WHEREOF, duly authorized representatives of City and Contractor have executed this Contract effective as of the date first above written. The Parties agree that this document is executed under seal for the purposes of any applicable statute of limitations.

PRE-AUDIT CERTIFICATE

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



ATTEST:

Cynthia S. Bennett (SEAL)
Cynthia S. Bennett, City Clerk

CITY OF WASHINGTON

Matt Rauschenbach (SEAL)
Matt Rauschenbach,
Chief Financial Officer

CITY:

CITY OF WASHINGTON

By: Joshua L. Key (SEAL)
Joshua L. Key, City Manager
Date: August 9, 2011
Tax ID Number: 56-6001364
End of Fiscal Year: June 30th

CONTRACTOR:

CONTOUR CONSTRUCTION LLC

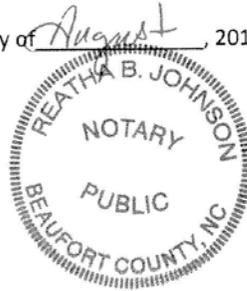
By: Christopher Smith (SEAL)
Christopher Smith, Member
Date: 8-19-2011
Tax ID Number: 27-267394
End of Fiscal Year: 12-31-11

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

Witness my hand and official seal, this the 19 day of August, 2011.

Reatha B. Johnson
Notary Public
My Commission Expires: 12/14/2014



STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Heike Wiedel, a Notary Public of the County and State aforesaid, certify that CHRISTOPHER SMITH, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged that he is a Member of Contour Construction LLC, Contractor, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, executed the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 19th day of August, 2011.

Heike Wiedel
Notary Public
My Commission Expires: 2012/06/20/15

NOTICE TO PROCEED

To: Contour Construction, LLC.
2917 Laylah Drive
Winterville, NC 28590

PROJECT Description:

**Main Street Energy Fund
Carolina Wind and Yacht and Edward Jones Investments**

You are hereby notified to commence WORK in accordance with the Agreement dated September 8, 2011 on or before October 8, 2011 and you are to complete the WORK within the stated time thereafter.

The date of completion of all WORK is therefore-December 1, 2011.

A Pre-Construction meeting for this project was held Wednesday, August 19, at 9:000 a.m. at the following location:

City of Washington
Mayor's Conference Room 219
102 East 2nd Street
Washington, North Carolina

You are required to return an acknowledged copy of this NOTICE TO PROCEED to the City.

Before commencing any work at the Site, you must furnish any and all certificates of insurance, payment bonds, and performance bonds required by the Invitation for Bids and/or the Contract for this project in a form acceptable to the City, in its sole discretion, as well as an executed State Energy Program Special Terms and Conditions Acknowledgement Form.

Dated this the September 9, 2011

City of Washington



John Rodman, AICP
Director of Planning and Community Development

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED for the Main Street Energy Fund at Carolina Wind and Yacht and Edward Jones Investments is hereby acknowledged on this day the 9th of September, 2011

Contour Construction, LLC.

By: Chris Smith

Name: Chris Smith

Title: Owner

NOTICE TO PROCEED

To: **Air Care Service Co**
134 West 5th Street
Washington, NC 27889

PROJECT Description:

Main Street Energy Fund
Carolina Wind and Yacht, the Moss House and Edward Jones Investments

You are hereby notified to commence WORK in accordance with the Agreement dated September 8, 2011 on or before October 8, 2011 and you are to complete the WORK within the stated time thereafter.

The date of completion of all WORK is therefore-December 1, 2011.

A Pre-Construction meeting for this project was held Wednesday, August 19, at 9:000 a.m. at the following location:

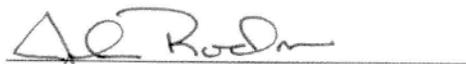
City of Washington
Mayor's Conference Room 219
102 East 2nd Street
Washington, North Carolina

You are required to return an acknowledged copy of this NOTICE TO PROCEED to the City.

Before commencing any work at the Site, you must furnish any and all certificates of insurance, payment bonds, and performance bonds required by the Invitation for Bids and/or the Contract for this project in a form acceptable to the City, in its sole discretion, as well as an executed State Energy Program Special Terms and Conditions Acknowledgement Form.

Dated this the September 9, 2011

City of Washington



John Rodman, AICP
Director of Planning and Community Development

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED for the Main Street Energy Fund at Carolina Wind and Yacht, Edward Jones Investments, and the Moss House Bed and Breakfast is hereby acknowledged on this day the 9th of September, 2011

Air Care Service Co.

By: 

Name: Will Edwards

Title: Resident

NTB-2

ACCEPT – NC DOT BICYCLE/PEDESTRIAL GRANT, AUTHORIZE MAYOR TO SIGN AGREEMENT WITH NC DOT (\$28,000), ADOPT BUDGET ORDINANCE AMENDMENT (\$7,000 – CITY MATCH) AND ADOPT GRANT PROJECT BUDGET ORDINANCE.

By motion of Councilman Davis, seconded by Councilman Pitt, Council unanimously authorized the Mayor to sign an agreement with NCDOT (\$28,000 NCDOT share) **and** Adopt Budget Ordinance Amendment to appropriate the \$7,000 (City share) **and** Adopt the Grant Project Budget Ordinance for the Comprehensive Bicycle Plan Grant. Council adopted all three phrases.

**A GRANT PROJECT BUDGET ORDINANCE FOR
COMPREHENSIVE BICYCLE PLAN GRANT
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012**

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

Section 1. The project authorized is to provide for the development of a comprehensive bicycle plan.

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

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

52-40-4930-0400	Professional Services	\$35,000
-----------------	-----------------------	----------

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

52-60-3490-0000	Federal Grant Funds	\$28,000
52-60-3980-1000	Transfer from General Fund	<u>7,000</u>
	Total	35,000

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

Section 6. Funds may be advanced from the General Fund for the purpose of making payments that are due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.

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

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

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

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

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

Adopted this the 8th day of August 2011.

ATTEST:

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

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

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012**

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

Section 1. That account number 10-00-9990-9900, Contingency portion of the General Fund appropriations budget be decreased in the amount of \$7,000 to provide for the City's required 20% matching funds for the Comprehensive Bicycle Plan Grant.

Section 2. That account number 10-00-4400-9201, Transfer to Grant Funds, Miscellaneous Non-Departmental portion of the General Fund appropriations budget be increased in the amount of \$7,000.

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

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

Adopted this the 8th day of August, 2011.

ATTEST:
s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

NORTH CAROLINA

LOCALLY ADMINISTERED PROJECT -
FEDERAL

BEAUFORT COUNTY

DATE: 7/6/2011

NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION

TIP #: M-0371

AND

WBS Elements: PE 37309.1.1

TOWN OF WASHINGTON

OTHER FUNDING:

FEDERAL-AID NUMBER: SPR-2003(4)

CFDA #: 20.205

Total Funds [NCDOT Participation] \$28,000

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Washington, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Section 1113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA – LU), establishes Bike/Pedestrian funds, which require that federal funds be available for certain specified transportation activities; and,

WHEREAS, in accordance with G.S. 133-66.2.1, the NC General Assembly requires each Municipality to develop a comprehensive plan that will serve present and anticipated travel demand; and

WHEREAS, the Department's Division of Bicycle and Pedestrian Transportation (DBPT) and the Transportation Planning Branch (TPB) have created a matching grant program to fund plan development to encourage the development of comprehensive municipal bicycle plans and pedestrian plans; and

WHEREAS, the Town of Washington has requested federal funding for Development of a Comprehensive Bicycle Plan, hereinafter referred to as the Project, in Beaufort County, North Carolina; and,

WHEREAS, subject to the availability of federal funds, the Municipality has been designated as a recipient to receive funds allocated to the Department by the Federal Highway Administration (FHWA) up to and not to exceed the maximum award amount of \$28,000 for the Project; and,

Agreement ID # 2508

WHEREAS, the Department has agreed to administer the disbursement of said funds on behalf of FHWA to the Municipality for the Project in accordance with the Project scope of work and in accordance with the provisions set out in this Agreement; and,

WHEREAS, the governing board of the Municipality has agreed to participate in certain costs and to assume certain responsibilities in the manner and to the extent as hereinafter set out; and,

WHEREAS, this Agreement is made under the authority granted to the Department by the North Carolina General Assembly including, but not limited to, the following applicable legislation: General Statutes of North Carolina (NCGS) Section 136-66.1, Section 136-71.6, Section 160A-296 and 297, Section 136-18, Section 136-41.3 and Section 20-169, to participate in the planning, construction and/or implementation of the Project approved by the Board of Transportation.

NOW, THEREFORE, this Agreement states the promises and undertakings of each party as herein provided, and the parties do hereby covenant and agree, each with the other, as follows:

1. GENERAL PROVISIONS

FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

All parties to this Agreement, including contractors, subcontractors, and subsequent workforces, associated with any work under the terms of this Agreement shall provide reports as required by the Federal Funding Accountability and Transparency Act (FFATA) for this Project.

AGREEMENT MODIFICATIONS

Any modification to this Agreement will be agreed upon in writing by all parties prior to being implemented.

Any increases to the funding amount will be agreed upon by all parties by means of a Supplemental Agreement.

SPONSOR TO PERFORM ALL WORK

The Municipality shall be responsible for administering all work performed and for certifying to the Department that all terms set forth in this Agreement are met and adhered to by the Municipality and/or its contractors and agents. The Department will provide technical oversight to guide the Municipality. The Department must approve any assignment or transfer of the responsibilities of the Municipality set forth in this Agreement to other parties or entities.

COMPLIANCE WITH STATE/FEDERAL POLICY

The Municipality, and/or its agent, including all contractors, subcontractors, or sub-recipients shall comply with all applicable Federal and State policies and procedures, stated both in this Agreement and in the Department's guidelines and procedures, including the *Local Programs Management Handbook and guidance provided by the Division of Bicycle and Pedestrian Transportation*.

FAILURE TO COMPLY - CONSEQUENCES

Failure on the part of the Municipality to comply with any of the provisions of this Agreement will be grounds for the Department to terminate participation in the costs of the Project and, if applicable, seek repayment of any reimbursed funds.

2. SCOPE OF PROJECT

The Project consists of the development and production of a Comprehensive Bicycle and Pedestrian Transportation Plan in accordance with Departmental Policies and Procedures.

The Department's funding participation in the Project shall be restricted to the following eligible items:

- Planning and Production of a Comprehensive Bicycle Plan for 2011.

as further set forth in this Agreement.

3. FUNDING

Subject to compliance by the Municipality with the provisions set forth in this Agreement and the availability of federal funds, the Department shall participate up to a maximum amount of Twenty Eight Thousand Dollars (\$28,000), as detailed below. The Municipality shall provide a local match, as detailed in the FUNDING TABLE below, and all costs that exceed the total estimated cost.

FUNDING TABLE

Fund Source	Federal Funds Amount	Reimbursement Rate	Non-Federal Match \$	Non-Federal Match Rate
Bike/Pedestrian	\$28,000	80 %	\$7,000	20 %
Total Estimated Cost			\$35,000	

4. TIME FRAME

The Municipality shall complete the Project by July 1, 2013.

The Municipality shall meet milestone dates as stated herein or the Department reserves the right to revoke the funds awarded if the Municipality is unable to meet milestone dates. The Department may extend the deadline for milestone activities if, in the opinion of the Department, circumstances warrant. Extensions of time granted will be documented in writing.

The Project must progress according to the milestone dates or the Department and/or FHWA reserves the right to de-obligate said funding.

5. AUTHORIZATION

Upon receipt of an executed agreement, the Department will authorize funds and shall notify the Municipality, in writing, once funds have been authorized and can be expended. The Municipality shall not initiate any work, nor solicit for any professional services prior to receipt of written authorization from the Department to proceed. Any work performed, or contracts executed, prior to receipt of written authorization to proceed will be ineligible for reimbursement.

6. PROFESSIONAL AND ENGINEERING SERVICES

The Municipality shall comply with the policies and procedures of this provision if the Municipality uses Professional Services or in-house staff to accomplish work.

PROCUREMENT POLICY

When procuring professional services, the Municipality must adhere to Title 49 Code of Federal Regulations Part 18.36; Title 23 of the Code of Federal Regulations, Part 172; Title 40 United States Code, Chapter 11, Section 1101-1104; NCGS 143-64, Parts 31 and 32; and the Department's *Policies and Procedures for Major Professional or Specialized Services Contracts*. Said policies and standards are incorporated in this Agreement by reference at www.fhwa.dot.gov/legisregs/legislat.html and www.ncleg.net/gascripts/Statutes/Statutes.asp.

- The Municipality shall ensure that a qualified firm is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner and at a just and reasonable cost.
- All Professional Services Firms shall be pre-qualified by the Department.

- If the proposed contract exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.

SMALL PROFESSIONAL AND ENGINEERING SERVICES FIRMS REQUIREMENTS

Any contract entered into with another party to perform work associated with the requirements of this Agreement shall contain appropriate provisions regarding the utilization of Small Professional Services Firms (SPSF). This policy conforms with the SPSF Guidelines as approved by the North Carolina Board of Transportation. These provisions are incorporated into this Agreement by reference www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

- The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.
- If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

WORK BY ENTITY

If the Professional and Engineering Services required for this project will be undertaken by the Municipality, and the Municipality requests reimbursement, then the Municipality must submit a request and supporting documentation to the Department for review and approval, prior to any work being initiated by the Municipality.

7. COMPREHENSIVE PLAN

CONTENT OF PLAN PACKAGE

The Municipality, and/or its agent, shall prepare the Comprehensive Plan, developed in accordance with the Department's Template for Bicycle and Pedestrian Plans. The Comprehensive Plan will address (but not be limited to) the following:

- A) Introduction / Executive Summary
- B) Evaluating Current Conditions
- C) Existing Plans, Programs, and Policies
- D) Develop Bicycle or Pedestrian System Plan

- E) Facility Standards and Guidelines
- F) Ancillary Facilities and Programs
- G) Project Development
- H) Maps and Illustrations
- I) Recommendations
- J) Implementing the Plan

SUBMITTAL REQUIREMENTS

The Municipality shall submit two copies of the final draft of the Comprehensive Plan to the Department for review and approval. The DBPT and the TPB shall review and approve said final draft and any necessary revisions within six months.

8. COMPLETION

The Department shall accept completion of the Project under the following conditions;

- A. The City/Town Council of the Municipality shall consider the adoption of the Comprehensive Plan, as approved by the Department. If the Council requests significant changes prior to adoption, the Municipality must resubmit the Council-approved Comprehensive Plan to the Department for re-approval.
- B. The Municipality shall submit digital files and five (5) hard copies of the approved Comprehensive Plan, in a format compatible with Department and Municipal requirements. The Municipality shall be responsible for the distribution of the final documents to the appropriate local agencies and interested parties.

9. PROJECT DOCUMENTS

All documents, including digital files, will become the property of the Municipality and the Department. Any and all original graphics, technical drawings, photographs, maps, GIS files, and promotional items produced for the plan or for any public meetings shall be available for use by the Department in other publications, on the DBPT website and for display purposes. The Department shall be credited for its participation in all documents, publicity, announcements and materials prepared by the municipality for public meetings.

10. REIMBURSEMENT

SCOPE OF REIMBURSEMENT

Activities eligible for funding reimbursement for this Project shall include:

Planning and Production of a Comprehensive Bicycle Plan for 2011

REIMBURSEMENT GUIDANCE

The Municipality shall adhere to applicable administrative requirements of Title 49 Code of Federal Regulations, Part 18 (www.fhwa.dot.gov/legregs/directives/fapgtoc.htm) and Office of Management and Budget (OMB) Circulars A-102 (www.whitehouse.gov/omb/circulars/index.html) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Reimbursement to the Municipality shall be subject to the policies and procedures contained in Title 23 Code of Federal Regulations, Part 140 and Part 172, which is being incorporated into this Agreement by reference at www.fhwa.dot.gov/legregs/directives/fapgtoc.htm and by Office of Management and Budget (OMB) Circular A-87 (www.whitehouse.gov/omb/circulars/index.html) "Cost Principles for State, Local, and Indian Tribal Governments." Reimbursement to the Municipality shall be subject to the guidance contained in Title 2 Code of Federal Regulations, Part 170 (<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>) and Office of Management and Budget (OMB) "Federal Funding Accountability and Transparency Act" (FFATA). Said reimbursement shall also be subject to the Department being reimbursed by the Federal Highway Administration and subject to compliance by the Municipality with all applicable federal policy and procedures.

REIMBURSEMENT LIMITS

▪ WORK PERFORMED BEFORE NOTIFICATION

Any costs incurred by the Municipality prior to written notification by the Department to proceed with the work shall not be eligible for reimbursement.

▪ NO REIMBURSEMENT IN EXCESS OF APPROVED FUNDING

At no time shall the Department reimburse the Municipality costs that exceed the total federal funding.

- **UNSUBSTANTIATED COSTS**

The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs or any costs that have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division.

- **WORK PERFORMED BY NCDOT**

All work performed by the Department on this Project, including, but not limited to, reviews, inspections, and Project oversight, shall reduce the maximum award amount of \$28,000 available to the Municipality under this Agreement. If the cost of work done by the Department exceeds the funding award, the Department will bill the Municipality for the excess costs.

BILLING THE DEPARTMENT

- **PROCEDURE**

The Municipality may bill the Department for eligible Project costs in accordance with the Department's guidelines and procedures. Proper supporting documentation shall accompany each invoice as may be required by the Department. By submittal of each invoice, the Municipality certifies that it has adhered to all applicable state and federal laws and regulations as set forth in this Agreement.

Along with each invoice, the Municipality is responsible for submitting the FFATA Subrecipient Information Form, which is available at <http://www.ncdot.gov/programs/Enhancement/ProjectAdministration/Forms/>.

- **INTERNAL APPROVALS**

Reimbursement to the Municipality shall be made upon approval of the invoice by the Department's Financial Management Division.

- **TIMELY SUBMITTAL OF INVOICES**

The Municipality may invoice the Department monthly for work accomplished, but no less than once every six (6) months to keep the Project funds active and available. If the Municipality is unable to invoice the Department, then they must provide an explanation. Failure to submit invoices or explanation may result in de-obligation of funds.

▪ **FINAL INVOICE**

All invoices associated with the Project must be submitted within six (6) months of the completion of construction and acceptance of the Project to be eligible for reimbursement by the Department. Any invoices submitted after this time will not be eligible for reimbursement.

11. REPORTING REQUIREMENTS AND RECORDS RETENTION

PROJECT EVALUATION REPORTS

The Municipality is responsible for submitting quarterly Project evaluation reports, in accordance with the Department's guidelines and procedures that detail the progress achieved to date for the Project.

PROJECT RECORDS

The Municipality and its agents shall maintain all books, documents, papers, accounting records, Project records and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its agent to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration, for inspection and audit by the Department's Financial Management Section, the Federal Highway Administration, or any authorized representatives of the Federal Government.

12. OTHER PROVISIONS

REFERENCES

It will be the responsibility of the Municipality to follow the current and/or most recent edition of references, websites, specifications, standards, guidelines, recommendations, regulations and/or general statutes, as stated in this Agreement.

INDEMNIFICATION OF DEPARTMENT

The Municipality agrees to indemnify and hold harmless the Department, FHWA and the State of North Carolina, to the extent allowed by law, for any and all claim for payment, damages and/or

liabilities of any nature, asserted against the Department in connection with this Project. The Department shall not be responsible for any damages or claims, which may be initiated by third parties.

DEBARMENT POLICY

It is the policy of the Department not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the Municipality certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

TITLE VI - CIVIL RIGHTS ACT OF 1964

The Municipality shall comply with Title VI of the Civil Rights Act of 1964, (Title 49 CFR, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

OTHER AGREEMENTS

The Municipality is solely responsible for all agreements, contracts, and work orders entered into or issued by the Municipality for this Project. The Department is not responsible for any expenses or obligations incurred for the Project except those specifically eligible for Bike/Pedestrian funds and obligations as approved by the Department under the terms of this Agreement.

AVAILABILITY OF FUNDS

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IMPROPER USE OF FUNDS, EXCESS USE OF FUNDS

Where either the Department or the FHWA determines that the funds paid to the Municipality for this Project are not used in accordance with the terms of this Agreement, or if the cost of work done by the Department exceed the funding award, the Department will bill the Municipality.

TERMINATION OF PROJECT

If the Municipality decides to terminate the Project without the concurrence of the Department, the Municipality shall reimburse the Department one hundred percent (100%) of all costs expended by the Department and associated with the Project.

AUDITS

In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an annual independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the annual independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.

REIMBURSEMENT BY MUNICIPALITY

For all monies due the Department as referenced in this Agreement, reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with NCGS 147-86.23.

USE OF POWELL BILL FUNDS

If the other party to this agreement is a Municipality and fails for any reason to reimburse the Department in accordance with the provisions for payment hereinabove provided, NCGS 136-41.3 authorizes the Department to withhold so much of the Municipality's share of funds allocated to Municipality by NCGS 136-41.1, until such time as the Department has received payment in full.

GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor).

13. SUNSET PROVISION

All terms and conditions of this Agreement are dependent upon, and subject to, the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

IT IS UNDERSTOOD AND AGREED that the approval of the Project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ATTEST: TOWN OF WASHINGTON
BY: Cynthia S. Bennett BY: [Signature]
TITLE: City Clerk TITLE: Mayor
DATE: 8-8-2011

NCGS 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

Approved by City Council of the City Town of Washington as attested to by the signature of Cynthia S. Bennett Clerk of the City of Washington on August 8, 2011 (Date)

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



[Signature]
(FINANCE OFFICER)

Federal Tax Identification Number
56 6001364

Town of Washington

Remittance Address:
PO Box 1988/1029 2nd St.
Washington, NC 27889

DEPARTMENT OF TRANSPORTATION

BY: _____
(STATE HIGHWAY ADMINISTRATOR)

DATE: _____

APPROVED BY BOARD OF TRANSPORTATION ITEM O: _____ (Date)

APPROVE AND SUPPORT – APPLICATION BY WASHINGTON FIRE DEPARTMENT FOR THE 2011 FEMA ASSISTANCE TO FIREFIGHTERS GRANT

Chief Rose explained they received the notification today that the grant will open up on August 15, 2011 and run through September 9, 2011. Chief Rose stated this grant will allow them to replace two vehicles with this single apparatus. The grant request amount would be \$600,000, and if awarded would provide 95% Federal funding - \$570,000, and our match of 5% - \$30,000.

By motion of Mayor Pro tem Roberson, seconded by Councilman Davis, Council unanimously approved and supported an application by Washington Fire Department for the 2011 FEMA Assistance to Firefighters Grant.

Mayor Pro tem Roberson and Councilman Mercer commended Chief Rose on providing this information.

ADOPT – DECLARATION OF OFFICIAL INTENT TO REIMBURSE

Chief Financial Official, Matt Rauschenbach explained that this declaration will allow Council to reimburse itself for commitments made prior to the financing being conducted.

Chief Rose addressed the EMS truck, power stretcher and Mr. Hardt addressed the engineering for the White Post transformer project.

Mayor Pro tem Roberson asked when the White Post transformer project would be completed. Mr. Hardt advised it would be completed this fiscal year.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council unanimously adopted a Declaration of Official Intent to Reimburse for Fiscal Year 2011/2012 installment purchase expenditures incurred prior to the issuance of debt.

DECLARATION OF OFFICIAL INTENT TO REIMBURSE

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

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

1. **Expenditures to be Incurred.** The issuer anticipates incurring expenditures (the "Expenditures") for budgeted installment purchases (the "Projects").
2. **Plan of Finance.** The issuer intends to finance the costs of the Projects with the proceeds of debt to be issued by the Issuer (the "Borrowing"), the interest on which is to be excluded from gross income for Federal income tax purposes.
3. **Maximum Principal Amount of Debt to be Issued.** The maximum principal amount of the Borrowing to be incurred by the Issuer to finance the Projects is \$862,000.
4. **Declaration of Official Intent to Reimburse.** The Issuer hereby declares its official intent to reimburse itself with the proceeds of the Borrowing for any of the Expenditures incurred by it prior to the issuance of the Borrowing.

Adopted this the 8th day of August, 2011

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/N. Archie Jennings, III
Mayor

APPROVE – PURCHASE OF EMS TRUCK & POWER STRETCHER

Chief Rose explained this action item. Installment purchases are budgeted for financing in April 2012. Delay in purchase of the EMS truck until the spring of 2012 will result in an estimated price increase of \$5,000 and will also delay replacement until July of 2012 creating maintenance cost issues related to replacement justification of the vehicle. The Power Stretcher has been bundle in with the purchase of the EMS truck.

Councilman Mercer commended Chief Rose once again and requested staff to start looking at the list to see if there is something on the list that can be purchased now instead of delaying until May or June. Mayor Pro tem Roberson stated he felt certain the City Manager will take care of this request.

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council unanimously approved the early purchase of an EMS truck and Power Stretcher; **and** approved a purchase order in the amount of \$131,413.75 to Select Custom Apparatus for the EMS truck.

ACCEPT – OPERATIONAL AGREEMENTS WITH THE BEAUFORT COUNTY BOARD OF EDUCATION TO PROVIDE SCHOOL RESOURCE OFFICERS (SRO) FOR WASHINGTON HIGH SCHOOL AND P.S. JONES MIDDLE SCHOOL FOR THE SCHOOL YEAR 2011-2012

Councilman Mercer stated he requested to have this item moved from the consent agenda to discuss the amount of the contract. The contract is in the amount of \$37,838 and he recognized that this is the amount the State gives the Board of Education for each resource officer; regrettably that \$37,838 is not paying for the individual they are acquiring. The resource officer on the salary list is making \$44,000 a year. This means we will get a \$37,838 grant to pay a \$44,000 year salary; therefore, we are coming out with a deficit of \$6,000 just on the salary alone. Also, the City provides a vehicle for the individual to drive to and from the school, uniforms, weapon, radio and any other equipment. This individual is costing the City approximately \$55,000-\$60,000 a year. Councilman Mercer voiced it is time to put the Board of Education on notice that we will need to negotiate the funding. Mayor Jennings felt this was a good point and one note that had been uncovered in this discussion in the past is that the contract is for a school year allocation and the City has the officer for the whole year.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Councilman unanimously agreed to fund a School Resource Officer (SRO) for Washington High School and P.S. Jones Middle School in the amount \$37,838 for each position and that the notice of acceptance of this funding also include a reference to the fact that in the future years the City will want to negotiate this value (notify a requirement to renegotiate in the future).

North Carolina
Beaufort County

P.S. Jones Middle School

School

2011 - 2012

Year

OPERATIONAL AGREEMENT

This OPERATIONAL AGREEMENT made and entered into for fiscal year July 1, 2011 through June 30, 2012, when it shall terminate, by and between the BEAUFORT COUNTY BOARD OF EDUCATION, hereinafter referred to as "BOARD", and the CITY OF WASHINGTON, a municipal corporation of the State of North Carolina, hereinafter referred to as "LAW ENFORCEMENT AGENCY".

WITNESSETH:

WHEREAS, the BOARD is concerned about the increasing violence in the community and desires to secure a law enforcement officer for assignment to P.S. Jones Middle School as a designated Resource Officer; and

WHEREAS, it is anticipated that a Resource Officer will be an armed law enforcement officer selected by the LAW ENFORCEMENT AGENCY, through its designated personnel; and

WHEREAS, it is anticipated that any selected Resource Officer will perform his or her duties under the direct supervision of the head of such LAW ENFORCEMENT AGENCY, and with day to day supervision by the Principal of the high school to which the Resource Officer is assigned; and

WHEREAS, the BOARD and LAW ENFORCEMENT AGENCY desire to set forth in writing their agreements with respect to the hiring, training, and supervision of each such Resource Officer.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and covenants set forth herein, BOARD and LAW ENFORCEMENT AGENCY do hereby agree each with the other as follows:

1.0 Administration and Control

- 1.1 The Resource Officer is and shall be an employee of the LAW ENFORCEMENT AGENCY and shall be subject to the administration, supervision, and control of the LAW ENFORCEMENT AGENCY, except to the extent such administration, supervision and control is expressly delegated under the terms and conditions of the Agreement.
- 1.2 The LAW ENFORCEMENT AGENCY shall take the lead in the hiring process with the Principal or his designee serving as a member of the interview team.
- 1.3 A Resource Officer shall be a certified officer.

- 1.4 While working as a Resource Officer with the Beaufort County Schools System, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the Resource Officer normally possesses. While on duty at a school location, the Resource Officer shall respond to the day-to-day supervision by the Principal, but shall remain subject to the lawful operational commands of his superior officers in the LAW ENFORCEMENT AGENCY. Resource Officer shall, for personnel and administrative purposes, remain under control of the LAW ENFORCEMENT AGENCY, including for purposes of pay, benefits, insurance, worker's compensation, liability coverage and all other normal administrative coverages provided by the LAW ENFORCEMENT AGENCY.
 - 1.5 LAW ENFORCEMENT AGENCY shall not utilize a Resource Officer during the designated workday for duties other than that set forth herein, except in rare and serious emergencies.
 - 1.6 Throughout the term of this Operational Agreement, BOARD shall pay the LAW ENFORCEMENT AGENCY in quarterly payments in the amount of \$9,459.50 (includes salary, benefits, and uniforms) due and payable on the first day of the month, in the second month of each quarter, for the Resource Officer assigned to work in the Beaufort County Schools.
- 2.0 **Basic Qualifications of Resource Officer.** To be a Resource Officer, an officer must first meet all the following basic qualifications:
- 2.1 Should have three (3) years of law enforcement experience;
 - 2.2 Prefer experience in working with youth;
 - 2.3 Shall possess a sufficient knowledge of the applicable Federal and State Laws, including the Juvenile Code of North Carolina, County Ordinances, and Board of Education Policies and Administrative Regulations;
 - 2.4 Shall be capable of conducting in-depth criminal investigations;
 - 2.5 Shall possess even temperament and set a good example for school students; and
 - 2.6 Shall possess communication skills, which would enable the officer to function effectively within the school environment.
- 3.0 **Duties of Resource Officer**
- 3.1 To provide law enforcement services to the School System at assigned school locations in accordance with the terms of this Agreement;
 - 3.2 To counsel school students in special situations, such as when a student is suspected of engaging in criminal misconduct, when requested by the Principal or the Principal's designee or by the parents of that student;
 - 3.3 To answer questions that students may have about North Carolina criminal or juvenile law, and to make classroom presentations at the request of teachers as his or her schedule permits, but not to give legal advice;
 - 3.4 To assist other law enforcement officers with outside investigations concerning students attending the school to which Resource Officer is assigned;

- 3.5 To work (10 months) on the school calendar schedule of the Beaufort County Schools as duly adopted each year;
- 3.6 To maintain minimum in-service training and certification requirements as are normally applied to all other certified officers, whenever possible during the summer months when regular school is not in session; and
- 3.7 To coordinate traffic and security at all athletic events and social functions on school premises for the school to which the Resource Officer is assigned.
- 3.8 Resource Officer has the right and obligation to decline to participate in an activity/event that would violate LAW ENFORCEMENT AGENCY or state procedures.

4.0 Chain of Command

- 4.1 Resource Officers who are employees of the LAW ENFORCEMENT AGENCY shall follow the chain of command as set forth in the LAW ENFORCEMENT AGENCY Standard Operating Procedures Manual.

5.0 Duty Hours

- 5.1 Resource Officer hours shall be set by the BOARD at the direction of the head of the LAW ENFORCEMENT AGENCY and the Principal or the Principal's designee of the school to which the officer is assigned. The maximum number of hours that a Resource Officer shall work in any four (4) week period shall be 171 hours.
- 5.2 Unless modified by the head of the LAW ENFORCEMENT AGENCY or the Principal or Principal's designee, Resource Officer shall be on duty at the assigned school with a schedule worked out jointly with Resource Officer and Principal of the school throughout the year (10 months), or for a minimum of seven and one-half (7 1/2) hours per day on average, or a minimum of forty (40) hours each week on average, in the event the opening or closing of school is delayed or the school schedule is modified. Provided, however, Resource Officer shall also be at school during lunch hours and through the school bus boarding period, but Resource Officer shall be allowed thirty (30) minutes of lunch each day. The remainder of the Officer's workweek shall be assigned to provide afternoon and/or evening security at school events and/or to pursue criminal investigations of school related crimes.

6.0 Training /Briefing

- 6.1 Resource Officer shall attend training and briefing sessions as required by the LAW ENFORCEMENT AGENCY. Coordination of meetings between school personnel, the Resource Officer and Commanding Officers in the LAW ENFORCEMENT AGENCY may be scheduled as required or needed for the exchange of information and coordination of efforts.
- 6.2 Resource Officer shall be required to maintain minimum in-service training and certification requirements as would normally apply to all other certified officers in the LAW ENFORCEMENT AGENCY. The BOARD may provide training in Board of Education policies, regulations and procedures.

7.0 Uniforms, Equipment and Weapons

- 7.1 Resource Officer shall be required to wear LAW ENFORCEMENT AGENCY issued uniforms, and to use LAW ENFORCEMENT AGENCY equipment and weapons, which shall be the responsibility of the LAW ENFORCEMENT AGENCY to provide.
- 7.2 BOARD shall provide Resource Officer with the following:
- a. Access to an air-conditioned and properly lighted office, which shall contain a telephone, which may be used for general business purposes;
 - b. A location for files and records, which can be properly locked and secured;
 - c. A desk with drawers, a chair, worktable, a filing cabinet and office supplies;
 - d. Reasonable access to a typewriter and/or secretarial assistance; and
 - e. A radio or walkie-talkie (school based) or pager for the Resource Officer as to avoid using the radio frequency of the LAW ENFORCEMENT AGENCY.

8.0 Transporting Students

- 8.1 Resource Officer shall not transport students in their vehicle except when the students are victims of a crime, under arrest, or when other emergency circumstances exist, except that Resource Officer shall transport students being sent home from school pursuant to school disciplinary actions if the student's parent or guardian has refused or is unable to pick up the child within a reasonable time period and the student is disruptive/disorderly and his/her continued presence on campus is a threat to the safety of other students and school personnel.
- 8.2 Resource Officer shall not transport students in their personal vehicles. If the Resource Officer does not have a LAW ENFORCEMENT AGENCY or BOARD vehicle, then a patrol unit shall be dispatched by the LAW ENFORCEMENT AGENCY to assist the officer.
- 8.3 Resource Officer shall notify the school Principal or the Principal's designee before removing a student from campus.

9.0 **Interview and Arrest Procedure.** Resource Officer shall adhere to the procedures set forth in Chapter 7A of the General Statutes of the State of North Carolina when dealing with juveniles.

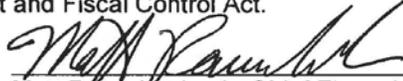
10.0 **Cooperative Understanding.** The attached Cooperative Understanding between the BOARD and LAW ENFORCEMENT AGENCY is attached hereto and incorporated herein by reference.

11.0 **Evaluation.** It is mutually agreed that the Principal/Resource Officer's supervisor shall evaluate annually the Resource Officer Program and the performance of each Resource Officer on forms developed jointly by the parties. It is further understood that the evaluation of each officer is advisory only and that the LAW ENFORCEMENT AGENCY retains the final authority to evaluate.

IN WITNESS WHEREOF, the BOARD has caused this Operational Agreement to be signed by its Superintendent/Secretary and the LAW ENFORCEMENT AGENCY has caused this Operational Agreement to be signed by its Police Chief, by order or other proper authority of the respective governing board duly given as of the day and year first written above.

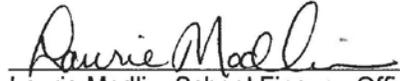
PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited pursuant to N.C.G.S. § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.


Matt Rauschenbach, Chief Financial Officer
City of Washington

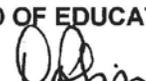
PRE-AUDIT CERTIFICATE

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


Laurie Modlin, School Finance Officer
Beaufort County Board of Education



By:  (SEAL)
G. Mitchell Reed, Police Chief

BEAUFORT COUNTY
BOARD OF EDUCATION
By:  (SEAL)
Don Phipps, Superintendent/Secretary

8-9-11
Date

7-22-11
Date

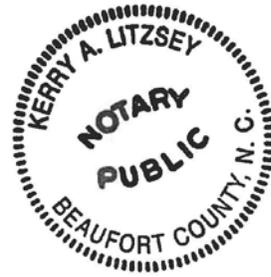
**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that Don Phipps personally appeared before me this day, and being duly sworn by me, acknowledged that he is Superintendent/Secretary of the Beaufort County Board of Education, and that by authority duly given and as the act of the Board the foregoing instrument was signed by him.

Witness my hand and notary seal this 22 day of July 2011.

Kerry A. Litzsey
Notary Public

My Commission expires: 9-17-2014



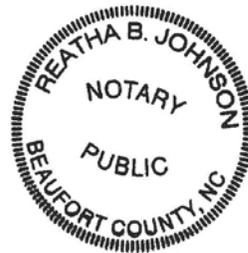
**NORTH CAROLINA
BEAUFORT COUNTY**

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

Witness my hand and notary seal this 9 day of August 2011.

Reatha B. Johnson
Notary Public

My Commission expires: 12/14/2014



**Cooperative Understanding
(Resource Officer)**

General Statement of Duties

Within the lawful jurisdiction of the Washington City Police Department, a sworn Washington City Police Officer must at all times take appropriate action to: protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce all state, local and federal laws in matters over which the Washington City Police Department has jurisdiction.

Distinguishing Features of the Class

An employee in this class performs a variety of law enforcement duties for the school system. Work is derived from the requirement to protect life and property, to conduct initial investigations of crimes committed at the schools, to patrol in an official vehicle to deter crimes, and to apprehend violators or suspects. Duties may include serving criminal court papers such as warrants and subpoenas; testifying in court; and filing necessary papers with the judicial system. The employee is subject to the usual hazards of law enforcement. Considerable tact, firmness and courtesy are required in serving the public. The employee is expected to exercise alertness and independent judgment in dealing with unusual situations. Work is performed in accordance with established policies and procedures and is supervised by the head of the supervising LAW ENFORCEMENT AGENCY through conference, review of records and reports, and effectiveness of assigned duties.

Illustrative examples of work

- Patrols the school sites to detect and deter crime
- Responds to school personnel calls for law enforcement assistance
- Conducts preliminary investigation of crimes and complaints
- Makes arrests and transports violators
- Testifies in court concerning enforcement and investigative activities
- Maintains records of patrol and investigative activities
- Participates in surveillance and stake-out duties; assists as permitted by law with searches
- Cooperates with other law enforcement officers of other governmental units in conducting investigations and making arrests
- Answers and checks on alarms and security systems
- Performs related duties as required

Knowledge, Skills and Abilities

- Working knowledge of the operations, functions, procedures and legal processes of law enforcement
- Working knowledge of federal, state and county laws relative to civil and criminal processes and Juvenile Code of North Carolina
- Working knowledge of the operation of two-way radio equipment and related FCC regulations
- Working knowledge of the geographical layout of the school sites as to locations of roads, important buildings and other landmarks
- Skill in the use of firearms and other law enforcement equipment
- Ability to exercise sound judgment in emergency and routing situations and to adopt quick, effective and reasonable courses of action

North Carolina
Beaufort County

Washington High

School

2011 - 2012

Year

OPERATIONAL AGREEMENT

This OPERATIONAL AGREEMENT made and entered into for fiscal year July 1, 2011 through June 30, 2012, when it shall terminate, by and between the BEAUFORT COUNTY BOARD OF EDUCATION, hereinafter referred to as "BOARD", and the CITY OF WASHINGTON, a municipal corporation of the State of North Carolina, hereinafter referred to as "LAW ENFORCEMENT AGENCY".

WITNESSETH:

WHEREAS, the BOARD is concerned about the increasing violence in the community and desires to secure a law enforcement officer for assignment to Washington High School as a designated Resource Officer; and

WHEREAS, it is anticipated that a Resource Officer will be an armed law enforcement officer selected by the LAW ENFORCEMENT AGENCY, through its designated personnel; and

WHEREAS, it is anticipated that any selected Resource Officer will perform his or her duties under the direct supervision of the head of such LAW ENFORCEMENT AGENCY, and with day to day supervision by the Principal of the high school to which the Resource Officer is assigned; and

WHEREAS, the BOARD and LAW ENFORCEMENT AGENCY desire to set forth in writing their agreements with respect to the hiring, training, and supervision of each such Resource Officer.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and covenants set forth herein, BOARD and LAW ENFORCEMENT AGENCY do hereby agree each with the other as follows:

1.0 Administration and Control

- 1.1 The Resource Officer is and shall be an employee of the LAW ENFORCEMENT AGENCY and shall be subject to the administration, supervision, and control of the LAW ENFORCEMENT AGENCY, except to the extent such administration, supervision and control is expressly delegated under the terms and conditions of the Agreement.
- 1.2 The LAW ENFORCEMENT AGENCY shall take the lead in the hiring process with the Principal or his designee serving as a member of the interview team.
- 1.3 A Resource Officer shall be a certified officer.

- 1.4 While working as a Resource Officer with the Beaufort County Schools System, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the Resource Officer normally possesses. While on duty at a school location, the Resource Officer shall respond to the day-to-day supervision by the Principal, but shall remain subject to the lawful operational commands of his superior officers in the LAW ENFORCEMENT AGENCY. Resource Officer shall, for personnel and administrative purposes, remain under control of the LAW ENFORCEMENT AGENCY, including for purposes of pay, benefits, insurance, worker's compensation, liability coverage and all other normal administrative coverages provided by the LAW ENFORCEMENT AGENCY.
 - 1.5 LAW ENFORCEMENT AGENCY shall not utilize a Resource Officer during the designated workday for duties other than that set forth herein, except in rare and serious emergencies.
 - 1.6 Throughout the term of this Operational Agreement, BOARD shall pay the LAW ENFORCEMENT AGENCY in quarterly payments in the amount of \$9,459.50 (includes salary, benefits, and uniforms) due and payable on the first day of the month, in the second month of each quarter, for the Resource Officer assigned to work in the Beaufort County Schools.
- 2.0 **Basic Qualifications of Resource Officer.** To be a Resource Officer, an officer must first meet all the following basic qualifications:
- 2.1 Should have three (3) years of law enforcement experience;
 - 2.2 Prefer experience in working with youth;
 - 2.3 Shall possess a sufficient knowledge of the applicable Federal and State Laws, including the Juvenile Code of North Carolina, County Ordinances, and Board of Education Policies and Administrative Regulations;
 - 2.4 Shall be capable of conducting in-depth criminal investigations;
 - 2.5 Shall possess even temperament and set a good example for school students; and
 - 2.6 Shall possess communication skills, which would enable the officer to function effectively within the school environment.
- 3.0 **Duties of Resource Officer**
- 3.1 To provide law enforcement services to the School System at assigned school locations in accordance with the terms of this Agreement;
 - 3.2 To counsel school students in special situations, such as when a student is suspected of engaging in criminal misconduct, when requested by the Principal or the Principal's designee or by the parents of that student;
 - 3.3 To answer questions that students may have about North Carolina criminal or juvenile law, and to make classroom presentations at the request of teachers as his or her schedule permits, but not to give legal advice;
 - 3.4 To assist other law enforcement officers with outside investigations concerning students attending the school to which Resource Officer is assigned;

- 3.5 To work (10 months) on the school calendar schedule of the Beaufort County Schools as duly adopted each year;
- 3.6 To maintain minimum in-service training and certification requirements as are normally applied to all other certified officers, whenever possible during the summer months when regular school is not in session; and
- 3.7 To coordinate traffic and security at all athletic events and social functions on school premises for the school to which the Resource Officer is assigned.
- 3.8 Resource Officer has the right and obligation to decline to participate in an activity/event that would violate LAW ENFORCEMENT AGENCY or state procedures.

4.0 Chain of Command

- 4.1 Resource Officers who are employees of the LAW ENFORCEMENT AGENCY shall follow the chain of command as set forth in the LAW ENFORCEMENT AGENCY Standard Operating Procedures Manual.

5.0 Duty Hours

- 5.1 Resource Officer hours shall be set by the BOARD at the direction of the head of the LAW ENFORCEMENT AGENCY and the Principal or the Principal's designee of the school to which the officer is assigned. The maximum number of hours that a Resource Officer shall work in any four (4) week period shall be 171 hours.
- 5.2 Unless modified by the head of the LAW ENFORCEMENT AGENCY or the Principal or Principal's designee, Resource Officer shall be on duty at the assigned school with a schedule worked out jointly with Resource Officer and Principal of the school throughout the year (10 months), or for a minimum of seven and one-half (7 1/2) hours per day on average, or a minimum of forty (40) hours each week on average, in the event the opening or closing of school is delayed or the school schedule is modified. Provided, however, Resource Officer shall also be at school during lunch hours and through the school bus boarding period, but Resource Officer shall be allowed thirty (30) minutes of lunch each day. The remainder of the Officer's workweek shall be assigned to provide afternoon and/or evening security at school events and/or to pursue criminal investigations of school related crimes.

6.0 Training /Briefing

- 6.1 Resource Officer shall attend training and briefing sessions as required by the LAW ENFORCEMENT AGENCY. Coordination of meetings between school personnel, the Resource Officer and Commanding Officers in the LAW ENFORCEMENT AGENCY may be scheduled as required or needed for the exchange of information and coordination of efforts.
- 6.2 Resource Officer shall be required to maintain minimum in-service training and certification requirements as would normally apply to all other certified officers in the LAW ENFORCEMENT AGENCY. The BOARD may provide training in Board of Education policies, regulations and procedures.

7.0 Uniforms, Equipment and Weapons

- 7.1 Resource Officer shall be required to wear LAW ENFORCEMENT AGENCY issued uniforms, and to use LAW ENFORCEMENT AGENCY equipment and weapons, which shall be the responsibility of the LAW ENFORCEMENT AGENCY to provide.
- 7.2 BOARD shall provide Resource Officer with the following:
- a. Access to an air-conditioned and properly lighted office, which shall contain a telephone, which may be used for general business purposes;
 - b. A location for files and records, which can be properly locked and secured;
 - c. A desk with drawers, a chair, worktable, a filing cabinet and office supplies;
 - d. Reasonable access to a typewriter and/or secretarial assistance; and
 - e. A radio or walkie-talkie (school based) or pager for the Resource Officer as to avoid using the radio frequency of the LAW ENFORCEMENT AGENCY.

8.0 Transporting Students

- 8.1 Resource Officer shall not transport students in their vehicle except when the students are victims of a crime, under arrest, or when other emergency circumstances exist, except that Resource Officer shall transport students being sent home from school pursuant to school disciplinary actions if the student's parent or guardian has refused or is unable to pick up the child within a reasonable time period and the student is disruptive/disorderly and his/her continued presence on campus is a threat to the safety of other students and school personnel.
- 8.2 Resource Officer shall not transport students in their personal vehicles. If the Resource Officer does not have a LAW ENFORCEMENT AGENCY or BOARD vehicle, then a patrol unit shall be dispatched by the LAW ENFORCEMENT AGENCY to assist the officer.
- 8.3 Resource Officer shall notify the school Principal or the Principal's designee before removing a student from campus.

9.0 Interview and Arrest Procedure. Resource Officer shall adhere to the procedures set forth in Chapter 7A of the General Statutes of the State of North Carolina when dealing with juveniles.

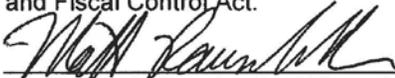
10.0 Cooperative Understanding. The attached Cooperative Understanding between the BOARD and LAW ENFORCEMENT AGENCY is attached hereto and incorporated herein by reference.

11.0 Evaluation. It is mutually agreed that the Principal/Resource Officer's supervisor shall evaluate annually the Resource Officer Program and the performance of each Resource Officer on forms developed jointly by the parties. It is further understood that the evaluation of each officer is advisory only and that the LAW ENFORCEMENT AGENCY retains the final authority to evaluate.

IN WITNESS WHEREOF, the BOARD has caused this Operational Agreement to be signed by its Superintendent/Secretary and the LAW ENFORCEMENT AGENCY has caused this Operational Agreement to be signed by its Police Chief, by order or other proper authority of the respective governing board duly given as of the day and year first written above.

PRE-AUDIT CERTIFICATE

This Agreement has been pre-audited pursuant to N.C.G.S. § 159-28 in the manner required by the Local Government Budget and Fiscal Control Act.



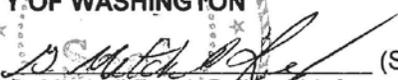
Matt Rauschenbach, Chief Financial Officer
City of Washington

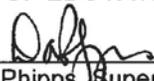
PRE-AUDIT CERTIFICATE

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



Laurie Modlin, School Finance Officer
Beaufort County Board of Education


By:  (SEAL)
G. Mitchell Reed, Police Chief

**BEAUFORT COUNTY
BOARD OF EDUCATION**
By:  (SEAL)
Don Phipps, Superintendent/Secretary

8-9-11
Date

7-22-11
Date

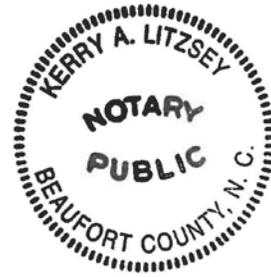
**NORTH CAROLINA
BEAUFORT COUNTY**

The undersigned, a Notary Public of the County and State aforesaid, hereby certifies that Don Phipps personally appeared before me this day, and being duly sworn by me, acknowledged that he is Superintendent/Secretary of the Beaufort County Board of Education, and that by authority duly given and as the act of the Board the foregoing instrument was signed by him.

Witness my hand and notary seal this 22 day of July 2011.

Kerry A. Litzsey
Notary Public

My Commission expires: 9-17-2014



**NORTH CAROLINA
BEAUFORT COUNTY**

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

Witness my hand and notary seal this 9 day of August 2011.

Reatha B. Johnson
Notary Public

My Commission expires: 12/14/2014



**Cooperative Understanding
(Resource Officer)**

General Statement of Duties

Within the lawful jurisdiction of the Washington City Police Department, a sworn Washington City Police Officer must at all times take appropriate action to: protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce all state, local and federal laws in matters over which the Washington City Police Department has jurisdiction.

Distinguishing Features of the Class

An employee in this class performs a variety of law enforcement duties for the school system. Work is derived from the requirement to protect life and property, to conduct initial investigations of crimes committed at the schools, to patrol in an official vehicle to deter crimes, and to apprehend violators or suspects. Duties may include serving criminal court papers such as warrants and subpoenas; testifying in court; and filing necessary papers with the judicial system. The employee is subject to the usual hazards of law enforcement. Considerable tact, firmness and courtesy are required in serving the public. The employee is expected to exercise alertness and independent judgment in dealing with unusual situations. Work is performed in accordance with established policies and procedures and is supervised by the head of the supervising LAW ENFORCEMENT AGENCY through conference, review of records and reports, and effectiveness of assigned duties.

Illustrative examples of work

- Patrols the school sites to detect and deter crime
- Responds to school personnel calls for law enforcement assistance
- Conducts preliminary investigation of crimes and complaints
- Makes arrests and transports violators
- Testifies in court concerning enforcement and investigative activities
- Maintains records of patrol and investigative activities
- Participates in surveillance and stake-out duties; assists as permitted by law with searches
- Cooperates with other law enforcement officers of other governmental units in conducting investigations and making arrests
- Answers and checks on alarms and security systems
- Performs related duties as required

Knowledge, Skills and Abilities

- Working knowledge of the operations, functions, procedures and legal processes of law enforcement
- Working knowledge of federal, state and county laws relative to civil and criminal processes and Juvenile Code of North Carolina
- Working knowledge of the operation of two-way radio equipment and related FCC regulations
- Working knowledge of the geographical layout of the school sites as to locations of roads, important buildings and other landmarks
- Skill in the use of firearms and other law enforcement equipment
- Ability to exercise sound judgment in emergency and routing situations and to adopt quick, effective and reasonable courses of action

COMMENTS FROM THE CITY MANAGER

Mr. Kay offered his thanks to the Mayor, City Council for the trust they placed in him in taking over this position and he does not take the position lightly. Also, he offered his thanks to the Department Heads because this is a tremendous team and he looks forward to working with each one as well as the citizens who have stepped into his office.

AWARD – AMENDED CONTRACT FOR MR. JOSHUA L. KAY FOR TRANSITION AND RELOCATING EXPENSE IN THE AMOUNT OF \$5,000

Councilman Mercer stated Mr. Kay indicated he was submitting a request for reimbursement for his relocation expenses and the money he spent prior to Mr. Connet's departure before he was actually requested to report to work. He also recognized that Mr. Kay has done a lot work for the City in the two weeks prior to his employment with the City.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council unanimously agreed to award Mr. Kay for transition and relocation expenses in the amount of \$5,000 and to amend his employment contract to reflect the change.

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

AMENDMENT TO EMPLOYMENT AGREEMENT

THIS AMENDMENT TO EMPLOYMENT AGREEMENT is made and entered into as of the 8th day of August 2011 by and between the **CITY OF WASHINGTON**, a municipal corporation organized and existing under the laws of the State of North Carolina, hereinafter referred to as "**EMPLOYER**" and **JOSHUA L. KAY**, of 110 Palmer Place, Washington, North Carolina, 27889, hereinafter referred to as "**EMPLOYEE**".

WITNESSETH

WHEREAS, the parties hereto entered into a certain Employment Agreement dated as of the 1st day of August 2011, a copy of the same being attached hereto as Exhibit A and incorporated herein by reference.

WHEREAS, **EMPLOYER** and **EMPLOYEE** now desire to amend said Employment Agreement with regards to certain moving and relocation expenses.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein and the continued employment pursuant to said Employment Agreement, the receipt and legal sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows.

1) Section 10: Moving and Relocation Expenses shall be voided, changed, amended and replaced in its entirety to read as follows.

"The **EMPLOYER** shall pay or reimburse, as the case may be, **EMPLOYEE** in the amount of FIVE THOUSAND DOLLARS (\$5,000) for all of **EMPLOYEE**'s moving and relocation expenses from Clinton, South Carolina to Washington, North Carolina."

IN TESTIMONY WHEREOF, EMPLOYER has caused this Amendment to Employment Agreement to be executed by its Mayor and attested by its City Clerk, all by proper municipal authority duly given, and EMPLOYEE has executed this Amendment to Employment Agreement, all as of the day, month and year first above written.

PRE-AUDIT CERTIFICATE

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



CITY OF WASHINGTON

BY: Matt Rauschenbach (Seal)
MATT RAUSCHENBACH,
CHIEF FINANCIAL OFFICER

EMPLOYER

BY: N. Archie Jennings, III (Seal)
N. ARCHIE JENNINGS, III,
MAYOR

ATTEST:

Cynthia S. Bennett
CYNTHIA S. BENNETT,
CITY CLERK

EMPLOYEE

BY: Joshua L. Kay (Seal)
JOSHUA L. KAY,
CITY MANAGER

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

WITNESS my hand and official seal, this the 13 day of September, 2011.

Reatha B. Johnson
NOTARY PUBLIC

My Commission expires: 12/14/2014



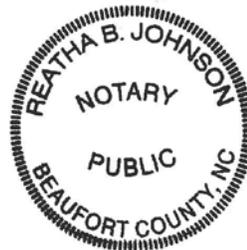
STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Reatha B. Johnson, a Notary Public of the County and State aforesaid, certify that **JOSHUA L. KAY**, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged the voluntary execution of the foregoing instrument.

WITNESS my hand and official seal, this the 13 day of September, 2011.

Reatha B. Johnson
NOTARY PUBLIC

My Commission expires: 12/14/2014



Agreement shall be extended automatically on the same terms and conditions as herein provided, all for an additional period of two (2) years. This Agreement shall continue thereafter for two (2) year periods unless either party hereto gives to the other one hundred twenty (120) days written notice prior to the then applicable two (2) year anniversary date hereof that the party giving notice does not wish to extend this Agreement.

- C. Notwithstanding anything herein to the contrary, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 4, paragraphs A and B, of this Agreement.
- D. Notwithstanding anything herein to the contrary, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with EMPLOYER, subject only to the provision set forth in Section 5 of this Agreement.

SECTION 3 — SUSPENSION

Council may suspend EMPLOYEE, with or without pay in the discretion of Council, during the investigation, hearing, or trial of EMPLOYEE on any criminal charge or during the course of any civil action involving the EMPLOYEE. The duration of such suspension will be in the discretion of Council. If the suspension is without pay, full recovery of pay and benefits for the period of suspension may be authorized by Council if the suspension is terminated with full reinstatement of EMPLOYEE. Notwithstanding anything herein to the contrary, any suspension without pay hereunder shall be in accordance with the Fair Labor Standards Act regulations regarding exempt employee pay.

SECTION 4 — TERMINATION AND SEVERANCE PAY

- A. In the event EMPLOYEE is terminated by the Council before the expiration of the initial or any subsequent term of this Agreement and during such time EMPLOYEE is willing and able to perform his duties under this Agreement, then and in those events EMPLOYER agrees to pay EMPLOYEE a lump sum cash payment equal to six (6) months aggregate salary, benefits, and deferred compensation. EMPLOYEE shall also be compensated for all earned and unused vacation up to two hundred forty (240) hours and holidays.
- B. EMPLOYEE may be terminated for either of the following without notice and, upon such termination, EMPLOYER shall not have an obligation to pay any of the sums set forth in this section.
 - 1. Any misconduct of EMPLOYEE involving an act of moral turpitude, criminal illegality (excepting minor traffic violations), or habitual violations of the traffic laws, whether or not related to EMPLOYEE's official duties hereunder.

2 Employment Agreement – Approved by City Council on May 2, 2011

2. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by EMPLOYEE of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the EMPLOYEE in his official capacity.
- C. In the event EMPLOYER at any time during the term of this Agreement reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than applicable to a simultaneous, across-the-board reduction for all employees of EMPLOYER, or in the event EMPLOYER refuses, following written notice, to comply with any other provision benefitting EMPLOYEE herein, or the EMPLOYEE resigns following a suggestion, whether formal or informal, by the Council that he resign, then, in that event EMPLOYEE may, at his option, be deemed to be "terminated" at the date of such reduction, such refusal to comply, or said suggestion to resign within the meaning and context of the herein severance pay provision.

SECTION 5 — RESIGNATION

In the event EMPLOYEE voluntarily resigns his position with EMPLOYER before expiration of the aforesaid term of his employment, then EMPLOYEE shall give EMPLOYER two months notice in advance, unless the parties agree otherwise.

SECTION 6 — DISABILITY

If EMPLOYEE is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued sick leave, EMPLOYER shall have the option to terminate this Agreement subject to the severance pay requirements of Section 4, paragraph A.

SECTION 7 — SALARY

EMPLOYER agrees to pay EMPLOYEE for his services rendered pursuant hereto an annual base salary of one hundred and eight thousand dollars (\$108,000.00), payable in installments at the same time as the other employees of the EMPLOYER are paid. In addition, EMPLOYER agrees to increase said base salary and/or benefits of EMPLOYEE in such amounts and to such extent as the Council may determine that it is desirable to do so in a similar manner and at the same time as similar consideration is given other employees generally. EMPLOYEE shall receive the cost of living adjustment given to other employees of the EMPLOYER payable in the same manner as paid to other employees of the City. EMPLOYEE may also receive a merit pay increase based on a review of his performance made by the Mayor and Council.

SECTION 8 — HOURS OF WORK

It is recognized by both EMPLOYER and EMPLOYEE that the duties of City Manager require a great deal of time outside of normal office hours. The parties also recognize that EMPLOYEE is required to devote the amount of time and energy necessary to carry out those duties with the highest amount of professionalism possible. That being the case, the parties recognize that

3 Employment Agreement – Approved by City Council on May 2, 2011

EMPLOYEE may choose to take personal time off during business hours when it is appropriate and when his duties allow. Although this personal time off is not considered vacation, neither is it to be considered as compensatory time for time spent by EMPLOYEE in carrying out his duties outside normal office hours, as the parties agree that EMPLOYEE must devote the amount of time necessary to fulfill those duties. The Council will consider EMPLOYEE's use of personal time off during the performance evaluation.

SECTION 9 — RESIDENCY REQUIREMENT

EMPLOYEE agrees that it is necessary to reside inside the corporate limits of Washington, and hereby agrees to occupy a place of residence within the City of Washington within twelve (12) months of employment.

SECTION 10 — MOVING AND RELOCATION EXPENSES

EMPLOYEE shall obtain two quotes from companies that customarily provide moving services for the expenses associated with moving and relocating his personal property from Clinton, South Carolina, to Washington, North Carolina. EMPLOYER shall pay EMPLOYEE the amount of the lesser of the two quotes. EMPLOYEE shall be solely responsible for paying said moving and relocation expenses to the company of his choosing; however, if EMPLOYEE utilizes the company with the lower quote and if the actual moving and relocation expenses exceed said quote, EMPLOYEE may request EMPLOYER to reimburse him for the balance.

SECTION 11 — AUTOMOBILE

EMPLOYEE's duties require that he use an automobile at all times during his employment with EMPLOYER. EMPLOYER agrees to pay EMPLOYEE a car allowance of four hundred dollars (\$400.00) per month and EMPLOYEE shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase, operation, maintenance, and repair of said automobile. EMPLOYER provides said car allowance for EMPLOYEE in lieu of providing a City-owned vehicle to conduct City business. The allocated car allowance will cover all mileage expenses for City business within a one hundred fifty (150) mile radius (three hundred [300] mile round trip) of the City. Travel beyond the one hundred fifty (150) mile radius will be reimbursed in accordance with the City's travel policy. This allowance will be reported on the EMPLOYEE's W-2 form.

SECTION 12 — DISABILITY, HEALTH, AND LIFE INSURANCE

EMPLOYER agrees to put into force and to make required premium payments for EMPLOYEE for insurance policies for life, major medical, and other group insurance, as the same is provided to other employees of the City, covering EMPLOYEE only. If dependent coverage is available through the EMPLOYER, it shall be paid for by EMPLOYEE, if he elects dependent coverage. EMPLOYER agrees to put into force and to make required premium payments for EMPLOYEE for an insurance policy for long-term disability coverage with a benefit of five thousand forty and 00/100s dollars (\$5,040.00) per month and a ninety (90) day waiting period until age sixty-six (66).

4 Employment Agreement -- Approved by City Council on May 2, 2011

SECTION 13 — VACATION AND SICK LEAVE

EMPLOYEE shall be allowed to begin and accrue vacation at a rate equivalent to an employee with ten (10) years continuous employment increasing incrementally from that base without any applicable maximum until December 31st of each year. EMPLOYEE may carry over up to a maximum of two hundred forty (240) vacation hours to the next calendar year. Any amount of vacation that is accrued by EMPLOYEE over said maximum as of December 31st each year shall be converted to EMPLOYEE's sick leave account. EMPLOYEE shall also be entitled to begin and accumulate sick leave annually at a rate equivalent to an employee with ten (10) years of continuous employment increasing incrementally from that base during the term of this Agreement. EMPLOYER will accept and recognize any sick leave EMPLOYEE accrued with EMPLOYEE's immediately previous employer that EMPLOYEE has not already been compensated for.

SECTION 14 — RETIREMENT

It is mandatory that all employees of EMPLOYER participate in and be a part of the North Carolina Local Governmental Employees' Retirement System, hereinafter referred to as NCLGERS; therefore, EMPLOYER and EMPLOYEE shall pay into the NCLGERS for the benefit of EMPLOYEE their respective, required contributions based on the EMPLOYEE's base salary, as mandated by NCLGERS. EMPLOYER will provide EMPLOYEE access to and fund a 401k/457 plan at the same level as provided to and funded for other City employees.

SECTION 15 — DUES AND SUBSCRIPTIONS

EMPLOYER shall pay for the professional dues and subscriptions of EMPLOYEE that are necessary for his continuation and full participation in ICMA; the International Economic Development Council, hereinafter referred to as IEDC; and the North Carolina City/County Management Association, hereinafter referred to as NCCMA. EMPLOYEE participation in any other organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the EMPLOYER shall be subject to review and approval by Council.

SECTION 16 — PROFESSIONAL DEVELOPMENT

- A. As may be approved during the annual budget process, EMPLOYER hereby agrees to pay for travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for EMPLOYER, including, but not limited to annual ICMA, IEDC, and NCCMA conferences and such other national, regional, state, and local government groups and committees on which EMPLOYEE serves as a member.
- B. As may be approved during the annual budget process, EMPLOYER also agrees to pay for travel and subsistence expenses of EMPLOYEE for short courses, institutions, and

5 Employment Agreement - Approved by City Council on May 2, 2011

seminars that are necessary for his professional development and for the good of the EMPLOYER.

SECTION 17 — INDEMNIFICATION

In addition to that required under federal, state and local law, EMPLOYER shall defend, save harmless, and indemnify EMPLOYEE against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Manager. EMPLOYER will compromise and settle any such claims or suit and pay the amount of any settlement or judgment rendered thereon.

SECTION 18 — NO REDUCTION OF BENEFITS

EMPLOYER shall not at any time during the term of this Agreement reduce the salary, compensation, or other financial benefits of EMPLOYEE, except to the degree of such a reduction across-the-board for all employees of the EMPLOYER.

SECTION 19 — NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

1. **EMPLOYER:** Archie Jennings, Mayor
City of Washington
Post Office Box 1988
Washington, North Carolina 27889
2. **EMPLOYEE:** Joshua L. Kay, City Manager
City of Washington
Post Office Box 1988
Washington, North Carolina 27899

Alternatively, notices required pursuant to this Agreement may be personally served in the manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmittal in the United States Postal Service.

SECTION 20 — GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Agreement shall become effective commencing August 1, 2011.

6 Employment Agreement -- Approved by City Council on May 2, 2011

- D. By virtue of his signature below, **EMPLOYEE** consents to **EMPLOYER** releasing copies of this Agreement upon request.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Washington, North Carolina, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and the **EMPLOYEE** has signed and executed this Agreement, both in duplicate as of the day and year first above written.

PRE-AUDIT CERTIFICATE

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



CITY OF WASHINGTON

Matt Rauschenbach
MATT RAUSCHENBACH,
CHIEF FINANCIAL OFFICER

EMPLOYER

BY: *Archie Jennings, II* (Seal)
N. ARCHIE JENNINGS, II,
MAYOR

ATTEST:

Cynthia S. Bennett
CYNTHIA S. BENNETT,
CITY CLERK

EMPLOYEE

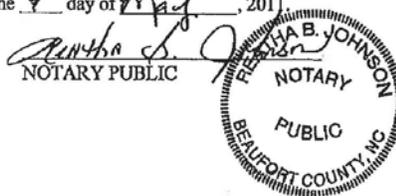
BY: *Joshua L. Kay* (Seal)
JOSHUA L. KAY,
CITY MANAGER

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

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

WITNESS my hand and official seal, this the 9 day of May, 2011.

My Commission expires: 12/12/2015



STATE OF South Carolina
COUNTY OF Laurens

I, Dianne L. Wyatt, a Notary Public of the County and State aforesaid, certify that JOSHUA L. KAY, Employee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 12th day of May, 2011.

My Commission Expires: 12-12-2015

Dianne L. Wyatt
Notary Public

8 Employment Agreement – Approved by City Council on May 2, 2011

11 Amendment to Employment Agreement – August 8, 2011

**RECOGNITION – PHILIP MOBLEY NOTED THE PASSING OF FORMER
CITY EMPLOYEE BILL EBISON**

Mr. Mobley noted what a tremendous ambassador the City of Washington had in Mr. Ebison. Councilman Pitt requested to speak into the record as well, not only was he a great City employee but a wonderful friend of the community and was Washington's best cheerleader. Councilman Davis stated Bill was a man who always looked on the bright side of things and enjoyed working with the City and the youth.

ITEMS TO BE INCLUDED ON THE COMMITTEE OF THE WHOLE

Mayor Pro tem Roberson requested the following be added to the Committee of the Whole meeting:

1. Civic Center decking issues (address the handicapped ADA requirements to bring up to code compliance)
2. Wilderness Park

ADJOURN

By motion of Mayor Pro tem Roberson, seconded by Councilman Pitt, Council adjourned the meeting at 6:50pm until August 22, 2011 at 5:30pm in the Council Chambers at the Municipal Building.

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