

The Washington City Council met in a regular session on Monday, September 12, 2011 at 5:30 pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Bobby Roberson, Mayor Pro tem; Doug Mercer, Councilman; Ed Moultrie, Councilman; Gil Davis, Councilman; William Pitt, Councilman; Cynthia Bennett, City Clerk; Franz Holscher, City Attorney and Josh Kay, City Manager.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Mick Reed, Police Chief; Allen Lewis, Public Works Director; Keith Hardt, Electric Director; Gloria Moore, Library Director; John Rodman, Planning & Development Director; Philip Mobley, Parks and Recreation Director; Susan Hodges, Human Resource 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 Davis delivered the invocation.

APPROVAL OF MINUTES

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the minutes of August 8 & August 22, 2011 as submitted.

APPROVAL/AMENDMENTS TO AGENDA

Councilman Mercer suggested the following amendment to the agenda:

1. Move from Consent Item K to New Business X.C: Approve Purchase Orders > \$20,000.

Councilman Pitt suggested the following amendment to the agenda:

1. Move from Consent Item H to Scheduled Public Appearances D: Authorize Mr. Alvin Powell use of Warren Filed Airport on September 28 & 29, 2011 for a Transportation Career Program

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

PRESENTATIONS

Mayor Jennings and City Manager Josh Kay presented the following awards:

Certificate of Achievement for Excellence in Financial Reporting - This is the 14th year the City has received this award. Accepting award for the City was Chief Financial Officer, Matt Rauschenbach.

Electric Department Lineman Career Development Awards were presented by Mike Byrd and Woodie Wilson, Electricities Representatives; Derek Elks, Level II Underground; Jason Foreman, Level III Overhead; Phil Cameron, Level II Underground.

CONSENT AGENDA

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, Council approved the Consent Agenda as amended.

- A. Allow – Boy Scouts of America request to camp on city-owned property near Warren Field (the Blackbeard District, East Carolina Council of the Boy Scouts of America to camp on City-owned property at Warren Field during the weekend of October 26, 2011 to October 28, 2011.)
- B. Adopt – Project Budget Ordinance for the Talent Enhancement Grant Opportunity \$50,000

**A GRANT PROJECT ORDINANCE FOR CDBG COMMUNITY
DEVELOPMENT BLOCK 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 additional staffing for Washington Housing Inc., a non-profit organization that assists low to moderate income persons with housing needs.

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:

54-60-4930-0400	Administration	\$ 5,000
54-60-4930-0405	Personnel	30,000
54-60-4930-1400	Employee Development	12,000
54-60-4930-1700	Travel	<u>3,000</u>
	Total	\$50,000

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

54-60-3470-0000	CDBG Grant Funds	\$50,000
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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 12th day of September, 2011.

ATTEST:

**s/Cynthia S. Bennett, CMC
CITY CLERK**

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

- C. Adopt – Budget Ordinance Amendment to appropriate funds for the Brooks Boatworks tax incentive \$6,709

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

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

Section 1. That the following accounts in the Economic Development Department portion of the General Fund appropriations budget be increased:

10-00-4650-4507 Brooks Boatworks Incentive \$6,709

Section 2. That account number 10-00-9990-9900, Contingency, of the General Fund appropriations budget be decreased in the amount of \$6,709.

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 12^h day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

- D. Adopt – Budget Ordinance Amendment for E911 Surcharge Fund for Washington Police Department to use for public safety needs approved by the E911 Board and remaining funds transferred to the County (\$43,535)

**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 E-911 Surcharge Fund be increased in the amount of \$43,535 in the account Fund Balance Appropriated, account number 14-70-3991-9910.

Section 2. That account number 14-70-4310-4501, Contract Services, E-911 Surcharge fund appropriations budget be increased in the amount of \$43,535.

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 12^h day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

- E. Accept & Adopt – 2011 Edward Byrne Memorial Justice Assistance Grant- (\$11,252) and Adopt Budget Ordinance Amendment

**BRYNE JAG GRANT BUDGET ORDINANCE
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 amount of \$11,252 in the account Byrne Jag Grant, account number 10-10-3433-3400.

Section 2. That account number 10-10-4310-3603, Supplies/Equipment - Byrne Jag Grant, Police Department portion of the General Fund appropriations budget be increased in the amount of \$11,252 to provide funds for purchase of equipment.

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 12th day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

- F. Authorize – City Manager to sign the Memorandum of Understanding that sets forth the points of agreement between the Department of Homeland Security and the City of Washington (E-Verify Program)

E-Verify  

Company ID Number: _____

**THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION
MEMORANDUM OF UNDERSTANDING**

ARTICLE I
PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and City of Washington (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

ARTICLE II
FUNCTIONS TO BE PERFORMED

A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.
2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.
3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

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4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

B. RESPONSIBILITIES OF DHS

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on employees by electronic means, and
- Photo verification checks (when available) on employees.

2. DHS agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.

3. DHS agrees to make available to the Employer at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.



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7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

C. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

• If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

• If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of



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photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after the Form I-9 has been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. Employers may initiate verification by noting the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer uses the E-Verify system for any purpose other than as



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authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(f)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).



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12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE

1. The Employer understands that if it is a subject to the employment verification terms in Subpart 22.18 of the FAR, it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.

b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.

c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States, whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated



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within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and after the date and selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Employers that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with Article II.C.5, the employee's work authorization has



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not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the



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referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding. The Employer must review the tentative nonconfirmation with the employee in private.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (paid for at employer expense).

7. If the Employer determines that there is a photo non-match when comparing the photocopied List B document described in Article II.C.5 with the image generated in E-Verify, the Employer must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.



Company ID Number: _____

ARTICLE IV

SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V

PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.



Company ID Number: _____

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.

Employer	
Name (Please Type or Print)	Title
Signature	Date
<i>[Handwritten Signature]</i>	09/13/11
Department of Homeland Security – Verification Division	
Name (Please Type or Print)	Title
Signature	Date

E-Verify



Company ID Number: _____

Information Required for the E-Verify Program		
Information relating to your Company:		
Company Name:	City of Washington	
Company Facility Address:	102 E. 2nd Street Washington, NC 27889	
Company Alternate Address:	P.O. Box 1988 Washington, NC 27889	
County or Parish:	Beaufort County	
Employer Identification Number:	566001364	
North American Industry Classification Systems Code:		
Administrator:	Susan C. Hodges	
Number of Employees:	295	
Number of Sites Verified for:	1	
Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:		
State	Number of sites	Site(s)

E-Verify



Company ID Number: _____

Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:	
Name:	Susan Hodges
Telephone Number:	252-975-9322
Fax Number:	252-974-6461
E-mail Address:	shodges@washingtongov.gov
Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:	
Name:	
Telephone Number:	
Fax Number:	
E-mail Address:	

- G. Authorize – City Manager to reclassify the Data Systems Specialist, salary grade 19, to Technology Administrator, salary grade 23 effective July 1, 2011 (Classification & Pay Grade Change)
- H. Moved to Scheduled Public Appearances: D - Authorize – Mr. Alvin Powell use of Warren Field Airport on September 28 & September 29, 2011 for a Transportation Career program
- I. Approve – Amendment to Employment Agreement by and between Joshua L. Kay and the City of Washington

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: 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

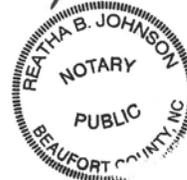
STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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



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

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6 Amendment to Employment Agreement -- August 8, 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).

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7 Amendment to Employment Agreement -- August 8, 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

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8 Amendment to Employment Agreement - August 8, 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

9 Amendment to Employment Agreement - August 8, 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: *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

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

10 Amendment to Employment Agreement – August 8, 2011

COUNTY OF BEAUFORT
STATE OF NORTH CAROLINA

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

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

J. Adopt – Resolution Opening Brown Street between Park Drive and East Fourth Street

A RESOLUTION DECLARING BROWN STREET BETWEEN PARK DRIVE AND EAST FOURTH STREET, INCLUDING BRIDGE CROSSING OVER JACK'S CREEK, OPEN AS A PUBLIC STREET AND REDEDICATING THE SAME AS SUCH

WHEREAS, North Carolina General Statute § 160A-299 authorizes and sets forth the legal procedures that are required in order for municipalities to permanently close public streets and alleys.

WHEREAS, during the City Council meeting held on January 8, 2007 the City Council of the City of Washington ("City Council") adopted "A Resolution of Intent Declaring the Intention of the City of Washington to Consider the Closing of Brown Street Between Park Drive and East Fourth Street", set a date for a public hearing as prescribed by statute for February 12, 2007, and directed the City Clerk to notify the general public and adjoining property owners of said Resolution of Intent and public hearing in the manner prescribed by statute.

WHEREAS, during the City Council meeting held on February 12, 2007, the City Clerk advised the City Council that notification of the public and adjacent property owners regarding said Resolution of Intent and public hearing had been properly made and the City Council conducted a public hearing with respect to said attempted street closing.

WHEREAS, following said public hearing, the City Council adopted "A Resolution Ordering the Closing of Brown Street Between Park Drive and East Fourth Street" and ordered and directed the City Clerk to file a certified copy of said Resolution and Order in the Office of the Register of Deeds of Beaufort County as the final legal procedure required by statute in order to effectuate the permanent closure of said portion of Brown Street.

WHEREAS, a certified copy of said Resolution and Order has not been filed in the Office of the Register of Deeds of Beaufort County.

WHEREAS, the procedure required by statute in order to permanently close said portion of Brown Street has not been effectuated completely and said portion of Brown Street remains open as a public street and right-of-way subject to the general authority and control of the City of Washington under North Carolina General Statute §160A-296.

WHEREAS, the City of Washington was the sole owner of property located adjacent to said portion of Brown Street at all times relevant hereto and remains the sole owner of property located adjacent to said portion of Brown Street.

WHEREAS, if said attempted closure of said portion of Brown Street had been legally effectuated, any right, title, and interest in said portion of Brown Street would have vested in the City of Washington by virtue of North Carolina General Statute §160A-299.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Washington that the permanent closure of that portion of Brown Street between Park Drive and East Fourth Street, including bridge crossing over Jack's Creek, has not been legally effectuated and therefore said portion of Brown Street is and remains open as a public street and right-of-way and, to the extent it may be legally necessary, the City Council of the City of Washington rededicates the same as a public street and right-of-way subject to the general authority and control of the City of Washington.

Adopted this the 12th day of September, 2011, by the City Council of the City of Washington, North Carolina.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

K. Moved to New Business X.C - Approve – Purchase Orders >\$20,000

**MR. HARRY WILKINSON – INSTALLATION OF OUTLETS AT
OR BEHIND THE BOBBY ANDREWS CENTER (Absent)**

**MS. LINDA WITCHELL – ALTERNATE POWER SOURCE –
BACKUP GENERATOR**

Ms. Linda Witchell, 114 E. 12th Street discussed the need for a generator to operate pumps used to lower Jack's Creek during flooding associated with hurricanes/storms. She told the council she raised concerns about drainage in the Jack's Creek basin with the city about 15 years ago. Ms. Witchell stated her home flooded during the hurricane and felt if the pumps had been running with an alternate power source then possibly her house wouldn't have flooded. She further suggested that perhaps Jack's Creek could be pumped out before a storm."

City Manager, Josh Kay explained that water from the creek was pumped out before Irene hit the area. Those four pumps, including another 10-inch pump borrowed from N.C. Department of Transportation, continuously pumped water from Jack's Creek, except for a power outage that stopped the pumps for a period of time August 27th. Power was restored later that day. Mr. Kay also explained how the City prepared for the storm. We did pump Jack's Creek well below river levels. ... At one point in time, Jack's Creek was approximately 2 feet below sea level while on the other side of the pump the river was 2 to 3 feet above sea level. So, what that allowed us to do is provide a tremendous amount of storage capacity for Irene. The severity of Hurricane Irene was tremendous. He also reminded the council that the National Oceanic and Atmospheric Administration reported 13.11 inches of rain fell on Washington during the storm, with some people reporting well over 16 inches. Mr. Kay acknowledged the pumps do not have back-up power supply, something city staff has discussed in past few days. The estimate (for a reserve power supply) that we have is well over \$100,000. It's closer to \$600,000. Of course, we are approaching FEMA about the possibility of them assisting us in the purchase of that generation unit.

Mayor Pro tem Roberson suggested that Public Works needs to ensure that all catch basins are clean and free of debris.

**MS. MONICA FERRARI & MS. NANCY O'NEILL –
ALLOW FEEDING OF BIRDS AND ANIMALS**

Ms. Nancy O'Neill and Ms. Monica Ferrari explained they are representing CATS About Town and read the following statement. (begin statement) We are a non-profit administered under the umbrella of Parks & Recreation. I'd like to tell you a little about us before Monica reads our proposal.

CATS About Town is a trap, neuter, return program, commonly referred to throughout the U.S. as TNR. For the last two years, we have trapped numerous cats, including all of Washington's downtown cats, for the purpose of having them spayed or neutered, tested for feline disease & vaccinated for rabies. Only healthy, "fixed" cats have been released back to their environment with a cropped left ear for identification. Health records, including rabies tags, are always available for public viewing.

Where possible, we have also rescued downtown kittens & adoptable adult cats for placement in homes. Utilizing this humane & effective method of feline population control, we've reduced the number of cats living in downtown Washington, from 50 to the current 25. They live in small groups or colonies on the North & South side of Main Street and are monitored for newcomers or any other changes that may occur. They are timid by nature and will always run when approached. Relocating the cats has never been an option as removal of the cats only invites other cats into the territory to fill the void. This is referred to as the vacuum effect. Our program has allowed Beaufort County Animal Control to focus their energy & resources towards other more pressing issues rather than trapping & euthanizing these homeless cats. Much time, effort and unwavering veterinary and community support has been invested in our program, however, there is one critical & key missing component-being able to care for the cats, including feeding, openly & freely. Greenville, New Bern, Beaufort and Wilmington all have similar TNR programs, but without the hindrance of a feeding ban. In order for our program to continue

to be an effective method for controlling the downtown cat population & caring for their health, we are proposing the following:

Purpose: Modify above ordinance to the satisfaction of the public, police department and city council.

Problem: Residents and other compassionate persons are leaving food for the city's downtown cats in order to keep them healthy. Current ordinance does not allow feeding of birds and animals. Therefore the Police Department is issuing warnings and fines. Although people feel they are under camera surveillance, they compassionately continue to leave food in obscure areas.

Proposed Solution: Modify the current ordinance to allow designated caretakers/monitors to provide dry cat food and water in obscure spots off Main Street pedestrian traffic. Washington Police Department Chief of Police will act as administrator. In conjunction with CATS About Town-TNR, 3 approved sites north of Main St. and 3 approved sites south of Main St. will be designated. With agreement from both parties, 5 caretakers will be on record to provide feeding and monitoring. Any complaints will be addressed directly to Chief of Police and a solution will be obtained along with CATS About Town organization.

Cost: No cost to taxpayers. The small containers and dry food will be privately funded through our CATS About Town-TNR program.

Reasons to modify the city ordinance that prohibits the feeding of homeless cats in downtown Washington:

1. In spite of the current ordinance, there will always be compassionate people who will feed the downtown cats. Enforcing a ban on feeding Washington's cats is difficult and time consuming for our police department. In addition, the public would prefer that our city resources be spent on more critical issues that face the downtown and community.
2. Regularly feeding the cats by designated caretakers will:
 - keep the cats out of undesirable locations such as dumpsters and away from entrances to restaurants where they might congregate and negatively impact local businesses.
 - Help maintain their health and provide the opportunity to identify and care for injured/ill cats.
 - Help identify any newcomers for processing by the Trap, Neuter & Return program (supporting on-going stabilization of the cat population).
3. If the public is aware the cats are being well taken care of, they may refrain from placing unsightly containers of food and water that ultimately become litter.
4. Feeding the cats and monitoring their health is compassionate and humane.

Conclusion: Enforcing a ban on feeding downtown Washington cats is difficult, time consuming and poor use of our police department's limited resources. There will always be compassionate people who will in spite of the ordinance, continue to provide little food for our downtown cats. Allow the modification, so that the TNR Program can continue to be an effective method of population stabilization. Those few remaining community cats will stay healthy without reproducing. (end statement)

Councilman Mercer explained that he talked with Ms. Ferrari and Ms. O'Neill and advised them they needed to revise their presentation with more specificity. He suggested this matter be given to staff (including Chief Reed) and allow them to work on this possible ordinance amendment with the Animal Control Board.

Mayor Jennings commended them for their efforts. He also stated there hasn't always been this many cats downtown. He would like to have input from a veterinarian regarding if this program is actually giving the cats a humane life. Councilman Pitt asked

if this program was in force in other parts of the city? Ms. O'Neill stated that it is and they also help citizens with special requests if they can't afford to feed or care for their cats. Ms. Ferrari stated the cats tend to hide from the public and only come out when it's feeding time. Mayor Jennings is concerned that all of the cats may turn people off from visiting downtown.

**PUBLIC HEARING: ACCEPT – CERTIFICATE OF CONVENIENCE
AND NECESSITY FOR JEFFERY ROBERSON
D/B/A ROBERSON CAB SERVICE (RCS)**

Mayor Jennings opened the public hearing. City Manager, Josh Kay explained we are required to hold a public hearing to consider the application for a Certificate of Convenience and Necessity by Jeffery Roberson D/B/A Roberson Cab Service (RCS) to operate one taxicab in the City Of Washington. Mr. Roberson desires to operate one taxicab from his taxi terminal located at 702 West Martin Luther King, Jr. Drive, Washington, within the City limits of Washington. The notice calling for the public hearing was published on September 2, 2011, and a copy of the notice was mailed to all holders of Certificates of Convenience and Necessity for the operation of vehicles in compliance with the Washington City Code.

Mr. Jeffery Roberson stated his hours of operation would be 7-midnight, he may alter them depending on need and possibly on the weekend. There being no public comments, the public hearing was closed.

By motion of Councilman Mercer, seconded by Councilman Moultrie, Council approved the issuance of a Certificate of Convenience and Necessity to Jeffery Roberson, with one taxicab D/B/A Roberson Cab Service (RCS). (staff will ensure that Mr. Roberson has his application notarized and that the Police Department completes their certification regarding the business license)

**AUTHORIZE – MR. ALVIN POWELL USE OF WARREN FIELD AIRPORT
ON SEPTEMBER 28 & SEPTEMBER 29, 2011 FOR A TRANSPORTATION
CAREER PROGRAM**

Mr. Kay introduced Alvin Powell and explained that he desires to host a Transportation Career program for select grades at Warren Field over a two-day period on September 28-29, 2011. Mr. Powell gave a brief history of his 30 year career in law enforcement with the FBI. He feels this program will be positive motivation for the children.

“Transportation Day” Career” Forum
(Tentative)

When: September 28 and 29, 2011

Where: Beaufort County Center Building, 155-A Airport Road Washington, NC Airport

Objective: To have a local Historical Black College and University and a local community college each provide a brief presentation of their academic programs that relate to aviation and the trucking industry. The presentation would be to students that attend Beaufort County schools. The importance of physical fitness and making smart decisions as youth relative to passing background checks will be discussed as well. The students would also get an opportunity to see the Washington, NC airport complex.

Two day event structure: The program will be organized into a 9:00 am to 11:00 am morning session and a 12:15 pm to 2:15 pm afternoon session for both days. This will allow for handling up to 90 students plus nine school officials per session and not violate fire codes provisions.

Transportation: The Beaufort County School District will be responsible for selecting the students that attend this function (as reflected by an attendance log) and transportation of the students pursuant to any insurance or applicable school protocols.

1. Beaufort County Center: The designated student drop-off and pick-up location that will provide a 99 seat air conditioned classroom facility with rest rooms. The N.C. Cooperative Extension Service is a partner in this program and is coordinating the use of this facility.
2. Opening Comments: 9:00 am to 9:20 am and 1:00 pm to 1:20 pm respectively by Al Powell, Program Coordinator. He will explain how Elizabeth City State University (ECSU) and Beaufort County Community College (BCCC) will be showcasing some of their transportation based academic programs; show a brief DVD that will provide an aviation/trucking industry overview. Discuss topics concerning: (1) how making poor decisions as a youth can impact career choices/security clearances, and (2) physical fitness requirements for jobs.
3. Classroom Seating: Students will be divided into two sections: Group A and Group B not to exceed 45 students per group. For safety, students from the same schools will not be separated, if feasible.
4. Program Composition: Each program will consist of TWO 45 minute orientation sessions conducted concurrently in separate locations. After the opening comments, the two groups will proceed to their respective orientation sessions.
 - a. The ECSU) orientation station will be located at the, Washington Airport Terminal Building; Dr. J. Anthony Sharp, Director, ECSU Aviation Science Program, will discuss their program and provide the students with a tour of the ECSU airplane.
 - b. The BCCC orientation station will be located at the, Beaufort County Center Building; representatives from BCCC will explain their commercial truck driving program and provide the students with a tour of several vehicles.
 - c. Orientation Times: 9:25 am to 10:10 am and 10:15 to 11:00 am (morning session); 1:25 pm to 2:10 pm and 2:15 pm to 3:00 pm (afternoon session).
 - d. Each 45 minute orientation session will consist of 30 minutes for PowerPoint, lecture, etc. and 15 minutes for a “hands-on” static display component.
5. Rotation: At the end of each respective 45 minute orientation, Groups A and B will rotate. Group B will walk to the airport terminal to receive the ECSU station to orientation. Group A will walk back to the Beaufort County Center to receive their orientation by the BCCC personnel.
6. Closing Comments and Departure: At the completion of the program, both Group A and B will return to the Beaufort County Center classroom. Closing comments will be made and a safety head count conducted. Students would board their respective buses and return to school.
7. Security: The Washington, NC Fire Department and Police Department will be on premises to address any medical emergencies and/or handle vehicular-pedestrian traffic.

8. Educational Display Booths: Both the U.S. Coast Guard Auxiliary and the N.C. Cooperative Extension Service (featuring the 4-H Club) will be on premises to provide educational literature.
 - Possible Static Displays or Fly-in**
 - a. A Washington, NC fire truck
 - b. Fountain Boats; a large power boat on a trailer
 - c. A U.S. Coast Guard Auxiliary demonstration of a robotic device (hopefully)
 - d. Selected trucks from the Beaufort County Community College
 - e. A Washington, NC police vehicle
 - f. Civilian helicopter fly-in (pending)
 - g. ECSU airplane
 - h. Military aircraft fly-in (pending)

The school district has already committed 250 middle school children. Both colleges will be bringing recruiters to the event to express to the children the educational opportunities at the colleges.

By motion of Councilman Davis, seconded by Councilman Moultrie, Council authorized Mr. Alvin Powell to use Warren Field on September 28, 2011 and September 29, 2011 as the location for a Transportation Career program.

COMMENTS FROM THE PUBLIC

Jerry Evans, Spencer Stanley and Mae I. Taylor had signed up to speak, but left before the public comment period.

Susan Zachary of East Main Street came forward and commended City staff for their efforts both during the hurricane and now during the recovery and clean up period.

Shannon Blackstone stated her husband Whit Blackstone owns Pamlico Properties located at 222 Stewart Parkway and they have an issue with the feral cats downtown. Their business is affected by the cats. They thought the original purpose of the TNR program was to trap the cats, have them spayed or neutered and then released back downtown to help control the rodent population. Ms. Blackstone said she feels that if the cats are being fed, then they won't hunt and the food attracts other rodents. Currently the cats are being fed under the steps of the old Harbor Street Grille, this area is now nothing but a feral cat litter box. With the recent heat, one could imagine the odor this produces. Also produced are flea infestations. When the buildings have to be treated, the businesses in her building have to close early. She feels the cats are a liability for the city. There is the possibility of rabies, because it's difficult to identify the cats because several of them look alike it is hard to make sure the proper cat is getting its rabies booster shot. The cats come out during the day and sun on the deck of the former restaurant. There is currently an ordinance in place and should be left in place. If the ordinance is reversed, then people will feed the seagulls thus turning off the boaters and losing income for Washington. She would like for the TNR program to try to find homes for the cats instead of releasing them back downtown. A cat will stay where it is fed.

Scott Campbell, 213 Market Street works downtown and stated the cats are not shy at all. They are out at all times during the day and on several occasions vehicles have had to stop to allow the cats time to get out of the street. He supports the program and its efforts, but feels the ordinance pertaining to restricting the feeding of the animals/birds downtown should be left in place as is. The area beside Washington Jewelers is also a "cat litter box" and smells terrible.

Recess: 6:30-6:45pm

MEMO – JACK'S CREEK GREENWAY PROJECT UPDATE

(begin memo from Philip Mobley) The Greenway Project was to start on the 29th of August, but needless to say, we are, at best trying to start this project during the latter part of this week, depending on weather conditions, the availability of manpower and equipment. The first section of work starts between Bonner St. and Fifth St. on the South side of Jack's Creek. We will be marking the route and setting up soil retention material between the proposed walk and the creek. The asphalt walking surface will be a minimum of 55 feet from the creek up to a maximum of approximately 60 feet.

The second section will be between Harvey St. and Brown St. on the South side of Jack's Creek. The concrete basketball court on the North side of the old Health Department will have to come out. The City will need to evaluate if and when the old Health Dept. Northeast corner can come down or not. The two paving bids came in well below initial estimates with low bid being \$ 23,812.50 from Garris Grading & Paving of Farmville, NC and from Randolph Paving & Sealing of Greenville, NC it was \$ 34,500. The paving will be a fine grade and with 2" of asphalt over a prepared stone base approx. 1,905 sq. yds. If this price should fluctuate at any time, up or down, the contractor reserves the right to adjust our price accordingly. This project has to be completed by November 15, 2011 and all invoices have to be to the State of NC by November 1, 2011. (end memo)

MEMO – CIVIC CENTER DECKING

(begin memo from John Rodman) The Civic Center was originally constructed as a train depot and supporting warehouse between 1907 and 1910. Portions of the existing deck were constructed in the late 1970s. During the last thirty years the deck has not been adequately maintained and is currently in a state of disrepair.

Mr. Wayne Harrell, Chief Building Official for the City of Washington, conducted a courtesy inspection of the Civic Center deck. The objective of the inspection was to provide written information describing the issues discovered from observations made and conducted by the inspector and that, in the inspector's opinion, are likely to be of concern to the City. The inspection was a process of Mr. Harrell collecting information through visual observation during a walk-through inspection of the subject property and then generating a meaningful report about the condition of the deck based on observations made that.

After the decking report was presented to City Council, the Council instructed the Planning & Development Department to obtain engineering estimates on developing plans to construct a new deck on both the east side and the west side of the Civic Center building. The estimates would include two proposals for constructing a new deck. One estimate would include engineering plans for the replacement of the deck with wooden or composite materials. The second estimate would include engineering plans for the replacement of the deck with brick and concrete materials. The estimates for engineering will be received by the end of the week and forwarded to Council as quickly as possible. (end memo)

HUMAN RELATIONS COUNCIL

- Appointment of Chair and vice chair to the Washington/Beaufort County Human Relations Council. By motion of Board member Murrell, seconded by Board member Howard, the Board unanimously appointed William O'Pharrow as chairman of the Washington/Beaufort County Human Relations Council. By motion of Board member Howard, seconded by Board member Castro, the Board unanimously appointed Ann Barbee Cherry as vice chair of the Washington/Beaufort County Human Relations Council.
- Recognition — Former Chair Evelyne Roberson: Board members recognized outgoing chair person, Evelyne Roberson. Honors were given at this time for her six years of tireless service as chair person to the Board and pictures were taken of the plaque presented by the Human Relations Council.
- Scheduled Public Appearances: Mr. Alvin (Al) Powell — President/CEO ADP Consulting and Educations Services
In 2010, Mr. Powell developed/copyrighted an afterschool transportation syllabus to motivate youth to stay in school. Mr. Powell has developed and presented training seminars for the law enforcement and academic community.

PRESENTATION:

Review Course Objectives and the two (2) poverty:

1. Generational
2. Situational

Three Definitions of Poverty:

1. Uneducated
2. Unskilled
3. Working poverty (you have the education but will be classified as poverty based on your income situation)

Knowing the "Rules":

1. Improve communication
2. Pulse of community
3. Improve strategic planning
4. Develop trust

Types of Peer Pressure:

1. Negative Influences:
 - A. Drug dealers
 - B. Gang members

- C. Criminal organizations
- 2. Positive Influences:
 - A. Professional teachers, ministers & counselors
 - B. Community leaders — coaches, tutors, government officials
 - C. Other family members, associates, mentors and friends
 - Update — Multicultural Festival: Three bids were received for printing (award going to Lone Bull Consultant Groups)
 - Printing of flyers, posters and banners (total cost of printing \$510)
 - Arts Council contributed \$250 toward printing cost
 - Human Relations Council appropriated \$255 of their \$500 budget toward printing cost
 - Discussion — Hosting an Immigration Action Roundtable
 - Discussion — Latino
 - Discuss — All reminders

Councilman Pitt reminded everyone of the Multi-Cultural Festival to be held at the Civic Center on October 23rd.

FINANCIAL REPORTS

Councilman Mercer asked Mr. Rauschenbach to explain “negative revenue”. Mr. Rauschenbach stated these are funds that have been accrued in a prior year, it had been earned, but not received yet, this is similar to the process for sales tax. More specifically Councilman Mercer referred to the NC Hwy 17 reimbursement.

He also questioned expenditures for information services because there were no funds budgeted for installment purchases. Mr. Rauschenbach explained the purchase orders were possibly written prior to last fiscal year end and the work was finally completed, but he will confirm. He also had questions regarding the “miscellaneous account in the general fund” for downtown events. Mr. Rauschenbach will get answers to his questions and contact Councilman Mercer. Councilman Mercer inquired to when the maintenance at the library will take place. Gloria Moore explained she is working on this project with Mike Whaley and he was working on this along with the repairs at the Impressions building.

AWARD – CONTRACT FOR LABOR AND EQUIPMENT AND ALLOW THE MANAGER TO EXECUTE CONTRACT, AND ISSUE NOTICE TO PROCEED TO TURNING POINT RENOVATIONS AND REPAIRS, INC. – LIGHTING RETROFIT PROJECT IMPRESSIONS BUILDING (\$9,992.50)

	TD Goodwin	The Daniele Co.	Turning Point
Bid A (Lighting Retrofit oversight)	11,500.00	56,263.00	7,997.50
Alternate Bid (Gas heaters installation oversight)	6,400.00	159,302.00	1,995.00
Total	17,900.00	215,565.00	9,992.500

Mr. Kay stated the request is to award a contract for the professional construction management services to oversee the installation of energy efficient improvements (Lighting Retrofit Project and Direct Gas Fired Heaters Project) at the Impressions Building. The bid opening was hosted Thursday, August 25, 2011. The bid summaries are included for Council’s consideration. The contract is funded by American Recovery and Reinvestment grant funds. It is staff’s recommendation to award the contract to Turning Point Renovations and Repairs, Inc. for \$9,992.50 and allow the City Manager to execute the contract subject to the attorney’s revisions is so needed.

By motion of Councilman Davis, seconded by Councilman Moultrie, Council awarded the contract for Construction Management Services and allowed the Manager to execute the contract, subject to the attorney’s revisions, and issue the Notice to Proceed to Turning Point Renovations and Repairs, Inc. for \$9,992.50.

CITY OF WASHINGTON
ENERGY EFFICIENCY IN GOVERNMENT BUILDINGS GRANT
CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES

THIS CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES ("Contract") is made and entered into as of the 5 day of September 2011, by and between the City of Washington, a body politic and corporate of the State of North Carolina (the "City"), whose address is 102 E. 2nd St., P.O. Box 1988, Washington, North Carolina 27889 and Turning Point Renovations & Remodeling, Inc. (the "Contractor"), a North Carolina corporation, whose address is 1105 Harrington Street, P.O. Box 1479, Washington, North Carolina 27889. The City and the Contractor are sometimes referred to in this Contract individually as a "Party" and collectively as "the Parties".

WITNESSETH

WHEREAS, the North Carolina Department of Commerce ("DOC") 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 Recovery Funds DOE Award Agreement DE-EE0000157 (CFDA #81.128) (the "DOE Award Agreement").

WHEREAS, the City is a sub-recipient of said ARRA funds ("Award") under the SEP Energy Efficiency in Government Buildings Grant, Government Round 2 ("Grant") to fund its Energy Efficiency in Government Buildings Grant Program ("Program"), which Program includes its Lighting Retrofit and Installation of Direct Gas-Fired Heating Units projects (referred to collectively as "Project").

WHEREAS, said Award is governed by a Grant Agreement between the City and DOC dated August 25, 2011 ("Grant Agreement"), which Grant Agreement incorporates provisions of the Grant including all appendices and amendments thereto; the City's related application/proposal as approved by DOC; the above referenced DOE Award Agreement, as the same may be amended from time to time; SEP Special Terms and Conditions, which Contractor acknowledged in its response to the Request for Proposals for this Project and Contract; 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 DOC,

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.

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N.C. Energy Division's website at <http://www.nccommerce.com/energy>; and possibly on the City's website at www.washington-nc.gov.

WHEREAS, the purpose of the City's Program is to assist the City in making certain energy efficiency improvements to its buildings by utilizing Award funds to share in the cost of making said improvements.

WHEREAS, the City has selected one City building to participate in said Program at this time, which building is leased by the City to Impressions Marketing Group, Inc. ("Impressions").

WHEREAS, the City has awarded a bid for CONSTRUCTION MANAGEMENT SERVICES under the Program to Contractor at and for a sum equal to the aggregate cost of the services to be performed as the same are more specifically provided for in Contractor's bid, which bid is incorporated herein by reference.

WHEREAS, Contractor has represented to the City that Contractor possesses the requisite skill, experience, and financial resources to provide the services contracted for herein.

NOW, THEREFORE, in consideration of the mutual promises as well as covenants herein, the consideration to be paid, 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, PAYMENT, AND TERMINATION

- 1. Scope of Work.** Contractor shall provide to the City the construction management services (hereinafter referred to as "Services") for the above referenced Project as said Services are more specifically described in the "Project Scope" and "Proposal/Fee for Service" attached hereto as Exhibits A and B respectively, which exhibits are incorporated herein by reference as if fully set forth. Contractor shall furnish said Services, fulfill all the requirements of, and supervise 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 Request for Proposals as well as Contractor's response thereto (bid), including but not limited to Introduction, Project Scope, Terms and Conditions, Bid Form, Proposal/Fee for Services, Hold Harmless Agreements, SEP Terms and Conditions Acknowledgement, 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, 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,

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including any contractor's, 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 shall be duly licensed by the State of North Carolina to provide the Services contracted for.
 3. **Compensation and Expenses as well as Payment.** As compensation for the Services to be provided under this Contract, the City shall pay the Contractor the total sum of \$9,992.00 payable as set forth in Exhibit B. Unless otherwise stated in Exhibit B, the foregoing amount is all inclusive and includes all expenses of every kind and nature, including but not limited to travel, lodging, copying, overhead, outside consultants and other similar and dissimilar expenses and charges.
 - a. Provided that invoices are submitted to 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.
 4. **Term.** This Contract shall be effective as of the day first above written and shall continue until March 31, 2012 or until such time as DOC 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 on or before December 1, 2011.
 6. **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, DOC 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 DOC and City.
 7. **Recovery of Award Funds.** Contractor expressly acknowledges and accepts City's and DOC'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
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records and provide access to such records as required hereunder, Contractor shall, at a minimum, be required to reimburse DOC, and DOC 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.

8. **Termination.** The City reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the City to serve the public interest. This termination for convenience will not be made when termination is authorized under any other provision of this Contract. In the event of termination for convenience, the City shall pay the Contractor those costs directly attributable to Services received by the City in compliance with this Contract prior to termination. Provided, however, that no costs will be paid to the Contractor which are recoverable in the Contractor's normal course of doing business. The City is not liable for loss of any profits anticipated to be made hereunder, or any special, consequential, or other damages. If the Services provided by the Contractor under this Contract are unsatisfactory or unacceptable, as determined by the City, this Contract may be terminated for cause. Grounds for termination for cause shall include, but not be limited to the following.
 - a. Failure to respond to all reasonable requests by the City to provide Services covered by this Contract.
 - b. Failure to maintain any equipment required to provide the Services in accordance with the requirements of this Contract and with all laws.
 - c. Lack of proper insurance as required under this Contract.
 - d. Charging rates in excess of those listed in this Contract and in Exhibit B.
 - e. Inefficient, or unsafe practices in providing the Services.
 - f. Other actions which may impact unfavorably on the faithful performance of this Contract.

B. INSURANCE AND SAFETY

Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of this Project. Contractor 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 all 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. **Special Requirements.**
 - a. The City and Impressions 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 and Impressions shall also be named as additional insureds on this policy.
 - b. 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.
 - c. Coverage shall remain in effect at least until final payment and at all times thereafter when a contractor may be correcting, removing or replacing defective work.
 - d. 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.
 - e. Contractor shall report any obvious or suspected code issues to the City's Risk Manager or his designee.
5. **Contractor Safety Requirements.** Contractor is required to comply with all current NIOSH Safety and Health Standards that are applicable to the work being performed by the Contractor for the City. Contractor shall be responsible for explaining compliance requirements to the Contractor's employees, communicating with the City's Risk Manager for safety when necessary, and communicating to City regarding all safety issues.
 - a. The City shall have the right, but not the obligation, to stop work on the Project if a condition is observed that is considered to be immediately dangerous to life and health. The job shall be closed until the situation is corrected. 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.
 - b. Prior to the start of any work performed by Contractor, the City's Risk Manager may conduct a pre-job safety review with Contractor. The meeting will provide an opportunity for the City's representative to discuss with Contractor applicable safety rules, including work zone protection and an Emergency Action Plan if Contractor may be affected by the plan, and provide for an open line of communication between both parties.

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6. **Site Safety Audit.** The City's Risk Manager or his/her designee shall have the right, but not the obligation, to periodically audit the Project to ensure compliance with the provisions of this contract.
7. **Accident Reporting Requirement.** Any accidents that occur in relation to the Project shall be reported to the City's Risk Manager.
- C. **GENERAL PROVISIONS**
 1. **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.
 2. **Attorney's Fees.** Should Contractor or City institute any legal proceedings against the other concerning a dispute arising from this Contract, the prevailing party in such action shall, in addition to any other recovery, be entitled to recover its costs and expenses from the losing party, including its reasonable attorney's fees.
 3. **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.
 4. **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 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.
 5. **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. Contractor shall comply with and satisfy any reporting requirements as may be revised including, but not limited to, the "State Grant Compliance Reporting Requirements" (Exhibit C). 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

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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.

6. **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.
 7. **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.
 8. **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. Contractor is ineligible to receive, or benefit from, funds disbursed under this Contract if debarred pursuant to state law.
 9. **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.
 10. **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, 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.
 11. **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
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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.

12. **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 Contractor or by any and all contractors or subcontractors in the performance of the work contemplated by this Project.
13. **Notice.** Unless otherwise specifically provided for herein, 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

For the Contractor:
Matthew Sopher, President
Turning Point Renovations & Remodeling, Inc.
P.O. Box 1479
Washington, NC 27889
Telephone: 252-946-4638
Fax: 252-940-4637
Email: msopher@suddenlinkmail.net

Email: bgentile@washingtonnc.gov

14. **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.
15. **Confidentiality.** All proprietary data and information, if any, furnished to the Contractor by the City shall be regarded as confidential, shall remain the sole property of the City, and shall be held in confidence and safekeeping by Contractor for the sole use of the Parties and Contractor under the terms of this Contract. Contractor agrees that its officers, employees and agents will not disclose to any person, firm, or entity other than the City or City's designated legal counsel, accountants, or practice management consultants any confidential information about the City. Contractor agrees to carry out its obligations to the City in compliance with all privacy and security regulations required by law.
16. **No Waiver.** No waiver by either Party of any default by the other Party in the performance of any particular provision of this Contract shall invalidate any other paragraph of this Contract or operate as a waiver of any future default, whether like or different in character.
17. **Severability.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
18. **Other.** If applicable, 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.
19. **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.

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.

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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.



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. Kay* (SEAL)
Joshua L. Kay, City Manager
Date: 09/13/11
Tax ID Number: 56-6001364
End of Fiscal Year: June 30th

CONTRACTOR:
TURNING POINT RENOVATIONS & REMODELING, INC.

By: *Matthew Sopher* (SEAL)
Matthew Sopher, President
Date: 9/15/11
Tax ID Number: 56-2262028
End of Fiscal Year: 12/31/11

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Heatha B. Johnson, a Notary Public of the State and County aforesaid, certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, a North Carolina municipal corporation, and as the act of the corporation, the foregoing instrument was signed in its name by 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 15 day of September, 2011.

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



STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Dianna J. Toler, a Notary Public of the County and State aforesaid, certify that MATTHEW SOPHER, 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 TURNING POINT RENOVATIONS & REMODELING, INC., 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 15th day of September, 2011.

Dianna J. Toler
Notary Public
My Commission Expires: 11/15/2015



**AWARD – CONTRACT FOR LABOR AND EQUIPMENT FOR THE
INSTALLATION OF DIRECT GAS FIRED HEATING UNITS AND ALLOW
MANAGER TO EXECUTE THE CONTRACT, AND ISSUE THE NOTICE TO
PROCEED IMPRESSIONS BUILDING**

Mr. Kay explained that this request is to award a contract for the installation of direct gas fired heating units at the Impressions building. The contract is funded by American Recovery and Reinvestment grant funds and \$15,478.17 will be supplemented by funding from the Impression Lease Agreement. This is the second bid opportunity as the first time we only received one bid. Because this is an ARRA grant it was advised that the project be rebid. The bid opening was hosted Wednesday, September 7 at 2pm and again only one bid was received and this is acceptable by the granting agency. Staff was able to negotiate with the bidder for a slight reduction in the cost. Impressions have agreed to pay \$15,478.17.

By motion of Councilman Davis, seconded by Councilman Pitt, Council awarded the contract for labor and equipment for the installation of direct gas fired heating units and allow the Manager to execute the contract, subject to the attorney's revisions, and issue the Notice to Proceed to Southern Piping Company for \$105,600.

CITY OF WASHINGTON
ENERGY EFFICIENCY IN GOVERNMENT BUILDINGS GRANT
CONTRACT FOR LABOR AND EQUIPMENT FOR INSTALLATION OF DIRECT GAS FIRED HEATING UNITS

THIS CONTRACT FOR LABOR AND EQUIPMENT FOR INSTALLATION OF DIRECT GAS FIRED HEATING UNITS ("Contract") is made and entered into as of the ___ day of September 2011, by and between the City of Washington, a body politic and corporate of the State of North Carolina (the "City"), whose address is 102 E. 2nd St., P.O. Box 1988, Washington, North Carolina 27889 and Piedmont Natural Gas (the "Contractor"), a North Carolina corporation, whose address is 1069 Wilkes Road, Fayetteville, North Carolina 28306. The City and the Contractor are sometimes referred to in this Contract individually as a "Party" and collectively as "the Parties".

WITNESSETH

WHEREAS, the North Carolina Department of Commerce ("DOC") 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 Recovery Funds DOE Award Agreement DE-EE0000157 (CFDA #81.128) (the "DOE Award Agreement").

WHEREAS, the City is a sub-recipient of said ARRA funds ("Award") under the SEP Energy Efficiency in Government Buildings Grant, Government Round 2 ("Grant") to fund its Energy Efficiency in Government Buildings Grant Program ("Program"), which Program includes its Installation of Direct Gas-Fired Heating Units project ("Project").

WHEREAS, said Award is governed by a Grant Agreement between the City and DOC dated August 25, 2011 ("Grant Agreement"), which Grant Agreement incorporates provisions of the Grant including all appendices and amendments thereto; the City's related application/proposal as approved by DOC; the above referenced DOE Award Agreement, as the same may be amended from time to time; SEP Special Terms and Conditions, which Contractor acknowledged in its response to the Request for Proposals for this Project and Contract; 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 DOC,

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.

1 | Labor and Equipment for Installation of Direct Gas Fired Heating Units – Approved September 12, 2011

N.C. Energy Division's website at <http://www.nccommerce.com/energy>; and possibly on the City's website at www.washington-nc.gov.

WHEREAS, the purpose of the City's Program is to assist the City in making certain energy efficiency improvements to its buildings by utilizing Award funds to share in the cost of making said improvements.

WHEREAS, the City has selected one City building to participate in said Program at this time, which building is leased by the City to Impressions Marketing Group, Inc. ("Impressions").

WHEREAS, the City has awarded a bid for LABOR AND EQUIPMENT FOR INSTALLATION OF DIRECT GAS FIRED HEATING UNITS under the Program to Contractor at and for a sum equal to the aggregate cost of the work to be done, including but not limited to design, labor, equipment, apparatus, supplies, and installation furnished at the prices and rates respectively named therefore in Contractor's bid, which bid is incorporated herein by reference.

WHEREAS, Contractor has represented to the City that Contractor possesses the requisite skill, experience, and financial resources to provide the services contracted for herein.

NOW, THEREFORE, in consideration of the mutual promises as well as covenants herein, the consideration to be paid, 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, PAYMENT, AND TERMINATION

1. **Scope of Work.** Contractor shall complete the Project as more specifically provided for in the "Technical Scope of Work and Pricing" attached hereto as Exhibit A, which exhibit is incorporated herein by reference as if fully set forth. 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 Invitation for Bids as well as Contractor's response thereto (bid), including but not limited to Introduction, Scope of Work, Technical Scope of Work, Terms and Conditions, Bid Form, Pricing Sheet and Technical Specifications, SEP Special Terms and Conditions Acknowledgment Form, Performance Bond and Payment Bond Acknowledgment Form, Hold Harmless Agreements, Project Schedule, 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, 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

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with these requirements. Contractor shall fulfill all of its own, including any contractor's, 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 shall be duly licensed by the State of North Carolina to provide the Services contracted for.
3. **Compensation.** The amount available for work performed under this Contract shall not exceed \$115,900.00, 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 March 31, 2011 or until such time as DOC 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 on or before December 31, 2011. Contractor, as one of the considerations for the award 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 a delay within the control of Piedmont Natural Gas occurs. The fine will expire 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 \$115,900.00

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 Impressions.
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 the Project have been paid in full, final payment on account of the Project shall be made within thirty (30) days after the completion by Contractor of all work on the Project and the acceptance of such work as well as of said submission of evidence by City, in its sole discretion after consultation with Impressions 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

as contingent upon and subject to the appropriation, allocation, and continuing availability of funds for these purposes to DOC and City.

11. **Recovery of Award Funds.** Contractor expressly acknowledges and accepts City's and DOC'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 DOC, and DOC 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 | Labor and Equipment for Installation of Direct Gas Fired Heating Units – Approved September 12, 2011

5. **Special Requirements.**
 - a. The City and Impressions are to be included as additional insureds on the commercial general liability and business auto liability policies. If the Contractor carries umbrella/excess coverage, the City and Impressions shall also be named as additional insureds on said policy.
 - b. Contractor shall deliver to the City certificates of insurance for the insurance coverages Contractor is required to maintain in compliance with this Contract prior to the start of work.
 - c. 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.
 - d. 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.
 - e. Renewal certificates shall be sent to the City thirty (30) days prior to any 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.
 - f. Contractor shall report any obvious or suspected code issues to the project manager or his designee.
 - g. It shall be the responsibility of the Contractor to see that all subcontractors comply with these requirements.
6. **Contractor Safety Requirements.**
 - a. Contractor is required to comply with all current NIOSH 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 Risk Manager when necessary, and communicating to City regarding all safety issues.
 - b. 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 life and health. 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.
 - c. Prior to the start of any work by Contractor, 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.

6 | Labor and Equipment for Installation of Direct Gas Fired Heating Units – Approved September 12, 2011

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 Impressions 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 Impressions 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

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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 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 Contractor or City institute any legal proceedings against the other concerning a dispute arising from this Contract, the prevailing party in such action shall, in addition to any other recovery, be entitled to recover its costs and expenses from the other party, including its 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.

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

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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 B). 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 that 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

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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 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 Contractor or by any and all contractor(s) or subcontractors in the performance of the work contemplated by this Contract.
20. **Notice.** Unless otherwise specifically provided for herein, 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,

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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:

Keith Napier
Regional Executive
Piedmont Natural Gas
1069 Wilkes Road
Fayetteville, NC 28306
Telephone: 919.906.4216
Fax: 910.321.2954
Email: keith.napier@piedmontng.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. **No Waiver.** No waiver by either Party of any default by the other Party in the performance of any particular provision of this Contract shall invalidate any other paragraph of this Contract or operate as a waiver of any future default, whether like or different in character.
23. **Severability.** The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.
24. **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.
25. **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.

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.



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: *J. L. Kay* (SEAL)
Joshua L. Kay, City Manager
Date: _____
Tax ID Number: 56-6001364
End of Fiscal Year: June 30th

CONTRACTOR:
Piedmont Natural Gas

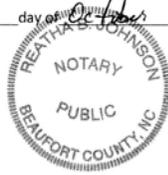
By: *Keith Napier* (SEAL)
Keith Napier, Regional Executive
Date: *Oct 19, 2011*
Tax ID Number: *56-0556998*
End of Fiscal Year: *Oct 31*

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Reatha B. Johnson, a Notary Public of the State and County aforesaid, certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is City Clerk of the CITY OF WASHINGTON, a North Carolina municipal corporation, and as the act of the corporation, the foregoing instrument was signed in its name by 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 October, 2011.

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



STATE OF NORTH CAROLINA
COUNTY OF Beaufort

I, Dianna J. Toler, a Notary Public of the County and State aforesaid, certify that KEITH NAPIER, who is personally known by me or has produced satisfactory evidence of identity, appeared before me this day and acknowledged that he is Vice President/Division Manager of PIEDMONT NATURAL GAS, 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 October, 2011.

Dianna J. Toler
Notary Public
My Commission Expires: 11/15/15



EXHIBIT A
TECHNICAL SCOPE OF WORK AND PRICING

Gas Fired Heaters:			
PIEDMONT NATURAL GAS			
Retrofit Description	Quantity	Price	Extended Price
Impressions			
Install S-Series Cambridge or equivalent direct gas fired makeup air unit heaters	5	98,234.00	102,734.00
Gas piping	1	11,697.73	12,197.73
Electrical Permit		45.00	45.00
HVAC Permit		45.00	45.00
Total Impressions Project			115,021.73
Signature		Date	
Gas Fired Heaters: Alternate Bid*			
Retrofit Description	Quantity	Price	Extended Price
Impressions			
Install S-Series Cambridge direct gas fired makeup air unit heaters	3	65,608.00	70,108.00
Gas piping	1	8,337.95	8,837.95
Electrical Permit		45.00	45.00
HVAC Permit		45.00	45.00
Total Impressions Project			79,035.95
Signature		Date	

EXHIBIT B
STATE GRANT COMPLIANCE REPORTING REQUIREMENTS

In addition to all other reporting requirements of the Contract, Contractor shall comply with the all rules and reporting requirements established by applicable North Carolina General Statutes and Title 9, Subchapter 3 of the North Carolina Administrative Code. For convenience, the requirements of 9 N.C.A.C. Subchapter 3M.0205 are set forth in this Exhibit. Note that the thresholds addressed below are thresholds for all State funds received by the City, as Grantee, in the aggregate and the definition of State funds includes Federal funds.

Reporting Thresholds.

There are three reporting thresholds established for Grantees and Contractors receiving State funds. The reporting thresholds are:

(1) Less than \$25,000 – A Grantee that receives, uses, or expends State funds in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year must comply with the reporting requirements established by 9 N.C.A.C. Subchapter 3M including:

- (A) A certification completed by the Grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted; and
- (B) An accounting of the State funds received, used, or expended.

All reporting requirements shall be filed with the funding agency within six (6) months after the end of the Grantee's fiscal year in which the State funds were received.

(2) \$25,000 up to \$500,000 - A Grantee that receives, uses, or expends State funds in an amount of at least twenty-five thousand (\$25,000) and up to five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by 9 N.C.A.C. Subchapter 3M including:

- (A) A certification completed by the Grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
- (B) An accounting of the State funds received, used, or expended; and
- (C) A description of activities and accomplishments undertaken by the grantee with the State funds.

All reporting requirements shall be filed with the funding agency within six (6) months after the end of the Grantee's fiscal year in which the State funds were received.

(3) Greater than \$500,000 – A Grantee that receives, uses, or expends State funds and in the amount greater than five hundred thousand dollars (\$500,000) within its fiscal year must comply with the reporting requirements established by 9 N.C.A.C. Subchapter 3M including:

- (A) A certification completed by the Grantee Board and management stating that the State funds were received, used, or expended for the purposes for which they were granted;
- (B) An audit prepared and completed by a licensed Certified Public Accountant for the grantee consistent with the reporting requirement of this Subchapter; and

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(C) A description of activities and accomplishments undertaken by the grantee with the State funds.
All reporting requirements shall be filed with both the funding agency and the Office of the State Auditor within nine (9) months after the end of the Grantee's fiscal year in which the State funds were received.

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**ADOPT – BUDGET ORDINANCE 2010-2011 PROJECTS NOT COMPLETED
THAT WERE BUDGETED IN 2010-11**

Mr. Kay explained the following projects were budgeted in the prior year but were not completed nor provided for in the current year budget:

- Brown Street Bridge, \$356,873 balance of project in addition to \$220,000 appropriated in August.

- Recreation trail grant, \$92,776 for the Jack’s Creek greenway project.
- Terra Ceia line rebuild, \$162,852 installment purchase.
- Vision 100 Grants, \$176,536 airport improvement grants.

Mr. Kay

Councilman Mercer inquired what the remainder of the funds be spent on for the Terra Ceia line rebuild. Keith Hardt explained the remaining funds will be for material and contract labor to complete this phase of the project. This project should be completed by the end of January 2012. Councilman Mercer requested a breakdown of where the monies were spent once the project is complete.

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, Council adopted a Budget Ordinance to appropriate funds for projects that were budgeted in 2010-2011 and not completed.

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

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

Section 1. That the following accounts of General Fund revenue budget be increased or decreased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Account	Description	Amount
10-20-3316-3400	DOT Reimbursement- Brown St	\$391,072
10-00-3991-9910	Fund Balance App- Powell Bill	(34,199)
10-40-3613-3603	Recreation Trail Grant	74,206

Section 2. That the following accounts of General Fund appropriations budget be increased or decreased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Department	Account	Description	Amount
Powell Bill	10-20-4511-7300	Brown St. Improvements	\$356,873
Parks & Grounds	10-40-6130-7305	Property Improvements	92,776
Contingency	10-00-9990-9900	Contingency	(18,570)

Section 3. That the following accounts of Electric Fund revenue budget be increased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Account	Description	Amount
35-90-3991-9910	Fund Balance Appropriated	\$117,661

Section 4. That the following accounts of Electric Fund appropriations budget be increased or decreased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Department	Account	Description	Amount
Power Line Construction	35-90-8390-7402	Installment Note Purch.	\$162,852
Contingency	35-90-9990-9900	Contingency	(45,191)

Section 5. That the following accounts of Warren Field Airport Fund revenue budget be increased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Account	Description	Amount
37-90-3490-0005	Vision 100 Grant	\$ 15,259
37-90-3490-0006	Vision 100 Grant	19,052
37-90-3490-0007	Vision 100 Grant	124,572
37-90-3991-9910	Fund Balance Appropriated	17,653

Section 6. That the following accounts of Warren Field Airport Fund appropriations budget be increased by the respective amounts indicated for projects budgeted but not completed in 2010-2011:

Department	Account	Description	Amount
Warren Field Airport	37-90-4530-4511	Grant Funds	\$ 16,954
Warren Field Airport	37-90-4530-4512	Grant Funds	21,169
Warren Field Airport	37-90-4530-4513	Grant Funds	138,413

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

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

Adopted this the 12th day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

**ADOPT – BUDGET ORDINANCE AMENDMENT FOR OUTSTANDING
PURCHASE ORDERS FROM FY 10/11 (\$912,158)**

Mr. Kay explained that at the close of fiscal year 2010-2011 the City had the following amount of outstanding purchase orders, by fund, issued for contracts and merchandise:

• General Fund	\$236,101
• Water Fund	29,778
• Sewer Fund	150,761
• Storm Water Fund	37,379
• Electric Fund	331,217
• Airport Fund	8,134
• Solid Waste Fund	114,536
• Cemetery Fund	1,326
• Façade Fund	2,926
• TOTAL	\$912,158

Funding for these outstanding purchase orders is restricted in fund balance at June 30, 2011. Therefore, the funding needs to be appropriated in the current fiscal year for spending.

Councilman Mercer requested staff investigate a way to clarify funds to show the funds are actually carried forward from a prior fiscal year. Mr. Kay explained staff is reviewing possible ways to show clarification regarding the funds that are carried forward from prior budget years.

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council adopted a budget ordinance amendment in the amount of \$912,158 for purchase orders outstanding from fiscal year 2010-2011 that are being brought forward into fiscal year 2011-2012 for payment.

**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:

General Fund

Section 1. That the Estimated Revenues in the General Fund be increased in the following amounts and accounts shown:

10-00-3991-9910	Fund Balance Appropriated	\$229,412
10-10-3491-3305	State Energy Grant	<u>6,689</u>
		\$236,101

Section 2. That the following account in the City Council Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #45497 outstanding from FY 10/11.

10-00-4110-0400	Professional Services	\$4,500
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Section 3. That the following accounts in the Human Resources Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #47039, #47287, #47288, and #47289 outstanding from FY 10/11.

10-00-4125-0400	Professional Services	\$2,750
10-00-4125-4500	Wellness Program	<u>550</u>
		\$3,300

Section 4. That the following accounts in the Finance Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #45499 and #45852 outstanding from FY 10/11.

10-00-4130-0400	Professional Services	\$686
10-00-4130-4500	Program Enhancements	<u>11,232</u>
		\$11,918

Section 5. That the following account in the Purchasing/Warehouse Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47307 outstanding from FY 10/11.

10-00-4131-1500	Maint/Repair Building	\$150
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Section 6. That the following accounts in the Information Technology Department portion of the General Funds appropriations budget be increased in the amounts shown to provide funds for purchase orders #46771, #47039, and #47341, outstanding from FY 10/11.

10-00-4132-7402	Installment Purchases	\$19,917
10-00-4132-4501	Program Enhancements	<u>2,750</u>
		\$22,667

Section 7. That the following accounts in the Municipal Building Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46667, #47356, #47357 and #47359 outstanding from FY 10/11.

10-00-4260-1502	Maint/Repair HVAC	\$1,028
10-00-4260-1500	Maint/Repair Buildings	5,200
10-00-4260-3300	Custodial Supplies	<u>50</u>
		\$6,278

Section 8. That the following account in the Miscellaneous, Non-Departmental portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47052, #47206, and #47350 outstanding from FY 10/11.

10-00-4400-7401	Installment Purchases	\$100,120
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Section 9. That the following accounts in the Police Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46639 and #46718 outstanding from FY 10/11.

10-10-4310-3600	Uniforms	\$1,233
10-10-4310-7402	Installment Purchases	<u>2,250</u>
		\$3,483

Section 10. That the following account in the Code Enforcement/Inspections Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47323 outstanding from FY 10/11.

10-10-4350-4500	Contract Services – Housing Demolition	\$2,500
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Section 11. That the following accounts in the Planning/Zoning Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #47340, #47342, and #47347 outstanding from FY 10/11.

10-10-4910-4510	Contract Services – Old City Hall	\$10,000
10-10-4910-4507	City Comprehensive Plan	20,000
10-10-4910-0400	Professional Services	4,000
10-10-4910-0202	Salaries – Energy Grant	3,740
10-10-4910-1404	Employee Development	940
10-10-4910-1201	Promotions & Education	<u>2,009</u>
		\$40,689

Section 12. That the following accounts in the Street Maintenance Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #45044, #46837, and #47391 outstanding from FY 10/11.

10-20-4511-4500	Street Paving	\$7,298
10-10-4341-7300	Property Improvements	<u>7,547</u>
		\$14,845

Section 13. That the following account in the Events and Facilities Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47285 outstanding from FY 10/11.

10-40-6121-3403	Special Events	\$480
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Section 14. That the following account in the Athletics and Programs Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47165 and #47333 outstanding from FY 10/11.

10-40-6122-4504	Beaufort County Reimbursable	\$882
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Section 15. That the following account in the Senior Programs Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47130 outstanding from FY 10/11.

10-40-6123-4504	Mid-East Grant	\$75
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Section 16. That the following account in the Waterfront Docks Department portion of the General Fund appropriations budget be increased in the amount shown to provide funds for purchase orders #47328 outstanding from FY 10/11.

10-40-6124-1501	Maint/Repair Grounds	\$1,344
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Section 17. That the following accounts in the Aquatic Center Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #47327, #47366, and #47387 outstanding from FY 10/11.

10-40-6126-1500	Maint/Repair Building	\$2,275
10-40-6126-1502	Maint/Repair HVAC	<u>1,420</u>
		\$3,695

Section 18. That the following accounts in the Parks and Ground Maintenance Department portion of the General Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46602, #47327, #47377, and #47392 outstanding from FY 10/11.

10-40-6130-1500	Maint/Repair Buildings	\$85
10-40-6130-7300	Other Improvements	<u>19,090</u>
		\$19,175

Water Fund

Section 19. That the Estimated Revenues in the Water Fund be increased in the amount of \$29,778 in the account Fund Balance Appropriated, account number 30-90-3991-9910.

Section 20. That the following account in the Water Meter Services Department portion of the Water Fund appropriations budget be increased in the amount shown to provide funds for purchase order #47179 outstanding from FY 10/11.

30-90-7250-5600	Materials	\$3,381
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Section 21. That the following accounts in the Water Treatment Plant Department portion of the Water Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #45472, #45964, #46041, #46783, #46493, #46619, #47081, #47241, #47368, and #47370 outstanding from FY 10/11.

30-90-8100-1500	Maint/Repair Buildings	\$3,000
30-90-8100-1600	Maint/Repair Plant Equip	1,417
30-90-8100-3302	Chemicals	2,630
30-90-8100-3303	Laboratory Supplies	615
30-90-8100-4501	Contract Lab Services	444
30-90-8100-0401	Professional Services	2,981
30-90-8100-7400	Capital Outlay	<u>15,310</u>
		\$26,397

Sewer Fund

Section 22. That the Estimated Revenues in the Sewer Fund be increased in the amount of \$150,761 in the account Fund Balance Appropriated, account number 32-90-3991-9910.

Section 23. That the following account in the Wastewater Maintenance Department portion of the Sewer Fund appropriations budget be increased in the amount shown to provide funds for purchase orders, #46700 and #47129 outstanding from FY 10/11.

32-90-8200-4500	Contract Services	\$22,059
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Section 24. That the following accounts in the Wastewater Treatment Plant Department portion of the Sewer Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #45456, #45457, #46041, #46095, #46503, #47098, #47237, and #47367 outstanding from FY 10/11.

32-90-8220-1600	Maint/ Repair Plant	\$10,208
32-90-8230-7400	Capital Outlay	<u>91,785</u>
		\$101,993

Section 25. That the following accounts in the Lift Stations Department portion of the Sewer Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #45288, #46867, #47217, and #47224 outstanding from FY 10/11.

32-90-8230-0400	Professional Services	\$52
32-90-8230-1600	Maint/Repair Pump Stations	18
32-90-8230-7400	Capital Outlay	<u>26,639</u>
		\$26,709

Storm Water Fund

Section 26. That the Estimated Revenues in the Storm Water Fund be increased in the amount of \$37,379 in the account Fund Balance Appropriated, account number 34-90-3991-9910.

Section 27. That the following accounts in the Storm Water Fund appropriations budget be increased in the amounts shown to provide funds for purchase order #43481, #45576, and #46238 outstanding from FY 10/11.

34-90-5710-1601	Maintenance/Repair Jacks Creek	\$37,279
34-90-5712-4501	Contract Lab Services	<u>100</u>
		\$37,379

Electric Fund

Section 28. That the Estimated Revenues in the Electric Fund be increased in the amounts and accounts shown:

35-90-3991-9910	Fund Balance Appropriated	\$331,217
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Section 29. That the following accounts in the Electric Director portion of the Electric Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46228 and #46401 outstanding from FY 10/11.

35-90-7220-1700	Maint/Repair Vehicles	\$6
35-90-7220-7402	Installment Purchases	<u>27,909</u>
		\$27,915

Section 30. That the following account in the Utility Communications Department portion of the Electric Fund appropriations budget be increased in the amount shown to provide funds for purchase order #47325 outstanding from FY 10/11.

35-90-7230-3300	Departmental Supplies	\$180
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Section 31. That the following accounts in the Meter Services Department portion of the Electric Fund appropriations budget be increased in the amounts shown to provide funds for purchase order #46676, #46871, #47320, #47321, #47322, and #47325 outstanding from FY 10/11.

35-90-7250-3600	Uniforms	\$350
35-90-7250-7402	Installment Purchases	<u>59,933</u>
		\$60,283

Section 32. That the following accounts in the Substation Maintenance portion of the Electric Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #47163, #47182, #47214, #47247, #47265, #47269, and #47325 outstanding from FY 10/11.

35-90-8370-1600	Maint/Repair Equipment	\$5,645
35-90-8370-1602	Maint/Repair Radio	245

35-90-8370-1603	Maint/Repair Substation	7,530
35-90-8370-3600	Uniforms	283
35-90-8370-4500	Contracts	2,150
35-90-8370-7402	Installment Purchases	<u>15,000</u>
		\$30,853

Section 33. That the following account in the Load Management Department portion of the Electric Fund appropriations budget be increased in the amount shown to provide funds for purchase order #46287 and #47016 outstanding from FY 10/11.

35-90-8375-4500	Contract Services	\$26,660
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Section 34. That the following accounts in the Power Line Maintenance portion of the Electric Fund appropriations budget be increased in the amounts shown to provide funds for purchase order #46348, #47020, #47267, and #47325 outstanding from FY 10/11.

35-90-8380-1500	Maint/Repair Buildings	\$2,373
35-90-8380-5601	Material – Street Lights	1,541
35-90-8380-3600	Uniforms	<u>1,500</u>
		\$5,414

Section 35. That the following accounts in the Power Line Construction Department portion of the Electric Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46626, #46840, #46932, #47393, and #45413 outstanding from FY 10/11.

35-90-8390-5601	Material Underground	\$114
35-90-8390-7400	Capital Outlay	4,807
35-90-8390-7402	Installment Purchases	<u>174,991</u>
		\$179,912

Airport Fund

Section 36. That the Estimated Revenues in the Airport Fund be increased in the amounts and accounts shown:

37-90-3991-9910	Fund Balance Appropriated	\$2,245
37-90-3490-0006	Grant Funds – 36237.38.8.1	3,633
37-90-3490-0005	Grant Funds – 36237.38.7.1	<u>2,255</u>
		\$8,134

Section 37. That the following accounts in the Airport Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #40611, #45940, #46664, #47029, and #47389 outstanding from FY 10/11.

37-90-4530-4511	Vision 100 Grant 36237.38.7.1	\$2,505
37-90-4530-4512	Vision 100 Grant 36237.38.8.1	4,037
37-90-4530-1500	Maint/Repair Building	720
37-90-4530-1502	Maint/Repair Runway	<u>872</u>
		\$8,134

Solid Waste Fund

Section 38. That the Estimated Revenues in the Solid Waste Fund be increased in the following amounts and accounts shown:

38-90-3991-9900	Fund Balance Appropriated	\$114,536
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Section 39. That the following accounts in the Solid Waste Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #47234 and #47235 outstanding from FY 10/11.

38-90-4710-1700	Maint/Repair Vehicles	\$6
38-90-4710-7401	Installment Purchases	<u>114,530</u>
		\$114,536

Cemetery Fund

Section 40. That the Estimated Revenues in the Cemetery Fund be increased in the amount of \$1,326 in the account Fund Balance Appropriated, account number 39-90-3991-9900.

Section 41. That the following accounts in the Cemetery Fund appropriations budget be increased in the amounts shown to provide funds for purchase orders #46465 and #46592 outstanding from FY 10/11.

39-90-4740-1600	Maint/Repair Mowers	\$326
38-90-4710-7400	Capital Outlay	<u>1,000</u>
		\$1,326

UDAG Fund

Section 41. That the Estimated Revenues in the UDAG Fund appropriations budget be increased in the amount of \$2,926 in the account Fund Balance Appropriated, account number 67-60-3991-9910.

Section 42. That account number 67-60-8280-9700, Façade Grants portion of the UDAG Fund appropriations budget be increased in the amount of \$2,926 to provide funds for purchase order #43722 and #43745 outstanding from FY 10/11.

Section 43. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 44. This ordinance shall become effective upon its adoption.

Adopted this the 12th day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

ADOPT & APPROVE – RESOLUTION AUTHORIZING A PUBLIC NOTICE TO SOLICIT OFFERS TO PURCHASE CERTAIN SURPLUS REAL PROPERTY OF THE CITY OF WASHINGTON AND APPROVE SAID PUBLIC NOTICE (DISPOSITION OF PROPERTY AT 507 WEST SECOND STREET)

During the regular scheduled meeting of the City Council held on September 13, 2010, a resolution was adopted to begin the upset bid process to dispose of the property located at 507 West Second Street. The original offer of \$1,000 was received as well as advertised and subsequent upset bids were received as well as advertised. The final upset bid was \$3,500.00. City Council accepted the bid and adopted a resolution authorizing the Mayor to sign all the necessary legal documents to convey the surplus property to the bidder. After attempting to contact the bidder several times concerning the conveyance of the property, the City Clerk received written communication that the bidder had to reorganize due to the economy and was no longer in a position to purchase the property. It is the recommendation of staff to re-start the process of disposing of the property by soliciting offers to purchase the property through a public notice and advertising the highest such offer received for upset bids pursuant to N.C. Gen. Stat. § 160A-269. The deposit will be refunded.

Mayor Pro tem Roberson suggested the Inspections Dept. visit the structure to determine what permits will be needed and work will be required to bring the structure up to code and that the bidders meet with the inspectors to discuss this. Mr. Kay suggested possibly delaying this item for another month to confer with the inspectors. Council, upon

consensus agreed to move forward with the project contingent on the consultation with the inspectors provided they feel this is a viable project, then move forward with the bidding process. If the inspectors feel this is a lost cause, there would be no need to move forward with the bidding process.

By motion of Councilman Pitt, seconded by Councilman Davis, Council adopted the Resolution authorizing a public notice to solicit offers to purchase certain surplus real property of the City of Washington and approved said public notice. Provided that the inspections department, upon review, deems the structure is viable and appropriate to proceed with the bidding process.

**RESOLUTION AUTHORIZING A PUBLIC NOTICE TO SOLICIT
OFFERS TO PURCHASE CERTAIN SURPLUS REAL PROPERTY
OF THE CITY OF WASHINGTON**

WHEREAS, the City Council of the City of Washington (“City”) has determined that the real estate herein described and currently owned by the City is not required for governmental purposes and is therefore surplus.

WHEREAS, the City desires to sell said property by soliciting offers to purchase the same through a public notice and advertising the highest such offer received for upset bids pursuant to N.C. Gen. Stat. § 160A-269.

NOW, THEREFORE, BE IT RESOLVED by the City Council that:

1. The following described real property, having an address of 507 West Second Street, is hereby declared to be surplus to the needs of the City.

That certain tract or parcel of land lying and being in the City of Washington. Beaufort County, North Carolina, more particularly described as follows:

IT BEING that Lot One (1) containing 0.09 acres as shown on survey map entitled “Survey for Timothy M. Evans” prepared by Waters Surveying dated December 3, 2009 and being that same property deeded to the City of Washington by deed dated January 27, 2010 recorded in Book 1710, Page 461, Beaufort County Registry, to which survey map and deed reference is herein made for a more complete and adequate description.

2. The City Council is accepting offers to purchase the property described above.
3. Persons desiring to make an offer to purchase the above property must submit a written offer to the City Clerk within thirty (30) days of the date the notice provided for herein is published. Any person making an offer shall deposit with the City Clerk a sum equal to five percent (5%) of the offer within thirty (30) days of said publication of said notice. The City Clerk shall retain the highest offer and deposit received and return all other offers and deposits. The City Clerk shall then publish a notice that within ten (10) days of the notice any person may raise the offer through an upset bid(s) of not less than ten percent (10%) more than the first one thousand (\$1,000.00) of the offer and five percent (5%) more than the remainder of the offer. When a qualifying upset bid is made, the bidder shall deposit with the City Clerk five percent (5%) of the amount of the increased bid and the Clerk shall re-advertise the offer in the amount of the increased bid. This procedure shall be repeated until no further qualifying upset bid(s) are received; at which time, the City Council may accept the offer and sell the property to the highest bidder. The City may at any time reject any and all offers and bids.
4. The City Council proposes to accept said offer or subsequent qualifying upset bid, subject to the provisions and conditions stated herein. Any subsequent conveyance of the property described above shall be subject to the following.

- a. Any restrictive or protective covenant, and a reversionary clause, that, in the sole discretion of the City, are required in order to preserve and restore said property consistent with the City's Historic District Guidelines for existing structures, as may be amended; the Secretary of the Interior's Standards for the Treatment of Historic Properties, as may be amended; and any other law, code, or guideline applicable to the property.
 - b. A Purchase, Preservation, and/or Maintenance Agreement, in the sole discretion of the City, by and between the purchaser and the City'. Said Agreement will be enforceable by said reversionary clause and shall include, among other things, requirements that the exterior restoration of the structure located on the property be completed within one hundred twenty (120) days and the entire renovation of said structure be completed within two (2) years.
 - c. The purchaser shall be responsible for payment of any and all taxes due or coming due against the property.
 - d. Any conveyance shall be by special warranty deed."
5. Notwithstanding anything herein to the contrary, the City, without recourse from any individual making the offer or any subsequent qualifying upset bid, reserves the right to cancel this upset bid process and enter an Option to Purchase Real Property for Historic Preservation with the Historic Preservation Foundation of North Carolina, Inc. or convey the property outright to the Historic Preservation Foundation of North Carolina, Inc.

Adopted this 12th day of September, 2011.

ATTEST:

s/Cynthia S. Bennett, CMC
CITY CLERK

s/N. Archie Jennings, III
MAYOR

**AUTHORIZE – CITY MANAGER TO EXECUTE ENGINEERING AGREEMENT
WITH SUMMIT CONSULTING FOR THE BROWN STREET BRIDGE
REPLACEMENT PROJECT (\$78,731.13)**

Mr. Kay explained that the project is nearing the bid process and we have advertised for inspection services as required. A proposal has been approved by NCDOT for \$78,731.13 with Summit Consulting out of Hillsborough. Discussion held regarding pricing and soil samples.

By motion of Councilman Davis, seconded by Councilman Pitt, Council authorized the Manager to execute the Engineering Agreement with Summit Consulting required for professional engineering services necessary for construction engineering and inspection for the Brown Street Bridge replacement project in the amount not to exceed \$78,731.13.

PROJECT: B-5174
CITY OF WASHINGTON
BRIDGE 80 ON BROWN STREET OVER JACK'S CREEK
COUNTY: BEAUFORT

ENGINEERING AGREEMENT

This AGREEMENT, made and entered into this _____ day of _____, 2011, by and between the City of Washington (hereinafter called the "CITY") and, SUMMIT CONSULTING-Engineering, Architecture & Surveying (hereinafter called the "ENGINEER") with office at, 1000 Corporate Drive, Suite 101, Hillsborough, NC 27278.

GENERAL RECITALS

WITNESSETH:

WHEREAS, the CITY intends to execute a contract for the construction of Bridge 80 on Brown Street over Jack's Creek; and,

WHEREAS, the CITY is obliged to carry out the proper construction of said Projects under standards for construction of roads and structures of the North Carolina Department of Transportation (hereinafter called the "NCDOT"); and

WHEREAS, the CITY desires the assistance of a private engineering firm (hereinafter called the "ENGINEER") in the performance of certain engineering services (hereinafter called "SERVICES") in conjunction with the CONTRACTOR'S performance; and

WHEREAS, the ENGINEER has exhibited evidence of experience, ability, competence, and reputation to perform such engineering SERVICES;

NOW THEREFORE, the CITY and the ENGINEER, for consideration hereinafter stipulated, mutually agree as follows:

The ENGINEER agrees to perform the required professional engineering SERVICES necessary for Construction Engineering and Inspection on Bridge 80 on Brown Street over Jack's Creek.

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ARTICLE I -- SCOPE OF SERVICES

I.A Description of Work Required

This statement of work describes and defines the SERVICES required for construction inspection, materials sampling and testing, and contract administration for the project entitled Bridge 80 on Brown Street over Jack's Creek.

- I.A.1 The ENGINEER shall be responsible for all construction inspection, field materials sampling and testing, and assisting the CITY with contract administration for the construction Project as outlined in the Scope of Services, Article I.
- I.A.2 The ENGINEER shall be responsible for all construction administrative functions as defined in this Scope of Services and referenced manuals and procedures.
- I.A.3 The ENGINEER shall utilize effective control procedures such that the construction of this project is performed in reasonably close conformity with the plans, specifications, and contract provisions.
- I.A.4 The ENGINEER shall be responsible for providing technical personnel in appropriate numbers at the proper times such that the responsibilities assigned under this AGREEMENT are effectively carried out.
- I.A.5 All SERVICES shall be performed in accordance with the established standard procedures and practices of the NCDOT. Prior to furnishing any SERVICES, the ENGINEER shall be familiar with those departmental standard procedures and practices as set forth in the Construction Manual and associated manuals and with informal procedures and practices for construction contract administration used by the NCDOT.
- I.A.6 The ENGINEER shall not employ any person to provide the SERVICES that was involved with the project while employed with NCDOT as a construction engineer or construction technician.
- I.A.7 The ENGINEER shall maintain close coordination with the CITY and the CONTRACTOR in order to minimize rescheduling of the ENGINEER'S activities due to construction delays or changes in scheduling of the CONTRACTOR'S activities.

I.B Work Standards

- I.B.1 It shall be the responsibility of the ENGINEER to provide SERVICES as necessary such that the project is constructed in reasonably close conformity with the plans, specifications, and contract provisions.
- I.B.2 The ENGINEER shall advise the CITY of any observed omissions, substitutions, defects, and deficiencies noted in the work of the CONTRACTOR and any corrective action taken. The SERVICES provided by the ENGINEER shall not relieve the

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CONTRACTOR of responsibility for the satisfactory performance of the construction contract.

- I.B.3 The ENGINEER shall work under the general guidance and direction of the Executive Director/Manager of the CITY. The ENGINEER shall make normal and routine project decisions consistent with the NCDOT's policies, procedures, and general guidance provided by the City or NCDOT Resident Engineer and Assistant Resident Engineers.
- I.B.4 The ENGINEER shall make and record such measurements as are necessary to calculate and document quantities for pay items, except for measurement of earthwork quantities that requires the services of a survey crew, and perform incidental engineering surveys as may be necessary to carry out the SERVICES covered by this AGREEMENT.
- I.B.5 The ENGINEER shall provide SERVICES to monitor the CONTRACTOR'S on-site construction operation and to inspect all materials entering into the work as required so that the quality of workmanship and materials is such that the project will be completed in reasonably close conformity with the plans, specifications, and other contract provisions. The ENGINEER shall keep detailed, accurate records of the CONTRACTOR'S daily operations and significant events that affect the work.
- I.B.6 The standard procedures and practices of the NCDOT for inspection of construction projects are set out in the Construction Manual. The ENGINEER shall perform inspection SERVICES in accordance with these standard procedures and practices and other accepted practices as may be appropriate.
- I.B.7 The ENGINEER shall perform or provide for through the services of an independent testing firm field sampling and testing of component materials and completed work items such that the materials and workmanship incorporated into the project are in reasonably close conformity with the plans, specifications, and contract provisions.
- I.B.8 The ENGINEER shall perform all necessary surveillance and inspection of the hot-mix asphalt roadway operations.
- I.B.9 The ENGINEER shall attend the Preconstruction Conference, if applicable.
- I.B.10 The ENGINEER shall maintain on a daily basis a complete and accurate record of all activities and events relating to the project and a record of all work completed by the CONTRACTOR, including quantities of pay items in conformity with NCDOT's policies and procedures. The ENGINEER shall immediately report apparent significant changes in quantity, time, or cost to the CITY as they are observed.
- I.B.11 The ENGINEER shall prepare inspector's daily reports of the CONTRACTOR's operations in accordance with the Construction Manual.

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- I.B.12 The ENGINEER shall maintain records of all sampling and testing accomplished and analyze such records required such that acceptability of materials and completed work items can be determined.
 - I.B.13 The ENGINEER shall, at a minimum, each month prepare a comprehensive tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be submitted to the CITY with the progress payment estimate.
 - I.B.14 The ENGINEER shall provide to the CONTRACTOR interpretations of the plans, specifications, and contract provisions. The ENGINEER shall consult with the NCDOT and the CITY when an interpretation involves complex issues or may have an impact on the cost of performing the work or is known to be an area of dispute with the CONTRACTOR.
 - I.B.15 The ENGINEER shall analyze changes to the plans, specifications, or contract provisions and extra work which appear to be necessary to carry out the intent of the construction contract. When it is determined that a change or extra work is necessary and such work is not within the scope and intent of the original contract, the ENGINEER shall initiate any change necessary to cause the CONTRACTOR to perform the extra work.
 - I.B.16 When it is determined that a modification to the original contract for the project is required due to a necessary change in the character of the work, the ENGINEER shall negotiate prices with the CONTRACTOR and prepare and submit for approval to the CITY an appropriate Change Order or Supplemental Agreement, as applicable.
 - I.B.17 In the event that the CONTRACTOR gives notice in writing that he deems certain work to be performed is beyond the scope of the construction contract and he intends to claim additional compensation, the ENGINEER shall maintain accurate records of the costs involved in such work. These records shall include manpower and equipment times and materials installed (temporary or permanent) in the portion of the work in dispute.
 - I.B.18 In the event that the CONTRACTOR gives notice of intent to file claim for additional compensation, the ENGINEER shall maintain complete and accurate records of work involved in the claims.
 - I.B.19 The ENGINEER shall monitor each construction operation to the extent necessary to determine whether construction activities violate the requirements of any permits. The ENGINEER shall notify the CONTRACTOR of any violations or potential violations and require his immediate resolution of the problem. Permit violations must be reported to the CITY immediately.
 - I.B.19 The ENGINEER shall interface with the CONTRACTOR and utility companies to coordinate the timely removal, adjustment, or protection of in-situ utilities which may conflict with the construction plans.

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ARTICLE II – DATA AND SERVICES TO BE PROVIDED BY THE CITY

II.A. The CITY shall provide the ENGINEER available data and information, as applicable to the detailed SCOPE OF WORK developed for the project, which may include but is not limited to, the following:

- Approved Construction Plans
- Approved Contract Documents – proposals, specifications.
- Environmental Permits (Erosion Control, CAMA, 401 Water Quality Certification, Section 404)
- All data in the hands of the CITY (or its engineering design consultant) that can be released that would assist the ENGINEER in the accomplishment of the work.
- All CITY policies and procedures applicable to the prosecution of the project.

It is the responsibility of the ENGINEER to obtain the latest NCDOT approved Standard Specifications for Roads and Structures, Standard Drawings, Construction Manual, and Materials and Tests Manual.

ARTICLE III – TIME OF BEGINNING AND CONTRACT DURATION

III.A SERVICES to be performed by the ENGINEER under this AGREEMENT shall begin after official notice from the CITY to proceed. The CITY will not be responsible for payment for work performed in advance of such notice. Actual construction inspection SERVICES in the field shall correspond with the dates for the construction contract.

III.B The contract duration proposed under this AGREEMENT is a construction period of approximately 4.5 months. Detailed man-hours and cost estimate are attached as Appendix A and substantiates the engineering fees and costs.

III.C The ENGINEER will be required to satisfactorily verify all pay records in accordance with the CITY's policies and procedures and submit same together with a set of plans with field revisions noted in red thereon to the CITY and NCDOT's Resident Engineer within forty-five (45) days after completion of the construction project.

ARTICLE IV – COMPENSATION AND PAYMENT

IV.A Engineering Fees and Costs

As complete compensation for SERVICES performed in accordance with the provisions of this AGREEMENT, the ENGINEER will be paid for actual costs plus a fee equal to 10% percent of the direct salaries, payroll burden, and overhead costs for the time period specified above. Actual costs to the ENGINEER include direct labor costs applicable to this project, all direct non-salary costs applicable to this project, and all overhead, all as

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found defined below and as allowed in the Federal Acquisition Regulations, Subpart 1-31.2. The Actual cost may be subject to audit by the NCDOT and FHWA.

IV.A.1 Maximum Amount Payable

The maximum amount payable, including an estimated actual cost and estimated fee shall not exceed \$78,731.13 for the time period specified above. Detailed man-hours and cost estimate are attached as Appendix A and substantiates the foregoing fees. During the progress of the SERVICES, if it appears that the maximum in the amount of \$78,731.13 will be exceeded, the ENGINEER shall notify the CITY in writing. The ENGINEER shall not proceed beyond the total estimated cost without prior written approval by the CITY.

IV.A.2 Direct Salaries

Direct salaries are defined as cost of salaries of inspectors and other personnel performing work or a service for the time directly chargeable to this project. Salaries to be charged during the contract period are shown in Appendix A.

IV.A.3 Payroll Burden and Overhead Costs

Overhead costs are expressed as a percentage of direct salaries, excluding the premium portion of overtime and shift premium labor. The ENGINEER will be reimbursed at an overhead rate of 130.5% for Project Technicians and Project Management. If the NCDOT Office of Inspector General arrives at a new audited overhead rate or is presented one from another Federal of State agency, the overhead will be adjusted at the date the Office of Inspector General indicates acceptance of the new rate.

IV.A.4 Nonsalary Direct Costs

Payment for vehicle usage will be made at the rate of \$1200.00 per month for two-wheel drive vehicles. Calculation of vehicle base rate and mileage additive is shown in Appendix A.

IV.B Progress Report

The ENGINEER shall, at the end of each calendar month during which SERVICES are in progress under this AGREEMENT, prepare and present to the CITY a Progress Report stating the percent completion of the SERVICES.

IV.C Payment and Retainage

IV.C.1 The ENGINEER'S Progress Report and invoice with required supporting documentation shall be submitted monthly by the ENGINEER and approved by the CITY. The CITY agrees to make monthly payments based on direct nonsalary costs incurred plus total

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direct labor costs incurred times the applicable multiplier for the ENGINEER and the applicable multipliers for Subconsultants as appropriate.

IV.C.2 The ENGINEER shall approve pay request for work performed by material testing consultant within seven days after the ENGINEER receives a request for payment. Upon approval, the material testing pay request shall be submitted to the CITY for payment.

IV.C.3 When payments are made to DBE and/or MBE firms, the ENGINEER shall provide the CITY with an accounting of said payments. This accounting shall be furnished to the CITY for any given month by the end of the following month. Failure to submit this information accordingly may result in (1) withholding of money due in the next monthly invoice, or (2) removal of an approved ENGINEER from the prequalified register of firms. The accounting shall list for each:

NCDOT Project Number(s)
Payee ENGINEER Name
Receiving Subconsultant Name
DBE/MBE Certification Basis
Amount of Payment
Date of Payment

A responsible fiscal officer of the payee ENGINEER who can attest to the date and amounts of the payments shall certify that the accounting is correct.

IV.D Maintenance of Information and Reports

IV.D.1 FHWA Information

IV.D.1.a All work shall be administered and performed in accordance with Federal-Aid Policy Guide, 23 CFR 172A and the North Carolina Administrative Code.

IV.D.1.b Subcontracts exceeding \$2,500 which involve the employment of mechanics or laborers shall require the subcontractor to comply with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

IV.D.1.c Subcontracts exceeding \$10,000 shall require the subcontractor to comply with all Federal regulations required in the prime contract.

IV.D.2 Availability of Information

The ENGINEER agrees to maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment for inspection by the CITY, NCDOT or Federal Highway Administration. Copies thereof shall be furnished to the CITY,

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NCDOT or Federal Highway Administration if requested. The ENGINEER shall use cost principles as described in Federal Acquisition Regulation (48 CFR 1-31), Subpart 1-31.2. The ENGINEER further agrees to require all subcontractors to whom a portion of this contract may be sublet to maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred on this project and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of final payment, and to require said subcontractors to furnish copies of such documents to the CITY, NCDOT and/or Federal Highway Administration upon request. The ENGINEER shall affirmatively enforce this provision of this contract with the subcontractor upon request of the CITY, NCDOT or Federal Highway Administration.

ARTICLE V – MISCELLANEOUS PROVISIONS

V.A Conferences, Visits to Site, Inspection of Work

A responsible member of the firm will represent the ENGINEER for any meetings, hearings, consultations, and field conferences deemed necessary by the CITY, NCDOT or the ENGINEER. All conferences held will be in the vicinity of the project.

V.B Relationship with Others

The ENGINEER shall cooperate fully with the CITY's and NCDOT's engineers on adjacent projects, and with local, state and federal government officials and others as may be directed by the CITY. This shall include attendance at meetings, discussions, and hearings as may be requested by the CITY.

V.C Staffing by the ENGINEER

The control and supervision of all phases of the SERVICES performed under this AGREEMENT by the ENGINEER shall be under the direction of a Professional Engineer or a person with an acceptable combination of education and experience. A staff of competent, qualified technicians adequate in number and experience to perform the described SERVICES shall be assigned at all times. The CITY reserves the right at any time to increase or decrease the number of technicians assigned to the work.

The technicians, salary rate of each technician, and classifications shall be approved by the CITY prior to their usage in the performance of the SERVICES. Changes in the technicians, salary rates, and/or classifications shall be approved by the CITY prior to the change.

V.D Instructions or Directions

If, during the duration of this AGREEMENT, the ENGINEER receives instructions or directions which are considered beyond the scope of SERVICES outlined in this

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AGREEMENT, or referenced attachments, the ENGINEER shall immediately notify the CITY in writing with a description and justification for the claim of extra SERVICES. The ENGINEER shall notify the CITY of extra SERVICES in writing prior to performing the extra SERVICES.

V.E. Ethics Policy

The ENGINEER agrees to comply with the NCDOT's ethics policy.

V.F. Miscellaneous Provisions

None.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated:

EXECUTED by the CITY this Sept. 13th day of 2011.



THE CITY OF WASHINGTON

By: [Signature]
Joshua Kay - City Manager

Attest: [Signature]

Cynthia S. Bennett, City Clerk
(Print Name and Title)

EXECUTED by the ENGINEER this _____ day of 2011.

SUMMIT CONSULTING-Engineering, Architecture & Surveying, PLLC

By: _____
James W. Parker, Jr., President

Attest: _____
Sherry Jones, Vice President

Affix Corporate Seal - no seal -

 SUMMIT CONSULTING <small>ENGINEERING & ARCHITECTURE & SURVEYING</small>		Appendix A
Construction Engineering and Inspection (CEI)		
B-5174 Bridge 80 on Brown Street Over Jack's Creek		
WBS -42395.11		
Contract # 7500011606		
ENGINEERING AND INSPECTION TECHNICAINS		
		<u>Direct Labor</u>
Summit Technicians		\$ 19,800.00
Summit Overhead Audited 130.5%		\$ 25,839.00
Subtotal		\$ 45,639.00
Operating Margin (10%)		\$ 4,563.90
Subtotal		\$ 50,202.90
Summit Technicians - Premium		\$ 900.00
TOTAL COST CEI TECHNICAINS		\$ 51,102.90
PROJECT MANAGEMENT / CONTRACT ADMINISTRATION		
		<u>Direct Labor</u>
Summit Project Management		\$ 8,832.80
Summit Overhead Audited 130.5%		\$ 8,916.80
Subtotal		\$ 15,749.60
Operating Margin (10%)		\$ 1,574.96
TOTAL COST PROJECT MANAGEMENT		\$ 17,324.56
PROJECT DIRECT EXPENSES		
TOTAL DIRECT EXPENSES		\$ 10,303.67
AGREEMENT COSTS AND FEES SUMMARY		
CEI Technicians		\$ 51,102.90
Project Management		\$ 17,324.56
Project Direct Expenses		\$ 10,303.67
TOTAL COSTS AND FEES:		\$ 78,731.13



ENGINEERING AND INSPECTION TECHNICIANS
B-5174 Bridge 80 on Brown Street Over Jack's Creek
DIRECT LABOR COST SUMMARY

Personnel Classification	Regular Hours ¹	Overtime Hours ²	Total Hours	Regular Rate ³	Regular Labor	Premium Hours	Premium Rate	Premium Labor	Total Labor ⁴
Trans. Technician III	720	72	792	\$ 25.00	\$ 19,800.00	72	\$ 12.50	\$ 900.00	\$ 20,700.00
					\$ -	0	\$ -	\$ -	\$ -
					\$ -	0	\$ -	\$ -	\$ -
	0	0	0		\$ -	0	\$ -	\$ -	\$ -
TOTALS	720	72	792	\$ 25.00	\$ 19,800.00	72	\$ 12.50	\$ 900.00	\$ 20,700.00

GRAND TOTAL

Personnel Classification	Regular Hours ¹	Overtime Hours ²	Total Hours	Regular Rate ³	Regular Labor	Premium Hours	Premium Rate	Premium Labor	Total Labor ⁴
TOTALS	720	72	792	\$ 25.00	\$19,800.00	72.00	\$ 12.50	\$900.00	\$20,700.00



PROJECT MANAGEMENT / CONTRACT ADMINISTRATION
B-5174 Bridge 80 on Brown Street Over Jack's Creek
DIRECT LABOR COST SUMMARY

Personnel Classification	Regular Hours ¹	Overtime Hours ²	Total Hours	Regular Rate ³	Regular Labor	Premium Hours	Premium Rate	Premium Labor	Total Labor ⁴
Project Manager	40	0	40	\$ 43.02	\$ 1,720.80	0	\$ 21.51	\$ -	\$ 1,720.80
Project Engineer	144	0	144	\$ 35.50	\$ 5,112.00	0	\$ 17.75	\$ -	\$ 5,112.00
		0	0	\$ -	\$ -	0	\$ -	\$ -	\$ -
	0	0	0		\$ -	0	\$ -	\$ -	\$ -
TOTALS	184	0	184	\$ 78.52	\$ 6,832.80	0	\$ 39.26	\$ -	\$ 6,832.80

GRAND TOTAL

Personnel Classification	Regular Hours ¹	Overtime Hours ²	Total Hours	Regular Rate ³	Regular Labor	Premium Hours	Premium Rate	Premium Labor	Total Labor ⁴
TOTALS	184	0	184	\$ 78.52	\$ 6,832.80	-	\$ 39.26	\$ 0.00	\$ 6,832.80



PROJECT DIRECT EXPENSES
B-5174 Bridge 80 on Brown Street Over Jack's Creek
DIRECT COST SUMMARY

Item No.	Description	Months	Quantity	Unit	Unit Price	Unit Tax	Total Unit Cost	Salvage Value	Total Cost
1	Project Vehicles	4.5	1	vehicle-month	\$ 1,078.67	\$ 83.69	\$ 1,162.36		\$ 5,229.72
2	Communications (Cell Phones)	4.5	1	phone-month	\$ 40.00	\$ 3.10	\$ 43.10		\$ 193.95
3	Mileage		1800	miles	\$ 0.51				\$ 918.00
	Miscellaneous Direct Costs								
4	Per Diem (breakfast, lunch, dinner)	2	20	days/month	\$ 35.15		\$ 703.00		\$ 1,406.00
5	Lodging	2	20	days/month	\$ 63.90		\$ 1,278.00		\$ 2,556.00

TOTAL DIRECT COSTS:

\$ 10,363.67

APPROVE – PURCHASE OF BACKHOE THROUGH GENERAL SERVICES ADMINISTRATION (GSA) CONTRACT (\$89,312.14)

The 2007 North Carolina General Assembly approved G.S. 143-129(e)(9a) as an exception which allows purchases of apparatus, supplies, materials, or equipment from contracts established by the United States of America or any federal agency, if the contractor is willing to extend to a political subdivision of the State the same or more favorable prices, terms, and conditions as established in the federal contract.

Vendor	Cost Per Unit	Delivery	Less Trade-In
Gregory Poole	\$89,312.14	45 days	N/A
			Grand Total \$89,312.14

Councilman Mercer stated this item was budgeted for \$90,000 and was included in the CIP and is coming in under budget. Mr. Kay also asked Council to approve the purchase order for this item as well.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the purchase of a backhoe from Gregory Poole through a GSA contract GS-30F-0018U as authorized through NC G.S. 143-129(e)(9a) and approved the associated purchase order.

APPROVE – PURCHASE ORDERS >\$20,000

- Requisition #9946, Westinghouse Electric Supply \$31,512, White Post Transformer project. Account 35-90-8370-7403.
- Requisition #9979, Asplundh Tree Expert Company, \$49,365, stump grinding & log removal, reimbursable HWY 32 DOT bridge project. Account 35-90-7220-5601.
- Requisition #10102, Floyd Brooks, \$27,174, Hurricane Irene clean up. Account 10-00-4400-5730.

Councilman Mercer stated the purchase orders are supposed to be approved before the work is complete. He referenced the HWY 32 DOT project and stated that project was completed over two years ago. (This is for another section of HWY 32 near Free Union Church Road.) The last requisition is for cleanup after Hurricane Irene.

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council approved the purchase orders as presented.

- Requisition #9946, Westinghouse Electric Supply \$31,512, White Post Transformer project. Account 35-90-8370-7403.
- Requisition #9979, Asplundh Tree Expert Company, \$49,365, stump grinding & log removal, reimbursable HWY 32 DOT bridge project. Account 35-90-7220-5601.
- Requisition #10102, Floyd Brooks, \$27,174, Hurricane Irene clean up. Account 10-00-4400-5730.

ANY OTHER BUSINESS FROM THE MAYOR OR OTHER MEMBERS OF COUNCIL

Mayor Jennings explained that Councilman Moultrie will be unable to attend the Sept. 26, 2011 Council meeting and needs to be excused.

By motion of Mayor Pro tem Roberson, seconded by Councilman Davis, Council excused Councilman Moultrie from the September 26, 2011 Council meeting.

Mayor Jennings also would like to add the following item to the Sept. 26th meeting: Carver Machine Works, sewer line easements and issues.

Councilman Mercer explained there is a rate workshop/rate committee meeting on October 5th in Wilson. If anyone would like to attend, please advise Councilman Mercer by September 21st.

Mayor Jennings thanked all of our public safety workers and reflected on the 10 year anniversary of September 11, 2001.

**CLOSED SESSION – UNDER § NCGS 143-318.11(A)(6) PERSONNEL AND
NCGS § 143-318.11(A)(3) ATTORNEY CLIENT PRIVILEGE**

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council entered into closed session under NCGS § 143-318.11(A)(6) Personnel and NCGS § 143-318.11(A)(3) Attorney Client Privilege at 7:20pm.

By motion of Councilman Pitt, seconded by Councilman Moultrie, Council agreed to come out of closed session at 7:45pm.

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Davis, Council adjourned the meeting at 7:50 pm until September 26, 2011 at 5:30 pm in the Council Chambers at the Municipal Building.

Cynthia S. Bennett, CMC
City Clerk