



City of  
**Washington**  
NORTH CAROLINA  
Council Agenda  
NOVEMBER 18, 2013  
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval of minutes from October 7, and October 28, 2013 (**page 4**)

Approval/Amendments to Agenda

I. Consent Agenda:

- A. Authorize/Adopt – Repurchase of Cemetery Lot R-83, Plot 2 in Oakdale Cemetery for \$600 **and** Adopt Budget Ordinance Amendment (**page 26**)
- B. Declare Surplus/Authorize – Declare surplus **and** Authorize the sale of vehicles through electronic auction using GovDeals (**page 31**)
- C. Accept/Adopt – Grant from Mid-East Commission Area Agency on Aging **and** Adopt Budget Ordinance to adjust the FY 13-14 budget appropriations and estimated revenue to match the grant award (\$32,680) (**page 32**)
- D. Approve/Support – NC State Trails Program – 2014-2015 RTP Grant application (**page 42**)
- E. Adopt – Resolution directing the City Clerk to investigate a petition for the non-contiguous annexation of Washington Montessori School (**page 43**)
- F. Adopt – Resolution directing the City Clerk to investigate a petition for a non-contiguous annexation of West Park Motors (**page 48**)
- G. Adopt – Ordinance – Waterfront Advisory Committee (**page 53**)

III. Public Hearing on Zoning: **6:00 PM**

- A. None –



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- IV. Public Hearing – Other:
  - A. Public Hearing – Close out of FY09 CDBG Housing Development Program – Washington Housing Inc. **(page 57)**
  
- V. Scheduled Public Appearances:
  - A. Randall & Shelia Morgan – Utility transfer request
  
- VI. Correspondence and Special Reports:
  - A. Memo – Status Report – SBEA Grant Program & CBDG 09-C-2050 Washington Housing Inc. **(page 61)**
  
  - B. Memo - Fuel Rebate Policy **(page 69)**
  
  - C. Report – Load Management Device Installation (October)**(page 71)**
  
- VII. Reports from Boards, Commissions and Committees:
  - A. Human Relations Council **(page 72)**
  
  - B. Financial Reports **(emailed as available)**
  
- VIII. Appointments:
  - A. Appointments – Various Boards, Commissions and Committees **(page 74)**
  
- IX. Old Business:
  - A. Authorize – City Manager to negotiate and execute an engineering contract for various water and sewer projects as a result of the recently awarded EDA grant **(page 91)**
  
  - B. Award/Approve – Contract for Airport Terminal Site Surcharge Work **and** Approve Purchase Order for same to B.E. Singleton & Sons, Inc. (\$37,016) **(page 92)**
  
  - C. Adopt – Waterfront Restrooms Grant Project Ordinance Amendment and Budget Ordinance Amendment (\$44,397)**(page 107)**
  
  - D. Authorize – City Manager to sign the attached Ground Lease and Easement Agreement with Washington Airport Solar, LLC. **(page 111)**



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- X. New Business:
- A. Authorize – Manager to Award contract for power line construction not to exceed (\$200,000) (**page 171**)
  - B. Adopt – Motion fixing the date for public hearing (12-9-2013) on the Beaufort County Comprehensive Transportation Plan (**page 172**)
  - C. Authorize – City Manager to execute an agreement with EMS Management & Consultants (**page 191**)
  - D. Authorize – Release of Lot 105 from City's Deed of Trust (**page 210**)
  - E. Authorize – Release of Lots 52 & 53 in Northgate Subdivision (**page 214**)
- XI. Any other Items from City Manager:
- A. None –
- XII. Any other business from the Mayor or other Members of Council
- A. Discussion – City Council professional development (**Mayor Jennings**)
- XIII. Closed Session – Under NCGS § 143-318.11(a)(3) Attorney Client Privilege – including James L. Davis vs. City of Washington (09-OSP-06499), NCGS § 143-318.11(a)(4) Economic Development, NCGS 143-318.11(a)(6) Personnel, NCGS § 143-318.11(a)(1) Disclosure of confidential information and 143-318.10(e) the public records act
- XIV. Adjourn – Until Monday, \_\_\_\_\_, 2013 at 5:30 pm, in the Council Chambers at the Municipal Building.

The Washington City Council met in a regular session on Monday, October 7, 2013 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; William Pitt, Councilman; Richard Brooks, Councilman; Brian M. Alligood, City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney. Councilman Moultrie was absent from the meeting.

Also present were: Matt Rauschenbach, Administrative Services Director/C.F.O.; Stacy Drakeford, Fire & Police Services Director; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Keith Hardt, Electric Utilities Director; John Rodman, Community/Cultural Resources Director; Kristi Roberson, Parks and Recreation Manager; Susan Hodges, Human Resources Director; Gloria Moore, Library Director; Lynn Lewis, Tourism Director; and David Carraway, IT Department and Mike Voss, Washington Daily News.

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

#### **APPROVAL OF MINUTES**

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the minutes of September 9, and September 23, 2013 as submitted.

#### **APPROVAL/AMENDMENTS TO AGENDA**

Mayor Jennings reviewed the requested changes to the agenda:

- Move Consent Item B: Authorize/Approve – Purchase of a Garbage Truck through the piggyback of the City of Martinsville, VA and approve a corresponding purchase order to be written (\$124,965) to New Business Item K
- Move Consent Item D: Amend – Personnel Policy Article III, Section 18, Longevity Pay to New Business Item L
- Move Consent Item E: Approve – Purchase Orders >\$20,000 to New Business Item M
- Remove: Scheduled Public Appearance: Ursula Corbett: Ducks in Smallwood

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

#### **CONSENT AGENDA:**

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

- A. Approve/Support – An application by Washington Fire Department for the 2013 FEMA Assistance to Firefighters Grant (AFG)

- B. **Moved to New Business Item: K - Authorize/Approve** – Purchase of a Garbage Truck through the piggyback of the City of Martinsville, VA **and** approve a corresponding purchase order to be written (\$124,965)
- C. **Declare/Surplus/Authorize** – Declare surplus and Authorize the sale of a vehicle through electronic auction using GovDeals
- D. **Moved to New Business Item: L - Amend** – Personnel Policy Article III, Section 18, Longevity Pay
- E. **Moved to New Business Item: M - Approve** – Purchase Orders >\$20,000

**SCHEDULED PUBLIC APPEARANCES:**  
**WRIGHT FLIGHT**

Jazire Boyd and Emmy Davis, former Wright Flight students, shared their experiences with Council concerning the Wright Flight program. The program allows students to learn about the history of aviation. Students have to sign a contract to increase a course grade by 7 points, and/or improve behavior and pass the Wright Flight exam with at least a “B”. If the students accomplish all of these things, they are allowed to pilot a plane on “fly day”. The program is so much fun as well as educational. The students thanked Council for their support.

Sherry Swain is a 5<sup>th</sup> grade teacher at John Small School and has taught Wright Flight for the past six years. The students are most excited about the opportunity to fly and pilot a plane. The program takes students through aviation history from the Wright Brothers to the space shuttle. One lesson a week is spent on the history of aviation and its contribution to our country. Students become closer and work together and work hard for what they want. Last year, 325 fifth graders went through the program, of the 325 only 215 successfully achieved their contract and were able to fly, this was the biggest number they’ve had so far. This year, there are 270 fifth graders anxiously waiting for their chance to fly. The Wright Flight motto is “Dream Big and Fly Safe”. Principal, Betty Jane Greene also attended the Council meeting.

Mayor Jennings urged Councilmembers to attend the Wright Flight Fly Day. He also thanked John Small School for inviting him out for Constitution Day and he signed the schools proclamation regarding anti-bullying.

**URSULA CORBETT – DUCKS IN SMALLWOOD** (Item removed)

**PHILIP RYALS – UTILITIES**

Mr. Philip Ryals, South Eden Drive, explained that he received a letter dated September 8, 2013 from Michelle Scannel with the City of Washington. The letter indicated that his residence has had a defective meter since December 2008. The letter specified that the City has the right to go back and recoup one year’s worth of charges. Mr. Ryals said he didn’t understand how the City could recoup these charges and felt the City should “eat the cost”. He feels the defective meter is the City’s problem and not his and he shouldn’t be charged. The letter indicated that he could pay the \$846.71 back over six months at a rate of \$141.12 per month in addition to their regular monthly bill. Over the weekend, he was going over his checking account and noticed their account was drafted for \$944 by the City. Obviously, this is his normal

monthly charge plus the entire \$846.71 that they were told they could pay back over six months. He asked that the \$846.71 be returned to his back account. Mr. Ryals stated he would not have had a problem with paying the amount back if the problem had been his.

Mayor Pro tem Roberson inquired if the City had contacted him prior to receipt of the letter and Mr. Ryals answered, “no”. Mr. Ryals explained that he talked with Michelle Scannel and she referred him to speak with the City Manager. Mr. Ryals noted that Mr. Alligood explained that the forum for dealing with the issue was to appear before City Council.

Councilman Brooks inquired how was the defective meter detected? Mr. Alligood was unsure of how the defective meter was detected, Keith Hardt, Electric Director is exploring this. Mr. Ryals explained he did not know the answer to that question. Mayor Jennings explained that the actual loss to the City was \$846.71 for five years (\$4,233.55), but our Code only allows for the City to recoup 12 months of charges. Councilman Mercer inquired when did the meter go wrong, if we put in a defective meter then it is the City’s fault? Brian Alligood, City Manager explained that the meter has been replaced. Mayor Jennings felt staff could have communicated with him much better and Council will give staff guidance to resolve this matter. Mr. Alligood explained that the automatic billing caused the full amount to be drafted and we will reimburse his account.

#### **MOMENT OF SILENCE – EVELYNE ROBERSON**

Mayor Jennings asked for a moment of silence to remember and reflect on the passing of Evelyne Roberson. Mayor Jennings noted that Evelyne Roberson served this community in so many aspects, that it is hard to name them all. She was chair of the Human Relations Council as well as the Economic Development Commission and a Key Woman. She will be greatly missed.

#### **COMMENTS FROM THE PUBLIC:**

**Harry Langley** explained he has a problem at 503 West 13<sup>th</sup> Street. Water is coming up under his house and has rotted out some of the seals under his home. He explained that a ditch was closed up when BeeBee Park was built and now the water has nowhere to go and it stands under his house. Mayor Jennings explained staff will come out and take a look at his concerns.

**Steve Rader** discussed his concerns pertaining to the memo in the agenda regarding the demolition of 312 Water Street. Mr. Rader explained that he and many others feel the structure should not be taken down as it is a historic structure. If the house were destroyed, a vacant lot would be a negative for that neighborhood. He is asking Council to use the tools it has in the Demolition by Neglect ordinance and impose fines against the property owner. Mr. Rader met with the Historic Preservation Commission and the HPC adopted a resolution asking Council to use its tools in the ordinance to impose such fines against the owner, or use City funds to stabilize the structure and save the house. He is asking Council to move forward and try to save the house. The house is still sound and there are a number of people, including Mr. Rader’s son that are interested in buying the structure. Mr. Rader explained that the owner of the house doesn’t respond to or sign for any certified letters sent to him regarding the repair of the house. Delay is not a friend in the preservation of this house.

Mayor Jennings stated that twice now, tonight and at Mr. Rader’s prior visit, reference was made to “many people who want to buy this property”. Mayor Jennings said that if anything were to move forward, then the “many people” would need to step forward and be ready to purchase the property.

**PUBLIC HEARING ON ZONING: NONE**

**PUBLIC HEARING OTHER: NONE**

**CORRESPONDENCE AND SPECIAL REPORTS:**

**MEMO – FESTIVAL PARK – ESTABLISHED PARTNER’S LIST**

Eastern Elementary School PTA has requested permission to be added to the Festival Park Established Partner's list. I support this request, however I feel it should include all Beaufort County Schools. Therefore, I recommend Beaufort County Schools be added to the Established Partner's list for Festival Park. A partner sponsored event is defined as an event sponsored by a Washington based non-profit that brings measurable economic and/or community impact to the City of Washington. The City currently has joint use agreements with Beaufort County Schools. Beaufort County Schools are also allowed to rent Havens Gardens free of charge. I feel including them on the partners list is a good fit. BC Schools currently have a working relationship with the City and provide measurable community impact. This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee supported this recommendation. (Memo accepted as presented)

**MEMO - HOURS OF OPERATION – MOORE AQUATIC & FITNESS CENTER**

The City of Washington hired a new Aquatic Supervisor, Dalace Inman, in August. Over the last few weeks she has reviewed our current operating hours and part time work schedules. We would like to request a pool schedule increase by staying open Monday through Friday from 1:00 PM-3:00 PM for adult lap swim. Currently the pool is open Monday through Friday from 6:00 AM - 1 PM and 3:00 PM - 7:30 PM. We are open on Saturday from 10:00 AM - 6:00 PM and closed on Sunday. The total number of part time lifeguard staff hours is currently 135 hours per week.

The new hours of operation would be Monday - Friday from 6:00 AM - 7:30 PM and Saturday from 10:00 AM - 6:00 PM. The current part time schedules will be adjusted and the Aquatic & Fitness Supervisor will serve as the additional guard when needed. The total number of part time lifeguard staff hours will be 134½ . The facility operating costs are the same whether we are open or closed. The proposed schedule will actually result in a .5 hour lifeguard staff savings per week and increase pool time for its adult members by 10 hours per week. Staff feels this will make a positive impact in the swimming community. This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee supported this recommendation. (Memo accepted as presented)

**MEMO – ADDITIONAL SWING ON THE WATERFRONT**

Kristi Roberson, Parks and Recreation Manager explained that Noon Rotary approached the Recreation Advisory Committee on September 16 to install a swing on the West end of the Waterfront. The swing will match the current swing located at Festival Park. The location for

the new swing would be in front of Dock B. The Buildings & Grounds Supervisor has reviewed this location and it will not interfere with current irrigation lines. I have spoken with the Division of Water Quality and the Division of Coastal Management. Both agencies state with little modification, we will be able to proceed with this project. This request was presented to the Recreation Advisory Committee on Monday, September 16. The Recreation Advisory Committee supported this request.

Phil Holloman explained that Noon Rotary applied for and received a grant for a service project to install a second swing in front of Dock B identical to the current swing located at Festival Park. Council was in agreement and accepted the donation of the new swing.

#### **MEMO – DEMOLITION – 312 WATER STREET**

The governing body of the City may adopt and enforce ordinances relating to buildings or structures that fail to meet minimum standards of maintenance, sanitation, and safety. The minimum standards address conditions that are dangerous and injurious to public health, welfare, and safety and identify circumstances under which a public necessity exists for the repair, closing or demolition of such building and structures. If after a notice and hearing the Code Official determines that the property has not been properly maintained and failed to meet minimum standards an order is issued to require the owner to demolish and remove the building or structure.

This process occurred with the structure located at 312 Water Street, owned by Mr. William Henry. The City Council adopted an ordinance condemning the structure as unsafe and directing that it be demolished. The demolition bid was awarded to St. Clair Trucking. During the delay in demolition the Historic Preservation Commission, as is their obligation, sought alternatives to the demolition process. These alternatives included discussions with Preservation North Carolina, actively seeking a buyer for the property, and conducting maintenance on the property.

A resolution was presented to the Historic Preservation Commission (HPC) by Ms. Victoria Rolinsky Rader requesting that the HPC recommend to City Council to rescind its condemnation proceeding on the structure and either: 1) expend funds (which would be a lien on the property) to stabilize the house or 2) immediately impose maximum demolition by neglect fines on its owner until he stabilizes the structure. A petition was also presented that reflected persons who are interested in rescinding the order for demolition.

A copy of the previous Condemnation Ordinance, the Order to Remedy Defective Condition from the Code Official, a copy of the letter from Ms. Rolinsky-Rader, a copy of the petition from the concerned citizens, and the resolution from the Historic Preservation Commission were included in the agenda. (memo accepted as presented)

Councilman Mercer acknowledged there has been constant reference to “many people that want to buy this house”. There has been no action taken by anyone to purchase this property. Councilman Mercer noted that he doesn’t have a problem with delaying action on this item for a period not to exceed 90 days. If during this period of time there is not a contract to purchase the house, then Council will proceed with the demolition of the structure.

Steve Rader again stated that the problem is the owner, he basically doesn't sign for mail from the City. Mr. Rader said something needs to be done to make the owner fix the house or sell it.

Mayor Jennings explained that unless the owner is compelled to take action, he is not going to take action. We could potentially place a lien against the property for work the City has already done at the property. If the City takes this course of action then we expect the "many people that want to buy this house" to come forward and take action. Mayor Jennings explained that this building has been deemed unsafe by the building inspector. Discussion was held regarding potential penalties/fines as well as other possible actions.

By motion of Councilman Mercer, seconded by Councilman Brooks, Council offered direction to the City Manager and City Attorney to proceed under the Demolition by Neglect Ordinance to impose fines in the category of taxes, liens or penalties and after serving the owner with the appropriate paperwork, grant 90 days to the process of resolution. Council suggested serving the owner via the Sheriff's Dept. in his residing county.

**REPORTS FROM BOARDS, COMMISSIONS AND COMMITTEES:**  
**FINANCIAL REPORTS (EMAILED AS AVAILABLE)**

**APPOINTMENTS – LIBRARY BOARD OF TRUSTEES**

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council appointed Joe Phipps to the Board of Library Trustees, to fill the expired term of Muriel Brothers, term to expire June 30, 2019.

Mayor Pro tem Roberson requested continuing the remaining appointment until the November meeting.

**OLD BUSINESS:**

**AUTHORIZE – CITY MANAGER TO SIGN A CONTRACT WITH MID-EAST COMMISSION TO COMPLETE THE PARKS & RECREATION COMPREHENSIVE PLAN FOR THE CITY**

City Manager, Brian Alligood explained that on May 15, 2013 the City was awarded the Community Transformation Grant to complete a Comprehensive Pedestrian Plan in the amount of \$10,000. The City accepted the Community Transformation Grant on May 20, 2013. This project has a completion date of July 2014. On May 15, 2013 the grant was awarded and on May 20, 2013 the City Accepted CTG \$10,000.

By motion of mayor Pro tem Roberson, seconded by Councilman Brooks, Council authorized the City Manager to sign a contract with Mid-East Commission to complete the City of Washington Comprehensive Pedestrian Plan.

**(copy attached)**

**ACCEPT/AWARD – BIDS AND AWARD CONTRACT**  
**LIGHTHOUSE RESTROOMS**

City Manager Brian Alligood explained that the Lighthouse restroom sub-committee has completed work on final specifications and materials for the project. Mosley Design Group has

completed work on a set of sealed drawings in order to begin the process of bidding the project. Site layout services, including surveying, grading and site plans have been completed. Bid documents were completed and an "Invitation to Bid" was extended. A pre-bid meeting was held on Thursday, August 29, 2013. Sealed bids for the construction of the Lighthouse Restrooms were received until 4:00 pm September 18, 2013. Bids were opened at that time. Appropriation approved as part of 2012-2013 budget in the amount of \$300,000. At the last meeting, Council asked staff to find a way to possibly close the gap for this project. We have value engineered \$18,710 out of the bid. Our request to Council is to approve the negotiated bid amount of \$331,222. Funds to cover the gap was found with the overage on the boardwalk project, Peterson Building roof project as well as several other projects.

Councilman Mercer discussed delaying the handicap ramp at the Peterson Building and using that money for the gap in the Lighthouse project. Mr. Alligood explained that the handicap ramp is not code compliant and this is why we are replacing the ramp. Mayor Jennings noted that we worked with the low bid without degrading the project and staff identified \$18,710 in savings. Mr. Alligood reviewed some of the changes to the project that resulted in the cost savings. Mayor Jennings noted that we need to award the contract either with or without the proposed changes (\$318,222 or \$341,932). Councilman Brooks asked if the changes still meet code and Mr. Alligood stated they do. Mayor Pro tem Roberson inquired if the Department of Insurance had reviewed the plans. Mr. Alligood explained that this project is not required to be reviewed by the Department of Insurance due to the square footage of the project.

A motion was made by Councilman Pitt, seconded by Councilman Brooks, to accept the bids as presented and award the construction contract to the lowest responsible bidder, White Construction and Design, in the negotiated amount of \$331,222. Voting for the motion: Pitt and Brooks. Opposing the motion: Mercer and Roberson. A tie resulted, Mayor Jennings voted in favor of the motion, thus the motion carried 3-2.

**AWARD/APPROVE – BID TO REPLACE THE PETERSON BUILDING  
HANDICAP RAMP AND ENTRANCE TO HORTON CONTRACTORS AND  
APPROVE PURCHASE ORDER (\$33,800)**

City Manager Brian Alligood explained that three bids to replace the Peterson Building handicap ramp and entrance were received and Horton Contractors was the low bid. The ramp and entrance will match the Civic Centers. Horton was also the contractor for the Civic Center deck. \$34,000 was budgeted in the 2013/2014 budget.

Mayor Pro tem Roberson discussed the possible exceptions regarding historic structures. Councilman Mercer stated that the code may not be up to today's code, but it met code when it was installed and should still meet code until it is modified. Mayor Jennings inquired if the ramp needed to be replaced due to its condition or to lack of meeting code. John Rodman, Community & Cultural Services Director explained that the railings on the handicap ramp are unsafe, not the ramp itself, the ramp does not meet the existing building code. Mayor Pro tem Roberson noted that the money to fund the replacement of the entrance as well as the handicap ramp at the Peterson Building was approved in the budget.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council awarded the bid to replace the Peterson Building handicap ramp and entrance to Horton Contractors and approve a \$33,800 purchase order.

**APPROVE – BOARDWALK REPAIR AND PURCHASE ORDER (\$22,777)**

Brian Alligood, City Manager explained that the completion of the last phase of the boardwalk repair was sent out to bid. Three proposals were received. One of the three was rejected because it did not adhere to the bid request. Roanoke Electric submitted the lowest bid and it will be awarded to them. They also did the work for the second phase of this project. \$25,000 was approved for this project in the 2013-2014 budget. The bidder is aware of the time frame required for the project.

**Roanoke Electric: \$22,770**

**Paul Woolard: \$26,992**

**Turning Point: \$26.19/ft.**

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council approved a \$22,777 purchase order to complete the repair of the waterfront boardwalk.

**ADOPT – EDA GRANT PROJECT ORDINANCE AND ADOPT THE BUDGET ORDINANCE AMENDMENT FOR THE TRANSFER OF CITY'S MATCH**

Brian Alligood, City Manager explained that this item is a technical correction to the previous action taken by Council last month. The budgeted amounts for engineering fees have been revised to reflect that the 16" water line project will not have any fees and both ordinances have been revised to reflect the correct amounts. Mr. Alligood explained the engineering design fees are not part of the grant and was inadvertently included in the budget/project ordinance presented last month. Allen Lewis, Public Works Director explained that the engineering/design fees were budgeted in the 2011-2012 budget and the money was appropriated in the 2012-2013 budget. The EDA grant does not include the design work, but the construction portion is included in the EDA grant. Mayor Jennings noted that staff is correcting the numbers to ensure the ordinances are correct.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adopted the EDA Grant Project Ordinance to the revised amounts on the Grant Project Ordinance Amendment and the Budget Ordinance Amendment for the transfer of the City's match.

**(copy attached)**

**APPROVE/AUTHORIZE – APPROVE CDBG SBEA JUMPSTART WASHINGTON PROMISSORY NOTES AND AUTHORIZE THE MAYOR TO EXECUTE THE LEGALLY BINDING COMMITMENTS**

Legally binding commitments and promissory notes have been developed to protect the City's interest should a business not fulfill the requirements of the grant.

A motion was made by Mayor Pro tem Roberson and seconded by Councilman Brooks, Council approved the Promissory Notes and authorized the Mayor to execute the Legally Binding Commitments for the respective businesses participating in the CDBG SBEA Jump Start Washington grant program.

Councilman Mercer discussed his concerns with this grant and the lack of language regarding job creation and the required length of time to keep the job for the grant.

Councilman Mercer opposed the motion and the motion carried 3-2.  
**(copy attached)**

**APPROVE/AUTHORIZE – PROMISSORY NOTE AND DEED OF TRUST AND AUTHORIZE THE CITY MANAGER TO EXECUTE A LEGALLY BINDING COMMITMENT WITH METROPOLITAN HOUSING AND COMMUNITY DEVELOPMENT CORPORATION, INC.**

City Manager, Brian Alligood explained that the Department of Commerce and Community Assistance closed CDBG grant 05-C-1490 because none of the five homes were constructed and sold to qualifying individuals. The City contributed \$90,000 to the project and the grant was for an additional \$250,000. All of the funds were expended and we are required to repay \$250,000 at the rate of \$83,333 per year for three years beginning July 1, 2013. The original repayment plan was for ten years but was rejected by HUD. The ruling is being appealed. The repayment will be reduced \$50,000 for each home that is built and occupied but prior repayments are not eligible to be returned to the City. The City currently has a promissory note for the original contribution of \$60,000. The City Manager will be discussing this agreement with Reverend Moore and developing a plan to have the homes built and occupied. DCA is meeting with the City Manager on Friday to discuss the repayment plan. Staff is asking for the ability to amend the agreement as needed, if there are any positive changes that come out of the meeting with Richard Self, DCA

Councilman Mercer noted a needed correction to the agreement on page 3 item #11. The term “on or before June 30, 2016” should be deleted.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the Promissory Notes as well as the Deed of Trust and authorized the City Manager to execute a Legally Binding Commitment with Metropolitan Housing and Community Development Company, Inc. with the amendment on page 3 item #11 that the term “on or before June 30, 2016” should be deleted.

**(copy attached)**

(recess)

**NEW BUSINESS:**

**ACCEPT/ADOPT – RECOMMENDED MANAGEMENT STRUCTURE OF THE WATERFRONT DOCKS AND ADOPT RESOLUTION CREATING THE WATERFRONT ADVISORY COMMITTEE**

In accordance with a memorandum by City Manager Brian Alligood on the recommended management structure of the waterfront docks, the memo advised the creation of a 5 member Waterfront Advisory Committee to assist and make recommendations to a proposed dock master and to City Council. Members would include 3 at-large members and 2 members of the WHOA Maritime Committee. All 5 members would be appointed by City Council. The creation of the committee would allow the committee to begin the process of establishing goals and objectives for the waterfront docks.

Mayor Pro tem Roberson noted that term limits need to be established and those terms should be staggered. Mayor Jennings suggested ex-officio membership as well. The suggested rewrite is as follows:

“The City Council shall appoint a 5 member Waterfront Advisory Committee, two of the five members will be recommended from the Washington Harbor District Alliance’s Maritime Committee for a term of three years. The initial appointments will be staggered terms with three members serving three year terms and two members serving two year terms. There shall be an ex-officio member from the Recreation Advisory Committee appointed to the Waterfront Advisory Committee and an ex-officio member from the Waterfront Advisory Committee appointed to the Recreation Advisory Committee.”

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council accepted the recommended management structure of the waterfront docks with the suggested revisions and adopted the Resolution creating the Waterfront Advisory Committee with the following revisions “The City Council shall appoint a 5 member Waterfront Advisory Committee, two of the five members will be recommended from the Washington Harbor District Alliance’s Maritime Committee for a term of three years. The initial appointments will be staggered terms with three members serving three year terms and two members serving two year terms. There shall be an ex-officio member from the Recreation Advisory Committee appointed to the Waterfront Advisory Committee and an ex-officio member from the Waterfront Advisory Committee appointed to the Recreation Advisory Committee.”

**RESOLUTION OF THE CITY OF WASHINGTON CREATING THE  
WATERFRONT ADVISORY COMMITTEE**

**WHEREAS**, Washington City Council wishes to establish an advisory committee in order to provide recommendations to City Council regarding the management of the waterfront docks according to the *Washington Waterfront Docks Business Plan* and to advance the goals and objectives of said Plan; and

**WHEREAS**, the City of Washington waterfront is an invaluable resource, rich in history, open space, recreation, cultural events and water-based activities; and

**WHEREAS**, the City of Washington objective is for the waterfront to be welcoming to and for the benefit of all City residents and visitors and be self-sufficient while continuing to provide a high level of service to its users; and

**WHEREAS**, the Washington City Council has endorsed the *Washington Waterfront Docks Business Plan* to provide a management structure that will reduce costs, focus attention on the unique recreation/ business aspects of the docks, allow continued oversight of City Council by committee appoints and allow the waterfront docks to flourish; and

**WHEREAS**, said advisory committee, representing stakeholder interests, can greatly assist in making recommendations, clarifying positions on issues, identify opportunities for development, and help achieve goals and objectives of the Washington waterfront;

**NOW, THEREFORE BE IT RESOLVED** that the Waterfront Advisory Committee is hereby established as an advisory committee to the Mayor and the City Council; and

**BE IT FURTHER RESOLVED** that:

1. The Waterfront Advisory Committee shall consist of five (5) members representing a variety of knowledge of waterfront water based activities.
2. The City Council shall appoint a 5 member Waterfront Advisory Committee, two of the five members will be recommended from the Washington Harbor District Alliance’s Maritime Committee for a term of three years. The initial appointments will be staggered terms with three members serving three year terms and two members serving two year terms. There shall be an ex-officio member from the Recreation Advisory Committee appointed to the Waterfront Advisory Committee and an ex-officio member from the Waterfront Advisory Committee appointed to the Recreation Advisory Committee.
3. Staff assistance to the Waterfront Advisory Committee shall be managed by the Department of Community and Cultural Services with assistance from other staff as needed.
4. The Waterfront Advisory Committee shall meet on a monthly basis and will be formed for specific activities with the expectation that they will report to City Council on a monthly basis.

**BE IT FURTHER RESOLVED** that this motion shall take effect upon adoption.

Adopted this the 7th day of October, 2013 in Washington, North Carolina.

**ATTEST:**

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

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

**ADOPT – BUDGET ORDINANCE AMENDMENT IN THE AIRPORT FUND**  
**FOR PURCHASE OF FLEX WING MOWER (\$15,752)**

Approval of this budget ordinance amendment will allow for the purchase of a flex wing or "batwing" mower to be used in conjunction with an existing tractor we have in Public Works. This mower has a 15' cutting span and will be used to mow the infield at the airport where finish mowing is not necessary. City Manager, Brian Alligood explained that this item will be funded from fund balance in the Airport Fund.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adopted a budget ordinance amendment from fund balance in the airport fund for the purchase of a flex wing mower.

**(copy attached)**

**AUTHORIZE – MANAGER TO SIGN THE FY 2014-2020 AIRPORT TIP**

Brian Alligood, City Manager explained this submission is being made to allow the Division of Aviation to prioritize airport improvement projects throughout the state of North Carolina. Only if the Division of Aviation awards grant funds to an airport sponsor will the City be asked to secure the local matching funds. The form has been reviewed by Talbert & Bright, our airport engineers, as well as the Airport Advisory Board. Signing this document does not commit the City to providing any funds for the projects listed on this form.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council authorized the City Manager to sign the attached FY 2014-2020 TIP submission for Warren Field.

**(copy attached)**

**AUTHORIZE – MANAGER TO EXECUTE A LEASE AGREEMENT WITH EASTERN FLYING SERVICE, INC., FOR THE LEASE OF THE CORPORATE HANGAR AT WARREN FIELD AIRPORT (JAMES BRINKLEY)**

Brian Alligood, City Manager explained the request for a Corporate Hangar Lease Agreement with Eastern Flying Service, Inc. This hangar has been vacant since the storm that damaged it hit the airport on July 1, 2012. Repairs are being completed and we now have a new tenant to lease the facility. The agreement has been reviewed by the City Attorney and staff recommends Council's approval of the lease agreement.

Councilman Mercer discussed potential amendments to Section Two, Paragraph Two.

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council authorized the City Manager to execute the lease agreement with Eastern Flying Service, Inc., for the lease of the corporate hangar at Warren Field Airport with suggested revisions by the City Attorney.

**(copy attached)**

**AMEND – CHAPTER 32, SECTION 32-50 – PERMIT REQUIRED – REQUIRING PERMITS PRIOR TO ANY EXCAVATION WITHIN PUBLIC RIGHT-OF-WAYS**

City Manager, Brian Alligood explained that currently when contractors are working and tearing up pavement and sidewalks, they are required to obtain a permit from the City. The Public Works department has recently experienced several disruptions of utility services due to utility contractors (telephone, cable TV, gas) burying cables within public rights-of-way. This ordinance did not specifically address excavations in rights-of-ways, only within pavement and sidewalk. This proposed amendment is suggested to provide the City a clearer means to address these types of situations and to help us prevent them from happening in the future.

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council adopted an ordinance to amend Chapter 32, Section 32-50 - Permit Required, requiring permits prior to any excavation within public right-of-ways.

**(copy attached)**

**ADOPT – ORDINANCE TO REPEAL CHAPTER 39 – WASTEWATER/SUO IN ITS ENTIRETY AND REPLACE IT WITH THE NEW CHAPTER 39- WASTEWATER/SUO**

Brian Alligood, City Manager explained that this ordinance amendment is a re-write that is required by the State. Public Works staff has been working with the State to implement a SUO, Sewer Use Ordinance, which would meet their new criteria. These changes are required by the State to meet their latest requirements and is based on their model ordinance.

Councilman Mercer noted that he has several questions that he would like answered at the October 28<sup>th</sup> Committee of the Whole.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council continued the request until the Committee of the Whole meeting on October 28<sup>th</sup>.

**ADOPT – ORDINANCE TO REPEAL CHAPTER 8 – CEMETERIES IN ITS ENTIRETY AND REPLACE IT WITH THE NEW CHAPTER 8 – CEMETERIES**

Brian Alligood, City Manager provided background by noting staff has been working for some time on amendments to this chapter of the Code of Ordinances in attempt to codify policies to allow for consistent management of the City-owned cemeteries. For example: allowing two sets of cremated remains on one plot, burial of said remains done under the direction of cemetery staff, disallowance of plastic vaults that easily collapse, and various guidelines regarding monuments and markers, etc. Amongst other things, the proposed changes within this revised ordinance will help in the appearance of the cemeteries for burials taken place from the day it is passed, forward.

Councilman Mercer asked for clarification regarding the number of cremains in each plot as well as plantings at the cemetery. Staff provided answers to those questions noting that staff is recommending only two cremains per plot. Staff also noted the additional maintenance concerns if the installation of plantings aren't approved by staff. Councilman Mercer stated that if bikes and dogs aren't allowed in the cemetery, then "we need to enforce it". Allen Lewis, Public Works Director stated that staff enforces this when they are at the cemetery from 7:00am-4:00pm.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted an ordinance to repeal Chapter 8 - Cemeteries in its entirety and replace it with the new Chapter 8 - Cemeteries.

**(copy attached)**

**ADOPT – BUDGET ORDINANCE AMENDMENT IN THE STORMWATER FUND FOR PURCHASE OF GRASS CARP TO STOCK JACK'S CREEK (\$1,000)**

Brian Alligood, City Manager noted that on September 23,2013, staff met with Mr. Steve Gabel of the North Carolina Cooperative Extension Service to discuss the problem we have been experiencing with aquatic vegetation in Jack's Creek. In a letter from Mr. Gabel he recommends stocking the creek with grass carp. The carp are sterile and cost between \$8-\$10 each. This

budget ordinance will appropriate the funds necessary to stock the creek with grass carp per Mr. Gabel's recommendations.

By motion of Mayor Pro Tem Roberson, seconded by Councilman Brooks, Council adopted a budget ordinance amendment from fund balance in the stormwater fund for the purchase of grass carp to stock Jack's Creek.

(copy attached)

**AMEND – CHAPTER 22, SECTION 22-97(D) – PROHIBITED ACTS, FISHING, PROHIBITING FISHING IN JACK’S CREEK BETWEEN JOHN SMALL AVENUE AND PARK DRIVE**

Due to stocking Jack's Creek in this area with grass carp to help control aquatic vegetation, staff feels that it is necessary to also prohibit fishing in this same area (John Small Avenue to Park Drive). The attached ordinance amendment accomplishes this.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council adopted an ordinance to amend Chapter 22, Section 22-97(d) - Prohibited Acts, Fishing, prohibiting fishing in Jack's Creek between John Small Avenue and Park Drive.

(copy attached)

**AUTHORIZE – MAYOR AND THE CITY ATTORNEY TO EXECUTE THE RELEASE OF LOTS 64 AND 81 IN THE NORTHGATE SUBDIVISION**

Brian Allgood City Manager explained that Lots 64 and 81 have been sold in the Northgate Subdivision and are part of the CDBG Affordable Housing Grant. The Washington Housing Nonprofit, Inc. has deposited \$12,000.00 into the City Attorney's trust account pursuant to and consistent with the Legally Binding Commitment by and between the City of Washington and Washington Housing Nonprofit, Inc.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council authorized the Mayor and the City Attorney to execute the release of lots 64 and 81 in the Northgate Subdivision upon Washington Housing Nonprofit, Inc.'s deposit of \$12,000 into the City Attorney's trust account.

(copy attached)

**Moved From Consent Item B: AUTHORIZE/APPROVE – PURCHASE OF A GARBAGE TRUCK THROUGH THE PIGGYBACK OF THE CITY OF MARTINSVILLE, VA AND APPROVE A CORRESPONDING PURCHASE ORDER TO BE WRITTEN (\$124,965)**

Vendor	Cost Per Unit	Delivery	Less Trade-In
Cavalier Equipment	\$124,965.00	180 days	N/A

The General Statutes approved O.S. 143-129 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, State, or local government 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, state, or local government contract if bid in the past 12 months.

Councilman Mercer expressed that he would like the purchase order to read “not to exceed \$124,965.00.”

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council authorized the purchase of a Garbage Truck through the piggyback of the City of Martinsville, VA purchase order 747-00 dated 10118/2012, and approve a corresponding purchase order to be written not to exceed \$124,965.

Move From Consent Item D: **AMEND – PERSONNEL POLICY ARTICLE III, SECTION 18, LONGEVITY PAY TO NEW BUSINESS**

Brian Alligood, City Manager explained that City Council adopted a revised Personnel Policy which went into effect on July 1, 2013. Unfortunately, a typographical error has been identified in Article III. Pay Plan, Section 18. Longevity Pay, which needs to be corrected. The adopted policy says that "employees who are terminated voluntarily or involuntarily prior to November 1, but before longevity checks are issued, are entitled to longevity pay and will receive the compensation in their last paycheck." Longevity pay is based on years of service as of November 1 of each year and the intention of the policy is to include employees who terminate from employment on or after November 1 and prior to issuance of longevity checks. Therefore, the language in this section needs to be corrected to reflect the true intent of the policy.

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council amended the City of Washington Personnel Policy Article III. Section 18. Longevity Pay effective October 7, 2013 to read as follows:

III. Section 18. Longevity Pay

Longevity pay may be awarded to each full-time employee, including the City Manager, who has completed five (5) years of continuous full-time employment with the City as of November 1 of each year. Compensation shall be twenty-five dollars (\$25.00) per each completed year of continuous full-time service as of November 1.

Employees who are terminated voluntarily or involuntarily on or after November 1, but before longevity checks are issued, are entitled to longevity pay and will receive the compensation in their last paycheck.

*Note: Employees hired with a full-time regular or probationary appointment prior to July 1, 2013 may receive Longevity Pay beginning with their first full year of employment as of November 1.*

Move Consent Item E: **APPROVE – PURCHASE ORDERS >\$20,000 TO NEW BUSINESS**

Councilman Mercer explained his concern with the purchase order by noting the request is for a forklift for the grant that he has been opposed from the beginning and therefore, he is opposed to the purchase order.

By motion of Councilman Brooks, seconded by Councilman Pitt, Council approved the following purchase order: Requisition #13612, \$26,975.45, to Deese Equipment Sourcing, for a

Yale forklift for Park Boat Company, a participant in the CDBG SBEA Job Creation Grant 57-60-4930-4500. Councilman Mercer opposed and the motion carried 3-1.

**ANY OTHER ITEMS FROM CITY MANAGER: NONE**

**ANY OTHER BUSINESS FROM THE MAYOR OR OTHER MEMBERS OF COUNCIL: NONE**

**CLOSED SESSION – CLOSED SESSION – UNDER NCGS § 143-318.11(A)(3) ATTORNEY CLIENT PRIVILEGE – INCLUDING JAMES L. DAVIS VS. CITY OF WASHINGTON (09-OSP-06499)**

By motion of Councilman Pitt, seconded by Councilman Brooks, Council agreed to enter closed session at 7:45pm under § NCGS 143-318.11(a)(3) Attorney Client Privilege, including James L. Davis vs. City of Washington (09-OSP-06499)

By motion of Councilman Brooks, seconded by Mayor Pro tem Roberson, Council agreed to come out of closed session at 8:15pm.

**ADJOURN – UNTIL MONDAY, OCTOBER 28, 2013**

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council adjourned the meeting at 8:20 pm until Monday, October 28, 2013 at 5:30 pm in the Council Chambers at the Municipal Building.

**(subject to approval of City Council)**

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

The Washington City Council met in a continued session on Monday, October 28, 2013 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; William Pitt, Councilman; Richard Brooks, Councilman; Brian Alligood, City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney. Councilman Moultrie was absent.

Also present were: Matt Rauschenbach, Administrative Services Director/C.F.O.; Stacy Drakeford, Fire & Police Services Director; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Keith Hardt, Electric Utilities Director; John Rodman, Community/Cultural Resources Director; Kristi Roberson, Parks and Recreation Manager; Susan Hodges, Human Resources Director; Gloria Moore, Library Director; Lynn Lewis, Tourism Director; and David Carraway, IT Department.

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

**APPROVAL/AMENDMENTS TO AGENDA**

By motion of Councilman Mercer, seconded by Councilman Brooks, Council approved the agenda as presented.

**AUTHORIZE: MAYOR TO SIGN ASSIGNMENT AND ASSUMPTION OF HANGAR  
GROUND SITE LEASE AND FIXED BASE OPERATION – AIR MEDICAL  
OPERATION AGREEMENT**

City Manager, Brian Alligood explained this is an assignment and assumption of the hangar ground site lease and fixed base operation for Air Medical Services. The operation agreement is in regard to the Goess hangar ground lease with the City. Metro Aviation, Inc. out of Shreveport, Louisiana has received the contract from Vidant Medical to provide air medical services. Mr. Alligood explained that Metro Aviation would like to assume Mr. Goess' ground lease and base their helicopters out of Warren Field Airport. This agreement does just that and essentially maintains the master lease agreement that the City originally had with Mr. Goess. It is a three party agreement whereas Mr. Goess agrees to sign it over to Metro Aviation. Mr. Alligood suggested the most substantial language change is having a flight base operation for the medical helicopters.

Mr. Alligood acknowledged that we have received a signed copy from Metro Aviation, Inc and staff is ready to move forward with Council approval.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council authorized the Mayor to sign the Assignment and Assumption of the Hangar Ground Site Lease and Fixed Base Operation for medical services – Air Medical Operations Agreement between the City, Craig Goess and Metro Aviation, Inc.

**(copy attached)**

**AUTHORIZE: CITY MANAGER TO SIGN TERMINAL BUILDING ANNEX LEASE AND FIXED BASE OPERATION – JUMP SCHOOL AGREEMENT – SKYDIVE LITTLE WASHINGTON**

City Manager, Brian Alligood reviewed the agreement that is with Mr. John Hayes who is the manager of Skydive Little Washington, LLC. Mr. Hayes plans to start a jump school and rent the annex building. This was presented to the Airport Advisory Board for their review. The Airport Advisory Board voted to recommend that Skydive Little Washington be allowed to operate a jump school at Warren Field Airport. Mr. Alligood called Council's attention to the changes on the agreement and noted a clean copy of this agreement has been placed in front of Council for their consideration. Changes are located on page 2, page 10 and page 27. Also, a waiver of subrogation was added. The rental fee is \$400 a month and Skydive Little Washington will be paying the City \$5 on random jumps, \$2 on experienced jumps. The drop zone will be near the overflow parking lot of the sports complex off Airport Road. This is a five year contract with a thirty day out by either party. Upon Council approval, staff will be ready to move forward.

Mayor Pro tem Roberson requested clarification on why we took out the minimum \$300,000 insurance and Mr. Alligood stated Mr. Hayes is covering it with \$1 million so we are in excess in what the City is requiring. Mayor Pro tem Roberson requested clarification under subsection A- the waiver of the subrogation and the City Attorney explained it is protection for the City and should an accident occur, Mr. Hayes' insurance company is supposed to give the City a thirty day notice before the lapse occurs.

Councilman Mercer inquired as to the signature line (owner/manager) who will sign? Mr. Holscher said the majority owner will sign or give Mr. Hayes authority to sign.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council authorized the Manager to sign the Jump School Agreement on behalf of the City with Skydive Little Washington, LLC.

**(copy attached)**

**ADOPT: ORDINANCE TO REPEAL CHAPTER 39 – WASTEWATER/SUO IN ITS ENTIRETY AND REPLACE WITH THE NEW CHAPTER 39 – WASTEWATER/SUO**

City Manager, Brian Alligood noted this item was placed in front of City Council at the last meeting and was pulled because of questions and clarification. This is a re-write and agrees with the State model for the waste water and sewer ordinance. These changes are required by the State to meet their latest requirements. Staff recommends Council approval and will answer any other questions Council may have.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council adopted the ordinance to repeal Chapter 39 – Wastewater/SUO in its entirety and replaced it with the new Chapter 39 – Wastewater/SUO.

**(copy attached)**

**MEMO: LSTA NC CARDINAL GRANT**

City Manager, Brian Alligood summarized the letter from Gloria Moore, Library Director advising that it is our intent to apply for the Library Services and Technology Act NC Cardinal grant. Applications are due on February 28, 2014 and there are no local matching funds required. Unless there are any objections from Council, staff wishes to proceed with the application process.

(Begin memo):

RE: LSTA NC Cardinal Grant

This year, we propose to apply for the Library Services and Technology Act (LSTA) NC Cardinal grant. Applications are due on February 29, 2014. No local matching funds are required.

The State Library pays the total cost for the first two years including shipping; then Brown Library begins cost sharing with the other members. After the first two years, Brown Library will pay an estimated \$1,800 per year. We currently pay Library Corporation \$13,916 annually. This would be a savings of \$27,832 in a two year period. The State Library will pay for the shipping of library materials for 6 months as they investigate the cost of this service.

The library patron will be able to place a hold (or make a request) for material from any of the libraries. The system will provide the patron's home library material first. If there are no available copies in the home library, it will look farther afield. Brown Library patrons would be able to request materials from any of the Cardinal Libraries. Those libraries would receive the request as if the patron were their patron and ship the item to us for pickup. The patron can then return it to the owning library. The State Library covers the shipping cost.

The library patron can also walk into any of the Cardinal libraries and check out materials using their home card. The circulating library will accept any NC Cardinal Library cards. If Brown decided to become a member, the project manager would discuss with the Library Director when would be the best time to migrate Brown Library's data. Once that is established, State Library will negotiate a price and send us a grant agreement for the migration cost (free) and an agreement between Brown and Equinox for the migration. (end memo)

**MEMO: FIRE ESCAPE ACCESS**

City Manager, Brian Alligood reviewed the memo from John Rodman, Community - Cultural Resources Director noting that La Bella Italian Restaurant is requesting permission for an agreement with the City to construct a fire escape.

The fire escape will not impede any of the access through the alleyway but it does essentially encroach upon air space.

Mr. Alligood called Council's attention to the pictures of the proposed alleyway, as well as some pictures of the cantilever fire escape, and plans that were drawn. The plans are a little misleading in that it is showing the fire escape coming out of a bedroom. The Building Inspector has spoken with Mr. Logelfo regarding this matter and it will need to be redesigned. Mr. Logelfo did not want to spend the money to have the plans redrawn unless he was sure Council

would sign off on it. The plan will be redesigned so that it is a fire rated corridor that goes out to the second access point.

(Begin memo):

RE: Fire Escape Access

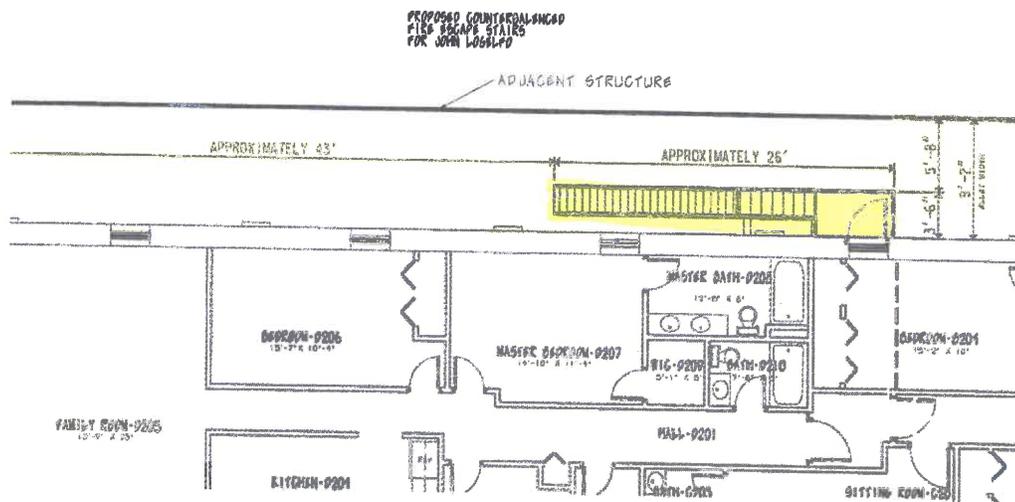
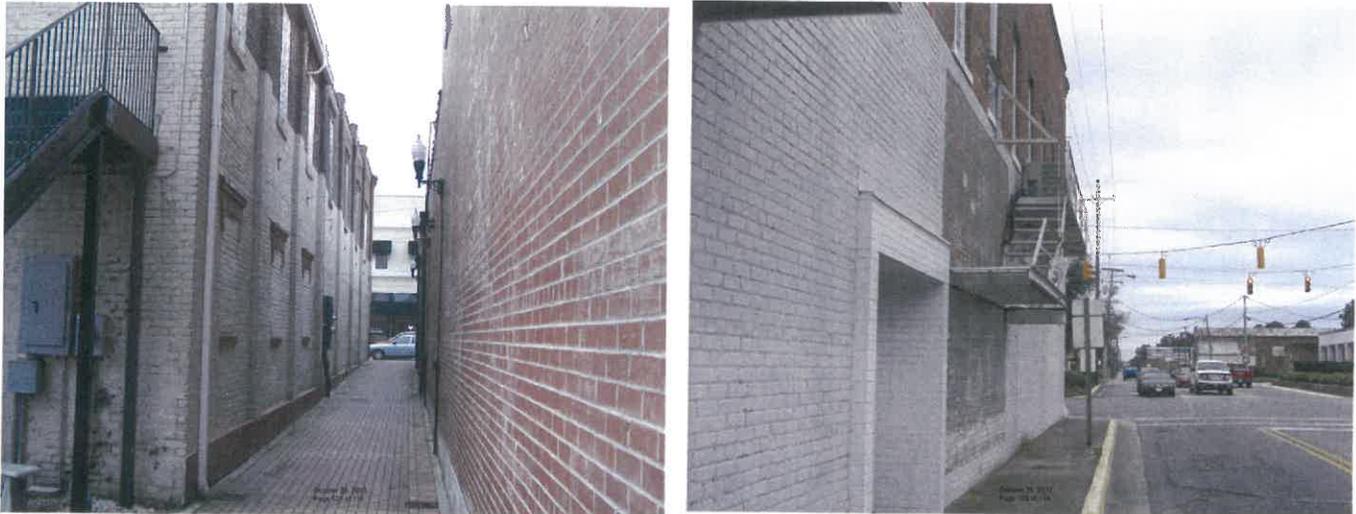
Mr. John Logelfo, owner of La Bella Italian Restaurant, located at 126 West Main Street, has plans to construct three 2<sup>nd</sup> floor apartments above the restaurant. In order to meet the building code requirements for ingress and egress a 2<sup>nd</sup> exit has to be added to the building. The only location available for an additional exit would be to construct a fire escape within the right-of-way of Ayers Lane. The alley is located on the western side of the building. The proposed fire escape would be a counterbalanced fire escape whose stairs would only descend in times of an emergency. At times of non-emergency the stairs would be 10 + feet above the alley way. Since Ayers Lane is a public right-of-way and after speaking with the City Attorney we feel an agreement between John Logelfo and the City is warranted in order to construct the fire escape. There are several of these types of fire escapes that are still in existence today. I am seeking authorization from City Council to allow the attorney to begin working on an encroachment agreement for the construction of the proposed fire escape.

Mr. Logelfo appeared before the Historic Preservation Commission in October seeking a Certificate of Appropriateness for the construction of the fire escape. Approval was granted by the Commission. (end memo)

Councilman Mercer raised a question to make sure it is a fire rated corridor and the Manager has addressed this concern. He does have some concerns about the fire escape being in the alley but we can overcome that. Councilman Mercer recommended seeing the revision that says that fire escape is accessible to anyone on the second floor. Mr. Alligood said the Planning/Inspection Department has had that conversation with Mr. Logelfo and will make sure it is done before they sign off on it. Mayor Jennings said Council's guidance to staff should be that it meet the intent of the code.

Discussion was held regarding encroachment agreements.

Mayor Pro tem Roberson called for a point of order noting it was his understanding on the fire escape issue that staff was actually asking Council about the encroachment agreement. Mayor Jennings explained it was just a memo making Council aware of the situation. Mr. Alligood stated they would come back to Council with an encroachment agreement. Mayor Pro tem Roberson suggested there are other ways to take care of this besides an encroachment agreement. Mayor Jennings directed Mr. Alligood to find out what it would cost to sprinkle a building. Mr. Alligood stated in his initial conversation with the Chief Building Inspector today he suggested you would have to sprinkle both upstairs and downstairs (the entire building). Also, it is his impression that it will take a fire pump because there is not enough pressure to maintain that system and noted it would be easily in excess of \$100,000. Discussion followed.



*LA Bella Subs & Ices  
126 W. Main Street*

**MEMO: 2013 AFG GRANT APPLICATION ALTERATION**

City Manager, Brian Alligood reviewed the memo from Robbie Rose, Fire Chief.

(Begin memo):

SUBJECT: 2013 AFG Grant Application Alteration

In reference to the approval by Council for the 2013 FEMA AFG grant process; we will not be including the two thermal image cameras in the roll over from the 2012 grant process as previously indicated. We recently had one of our two existing cameras fail and it was replaced with a new one by the Auxiliary. As a result the grant writer indicated the request justification for the two in the 2012 grant would not qualify. To that end we will not include them in the roll over but will most likely increase the funding request in the other areas to cover price increases but not exceed the original amount of \$70,000 total for the 2012 part of the application. (end memo)

**DISCUSSION: SCHEDULING FOR NOVEMBER COUNCIL MEETING**

Mayor Jennings stated the next regular meeting falls on November 11 which is Veterans Day and a holiday for the City. Thought has been given to this and several suggestions were given.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council agreed to move the November 11 meeting to November 18, 2013 and at the November 18 meeting make a decision on the November 25 Committee of the Whole meeting.

**ANNOUNCEMENT:**

Ms. Barbara Gaskins thanked Council for the support given on the Trunk or Treat planned event and said planning is going very well. The event will be held at Beebe Memorial Park (1101 North Bridge Street) on Thursday, October 31 at 4:30 pm and Council is invited to attend.

**CLOSED SESSION: UNDER NCGS § 143-318.11(a)(3) ATTORNEY CLIENT PRIVILEGE – INCLUDING JAMES L. DAVIS VS. CITY OF WASHINGTON (09-OSP-06499)**

By motion of Councilman Pitt, seconded by Council Brooks, Council agreed to enter closed session under NCGS § 143-318.11(a)(3) Attorney Client Privilege – including James L. Davis vs. City of Washington (09-OSP-06499) at 6:00 pm.

By motion of Councilman Mercer, seconded by Councilman Brooks, Council agreed to come out of Closed Session at 7:00 pm.

**ADJOURN – UNTIL MONDAY, NOVEMBER 18, 2013 AT 5:30 PM IN THE COUNCIL CHAMBERS AT THE MUNICIPAL BUILDING**

By motion of Councilman Mercer, seconded by Councilman Brooks, Council adjourned the meeting at 7:00 pm until Monday, November 18, 2013 at 5:30 pm in the Council Chambers at the Municipal Building.

**(Subject to the Approval of the City Council)**

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



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Allen Lewis, Public Works Director *ALL*  
**Date:** 11-05-13  
**Subject:** Authorize the Repurchase of Cemetery Lot R-83, Plot 2 in Oakdale Cemetery for \$600.00 and Adopt Budget Ordinance Amendment.

**Applicant Presentation:** N/A  
**Staff Presentation:** Allen Lewis

### RECOMMENDATION:

I move that Council authorize the repurchase of Lot R-83, Plot 2 in Oakdale Cemetery from Mr. Lyman Sheppard, Jr. the amount of \$600.00 and adopt the attached budget ordinance amendment to cover the cost.

### BACKGROUND AND FINDINGS:

The purpose of this Council Action is to receive authorization to repurchase one (1) plot in Oakdale Cemetery. The City has received a written request from Mr. Lyman Sheppard, Jr. for the repurchase of this plot which was purchased in 2011. He states that she no longer has the need for the plot.

Section 8-5(c) of the City Code states, "No cemetery lot may be sold or transferred by its owner to any other party. If the owner finds that he has no use for a lot, the city will buy it back at the same price originally paid for same; provided no interments have been made thereon." Staff has checked our records and has verified that there are currently no interments on this plot.

### PREVIOUS LEGISLATIVE ACTION

### FISCAL IMPACT

\_\_\_ Currently Budgeted (Account \_\_\_)  Requires additional appropriation \_\_\_ No Fiscal Impact

### SUPPORTING DOCUMENTS

Attached request from Mr. Lyman Sheppard, Jr., copy of plot "deed" and budget ordinance amendment.

City Attorney Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
 Finance Dept Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
 City Manager Review: *ALL* Concur November 18, 2013 Recommend Denial \_\_\_ No Recommendation 11/13/13 Date

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**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE  
OF THE CITY OF WASHINGTON, N.C.  
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That following account numbers in the Cemetery Fund appropriations budget be increased or decreased in the amounts shown to provide funds for the repurchase of cemetery lot R-83, plot 2.

39-90-9990-9900	Contingency	\$(600)
39-90-4740-4901	Repurchase of Lots	600

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

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

Adopted this the 18<sup>th</sup> day of November, 2013.

\_\_\_\_\_  
**MAYOR**

**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

10-3-13

I, Lyman Sheppard, Jr. owner  
of Lot R-83, plot 2 do not  
have any use for this lot and  
am requesting that the city  
of Washington buy it from  
me.

Lyman Sheppard, Jr

*This Certifies* that the CITY OF WASHINGTON,

3085

NORTH CAROLINA, for and in consideration of:

FEE ..... \$ 600.00

has sold and conveyed to Lyman Sheppard Jr.

301 Oak Dr. Washington NC 27889

the right of interment for LOT(S) R-83 in

PLOT(S) 2 in Oakdale

Cemetery according to the plan or map of said cemetery.

PROVIDED that this conveyance shall be subject to all the rules and regulations now existing or hereafter adopted by the said City with reference to said Cemetery.

IN WITNESS WHEREOF, The Mayor and City Clerk of said City have set their hands and affixed the corporate seal of said City hereto this the

15<sup>th</sup> day of July, 2011

City Clerk

*Cynthia S. Bennett*

Mayor

*[Signature]*

LOT NO. R-83 OWNER Single Grave Section LOT FEE \_\_\_\_\_  
 CEDAR HILL \_\_\_\_\_ ST. ADDRESS Oakdale Cemetery PER. CARE \_\_\_\_\_  
 OAKDALE  CITY \_\_\_\_\_ TOTAL \_\_\_\_\_

<p>1 <u>S.</u>          Linda Haggie Satchel          7-14-2007</p> <p>Deed. Estate of          Linda H. Satchel          c/o Blake Phillips F.W.          Greenville, N.C.</p>	<p>2</p> <p>Deed: Lyman Sheppard <sup>Jr.</sup></p>	<p>3          Violet Phelps Sheppard          06-08-2011</p> <p>Deed: Lyman Sheppard SR.</p>	<p>4 N.S.</p>
<p>5 N.S.</p>	<p>6 N.S.</p>	<p>7 N.S.</p>	<p>8 N.S.</p>



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Mike Whaley  
**Date:** November 18, 2013  
**Subject:** Declare Surplus/Authorize Electronic Auction of items through GovDeals  
**Applicant Presentation:** N/A  
**Staff Presentation:** N/A

**RECOMMENDATION:**

I move that City Council declare surplus and authorize the sale of the following vehicles through electronic auction using GovDeals.

**BACKGROUND AND FINDINGS:**

The purpose of this Council Action is to declare surplus the following city vehicles and authorize the sale of these vehicles through electronic auction using GovDeals.

<u>Vehicle Number</u>	<u>Make /Model</u>	<u>Serial</u>	<u>Odometer</u>
<u>Number</u>	<u>Description</u>	<u>Number</u>	<u>Reading</u>
#134	2005 Ford Crown Vic	1FAHP71W75X136814	126,905
#150	2007 Ford Crown Vic	2FAFP71W17X130663	125,690
#158	2005 Ford Crown Vic	2FAHP71W25X100996	110,067
#159	2005 Ford Crown Vic	2FAHP71W15X128532	106,080

**PREVIOUS LEGISLATIVE ACTION**

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date November 18, 2013  Denial  No Recommendation \_\_\_\_\_



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Kristi Roberson, Parks & Recreation Manager  
**Date:** November 18, 2013  
**Subject:** Accept annual grant from Mid-East Commission Area Agency on Aging and adopt budget ordinance

**Applicant Presentation:** N/A  
**Staff Presentation:** NA

**RECOMMENDATION:**

I move that the City Council accept the grant from the Mid-East Commission Area Agency on Aging in the amount of \$32,680 and adopt a budget ordinance to adjust the FY 13-14 budget appropriations and estimated revenue to match the grant award.

**BACKGROUND AND FINDINGS:**

The Grace Martin Harwell Senior Center has been awarded the annual grant to support and promote senior health and general Senior Center operations in the amount of \$32,680 with a \$6,226 cash match. The estimated grant revenue, appropriations, as well as the cash and in kind matches were budgeted in the FY 13-14 original budget. These estimated numbers now need to be adjusted to the funds actually awarded.

**PREVIOUS LEGISLATIVE ACTION**

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

Grant Agreement/Contract

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 4/13/13 Date November 18, 2013  Denial  No Recommendation \_\_\_\_\_



## *People Working Together*

1385 John Small Avenue Washington, North Carolina 27889  
www.mideastcom.org  
Phone: (252) 946-8043 Fax: (252) 946-5489

October 31, 2013

Ms. Carolyne Everett  
Grace Martin Harwell Senior Center  
310 W. Main  
PO Box 1988  
Washington, NC 27889

Dear Carolyne:

Enclosed are two originals of the contract for Senior Center Operations, Health Promotion/Disease Prevention, and General Purpose services to be provided during Fiscal Year 2014. Both originals have been signed by Mid-East Commission and need to be signed on behalf of the City. Also, please have that signature attested. Please retain one copy for your files and return the second to the Area Agency on Aging. If there are any questions, please contact us. Thank you for the services your agency is providing to older adults in Region Q.

Attached is an original FY 2013-2014 Application Packet for your file. This office received two originals.

Sincerely,

Carol Ward, Administrative Assistant  
Area Agency on Aging

Enclosures

Serving: Beaufort County • Bertie County • Hertford County • Martin County • Pitt County

\*Auxiliary aids and services are available upon request to individuals with disabilities.\*  
Relay numbers for the Hearing Impaired: (TTY) 1-800-735-2962 (voice) 1-800-735-8262

November 18, 2013  
Page 33 of 217

Grace Martin Harwell Senior Center  
 310 W Main Street  
 Washington, NC 27889  
 (252) 975-9368

November, 2013

Services	Fed./State Dollars	Match	Allocation
General Purpose	\$11,680.00	\$3, 893	10-40-6123-0200 Salaries
Senior Center Operations	\$17,000.00	\$1,889	
	\$10,000.00		10-40-6123-0301 Pt Salaries MidEast
	\$ 7,000.00		10-40-6123-4504 Operations
Health Promotions	\$4,000.00	\$ 444	10-40-6123-4501

Kristi,  
 Allocations to go with Contract.

Carolyne Everett

July 1, 2013 through June 30, 2014

**Agreement for the Provision of County-Based Non-Unit Aging Services**

This Agreement, entered into as of this 1<sup>st</sup> day of July 2013, by and between the City of Washington Grace Martin Harwell Senior Center (hereinafter referred to as the "provider") and the Mid-East Commission Area Agency on Aging (hereinafter referred to as the "MEC").

Witnesseth That:

WHEREAS, the MEC and the provider agree to the terms and conditions for provision of aging services in connection with activities financed in part by Older Americans Act grant funds, provided to the MEC from the United States Department of Health and Human Services through the North Carolina Division of Aging and Adult Services (DAAS) and state appropriations made available to the MEC through the North Carolina Division of Aging and Adult Services, as set forth in a) this document, b) the Division of Aging and Adult Services Service Standards Manual, Volumes I through IV, and, c) the Division of Aging and Adult Services Community Service Providers Monitoring Guidelines.

NOW THEREFORE, in consideration of these premises, and mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Availability of Funds. The terms set forth in this Agreement for payment are contingent upon the receipt of funding by the MEC.
2. Grant Administration. The grant administrator for MEC shall be Timothy Baynes, Executive Director. The grant administrator for the provider shall be Carlyne Everett, Recreation Program Specialist. It is understood and agreed that the grant administrator for the provider shall represent the provider in the performance of this Agreement. The provider shall notify the MEC in writing if the administrator changes during the grant period. Specific responsibilities of the grant administrator for the provider are provided in paragraph six (6) of this Agreement.
3. Scope of Services: The provider shall do, perform, and carry out in a satisfactory and proper manner, as determined by the MEC, the agreements and assurances required in the request for proposal.

<u>Services</u>	<u>Federal/State Dollars</u>	<u>Local Match</u>
General Purpose (176)	\$11,680	\$3,893
Senior Center Operations (170)	\$17,000	\$1,889
Health Promotion/Disease Prevention (220)	\$ 4,000	\$ 444

The provider shall submit an annual report to the MEC no later than July 14, 2014. Services authorized through this agreement shall be undertaken and pursued in such sequence as to assure their expeditious completion. All services required hereunder shall be completed by June 30, 2014. No state funds can be dispersed after the close of the fiscal year. Projected June expenditures must be reported with May services reported in June.

4. Assignability and Contracting. The provider shall not assign all or any portion of its interest in this Agreement. Any purchase of services with grant funding shall be carried out in accordance with the procurement and contracting policy of the provider or, where applicable, the MEC, which does not conflict with procurement and contracting requirements contained in 45 CFR 92.36. Federal funds shall not be awarded to any subrecipients who have been suspended or debarred by the Federal government. In addition, Federal funds may not be used to purchase goods or services from a vendor that has been suspended or debarred from Federal grant programs.
5. Compensation and Payments to the Provider. The provider shall be compensated for the work and services actually performed under this Agreement by payments to be made by the MEC. Total reimbursement to the provider under this Agreement may not exceed the grand total of available funding.
  - (a) Reimbursement of Service Costs. Reimbursements of service costs are carried out as provided in Section 3 of the N.C. Division of Aging and Adult Services Home and Community Care Block Grant Procedures Manual for Community Service Providers, revised February 17, 1997.
6. Reallocation of Funds and Budget Revisions. Any reallocation of funding between providers shall be voluntary on the part of the provider and shall be effective only for the period of the Agreement. The reallocation of funds between providers will not affect the allocation of future funding to the provider. If during the performance period of the Agreement, the MEC determines that a portion of the funds will not be expended; the grant administrator for the provider shall be notified in writing by the MEC and given the opportunity to make funds available for reallocation to other providers in the Planning and Service Area or elsewhere in the state.

Providers may request budget revisions during the period of the agreement, with final budget revisions due to the MEC no later than May 1, 2014.

Unless community services providers have been given the capacity to enter data into the Aging Resources Management System (ARMS), Area Agencies on Aging are responsible for entering amended service data into the Division of Aging Management Information System,

as specified in the N.C. Division of Aging Home and Community Care Block Grant Procedures Manual for Community Service Providers, revised February 17, 1997.

7. Monitoring. This Agreement will be monitored to assure that services are being provided in compliance with the N.C. Division of Aging Service Standards Manual, dated July 1, 1992, and the N.C. Division of Aging Home and Community Care Block Grant Procedures Manual for Community Service Providers, revised February 17, 1997. Further, compliance with updated monitoring requirements, as specified in Office of Management and Budget (OMB) Circular A-133 and NC General Statute 143-6. shall be carried out. Monitoring shall also include compliance with conflict of interest requirements. Monitoring requirements are discussed in DOA Administrative Letter No. 03-14 (11/5/03). Private non-profit service providers will be monitored to ensure compliance with conflict of interest policies, as stated in DOA Administrative Letter No. 03-14.

The monitoring of services provided under this Agreement shall be carried out by the MEC in accordance with its Assessment Plan and/or by the DAAS regional Adult Program Representatives in accordance with the parameters of the interagency agreement established between the Division of Aging and the Division of Social Services, as provided in DOA Administrative Letter No. 98-13.

Providers will receive a written report of monitoring findings in accordance with procedures established in Section 308 of the AAA Policies and Procedures Manual (July, 1994) and DOA Administrative Letter No. 98-13. Any areas of non-compliance will be addressed in a written corrective action plan with the provider.

8. Disputes and Appeals. Any dispute concerning a question of fact arising under this Agreement shall be identified to the designated grant administrator for the MEC. In accordance with Lead Regional Organization (LRO) policy, a written decision shall be promptly furnished to the designated grants administrator for the provider.

The decision of the LRO is final unless within twenty (20) days of receipt of such decision the provider furnishes a written request for appeal to the Director of the North Carolina Division of Aging and Adult Services, with a copy sent to the MEC. The request for appeal shall state the exact nature of the complaint. The Division of Aging and Adult Services will inform the provider of its appeal procedures and will inform the MEC that an appeal has been filed. Procedures thereafter will be determined by the appeals process of the Division of Aging and Adult Services. The state agency address is as follows:

Director  
North Carolina Division of Aging and Adult Services  
2101 Mail Service Center  
693 Palmer Drive  
Raleigh, North Carolina 27699-2101

9. **Termination for Cause.** If through any cause, the provider shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or the provider has or shall violate any of the covenants, agreements, representations or stipulations of this Agreement, the MEC shall have the right to terminate this Agreement by giving the provider written notice of such termination to the provider and specifying the effective date thereof. The date of notice shall be at least five (5) working days before MEC effective date of such termination. In such event, all documents and other materials collected or produced under this Agreement shall at the option of the MEC, become its property. The provider shall be entitled to receive just and equitable compensation for any work satisfactorily performed under this Agreement.
10. **Audit.** The Community Service Provider agrees to have an annual independent audit in accordance with North Carolina General Statutes, North Carolina Local Government Commission requirements, Division of Aging and Adult Services Program Audit Guide for Aging Services and Federal Office of Budget and Management (OMB) Circular A-133.

Community service providers must provide a copy of their year end financial statements, and any required audit, to the MEC on Aging. Community service providers, as specified in paragraph one (1) are subject to audit and fiscal reporting requirements as stated in NC General Statute 143-6 and OMB Circular a-133, where applicable. Home and Community Care Block Grant providers are not required to submit Activities and Accomplishments Reports. For-profit corporations are not subject to the requirements of OMB Circular A-133, but are subject to NC General Statute 143-6 and Yellow Book audit requirements, where applicable. **Federal funds** may not be used to pay for a **Single or Yellow Book** audit unless it is a federal requirement. **State funds** will not be used to pay for a **Single or Yellow Book** audit if the provider receives less than \$500,000 in state funds. The Department of Health and Human Services will provide confirmation of federal and state expenditures at the close of the state fiscal year. Information on audit and fiscal reporting requirements can be found at <http://www.ncgrants.gov>.

The following provides a summary of reporting requirements under NCGS 143-6 and OMB Circular A-133 based upon funding received and expended during the service provider's fiscal year.

11. **Audit/Assessment Resolutions and Disallowed Cost.** It is further understood that the community service providers are responsible to the MEC for clarifying any audit exceptions that may arise from any MEC assessment, county or community service provider single or financial audit, or audits conducted by the State or Federal Governments. In the event that the MEC or the Department of Health and Human Services disallows any expenditure made by the community service provider for any reason, the Community Service Provider shall promptly repay such funds to the MEC once any final appeal is exhausted in accordance with paragraph nine (9). The only exceptions are if the MEC is designated as a community service provider through the County Funding Plan or, if as a part of a procurement process, the MEC

on Aging enters into a contractual agreement for service provision with a provider which is in addition to the required County Funding Plan formats. In these exceptions, the MEC is responsible for any disallowed costs. The County or MEC can recoup any required payback from the community service provider in the event that payback is due to a community service provider's failure to meet OMB Circular A-122 requirements, requirements of A-110, requirements of 45CFR, Part 1321, and 45CFR, Part 92, or state eligibility requirements as specified in policy.

12. Indemnity. The provider agrees to indemnify and save harmless the MEC, its agents, and employees from and against any and all loss, cost, damages, expenses, and liability arising out of performance under this Agreement to the extent of errors or omissions of the provider.
13. Equal Employment Opportunity and Americans With Disabilities Act Compliance. The provider shall comply with all federal and state laws relating to equal employment opportunity and accommodation for disability.
14. Data to be Furnished to the Provider. All information which is existing, readily available to the MEC without cost and reasonably necessary, as determined by the MEC's staff, for the performance of this Agreement by the provider shall be furnished to the provider without charge by the MEC. The MEC, its agents and employees, shall fully cooperate with the provider in the performance of the provider's duties under this Agreement.
15. Rights in Documents, Materials and Data Produced. The provider agrees that at the discretion of the MEC, all reports and other data prepared by or for it under the terms of this Agreement shall be delivered to, become and remain the property of the MEC upon termination or completion of the work. Both the MEC and the provider shall have the right to use same without restriction or limitation and without compensation to the other. For the purposes of this Agreement, "data" includes writings, sound recordings, or other graphic representations, and works of similar nature. No reports or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the provider.
16. Interest of the Provider. The provider covenants that neither the provider nor its agents or employees presently has an interest, nor shall acquire an interest, direct or indirect, which conflicts in any manner or degree with the performance of its service hereunder, or which would prevent, or tend to prevent, the satisfactory performance of the service hereunder in an impartial and unbiased manner.
17. Interest of Members of the MEC, Lead Regional Organization, and Others. No officer, member or employee of the MEC or Lead Regional Organization, and no public official of any local government which is affected in any way by the Project, who exercises any function or responsibilities in the review or approval of the Project or any component part thereof, shall participate in any decisions relating to this Agreement which affects his personal interest or

the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such persons have any interest, direct or indirect, in this Agreement or the proceeds arising therefrom.

18. Officials not to Benefit. No member of or delegate to the Congress of the United States of America, resident Commissioner or employee of the United States Government, shall be entitled to any share or part of this Agreement or any benefits to arise here from.
19. Prohibition Against Use of Funds to Influence Legislation. No part of any funds under this Agreement shall be used to pay the salary or expenses of any employee or agent acting on behalf of the provider to engage in any activity designed to influence legislation or appropriations pending before Congress.
20. Applicable Law. This Agreement is executed and is to be performed in the State of North Carolina, and all questions of interpretation and construction shall be construed by the laws of such State.
21. Disaster Assistance: In the event that elderly individuals are endangered by the occurrence of a tornado, fire, flood, severe temperature extremes, or other disaster related situation, the provider shall cooperate with requests for assistance from the MEC.
22. Attendance at MEC Meetings: The provider shall attend any committee; special meeting; or staff development training being held by the MEC to include the Regional Advisory Committee.

In witness whereof, the MEC and the provider have executed this Agreement as of the day first written above.

**CITY OF WASHINGTON GRACE MARTIN HARWELL SENIOR CENTER**

Attest:

\_\_\_\_\_ By: \_\_\_\_\_

Date: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MEC**

Attest:

\_\_\_\_\_  
Annette Eubanks  
Area Agency on Aging Director

By: Timothy M. Baynes  
Timothy M. Baynes  
Executive Director

Date: \_\_\_\_\_

Date: 10/30/13

Provision for payment of the monies to fall due under this Agreement within the current fiscal year have been made by appropriation duly authorized as required by the Local Government Budget and Fiscal Control Act.

BY: Janet E. Dodge, ZD DATE: 10/30/13  
Janet Dodge, Finance Officer



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Kristi Roberson, Parks and Recreation Manager  
**Date:** November 18, 2013  
**Subject:** NC State Trails Program - 2014-2015 RTP Grant  
**Applicant Presentation:** N/A  
**Staff Presentation:** N/A

**RECOMMENDATION:**

I move that the City Council approve and support an application by the Washington Recreation Department for the NC State Trails Program.

**BACKGROUND AND FINDINGS:**

We recently became aware of funding from the NC State Trails Program. Pre application deadlines were due November 15. If approved, we request permission to apply for the NC State Trails 2014-2015 Program.

The Recreation Department was awarded a NC Adopt-A-Trail Grant, however funding for the State Adopt-A-Trail Grant Program was eliminated with the passage of the State's 2013/2014-2014/2015 biannual budget. The grant consisted of purchasing and installing a safe-launch dock at the Havens Gardens Boat Ramp.

The cost of the project is \$10,000. The grant share is 75% (\$7,500) and the City's 25% match would be \$2,500.

**PREVIOUS LEGISLATIVE ACTION**

The Recreation Advisory Committee and City Council supported the previous application for the NC Adopt-A-Trails Grant.

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date Concur KR Recommend Denial \_\_\_\_\_ No Recommendation \_\_\_\_\_



**REQUEST FOR CITY COUNCIL ACTION**

**To:** Mayor Jennings & Members of the City Council  
**From:** Glen Moore, Planning Administrator  
**Date:** November 6, 2013  
**Subject:** Resolution directing City Clerk to investigate a petition for a non-contiguous annexation of Washington Montessori School  
**Applicant Presentation:** N/A  
**Staff Presentation:** John Rodman, Community and Cultural Services

**RECOMMENDATION:**

I move that the City Council adopt the resolution directing the City Clerk to investigate a petition for the non-contiguous annexation of Washington Montessori School received under General Statutes 160A-31.

**BACKGROUND AND FINDINGS:**

On October 15, 2013, Washington Montessori School presented a petition for a non-contiguous annexation for a parcel of land. The property contains 6.954 acres and is located on Old Bath Hwy just east of Asbury Church Road.

After directing the clerk to investigate the petition the City will proceed with the annexation process.

**PREVIOUS LEGISLATIVE ACTION**

N/A

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

Resolution, Map  
Petition

---

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date Concur hwd Recommend Denial \_\_\_\_\_ No  
Recommendation \_\_\_\_\_  
November 18, 2013  
Page 43 of 217

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-31**

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 18, 2013 by the Washington City Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Washington deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of her investigation.

---

N. Archie Jennings, Mayor

ATTEST:

---

Cynthia S. Bennett, Clerk

Annexation # 13-A-02  
Washington Montessori School

**PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION**

Date: 9/27/2013

To the City Council of the City of Washington:

1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Washington.
2. The area to be annexed is non-contiguous to the City of Washington and the boundaries of such territory are as follows:

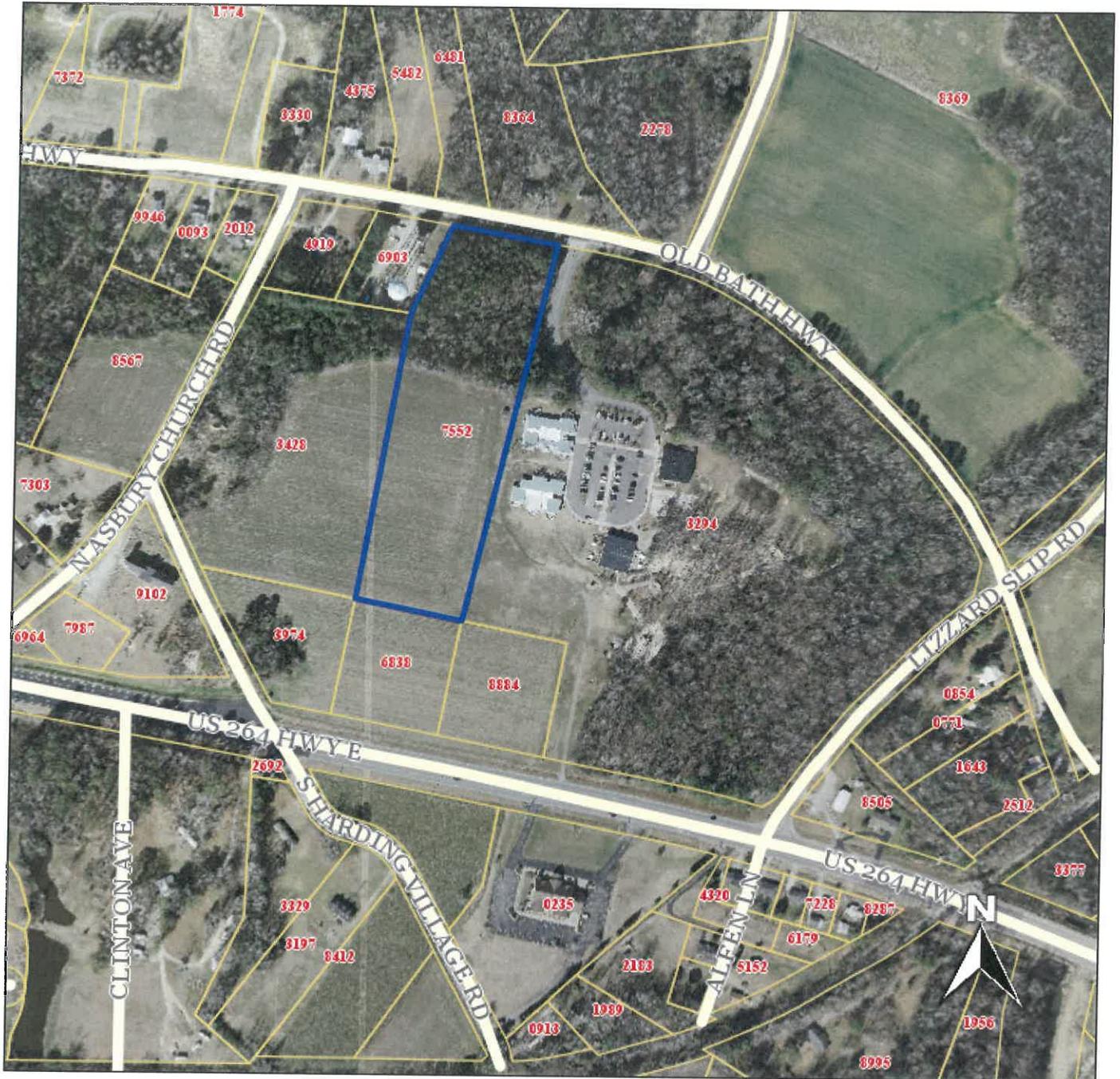
(Insert Metes and Bounds Description of Boundaries)

3. A Map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City.

4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

<u>Name</u>	<u>Address</u>	<u>Do you declare vested rights? (Indicate yes or no.)</u>	<u>Signature</u>
1. Washington Montessori, Inc	2330 Old Bath Hwy Washington, NC 27889	No	Jen Hales
2.			
3.			

# Washington Montessori School



90 m  
300 ft

Nov/05/2013  
Scale 1:4513

November 18, 2013  
The materials available at this web site are for informational purposes only and do not constitute a legal document.

Attribute	Value
PIN	15027988
GPIN	6605-07-7552
GPINLONG	6605-07-7552
NAME1	WASHINGTON MONTESSORI INC
NAME2	-
ADDR1	2330 OLD BATH HWY
ADDR2	-
CITY	WASHINGTON
STATE	NC
ZIP	27889
ACRES	6.95
ACCT_NBR	859110
MAP_SHEET	660500
NBR_BLDG	
DATE	27.3.2013
DB_PG	1812/0169
LAND_VAL	28003
BLDG_VAL	
DEFR_VAL	
TOT_VAL	28003
NBHD_CDE	A1
NBHD_DESC	ZONE1 AVERAGE
SUB_CDE	-
SUB_DESC	-
STAMPS	60
SALE_PRICE	30000
ZONE	-
LAND_USE	-
DISTRICT	05
PROP_DESC	6.95 AC TR-2 ASBURY MC H.ALLIGOOD DIV
MBL	660500157
EXMPT_PROP	-
EXMPT_AMT	



## REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Glen Moore, Planning Administrator  
**Date:** November 6, 2013  
**Subject:** Resolution directing City Clerk to investigate a petition for a non-contiguous annexation from West Park Motors  
**Applicant Presentation:** N/A  
**Staff Presentation:** John Rodman, Community and Cultural Services

### RECOMMENDATION:

I move that the City Council adopt the resolution directing the City Clerk to investigate a petition for the non-contiguous annexation of West Park Motors received under General Statutes 160A-31.

### BACKGROUND AND FINDINGS:

On October 15, 2013, West Park Motors presented a petition for a non-contiguous annexation for a parcel of land. The property contains 4.62 acres and is located on US Hwy 264 just east of Page Road.

After directing the clerk to investigate the petition the City will proceed with the annexation process.

### PREVIOUS LEGISLATIVE ACTION

N/A

### FISCAL IMPACT

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

### SUPPORTING DOCUMENTS

Resolution, Map  
Petition

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**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date Concur LRD Recommend Denial \_\_\_\_\_ No  
 Recommendation \_\_\_\_\_  
 November 18, 2013  
 Page 48 of 217

**RESOLUTION DIRECTING THE CLERK TO INVESTIGATE  
A PETITION RECEIVED UNDER G.S. 160A-31**

WHEREAS, a petition requesting annexation of an area described in said petition was received on November 18, 2013 by the Washington City Council; and

WHEREAS, G.S. 160A-31 provides that the sufficiency of the petition shall be investigated by the City Clerk before further annexation proceedings may take place; and

WHEREAS, the City Council of the City of Washington deems it advisable to proceed in response to this request for annexation;

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

The City Clerk is hereby directed to investigate the sufficiency of the above described petition and to certify as soon as possible to the City Council the result of her investigation.

---

N. Archie Jennings, Mayor

ATTEST:

---

Cynthia S. Bennett, Clerk

Annexation # 13-A-03  
West Park Motors

**PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION**

Date: October 15, 2013

To the City Council of the City of Washington:

1. We the undersigned owners of real property respectfully request that the area described in Paragraph 2 below be annexed to the City of Washington.

2. The area to be annexed is non-contiguous to the City of Washington and the boundaries of such territory are as follows:

Beginning at a point in the northern right of way of US Hwy 204 and being the northwestern corner of BLP Holdings, LLC tract and running N 31 35' 26" W 37.87 feet to a point, thence N 37 53' 18" W 150.03 feet to a point in the right of way and thence N 31 45' 09" W 64.29 feet to a point in the northern right of way being the centerline of an existing ditch along the western boundary and running N 62 30' 47" E 64.53 feet to a point along the ditch, thence N 28 16' 55" E 437.62 feet to a point along the northern boundary of this property running thence S 64 39' 12" E 300.37 feet to a point, running thence S 64 43' 22" E 85.57 feet to a point on the eastern boundary running thence S 24 33' 09" W 139.37 to a point on the eastern property line, running thence along an arc with a radius of 630.48 feet an a chord running S 46 43' 16" E 340.13 feet to a point on the eastern property line and running thence S 59 24' 34" W 195.49 feet to the point of beginning and being all of 4.619 acres recorded in DB 1777 Page 0590

**(Insert Metes and Bounds Description of Boundaries)**

3. A Map is attached showing the area proposed for annexation in relation to the primary corporate limits of the City.

4. We acknowledge that any zoning vested rights acquired pursuant to G.S. 160A-385.1 or G.S. 153A-344.1 must be declared and identified on this petition. We further acknowledge that failure to declare such rights on this petition shall result in a termination of vested rights previously acquired for the property. (If zoning vested rights are claimed, indicate below and attach proof.)

	<u>Name</u>	<u>Address</u>	<u>Do you declare vested rights? (Indicate yes or no )</u>	<u>Signature</u>
1.	Kyle Allgood	630 US Hwy 265 Bypass, Beheven NC 27810	Yes	<i>Kyle Allgood</i>
2.				
3.				

# West Park Motors



90 m  
300 ft

Nov/05/2013  
Scale 1:4513

November 18, 2013  
The materials available at this web site are for informational purposes only and do not constitute a legal document.

Attribute	Value
PIN	15021907
GPIN	5667-46-6237
GPINLONG	5667-46-6237
NAME1	EDGEWATER MOTORS INC
NAME2	-
ADDR1	630 US HWY 264 BYPASS
ADDR2	-
CITY	BELHAVEN
STATE	NC
ZIP	27810
ACRES	4.62
ACCT_NBR	910219
MAP_SHEET	566700
NBR_BLDG	
DATE	14.3.2012
DB_PG	1777/0590
LAND_VAL	228000
BLDG_VAL	-
DEFR_VAL	
TOT_VAL	228000
NBHD_CDE	A1
NBHD_DESC	ZONE1 AVERAGE
SUB_CDE	-
SUB_DESC	-
STAMPS	200
SALE_PRICE	100000
ZONE	-
LAND_USE	-
DISTRICT	02
PROP_DESC	4.62 AC LT 2 E R LEWIS CONT CO INC
MBL	566700105
EXMPT_PROP	-
EXMPT_AMT	



**REQUEST FOR CITY COUNCIL ACTION**

To: Mayor Jennings & Members of the City Council  
From: John Rodman, Community & Cultural Services  
Date: November 6, 2013  
Subject: Adopt Ordinance – Waterfront Advisory Committee  
Applicant Presentation: N/A  
Staff Presentation: John Rodman, Community and Cultural Services

**RECOMMENDATION:**

I move that the City Council approve the Ordinance to amend Chapter 2, Administration, of the Washington City Code by adding **Article XXIII, Waterfront Advisory Committee** as an established Board created by the Washington City Council.

**BACKGROUND AND FINDINGS:**

In accordance with a memorandum by City Manager Brian Alligood on the recommended management structure of the waterfront docks, the memo advised the creation of a 5 member Waterfront Advisory Committee to assist and make recommendations to a proposed dock master and to City Council. Members would include 3 at-large members and 2 members would be recommended by the WHDA Maritime Committee. All 5 members would be appointed by City Council. The creation of the committee would allow the committee to begin the process of establishing goals and objectives for the waterfront docks.

**PREVIOUS LEGISLATIVE ACTION**

Committee established by Resolution of the Washington City Council on September 23, 2013.

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

Ordinance

City Attorney Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
Finance Dept Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
City Manager Review: 11/13/13 Date Concur 6/10 Recommend Denial \_\_\_\_\_ No  
November 18, 2013  
Recommendation  
Page 55 of 217

**An Ordinance to Amend Chapter 2, Administration, of the  
Code of Ordinances of the City of Washington by Creating a  
Waterfront Advisory Committee**

WHEREAS, NCGS 160A-361 authorizes local governments to amend ordinances to create or designate one or more boards or commissions to perform specific duties; and

WHEREAS, the City of Washington has created a Waterfront Advisory Committee in order to provide recommendations to City Council regarding the management of the waterfront docks; and

WHEREAS, said advisory committee, representing stakeholder interests, can greatly assist in making recommendations, clarifying positions on issues, identify opportunities for development and help achieve goals and objectives of the Washington waterfront.

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

Section 1. That a new **Article XXIII, Waterfront Advisory Committee**, under Chapter 2 is added as follows:

**Sec. 2 - 591. Created.**

A City Waterfront Advisory Committee is hereby created under the authority of G.S. 160A-361 and by Resolution of the Washington City Council.

**Sec. 2 - 592. Members.**

(a) *Composition; appointment.* The Waterfront Advisory Committee shall consist of five (5) members all of which shall be appointed by City Council. Two (2) of the five (5) committee members will be recommended from the Washington Harbor District Alliance's Maritime Committee. The Dock Master will serve as an ex-officio member of the Advisory Committee. There shall also be a member from the Recreation Advisory Committee appointed to serve as an ex-officio member of the Waterfront Advisory Committee.

(b) *Terms.* The initial appointments will be staggered terms with three (3) members serving three (3) year terms and two (2) members serving two (2) year terms. Terms shall expire on June 30<sup>th</sup> with the two (2) year subsequent terms being appointed for three (3) years. Committee member vacancies occurring through the expiration of a term and unexpired terms shall be filled by the City Council.

(c) *Qualifications.* The members of the Waterfront Advisory Committee shall represent and have a variety of knowledge of waterfront water-based activities. The members shall be citizens of recognized ability and good judgment, which, in the opinion of City Council, will perform their official duties in the best interest of the City of Washington.

**Sec. 2 – 593. Organization and Rules of Procedure.**

(a) The Waterfront Advisory Committee shall adopt Rules of Procedure in accordance with Section 2 – 532.

(b) Within thirty (30) days after appointment, the Waterfront Advisory Committee shall elect its Chairman from the appointed members at its first regularly scheduled meeting. The term of Chairman shall be one (1) year with eligibility for reelection.

(c) The Waterfront Advisory Committee shall meet on a monthly basis and will be formed for specific activities with the expectation that the committee will report to City Council on a monthly basis or as determined to be needed. All meetings shall be open to the public.

(d) The Waterfront Advisory Committee shall record full and accurate records of all meetings held and any official action taken.

(f) Staff assistance will be provided by the Department of Community and Cultural Services along with the Dock Master acting as an ex-officio member.

**Sec. 2 - 594. Duties.**

The Waterfront Advisory Committee shall act as an advisory board to the City Council, City Manager and Director of Community and Cultural Services and provide recommendations regarding the management of the waterfront docks according to the *Washington Waterfront Docks Business Plan* and to advance the goals and objectives of said Plan. The Advisory Committee members shall assist in clarifying positions on waterfront issues, identify opportunities for development and help achieve goals and objectives of the Washington waterfront. The committee shall also perform other duties as the City Council may direct.

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

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

Adopted this \_\_18th\_\_ day of \_\_November\_\_\_\_, 2013.

\_\_\_\_\_  
N. Archie Jennings, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk



## REQUEST FOR CITY COUNCIL ACTION

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**To:** Mayor Jennings & Members of the City Council  
**From:** John Rodman, Planning & Development  
**Date:** November 6, 2013  
**Subject:** Public Hearing for Close Out of FY09 CDBG Housing Development Program – Washington Housing Inc.  
**Applicant Presentation:** Reed Whitesell, Holland Consulting Planners  
**Staff Presentation:** John Rodman, Planning and Development

### **RECOMMENDATION:**

No action is required from Council for the close out. The purpose of the public hearing is to review the budget and activities that have been accomplished through the city's FY09 CDBG Housing Development Program and a public hearing is consistent with the procedures and the original project timeline.

### **BACKGROUND AND FINDINGS:**

Washington Housing Inc. is a Community Development Block Project jointly through the City of Washington and the Washington Housing Authority. The following are agreed close-out activities:

November 11, 2013: Hold Closeout Public Hearing and present Performance Schedule and Agreed Actions to City Council.

Monthly beginning November 2013: Submit Monthly Performance Report from Washington Housing Incorporated, with cover letter from the City Manager, outlining progress to date on units to be constructed by WHI. DCA agrees to reduce the existing new SF construction performance quota for the FY09 HD project from 13 to 10 units, which will still provide DCA with the required HD application threshold of \$18,000 per new SF homeowner unit (\$185,000 expended to date).

December 13, 2013: Submit Closeout Documents to DCA (with certified minutes of November Public Hearing). Total project expenditures will not exceed the \$185,718.62 expended to date. No additional requisitions will be submitted for grant #09-C-2050. All remaining funds will be de-obligated.

By October 31, 2014: Demonstrate construction of ten (10) total units in the Northgate Subdivision by Washington Housing Incorporated, including development of all eight (8) parcels acquired with FY09 CDBG-HD funds. In the event of partial non-performance by WHI, The City of Washington agrees to reimburse DCA \$18,572 for each housing unit not constructed prior to 10/31/13. This payment (if any) will be made in full (one payment) no later than 11/30/14.

**PREVIOUS LEGISLATIVE ACTION**

The City is in the process of closing out the program.

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

Notice of Public Hearing

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**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** - 11/13/13 Date Concur but Recommend Denial \_\_\_\_\_ No  
 Recommendation \_\_\_\_\_

## NOTICE OF CLOSEOUT PUBLIC HEARING

### CITY OF WASHINGTON, NORTH CAROLINA FY2009 COMMUNITY DEVELOPMENT BLOCK GRANT HOUSING DEVELOPMENT PROGRAM

Notice is hereby given that the City of Washington City Council will conduct a public hearing on Monday, November 18, 2013, at 6:00 p.m., in the Council Chambers, Room 214, Municipal Building, 102 E. Second Street, Washington, NC. The purpose of the public hearing is to review the budget and activities that have been accomplished through the city's FY09 CDBG Housing Development Program. The program activities are complete and the city is in the process of closing out the program.

All interested citizens are encouraged to attend this public hearing, and all comments are welcome. Anyone wishing to submit written comments should do so by mailing them directly to Mr. John Rodman, Planning & Development Director, City of Washington, PO Box 1988, Washington, NC 27889-1988, to be received no later than 2:00 p.m., on Friday, November 14, 2013.

Persons with disabilities or who otherwise need assistance should contact John Rodman, at 252/975-9383 (TDD # 919/807-4420 or Relay North Carolina TTY# 1-800-735-2962) by Friday, November 14, 2013. Accommodations will be made for all who request assistance with participating in the public hearing.

This information is available in Spanish or any other language upon request. Please contact John Rodman, Planning & Development Director, at 252/975-9383, or at the Planning & Development Department, 102 East Second Street, Washington, NC for accommodations for this request.

Esta información está disponible en español o en cualquier otro idioma bajo petición. Por favor, póngase en contacto con John Rodman, Planning & Development Director, al 252/975-9383 o en Planning & Development Department, 102 East Second Street, Washington, NC, de alojamiento para esta solicitud.



# Grant Financial Statement

## For Grant 09-C-2050

05/23/13

Grant Number	09-C-2050	<b>Award Amount</b>	<b>\$227,700.00</b>
Grantee	Washington	Changes/Deobls	\$0.00
Duns Number			
Budget Number	DCA2009	<b>Project</b>	<b>CPS</b>
Category	HD		<b>Amount</b>
Rep	DB	C1	313 \$227,700.00
<b>Grant Amount:</b>			<b>\$227,700.00</b>

### Project & Activity Information

HUD Activity	Activity	Budgeted	Expend Qtr	Expend To Date	%	Balance
<b>Project C1</b>						
21564	Acquisition	\$147,000.00		\$130,142.55	89 %	\$16,857.45
21566	Administration	\$20,700.00		\$20,700.00	100 %	\$0.00
21565	Other Activities	\$60,000.00		\$25,193.78	42 %	\$34,806.22
<b>Total Project C1</b>		<b>\$227,700.00</b>		<b>\$176,036.33</b>	<b>77 %</b>	<b>\$51,663.67</b>
<b>Total Grant</b>		<b>\$227,700.00</b>		<b>\$176,036.33</b>	<b>77 %</b>	<b>\$51,663.67</b>

**MEMORANDUM**

Date: November 8, 2013  
To: Mayor and City Council  
From: John Rodman, Community and Cultural Services  
RE: Status Report - SBEA Grant Program  
CDBG 09-C-2050 Washington Housing Inc.

**SBEA Grant Program**

The Division of Community Investment and Assistance approved the 2011 Community Development Block Grant (CDBG) for Small Business and Entrepreneurial Assistance (SBEA) funds in the amount of \$200,000. The primary purpose of the SBEA program is to provide funding to local governments to help jumpstart the growth of existing small businesses by expanding their businesses and creating new jobs. Five (5) local businesses are participating in the program and will provide the local match. The local businesses that are participating are: Park Boat Company, Hospital Pharmacy, East Carolina Imports, FRE Plumbing, and Pamlico Fencing.

The grant project is authorized to provide CDBG funds to these local businesses for construction/rehab, machinery and equipment, and working capital. By providing capital resources to the existing business the City of Washington will help increase employment opportunities by creating 8 new jobs. Funding eligibility is contingent upon the creation or retention of permanent fulltime jobs. Each new job created or retained is eligible to receive up to \$25,000 in grant funds. The City of Washington was therefore awarded \$200,000 in Small Business and Entrepreneurial Assistance funds. Before these funds can be released the conditions must be met. Attached are monthly status reports and a letter indicating completed activities.

**CDBG 09-C-2050 Washington Housing Inc.**

The Division of Community Investment and Assistance approved the 2009 Community Development Block Grant for Housing Development in the amount of \$227,700. The primary purpose of the program is to provide funding to local governments to provide residential construction for low to moderate income individuals. The City of Washington is working in partnership with the Washington Housing Authority and Washington Housing Inc. The performance requirement was originally 13 houses built and occupied by 10/31/14. That requirement has been reduced to 10 houses. Attached are monthly grant updates and project schedule.



November 7, 2013

City of Washington  
John Rodman, Planning Director  
PO Box 1988  
Washington, NC 27889-1988

Re: Jumpstart Washington CDBG Report  
Washington CDBG # 11-C-2340  
Small Business and Entrepreneurial Assistance Grant (SBEA)

Dear Mr. Rodman:

During the months of August, September and October, 2013, The Wooten Company completed the following CDBG activities:

- One new employee was hired by one of the five project companies that qualifies as low and moderate-income, which brings our current total of new hires to six towards a goal of eight.
- Grant funded purchases were advertised for three pieces of equipment for project company's needs.
- Staff met with four of the five project companies to execute the revised Legally Binding Commitments and Promissory Notes.
- Staff met with project companies to finalize specifications for grant funded equipment needs.
- On-going administration and financial management.

Sincerely,

THE WOOTEN COMPANY

Billie Hansen, Project Manager

BBH/bbh

Enclosure: Financial Status Report

# Monthly Performance Status Report

(Due on 15<sup>th</sup> of each month)

Grantee Name: City of Washington Grant Number: 11-C-2340 Month: October Year: 2013

<u>Activity</u>	<u>Performance Schedule</u> (On/Off)	<u>Current Performance Status</u> (If Off Schedule)	<u>Remedy to get back on Schedule</u> (If Off Schedule)
Rehabilitation (Commercial)	On		
Working Capital	On		
Machinery & Equipment	On		
Planning	On		
Administration	On		

Prepared By: Billie Hansen Title: Project Coordinator  
 Endorsed By: Brian Alligood Title: City Manager (City/County Manager or Clerk)  
 Board or Council Update: John Rodman, Dir. of Planning Date: November 11, 2013

**Performance Schedule**  
 (Based on Performance Based Contract)  
 On/Off Schedule

- ❖ • **Off Performance Schedule: Provide current performance status and remedy to get back on schedule and submit report**
- ❖ • **On Performance Schedule: Stop and submit report, no current performance status or remedy to get back on schedule is required**

Status Report  
City of Washington  
Washington FY 11 SBEA Jumpstart Washington  
11-C-2340

Date: October 15, 2013  
Through CDBG Req #: 2

Activity	Total Project Funds			CDBG Funds		Other Funds	
	CDBG Grant**	Other*	Total Budget	Requisitioned To Date**	Unencumbered Balance To Date	Expended To Date**	Unencumbered Balance To Date
<b>C-1</b>							
Working Capital	\$43,750.00	\$97,125.00	\$140,875.00	\$43,750.00	\$0.00	\$0.00	\$97,125.00
Machinery and Equipment	\$131,250.00	\$53,375.00	\$184,625.00	\$54,531.22	\$76,718.78	\$0.00	\$53,375.00
Planning	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$5,000.00	\$0.00	\$0.00
Administration	\$20,000.00	\$0.00	\$20,000.00	\$16,644.43	\$3,355.57	\$0.00	\$0.00
<b>C-1 Total</b>	<b>\$200,000.00</b>	<b>\$150,500.00</b>	<b>\$350,500.00</b>	<b>\$114,925.65</b>	<b>\$85,074.35</b>	<b>\$0.00</b>	<b>\$150,500.00</b>
<b>PROJECT TOTAL</b>	<b>\$200,000.00</b>	<b>\$150,500.00</b>	<b>\$350,500.00</b>	<b>\$114,925.65</b>	<b>\$85,074.35</b>	<b>\$0.00</b>	<b>\$150,500.00</b>

## City of Washington Grant Update

Agenda Date: November 18, 2013

**Grant Name:** CDBG Housing Development Program

**Grant Number:** CDBG 09-C-2050 (HD)

**Grant Agency:** Department of Commerce

**Contract Grant Administrator:** Holland Consulting, Reed Whitesell

**City Grant Administrator:** John Rodman

Award Date: 4/9/10

Grant Expiration Date:

Projected Completion Date: 10/31/14

**Financial Status:**

	<u>Total Budgeted Revenues</u>	<u>Actual Revenues Project to Date</u>	<u>Total Budgeted Expenditures</u>	<u>Actual Expenditures Project to Date</u>
Grant Funds	\$227,700	\$185,718.62	\$227,700	
City Match	0		0	
Other Match				
Total	\$227,700	\$185,718.62	\$227,700	\$185,718.62

\*Detailed Revenue and Expenditure Statement is attached.

Reimbursement to Date:	\$185,718.62
Outstanding Reimbursement requests:	0
Total Reimbursement:	\$185,718.62

**Grant Status**

**Prior Activity:**

The performance requirement has been reduced from 13 to 10 houses built and occupied by 10/31/14. Three houses are currently occupied at this time. One of these houses was constructed on one of the 8 lots purchased with grant funds. As per the LBC, \$6000 was placed in the trust account of the city attorney.

**Activity during Month:**

The fourth house is under construction at this time. The closing has already taken place and WHI put \$6000 in the city attorney's trust account as stated in the LBC. The buyer should be living in home within 2 months.

## **City of Washington Grant Update**

### **Projected Activity for next Month:**

The fifth house is under contract and should close within the next month. Construction will begin at that time. In addition, 3 more applicants are in the pre-approval process at this time.

### **Other Notes/Council Actions required (Anticipated Date of Council Action):**

City of Washington FY09 CDBG Housing Development Project

Technical Approach/Project Schedule

Year One (February 2011 -- January 2012)

<u>Task</u>	<u>Feb-11</u>	<u>Mar-11</u>	<u>Apr-11</u>	<u>May-11</u>	<u>Jun-11</u>	<u>Jul-11</u>	<u>Aug-11</u>	<u>Sep-11</u>	<u>Oct-11</u>	<u>Nov-11</u>	<u>Dec-11</u>	<u>Jan-12</u>
Review Appraisals	HCP											
Approval of Substitute Parcels	DCA											
Complete Analysis of Impediments		HCP			DCA			DCA			DCA	
Quarterly Fair Housing Initiative		HCP/City			HCP/City			HCP/City			HCP/City	
Quarterly Report to DCA/City		HCP			HCP			HCP			HCP	
Quarterly WHI Counseling Meeting		HCP/City			HCP/City			HCP/City			HCP/City	
Quarterly WHI Financial Monitoring		HCP/City			HCP/City			HCP/City			HCP/City	
Quarterly Requisition		HCP City										
Submit APR to DCA	HCP					HCP						
# of Land Closings	2	2	2	2	2	2	2	2	2	2	2	2
# of New Housing Units Started												
# of New Housing Units Complete												
# of New Housing Units Occupied												
Promissory Note Executed	13 Parcels											
Deeds of Trust Executed	8 Parcels						3 Parcels			One Parcel	Final Parcel	
WHI Distribution to Escrow Account												

Technical Approach/Project Schedule

March 2012 -- April 2014)

Sep-13   Oct-13   Nov-13   Dec-13   Jan. - 14   Feb. - 14   Mar. - 14   Apr. - 14   May-14   Jun-14   Jul-14   Aug. - 14   Sept. - 14   Oct. - 14

Task	Sep-13	Oct-13	Nov-13	Dec-13	Jan. - 14	Feb. - 14	Mar. - 14	Apr. - 14	May-14	Jun-14	Jul-14	Aug. - 14	Sept. - 14	Oct. - 14
Quarterly Fair Housing Initiative	HCP/City			HCP/City			HCP/City							
Quarterly Report to DCA/City	HCP			HCP			HCP							
Quarterly WHI Counseling Meeting	HCP/City			HCP/City			HCP/City							
Quarterly WHI Financial Monitoring	HCP/City			HCP/City			HCP/City							
Quarterly Requisition	HCP City			HCP City			HCP City							
Submit APR to DCA														
Transfer 7th Street Units/Draw Funds				WHI/WHA										
WHI Submits Counseling Costs (13 Units)														
WHI Submits LMI Documentation (13 Units)	0	0	0	0	0	0	0	0						
# of New Housing Units Started (13 Units)	4	4	4	5	5	5	6	6	7	7	8	9	10	10
# of New Housing Units Complete (13 Units)	4	4	4	5	5	5	6	6	7	7	8	9	10	10
# of New Housing Units Occupied (13 Units)	3	3	3	4	4	5	5	6	6	7	7	7	8	10
WHI Distribution to Escrow Account (13 Units)	2	2	2	3	3	3	4	4	5	5	6	7	7	8

**Mayor**  
Archie Jennings

**City Manager**  
Brian Alligood



**Washington City Council**

Richard Brooks  
Doug Mercer  
Edward Moultrie  
William Pitt  
Bobby Roberson

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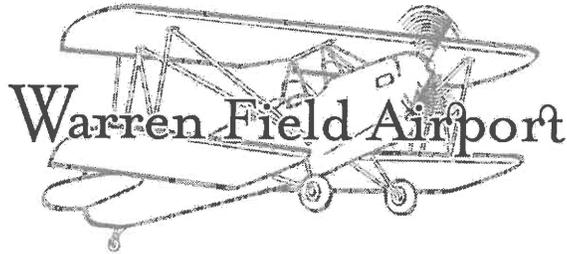
**MEMORANDUM**

**DATE:** November 12, 2013  
**TO:** Mayor and City Council  
**FROM:** Allen Lewis   
Public Works Director  
**SUBJECT:** Fuel Rebate Policy.

In order to assist with attracting more aircraft traffic at Warren Field Airport, staff has proposed the attached fuel rebate program to be implemented. This proposal was submitted to the Airport Advisory Board and received their overwhelming approval. This policy is just being presented for your information and no action is required.

/al

Attachment



### Fuel Rebate Policy

Purchase 250 or more gallons per quarter receive \$0.10/gallon rebate.

Purchase 500 or more gallons per quarter receive \$0.20/gallon rebate.

Purchase 1,000 or more gallons per quarter receive \$0.30/gallon rebate.

Purchase 2,000 or more gallons per quarter receive \$0.40/gallon rebate.

Purchase 4,000 or more gallons per quarter receive \$0.50/gallon rebate.

Conditions: Must sign up to receive rebates and make at least four (4) purchases per quarter.  
Rebates will be made within thirty (30) days of end of quarter. Quarters end in March, June, September and December.

## Load Management Device Installation Report

Project Start Date : October 2010

	October 2013	Project to Date	Projected Annual Savings
Total Load Management Device Installations	52	2,318	
Total Accounts Added with Load Management	64	1,717	
<b>Appliance Control Installations</b>			
Air Conditioner / Heat Pump	70	1,747	\$85,575
Auxiliary Heat Strip	53	878	\$90,978
Electric Furnace	3	260	\$35,922
Water Heater	61	1,385	\$118,290
			\$330,765
<b>Total Encumbrances to Date</b>			
Load Management Devices		\$65,600	
Contractor Installations		\$250,000	
Total Project Encumbrances		\$315,600	
<b>Total Expenses to Date</b>			
Load Management Device Purchases		\$65,600	
Contractor Installation Expenses	\$9,805	\$232,995	
Total Project Expenses		\$298,595	
Average Cost per Load Management Device Installed		\$129	
Average Installed Cost per Controlled Appliance		\$70	
Load Management Devices Remaining in Stock	182		



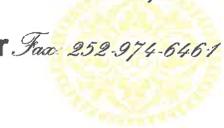
## HUMAN RELATIONS COUNCIL

*102 East 2nd Street*

*Washington, NC 27589*

*Phone: 252-975-1280*

**Human Relations Council (HRC) Report for the month of October**  
**Monday November 18, 2013 City Council Meeting**



### **MISSION STATEMENT**

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

### **SCHEDULED PUBLIC APPEARANCES:**

Criminal Justice Program Coordinator, Kimberly Grimes addressed the Board regarding the event "Take-A-Stand & Give-A-Helping Hand" to be held on Saturday, October 19, 2013 at the Smoke on the Water Festival. Ms. Grimes explained that the event would allow an individual to put their hand on a Police or Fire vehicle and all contributions would be donated to the Marion L. Shepard Cancer Center.

Event organizer, Barbara Gaskins addressed the Board regarding the Trunk & Treat event planned for Thursday, October 31, 2013 at Beebe Park. Ms. Gaskins requested the boards' participation by volunteering and donating candy.

**Update – Fire Chief Rose** – Provided an update on the project and the placement of the Ed Peed marker at Beebe Park. Chief Rose presented the marker for the Board to review and noted it was made with non-glare acrylic. This is an informational pedestal and the community will be provided with the history of Edward Peed when walking in the Park for generations to come.

Chief Rose advised the next step in this on-going project would be to request NDCOT to place a historical marker sign out at 15<sup>th</sup> Street directing people to the site.

**Discussion – Post Master Myra Lynn – unveiling of cancellation stamp for Ed Peed** – The Human Relations Council was informed of Ms. Lynn's request to unveil a cancellation stamp at the Ed Peed Commemoration service to be held on Saturday, February 15, 2014. By unanimous vote, the Board approved this request.

**Amendment – Amended By-laws** – A hard copy of the current operating by-laws was provided to the Human Relations Council Board members for filing purposes.

**OPEN DISCUSSION:**

Memorial discussion for former Board Chair Evelyne Roberson was held. The Board approved purchasing flowers (\$72.59) from the Human Relations Council budget and to receive private donations from Board members. The private donations would be presented to the Marion L. Shepard Cancer Center to memorialize Mrs. Roberson. Also, the Human Relations Council presented a resolution to Mrs. Roberson's family.

**CANCELED MEETING:**

Chairman Hughes and the Human Relations Board determined that there were no regular items that would require a meeting for the month of November. The next meeting was scheduled for December 10, 2013 with time and venue to be announced.



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Cynthia S. Bennett, City Clerk  
**Date:** November 8, 2013  
**Subject:** Appointments to Various Boards, Commissions, and Committees  
**Applicant Presentation:** N/A  
**Staff Presentation:** N/A

**RECOMMENDATION:**

**See attached recommended motions**

**BACKGROUND AND FINDINGS:**

Advertisements were published in the Washington Daily News and Cable 9 for vacancies for expiring terms on various boards, commissions, and committees, with the application deadline being November 12, 2013 at 5:00 p.m. Copies of all applications received were distributed to department heads to allow them time to meet with their Council liaison and Board Chairman. The Enlarged Planning Board (1), Alternate Member – Enlarged Board of Adjustment(1) and Airport Advisory Board(1) still have vacancies, but no applications were received.

Nominations will be made by the Council liaisons at the November 18, 2013 Council meeting.

**PREVIOUS LEGISLATIVE ACTION**

N/A

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

Board Applications

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date Concur Recommend Denial \_\_\_\_\_ No recommendation kwit

**ACTIONS SUGGESTED:**

**A. Recreation Advisory Committee:**

I move that the City Council appoint \_\_\_\_\_ to the Recreation Advisory Committee to fill the unexpired position of Ann Ange (**outside**), term to expire June 30, 2014.

**B. Waterfront Advisory Committee:**

**(Two members recommended by WHDA's Maritime Committee)**

I move that the City Council appoint \_\_\_\_\_ to the Waterfront Advisory Committee with a term to expire June 30, 2015.

I move that the City Council appoint \_\_\_\_\_ to the Waterfront Advisory Committee with a term to expire June 30, 2015.

I move that the City Council appoint \_\_\_\_\_ to the Waterfront Advisory Committee with a term to expire June 30, 2016.

I move that the City Council appoint \_\_\_\_\_ to the Waterfront Advisory Committee with a term to expire June 30, 2016.

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**C. Planning Board:**

I move that the City Council appoint \_\_\_\_\_ to the Planning Board, to fill the unexpired term of Steve Moler, term to expire June 30, 2015

**D. Board of Library Trustees:**

I move that the City Council appoint \_\_\_\_\_ to the Board of Library Trustees, to fill the unexpired position of Raymond Freeman, term to expire June 30, 2018

Requested Board Recreation Advisory Committee

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

NAME Carl W Moore Jr. aka CW Moore

ADDRESS 203 Hillingdale Dr. Washington NC 27889

PHONE (WORK) 252.714.3621 (HOME) 252.944.5677

E-MAIL ADDRESS cw.moore76@gmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 20 YEARS

YEARS OF EDUCATION High School Graduate, 1 year of College

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

IF YES, PLEASE INDICATE \_\_\_\_\_

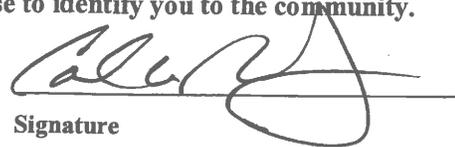
DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? No IF YES, EXPLAIN \_\_\_\_\_

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

I have coached several seasons of youth athletics, Cal Ripken Baseball, Optimist Soccer, Upwards Basketball.  
I have a vested interest in the future of the youth programs within Beaufort County as I have two children curenly participating. I would also like to be more involved in the behind the scenes action, as well advising what parents, and children need or would like to see within Washington's youth athletic development. I have excellent references such as Chip Edwards 252.943.4398; Tom Anglim 252.940.4010; Sandy Blizzard 252.944.6106

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

10/16/13  
Date

  
Signature

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

Requested Board recreation advisory

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

NAME Harold Robinson, Jr.

ADDRESS 340 Cypress Shores road

PHONE (WORK) 252-737-2649 (HOME) 252-714-0307

E-MAIL ADDRESS robinsonwi@ecu.edu

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? moved back 7yrs ago YEARS

YEARS OF EDUCATION BS,MAED,MAED in health and phy,Ed. and HS Administration

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

IF YES, PLEASE INDICATE \_\_\_\_\_

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

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

I have a broad background in athletics and have served on the Williamston Rec. when I lived there. Also, I just want to help the young people in Washington like the generation before me.

Growing up in Washington I remember the Bug House and the opportunities it provided us then. Further while living in Williamston I worked for the Parks and Recreation dept. as a summer employee and umpire

I was a 1967 graduate of WHS and was borned and raised in Washington until College. I have returned and been living here for 7 years

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

Oct.24,2013  
Date

Harold Robinson, Jr.  
Signature

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

Requested Board Recreation Advisory Committee

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

NAME Casey Cox

ADDRESS 221 Alderson Rd

PHONE (WORK) 947-0279 (HOME) 947-0279

E-MAIL ADDRESS caseycox.nc@gmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 33 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE n/a

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

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

Growing up in Washington I played in several city sports leagues and now I have a 7 year old son playing in several organizational sports leagues. I also have been a long time user of the boat ramps and waterfront facilities. Having lived in several different cities over the 17 years I did not live in Washington gives me a unique perspective of comparing Washington to other cities recreation services. And being a city property tax payer, I think I have a balanced view of wanting first class recreational facilities with cost along with other city services I enjoy and think the city should provide. I think it is important for citizens to be involved in the community and this is one way I can give back.

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

11/9/13

Date

Signature 

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

Requested Board Waterfront Advisory Committee

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

NAME Mac Cox

ADDRESS 467 Mimosa Shores RD., Washington, NC 27889

PHONE <sup>Cell</sup> 252-975-8579 (HOME) \_\_\_\_\_

E-MAIL ADDRESS M.Cox@suddenlink.net

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 65 YEARS

YEARS OF EDUCATION 15

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

IF YES, PLEASE INDICATE PS: Chamber of Commerce Around 1978?

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

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

HAVING GROWN UP IN WASHINGTON I HAVE A GREAT DEAL OF PRIDE AND RESPECT FOR WASHINGTON + THE PAMLICO RIVER. I WANT TO SEE THE WASHINGTON WATERFRONT DEVELOPED FOR THE GOOD OF THE COMMUNITY. IT'S ONE, IF NOT OUR BIGGEST ASSET

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

10-29-13  
Date

Mac Cox  
Signature

over  
→

Requested Board Washington Maritime Advisory Board

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

NAME Doug Doscher

ADDRESS 204 Pamlico Lane Chocowinity NC 27817

PHONE (<sup>cell</sup>~~WORK~~) 252-495-1530 (HOME) 252-833-4742

E-MAIL ADDRESS dougd54@hotmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 5 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE \_\_\_\_\_

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

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

Have maintained a 40' sailboat at Slip F6, Washington City Docks since October 2008.  
I am a member of the board for the Little Washington Sailing School and actively work to promote its success, strongly believe the waterfront can be the engine to revitalize downtown

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

October 25, 2013  
Date

Douglas Doscher  
Signature

Requested Board Washington Maritime Advisory Board

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

NAME Jules Norwood

ADDRESS 110 Bramblewood Dr., Greenville, NC 27858 (business at 411 W. Main St., Washington)

PHONE (WORK) 252.946.4653 (HOME) 252.341.2483

E-MAIL ADDRESS jules@carolinawind.com

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

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

YEARS OF EDUCATION 17

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

IF YES, PLEASE INDICATE \_\_\_\_\_

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

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

For the past five years I have operated a marina adjacent to the Washington waterfront docks. My knowledge of the marina operations goes back even further as it has been a family business for 30+ years. This experience will be a valuable addition to the committee responsible for improving the operations of the waterfront docks. As an active boater and a contact point for many other boaters, I will represent the interests of that community as well.

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

11.2.13  
Date

Jules Norwood  
Signature

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

Requested Board Washington Maritime Advisory Board

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

NAME R. Harrison Marks, III

ADDRESS PO Box 1854, (108 Gladden St.), Washington, NC 27889

PHONE (WORK) 252-946-7211 (HOME) 252-617-2631

E-MAIL ADDRESS harrison@ptrf.org

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 0 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE \_\_\_\_\_

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

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

As Executive Director for the Pamlico-Tar River Foundation and as an avid boater, I have a real appreciation for the importance of the waterfront area to Washington's economic growth and community well-being. My wife and I spent six weeks with our boat at the docks so we could spend more time in Washington and experience the downtown area in particular. My 30 years in banking included substantial responsibility for strategy and planning, experience that would be helpful as part of the Maritime Advisory Board.

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

October 29, 2013

Date

R. Harrison Marks, III

Signature

Requested Board Washington Maritime Advisory Board

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

NAME Bill Gravely

ADDRESS 126 Fairway Drive, Washington, NC 27889

PHONE (WORK) 252-946-2959 (HOME) 252-946-6173

E-MAIL ADDRESS gravely@coastalnet.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 64 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE \_\_\_\_\_

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A  
BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

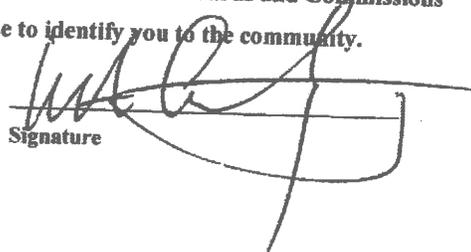
STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): *Use back of sheet if additional space is needed.*

I have extensive experience in various types and sizes of recreational boats cruising the entire eastern seaboard. This experience gives me some insight into what attractions, experiences and amenities boaters are looking for and how they go about obtaining information on these subjects.

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

November 8, 2013

Date

Signature 

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

FOR THE ECONOMICAL GROWTH OF WASHINGTON  
AND THE DOWNTOWN AREA.

I HAVE BEEN AN AVID BOATER/SAILOR  
MY ENTIRE LIFE, HAVING OWNED SEVERAL  
SAIL AND A FEW POWER BOATS. I ENJOY  
DOCKING ON THE WATERFRONT WHENEVER I CAN.

I HAVE MY U.S. COAST GUARD CAPTAIN'S  
LICENSE (CDUV) AND I'M CURRENT SERVING  
ON THE BOARD OF DIRECTORS FOR THE LITTLE  
WASHINGTON SAILING SCHOOL. I HAVE A  
GOOD UNDERSTANDING OF BOATS, BOATER'S  
AND THEIR NEEDS AND WHAT THEY EXPECT  
TO HAVE A SAFE AND ENJOYABLE STAY AT THE  
WASHINGTON WATERFRONT DOCKS.

I REMEMBER WHEN THE WATERFRONT WAS  
WAREHOUSES, FISH MARKET AND THE OLD ICEHOUSE,  
IT'S COME A LONG WAY. IF GIVEN THE  
OPPORTUNITY I WILL WORK HARD TO IMPROVE  
ON AND HELP TAKE THE WASHINGTON  
WATERFRONT TO THE NEXT LEVEL.

THANK YOU FOR YOUR CONSIDERATION.

Sincerely,  
Walter Cox

Requested Board Washington Maritime Advisory Board

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

NAME Fred O Watkins, III

ADDRESS 306 Sunnyside Drive, Washington, NC 27889

PHONE (WORK) 252-943-5005 (HOME) 252-946-1844

E-MAIL ADDRESS fowatkins@hotmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 64 YEARS

YEARS OF EDUCATION 16

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

IF YES, PLEASE INDICATE Washington TDA Board Member

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

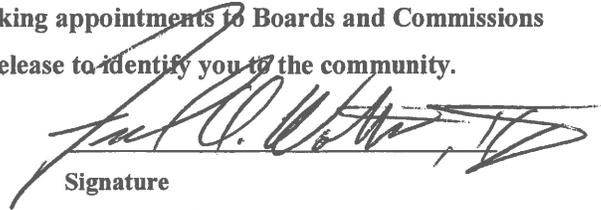
STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): *Use back of sheet if additional space is needed.*

I have been an avid sailor and motor boater my entire life. I currently have a 27 ft sail boat and a 24 ft motor boat which I use regularly on the coastal and off shore waters of North Carolina. Traveling the Intra-coastal waterway has given me the opportunity to see and experience the hospitality and pleasure of visiting communities with well managed marinas. I want Washington to become a destiny for boaters traveling the coastal waters of North Carolina.

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

November 11, 2013

Date

  
Signature

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

Requested Board Planning Board

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

NAME Daryl Keith Woolard

ADDRESS 205 Lawson Road Washington, NC 27889

PHONE (WORK) Retired (HOME) 252-402-7504

E-MAIL ADDRESS darylwoolard@gmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 65 YEARS

YEARS OF EDUCATION 18

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

IF YES, PLEASE INDICATE \_\_\_\_\_

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

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

22 years military servicedeveloping my operational skills by learning to plan large operations or missions for company and battalion size units. Becoming a technical writer for a global teaching course. etc. etc. 17 years as postmaster in Edward, NC performing all duties, reports, and required activities for a community regarding their long distance written communicable needs.

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

11/10/2013  
Date

Daryl K. Woolard  
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: 05/10/2014

Requested Board Board of Library Trustees

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

NAME Daryl Keith Woolard

ADDRESS 205 Lawson Road Washington, NC 27889

PHONE (WORK) Retired (HOME) 252-402-7504

E-MAIL ADDRESS darylwoolard@gmail.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 65 YEARS

YEARS OF EDUCATION 18

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

IF YES, PLEASE INDICATE \_\_\_\_\_

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

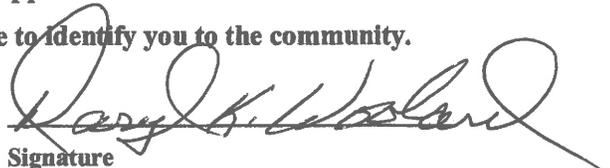
STATE REASONS WHY YOU FEEL QUALIFIED FOR THIS APPOINTMENT (s) (OPTIONAL): *Use back of sheet if additional space is needed.*

22 years military servicedeveloping my operational skills by learning to plan large operations or missions for company and battalion size units. Becoming a technical writer for a global teaching course. etc. etc. 17 years as postmaster in Edward, NC performing all duties, reports, and required activities for a community regarding their long distance written communicable needs.

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

11/10/2013

Date

  
Signature

NOTE: Application will remain on file for six (6) months. Expiration Date: 05/10/2014

Requested Board LIBRARY BD. OF TRUSTEES

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

NAME STEPHEN H. MOLER

ADDRESS 203 LEE PLACE, WASHINGTON, N.C

PHONE (WORK) (252) 948-3888 (HOME) (252) 974-0479

E-MAIL ADDRESS STEVE.MOLER@NCPARKS.GOV

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 43 YEARS

YEARS OF EDUCATION POST-UNDERGRADUATE

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

IF YES, PLEASE INDICATE CITY PLANNING BOARD

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A  
BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

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

I SERVED ON THE BROWN LIBRARY EXPANSION COMMITTEE BACK  
IN THE 1980s. I HAVE SERVED ON OTHER BOARD IN THE PAST. I WAS CHAIRMAN  
OF BOARD OF BEAUFORT CO. ARTS COUNCIL BACK IN 1984.

I HAVE A STRONG INTEREST THE BROWN LIBRARY AND I USE ITS  
SERVICES.

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

Date

Sept 26, 2013

Signature

Steph H Moler

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

NAME Leesa Payton Jones

ADDRESS 324 East 10th Street Washington NC 27889

PHONE (WORK) 609-444-8974 (HOME) 252-833-0995

E-MAIL ADDRESS Leesawisdom@aol.com

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 18 YEARS

YEARS OF EDUCATION 7 (City University of New York, Philadelphia Community College)

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

IF YES, PLEASE INDICATE \_\_\_\_\_

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

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

I feel I am qualified for this appointment because I believe that libraries enhance the quality of a community and it's welfare. A well endowed library and the Board that ensures it's viability is an asset to everyone. I believe in the mission of the Library and what it means to Washington. I am producing a documentary about Washington for PBS and 85% of my research was done at the Brown Library. I am an advocate for promoting the vital resource this Library is and will work hard to add to it's mission and function.

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

July 9 2013

Date

Leesa P Jones  
Signature

Requested Board BROWN LIBRARY BOARD OF TRUSTEES

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

NAME RICK F GAGLIANO

ADDRESS 120 WASHINGTON HARBOUR WASHINGTON NC 27889

PHONE (WORK) 252-327-9504 (HOME) 252-940-0334

E-MAIL ADDRESS ablenotary@suddenlink.net

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

HOW LONG HAVE YOU BEEN A RESIDENT OF BEAUFORT COUNTY? 14 YEARS

YEARS OF EDUCATION 18

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

IF YES, PLEASE INDICATE HUMAN RELATIONS COUNCEL-VICE CHAIR-6 YRS

DO YOU ANTICIPATE A CONFLICT OF INTEREST BY SERVING AS A MEMBER OF A BOARD/COMMISSION? NO IF YES, EXPLAIN \_\_\_\_\_

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

I AM VERY CIVIC MINDED AND FEEL A NEED TO USE MY MANY TALLANTS TO GUIDE THE LIBRARY IN THE RIGHT DIRECTION

I HAVE BEEN A BUSINESS OWNER FOR OVER 30 YRS.I'M A BORN LEADER AND WANT TO USE MY FUND RAISING TALLENTSTO SERVE THE LIBRARY.

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

11/ 06/2013

Date

RICK F GAGLIANO

Signature

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



## REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Allen Lewis, Public Works Director *Allen Lewis*  
**Date:** 11-05-13  
**Subject:** Authorize manager to negotiate and execute an engineering contract for various water and sewer projects as a result of the recently awarded EDA grant.

**Applicant Presentation:** N/A  
**Staff Presentation:** Allen Lewis

### RECOMMENDATION:

I move that Council authorize the manager to negotiate and execute an engineering contract with Rivers and Associates, Inc. for various water and sewer projects as a result of the recently awarded EDA grant.

### BACKGROUND AND FINDINGS:

As a result of the recently awarded EDA grant, staff requested proposals from engineering firms to provide engineering services for design, construction administration, surveying, environmental studies and permitting. This request resulted in a total of eight (8) companies submitting proposals. After careful consideration of all proposals, it was decided that Rivers and Associates, Inc., be awarded this project. Rivers has far more experience with our existing system and is already the engineer of record for the 16" water line project which will be a part of the construction portion of this grant project. As EDA requires that all five projects funded for construction be let as one contract, it will be much easier for staff to deal with one engineering firm and have one engineering firm overseeing all projects in reference for submittals, pay request and reimbursement requests.

The negotiated contract amount will not exceed the amount of grant approved funding for these types of services for this project which total \$290,506.

### PREVIOUS LEGISLATIVE ACTION

Most recently, 09-23-13, authorized Mayor to execute Financial Assistance Award

### FISCAL IMPACT

Currently Budgeted (Account various accounts)  Requires additional appropriation  No Fiscal Impact

### SUPPORTING DOCUMENTS

N/A

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** *Concur* \_\_\_\_\_ Concur \_\_\_\_\_ Recommend Denial \_\_\_\_\_ No  
 Recommendation 11/13/13 Date



## REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Allen Lewis, Public Works Director *Allen Lewis*  
**Date:** 11-12-13  
**Subject:** Award Contract for Airport Terminal Site Surcharge Work and Approve Purchase Order for Same to B.E. Singleton & Sons, Inc. (\$37,016).  
**Applicant Presentation:** N/A  
**Staff Presentation:** Allen Lewis

### RECOMMENDATION:

I move that Council award a contract for the airport terminal building surcharge work to B.E. Singleton & Sons, Inc., in the amount of \$37,016 and approve a purchase order for this amount.

### BACKGROUND AND FINDINGS:

This request is to award a contract and corresponding purchase order for B.E. Singleton to perform earth moving work at the future site of the proposed airport terminal building. This work will primarily consist of the excavation of approximately 30" of existing material, backfilling with structural fill and surcharging the site with an additional 8' of material. This work is necessary in order to help compact the soil under the future terminal building. This method was determined to be the most economical of those considered in order to reduce the possibility of settlement in the future. Informal bids were requested of three contractors and we received two bids. A bid sheet is attached for your information.

### PREVIOUS LEGISLATIVE ACTION

Most recently 07-29-13, advised staff to move forward with terminal design and move forward with bid package.

### FISCAL IMPACT

Currently Budgeted (66-90-4530-4500)  Requires additional appropriation  No Fiscal Impact

### SUPPORTING DOCUMENTS

Proposed Contract and Bid Tabulation Sheet.

City Attorney Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
 Finance Dept Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
 City Manager Review: *And* Concur November 18, 2013 Denial \_\_\_\_\_ No Recommendation 11/13/13 Date  
 Page 92 of 217

Warren Field  
 Terminal Building Surcharge and Site Preparation  
 TBI No. 4207-1302  
 Bid Date: Friday, October 25, 2013 @ 1:00 pm

This Tabulation was prepared by Talbert & Bright, Inc. and is correct to the best of our knowledge, information, and belief.

By:

Date: 10/25/13

Base Bid				B.E. Singleton & Sons, Inc. 920 W. 3rd Street Washington, NC 27889 NC General License No: 8226		St. Clair Trucking, Inc. PO Box 372 Washington, NC 27889 NC General License No: 30071		
Item	Spec.	Description	Unit	Quantity	Unit Price	Ext. Total	Unit Price	Ext. Total
1	P-150	Mobilization	LS	1	\$ 4,355.00	\$ 4,355.00	\$ 12,180.00	\$ 12,180.00
2	95	Temporary Chain Link Construction Fence	LF	430	\$ 7.06	\$ 3,035.00	\$ 16.05	\$ 6,901.50
3	95	Temporary Silt Fence	LF	300	\$ 3.00	\$ 900.00	\$ 3.35	\$ 1,005.00
4	95	Temporary Seeding and Mulching	LS	1	\$ 1,500.00	\$ 1,500.00	\$ 1,000.00	\$ 1,000.00
5	95	Erosion Control Matting	SY	75	\$ 4.00	\$ 300.00	\$ 5.60	\$ 420.00
6	REP	Pavement Removal	SY	360	\$ 13.25	\$ 4,770.00	\$ 5.14	\$ 1,850.40
7	REP	Sidewalk Removal	SY	26	\$ 10.00	\$ 260.00	\$ 5.77	\$ 150.02
8	95	Remove Chain Link Fence	LF	275	\$ 3.20	\$ 880.00	\$ 1.64	\$ 451.00
9	P-152	Unclassified Excavation	CY	2,100	\$ 6.00	\$ 12,600.00	\$ 5.00	\$ 10,500.00
10	P-152	Borrow Embankment - Structural Fill	CY	700	\$ 9.00	\$ 6,300.00	\$ 17.54	\$ 12,278.00
11	95	Settlement Monitoring Devices	EA	2	\$ 300.00	\$ 600.00	\$ 600.00	\$ 1,200.00
12	95	Drainage Pipe Replacement	LF	40	\$ 37.90	\$ 1,516.00	\$ 20.00	\$ 800.00
<b>Total - Base Bid:</b>						<b>\$ 37,016.00</b>		<b>\$ 48,735.92</b>

**CONTRACT**

This AGREEMENT, made and entered into this 18<sup>th</sup> day of November 2013, by and between City of Washington, hereinafter called the OWNER, and B.E. Singleton & Sons, Inc., 920 W. 3<sup>rd</sup> Street, Washington, North Carolina 27889, hereinafter called the Contractor.

WITNESSETH: That the Contractor, for the consideration hereinafter fully set out, and the OWNER, for the construction of work performed, agree that:

**1. Scope of Work:**

The Contractor shall furnish and deliver all the materials and perform all the work in the manner and form as provided in the following enumerated Plans, Specifications and Contract Documents which are attached hereto and made a part hereof as if fully contained herein:

**TERMINAL BUILDING SURCHARGE AND SITE PREPARATION  
WARREN FIELD**

**Specifications and Contract Documents:**

- a. Project Plans prepared by Talbert & Bright, Inc. Dated October 2013
- b. Instructions to Bidders
- c. General Conditions, including any Supplementary General Conditions
- d. Project Special Provisions
- e. Technical Provisions
- f. Proposal in the amount of \$37,016.00
- g. Performance and Payment Bonds

ORIGINAL PROPOSAL:	\$37,016.00
TOTAL ADDITIONS:	\$0.00
TOTAL DEDUCTIONS:	<u>\$0.00</u>
<b>CURRENT CONTRACT AMOUNT:</b>	<b>\$37,016.00</b>

The Contractor hereby guarantees all materials and workmanship for a period of one year from the date at final acceptance of all items of work set forth under this Contract.

- 2. The Contractor shall commence the work to be performed under the Contract not later than the date set by the OWNER in written notice to proceed, said date to be not less than seven (7) days after issuance of notice.
- 3. The OWNER hereby agrees to pay to the Contractor for the faithful performance of this agreement, subject to additions and deductions as provided in the specifications or proposal, in lawful money of the United States, such unit and/or

lump sum prices as are set forth in the accepted proposal for quantities of each item actually accomplished.

4. On or before the 20th day of each calendar month, the OWNER shall make partial payments to the Contractor on a basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Contractor, less ten percent (10%) of the amount of such estimate which is to be retained by the OWNER until all work has been performed strictly in accordance with this Contract and until such work has been accepted by the OWNER.
5. Payment of the balance due the Contractor shall occur within 30 days of completion of all work covered by this contract, acceptance of same by the Owner, and the submission of proof to the Owner of payment in full of all labor and material by the Contractor.
6. It is further mutually agreed between the Contractor and the OWNER hereto if, at any time after the execution of this Contract and the Performance and Payment Bond hereto attached for its faithful performance, the OWNER shall deem the surety or sureties upon such bond to be unsatisfactory; or if, for any reason such bond ceases to be adequate to cover the performance of such work, the Contractor shall, at its expense, within five days after the receipt of notice from the OWNER to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the OWNER. In such event, no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the work shall be furnished in a manner and form satisfactory to the OWNER.
7. The Contractor shall indemnify and hold harmless the OWNER, its officers, agents, employees and consultants, from and against any and all losses or costs including but not limited to litigation and settlement costs, counsel fees, claims, suits, action, damages, liability, and expenses, occasioned wholly or in part by the Contractor's negligent act(s) or willful omissions or fault or the negligent acts or willful omissions or fault of the Contractor's agents, subcontractors, suppliers, employees, or servants in connection with this agreement, including but not limited to those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay such subcontractors and suppliers, any breach of the agreement and any infringement or violation of any proprietary right (including but not limited to patent, copyright, trademark, service mark and trade secret). The indemnity obligations under this paragraph will survive termination of the agreement.

Dispute resolution shall be resolved in the Superior Court for the County or other political subdivision in which the project is located. The law to be applied is the Laws of the State of North Carolina. In the event the Parties are found to be jointly at fault for any claim, action, loss or damage that results from their

respective obligations under this agreement, the Contractor shall indemnify **City of Washington** to the extent of the Contractor's fault.

IN WITNESS WHEREOF, the OWNER and Contractor hereto have executed this Contract on the day and date first above written in four counterparts, be deemed an original Contract.

BY:

BY:

\_\_\_\_\_  
**CITY OF WASHINGTON**

\_\_\_\_\_  
**B.E. SINGLETON & SONS, INC.**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Executed in quadruple

**PERFORMANCE BOND**  
100% of the Contract Amount

KNOW ALL MEN BY THESE PRESENT: that

**B.E. SINGLETON & SONS, INC.**  
**920 W. 3<sup>RD</sup> STREET**  
**WASHINGTON, NORTH CAROLINA 27889**

as Principal, hereinafter called Contractor and \_\_\_\_\_, a corporation duly organized in the State of \_\_\_\_\_ and licensed under laws of and authorized to do business in the State of North Carolina as Surety, hereinafter called Surety, are held firmly bound unto

**CITY OF WASHINGTON**  
**102 E. SECOND STREET**  
**WASHINGTON, NORTH CAROLINA 27889**

hereinafter called OWNER, in the amount of **Thirty seven thousand and sixteen dollars (\$37,016.00)** for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firm by these present.

WHEREAS, Contractor has by written agreement dated **November 6, 2013**, entered into a Contract with OWNER for **Terminal Building Surcharge and Site Preparation** in accordance with drawings and specifications prepared by:

**TALBERT & BRIGHT, INC.**  
**4810 SHELLEY DRIVE**  
**WILMINGTON, NORTH CAROLINA 28405**

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER and Contractor.

Whenever Contractor shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER'S obligations thereunder, the Surety may promptly remedy the defaults, or shall promptly:

1. Complete the Contract in accordance with its terms and conditions, or

2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the OWNER elects, upon determination by the OWNER and the Surety jointly of the lowest responsible bidder, arrange for a Contract between such bidder and OWNER, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts arranged under this paragraph) sufficient funds to pay the cost of completion, less the balance of the contract price, but not exceeding (including other costs and damages for which the Surety may be liable hereunder), the amount set forth in the second paragraph hereof. The term "balance of contract price" as used in paragraph, shall mean the total amount payable by OWNER to Contractor under the Contract and any amendment thereto, less the amount properly paid by OWNER to Contractor. It is the intent for the contract to be completed within the contract time or liquidated damages will be assessed in accordance with the specifications.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER names herein or the heirs, executors, administrators or successors of the OWNER.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_ 2013.

**BY:**

**BY:**

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Name (Seal)

\_\_\_\_\_  
Name (Seal)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**WITNESS:**

**WITNESS:**

\_\_\_\_\_  
**BY:**

\_\_\_\_\_  
Licensed Resident Agent (Signature)

\_\_\_\_\_  
Licensed Resident Agent (Typed)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number

**LABOR AND MATERIAL PAYMENT BOND**  
100% of the Contract Amount

KNOW ALL MEN BY THESE PRESENT: that

**B.E. SINGLETON & SONS, INC.**  
**920 W. 3<sup>RD</sup> STREET**  
**WASHINGTON, NORTH CAROLINA 27889**

as Principal, hereinafter called Principal, and \_\_\_\_\_ corporation duly organized in the State of \_\_\_\_\_ and licensed under the laws of and authorized to do business in the State of North Carolina as Surety, hereinafter called Surety, are held firmly bound unto

**CITY OF WASHINGTON**  
**102 E. SECOND STREET**  
**WASHINGTON, NORTH CAROLINA 27889**

as Obligee, hereinafter called OWNER, for the use and benefit of claimants as herein below defined, in the amount of **Thirty seven thousand and sixteen dollars (\$37,016.00)** for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firm by these present.

WHEREAS,

Principal has by written agreement dated **November 6, 2013**, entered into a contract with OWNER for **Terminal Building Surcharge and Site Preparation** in accordance with drawings and specifications prepared by:

**TALBERT & BRIGHT, INC.**  
**4810 SHELLEY DRIVE**  
**WILMINGTON, NORTH CAROLINA 28405**

which contract is by reference made a part hereof, and is hereinafter referred to as the CONTRACT.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for the use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being

construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contractor.

2. The above named Principal and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sums or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
  - a. Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following; the Principal, the OWNER, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to who the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, OWNER, or surety, at any place where an office is regularly maintained for the transaction of business, or served in the state in which the aforesaid project is located, save that such service need not be made by public officer.
  - b. After the expiration of one (1) year following the date of which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
  - c. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

**BY:**

**BY:**

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

\_\_\_\_\_  
Name (Seal)

\_\_\_\_\_  
Name (Seal)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**WITNESS:**

**WITNESS:**

\_\_\_\_\_

\_\_\_\_\_

**BY:**

\_\_\_\_\_  
Licensed Resident Agent (Signature)

\_\_\_\_\_  
Licensed Resident Agent (Typed)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number

## **PROPOSAL REQUIREMENTS AND CONDITIONS**

### **TERMINAL BUILDING SITE PREPARATION AND SURCHARGE**

#### **WARREN FIELD WASHINGTON, NORTH CAROLINA**

DATE: October 25, 2013

In compliance with the Advertisement (Notice to Bidders), the undersigned hereby proposes to furnish the materials and perform the work for completion of all items, listed below in strict accordance with the Advertisement (Notice to Bidders), Plans, Special Provisions of the Specifications, and all contract documents for the consideration of the price quoted in the following items and agrees, upon receipt of written notice of the acceptance of this Proposal, that within sixty (60) days after the date of the opening of the Proposals, that it will execute a contract in accordance with the Proposal as accepted, and give the required Performance and Payment Bond with good and sufficient surety or sureties, within ten (10) days after receipt of notice of formal award of contract and presentation of the prescribed forms.

Bidder shall complete all line items included in the bid form and total amount of the Bid. Failure to submit prices and amount for each item shall be cause for rejection of the Bid. The Owner reserves the right to reject any and all bids and to waive any and all technical defects in the execution and submission of any bid.

Contract award will be made to a single prime bidder on the basis of the lowest responsive qualified bidder and subject to the availability of local funding. The OWNER reserves the right to award the Contract or to reject all bids. The OWNER reserves the right to reject any or all bids and to waive formalities and technicalities.

#### **IMPORTANT NOTICE**

It is understood that all workmanship and materials under all items of work are guaranteed for one year from the date of final acceptance, unless otherwise specified.

It is understood that the quantities of work to be done are approximate only and are intended principally to serve as a guide in evaluating Proposals.

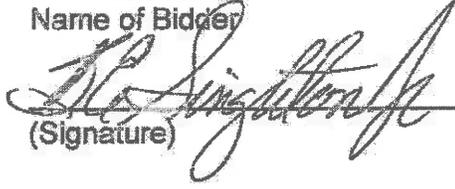
The undersigned agrees that, if awarded the contract(s), it will commence work not later than the date set by the ENGINEER in the Notice(s) to Proceed, and that it will complete the work within the time specified above and in accordance with the Specifications.

B. E. Singleton & Sons, Inc.

Name of Bidder

BY:

(Signature)



B. E. Singleton, Jr. President

(Name and Title of Signing Official)

(Seal)



NC Contractor's License No. 8226

**Bid Form**  
**Warren Field**  
**Terminal Building Surcharge and Site Preparation**  
**TBI Ref. No. 4207-1302**

Bidder: B. E. Singleton & Sons, Inc.

Item No.		Item Description	Unit	Est. Quantity	Bid Unit Price Written in Words	Bid Unit Price Written in Figures	Extended Price (Unit Price x Quantity)	
Line No.	Spec. No.							
1	P-150	Mobilization	LS	1	Four Thousand Three Hundred Fifty Five Dollars - Lump Sum	4,355.00	4,355.00	
2	95	Temporary Chain Link Construction Fence	LF	430	Three Thousand Thirty Five Dollars - Lump Sum	3,035.00	3,035.00	
3	95	Temporary Silt Fence	LF	300	Three Dollars per LF	3.00	900.00	
4	95	Temporary Seeding and Mulching	LS	1	One Thousand Five Hundred Dollars - Lump Sum	1,500.00	1,500.00	
5	95	Erosion Control Matting	SY	75	Four Dollars per SY	4.00	300.00	
6	REP	Pavement Removal	SY	360	Thirteen Dollars and Twenty Five Cents per SY	13.25	4,770.00	
7	REP	Sidewalk Removal	SY	26	Ten Dollars per SY	10.00	260.00	
8	95	Remove Chain Link Fence	LF	275	Three Dollars and Twenty Cents - LF	3.20	880.00	
9	P-152	Unclassified Excavation	CY	2,100	Six Dollars per CY	6.00	12,600.00	
10	P-152	Borrow Embankment - Structural Fill	CY	700	Nine Dollars per CY	9.00	6,300.00	
11	95	Settlement Monitoring Devices	EA	2	Three Hundred Dollars Each	300.00	600.00	
12	95	Drainage Pipe Replacement	LF	40	Thirty Seven Dollars and Ninety Cents per LF	37.90	1,516.00	
Total Bid in Figures:								50,692.00

Warren Field  
Terminal Building Surcharge and Site Preparation  
TBI No. 4207-1302  
Contract Award

Item	Spec.	Description	Unit	Quantity	Unit Price	Ext. Total
1	P-150	Mobilization	LS	1	\$ 4,355.00	\$ 4,355.00
2	95	Temporary Chain Link Construction Fence	LF	430	\$ 7.06	\$ 3,035.00
3	95	Temporary Silt Fence	LF	300	\$ 3.00	\$ 900.00
4	95	Temporary Seeding and Mulching	LS	1	\$ 1,500.00	\$ 1,500.00
5	95	Erosion Control Matting	SY	75	\$ 4.00	\$ 300.00
6	REP	Pavement Removal	SY	360	\$ 13.25	\$ 4,770.00
7	REP	Sidewalk Removal	SY	26	\$ 10.00	\$ 260.00
8	95	Remove Chain Link Fence	LF	275	\$ 3.20	\$ 880.00
9	P-152	Unclassified Excavation	CY	2,100	\$ 6.00	\$ 12,600.00
10	P-152	Borrow Embankment - Structural Fill	CY	700	\$ 9.00	\$ 6,300.00
11	95	Settlement Monitoring Devices	EA	2	\$ 300.00	\$ 600.00
12	95	Drainage Pipe Replacement	LF	40	\$ 37.90	\$ 1,516.00
<b>Total - Base Bid:</b>						<b>\$ 37,016.00</b>

\* Note: Contractor made an error when calculating the extended totals shown in the bid form. The Total Bid Amount shown above is correct based on the extended totals calculated using the unit prices provided for each item



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Matt Rauschenbach, Administrative Services Director/C.F.O.  
**Date:** November 18, 2013  
**Subject:** Waterfront Restrooms Grant Project Ordinance Amendment and Budget Ordinance Amendment  
**Applicant Presentation:** N/A  
**Staff Presentation:** Matt Rauschenbach

**RECOMMENDATION:**

I move that City Council Adopt a Grant Project Ordinance Amendment and a Budget Ordinance Amendment to provide additional funds for the Waterfront Restroom project.

**BACKGROUND AND FINDINGS:**

Additional funds of \$44,397 are necessary to fund the low bid on the construction of this project. The additional funds are available in the cost under run of the replacement of the Peterson Building roof and in contingency. \$10,090 will be left in contingency after this transfer.

**PREVIOUS LEGISLATIVE ACTION**

Bid award at October 7, 2013 Council Meeting

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

- Budget Ordinance Amendment
- Grant Project Ordinance Amendment
- Additional Cost Calculation

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** mt Concur \_\_\_\_\_ Recommend Denial \_\_\_\_\_ No Recommendation  
11/13/13 Date  
November 18, 2013  
Page 107 of 217

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE  
OF THE CITY OF WASHINGTON, N.C.  
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That the following appropriation accounts in the General Fund be decreased by the following amounts:

10-00-9990-9900	Contingency	\$(26,717)
10-40-6120-7401	Installment Purchases	<u>(17,680)</u>
	Total	\$(44,397)

Section 2. That account number 10-00-4400-6200, Transfer to Capital Projects, Miscellaneous portion of the General Fund appropriations budget be increased in the amount of \$44,397 to provide funds for the waterfront restroom grant project.

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

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

Adopted this the 18<sup>th</sup> day of November, 2013.

---

**MAYOR**

**ATTEST:**

---

**CITY CLERK**

**AN ORDINANCE TO AMEND THE GRANT PROJECT ORDINANCE FOR THE  
WATERFRONT RESTROOM GRANT AWARD  
CITY OF WASHINGTON, N.C.  
FOR THE FISCAL YEAR 2013-2014**

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

Section 1. That the following appropriation accounts in the Waterfront Restroom grant be increased or decreased by the following amounts:

78-40-6124-0401	Planning and Design	\$(26,825)
78-40-6124-4500	Construction	86,222
78-40-6124-9990	Contingency	(15,000)
	Total	\$44,397

Section 2. That the following revenue accounts in the Waterfront Restroom grant be increased by the following amount:

78-40-3352-0000	City Contribution- Trans. Gen. Fund	\$44,397
-----------------	-------------------------------------	----------

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 18th day of November, 2013.

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**MAYOR**

**ATTEST:**

---

**CITY CLERK**

Waterfront Restroom Budget Changes

10/8/2013

	<b>Bid \$</b>	<b>Budget \$</b>	<b>Change</b>
<b>Spent/Encumbered:</b>			
Mosely Enginnering	13,175	40,000	(26,825)
<b>Negoitiated Bid:</b>			
White Construction & Design	331,222	245,000	86,222
Contingency	<u>0</u>	<u>15,000</u>	<u>(15,000)</u>
<b>Total</b>	<b>344,397</b>	<b>300,000</b>	<b>44,397</b>



**REQUEST FOR CITY COUNCIL ACTION**

**To:** Mayor Jennings & Members of the City Council  
**From:** Allen Lewis, Public Works Director *Allen Lewis*  
**Date:** 11-13-13  
**Subject:** Authorize the Manager to Sign the Attached Ground Lease and Easement Agreement with Washington Airport Solar, LLC.  
**Applicant Presentation:** N/A  
**Staff Presentation:** Allen Lewis

**RECOMMENDATION:**

I move that Council approve and authorize the Manager to sign the attached Ground Lease and Easement Agreement and related legal documents, including but not limited to, Easement Agreement, Solar Skyway Easement, Memorandum of Lease and Owner Affidavit and Indemnity Agreement on behalf of the City with Washington Airport Solar, LLC.

**BACKGROUND AND FINDINGS:**

As you are well aware, staff has been working with Duke Energy Renewables for some time now on the solar farm project at the airport. The proposed project has been discussed on several occasions with the Airport Advisory Board and they are in favor of the project and the additional revenue that the airport will realize as a result. The attached agreement has been thoroughly reviewed by the FAA and they have no objections to it as presented. The attached agreement is for your approval.

**PREVIOUS LEGISLATIVE ACTION**

Resolution of Intent to Lease – 08-13-12

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

Ground Lease and Easement Agreement with Washington Airport Solar, LLC.

City Attorney Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
Finance Dept Review: \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
City Manager Review: *11/18/13* Date *November 18, 2013* Concur *AM* Recommend Denial \_\_\_\_\_ No Recommendation \_\_\_\_\_  
Page 111 of 217

## GROUND LEASE AND EASEMENT AGREEMENT

This GROUND LEASE AND EASEMENT AGREEMENT (this “Ground Lease”), is dated as of November \_\_\_\_, 2013 (“Effective Date”) between CITY OF WASHINGTON, a body politic and corporate organized and existing under the laws of the State of North Carolina (“Owner”) and WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company (“Tenant”).

In consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, hereby agree as follows.

1. Definitions. For all purposes of this Ground Lease the following terms shall have the meanings assigned to them in this Article, and include the plural as well as the singular.

1.1 “Affiliate” means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of the foregoing, “control”, “controlled by” and “under common control with” with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

1.2 “Business Day” means any day other than Saturday or Sunday or a legal holiday observed by the State of North Carolina.

1.3 “Casualty” means any loss or destruction of or damages to the Facility or the Site resulting from any act of God, fire, explosion, earthquake, accident or the elements, whether or not covered by insurance and whether or not caused by the fault or negligence of either Party, or such Party’s employees, agents, contractors, or visitors.

1.4 “Closing” has the meaning set forth in Section 23.2.

1.5 “Commercial Operation Date” means the date upon which Tenant notifies Owner that the Facility is commercially operational.

1.6 “Environmental Laws” means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law, guideline or informal policy position, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture of any Hazardous Materials regulated thereunder, now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party), including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act, as now or hereafter amended (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act, as now or hereafter amended (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act, as now or hereafter amended (42 U.S.C. Section 6901, et seq.); and any so-called “Superfund” or “Superlien” law, or any other federal, state or local statute,

law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material; or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601 et seq.); and any “toxic pollutant” under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251 et seq.); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901 et seq.).

1.7 “Environmental Liability” means any action, lawsuit, claim or proceeding (including claims or proceedings at common law or under the Occupational Safety and Health Act or similar laws relating to safety of employees) arising under or related in any way to the Environmental Laws or which seeks to impose liability for (a) noise; (b) pollution or contamination of the air, surface water, ground water or land or the clean-up of such pollution or contamination; (c) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (d) exposure to or contamination by Hazardous Materials; (e) the safety or health of employees or (f) the manufacture, processing, distribution in commerce or use of Hazardous Materials. An “Environmental Liability” includes a common law action, whether direct or indirect, as well as a proceeding to issue, modify or terminate an Environmental Permit, or to adopt or amend a regulation to the extent that such a proceeding attempts to redress violations of an applicable permit, license, or regulation as alleged by any governmental authority.

1.8 “Environmental Permit” means any permit, license, approval or other authorization under any applicable Environmental Laws.

1.9 “Facility” means a solar photovoltaic electric generating facility or facilities and related Utilities, improvements, equipment, facilities, appurtenances and other improvements existing on the Effective Date and/or to be developed, constructed, owned, operated and maintained on the Site and the Easement Areas, including but not limited to all structures, machinery, equipment, meters, fixtures, interconnections, ancillary equipment and materials, and all additions, expansions and modifications thereto as may be located on the Site and the Easement Areas.

1.10 “Force Majeure” means all events beyond the control of the Party affected, including without limitation flood, earthquake, storm, lightning, fire, explosion, war, riot, civil disturbances, strikes, and sabotage.

1.11 “Hazardous Materials” means any flammable, reactive, explosive, corrosive or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials, wastes or substances, exposure to which is prohibited, limited or regulated by a federal, state, county, regional or local authority, or any Environmental Laws including, but not limited to, asbestos, PCBs, petroleum products and by-products, hazardous air pollutants, or any substance identified, defined or listed as a “toxic pollutant,” “hazardous wastes,” “hazardous materials,” “hazardous substances,” “toxic substances,” “pollutant or contaminant,” “hazardous chemical,” or any hazardous air pollutant, or similarly identified in, pursuant to, or for purposes of, any Environmental Laws.

1.12 “Lease Year” means each consecutive 12 month period during the Term commencing with the first day of the first full calendar month following the Rent Commencement Date (or if the Rent Commencement Date shall occur on the first day of a calendar month, commencing on the Rent Commencement Date) and ending on the last day of the calendar month completing such 12 month period.

1.13 “Official Records” means the Official Records of Beaufort County, North Carolina.

1.14 “Owner’s Parties” means Owner, its elected as well as appointed officials, officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees (other than Tenant), sublessees, licensees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.15 “Party” or “Parties” means Owner and/or Tenant, as applicable.

1.16 “Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, estate, unincorporated organization or other business entity, or any governmental authority.

1.17 “Public airport” means an airport used or intended to be used for public purposes – (a) that is under the control of a public agency; and (b) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is public owned.

1.18 “Release” means any release, pumping, pouring, emptying, injecting, escaping, leaching, dumping, seepage, spill, leak, flow, discharge, disposal or emission of a Hazardous Material whether on, under or migrating to or from the property of any Party.

1.19 “Rent Commencement Date” means the Effective Date.

1.20 “Rent Payment Term” means the period of time commencing with the Rent Commencement Date and expiring at the end of the Term.

1.21 “Site” means the property described on Exhibit A attached hereto, together with all improvements located thereon as of the Effective Date.

1.22 “Tenant’s Contemplated Use” means the construction, operation, use, maintenance, repair and replacement of the Facility on the Site and within the Easement Areas, as generally illustrated on Exhibit “F” attached hereto and substantially in accordance with plans therefor as disclosed to Owner prior to the execution of this Ground Lease.

1.23 “Tenant’s Parties” means Tenant, its officers, directors, partners, members, affiliates, lenders, employees, shareholders, attorneys, lessees, sublessees, licensees, invitees, contractors, subcontractors, consultants, agents and any of their respective successors and assigns.

1.24 “Transfer” means a transfer or conveyance of Owner’s interest in (i) the Site, (ii) the Easements and/or (iii) this Ground Lease.

1.25 “Utilities” means the services and related improvements, equipment and facilities necessary for the operation of the Facility, including, but not limited to, natural gas, electrical power, water, storm water, sanitary sewer, roads, telephone and telecommunication services, improvements, equipment and facilities.

2. Lease; Term.

2.1 Lease of Site; Term. Owner hereby leases the Site to Tenant, and Tenant hereby leases the Site from Owner, upon the terms and conditions hereof, for a term which shall commence on the Effective Date, and expire on the date that is fifteen (15) years after the Commercial Operation Date (the “Initial Term”); provided, that upon not less than 180 days’ written notice (a “Renewal Notice”) to Owner prior to the expiration of the then expiring term, Tenant may elect to extend the term of this Ground Lease for a period of five (5) years (the “First Renewal Term”), followed by up to two additional period(s) of five (5) years each (the “Second Renewal Term” and “Third Renewal Term”, respectively, and, together with the First Renewal Term and the Initial Term, collectively, the “Term”), with each such renewal term commencing on the expiration of the then expiring term and continuing for the period specified in such Renewal Notice delivered by Tenant.

(a) Tenant shall notify Owner that the Facility is commercially operational by December 31, 2014.

2.2 Termination Right. In the event of a condition outside of Tenant’s reasonable control that prevents or materially and adversely affects Tenant’s ability to use or operate any Facility located on the Site for the purposes of generating or selling electricity, Tenant shall notify Owner (“Tenant’s Notice”) of the same and the Parties shall meet and discuss whether there is any commercially feasible alternative for Tenant to maintain its operations on the Property. If the Parties, each negotiating in good faith and with due diligence, cannot come to a mutually satisfactory agreement within sixty (60) days following the date of Tenant’s Notice, then Tenant may, at any time following such date, elect to terminate this Ground Lease with respect to all or a portion of the Site by giving Owner not less than one hundred twenty (120) days notice of such termination (“Tenant’s Election”). In the event Tenant elects to terminate this Ground Lease with respect to a portion of the Site, Tenant’s Election shall contain a description of the portion of the Site for which Tenant intends to continue this Ground Lease and the Parties shall enter and execute with due diligence an Amendment to this Ground Lease in order to effectuate any revision to this Ground Lease that is required as a result of Tenant’s Election. Upon the effective date of any such termination with respect to all of the Site, this Ground Lease shall terminate and neither Party shall have any further obligations under this Ground Lease, except as specifically set forth herein. In the event Tenant elects to terminate all or a portion of this Ground Lease pursuant to the provisions of this Section 2.2, Owner shall retain all of the Rent which has been paid to Owner for the year in which the effective date of any such termination occurs as a Termination Fee.

2.3 Elective Termination. If for any reason other than as set forth in Section 2.2. above Tenant elects to terminate this Ground Lease within the first year of the Term (other than any termination based on Landlord's default, if applicable), Tenant shall notify Owner of same ("Tenant's Elective Termination Notice") and this Ground Lease shall terminate effective as of the date which is the later of (i) the date Landlord receives Tenant's Elective Termination Notice, or (ii) the date set forth in said Tenant's Elective Termination Notice. In the event Tenant elects to terminate this Ground Lease pursuant to the provisions of this Section 2.3, Owner shall retain the Rent for the first year which has been paid to Owner upon the execution of this Ground Lease as a termination fee (the "Termination Fee"). Upon the effective date of any such termination, this Ground Lease shall terminate and neither party shall have any further obligations under this Ground Lease, except as specifically set forth herein, and Tenant shall surrender the Site and Easement Areas to Owner; however, Tenant shall remove and retain ownership of any and all materials, equipment and fixtures then located on the Site or any Easement Area.

2.4 Holdover. If Tenant shall remain in possession of the Site after the expiration or termination of the Term (other than in connection with performing any applicable removal activities as contemplated in Article 6 below), such possession shall be on a month-to-month tenancy, and the provisions of the Ground Lease shall remain applicable, except that the Rent shall be increased by 25%, and shall be prorated and paid in monthly installments.

3. Severance. The Parties agree that all improvements at any time constructed by or for Tenant on the Site or within any Easement Area, whether prior to the Effective Date or after the same, and all equipment at any time acquired by or for Tenant and located on the Site or within any Easement Area, including (without limitation) all improvements and equipment comprising the Facility, are hereby severed by agreement and intention of the Parties and shall remain severed from the Site and any Easement Area, shall be considered with respect to the interests of the Parties hereto as the sole and exclusive property of Tenant or a Financing Party designated by Tenant, and, even though attached to or affixed to or installed upon the Site or within an Easement Area, shall not be considered to be fixtures or a part of the Site or such Easement Area and shall not be or become subject to the lien of any mortgage or deed of trust heretofore or hereafter placed on the Site or any Easement Area by Owner. Except as specifically provided for herein, Owner waives any rights it may have under the laws of the State of North Carolina arising under this Ground Lease or otherwise to any lien upon, or any right to distress or attachment upon, or any other interest in, any item constituting part of the Facility or any other equipment or improvements constructed or acquired by or for Tenant and located on the Site or within any Easement Area. Nothing contained in this Article 3 shall be interpreted or construed to limit or restrict in any way any right or interest any taxing authority may have to levy and collect any tax.

4. Rent. In consideration of the agreements herein contained, a lease rate of \$1,200.00 per acre per year, which amount shall be received or satisfied in accordance with the terms and conditions contained in Section 4.1 below and Exhibit "G" attached hereto and incorporated herein by reference as if fully set forth.

4.1 Rent Calculations. For purposes of the Rent calculations, the acreage of the Site shall be as determined by Tenant's survey (the "Survey") of the Site, as the same may be amended.

4.2 Interest. Any monetary payment due Owner hereunder not received on or before such payment is due, other than late charges, not received by Owner within 10 Business Days after Tenant receives notice from Owner that such payment is past due shall bear interest from the due date until the date paid. The interest charged shall be equal to the lesser of 10% per annum or the maximum rate allowed by law.

4.3 Late Charge. Tenant agrees to pay, upon demand by Owner, for each payment past due for ten (10) or more Business Days after receipt of written notice of non-payment, a late charge in an amount equal to five percent of the amount past due.

5. Further Assurances. Owner and Tenant shall conduct good faith negotiations with due diligence and upon reasonable terms concerning any further instruments and documents, including, without limitation, a shared facilities agreement, if reasonably necessary, and take any further action that may be reasonably necessary to effectuate the purposes and intent of this Ground Lease. To such end, Owner and Tenant shall conduct good faith negotiations with due diligence and upon reasonable terms, including but not limited to any applicable consideration that may be required therefor, concerning any nonexclusive easements and rights-of-way in, to, over, under and across the Site and/or adjacent lands owned or controlled by Owner, and any improvements thereon, as the Parties mutually determine may be necessary or desirable in connection with the development, construction, ownership, operation, maintenance and expansion of the Facility (the "Operational Easements") as well as a solar skyway easement (the "Solar Skyway Easement" (the Operational Easements and the Solar Skyway Easement herein collectively referred to as the "Easements", each also herein sometimes referred to as an "Easement"), which Easements shall burden real property owned or controlled by the Owner (the "Easement Areas"). Notwithstanding anything herein to the contrary, said Easements and Tenant's use thereof shall not prevent or impair in any way Owner or any third party from operating or using Warren Field Airport ("Airport") as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the current Airport Layout Drawing ("ALD") (a copy of which is attached hereto as Exhibit E) on property owned or controlled by Owner. All Easements shall (a) be non-exclusive, (b) be co-terminous with the Term hereof (as the same may be extended), (c) be appurtenant to the Site, benefit and run with the Site and burden and run with the Easement Areas, (d) require Tenant to bear the cost of restoring the condition of the Easement Area after the exercise of any rights of access under such Easement, and (e) be consistent with Owner's grant and other applicable assurances as well as federal obligations. Without limiting the generality of the foregoing, Owner acknowledges and agrees that Tenant may request Easements for solar skyway protection, construction laydown areas, pedestrian and vehicular ingress, egress and access, parking and circulation, electrical transmission lines, water lines, fire lines, gas lines, storm drainage, sewer lines, telephone lines, fiber optic lines, and other or associated Utilities, facilities and/or equipment serving the Facility and/or the Site. Upon reaching mutual agreement concerning any such request, the Parties shall execute one or more easement agreements reflecting certain of the Operational Easements in substantially the form of attached Exhibit B, and a Solar Skyway Easement in substantially the form of Exhibit C, which easement agreements shall be recorded in the Official Records at

Tenant's expense. The Parties expressly agree that said forms may be revised to incorporate any provision required to capture the Parties' mutual agreement, including but not limited to a provision concerning any applicable consideration that may be required. Owner shall not grant or convey any easement or other interest that, if enjoyed in accordance with its terms, would interfere with Tenant's Contemplated Use on the Site. If there are any mortgages, deeds of trust or other security interests with respect to the Site or any Easement Area(s), then, subject to any applicable federal agency pre-emptive rights, within 30 days after Tenant's written request, Owner shall obtain a commercially reasonable subordination, non-disturbance and attornment agreement, in a form provided by Tenant and satisfactory to Tenant as well as Owner from any lender or beneficiary which provides, among other things, that Tenant's occupancy or use of the Easements in accordance with the terms of the applicable easement agreement will not be disturbed.

6. Surrender of Site. Upon expiration of the Term, any termination of this Ground Lease, and any termination of this Ground Lease with respect to any portion of the Site and/or Easement Areas (collectively referred to in this Article 6 as "Termination"), and except as set forth below, Owner shall have the right to elect to take title to so much of the Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner may elect and/or to require Tenant to remove so much of said Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner may elect. Owner shall provide Tenant written notice of said election ("Owner's Election") within sixty (60) days of such Termination. Owner's Election shall describe so much of the Facility, fixtures, and any other improvements located upon the Site or Easement Areas that are subject to such Termination as Owner elects to take title to. Notwithstanding anything herein to the contrary, however, in the event Tenant elects to terminate all or any portion(s) of the Site or the Easement Areas under the terms of Section 2.2 or Section 2.3, or if Tenant has terminated the Ground Lease based on a default by Owner, Tenant shall retain title to and remove all of its Facility, fixtures and other improvements and personal property located within such areas as to which the Ground Lease and/or any Easement is terminated, and Owner shall not be entitled to elect to take title to the same. Within one hundred eighty (180) days of Owner's Election or the effective date of any termination described in the preceding sentence, Tenant shall commence to decommission, dismantle, and remove the Facility, fixtures, and any other improvements and all other property of Tenant located upon the Site or Easement Areas ("Tenant Removal Obligations") that Owner does not elect (or is not entitled) to take title to and return such applicable portions of the Site and Easement Areas to their condition as of the Effective Date to the extent reasonably practical, absent the planting or harvesting of any presently existing crops. In this regard, Tenant shall repair any damage to, and remove any debris placed upon, Owner's property arising out of or related to such removal or Tenant's use of the Site and Easement Areas and shall complete such Tenant Removal Obligations within ninety (90) days of commencement of the work, or such other period of time as may be agreed to by Owner. Owner hereby grants to Tenant and Tenant's Parties a license to enter upon the Site and the Easement Areas to perform the activities required to be performed by Tenant pursuant to this Article 6, which license shall be effective commencing upon the date of Owner's Election or the effective date of any other termination specifically provided for hereinabove, as the case may be, and shall terminate upon the date on which such Tenant Removal Obligations are complete. Tenant's occupancy of the Site and Easement Areas during such period for the purpose of accomplishing such Tenant Removal Obligations shall not be

deemed a holdover hereunder. Failure by Tenant to perform the above Tenant Removal Obligations within said period shall entitle Owner to perform said Tenant Removal Obligations and recover all of its costs and expenses in doing so from Tenant. In the event Owner is entitled to do so and provides Tenant with Owner's Election, Tenant shall have no further right or interest in the Facility, fixtures, or any other improvements Owner elects to take title to as described in Owner's Election. It is mutually agreed that title to any and all of the Facility, fixtures, and any other improvements Owner validly elects to take title to as described in Owner's Election shall revert to and become owned and possessed by Owner without any additional payment or consideration to Tenant therefor, free and clear of all claims on the part of Tenant or any liens. The vesting of title in Owner in this instance at the time specified is a part of the consideration of this Ground Lease. Owner shall not be liable to Tenant or Tenant's lenders, contractors or subcontractors for the value of such part of the Facility, fixtures, or any other improvements Owner elects to take title to as described in Owner's Election.

7. Nontermination. Except as specifically provided for in this Ground Lease, this Ground Lease shall not terminate, nor shall Tenant's interest in the Site, the Easements, or the Facility be extinguished, lost, conveyed or otherwise impaired, or be merged into or with any other interest or estate in the Site, the Easement Areas or any other property interest, in whole or in part, by any cause or for any reason whatsoever, including, without limitation, the following: (a) destruction of all or any part of the Facility, the Site or the taking of the Facility, or the Site or any portion thereof by condemnation, requisition, eminent domain or otherwise, (b) any prohibition, limitation or restriction of Tenant's Parties' or any Financing Party's use of all or any part of the Site or the Easements or of Tenant's Parties' or any Financing Party's use of the Facility, or the interference of such use by any Person, or any eviction by paramount title or otherwise, (c) any inadequacy, incorrectness or failure of the description of the Site, the Easements or any other property or rights intended to be granted or conveyed by this Ground Lease, or (d) insolvency, bankruptcy, reorganization or similar proceedings by or against either Party.

8. Possession and Quiet Enjoyment. As long as Tenant's activities on the Site and the Easement Areas are consistent with the scope of Tenant's Contemplated Use and no Tenant Event of Default under this Ground Lease has occurred and is continuing beyond any applicable cure period, Owner covenants and agrees that Tenant shall enjoy quiet possession of the Site and the Easements without any disturbance from Owner or any person claiming by or through Owner. Notwithstanding the foregoing, Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use as permitted herein which shall prevent or impair in any way Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the ALD on property adjacent to the Site owned or controlled by Owner. Such public airport operations shall not constitute or be construed to constitute a breach of this covenant for possession and quiet enjoyment. With the exception of any encumbrance that may be required by the Division of Aviation ("DOA") or the Federal Aviation Administration ("FAA"), in no event shall Owner permit or suffer to exist any mortgage, deed of trust, tax lien or other encumbrance on or against the Facility, the Site or the Easement Areas without Tenant's prior written consent, which may be withheld in Tenant's sole and absolute discretion. Upon either Party's discovery of any such lien, such Party shall (a) promptly give written notice thereof to the other Party, and (b) Owner shall cause the same to be discharged of record or deliver to Tenant, within 30 days after the date

Owner receives notice of filing of the same, appropriate security for payment, either by payment, deposit or bond. If Owner shall fail to discharge any such lien(s) within such period, in addition to any other rights or remedy hereunder, Tenant may, but shall not be obligated to, procure the discharge of the same either by paying the amount claimed to be due by deposit in court or bonding. Any amount so paid or deposited by Tenant, and all costs and other expenses related thereto, including reasonable attorneys' fees, in defending any action or in procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon at the prime interest rate of Bank of America, N.A., or its successor, plus 4% per annum (subject to and limited by applicable usury laws) from the date of payment or deposit, until repaid to Tenant, shall be payable by Owner to Tenant upon demand.

9. Use of Site; Development of Facility.

9.1 Use. During the Term, Tenant shall have exclusive use of the Site. Any use of the Site or any of the Easement Areas for other than Tenant's Contemplated Use will be subject to any conditions or requirements of the DOA or the FAA, including but not limited to any glare or other applicable study. Without limiting the generality of the foregoing, Tenant may use the Site and the Easement Areas for purposes related to due diligence investigations and studies, and the construction, use, operation, repair, ownership, replacement, expansion, modification, upgrade or maintenance of the Facility. Notwithstanding the foregoing, Owner shall have access to the Site as well as Easement Areas as may be necessary, in Owner's reasonable discretion, to operate, develop, and maintain the Airport, including but not limited to the runways. Owner acknowledges and agrees, however, that Tenant's Contemplated Use is not, and shall not be deemed to be, a use which prevents or impairs Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances, as well as federal obligations and the ALD on property adjacent to the Site owned or controlled by Owner.

9.2 Construction of the Facility. Tenant shall determine whether and when to construct (or cause the construction of) the Facility on the Site and within the Easement Areas in its sole discretion and nothing herein shall obligate Tenant to construct the Facility on the Site or within the Easement Areas. Construction shall be performed in a good and workmanlike manner using new (or like-new), quality materials, products and equipment; and the Facility, after completion, shall conform and otherwise comply in all material respects with all applicable laws. Owner acknowledges and agrees that Tenant's Contemplated Use of the Site and the Easement Areas does not constitute, and shall not be deemed to constitute, any activity that would constitute an obstruction to air navigation, interfere with, or be a hazard to, the flight of aircraft over the Airport or to and from the Airport, or interfere with air navigation or communication facilities serving the Airport. Tenant shall not erect structures or allow growth of natural objects that would constitute an obstruction to air navigation. Tenant shall not engage in any activity outside the scope of Tenant's Contemplated Use that would interfere with, or be a hazard to, the flight of aircraft over the Airport or to and from the Airport. Tenant shall not engage in any activity outside the scope of Tenant's Contemplated Use that interferes with air navigation or communication facilities serving the Airport. Should Tenant seek to obtain any permits, licenses, exemptions or certifications in connection with the Facility, Owner agrees to cooperate fully and promptly with Tenant in such efforts. To the extent permitted by law, all permits, licenses, exemptions and certifications for the construction of the Facility shall be in the name of

and for the benefit of Tenant or a party designated by Tenant. Owner has no obligation to upgrade, update, expand, replace, make additions to, or otherwise modify the Facility.

(a) Tenant shall provide Owner with contact information, including name(s), title(s), phone number(s) and mailing address(es), for Tenant's Parties that will be performing the construction and maintenance contemplated by this Section 9.

9.3 Maintenance. During the Term, Tenant shall be responsible for the general maintenance of the Site, and so much of the Easement Areas as may be agreed upon, in a good as well as aesthetically pleasing condition and in accordance with prudent industry standards given the permitted use hereunder, which maintenance shall include the planting as well as maintenance of a low growth ground cover on the Site and mowing as may be reasonably required.

9.4 Access. All permanent means of ingress and egress to and from the Facility operated and maintained by Tenant shall be cleared, graded, improved and maintained with a gravel surface passable at all times by a two-wheel drive vehicle.

9.5 Liens. Tenant shall keep the Site and Easement Areas free and clear of any lien or encumbrance arising out of work performed, materials furnished or obligations incurred in connection with Tenant's obligations for construction, utilities and services, repairs or alterations under this Ground Lease. In the event any lien is placed upon the Site or Easement Areas as a result of any act or omission of Tenant, Tenant shall pay such lien or may provide a bond or otherwise insure Owner against such lien within 60 calendar days after notice to Tenant of such lien being perfected, and may thereafter contest such lien or payment at Tenant's sole cost and expense. Tenant shall indemnify Owner against any loss, damage, cost or expenses in connection with any such lien or encumbrance that may be claimed or asserted against the Site or Easement Areas.

## 10. Insurance.

10.1 Coverage. As to all activities hereunder, the following insurance shall be obtained and maintained in force during the Term by Tenant so long as such insurance is available at commercially reasonable rates.

(a) Commercial General Liability. Commercial General Liability insurance including, but not limited to, coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, property damage and bodily injury providing for minimum limits of \$1,000,000.00 for bodily injury, including death, and property damage, arising from any one occurrence, and a \$2,000,000.00 aggregate limit.

(b) Property Insurance. From the beginning of construction of the Facility to its completion, Tenant, at Tenant's cost and expense, shall carry (or shall cause its contractor to carry) and maintain in full force with respect to the Facility all risk insurance in such amount as Tenant may designate, written in builder's risk form; and from the date of completion of the Facility through the end of the Term, Tenant, at Tenant's cost and expense, shall carry and maintain in full force all risk fire and extended coverage insurance on the Facility in such amount as Tenant may deem prudent. The property insurance shall be carried with a

reputable insurance company authorized or qualified to do business in the State of North Carolina.

(c) Workers' Compensation Insurance. Workers' Compensation insurance or qualified self-insurance in accordance with State and Federal laws including statutory North Carolina benefits and other states' endorsement covering loss resulting from injury, sickness, disability or death; and Employer's Liability insurance or self-insurance with limits of not less than \$100,000.00 each accident or disease or the minimum limit necessary to meet the underlying requirements of the excess liability carrier, but in no event less than \$500,000.00 bodily injury by disease policy limit.

(d) Policy Terms. The liability policy described above (a) shall be primary, without right of contribution from any other insurance which may be carried by Owner, and (b) shall include Owner, as an additional insured.

10.2 Certificates. Prior to commencement of construction of the Facility and upon any policy renewal or replacement, Tenant shall provide Owner hereto with written evidence of the insurance required in Section 10.1(a) – (c) above in the form of appropriate insurance certificates specifying amounts of coverage and expiration dates of all policies in effect. Each policy shall provide that it is not subject to cancellation except after thirty (30) days following notice to Tenant. Tenant shall provide twenty-five (25) business days notice to Owner prior to the expiration of any such policy.

10.3 Waiver of Subrogation. All policies obtained hereunder shall have a provision waiving rights of subrogation by the insurer against the Owner.

10.4 Waiver of Insurance; Right to Self-Insure. In the event any insurance (including the limits of deductibles thereof) hereby required to be maintained, other than insurance required by law to be maintained, shall not be available at commercially reasonable rates, Owner shall not unreasonably withhold its consent to waive such requirement to the extent the maintenance thereof is not so available; provided, however, that Tenant shall first request any such waiver in writing delivered to Owner explaining in detail the basis for such conclusions and Tenant taking whatever action may be necessary to establish self-insurance for the respective coverages and amounts required herein. Any such waiver shall be effective only so long as such insurance shall not be available at commercially reasonable rates. Notwithstanding anything herein to the contrary, Tenant shall have the right to self-insure.

11. Damage or Destruction of Facility. Except in the case of Casualty which occurs in the last five years of the Initial Term or any exercised renewal term(s), if the Facility or any part thereof is damaged or destroyed by any Casualty such that the damage can be repaired within six (6) months, Tenant shall either (i) repair the damage in accordance with this Article 11 or (ii) continue the Lease and make applicable Rent and other payments due under the Lease, but Tenant may elect not to rebuild or continue its operations hereunder. In the event Tenant elects not to rebuild or continue its operations hereunder, Tenant shall remove so much of the Facility, fixtures, and other improvements located upon the Site and the Easement Areas as were affected by said Casualty and not rebuilt as provided in Article 6 above. Any repairs shall restore the Facility to a condition which is not less than the condition it was in immediately prior to the

Casualty. The repairs shall be made in a good and workmanlike manner using new (or like-new), quality materials, products and equipment; and the Facility, after completion of the repairs, shall conform and otherwise comply in all material respects with all applicable laws. All insurance proceeds paid on account of the Casualty shall be paid to Tenant as its sole property, to be used by Tenant in connection with repairing the Facility, if applicable. If the Casualty occurs during the last five years of the Initial Term or any exercised renewal term(s), or if the repairs cannot reasonably be concluded within six (6) months of the Casualty, Tenant may elect not to restore the Facility, in which event Tenant shall provide written notice to Owner of its election not to repair the Facility within 90 days following the date of the Casualty, and upon the date of such notice, this Ground Lease shall be terminated and Tenant shall surrender the Site and the Easement Areas as provided in Article 6 above. In the event Tenant elects not to restore the Facility as provided for in the preceding sentence, Owner shall retain the Rent for the year in which the Casualty occurs.

## 12. Liabilities.

### 12.1 General.

(a) Tenant. Tenant shall indemnify, defend and hold Owner and Owner's Parties harmless from any and all claims, losses, expenses, liabilities, actions, suits, or judgments for personal injury or property damage, including all of the above of third parties (collectively, "Losses") by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Tenant's or Tenant's Parties' ownership, operation, use or maintenance of the Facility, the Easement Areas or the Site; (ii) the negligence or willful misconduct of Tenant or any Tenant Party in connection with the transactions contemplated by this Ground Lease; (iii) any release of Hazardous Materials on the Site or any of the Easement Areas caused or permitted by Tenant or any Tenant Party; or (iv) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Tenant or any Tenant Party.

(b) Owner. Owner shall indemnify, defend and hold Tenant and Tenant's Parties harmless from any and all Losses to the extent arising prior to or after the Effective Date by reason of, resulting from, whether directly or indirectly, or arising out of or related to (i) Owner's or Owner's Parties' ownership, operation, use or maintenance of Owner's property underlying the Site or any of the Easement Areas; (ii) the negligence or willful misconduct of Owner or any Owner Party in connection with the transactions contemplated by this Ground Lease; (iii) the inaccuracy of any representation or warranty of Owner contained in this Ground Lease; (iv) any release of Hazardous Materials on the Site or any of the Easement Areas caused or permitted by Owner or any Owner Party; or (v) any environmental claim from a third party with regard to a violation or alleged violation of any Environmental Laws by Owner or Owner's Parties. The foregoing liability obligation of Owner shall not include Losses that are in any way related to the use of the Airport, or activities thereon, by unrelated third parties, specifically including but not limited to lessees, sublessees, or licensees of Owner or any person performing a fixed based operation at the Airport.

(c) Survival. The provisions of this Section 12.1 shall survive the expiration or termination of the Term, and, as to Owner's obligation to indemnify, defend, and

hold Tenant and Tenant's Parties harmless, shall survive Owner's Transfer with respect to any occurrence prior to such Transfer.

12.2 Consequential Damages. Notwithstanding anything to the contrary in this Ground Lease, neither Party hereto shall be liable to the other for consequential or punitive damages, including but not limited to loss of use or loss of profit or revenue.

13. Default.

13.1 Events of Default. The following events shall be deemed to be events of default by Tenant ("Tenant Events of Default") under this Ground Lease:

(a) Failure to pay any payment required to be made hereunder, including taxes or any other sum to be paid hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Tenant by Owner.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 60 days after due written notice thereof from Owner; or if such failure cannot reasonably be cured within the said 60 days and Tenant shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Tenant shall file in any court pursuant to any statute, either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, or makes an assignment for benefit of creditors; or there is filed against Tenant in any court pursuant to any statute either of the United States or any state, a petition in bankruptcy or insolvency, or for reorganization, or for the appointment of a receiver or trustee of all or any portion of Tenant's property, and within 90 days after the commencement of any such proceeding against Tenant, such petition shall not have been dismissed.

13.2 Owner's Remedies. Upon the occurrence of any Tenant Event of Default, Owner may, at its option, and in addition to and cumulatively of any other rights Owner may have at law or in equity or under this Ground Lease, (a) cure the Tenant Event of Default on Tenant's behalf, in which event Tenant shall reimburse Owner on demand for all sums so expended by Owner, (b) terminate this Ground Lease by notice to Tenant and in conformity with procedures required hereby and by applicable law, or in lieu of termination, Owner may re-enter, retake and relet the Site, or any part thereof, as agent of Tenant or otherwise, and Tenant shall be responsible to Owner for the difference between the rent hereby reserved and agreed to be paid by Tenant for the portion of the term remaining at the time of re-entry or repossession in the amount, if any, received or to be received under such re-letting for such portion of time, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Owner shall have all remedies available at law or in equity, and should it be necessary for Owner to take any legal action in connection with such enforcement, Tenant shall pay Owner all reasonable attorneys' fees and expenses so

incurred, all without prejudice to any remedies that might otherwise be used by Owner for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

13.3 Owner Events of Default. The following events shall be deemed to be events of default by Owner (“Owner Events of Default”) under this Ground Lease regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which have or might have the effect of preventing Owner from complying with the terms of this Ground Lease.

(a) Failure to pay any payment required to be made hereunder within 10 Business Days after the date the same is due which shall have remained unpaid for 20 Business Days after written notice of such failure has been given to Owner by Tenant.

(b) Failure to comply in any material respect with any material term, provision or covenant of this Ground Lease, other than the payment of sums to be paid hereunder, without curing such failure within 60 days after due written notice thereof from Tenant; or if such failure cannot reasonably be cured within the said 60 days and Owner shall not have commenced to cure such failure within said period and shall not thereafter with reasonable diligence and good faith proceed to cure such failure.

(c) Any act or omission of Owner that in any way, directly or indirectly, adversely, materially, and substantially impacts, affects or impairs Tenant’s ability to operate and/or the operation of the Facility for Tenant’s Contemplated Use. The foregoing event of default shall not include any impact, effect, or impairment that results from any act or omission of Owner that is related to Owner’s operation or use of the Airport as a public airport and is required by Owner’s grant and other applicable assurances as well as federal obligations and consistent with the ALD.

13.4 Tenant’s Remedies. Upon the occurrence of any Owner Event of Default, Tenant may, at its option, and in addition to and cumulatively of any other rights Tenant may have at law or in equity or under this Ground Lease, (a) cure the Owner Event of Default on Owner’s behalf, in which event Owner shall reimburse Tenant on demand for all sums so expended by Tenant or Tenant may elect to offset any such amounts against subsequent installments of Rent or any other sums due from Tenant to Owner hereunder, (b) terminate this Ground Lease by notice to Owner and in conformity with procedures required hereby and by applicable law, or (c) enforce, by all proper and legal suits and other means, its rights hereunder, including the collection of sums due hereunder, in which event Tenant shall have all remedies available at law or in equity, and should it be necessary for Tenant to take any legal action in connection with such enforcement, the Owner shall pay Tenant all reasonable attorneys’ fees and expenses so incurred, all without prejudice to any remedies that might otherwise be used by Tenant for recovery or arrearages of sums due hereunder, damages as herein provided, or breach of covenant.

13.5 Limitation of Right of Recovery against Owner. Tenant acknowledges and agrees that the liability of Owner under this Ground Lease shall be limited to its interest in the Site and any judgments rendered against Owner shall be satisfied solely out of the proceeds

of the sale of its interest in the Site. No personal judgment shall lie against Owner (or the agents or employees of either). Upon extinguishment of their rights in the Site, any judgment so rendered shall not give rise to any right of execution or levy against Owner or its assets. The foregoing provisions are not intended to relieve Owner from the performance of any of Owner's obligations under this Ground Lease, but only to limit the liability of Owner in case of recovery of a judgment against Owner; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded Tenant by law or under this Ground Lease. Nothing herein shall be deemed to waive Owner's sovereign immunity, if applicable. Notwithstanding anything herein to the contrary, the Parties hereto expressly acknowledge that any sale of Airport property is subject to FAA approval.

14. Governing Law. This Ground Lease and all provisions hereof, shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

15. Force Majeure.

15.1 Force Majeure. The performance of each Party's respective obligations under this Ground Lease, other than failure or delay in payment of obligations, shall be excused during such times and to the extent such performance is prevented by reason of Force Majeure.

15.2 Resumption of Performance. The Party whose performance is suspended, prevented or delayed by Force Majeure shall promptly notify the other Party of such occurrence and its estimated duration. Subject to any rights of termination under this Ground Lease, such Force Majeure shall be promptly remedied, if and to the extent reasonably possible.

16. Condemnation. If at any time the Site, the Easements, or any portion thereof is condemned or transferred in lieu of condemnation, the net proceeds of such condemnation or transfer shall be divided between Owner and Tenant (or Tenant's designee) in the proportions specified in the condemnation award or agreement of transfer or, if not so specified, in proportion to the fair value of Owner's and Tenant's respective interests in the Site and the Easements, provided that to the extent that the net proceeds of any condemnation or transfer in lieu of condemnation are attributable to the Facility or improvements constructed by or on behalf of Tenant on the Site and/or the Easements, such proceeds shall be paid solely to Tenant or Tenant's designee, with Owner receiving any proceeds attributable solely to the residual value of the fee estate of the Site. For the purpose of this Article 16, the net proceeds of a condemnation or transfer in lieu of condemnation shall mean the total proceeds of such condemnation or transfer less the costs and expenses incurred in connection therewith (including legal fees).

16.1 Termination. If the entire Site is condemned or transferred in lieu of condemnation, the Term shall terminate at the time title vests in the condemning authority. If a portion of the Site is condemned or transferred in lieu of condemnation, the Ground Lease shall continue in full force and effect with respect to that portion of the Site which has not been so condemned or transferred, and Rent shall abate with respect to that portion of the Site which has been so condemned or transferred. Notwithstanding the foregoing, Tenant may terminate this Ground Lease without penalty by giving written notice of termination to Owner if, in Tenant's

discretion, the Site or the Easements are not suitable for Tenant's intended use following such condemnation or transfer in lieu thereof.

17. Maintenance Responsibilities of Parties. No Party shall have any duty or responsibility to the other Party in respect of the Site or the Easement Areas or the use, maintenance or condition thereof except such obligations of such Party as are specifically set forth in this Ground Lease.

18. Mortgage of Tenant's Interest.

18.1 Tenant Financing. Tenant may at any time elect to finance a portion of the cost of the Facility, possibly in a sale-leaseback financing structure, with one or more financial institutions, leasing companies, institutions or affiliates or subsidiaries thereof (each a "Financing Party," collectively, the "Financing Parties") and in connection therewith Tenant would enter into various agreements and execute various documents relating to such financing, which documents may, among other things, assign this Ground Lease and the Easements to a Financing Party, grant a sublease in the Site and a lease of the Facility from such Financing Party to Tenant, grant the Financing Parties a sublease or other real property interest in Tenant's interests in and to the Site, grant a first priority security interest in Tenant's interest in the Facility and/or this Ground Lease and Tenant's other interests in and to the Site, including, but not limited to, any easements, rights of way or similar interests (such documents, "Financing Documents"). Owner acknowledges notice of the foregoing and consents to the foregoing actions and Financing Documents described above, provided that in no event shall Tenant be released from liability under this Ground Lease, and Owner agrees to execute, and agrees to cause any and all of Owner's lenders to execute, such subordination agreements, consents, estoppels and other acknowledgements of the foregoing as Tenant or the Financing Parties may reasonably request. Owner agrees that if requested by Tenant, Owner will furnish the Financing Parties with a counterpart of each notice or other document delivered by Owner to Tenant in connection with this Ground Lease.

(a) Tenant shall provide Owner with contact information, including name(s), title(s), phone number(s) and mailing address(es), for Financing Parties who hold, own, or may be entitled to an interest, including security interest, in the Site.

18.2 Notice to Financing Party. Owner agrees that it shall not terminate this Ground Lease unless it has given each Financing Party at least 90 days' (30 days' in the case of a default in payment by Tenant) prior written notice of its intent to terminate this Ground Lease and the Financing Parties fail to cure the condition giving rise to such right of termination within such time period.

18.3 Cured by Financing Party. If the default under this Ground Lease is of such a nature that it cannot be practicably cured without first taking possession of the Facility and the Site or if such default is of a nature that is not susceptible of being cured by the Financing Parties, then Owner shall not be entitled to terminate this Ground Lease by reason of such default if and so long as the Financing Parties proceed diligently to attempt to obtain possession of the Facility and the Site pursuant to the rights of the Financing Parties under the Financing Documents and upon obtaining such possession, the Financing Parties shall proceed

diligently to cure such default if such default is susceptible of being cured by the Financing Parties.

18.4 Acquisition by Financing Party. The Financing Parties shall not be required to continue to proceed to obtain possession, or to continue in possession of the Site, pursuant to Section 18.3 if and when such default is cured. If the Financing Parties, or a purchaser through foreclosure under the Financing Documents or otherwise, shall (a) acquire title to the Facility and the leasehold estate created by this Ground Lease, (b) cure all defaults which are susceptible of being cured by the Financing Parties or such purchaser, as the case may be, and (c) assume all the obligations of Tenant hereunder, then (i) any default of Tenant which is not susceptible of being cured by the Financing Parties or such purchaser, as the case may be, shall no longer be deemed to be a default under this Ground Lease, and (ii) Owner shall recognize the Financing Parties or such purchaser, as the case may be, as if such party had been the Tenant under this Ground Lease; provided, however, that any waiver of default by Owner in connection with the Financing Parties or purchaser pursuant to this Section 18.4 shall not constitute a waiver of such default and Owner's rights as a result thereof as against Tenant.

19. Owner's Representations and Covenants.

19.1 Condition of Title; Warranty of Authority; Enforceability. Owner represents and warrants as of the Effective Date that Owner owns fee title to the Site and the Easement Areas free and clear of any lien, interest or encumbrance, subject only to the matters and exceptions approved in writing by Tenant on or before the Effective Date and shown in that certain Title Insurance Commitment prepared by First American Title Insurance Company, Commitment No. 638190 having an effective date of October 25, 2013. At any time on or after the Effective Date, Tenant may obtain for itself and/or any Financing Party, at Tenant's expense, an ALTA Extended Coverage policy of title insurance in a form and with exceptions acceptable to Tenant and/or such Financing Party in its sole discretion (the "Title Policies"). Owner agrees to cooperate fully and promptly with Tenant in its efforts to obtain the Title Policies, and Owner shall take such actions as Tenant or any Financing Party may reasonably request in connection therewith. Except as specifically provided for hereinbelow, Owner represents and warrants that, to Owner's knowledge, (a) there are no pending or threatened claims, actions or suits affecting the Site or the Easement Areas or Owner's interest in the Site or the Easement Areas; (b) the execution and performance of this Ground Lease by Owner does not violate any contract, agreement or instrument to which Owner is a party and Owner has not entered into any contract, agreement or instrument with respect to the Site or the Easement Areas with any third party other than Tenant; (c) the execution, delivery and performance by it under this Ground Lease have been duly authorized by all necessary action by Owner and, to Owner's knowledge, do not violate any provision of any current law applicable to Owner, the Site or the Easement Areas or any order, judgment or decree of any court or other agency presently binding on Owner or conflict with or result in a breach of or constitute a default under any contractual obligation of Owner; and (d) this Ground Lease is the legally valid and binding obligation of Owner enforceable against it in accordance with its terms except as enforcement may be limited by bankruptcy, insolvency, or reorganization, moratorium or similar laws or equitable principles relating or limiting creditors rights generally.

(a) The foregoing representations and warranties are subject to the following: (i) the recapture clause and other conditions of any grant or agreement with the Navy Department, Civil Aeronautics Administration or respective successor agency, as well as any other rights or authority whatsoever held by, or obligations the Owner may have to, the North Carolina or federal governments and which have been disclosed to Tenant in writing, including but not limited to grant and other applicable assurances, as well as federal obligations (ii) any applicable requirements or directives of the DOA and the FAA regarding this Ground Lease, the Site, the Facility, the Easement Areas, or Tenant's use of the Site, the Facility, the Easement Areas, or any of Owner's property, (iii) the Agreement to Reduce Deer Population of Warren Field Airport with Willie Allen d/b/a Outback Outfitters and Guide Service dated December 15, 2009, and (iv) the Acquisition Agreement with County of Beaufort, North Carolina dated February 5, 2005.

(b) Notwithstanding anything herein to the contrary, Tenant expressly acknowledges that the Owner's property that is subject to this Ground Lease and leased hereby is located on and is a part of the Airport, a public airport owned and operated by Owner, and, as such, is subject to any and all applicable regulatory agency, state and federal rules, regulations, laws, and other authority, including grant and other applicable assurances. Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use but otherwise permitted herein which shall prevent or impair in any way Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the ALD. Tenant and Tenant's Parties hereby unconditionally release, hold harmless, acquit and forever discharge the Owner and Owner's Parties of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, losses, penalties, attorney's or other professional fees, and consequential, general, special, and punitive damages or liabilities, of every kind, known or unknown, on account of, arising from, or in any way in violation of, related to or produced by any applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, or any action, directive, or consequence arising from any such applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, that in any way affects or is related to the Owner's operation of the Airport or that in any way affects Tenant's rights arising from or relating to this Ground Lease outside of the scope of Tenant's Contemplated Use. Furthermore, Tenant will cooperate with and will abide by any such regulatory agency, state or federal rule, regulation, law, and other authority, as well as any action, directive, or consequence therefrom, taken thereunder, or promulgated pursuant thereto. Notwithstanding the foregoing, however, any matter(s) arising out of any of such regulation, rule or law which prevents or materially and adversely affects Tenant's ability to use or operate any Facility located on the Site may trigger Tenant's rights under Section 2.2 above.

19.2 Environmental. Owner represents and warrants that, with the exception of those matters disclosed in the Phase I Environmental Site Assessment Questionnaire dated July 31, 2013 and any and all Hazardous Materials as well as similar substances, including but not limited to aircraft fuel and similar substances, that have been and are stored and used in conjunction with the operation of the Airport, to the best of Owner's knowledge, as of the Effective Date (a) the Site and Easement Areas are free of known or identified Hazardous Materials, no Hazardous Materials have ever been produced or disposed upon the Site or the

Easement Areas, no Release has occurred on the Site or the Easement Areas and Hazardous Materials have not migrated to the Site or the Easement Areas, (b) the Site and the Easement Areas and are in compliance with all Environmental Laws, (c) neither the Site nor the Easement Areas are subject to any Environmental Liability, threatened Environmental Liability or alleged Environmental Liability, and (d) Owner has not received notice of any violation of Environmental Laws affecting the Site or the Easement Areas.

19.3 Subordination Agreements. Owner shall, at its expense, on or before the initial Rent Payment Date and as a condition to Tenant's obligation to make any payment of Rent, remove, or cause to be subordinated to the Ground Lease all monetary obligations that are described as exceptions to the Title Policies. Any such subordination agreement shall be in a form as may be reasonably acceptable to Tenant, which provides, among other things, that Tenant's occupancy or use of the Site in accordance with the terms of this Ground Lease will not be disturbed by anything related to said exceptions to the Title Policies.

20. Utilities. The provision of Utilities shall be covered under a separate agreement; however, Tenant shall be responsible for all applicable charges, including but not limited to "hook-up" and customary monthly charges for all Utilities consumed by Tenant at the Site or Easement Areas during the Term. Notwithstanding the foregoing, it is expressly understood by the Parties that Tenant shall be responsible for the installation of, in the manner required by Owner, and the paying for any Utilities that may be required.

21. Taxes.

21.1 Covenant to Pay Taxes and Assessments. Tenant shall be responsible for and promptly pay before default any and all real and personal property taxes or assessments ("Taxes and Assessments"), if any, that may be levied or assessed against the Site and Easement Areas (other than any Easement Area(s) affected by any Solar Skyway Easement) or any improvements or other property owned by Tenant situated thereon, it being the mutual intention of the Parties that Owner shall not be required to pay any taxes on either real or personal property by reason of permitting Tenant to enter this Ground Lease. Tenant also agrees to indemnify Owner against any loss or liability resulting from any and all claims or liens in connection with any applicable Taxes and Assessments.

21.2 Separate Tax Parcel(s); No Proration at Commencement and Expiration of Term.

(a) The Parties shall use good faith and duly diligent efforts to cause the Site to be designated as a separate tax parcel, independent from the balance of Owner's surrounding property, if any. At all times during the term hereof when the tax bills for the Site and any applicable Easement Areas are being sent to Owner, Owner shall deliver copies of same to Tenant within twenty (20) days following Owner's receipt of same. In the event the Site is so designated as a separate tax parcel, Tenant shall be responsible for paying, and shall timely pay, all Taxes and Assessments (or similar) applicable to the separate tax parcel. In the event the Site or any applicable Easement Area for which Tenant is responsible for paying real and/or personal property taxes hereunder is not a separate tax parcel, Tenant shall be responsible for only paying its proportionate share thereof, based on a per acre allocation of the acreage within the Site and

such Easement Area and the total acreage of the larger parcel of which the Site and such Easement Area is a portion. Until such time, if ever, that the Site and/or applicable Easement Area(s) is(are) designated as one or more separate tax parcel(s), Owner shall be responsible for paying all Taxes and Assessments for all of the larger parcel(s) within which the Site and the Easement Areas are located, and following Owner's payment of same, Owner shall provide Tenant with a paid receipt for such Taxes and Assessments and Tenant shall reimburse Owner for its prorata share of such Taxes and Assessments.

(b) Tenant covenants and agrees to pay any personal property taxes or special assessments, if any, that may be levied or assessed against any improvements, or other personal property, situated on the Site or the Easement Areas which the Owner would not incur but for this Ground Lease that are due and payable during the Term hereof and are at any time imposed or levied against the Facility, the Easement Area or the Site, directly to the agency, entity, municipality or other party charged with collection of same. In the event Tenant fails to make any such payment when due, Owner may in its sole discretion pay the same on behalf of Tenant, and the same shall be due to Owner as repayment in which event Owner shall have the right, after ten (10) days prior written notice to Tenant, to charge Tenant interest thereon beginning ten (10) days from the date such notice is received by Tenant.

(c) Tenant shall be responsible for and promptly pay before default any and all Taxes and Assessments for the full year in which the Effective Date occurs and for the full year in which the Term expires. Tenant expressly acknowledges that there will be no pro-ration of the same.

21.3 Tenant's Right to Contest Taxes. Without limiting the right of Owner to contest any Taxes and Assessments levied against the Site, Tenant shall have the right to contest any Taxes or Assessments payable by Tenant, provided, Tenant shall, in good faith and with due diligence, contest the same or the validity thereof by appropriate legal proceedings which shall have the effect of preventing the collection of the tax or assessment and the sale or foreclosure of any lien for such tax or assessment. Tenant shall have the right, at its sole expense, to institute and prosecute, in Owner's name, any suit or action to contest any tax or assessment payable by Tenant or to recover the amount of any such tax or assessment but, in such event, Tenant hereby covenants and agrees to indemnify and save Owner harmless from any and all reasonable and documented costs and expenses, including attorneys' fees, in connection with any such suit or action. Any funds recovered by Tenant as a result of any such suit or action shall belong to Tenant.

## 22. Assignment.

22.1 Assignment by Owner. Owner may not sell, assign, sublease, mortgage, pledge, or otherwise transfer its interest in the Site or this Ground Lease without the prior written consent of Tenant, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in the preceding sentence, no assignment of Owner's interest in the Site or the Ground Lease shall relieve Owner of any of its obligations under this Ground Lease, nor may any such assignment be made unless fee title to the Site is simultaneously transferred to the permitted assignee hereunder and unless such permitted assignee has first assumed all of Owner's obligations under this Ground Lease in writing.

22.2 Assignment by Tenant. Tenant may not sell, assign, sublease, mortgage, pledge, or otherwise transfer its interest in the Site or this Ground Lease without the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary in the preceding sentence, Tenant may, without the consent of Owner, assign or sublease this Ground Lease to (a) any entity which controls, is controlled by or under common control with Tenant; (b) any entity resulting from the merger or consolidation of Tenant; (c) any person or entity which acquires all of the assets of Tenant as a going concern of the business that is being conducted on the Site, provided that said transferee assumes all of the obligations of Tenant under the Ground Lease; or (d) any financing parties in connection with the financing and/or construction of the Facility on the Site. Notwithstanding anything to the contrary in the preceding sentences, no assignment of Tenant's interest in the Site or the Ground Lease (other than an assignment made pursuant to clause (a) above) shall relieve Tenant of any of its obligations under this Ground Lease, nor may any such assignment (other than an assignment made to any financing party(ies) of Tenant or any affiliate of Tenant) be made unless the permitted assignee hereunder has first assumed all of Tenant's obligations under this Ground Lease in writing. Pursuant to the provision of said clause (a) above, Tenant may assign or otherwise transfer its interest in this Ground Lease to an affiliate of Tenant without the prior written consent of Owner, and provided that said transferee assumes all of the obligations of Tenant under this Ground Lease, thereafter Tenant shall be fully released of all further obligations under this Ground Lease. Tenant will notify Owner of any such assignment to an affiliate, and upon the request of Tenant or of such affiliate, Owner will acknowledge such assignment and release of Tenant.

(a) Tenant shall provide contact information, including name(s), title(s), phone number(s) and mailing address(es) for any Person or entity to whom Tenant sales, assigns, subleases, mortgages, pledges, or otherwise transfers its interest in the Site or Ground Lease.

23. Sale of Site (Underlying Property). Owner is unaware of any statutory authority under which Owner could sell the property underlying the Site by private negotiation. Any potential sale of the property underlying the Site or a portion thereof during the Term hereof shall be accomplished only through the negotiated offer, advertisement, and upset bid process authorized by North Carolina General Statute § 160A-269, as the same may be amended, or a functionally equivalent statutorily authorized process that will ensure Tenant has the opportunity to receive notice of, and to upset, any bid or offer to purchase from any third party. Furthermore, Tenant expressly acknowledges that any sale of the property underlying the Site or a portion thereof would require formal approval from the DOA and/or the FAA as well as satisfaction of any conditions that the DOA and/or the FAA might place upon said approval and sale. The following Section 23.1 shall be inapplicable and void unless Owner's attorney renders a legal opinion satisfactory to Owner that the sale of the property underlying the Site by private negotiation is authorized by currently existing or subsequently enacted North Carolina law and has been approved by DOA and/or the FAA, as may be applicable.

23.1 Right of First Offer. Throughout the Term of this Ground Lease, Tenant shall have a continuing right to purchase the Site as it becomes available (the "Right of First Offer"). Should Owner (a) receive an offer to purchase the Site or any portion thereof from any third party during the Term, which offer the Owner contemplates accepting (a "Bona Fide

Offer”) or (b) intend to offer all or any portion of the Site for sale (an “Owner Offer” and, together with a Bona Fide Offer, collectively, an “Offer”), Owner shall promptly give written notice and a copy of such Bona Fide Offer to Tenant, or the material terms of an Owner Offer (including, without limitation, purchase price, location and size of offered space, due diligence contingencies and closing date), as applicable. Tenant shall have the right to purchase the Site or portions thereof as set forth in the relevant Offer by giving written notice to Owner that Tenant is exercising its Right of First Offer upon the terms set forth in the relevant Offer, no later than 20 Business Days after Tenant’s receipt of the relevant Offer from Owner. If Tenant does not exercise its Right of First Offer within such 20-Business Day period, then Owner may sell the Site to the third party who made the Bona Fide Offer or any other third party with respect to an Owner Offer on the same terms, covenants and conditions as presented to Tenant in the relevant Offer, subject to Article 22 above and the terms and conditions of this Ground Lease; provided, that if there is any change to the terms of the Offer, Owner shall promptly send Tenant a copy of the revised Offer and Tenant shall have a Right of First Offer to purchase the Site according to the terms of the revised Offer under the procedure set forth in this Section 23.1. Any such sale shall be made, if at all, within six (6) months of the end of the 20-Business Day period, and if the sale is not completed within such time period, Tenant’s Right of First Offer shall revive and the provisions of this Section 23.1 shall again be operative.

23.2 Closing. If Tenant exercises its Right of First Offer or otherwise purchases the Site, the closing of the sale (the “Closing”) shall be conducted as follows.

(a) Closing shall take place at a time and in a location mutually acceptable to the Parties hereto; provided, that Closing shall take place no later than the expiration of the then current Term hereof unless extended in writing by the Parties.

(b) Subject to the applicability of the provisions contained in Article 23 hereof, Owner shall deliver marketable title to the Site or the applicable portion thereof to Tenant by special warranty deed, free and clear of all liens and other encumbrances, other than those created, approved, or agreed to by Tenant, as evidenced by an ALTA Extended Coverage Owner’s policy of title insurance in the full amount of the purchase price issued by the title company approved by Tenant and in a form approved by Tenant in its sole discretion. Further, Owner shall grant to Tenant the Easements then in effect as permanent indefeasible easements appurtenant to the Site.

(c) Except as otherwise provided by this Ground Lease or otherwise agreed to by the Parties, Owner and Tenant shall share all closing costs in accordance with the custom and practice in Beaufort County, North Carolina. Notwithstanding the foregoing, Tenant expressly acknowledges that Tenant shall be responsible for and shall pay any and all taxes that may be imposed and there shall be no proration of the same.

(d) The sale of the Site or the applicable portion thereof to Tenant shall be made subject to the following representations and covenants by Owner as “seller” effective as of the date of Closing.

(i) Owner has done nothing to impair such title to the Site or the applicable portion thereof as Owner received. The documents delivered by Owner at

closing will be duly authorized, executed and delivered by Owner, and will be the legal, valid and binding obligations of Owner.

(ii) This subsection intentionally left blank.

(iii) Each of the representations and covenants made by Owner shall be true and correct in all respects on the date of Closing and shall survive the Closing. Owner shall indemnify Tenant and Tenant's Parties for, and hold it harmless from, any claims, damages, liabilities, costs and expenses (including reasonable attorney's fees), arising from or under, or by reason of any breach of, Owner's representations or covenants.

24. Miscellaneous.

24.1 Notices. Any notice, consent or other formal communication required or permitted to be given by a Party pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (a) when delivered personally or by email, unless such delivery is made (i) on a day that is not a business day in the place of receipt or (ii) after 5:00 p.m. local time on a business day in the place of receipt, in either of which cases such delivery will be deemed to be made on the next succeeding business day, (b) on the next business day after timely delivery to a reputable overnight courier and (c) on the business day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows (or to such other address or having such other contact information as either Party may hereafter specify for such purpose by like notice to the other Party from time to time):

(a) if to Tenant, addressed to:

WASHINGTON AIRPORT SOLAR, LLC  
c/o DEGS NC Solar, LLC  
550 South Tryon Street – DEC 18A  
Charlotte, North Carolina 28202  
Attention: Robert Stewart II  
Phone: (704) 382-9226  
Email: rob.stewart@duke-energy.com

With a copy to:

Duke Energy Corporation  
139 East Fourth Street  
Room 1212-Main  
Cincinnati, Ohio 45202  
Attention: George Dwight II, Deputy General Counsel  
Phone: (513) 287-4327  
Email: George.dwight@duke-energy.com

(b) if to Owner, addressed to:

City of Washington  
Attn: Brian M. Alligood, City Manager  
102 E. Second St.  
Washington, North Carolina 27889  
Phone: (252) 975-9319  
Email: balligood@washingtonnc.gov

With a copy to:

City Attorney  
Attn: Franz F. Holscher  
Rodman, Holscher, Peck & Edwards, PA  
320 N. Market Street  
Washington, North Carolina 27889  
Phone: (252) 946-3122  
Email: ffh@rhpe.net

or to such other address as either Party shall from time to time designate in writing to the other Party.

24.2 Counterparts; Signatures. This Ground Lease may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The Parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Ground Lease had been delivered. Owner and Tenant (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Ground Lease based on the foregoing forms of signature.

24.3 Amendments. Neither this Ground Lease nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the Party against which the enforcement of the termination, amendment, supplement, waiver or modification shall be sought.

24.4 Headings, etc. The headings of the various Articles and Sections of this Ground Lease are for convenience of reference only and shall not modify, define, expand or limit any of the terms or provisions hereof.

24.5 Successors and Assigns. The terms of this Ground Lease shall be binding upon, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

24.6 Confidentiality. Owner and Tenant each agree to use commercially reasonable efforts to keep confidential, and not publicly disclose, the terms of this Ground Lease and any information provided by Owner to Tenant or by Tenant to Owner in relation to the

transaction contemplated hereby; provided, however, that either Party may disclose the existence and terms of this Ground Lease to: (a) its consultants, agents, architects, independent contractors, or attorneys in connection with the execution of this Ground Lease, (b) any bona fide potential purchaser or lender of the Facility who agrees to keep such information confidential, (c) any third party to whom both Parties hereto have given their prior written consent for such a disclosure, or (d) governmental, administrative, regulatory or judicial authorities in the investigation of the compliance of the Site, the Facility and/or the Easement Areas with applicable legal requirements; and provided, further, that the non-disclosure obligations contained in this Section shall not apply to any such information that (i) is or becomes generally available to the public other than as a result of a disclosure by Tenant or Owner, or their employees, agents or representatives, or (ii) Owner or Tenant is compelled to disclose pursuant to any judicial, statutory or regulatory authority. Notwithstanding anything contained herein to the contrary, Tenant expressly authorizes Owner to disclose the existence and terms of this Ground Lease, as may be necessary in Owner's discretion, (a) to DOA and/or the FAA (upon which disclosure the same shall be considered a public record) or (b) to fulfill the statutory authority that authorizes Owner, a municipality, to lease property it owns, including but not limited to the statutory requirements for leases by municipalities of more than ten (10) years and (c) to the extent that public records law requires disclosure of the same. The provisions of this Section shall survive the termination of this Lease.

24.7 Attorneys' Fees. If either Party commences an action or proceeding against the other Party arising out of or in connection with this Ground Lease, or institutes any proceeding in a bankruptcy or similar court which has jurisdiction over the other Party or any or all of its property or assets, the prevailing Party in such action or proceeding and in any appeal in connection therewith shall be entitled to have and recover from the unsuccessful Party reasonable attorneys' fees, court costs, expenses and other costs of investigation and preparation. If such prevailing Party recovers a judgment in any such action, proceeding, or appeal, such attorneys' fees, court costs and expenses shall be included in and as a part of such judgment.

24.8 Interpretation. The Parties acknowledge that this Ground Lease, as executed, is the product of negotiations between Owner and Tenant and that it shall be construed fairly, in accordance with its terms, and shall not be construed for or against either Party. No inferences as to the intention of the Parties shall arise from the deletion of any language or provisions of this Ground Lease.

24.9 Memorandum of Lease. Concurrently with the execution of this Ground Lease, Owner and Tenant shall execute, acknowledge before a notary public, in recordable form, and deliver a short form memorandum of lease in the form of Exhibit D, attached hereto and incorporated herein, which shall be recorded by Tenant in the Official Records.

24.10 Severability. If any term or provision of this Ground Lease is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Ground Lease shall not be affected thereby, and each remaining term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

24.11 Time is of the Essence. Time is of the essence of this Ground Lease and each and every provision of this Ground Lease.

24.12 Consent and Approvals. Any consent or approval that a Party is obligated to give to the other Party shall not be unreasonably withheld or delayed, subject to any specific provision to the contrary contained in this Ground Lease.

24.13 Entire Agreement. This Ground Lease, including any exhibits and attachments hereto, constitutes the entire agreement between Owner and Tenant relative to the matters and transactions contemplated herein. Owner and Tenant agree hereby that all prior or contemporaneous oral or written agreements, or letters of intent, between and among themselves or their agents including any leasing agents and representative, relative to such matters and transactions are merged in or revoked by this Ground Lease.

24.14 Broker's Commission. Tenant represents and warrants that it has not dealt with any broker or agent in connection with this Ground Lease and Tenant agrees to indemnify and save Owner harmless from any claims made by any brokers or agents claiming to have dealt with Tenant. Owner represents and warrants that it has not dealt with any brokers or agents in connection with this Ground Lease, and Owner agrees to indemnify and save Tenant harmless from any claims made by any brokers or agents claiming to have dealt with Owner. The terms and provisions of this Section 24.14 shall survive the termination or earlier expiration of this Ground Lease.

24.15 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY LAW, THE PARTIES HEREBY WAIVE ANY AND ALL RIGHTS THAT THEY MAY NOW OR HEREAFTER HAVE UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR ANY STATE, TO A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING DIRECTLY OR INDIRECTLY IN ANY ACTION OR PROCEEDING RELATING TO THIS GROUND LEASE OR ANY TRANSACTIONS CONTEMPLATED HEREBY OR RELATED HERETO. IT IS INTENDED THAT THIS WAIVER SHALL APPLY TO ANY AND ALL CAUSES OF ACTION, DEFENSES, RIGHTS, CLAIMS AND/OR COUNTERCLAIMS, WHETHER IN CONTRACT, TORT OR OTHERWISE, IN ANY SUCH ACTION OR PROCEEDING. THE PARTIES UNDERSTAND THAT THIS WAIVER IS A WAIVER OF A CONSTITUTIONAL SAFEGUARD, AND THE PARTIES BELIEVE THAT THERE ARE SUFFICIENT ALTERNATE PROCEDURAL AND SUBSTANTIVE SAFEGUARDS, INCLUDING A TRIAL BY AN IMPARTIAL JUDGE, THAT ADEQUATELY OFFSET THE WAIVER CONTAINED HEREIN.

24.16 No Joint Venture. Neither this Ground Lease nor anything contained herein shall be deemed to make Owner in any way or for any purpose a partner, joint venturer, or associate in any relationship with Tenant other than that of Owner, as Owner of the property subject to this Ground Lease, and Tenant, as Tenant of this Ground Lease, nor shall this Ground Lease or any provision thereof be construed to authorize either to act as an agent for the other except as expressly provided in this Ground Lease.

24.17 Condition of Site and Easement Areas. Tenant's taking possession of the Site and Easement Areas shall be conclusive evidence as against Tenant that Tenant has accepted

said Site and Easement Areas “AS IS” and that, except with regard to any obligation that Owner may have with respect to any environmental issue(s) on or affecting the Site or any Easement Area(s) not caused by Tenant or anyone claiming by or through Tenant, Owner is under no duty to repair anything, furnish any services for, or otherwise improve in any way the same.

24.18 Adherence to Regulations. Tenant shall comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, Courts, authorities, agents, officials, officers and other parties, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to Tenant; Tenant’s construction, operation, and maintenance of the Facility; and Tenant’s use of the property that is subject to this Ground Lease. Tenant shall not intentionally or knowingly use the property that is the subject of this Ground Lease for any purpose or in any manner in violation of any law, ordinance, rule, or regulation adopted or imposed by any federal, state, county, municipal body, or other governmental agency. Tenant further agrees to indemnify and hold Owner harmless for any and all damage of any kind arising from Tenant’s failure to comply with the aforementioned rules and regulations.

IN WITNESS WHEREOF, the Parties hereto have caused this Ground Lease to be duly executed by their respective officers thereto duly authorized as of the day and year first above written.

**PRE-AUDIT CERTIFICATE**

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

**CITY OF WASHINGTON**

\_\_\_\_\_ (SEAL)  
Matt Rauschenbach, Chief Financial Officer

OWNER:

TENANT:

CITY OF WASHINGTON

WASHINGTON AIRPORT SOLAR, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

To Ground Lease

Legal Description of Site

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being in the City of Washington, Beaufort County and consisting of approximately 34.3 acres of land, and as more particularly shown as crosshatched and described on the survey of Summit Coastal Surveying and Mapping dated November 7, 2013, a copy of which is attached hereto as Exhibit A-1.

TOGETHER WITH the right to use that certain thirty (30) foot wide right of way easement for all purposes reserved in that certain Deed of Correction from the County of Beaufort and the City of Washington to the State of North Carolina dated March 15, 1972 and recorded in Book 683 at Page 414 in the Office of the Register of Deeds for Beaufort County, North Carolina.

EXHIBIT A-1

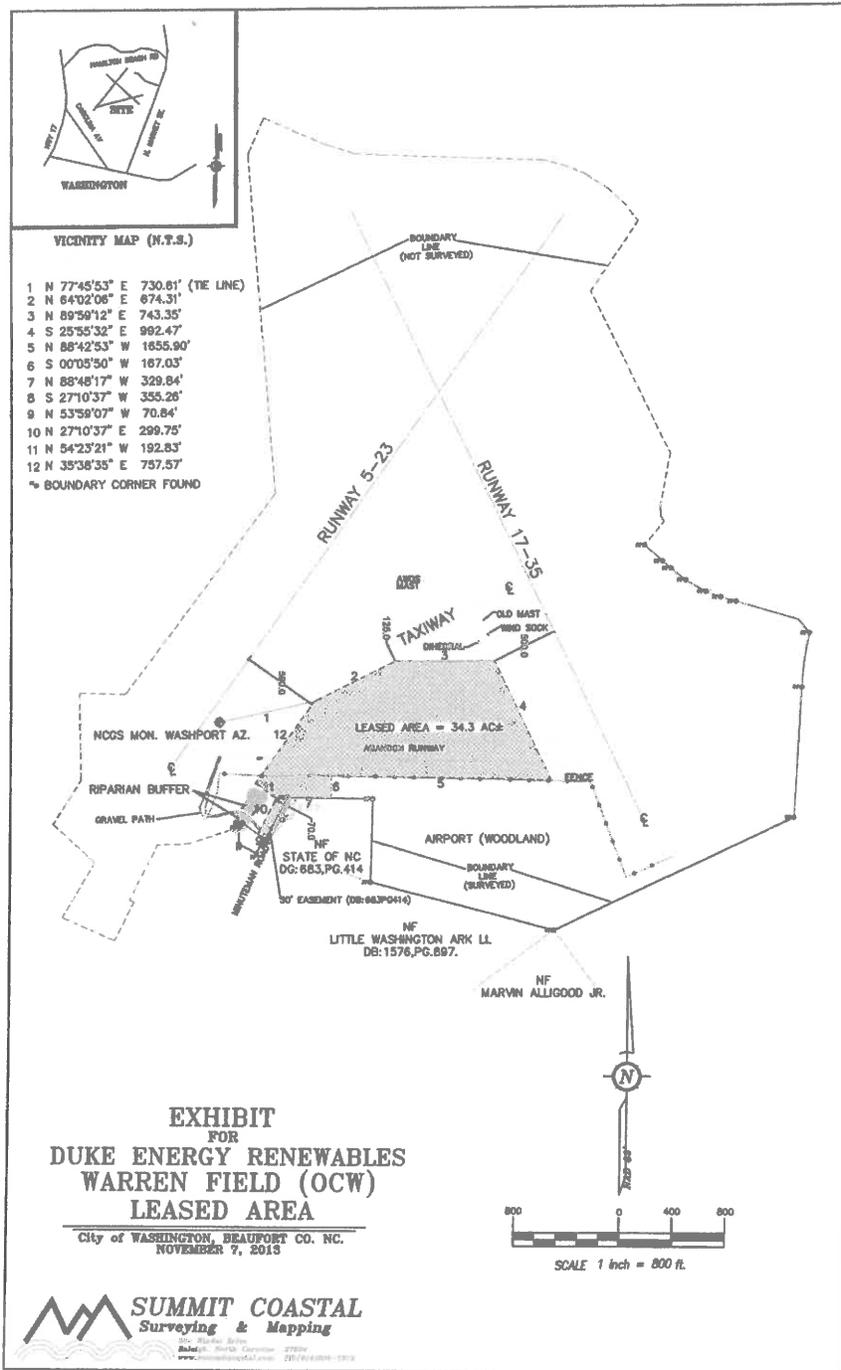


Exhibit A to Ground Lease - 2

**EXHIBIT B**

To Ground Lease

Form of Easement

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT (“Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by CITY OF WASHINGTON, a body politic and corporate organized and existing under the laws of the State of North Carolina, (“Owner”) to and for the benefit of WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company (“Grantee”).

**RECITALS**

A. Owner owns certain real property (the “Servient Estate”) located in the County of Beaufort, State of North Carolina and more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Grantee leases certain real property (the “Dominant Estate”) located adjacent to the Servient Estate in the County of Beaufort, State of North Carolina pursuant to that certain Ground Lease and Easement Agreement (the “Ground Lease”) between Owner as Owner and Grantee as Tenant, dated as of November \_\_, a memorandum of which was recorded on \_\_\_\_\_ in the Official Records of Beaufort County, North Carolina (the “Official Records”) and more particularly described in Exhibit B attached hereto and incorporated herein by this reference. Capitalized terms not otherwise defined herein shall have the meaning given in the Ground Lease.

C. Grantee intends to enter into one or more Power Purchase Agreements, pursuant to which Grantee or one of its affiliates will agree to engineer, construct and install solar photovoltaic systems (the “Systems”) in order to provide electrical energy and related services generated by the Systems.

D. In order to facilitate construction, installation, operation and maintenance of the Systems, Owner desires to grant to Grantee an easement for access, utility lines, water pipelines, telecommunications lines, pole usage, equipment pads for switching stations and related purposes, subject to the terms and conditions of the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties agree as follows.

**AGREEMENTS**

1. GRANT OF EASEMENT. For good and valuable consideration paid by Grantee, the receipt and legal sufficiency of which Owner hereby acknowledges, upon and subject to the terms, conditions, restrictions, limitations, and reservations set forth herein, Owner hereby grants to Grantee, for the benefit of the Dominant Estate, an appurtenant, non-exclusive easement (the “Easement”) on, over, under and through the Easement area in the location more particularly

described in attached Exhibit C for the purposes of constructing, placing, operating, maintaining, reconstructing, replacing, rebuilding, upgrading, removing, inspecting, patrolling, modifying and/or repairing (a) equipment pads for switching station facilities related to or necessitated by Grantee's Systems located on the Dominant Estate; (b) surface and subsurface utilities related to or necessitated by Grantee's Systems located on the Dominant Estate, which utilities may include, without limitation, electrical facilities and components and transmission lines, water pipelines, communications lines, telephone lines and fiber optic lines and related facilities; and (c) roads for access, consisting of paved roads and necessary fixtures and appurtenances, in, over, under and upon the Easement area, by Grantee and each Person in the group consisting of Grantee, all of Grantee's Affiliates, and each of their respective directors, officers, employees, contractors, agents, successors, sublessee, licensees, invitees and assigns (collectively, the "Grantee Group"), together with the right of ingress and egress over the Servient Estate to access the Easement area.

1.1 Limitation on Grant of Easement. Notwithstanding anything herein to the contrary, Grantee expressly acknowledges that the Owner's property that is subject to this Easement is located on and is a part of the Warren Field Airport ("Airport"), a public airport owned and operated by Owner, and, as such, is subject to any and all applicable regulatory agency, state and federal rules, regulations, laws, and other authority, including grant and other applicable assurances. Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use (as defined in the Ground Lease) but otherwise permitted herein which shall prevent or impair in any way Owner or any third party from operating or using the Airport as a public airport consistent with Owner's grant and other applicable assurances as well as federal obligations and the Airport Layout Drawing. Grantee and Grantee's Parties hereby unconditionally release, hold harmless, acquit and forever discharge the Owner and Owner's Parties of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, losses, penalties, attorney's or other professional fees, and consequential, general, special, and punitive damages or liabilities, of every kind, known or unknown, on account of, arising from, or in any way in violation of, related to or produced by any applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, or any action, directive, or consequence arising from any such applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, that in any way affects or is related to the Owner's operation of the Airport or that in any way affects Grantee's rights arising from or relating to this Easement outside the scope of Tenant's Contemplated Use. Furthermore, Grantee will cooperate with and will abide by any such regulatory agency, state or federal rule, regulation, law, and other authority, as well as any action, directive, or consequence therefrom, taken thereunder, or promulgated pursuant thereto. Notwithstanding the foregoing, however, any matter(s) arising out of any of such regulation, rule or law which prevents or materially and adversely affects Grantee's ability to use or operate any Facility located on the Site may trigger Grantee's rights under Section 2.2 of the Ground Lease. Any construction or installation permitted hereby shall be performed in a good and workmanlike manner using new (or like-new), quality materials, products and equipment; and upon completion shall conform and otherwise comply in all material respects with all applicable laws. Grantee shall not erect structures or allow growth of natural objects that would constitute an obstruction to air navigation. Grantee shall not engage in any activity that would interfere with, or be a hazard to,

the flight of aircraft over the Airport or to and from the Airport. Grantee shall not engage in any activity that interferes with air navigation or communication facilities serving the Airport.

## 2. CERTAIN COVENANTS.

2.1 Use and Maintenance of the Easement. Grantee shall use and maintain the Easement so as not to unreasonably interfere with Owner's use of the Servient Estate, provided, however, Grantee and each Person in the Grantee Group shall be permitted to use the Easement in a manner not inconsistent with the uses identified herein. Owner shall be responsible to maintain so much of the Easement as is undisturbed or not used by Grantee in good condition, in accordance with prudent industry standards; provided, that Grantee shall maintain so much of the Easement as is disturbed or used by Grantee to Owner's satisfaction and repair damage to the Easement area or other portions of the Servient Estate to the extent arising out of or related to the use of the Easement by any Person in the Grantee Group. Owner shall have the right to use the Servient Estate in any manner not inconsistent with the Easement and the rights granted to Grantee under this Agreement.

2.2 Compliance with Laws by Grantee. Grantee and any Person in the Grantee Group shall comply in all material respects with all federal, state or local acts, statutes, laws, ordinances, codes, rules, regulations, orders or other applicable legislative or administrative actions of any governmental authority having jurisdiction, including but not limited to any condition or requirement of the Division of Aviation ("DOA") or the Federal Aviation Administration ("FAA") ("Laws") (including Environmental Laws) relating to the Servient Estate (including the Easement area) and such Party's activities thereon. Grantee shall immediately notify Owner of (a) any Releases of any Hazardous Materials on or affecting the Servient Estate (including the Easement area) from those improvements owned by Grantee or any Person in the Grantee Group located within the Easement area or otherwise by Grantee or any Person in the Grantee Group within the Easement area, (b) any failure of Grantee or any Person in the Grantee Group to comply with any Environmental Law with respect to the Easement and Grantee's or any Person in the Grantee Group's activities thereon, and (c) any action required by a governmental authority or required in order to comply with Environmental Laws to clean up, contain or otherwise ameliorate or remedy any Release ("Remedial Action") commenced or threatened against Grantee or any Person in the Grantee Group by any governmental authority or other Person or any allegation by a governmental authority or other Person that Grantee or any Person in the Grantee Group has failed to comply with any Environmental Law with respect to the Easement and Grantee's or any Person in the Grantee Group's activities thereon. Grantee shall indemnify and hold Owner and the group consisting of Owner, all of Owner's Affiliates, as well as Owner's Parties, and each of their respective directors, officers, employees, contractors, agents, successors, sublessee, licensees, invitees and assigns (collectively, the "Owner Group") harmless from and against any and all liability to the extent caused by (i) Grantee's or any Person in the Grantee Group's violation of any Environmental Laws relating to the use of the Easement on the Servient Estate or (ii) any Release caused by Grantee or any Person in the Grantee Group.

2.3 Compliance with Laws by Owner. Owner and any Person within Owner's Parties shall comply in all material respects with all Laws (including Environmental Laws) relating to the Servient Estate and such Party's activities thereon. Owner shall immediately

notify Grantee of (a) any Releases of any Hazardous Materials on or affecting the Servient Estate or the Easement, (b) any failure of Owner or any Person within Owner's Parties (that Owner has actual knowledge of) to comply with any Environmental Law with respect to the Easement, the Servient Estate and Owner's or any Person within Owner's Parties' activities thereon, and (c) any Remedial Action commenced or threatened against Owner or any Person within Owner's Parties (that Owner has actual knowledge of) by any governmental authority or other Person or any allegation by a governmental authority or other Person that Owner or any Person within Owner's Parties (that Owner has actual knowledge of) has failed to comply with any Environmental Law with respect to the Easement, the Servient Estate and Owner's or any Person within Owner's Parties' activities thereon. Owner shall indemnify and hold Grantee and the Grantee Group harmless from and against any and all liability to the extent caused by (i) Owner's or Owner's Parties' violation of any Environmental Laws relating to the Servient Estate or (ii) any Release caused by Owner or Owner's Parties. The foregoing indemnification and hold harmless obligations of Owner shall not include any liability to the extent caused by lessees, sublessees or licensees of Owner or any Person performing a fixed based operation at the Airport.

2.4 Manner of Performance of Work. When possible, Grantee shall perform all installation, maintenance, repair and replacement work permitted or required to be performed by Grantee hereunder at such times, and in such a manner, so as to minimize any unreasonable interference with Owner's use of the Servient Estate. Upon completion of any such work, Grantee shall restore the affected area to its former condition insofar as reasonably possible.

2.5 Indemnity and Insurance.

(a) Indemnification by Grantee. Grantee shall indemnify, defend and hold harmless the Owner Group from and against all Losses suffered or incurred by any such Person by reason of, resulting from, whether directly or indirectly, or arising out of (1) the nonfulfillment or nonperformance of any covenant or agreement of any Person within the Grantee Group in this Agreement, or (2) the negligence or willful misconduct of any Person within the Grantee Group in connection with the transactions contemplated by this Agreement.

(b) Indemnification by Owner. Owner shall indemnify, defend and hold harmless the Grantee Group from and against all Losses suffered or incurred by any such Person by reason of, resulting from, whether directly or indirectly, or arising out of (1) the nonfulfillment or nonperformance of any covenant or agreement of Owner or any Person within the Owner's Parties in this Agreement, (2) the negligence or willful misconduct of Owner or any Person within the Owner's Parties in connection with the transactions contemplated by this Agreement, or (3) the inaccuracy of any representation or warranty of Owner contained in this Agreement. The foregoing liability obligation of Owner shall not include Losses that are in any way related to the use of the Airport, or activities thereon, by unrelated third parties, specifically including but not limited to lessees, sublessees, or licensees of Owner or any Person performing a fixed base operation at the Airport.

(i) Insurance Coverage. The provisions of Article 10 of the Ground Lease are incorporated herein by reference as if fully set forth and shall govern the Parties' rights to, as well as apply to, insurance coverage under this Agreement.

2.6 Removal of Improvements. The provisions of Article 6 of the Ground Lease are incorporated herein by reference as if fully set forth and shall govern the Parties' rights to, as well as apply to the removal of, all improvements, articles of personal property and all business and trade fixtures, machinery and equipment owned or installed by Grantee or the Grantee Group on the Easement or the portions of the Servient Estate utilized in conjunction with the Easement.

2.7 Covenants Run with the Lands. The covenants of the Parties made in this Agreement shall be deemed to be covenants running with, binding upon, benefiting and burdening the land pursuant to applicable law.

### 3. TERM, TERMINATION AND REMEDIES.

3.1 Term and Termination of Easements. The term of this Agreement, the Easement and other rights granted hereunder (and the corresponding respective obligations of the Parties) (collectively, the "Easement Interests") shall continue in full force and effect from the full execution of this Agreement until the date on which Grantee's rights as a tenant under the Ground Lease (as the same may be extended) terminate or expire (the "Easement Term"). Within 30 days of the end of the Easement Term, Grantee shall execute, acknowledge and deliver to Owner a quitclaim deed or any other document, in a form reasonably acceptable to Owner, as may be reasonably necessary to confirm the termination of the Easement Interests granted in this Agreement and to eliminate this Agreement as an encumbrance on the title of the Servient Estate.

3.2 Remedies. In the event of a default under this Agreement by either Party, the non-defaulting Party shall send written notice pursuant to Section 5.12 hereof of such default to the defaulting Party, and unless such default is cured within 45 days of the date of such written notice, the non-defaulting Party shall be entitled to all remedies (other than termination of this Agreement and the Easement herein granted) available at law or in equity for the defaulting Party's failure to comply with the provisions of this Agreement, including, without limitation, injunctive relief. In addition, if such default is not cured within such 45 day period, then the non-defaulting Party shall have the right to cure such default, in which case all costs reasonably incurred by the non-defaulting Party in effecting such cure shall be paid by the defaulting Party within 30 days after demand therefor.

4. OWNER'S HAZARDOUS MATERIALS REPRESENTATION. Owner represents and warrants that, with the exception of those matters disclosed in the Phase I Environmental Site Assessment Questionnaire dated July 31, 2013 and any and all Hazardous Materials as well as similar substances, including but not limited to aircraft fuel and similar substances, that have been and are stored and used in conjunction with the operation of the Airport, to the best of Owner's knowledge, as of the Effective Date of the Ground Lease (a) the Easement Areas are free of known or identified Hazardous Materials, no Hazardous Materials have ever been produced or disposed upon the Easement Areas, no Release has occurred on the Easement Areas and Hazardous Materials have not migrated to the Easement Areas, (b) the Easement Areas are in compliance with all Environmental Laws, (c) the Easement Areas are not subject to any Environmental Liability, threatened Environmental Liability or alleged

Environmental Liability, and (d) Owner has not received notice of any violation of Environmental Laws affecting the Easement Areas.

5. MISCELLANEOUS.

5.1 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the Parties, their respective heirs, successors (by merger, consolidation or otherwise), assigns, devisees, administrators and representatives. This Agreement may only be assignable as permitted in, and consistent with, Article 22 of the Ground Lease, which Article 22 is incorporated herein by reference as if fully set forth.

5.2 Amendments. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

5.3 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

5.4 Severability. The invalidity of one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

5.5 No Waiver. Any failure of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

5.6 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

5.7 Drafting Interpretations. Preparation of this Agreement has been a joint effort of both the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other by reason of authorship of this document.

5.8 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of North Carolina.

5.9 Survival. Notwithstanding any provision of this Agreement to the contrary, expiration or other termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such expiration or termination, including promises of indemnity and payment obligations.

5.10 No Joint Venture. Neither this Agreement nor anything contained herein shall be deemed to make Owner in any way or for any purpose a partner, joint venturer or associate in any relationship with Grantee other than that of Owner, as Owner of the Easement, and Grantee, as grantee of the Easement, nor shall this Agreement or any provision thereof be construed to authorize either to act as agent for the other except as expressly provided in this Agreement.

5.11 Attorneys' Fees. In the event that Owner or Grantee fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable costs and expenses incurred by the other Party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable counsel fees. The right of Owner or Grantee, as the case may be, to all costs and expenses incurred by it in enforcing or establishing its rights hereunder pursuant to the provisions of this Section 5.11 shall include, without limitation, all costs and expenses incurred by Owner or Grantee, as the case may be, including, without limitation, court costs and reasonable counsel fees, in the enforcement of all obligations of Owner or Grantee, as the case may be, under this Agreement or otherwise with respect to the Easements, whether or not legal action was commenced, and including all such costs and expenses incurred in an action or participation in, or in connection with, a case or proceeding under Chapter 7 or 11 of the Bankruptcy Code, or any successor statute thereto.

5.12 Notices. Any notice, consent or other formal communication required or permitted to be given by a Party pursuant to the terms of this Agreement shall be in writing and shall be deemed delivered (a) when delivered personally or by email, unless such delivery is made (i) on a day that is not a business day in the place of receipt or (ii) after 5:00 p.m. local time on a business day in the place of receipt, in either of which cases such delivery will be deemed to be made on the next succeeding business day, (b) on the next business day after timely delivery to a reputable overnight courier and (c) on the business day actually received if deposited in the U.S. mail (certified or registered mail, return receipt requested, postage prepaid), addressed as follows (or to such other address or having such other contact information as either Party may hereafter specify for such purpose by like notice to the other Party from time to time):

If delivered to Grantee: Washington Airport Solar, LLC  
c/o DEGS NC Solar, LLC  
550 South Tryon Street – DEC 18A  
Charlotte, North Carolina 28202  
Attention: Robert Stewart II  
Phone: (704) 382-9226  
E-mail: rob.stewart@duke-energy.com

With a copy to: Duke Energy Corporation  
139 East Fourth Street  
Room 1212-Main  
Cincinnati, Ohio 45202  
Attn: George Dwight II, Deputy General Counsel  
Phone: (513) 287-4327  
E-mail: George.dwight@duke-energy.com

If delivered to Owner: City of Washington  
Attn: Brian M. Alligood, City Manager  
102 E. Second St.  
Washington, North Carolina 27889  
Telephone: (252) 975-9319  
E-mail: balligood@washingtonnc.gov

With a copy to: City Attorney  
Attn: Franz F. Holscher  
Rodman, Holscher, Peck & Edwards, P.A.  
320 N. Market St.  
Washington, North Carolina 27889  
Phone: (252) 946-3122  
Telefax: (252) 946-3125  
E-mail: ffh@rhpe.net

In the event a Party is no longer located at the address specified above and has not provided the other Party hereunder with a current address, notices and demand may be served upon the other Party in writing: (a) by delivering such notice or demand to a responsible person at the address of such Party set forth at the time notice is given in the real property tax records of Beaufort County, North Carolina as the address to which tax bills with respect to the portion of the land affected hereby owned by such person are to be sent and obtaining a receipt therefor, whereupon, service shall be deemed complete; or (b) by mailing a copy thereof (by certified mail, postage prepaid and return receipt requested) to such tax records address of such person. Service by mail shall be deemed complete on the earlier of the day of actual delivery, as shown by the addressee's registry or certification receipt, or on the expiration of 3 days after the date of mailing if such mailing occurred in the State of North Carolina.

5.13 Documents Included. This Agreement consists of this document and the Exhibits attached hereto in accordance with the provisions hereof, which are specifically incorporated herein and made a part hereof by this reference.

5.14 Counterparts; Signatures. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The Parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this Assignment had been delivered. Owner and Grantee (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other Party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date 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 Government Budget and Fiscal Control Act.

**CITY OF WASHINGTON**

\_\_\_\_\_ (SEAL)

Matt Rauschenbach, Chief Financial Officer

**OWNER:**

CITY OF WASHINGTON

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GRANTEE:**

WASHINGTON AIRPORT SOLAR, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

I, \_\_\_\_\_, 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 \_\_\_\_\_, sealed with its corporate seal and attested by herself as its City Clerk.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, \_\_\_\_\_, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO THE EASEMENT AGREEMENT**

Description of Servient Estate

See attached

**EXHIBIT B TO THE EASEMENT AGREEMENT**

Description of Dominant Estate

See attached

**EXHIBIT C TO THE EASEMENT AGREEMENT**

Description of Easement

See attached

**EXHIBIT C**

To Ground Lease

Solar Skyway Easement

STATE OF NORTH CAROLINA SOLAR SKYWAY EASEMENT AGREEMENT

COUNTY OF BEAUFORT \_\_\_\_\_

THIS SOLAR SKYWAY EASEMENT AGREEMENT (this "Agreement"), is made this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between CITY OF WASHINGTON, a body politic and corporate organized and existing under the laws of the State of North Carolina, (the "Grantor"), and WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of those certain tracts of land identified and described as the "Grantor's Property" on Exhibit A attached hereto and incorporated herein by this reference (the "Grantor's Property"); and

WHEREAS, Grantee is the lessee of an approximately 34.3 acre portion of Grantor's Property under the terms of a Ground Lease and Easement Agreement between Grantor and Grantee dated as of November \_\_, 2013 (the "Site Lease") (such portion being herein referred to as the "Premises"), and as said Premises is more particularly described on Exhibit B attached hereto and incorporated herein; and

WHEREAS, Grantee has constructed or will construct certain solar photovoltaic electric generating facility improvements (the "Solar Power Facility") on the Premises; and

WHEREAS, in connection with the efficient operation of the Solar Power Facility, it is necessary that Grantee maintain the unobstructed passage of sunlight through an area surrounding the Solar Power Facility; and

WHEREAS, subject to the terms of this Agreement, Grantor has agreed to grant to Grantee the solar skyway easement herein described through, over, upon and across the remainder of Grantor's Property which is not included within the Premises (the "Solar Skyway Easement Area").

NOW, THEREFORE, FOR AND IN CONSIDERATION of the above premises and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Grantor hereby conveys, grants and warrants to Grantee a solar skyway easement over, across and above the Solar Skyway Easement Area in accordance with the following terms.

1. Grant of Solar Skyway Easement. Subject to the limitations set forth herein, Grantor hereby agrees that no structure, vegetation, activity, or land use of Grantor shall cast a shadow on any solar energy collector of Grantee located on the Premises unless such structure,

vegetation, activity, or land use exists on the effective date of this easement and is not specifically required to be removed or halted, or is specifically excepted, by the terms of this instrument.

Upon and subject to advance written consent from Grantor, which consent may be withheld by Grantor in order to fulfill its grant and other applicable assurances as well as federal obligations to operate and use the Warren Field Airport ("Airport") as a public airport, the following rights are also granted to Grantee: to enter said Solar Skyway Easement Area and to remove from the Solar Skyway Easement Area, now or at any time during the term of the Site Lease, as such term may be extended, trees, structures or other obstructions that may materially impair or reduce the electric power output of the Solar Power Facility and trees of any species that Grantee determines will grow at maturity to a height that will materially impair or reduce the electric power output of the Solar Power Facility; to trim or remove and to keep trimmed or remove dead, diseased, weak or leaning trees or limbs which, in the opinion of the Grantee, might interfere with or fall upon the Solar Power Facility. Further, Grantor shall not allow any third party claiming by or through Grantor to take any action, or fail to take any action, which would result in any shading of the Solar Power Facility solar collectors that materially impairs or reduces the electric power output of the Solar Power Facility unless such action or inaction is necessary in order for Grantor to fulfill its grant and other applicable assurances as well as federal obligations to operate and use the Airport as a public airport.

2. Limitation on Grant of Solar Skyway Easement. Notwithstanding anything herein to the contrary, Grantee expressly acknowledges that the Grantor's property that is subject to this Solar Skyway Easement is located on and is a part of the Airport, a public airport owned and operated by Grantor, and, as such, is subject to any and all applicable regulatory agency, state and federal rules, regulations, laws, and other authority, including grant and other applicable assurances. Tenant shall not engage in any activity(ies) outside of the scope of Tenant's Contemplated Use (as defined in the Ground Lease) but otherwise permitted herein which shall prevent or impair in any way Grantor or any third party from operating and using the Airport as a public airport consistent with Grantor's grant and other applicable assurances as well as federal obligations and the then current Airport Layout Drawing. Grantee and Tenant's Parties (as that term is defined in the Ground Lease) hereby unconditionally release, hold harmless, acquit and forever discharge the Grantor and Owner's Parties (as that term is defined in the Ground Lease) of and from all and any manner of action or actions, cause and causes of actions, claims, demands, costs, expenses, losses, penalties, attorney's or other professional fees, and consequential, general, special, and punitive damages or liabilities, of every kind, known or unknown, on account of, arising from, or in any way in violation of, related to or produced by any applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, or any action, directive, or consequence arising from any such applicable regulatory agency, state or federal rule, regulation, law, and other authority, including grant and other applicable assurances, that in any way affects or is related to the Grantor's operation of the Airport or that in any way affects Grantee's rights arising from or relating to this Solar Skyway Easement outside of the scope of Tenant's Contemplated Use. Furthermore, Grantee will cooperate with and will abide by any such regulatory agency, state or federal rule, regulation, law, and other authority, as well as any action, directive, or consequence therefrom, taken thereunder, or promulgated pursuant thereto. Notwithstanding the foregoing, however, any matter(s) arising out of any of such regulation, rule or law which prevents or

materially and adversely affects Grantee's ability to use or operate any Facility located on the Site may trigger Grantee's rights under Section 2.2 of the Ground Lease.

3. Title to Property. Grantor warrants to Grantee, its successors and assigns, that Grantor has done nothing to impair such title to the Grantor's Property as described herein as Grantor received, has the right to grant and convey the aforesaid solar skyway easement, and will warrant and defend its right to so grant said easement against the lawful claims of all persons.

4. Running with the Land. The burdens and benefits of this easement are transferable and shall run with the land to subsequent grantees of the Grantor and the Grantee. This solar skyway easement shall remain in effect until the Site Lease is terminated.

5. Governing Law. This Agreement is to be governed, construed and enforced in accordance with the laws of the State of North Carolina.

6. Binding Effect. Grantor hereby represents and warrants that it has the right, power and authority to enter into this Agreement and to grant the easements in accordance with and subject to the terms, conditions, and limitations hereof. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their successors and assigns.

7. Severability. If any term, covenant or condition of this Agreement, or any application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, such provision, or the application of such term, covenant or condition, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall be deemed severable, and the remainder thereof shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid, and may be enforced to the fullest extent permitted by law.

8. Amendment to Agreement. This Agreement may be amended only by a writing executed by each of the Parties hereto, or their applicable successors or assigns, and properly recorded in the Beaufort County, North Carolina, Public Registry.

9. Remedies for Breach. The terms and conditions of this Agreement shall be enforceable by actions for specific performance or injunction, in addition to any other remedies available at law.

10. No Waiver. No delay or omission by any Party in exercising any right or power accruing upon any noncompliance or failure of performance by the other Party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof.

11. Counterparts. This Agreement may be executed in counterparts all of which taken together shall be deemed one original when executed by all Parties.

**TO HAVE AND TO HOLD** the easements hereinabove described unto Grantee, its successors and assigns, for the aforesaid uses and purposes.

IN WITNESS WHEREOF, Grantor has duly executed this Agreement 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 Government Budget and Fiscal Control Act.

**CITY OF WASHINGTON**

\_\_\_\_\_ (SEAL)  
Matt Rauschenbach, Chief Financial Officer

CITY OF WASHINGTON (corporate seal)

ATTEST:

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk

GRANTOR:

By: \_\_\_\_\_ (Seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

GRANTEE:

WASHINGTON AIRPORT SOLAR, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY ACKNOWLEDGEMENTS BEGIN ON FOLLOWING PAGE]

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

I, \_\_\_\_\_, 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 \_\_\_\_\_, sealed with its corporate seal and attested by herself as its City Clerk.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(Official Seal)

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, \_\_\_\_\_,  
do hereby certify that \_\_\_\_\_ personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Official Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO SOLAR SKYWALK EASEMENT AGREEMENT**

**Grantor's Property**

**[To Be Supplied]**

**EXHIBIT B TO THE SOLAR SKYWALK EASEMENT AGREEMENT**

Premises

[To Be Supplied]

**EXHIBIT D**

To Ground Lease

Memorandum of Lease

STATE OF NORTH CAROLINA

**MEMORANDUM OF LEASE**

COUNTY OF BEAUFORT

CITY OF WASHINGTON, a body politic and corporate organized and existing under the laws of the State of North Carolina, as LANDLORD, having an address of 102 East Second Street, Washington, North Carolina, 27889, hereby leases to WASHINGTON AIRPORT SOLAR, LLC, a Delaware limited liability company, as TENANT, having an address of c/o DEGS NC Solar, LLC, 550 South Tryon Street – DEC 18A, Charlotte, NC 28202, Attention: Robert Stewart II, for a term beginning on November \_\_, 2013, and continuing for a maximum period of thirty (30) years, including extensions and renewals, the following property:

Those certain premises situated in the City of Washington, Beaufort County, North Carolina, consisting of approximately thirty-four and 3/10ths acres of land, as said premises are more particularly shown and described on Exhibit A and incorporated herein by reference.

The provisions set forth in a written Ground Lease and Easement Agreement between the Parties dated the \_\_\_\_ day of November, 2013, are hereby incorporated in this Memorandum.

“LANDLORD”

**CITY OF WASHINGTON**

\_\_\_\_\_ (SEAL)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY OF WASHINGTON (corporate seal)

ATTEST:

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk

STATE OF NORTH CAROLINA

COUNTY OF BEAUFORT

I, \_\_\_\_\_, 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 \_\_\_\_\_, sealed with its corporate seal and attested by herself as its City Clerk.

Witness my hand and official seal this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(Official Seal)

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

“TENANT”

WASHINGTON AIRPORT SOLAR, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_.

(Official Seal)

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name

My Commission Expires: \_\_\_\_\_

## **EXHIBIT A TO MEMORANDUM OF LEASE**

### **Legal Description of Site**

ALL THAT CERTAIN TRACT OR PARCEL OF LAND lying and being in the City of Washington, Beaufort County and consisting of approximately 34.3 acres of land, and as more particularly shown as crosshatched and described on the survey of Summit Coastal Surveying and Mapping dated November 7, 2013, a copy of which is attached hereto as Exhibit A-1.

TOGETHER WITH the right to use that certain thirty (30) foot wide right of way easement for all purposes reserved in that certain Deed of Correction from the County of Beaufort and the City of Washington to the State of North Carolina dated March 15, 1972 and recorded in Book 683 at Page 414 in the Office of the Register of Deeds for Beaufort County, North Carolina.



# EXHIBIT E TO GROUND LEASE

## Airport Layout Drawing

(Added graphics)

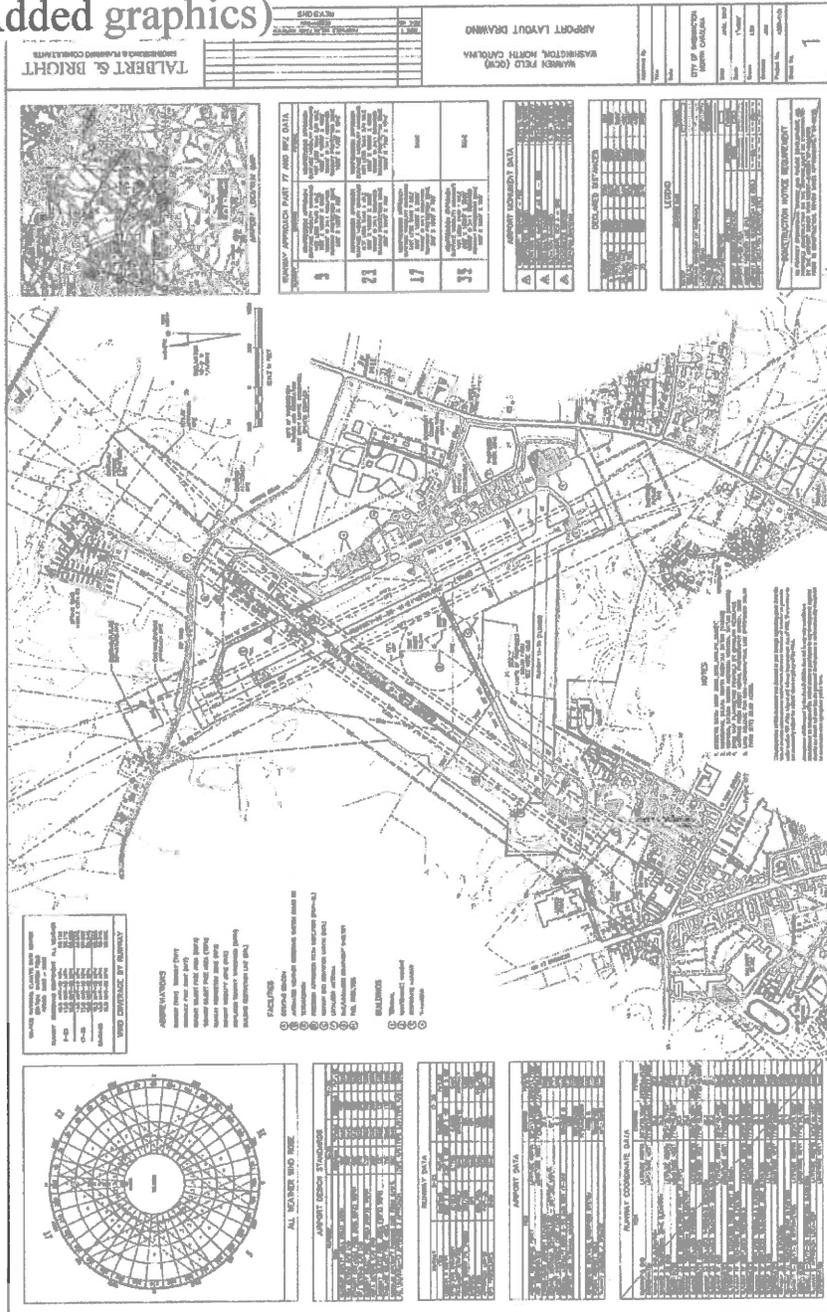




EXHIBIT G TO GROUND LEASE  
Lease Addendum: Lease Rate

The lease rate of \$1,200.00 per acre per year is subject to the following annual calculation.

1. Direct Payment by Tenant. During the Rent Payment Term, Tenant shall pay annual rent ("Rent"), in advance, to Owner commencing on the Rent Commencement Date and on each anniversary of the Rent Commencement Date thereafter (each such payment date, a "Rent Payment Date"). During the Initial Term and commencing on the Rent Commencement Date, the Rent shall be in the amount of THREE HUNDRED AND FIFTY DOLLARS AND NO/100s (\$350.00) per acre of the Site per year, payable annually in advance. Rent shall be pro-rated for any partial year which may occur during the Initial Term. During each of the First Renewal Term, the Second Renewal Term and the Third Renewal Term, Rent shall be in the amount of FOUR HUNDRED AND FIFTY DOLLARS AND NO/100s (\$450.00) per acre of the Site per year, payable annually in advance.

2. Lease Rate Credit for Cost Savings. Owner acknowledges that Tenant's Facility will result in Owner's cost savings of \$90.00 per acre per year. Owner agrees to calculate and credit this cost savings to the lease rate.

3. Lease Rate Credit for Ad Valorem Taxes. Owner shall receive an estimated \$220.00 per acre per year in additional ad valorem taxes as a result of Tenant's Facility and other improvements. Ad valorem taxes shall be paid by Tenant through the assessment and collection procedures established by North Carolina General Statutes as followed by the Beaufort County Tax Department. Ad valorem taxes attributable to new development, including Tenant's Facility and other improvements, at the Airport are and will be accounted for and paid to the City by the County on a yearly basis through an Airport Grant established by an Interlocal Agreement and are and will be deposited directly into the Owner's Airport Fund. The portion of said Airport Grant attributable to ad valorem taxes paid by Tenant shall be a credit to the lease rate.

4. Lease Rate Balance. Any amounts due shall be paid by Owner from Owner's General Fund.



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Keith Hardt, P.E., Electric Director  
**Date:** 6 November 2013  
**Subject:** Authorize Manager to Award Contract  
**Applicant Presentation:** None  
**Staff Presentation:** Keith Hardt, P.E., Electric Director

**RECOMMENDATION**

I motion that the City Council authorize the City Manager to award a contract for powerline construction in an amount not to exceed \$200,000.

**BACKGROUND AND FINDINGS**

The solar developer leasing the Warren Field Airport property has requested that the electric system improvements required to serve the facility be available by 15 December 2013. Due to the time to complete the improvements and the current schedule of the City Council’s December 2013 regular meeting a contract for construction will need to be awarded before 1 December 2013. It is estimated that the improvements required to be performed by a contractor will not exceed \$200,000. The engineering for the improvements is estimated to be completed by 15 November 2013 and the project is scheduled to be released for construction no later than 22 November 2013.

All expenditures made by the City in conjunction with these improvements will be reimbursed by the developer.

This request is to authorize the City Manager to award a contract not to exceed \$200,000 for powerline construction associated with improvements required to serve the solar project at the Warren Field Airport.

**PREVIOUS LEGISLATIVE ACTION**

None

**FISCAL IMPACT**

None

Currently Budgeted (Account \_\_\_\_\_)  Requires Additional Appropriation  No Fiscal Impact

**SUPPORTING DOCUMENTS**

None

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date November 18, 2013 Council 11/13/13 Recommend Denial \_\_\_\_\_ No Recommendation \_\_\_\_\_



## REQUEST FOR CITY COUNCIL ACTION

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**To:** Mayor Jennings & Members of the City Council  
**From:** John Rodman, Community & Cultural Services  
**Date:** November 8, 2013  
**Subject:** Motion fixing date for public hearing on the Beaufort County Comprehensive Transportation Plan  
**Applicant Presentation:** Bryant Buck, Mid-East Commission  
**Staff Presentation:** John Rodman, Community and Cultural Services

### RECOMMENDATION:

I move that the City Council adopt a motion fixing the date for a public hearing on the Beaufort County Comprehensive Transportation Plan for December 9, 2013 at 6:00 p.m.

### BACKGROUND AND FINDINGS:

The Beaufort Comprehensive Transportation Plan has been developed by the Mid-East Rural Planning Organization (MERPO) in conjunction with the North Carolina Department of Transportation. This long range planning tool identifies major transportation improvements that will be needed over the next 25-30 years. This plan has been developed not only with the needs of Beaufort County but with the needs of each municipality within the County. The plan makes recommendations for land use and development patterns throughout Beaufort County.

### PREVIOUS LEGISLATIVE ACTION

N/A

### FISCAL IMPACT

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

### SUPPORTING DOCUMENTS

Draft recommendations for Washington and Beaufort County

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**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** 11/13/13 Date Concur BUT Recommend Denial \_\_\_\_\_ No Recommendation \_\_\_\_\_

## II. Recommendations

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This chapter presents recommendations for each mode of transportation in the 2013 Beaufort County CTP as shown in Figure 1. More detailed information on each recommendation is tabulated in Appendix C.

The N.C. Department of Transportation adopted a "Complete Streets<sup>1</sup>" policy in July 2009. The policy directs the Department to consider and incorporate several modes of transportation when building new projects or making improvements to existing infrastructure. Under this policy, the Department will collaborate with cities, towns and communities during the planning and design phases of projects. Together, they will decide how to provide the transportation options needed to serve the community and complement the context of the area. The benefits of this approach include:

- making it easier for travelers to get where they need to go;
- encouraging the use of alternative forms of transportation;
- building more sustainable communities;
- increasing connectivity between neighborhoods, streets, and transit systems;
- improving safety for pedestrians, cyclists, and motorists.

Complete streets are streets designed to be safe and comfortable for all users, including pedestrians, bicyclists, transit riders, motorists and individuals of all ages and capabilities. These streets generally include sidewalks, appropriate bicycle facilities, transit stops, right-sized street widths, context-based traffic speeds, and are well-integrated with surrounding land uses. The complete street policy and concepts were utilized in the development of the CTP. The CTP proposes projects that include multi-modal project recommendations as documented in the problem statements within this chapter. Refer to Appendix C for recommended cross sections for all project proposals and Appendix D for more detailed information on the typical cross sections.

### ***Implementation***

The CTP is based on the projected growth for the planning area. It is possible that actual growth patterns will differ from those logically anticipated. As a result, it may be necessary to accelerate or delay the implementation of some recommendations found within this plan. Some portions of the plan may require revisions in order to accommodate unexpected changes in development. Therefore, any changes made to one element of the CTP should be consistent with the other elements.

Initiative for implementing the CTP rests predominately with the policy boards and citizens of the county and its municipalities. As transportation needs throughout the state exceed available funding, it is imperative that the local planning area aggressively pursue funding for priority projects. Projects should be prioritized locally and submitted to the Mid-East RPO for regional prioritization and submittal to NCDOT. Refer to

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<sup>1</sup>For more information on Complete Streets, go to: <http://www.nccompletestreets.org/>.

Appendix A for contact information on regional prioritization and funding. Local governments may use the CTP to guide development and protect corridors for the recommended projects. It is critical that NCDOT and local governments coordinate on relevant land development reviews and all transportation projects to ensure proper implementation of the CTP. Local governments and NCDOT share the responsibility for access management and the planning, design and construction of the recommended projects.

Prior to implementing projects from the CTP, additional analysis will be necessary to meet the National Environmental Policy Act (NEPA) or the North Carolina (or State) Environmental Policy Act<sup>2</sup> (SEPA). This CTP may be used to provide information in the NEPA/SEPA process.

### ***Problem Statements***

The following pages contain problem statements for each recommendation, organized by CTP modal element. The information provided in the problem statement is intended to help support decisions made in the NEPA/SEPA process. A full, minimum or reference problem statement is presented for each recommendation, with full problem statements occurring first in each section. Full problem statements are denoted by a gray shaded box containing project information. Minimum problem statements are more concise and less detailed than full problem statements, but include all known or readily available information. Reference problem statements are developed for TIP projects where the purpose and need for the project has already been established.

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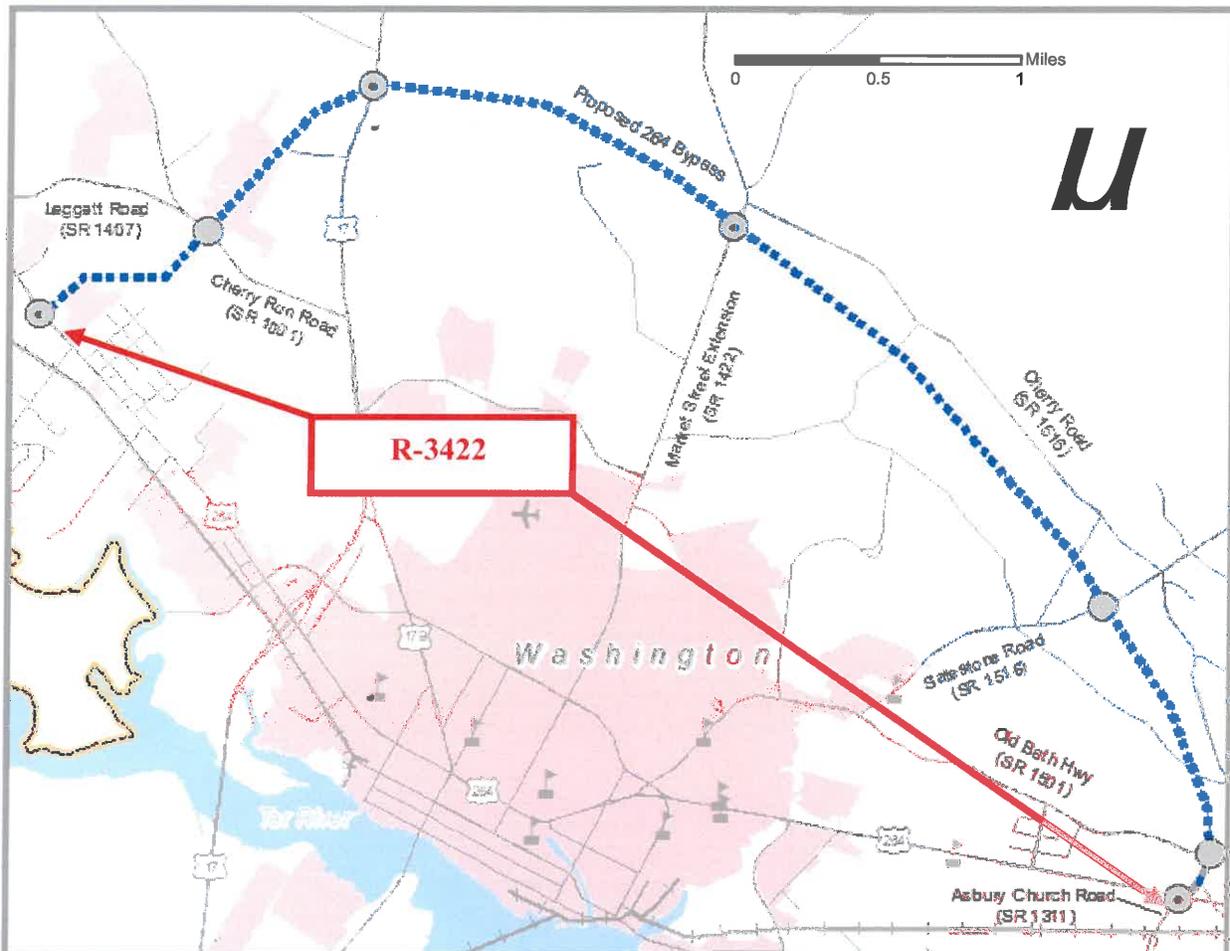
<sup>2</sup>For more information on SEPA, go to: <http://www.doa.nc.gov/clearing/faq.aspx>.

## Problem Statements

### HIGHWAY

US 264 (Washington Northern Bypass) from US 264 east of Leggett Road (SR 1407) to US 264 at Asbury Church Road (SR 1311)

TIP No. R-3422  
Last Updated: 10/17/2013



#### **Identified Problem**

US 264 is projected to be near or over capacity by 2040 from approximately 0.8 miles east of Leggett Road (SR 1407) to Asbury Church Road (SR 1311). Improvements are needed to accommodate projected traffic volumes and to improve mobility through Washington such that a minimum Level of Service (LOS) D can be achieved.

#### **Justification of Need**

US 264 is a major east-west corridor in Beaufort County, connecting to Greenville, Wilson, and Raleigh to the west and to the coastal communities of eastern North Carolina. It is also the primary east-west route through the central business district

(CBD) of Washington. The majority of US 264 in Beaufort County is on the regional tier of the North Carolina Multimodal Investment Network (NCMIN)<sup>3</sup>. The section between US 17 east to Pitt County-is on the statewide tier of NCMIN. Statewide tier facilities serve long-distance trips, connect regional centers, have the highest usage, and mostly serve a mobility need. Regional tier facilities can serve statewide transportation, but they usually connect major population centers and provide a more localized function including land access.

This section of US 264 is currently a 4 to 5 lane undivided major thoroughfare. Traffic is projected to increase in range from 10,500 to 22,200 vehicles per day (vpd) in 2011 to 22,600 to 33,100 in 2040, compared to a LOS D capacity of 22,200 to 35,700 vpd.

### **Community Vision and Problem History**

Washington is the county seat of Beaufort County and is the center of activity for the county. Several major regional roads converge in the city bringing traffic from all directions. This facility is a highly congested business route that provides direct access to local businesses in Washington. Residents who live in and around the vicinity of Washington use this facility to access jobs, local shops, restaurants, the Vidant Beaufort Hospital, and other amenities in this urban area. This deficiency was previously identified in the 2000 Washington Thoroughfare Plan<sup>4</sup>.

### **CTP Project Proposal**

#### **Project Description and Overview**

The proposed project (TIP No. R-3422) is to construct a four lane freeway on new location from existing US 264, 0.8 miles east of Leggett Road (SR 1407) north around Washington to US 264 at Asbury Church Road (SR 1311). The proposed bypass will utilize existing Asbury Church Road (SR 1311) which is recommended to be upgraded to a four lane freeway. Interchanges are recommended at the eastern and western termini, US 17, and Market Street Extension (SR 1422). Grade separations are recommended at Cherry Run Road (SR 1001), Slatestone Road (SR 1516) and Old Bath Highway (SR 1501).

Additionally, during the most recent three year period, three intersections along the US 264 corridor were identified as having 10 or more crashes and/or had a severity index above the state's 4.56 average for the same period. Those intersections included: W 15<sup>th</sup> Street (SR 1306), US 17 Business, and N Market Street (SR 1422). Refer to Appendix F for more detailed information on these locations. The proposed facility will help reduce congestion and improve mobility within the Washington urban area.

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<sup>3</sup>For more information on NCMIN, go to: <http://www.ncdot.gov/performance/reform/NCMINmaps/>.

<sup>4</sup>To view this plan, go to: <http://archive.org/details/cityofwashington2000nort>.

### **Relationship to Land Use Plans**

This area has a moderate to high density of population with land developed for urban purposes. Land use within this area consists of many local businesses, commercial/industrial properties, restaurants, shops, and nearby schools. US 264 provides access from major routes such as US 17 and NC 32. The Beaufort County Joint CAMA Land Use Plan 2006 Update (Approved October 2009) indicates primarily commercial and urban development is expected along this corridor.

### **Linkages to Other Plans and Proposed Project History**

The proposed project (Washington Northern Bypass) directly connects to proposed freeway improvements on the US 17 Bypass, and on US 264 east of Pitt County. Additionally, the portion of the project from US 264 west of Washington to US 17 north of Washington is designated as a freeway on NCDOT's Strategic Highway Corridor (SHC) Vision plan that was adopted by NCDOT on September 2, 2004.

The current project limits for the Washington Northern Bypass, TIP No. R-3422, are from Wharton Station Road (SR 1409) west of Washington to Braddy Road (SR 1600) east of Washington. The CTP recommends revising the project limits as described in the project proposal section. The CTP project proposal was included in the 2000 Washington Thoroughfare Plan.

### **Natural & Human Environmental Context**

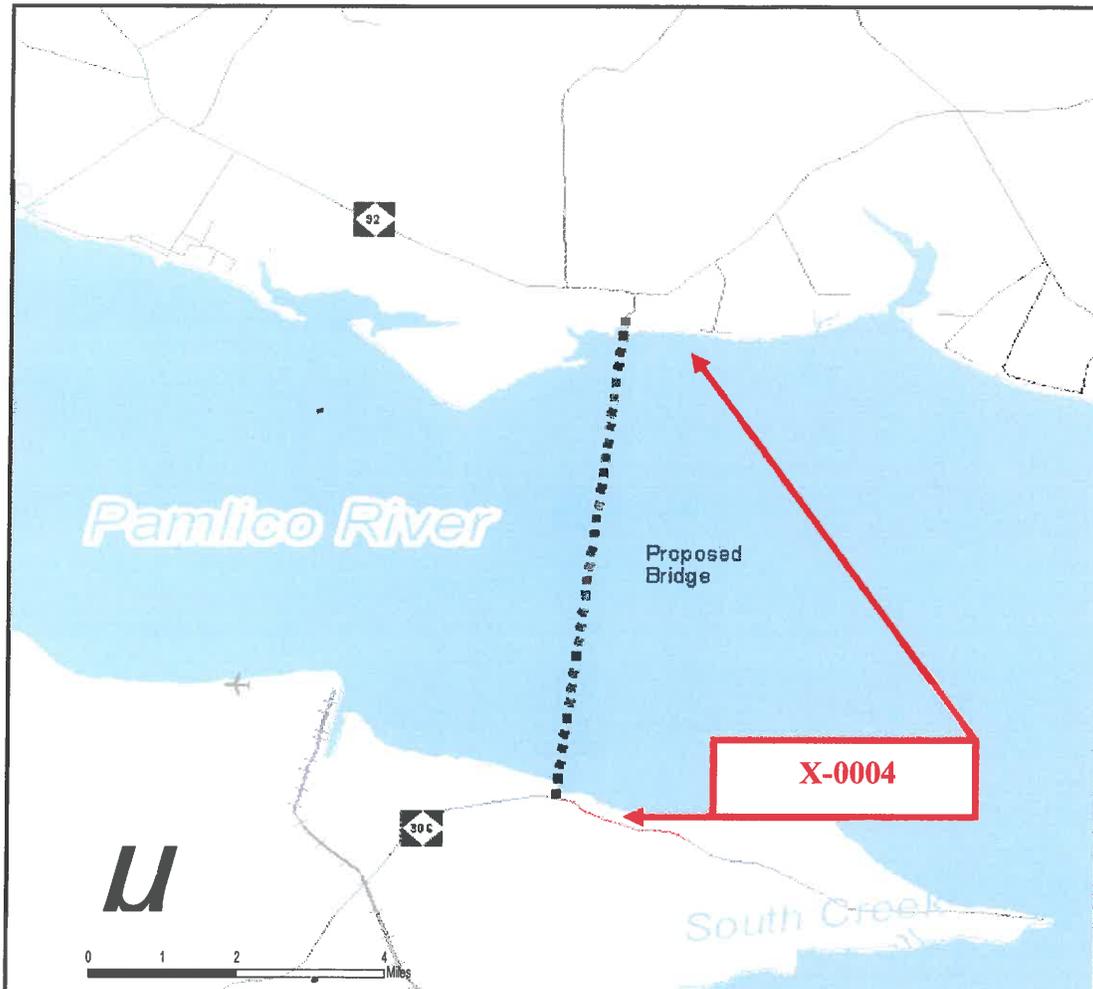
Based on a planning level environmental review using available GIS data, portions of the proposed project are within the Tar-Pamlico River Basin water shed area. The proposed project may also potentially impact wetlands and water and sewer pipes.

### **Multi-modal Considerations**

There are no other modes of transportation associated with this proposed project.

### **Public/ Stakeholder Involvement**

Respondents to the goals and objectives survey identified US 264 through Washington as a heavy traveled business route. From public meetings and other public comment opportunities, the primary public concern on existing US 264 was the high traffic congestion.



### **Identified Problem**

In the eastern part of the county there is currently only one north-south facility linking northern and southern Beaufort County. The Bayview-Aurora ferry connects NC 306 from the south with NC 92 to the north. Improvements are needed to enhance the transportation system linkage and improve connectivity and mobility to move people and goods in this part of the county.

### **Justification of Need**

Beaufort County is basically two land masses divided by the Pamlico River, with bridge crossings on US 17 Bypass and US 17 Business which are located close to one another on the far western end of the county. The eastern portion of Beaufort County, especially in the south side of the county, relies primarily on the ferry system for transportation to Washington and other areas on the north side of the river. The Bayview-Aurora ferry is free year round with a 30 minute ride from the Bayview Ferry Terminal to the Aurora Ferry Terminal. Departures start at 5:30am and end at 12:30am

with 22 crossings per day. A ferry toll is planned for this area possibly beginning sometime in 2014. There were 69,750 vehicles and 94,183 passengers that used the ferry from mid-year 2011 to mid-year 2012. There were 66,125 vehicles and 90,103 passengers that used the ferry from mid-year 2012 to mid-year 2013. The slight decline can be attributed to the anticipation of the ferry toll and people using an alternate route. This route is approximately 3 miles across the Pamlico River. The only alternative route for residents of southeastern Beaufort County to access NC 92 and other northern areas of the county is to travel NC 306 south to NC 33, northwest to US 17, north to US 264 and east to NC 92. The approximate distance of this “alternative” route is 60 miles.

### **Community Vision and Problem History**

Hospital, medical access, employment, shopping, and all other amenities are located in Washington which lies in the northern part of the county. Residents of southeastern Beaufort County use the ferry system as an extension of NC 306. Mobility throughout Beaufort County is restricted due to the geographical area being split by the Pamlico River, and the use of and reliance on the ferry system. Emergency evacuation and other emergency access/response time to the hospital are limited due to the lack of bridge access in the eastern part of the county. Students and faculty use the ferry to access the community college and other schools on the northern side of the county. Bridge access between Aurora and Bayview would benefit military operations and transport, economic development, tourism, employment opportunities, education, and mobility/connectivity within Beaufort County.

This deficiency was not identified in the 2000 Beaufort County Thoroughfare Plan<sup>5</sup>.

### **CTP Project Proposal**

#### **Project Description and Overview**

The proposed project (TIP No. X-0004) is to construct a new two lane bridge with bicycle accommodations across the Pamlico River that would replace the existing Bayview-Aurora Ferry route.

The proposed project would enhance the system linkage by providing a more efficient route and improving connectivity and mobility for commuters and residents from the northern to southern portions of eastern Beaufort County.

#### **Linkages to Other Plans and Proposed Project History**

The proposed project first appeared in the Transportation Improvement Program (TIP) in 1978 as an unfunded project. Since then, it has remained unfunded in subsequent program years and is currently scheduled for reprioritization through NCDOT’s strategic prioritization process. In 1980, a feasibility study was completed which concluded that a new bridge was not economically feasible. In 1988, NCDOT’s Feasibility Studies Unit reanalyzed this study to determine the feasibility of constructing a new bridge. This

<sup>5</sup> To view this plan, go to: <http://archive.org/details/beaufortcountyth2000nort>.

update concluded that the transportation benefits, economic development benefits, and cost benefits were not great enough to clearly show that constructing the bridge would be a good use of limited transportation resources at that time. Since then, no additional studies have been conducted.

The NCDOT Ferry Division is currently in the process of finalizing their long term strategic plan for the ferry system, including this area, and anticipates releasing it within the next 6 months. Their plan relative to the Bayview-Aurora ferry is to continue to monitor the traffic data at the Pamlico River and provide the necessary level of service to keep up with ridership demands into the future. In addition to maintaining ferry services at this location, the Ferry Division has plans to upgrade vessels in the future, as necessary. The proposed project was not included in the 2000 Beaufort County Thoroughfare Plan.

### **Relationship to Land Use Plans**

This area has a low to moderate density of population with land developed for residential purposes and limited commercial use. Land use within this area consists of few local businesses and residential subdivisions. The largest employer in Beaufort County, Potash of Aurora, resides on the south side of the Pamlico River with many employees relying solely on the ferry system for access to and from work. Access to this manufacturing/mining operation is obtained by NC 33, which is currently a two-lane minor thoroughfare with 11 foot lanes. NC 33 experiences both commercial and commuter traffic. Commercial traffic has to journey from the western end of Beaufort County to access the facility and to reach its final delivery destination. Potash of Aurora was recently issued a 30 year mining permit, which will increase the existing and future commuter and commercial traffic growth. The Beaufort County Joint CAMA Land Use Plan 2006 Update (Approved October 2009) indicates primarily residential and low commercial development is expected in the project area.

### **Natural & Human Environmental Context**

Based on a planning level environmental review using available GIS data, the southern end of the proposed project is within the Tar-Pamlico River Basin watershed area. The proposed project crosses the Pamlico River.

### **Multi-modal Considerations**

Bicycle accommodations on both sides of the bridge are recommended along this facility.

### **Public/ Stakeholder Involvement**

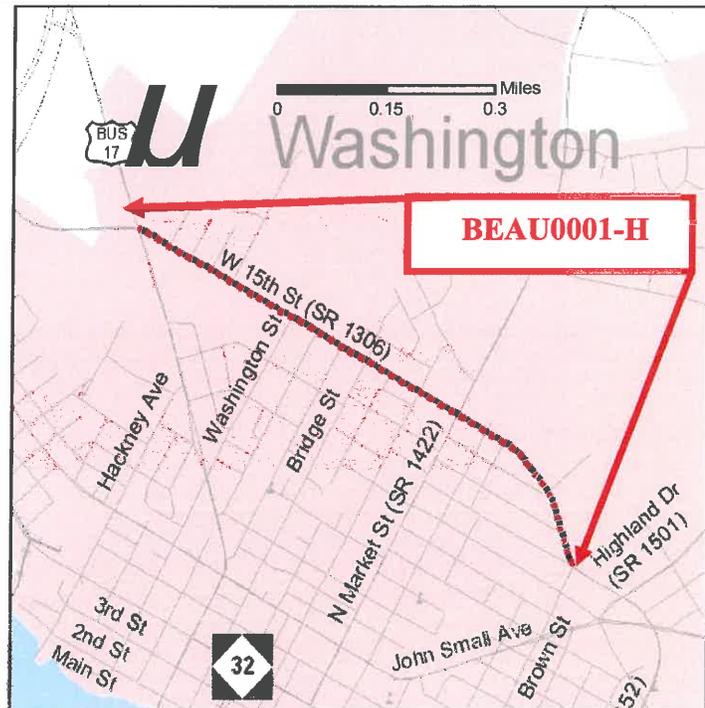
From public meetings and other public comment opportunities, the primary public concern on this part of the county is limited access between the southern or northern part of the county.

**Identified Problem**

15<sup>th</sup> Street (SR 1306) in Washington is currently near or over capacity and is projected to be over capacity by 2040 from US 17 Business to Brown Street. Improvements are needed to accommodate projected traffic volumes such that a minimum Level of Service (LOS) D can be achieved.

**Justification of Need**

15<sup>th</sup> Street (SR 1306) is a major east-west corridor in Washington and serves as an alternate route to US 264 (John Small Avenue). The facility is a vital artery in moving people and goods through downtown Washington by connecting major corridors such as US 17 Business and other state routes.



Currently, 15<sup>th</sup> Street (SR 1306) is a 4 lane major thoroughfare with 12 foot lanes from US 17 Business to Brown Street. Traffic volumes on this section of 15<sup>th</sup> Street are projected to increase in range from 20,400 to 23,200 vehicles per day (vpd) in 2011 to 24,200 to 27,500 vpd in 2040 compared to a LOS D capacity of 22,200 vpd.

**Community Vision and Problem History**

This facility is a highly congested business route that provides direct access to local businesses in Washington. Residents who live in and around Washington use this facility to access jobs, local shops, restaurants, the Vidant Beaufort Hospital, and other amenities in this urban area. Access to the businesses along this route provides an economic impact that enhances the economic vitality to the community in this area.

This problem was identified in the 2000 City of Washington Thoroughfare Plan<sup>6</sup>.

**CTP Project Proposal**

**Project Description and Overview**

The proposed project (Local ID: BEAU0001-H) is to improve 15<sup>th</sup> Street (SR 1306) to a four lane divided boulevard from US 17 Business to Brown Street with sidewalks on

<sup>6</sup> To view this plan, go to: <http://archive.org/details/cityofwashington2000nort>.

both sides. Additionally, during the most recent three year period, seven intersections along this corridor were identified as having 10 or more crashes and/or had a severity index above the state's 4.56 average for the same period. Those intersections included: US 17 Business (Carolina Avenue), 5<sup>th</sup> Street, Minuteman Lane, Washington Street, Pierce Street, N Market Street (SR 1422), and Brown Street. Refer to Appendix F for more detailed information on these locations. The proposed improvements would improve mobility along this section of 15<sup>th</sup> Street (SR 1306) and provide for a LOS D or better within the project area.

### **Linkages to Other Plans and Proposed Project History**

The project proposal for 15<sup>th</sup> Street (SR 1306) directly connects to proposed improvements on US 17 Business, Market Street Extension (SR 1422), and US 264.

The 2000 City of Washington Thoroughfare Plan recommended constructing a new two lane connector from Avon Avenue (SR 1504) to US 264 to accommodate projected traffic volumes and to improve mobility.

### **Relationship to Land Use Plans**

This area has a moderate to high density of population. Land use within this area consists of many local businesses, commercial/industrial properties, restaurants, shops, and nearby schools.

Fifteenth Street provides access from major routes such as US 17 and US 264 to nearby amenities such as Wal-Mart and the Beaufort County Regional Hospital. The Beaufort

County Joint CAMA Land Use Plan 2006 Update (Approved October 2009) indicates primarily commercial and urban development is expected to continue along this corridor.

### **Natural & Human Environmental Context**

Based on a planning level environmental review using available GIS data, the proposed project is within the Tar-Pamlico River Basin water shed area. There are also water and sewer pipes located along this facility.

### **Multi-modal Considerations**

Sidewalks on both sides of the road are recommended along this corridor from US 17 Business to Brown Street.

### **Public/ Stakeholder Involvement**

Respondents to the goals and objectives survey identified 15<sup>th</sup> Street through Washington as a heavy traveled business route. From public meetings and other public comment opportunities, the primary public concern on this section of 15<sup>th</sup> Street was the high traffic congestion.

### **US 264, Local ID: BEAU0003-H**

US 264 from Pitt County to the proposed Washington Northern Bypass (R-3422) does not meet the future mobility needs in eastern North Carolina. This facility is intended to provide mobility in Beaufort County and, ultimately, connectivity between Raleigh and Washington.

This section of US 264 is designated as a freeway on NCDOT's Strategic Highway Corridor (SHC) Vision Plan that was adopted on September 2, 2004. This existing facility is currently a four lane expressway with 12 foot lanes.

This facility provides direct access to several restaurants, retail stores, and local businesses in downtown Washington. The proposed project (Local ID: BEAU0003-H) is to upgrade the existing facility to freeway standards. As development occurs along this corridor every effort should be made to limit access in order to maintain mobility.

Based on a planning level environmental review using available GIS data, the proposed project may potentially impact water shed and farmland areas. It also crosses Maple Branch which is an anadromous fish spawning area located just west of Leggett Road (SR 1407). Neither the 2000 Washington Thoroughfare Plan nor the 2000 Beaufort County Thoroughfare included improvements for this section of US 264.

### **US 264, Local ID: BEAU0004-H**

US 264 from the proposed Washington Northern Bypass, 0.8 miles east of Leggett Road (SR 1407), to NC 92 is expected to be near or over capacity by 2040. Improvements are needed to accommodate projected traffic volumes such that a minimum Level of Service (LOS) D can be achieved.

This facility provides direct access to several restaurants, retail stores, the Beaufort County Community College, and local businesses in downtown Washington. The existing facility is currently a 4 to 5 lane undivided major thoroughfare with 12 foot lanes from 0.8 miles east of Leggett Road (SR 1407) to NC 32, and a 2 lane major thoroughfare with 12 foot lanes from NC 32 to NC 92. Traffic along this section of US 264 is projected to increase in range from 10,500 to 22,000 vehicles per day (vpd) in 2011 to 19,300 to 33,100 vpd in 2040, compared to a LOS D capacity of 16,400 to 35,700 vpd. Even with the implementation of the proposed Washington Northern Bypass (R-3422), traffic volumes in 2040 are projected to range from 14,800 to 27,000 vpd. Additionally, during the most recent three year period, four intersections along this section of US 264 were identified as having 10 or more crashes and/or had a severity index above the state's 4.56 average for the same period. Those intersections included: West 15<sup>th</sup> Street (SR 1306), US 17 Business, North Market Street (SR 1422) and Asbury Church Road (SR 1311). Refer to Appendix F for more detailed information on these locations.

The proposed project (Local ID: BEAU0004-H) is to upgrade the existing facility to a four lane divided boulevard from 0.8 miles east of Leggett Road (SR 1407) to NC 92. Bicycle accommodations are recommended from W 15<sup>th</sup> Street (SR 1306) to US 17

Business. Sidewalks are recommended from US 17 Bypass to US 17 Business and from Harvey Street to Avon Avenue.

Based on a planning level environmental review using available GIS data, the proposed project is within the Tar-Pamlico River Basin water shed area which may potentially be impacted as well as farmland areas. There are also water and sewer pipes as well as sewer pumps and water wells located along this facility.

Neither the 2000 Washington Thoroughfare Plan or the 2000 Beaufort County Thoroughfare included improvements on US 264 from 0.8 miles east of Leggett Road (SR 1407) to NC 32. The portion of this project from NC 32 to NC 92 was previously included in the 2000 Beaufort County Thoroughfare Plan as part of TIP project R-2601. TIP project R-2601 included widening US 264 to multi-lanes from NC 32 to NC 99 in Belhaven. However, during the development of this CTP, no transportation deficiency was identified on the section between NC 92 and NC 99 in Belhaven.

### **US 17, TIP No. R-2510**

Portions of US 17, from south of Possum Track Road (SR 1127) to north of NC 171, are projected to be near or over capacity by 2040. Additionally, US 17 within Beaufort County is designated as a freeway on NCDOT's SHC Vision Plan. Improvements are needed to accommodate projected traffic volumes and maintain mobility such that a minimum Level of Service (LOS) D can be achieved.

The 2012-2018 TIP includes project R-2510 that is intended to provide more efficient mobility and connectivity to the northern section of the county and will address the anticipated capacity deficiency. TIP project R-2510 includes constructing a four lane freeway, part of new location, from south of Possum Track Road (SR 1127) to north of NC 171. This project is currently in the construction phase. The majority of this project has been completed. The final section of this project, from north of NC 171 to south of Cherry Run Road (SR 1001), is anticipated to be completed in December of 2013. This final section of the project is being improved to a four lane expressway. Further improvements will be needed to meet the NCDOT SHC Vision Plan of freeway standards (see BEAU0005-H) for this section of US 17. For additional information about TIP project R-2510, please contact the NCDOT Resident Engineer's Office in Greenville at (252) 830-3495 or visit the project website<sup>7</sup>.

### **US 17, TIP No. R-2511**

US 17 from VOA Road (SR 1410) to north of NC 171 is projected to be near capacity by 2040. Additionally, US 17 within Beaufort County is designated as a freeway on NCDOT's SHC Vision Plan. Improvements are needed to accommodate projected traffic volumes and maintain mobility such that a minimum Level of Service (LOS) D can be achieved.

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<sup>7</sup> For more information on TIP project R-2510, go to: <http://www.ncdot.gov/projects/us17bypass/>.

The 2012-2018 TIP includes project R-2511 will address the anticipated capacity deficiency and will provide more efficient mobility to the northern section of the county. TIP project R-2511 includes widening US 17 to a four lane expressway from north of NC 171 to the existing four lane section south of Williamston in Martin County. This project is currently in the project development phase. For additional information about this project, including the Purpose and Need, contact NCDOT's Project Development and Environmental Analysis Branch. Further improvements will be needed along this section of US 17 to meet the NCDOT SHC Vision Plan of freeway standards (see BEAU0005-H) for this corridor.

### **US 17, BEAU0005-H**

US 17 from south of Cherry Run Road (SR 1001) to Martin County does not meet the future mobility needs in Beaufort County and eastern North Carolina. This facility is intended to serve mobility in eastern North Carolina, and ultimately, connectivity between Norfolk, Virginia and Myrtle Beach, South Carolina.

The 2012-2018 TIP includes projects R-2510 and R-2511 that will upgrade this section of US 17 to expressway standards. The proposed project (Local ID: BEAU0005-H) is to upgrade US 17 to freeway standards from south of Cherry Run Road (SR 1001) to Martin County. An interchange is recommended at NC 171 and a grade separation is recommended at Bear Grass Road (SR 1420). In conjunction with the proposed interchange, the realignment/reconfiguration of the Wharton Station Road (SR 1409) and Mill Road (SR 1511) intersection should be evaluated to maintain access to this area.

Based on a planning level environmental review using available GIS data, the proposed project may potentially impact water shed and farmland areas. This proposed project crosses over Latham Creek/ Old Ford Swamp.

### **US 17, TIP No. R-2513**

US 17 from south of Possum Track Road (SR 1127) to Craven County does not meet the future mobility needs in Beaufort County and eastern North Carolina. This facility is intended to serve mobility in eastern North Carolina, and ultimately, connectivity between Norfolk, Virginia and Myrtle Beach, South Carolina.

US 17 is designated as a freeway on NCDOT's Strategic Highway Corridor (SHC) Vision plan that was adopted on September 2, 2004. The existing facility is currently a two lane major thoroughfare with 12 foot lanes. The proposed project (TIP No. R-2513) is to widen the existing facility to a four lane freeway from south of Possum Track Road (SR 1127) in Beaufort County to Spruill Town Road (SR 1438) in Craven County. Within Beaufort County, a grade separation is recommended at Barr Road (SR 1152) and an interchange is recommended at NC 102. As development occurs along this corridor every effort should be made to limit access in order to maintain mobility.

Based on a planning level environmental review using available GIS data, the proposed project is within the Neuse River Basin water shed area. The proposed project may also potentially impact wetlands and farmland areas.

The proposed project was included in the 2000 Beaufort County Thoroughfare Plan and the 2000 Washington Thoroughfare Plan. This project is not currently funded in the State Transportation Improvement Program (TIP).

### **US 17 Business, Local ID: BEAU0002-H**

US 17 Business, between Main Street and US 17, is projected to be near capacity by 2040. Improvements are needed to accommodate projected traffic volumes such that a minimum Level of Service (LOS) D can be achieved.

This section of US 17 Business is currently a five lane major thoroughfare with 12 foot lanes. Traffic volumes on this section of US 17 Business are projected to increase in range from 9,900 to 13,000 vehicles per day (vpd) in 2011 to 22,600 to 27,900 vpd in 2040, compared to a LOS D capacity of 24,300 to 34,500 vpd. Additionally, during the most recent three year period, three intersections along this section of US 17 Business were identified as having 10 or more crashes and/or had a severity index above the state's 4.56 average for the same period. Those intersections included: US 264 (John Small Avenue), the entrance to Wal-Mart, and 15<sup>th</sup> Street. Refer to Appendix F for more detailed information on these locations.

The proposed project (Local ID: BEAU0002-H) is to convert the existing facility to a four lane boulevard with curb and gutter. Bicycle accommodations are recommended from Main Street to US 264. Sidewalks from 4<sup>th</sup> Street to US 264 needs improvements on the west side and recommended from 11<sup>th</sup> Street to W 15<sup>th</sup> Street (SR 1306).

Based on a planning level environmental review using available GIS data, portions of the proposed project are within the Tar-Pamlico River Basin water shed area. There are also water and sewer lines along the proposed project.

The proposed project was not included in the 2000 Washington Thoroughfare Plan.

### **12<sup>th</sup> Street, Local ID: BEAU0021-H**

12<sup>th</sup> Street between Brown Street and Highland Drive (SR 1501) is projected to be near capacity by 2040. Improvements are needed to accommodate projected traffic volumes such that a minimum Level of Service (LOS) D can be achieved.

12<sup>th</sup> Street from Brown Street to US 264 (John Small Avenue) is currently a five lane major thoroughfare with 12 foot lanes with a center turn lane. This facility provides direct access to Vidant Beaufort Hospital and numerous local businesses in downtown Washington. Traffic volumes on this section of 12<sup>th</sup> Street are projected to increase from 14,000 vehicles per day (vpd) in 2011 to 17,400 vpd in 2040, compared to a LOS D capacity of 23,500.

The proposed project (Local ID: BEAU0021-H) is to reconfigure the existing roadway to a four lane boulevard. Sidewalks are recommended from Brown Street to US 264. This project recommendation will directly connect to the boulevard recommendation on

15<sup>th</sup> Street (BEAU0001-H), thereby providing a continuous boulevard facility between US 17 Business and US 264.

Based on a planning level environmental review using available GIS data, the proposed project is within the Tar-Pamlico River Basin water shed area. There are also water and sewer lines along the proposed project. The Vidant Beaufort Hospital is located in the northeast quadrant of the Brown Street and 12<sup>th</sup> Street intersection.

### **Minor Widening Improvements**

The following routes do not have capacity issues, but are recommended to be upgraded to two 12-foot lanes with paved shoulders to improve narrow lane widths and/or to accommodate bicycles.

- **NC 32, BEAU0006-H:** Widen from 10 to 12 foot lanes from Washington County to Terra Ceia Road (SR 1612)
- **NC 33, BEAU0007-H:** Widen from 11 to 12 foot lanes from NC 306 in Aurora to Gray Road (SR 1136) in Chocowinity and from Amilite Way in Chocowinity to Pitt County
- **NC 92/NC 99, BEAU0008-H:** Widen from 10 to 12 foot lanes from S King Street (SR 1741) in Bath to Pamlico Beach Road (SR 1725) and from Seed Tick Neck Road (SR 1714) to US 264 in Belhaven. Also, widen NC 99 from 10 to 12 foot lanes from US 264 (Main Street) to Washington County
- **NC 99, BEAU0024-H:** Widen from 10 to 12 foot lanes from US 264 (Main Street) in Pantego to Washington County
- **NC 306, BEAU0009-H:** Widen from 9 to 12 foot lanes from Tunstall Swamp Road (SR 1003) to Pamlico County
- **Asbury Church Road (SR 1311), BEAU0010-H:** Widen from 11 to 12 foot lanes from US 264 to NC 32
- **Brick Kiln Road (SR 1303), BEAU0011-H:** Widen from 10 to 12 foot lanes from US 264 to NC 32
- **Burbage Road (SR 1732), BEAU0022-H:** Widen from 10 to 12 foot lanes from Peoples Road (SR 1738) to NC 99
- **Cherry Road (SR 1516), BEAU0012-H:** Add paved shoulders to the existing 12 foot lanes from Market Street Extension (SR 1422) to Old Bath Highway (SR 1501)
- **Cherry Run Road (SR 1001), BEAU0013-H:** Add paved shoulders to the existing 12 foot lanes from VOA Road (SR 1410) to US 17
- **Highland Drive (SR 1501), BEAU0014-H:** Widen 11 to 12 foot lanes from East 12<sup>th</sup> Street to Slatestone Road (SR 1507)
- **Market Street Extension (SR 1422), BEAU0015-H:** Add paved shoulders to the existing 12 foot lanes from West 15<sup>th</sup> Street (SR 1306) to NC 171
- **Mill Road (SR 1511), BEAU0016-H:** Widen from 10 to 12 foot lanes from US 17 to Market Street Extension (SR 1422)

- **Old Blounts Creek Road (SR 1123), BEAU0017-H:** Widen from 10 to 12 foot lanes from NC 33 to Hill Road (SR 1125)
- **Slatestone Road (SR 1516), BEAU0018-H:** Widen from 11 to 12 foot lanes from Highland Drive (SR 1501) to Corsica Road (SR 1518)
- **Tunstall Swamp Road (SR 1003), BEAU0019-H:** Widen from 9 to 12 foot lanes from NC 33 to Craven County
- **Wharton Station Road (SR 1409), BEAU0020-H:** Widen from 9 to 12 foot lanes from US 264 to US 17
- **Yeatsville Road (SR 1718), BEAU0023-H:** Widen from 10 to 12 foot lanes from US 264 to Peoples Road (SR 1732)

## **PUBLIC TRANSPORTATION & RAIL**

A public transportation and rail assessment was completed during the development of the CTP. There are no recommended improvements associated with these transportation modes.

## **BICYCLE**

The 2011 Washington Bicycle Plan (Adopted June 2013) identifies existing and recommended greenways and bicycle facilities throughout the city. These facilities were incorporated into the CTP. Additionally, during the development of the CTP, the following facilities were identified as recommended bicycle routes and will need improvements.

In accordance with American Association of State Highway and Transportation Officials (AASHTO), roadways identified as bicycle routes should incorporate the following standards as roadway improvements are made and funding is available:

- Curb & gutter sections require at minimum 4 foot bike lanes or 14 foot wide shoulder lanes.
- Shoulder sections require a minimum of 4 foot paved shoulder.
- All bridges along the roadways where bike facilities are recommended shall be equipped with 54 inch railings.

*On-road bicycle facilities are proposed on the following roads:*

- **US 264, BEAU0001-B:** from Old County Road (SR 1706) to Tinker Lane in Belhaven
- **US 264, BEAU0004-H:** from 15th Street (SR 1306) to US 17 Business in Washington
- **US 17 Business, BEAU0002-H:** from Main Street to US 264 (5<sup>th</sup> Street) in Washington

- **US 17 Business, BEAU0002-B:** from Sunset Drive to Bragaw Lane in Chocowinity
- **NC 33, BEAU0003-B:** Spring Creek Road (SR 1912) to 7<sup>th</sup> Street in Aurora
- **NC 32, BEAU0004-B:** from Hudnell Street (SR 1352) to Spruce Street in Washington Park
- **Bonner Street, BEAU0005-B:** from East Main Street to Water Street in Washington
- **Clarks Neck Road (SR 1403), BEAU0006-B:** from US 264 in Washington to Pitt County
- **East Main Street, BEAU0007-B:** from NC 32 to Bonner Street in Washington
- **East Main Street, BEAU0008-B:** from Stewart Parkway to US 17 Business in Washington
- **Stewart Parkway, BEAU0009-B:** from Water Street to E Main Street in Washington
- **2<sup>nd</sup> Street, BEAU0010-B:** from US 17 Business to Hudnell Street (SR 1352) in Washington

## **PEDESTRIAN**

The 2006 City of Washington Master Pedestrian Plan<sup>8</sup> identifies existing and recommended sidewalks for pedestrians throughout the city. These are shown on the Pedestrian Map as existing sidewalks, sidewalks that need improvement or proposed sidewalk. Additionally, during the development of the CTP, the following recommendations were developed.

### Sidewalks- Recommended (Sidewalks needed on both sides of a facility)

- **1<sup>st</sup> Street, BEAU0001-P:** from Main Street to Chapin Street in Aurora
- **2<sup>nd</sup> Street, BEAU0002-P:** from Middle Street to Main Street in Aurora
- **5<sup>th</sup> Street, BEAU0003-P:** from Middle Street to Chapin Street in Aurora
- **Middle Street, BEAU0004-P:** from 8th Street to 2nd Street in Aurora
- **Main Street, BEAU0005-P:** from 3rd Street to the Pamlico River in Aurora
- **S King Street (SR 1741), BEAU0006-P:** from NC 92 to Craven Street (SR 1756) in Bath
- **US 264 Business, BEAU0007-P:** from E Pantego Street to Tinker Lane in Belhaven
- **Old County Road (SR 1706), BEAU0008-P:** from US 264 Business (Main St) to US 264 Business/ E Pantego Street in Belhaven
- **US 17 Business, BEAU0009-P:** from NC 33 to Patrick Lane (SR 1143) in Chocowinity

<sup>8</sup> To view this plan, go to: <http://www.washington-nc.com/>.

Additionally, the following multi-use paths were recommended during the development of the CTP:

- Jake's Creek Greenway from East Main Street to Market Street with a link to the skateboard park near US 264 (John Small Avenue) in Washington, **BEAU0001-M**
- Runyon Creek Greenway from Park Drive to Keysville Road (SR 1506) in Washington, **BEAU0002-M**
- Tar River Nature Path from US 17 Business making loop back to US 17 Business in Washington, **BEAU0003-M**
- Washington Park Walkway from Edge Water Ave. to Walnut Street, **BEAU0004M**



# REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Matt Rauschenbach, Administrative Services Director/C.F.O.  
**Date:** November 18, 2013  
**Subject:** EMS Management & Consultants Agreement  
**Applicant Presentation:** N/A  
**Staff Presentation:** Matt Rauschenbach

**RECOMMENDATION:**

I move that City Council authorize the City Manager to execute an agreement with EMS Management & Consultants.

**BACKGROUND AND FINDINGS:**

EMS Management & Consultants has been billing and collecting the City's EMS since 2010 and has increased our collections from \$342,949 to \$613,013 and our State Medicaid reimbursement from \$16,686 to \$230,461.

**PREVIOUS LEGISLATIVE ACTION**

**FISCAL IMPACT**

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

**SUPPORTING DOCUMENTS**

Agreement

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** for Concur \_\_\_\_\_ Recommend Denial \_\_\_\_\_ No Recommendation  
11/18/13 Date

## BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT (hereinafter "Agreement"), is entered into this 1st day of September, 2013 between EMS MANAGEMENT & CONSULTANTS, INC. (hereinafter "EMS|MC") and the City of Washington (hereinafter "Client").

### WITNESSETH:

WHEREAS, EMS|MC is an ambulance billing service company with experience in providing medical billing and collection services to medical transport providers, including fire and rescue and emergency medical service (EMS) providers; and

WHEREAS, Client is normally engaged in the business of providing emergency medical services (hereinafter "Services"), and billable medical transportation services (hereinafter "transportation"); and

WHEREAS, Client wishes to retain EMS|MC to provide medical billing and collection services and EMS|MC wishes to provide those services to Client, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements described below and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- 1. ENGAGEMENT.** During the term of this Agreement, EMS|MC shall provide routine billing, bill processing and fee collection services reasonably required and customary for service providers of similar size and situation to Client. The services to be provided by EMS|MC shall include: (1) preparing and submitting initial and secondary claims and bills for Client to insurers and others responsible for payment; (2) performing reasonable and diligent routine collection efforts to secure payments from primary and secondary payers and patients or other entities, (as EMS|MC deems appropriate); (3) issuing patient statements for all unpaid balances; and (4) referring accounts which have not been collected during EMS|MC normal billing cycle to an outside collection agency if so directed by Client.

Accounts with outstanding balances after the insurance and/or third party payer has determined benefits due will be billed by EMS|MC to the patient. EMS|MC will send follow-up bills, except as to those accounts on which an insurance carrier or third-party payer has accepted responsibility to pay. Once Client has submitted all necessary information, EMS|MC will bill all uninsured patients directly.

EMS|MC will provide Client with a monthly financial report, to the Client within 10 business days of the last business day of the month. The Report shall include both monthly and year-to-date billing and collection summary, check register report and deposit tickets. EMS|MC shall provide appropriate storage and data back-up for all records pertaining to Client's bills and collections hereunder, accessible to Client during reasonable business hours.

EMS|MC shall maintain records of all services performed and records of all financial transactions. EMS|MC shall retain all financial records not tendered or returned to Client on any termination hereof for at least seven (7) years, and retain all Medicare and Medicaid records for seven (7) years. EMS|MC will comply with all applicable State and Federal regulations applicable to third party billers pertaining to the maintenance of patient files, financial records and related reports and documents, including but not limited to confidentiality of records. This undertaking will expressly survive the termination of this Agreement. If so requested by Client, EMS|MC shall provide Client with written guidelines or a policy and procedural manual specific to Client reflecting the current regulatory and procedural requirements applicable to Client as a service provider in the State of North Carolina providing services to Medicare, Medicaid and other government funded program patients. EMS|MC will work with the Client's designated management consultants to assist and support said consultants ("Consulting Services"). Under no circumstances will EMS|MC offer advice on any tax related or legal matters.

EMS|MC shall notify Client of all patient complaints about clinical services within five (5) business days of receipt and notify Client of all patient complaints about billing within ten (10) days of receipt. Client shall promptly advise EMS|MC of notices of audit received by the Client. EMS|MC shall directly advise Client of any notices of audit, requests for

medical records or other contacts or inquiries out of the normal course of business from representatives of Medicare, Medicaid or private payers, with which Client contracts ("Payer Inquiries"), and advise Client of any significant pattern of payer denials or downcodings for services billed by EMS|MC on Client's behalf ("Denial Patterns"). The Client will be notified of Payer Inquiries within ten (10) business days of EMS|MC's receipt of same.

EMS|MC is appointed as the agent of Client under this Agreement solely for the express purposes of this Agreement relating to billing and receiving payments and mail, receiving and storing documents, and communicating with hospitals and other entities to facilitate its duties. EMS|MC will have no authority to pledge credit, contract, or otherwise act on behalf of Client except as expressly set forth herein.

As to all payments received from Medicare, Medicaid and other government funded programs, the parties specifically acknowledge that EMS|MC will only prepare claims for Client and will not negotiate checks payable or divert electronic fund transfers to Client from Medicare, Medicaid or any other government funded program. All Medicare, Medicaid and any other government funded program payments, including all electronic fund transfers, will be deposited directly into a bank account designated by the client to receive such payments and as to such account only Client, through its officers and directors, shall have access.

The services provided by EMS|MC to Client under this Agreement are conditioned on the Client's fulfillment of the responsibilities set forth in Sections 2 and 3 of this Agreement.

EMS|MC shall have no responsibility to provide any of the following services:

- (a) Determining the accuracy or truthfulness of documentation and information provided by Client;
- (b) Providing services outside the EMS-MC billing system;

- (c) Submitting any claim that EMS|MC believes to be inaccurate or fraudulent;
- (d) Providing any service not expressly required of EMS|MC by this Agreement.

## **2. COMPENSATION OF EMS|MC.**

- (a) Client shall pay a fee for the services of EMS|MC hereunder, on a monthly basis, in an amount equal to 7.4% percent of "Net Collections" as defined below (the "Compensation"). Net Collections shall mean all cash and check amounts including electronic fund transfers (EFT's) received by EMS|MC from payers, patients, attorney's offices, court settlements, collection agencies, government institutions, group health insurance plans, private payments, credit cards, healthcare facilities or any person or entity submitting funds on a patient's account, OR any amounts paid directly to the Client with or without the knowledge of EMS|MC that are paid, tendered, received or collected each month for Client's transports, less refunds processed or any other necessary adjustments to those amounts. Net Collections is not defined to mean any single non-insurance payments or time of service payments made directly to the Client.

EMS|MC shall submit an invoice to Client by the 10<sup>th</sup> day of each month for the Compensation due to EMS|MC for the previous calendar month. The Compensation amount reflected on the invoice shall be paid in full by the 20<sup>th</sup> day of the month in which the invoice is first presented to Client. Such amount shall be paid without offset unless the calculation of the amount is disputed, in which case Client shall pay the undisputed amount and shall provide EMS|MC with detailed written notice of the basis for the disputed portion no later than the time payment is normally due. All invoices are to be paid directly from Client's banking institution to EMS|MC via paper check, direct deposit or ACH draft initiated by EMSMC into EMS|MC's bank account.

EMS|MC will immediately cease to process claims for Client should the outstanding balance owed to EMS|MC become in arrears for a reason that is not justified. This determination will be at the sole and absolute discretion of EMS|MC. Claims processing will not resume until all outstanding balances are paid in full or arrangements approved by EMS|MC have been made to wholly resolve any outstanding balances.

**FEES and CHARGES** - A one-time late fee of 5% shall be added to any invoices that remain unpaid by the 25th day of the calendar month in which such invoice is first presented to Client. Interest shall begin to accrue on all unpaid balances starting thirty (30) days after presentment of said invoice for any unpaid balances at the rate of 1½% per month. Client shall be responsible for all costs of collection incurred by EMS|MC or others in attempting to collect any amounts due from Client under this Agreement, including, but not limited to, reasonable attorney fees.

## **2.1 Software.**

### **(a.)emsCharts:**

During the term of this Agreement, EMS|MC will pay the full cost of emsCharts software, based on Client's contract terms with emsCharts in effect as of the date of this Agreement. Future increases in the monthly base package software cost will be borne by Client unless EMS|MC specifically agrees to pay for such increase. EMS|MC shall stop paying any software costs upon the expiration or termination of this Agreement.

Modules Included:

emsCharts Base Software  
emsCharts SyncPad

## **3. RESPONSIBILITIES OF CLIENT.**

The following responsibilities of Client are a condition of EMS|MC's services under this Agreement, and EMS|MC shall have no obligation to provide services to the extent that Client has not fulfilled these responsibilities:

- (a) Client will pay all amounts owed to EMS|MC under this Agreement.
- (b) Client will provide EMS|MC with complete and accurate demographic and charge information necessary for the processing of professional and/or technical component billing to third parties and/or patients, including the following: patient identification (name, address, phone number, birth date, gender); guarantor identification and address; insurance information; report of services; special claim forms; pre-authorization numbers; and such additional information as is requested by EMS|MC.
- (c) In addition, Client shall provide complete and accurate medical record documentation necessary to ensure proper billing and secure claim payment; secure authorizations and signatures, including consent to treat, assignment of benefits and release of information, and physician certification statements (PCS) forms for all non-emergency transports. Client will report to EMS|MC within ten (10) business days payments received directly by Client, and promptly notify EMS|MC of any cases requiring special handling or billing. Client must provide Patient Care Reports (PCRs) in a timely manner in order to achieve higher performance. Further, Client will: implement any reasonable changes that EMS|MC determines to be necessary for the accurate completion of billing forms and related documentation; execute all forms required by Medicare, Medicaid, CHAMPUS, and any other payer or insurance carrier to allow EMS|MC to carry out its billing and other duties under this Agreement; and maintain Client's own files with all original or source documents, as required by law. Client acknowledges that EMS|MC is not the agent of Client for storage of source documentation. Client will provide EMS|MC with a copy of any existing billing policy manuals or guidelines, Medicare or Medicaid reports, or any other record or document related to services or billing of client accounts.
- (d) In addition, Client is to provide EMS|MC with complete and accurate medical records for each incident or patient service rendered for reimbursement [i.e. the Ambulance Call Report (ACR)]

or Patient Care Report (PCR)]. The PCR record must thoroughly detail the patient's full medical condition at the time of service and include a chronological narrative of all services and treatment rendered. The Client attests that the PCR and any and all associated medical records, forms and certification statements provided to EMS|MC are true and accurate and contain only factual information observed and documented by the attending field technician during the course of the treatment and transport.

- (e) Client will obtain any and all additional patient documentation required by Centers for Medicare and Medicaid Services ("CMS") or any other governmental or commercial payer for reimbursement consideration, including but not limited to a Physician Certification Statements (PCS) or other similar medical necessity forms or prior authorization statements as deemed necessary by the payer.
- (f) Client shall ensure that any refunds posted by EMS|MC are actually issued and paid to the patient, insurer, or other payer as appropriate.
- (g) Client shall allow EMS|MC to audit Client's records and processes at least annually, and on a more frequent basis if reasonably necessary, upon ten (10) days advance notice to Client, during regular business hours, to attempt to ensure that Client is in compliance with this Agreement and that all fees due to EMS|MC have been paid.
- (h) Client shall provide EMS|MC with access to its facilities and personnel for the purpose of providing on-site and/or online training to such personnel. Client shall cooperate with EMS|MC and facilitate any training that EMS|MC wishes to provide.
- (i) Client shall comply with all applicable federal, state, and local laws, rules, regulations, and other legal requirements that in any way affect this Agreement or the duties and responsibilities of the parties hereunder.

#### 4. TERM OF AGREEMENT.

(a) This Agreement shall be effective upon execution and shall thereafter continue through August 31, 2016. This Agreement shall be binding upon the parties hereto and their respective successors, assigns, and transferees. The Agreement shall automatically renew on the same terms and conditions as stated herein, for successive one (1) year terms, unless either party gives written notice of intent not to renew at least 60 days before expiration of any term. Notwithstanding anything herein to the contrary, this Agreement may be terminated under the provisions, provided below, either for cause or by notice after the initial term, as further defined herein.

(i) **Termination for Cause.** Notwithstanding paragraph 4(a), this Agreement may be terminated by either party at any time for cause based on a material breach of a term or condition hereof by the other party which is not remedied by the other party within ten (10) days of written notice describing the breach in reasonable detail. "Cause" shall include the following:

- (1) Failure of Client to make timely payments due under this Agreement;
- (2) Any willful or reckless damage to property, business, reputation, or good will of the other party hereto;
- (3) Willful or reckless injury to any customer, independent contractor, employee or agent of the other party hereto;
- (4) Client's engagement of another billing services provider to provide services during the term of this Agreement;
- (5) Harassment of any contractor or commitment of any act which otherwise creates an offensive work environment for contractors;

- (6) Inattention to or neglect of the duties to be performed by each party, which inattention or neglect is not the result of illness or accident;
- (7) Failure to practice in accordance with the appropriate policies, standards and procedures established by the respective parties;
- (8) Commitment of any unethical or immoral act which harms the other party or could have the effect of harming the other party; or
- (9) Any breach of any material provision of this Agreement.

**5. RESPONSIBILITIES UPON TERMINATION.**

- (a) Provided Client has paid all amounts due hereunder, upon any termination of this Agreement, and during the period of any notice of termination, EMS|MC will make available to Client or its authorized representatives paper and electronic tape copies of information regarding open accounts, including accounts referred to an outside collection agency, and non-proprietary information concerning payers and claims processing, (all without additional charge except for the cost of blank electronic tape and reasonable copy charges), and will otherwise furnish reasonable cooperation and assistance in any transition to Client, or its successor billing agent.
- (b) Following termination of this Agreement, for a period of ninety (90) days (the "Wind Down"), EMS|MC will continue its billing and collection efforts as to those accounts with dates of services prior to termination, subject to the terms and conditions of this Agreement, for the applicable fee set forth in paragraph 2(a). Client will continue to provide EMS|MC with copies of checks and payments on those accounts which were filed by EMS|MC under this Agreement. EMS|MC shall have no further responsibilities as to

such accounts after the Wind Down; however EMS|MC shall be entitled to compensation as provided in paragraph 2(a) for such amounts filed by EMS|MC, regardless of whether such amounts are collected by Client during or after the Wind Down period. In the event Client has an outstanding balance owed to EMS|MC which is more than 45 days in arrears at the time of termination, or in the event that EMS|MC believes that Client has provided false or fraudulent claim information, EMS|MC shall have no obligation to provide any services after the date of termination.

**6. EXCLUSIVITY AND MISCELLANEOUS BILLING POLICIES.**

- (a) This Agreement to provide billing and collection services is made with EMS|MC as Client's exclusive provider for all dates of service during the term hereof. Except for the services defined in paragraph 2(a) of this Agreement, Compensation, the Client may not directly file, submit or invoice for any medical or medical transportation services rendered while this Agreement is in effect.
- (b) In addition, Client agrees not to collect or accept payment for services from any patient unless the service requested does not meet coverage requirements under any insurance program in which the patient is enrolled or the patient is uninsured. Payments received directly by Client for these services must be reported to EMS|MC as provided in paragraph 3(b) hereof and shall be treated as Net Collections for purposes of paragraph 2(a) hereof.
- (c) In compliance with CMS regulations, Medicare patients will not be charged by Client a higher rate or amount for identical covered services charged to other insurers or patients. Accordingly, only one fee schedule shall exist and be used in determining charges for all patients regardless of insurance coverage.
- (d) EMS|MC reserves the right not to submit a claim for reimbursement on any patient in which the PCR and/or associated medical records are incomplete or appear to be inaccurate or do not contain enough information to substantiate or justify reimbursement. This includes missing patient demographic information, insurance information,

physician certification statements (PCS) or any required crew and/or patient signatures, or otherwise contradictory medical information.

- (e) The Client shall implement and maintain a working compliance plan (“Compliance Plan”) in accordance with the most current guidelines of the U.S. Department of Health and Human Services (“HHS”). The Compliance Plan must include, but not be limited to, formal written policies and procedures and standards of conduct, designation of a compliance officer, quality assurance policy and effective training and education programs.
- (f) In accordance with the HHS Office of Inspector General (“OIG”) Compliance Program Guidance for Third-Party Medical Billing Companies, EMS|MC is obligated to report misconduct to the government, if the billing company discovers credible evidence of the provider’s continued misconduct or flagrant, fraudulent or abusive conduct. In the event of such evidence, EMS|MC has the right to refrain from (a) submitting any false or inappropriate claims, (b) terminate this Agreement and/or (c) report the misconduct to the appropriate authorities.

**7. NON-INTERFERENCE/NON-SOLICITATION OF EMS|MC EMPLOYEES.**

The Client understands and agrees that the relationship between EMS|MC and each of its employees constitutes a valuable asset of EMS|MC. Accordingly, Client agrees that both during the term of this Agreement and for a period beginning on the date of termination of this Agreement, whatever the reason, and ending three (3) years after the date of termination of this Agreement (the “Restricted Period”), Client shall not, without EMS|MC’s prior written consent, directly or indirectly, solicit or recruit for employment; attempt to solicit or recruit for employment; or attempt to hire or accept as an employee, consultant, contractor, or otherwise, or accept any work from EMS|MC’s employees with whom Client had material contact during the term of this Agreement, in any position where the Client would receive from such employees the same or similar services that EMS|MC performed for Client during the term of this Agreement. Client also agrees during the Restricted Period not to

unlawfully urge, encourage, induce, or attempt to urge, encourage, or induce any employee of EMS|MC to terminate his or her employment with EMS|MC. Client has carefully read and considered the provisions of Paragraph 7 hereof, and having done so, agrees that the restrictions set forth in such paragraph (including, but not limited to, the time period) are fair and reasonable and are reasonably required for the protection of the legitimate interests of EMS|MC, its officers, directors, shareholders, and employees.

## **8. PRIVACY.**

Confidentiality. All data and information furnished to EMS|MC by Client shall be regarded as confidential, shall remain the sole property of Client and shall be held in confidence and safekeeping by EMS|MC for the sole use of the parties and EMS|MC under the terms of this Agreement. EMS|MC agrees that except as provided otherwise herein, its officers, employees and agents will not disclose to any person, firm or entity other than Client or Client's designated legal counsel, accountants or practice management consultants any information about Client, its practice or billing, or any of the patients of Client unless required to do so by applicable law, including, without limitation, federal, state or local law enforcement authorities acting within their jurisdiction and/or acting under the law and/or under court orders. In addition to the foregoing, EMS|MC and Client shall comply with the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), and with the regulations promulgated thereunder, including, without limitation, the Privacy Rule, the Security Rule, and the amendments enacted in the Health Information Technology for Economic and Clinical Health ("HITECH") Act. EMS|MC and Client shall execute a separate Business Associate Agreement under HIPAA.

## **9. LIMITATIONS OF LIABILITY AND DISPUTE RESOLUTION**

- (a) EMS|MC and Client acknowledge and agree that despite their best efforts, billing errors may occur from time to time. Each party will promptly notify the other party of the discovery of a billing error. EMS|MC's sole obligation in the event of a billing error will be to

correct the error by making appropriate changes to the information in its system, posting a refund if appropriate, and re-billing the underlying claim if permissible.

- (b) A "Claim" is defined as any claim or other matter in dispute between EMS|MC and Client that arises from or relates in any way to this Agreement or to the services, hardware, software, or data provided by EMS|MC hereunder, regardless of whether such claim or matter is denominated as a contract claim, tort claim, warranty claim, indemnity claim, statutory claim, arbitration demand, or otherwise.
- (c) To the fullest extent allowed by law, the total liability of EMS|MC to Client regarding any and all Claims shall be capped at, and shall in no event exceed, the total fees paid by Client to EMS|MC under this Agreement (the "Liability Cap"). All amounts that may be potentially awarded against EMS|MC in connection with a Claim are included in and subject to the Liability Cap, and shall not cause the Liability Cap to be exceeded, including, without limitation, all compensatory damages, other damages, interest, costs, expenses, and attorneys' fees. Provided, however, that nothing in the foregoing shall be construed as an admission of liability by EMS|MC in any amount or as a waiver or compromise of any other defense that may be available to EMS|MC regarding any Claim.
- (d) To the fullest extent allowed by law, and notwithstanding any statute of limitations, statute of repose, or other legal time limit to the contrary, no Claim shall be brought by Client against EMS|MC after the earlier of the following to occur (the "Claim Time Limit"): (i) two years after the effective date of termination or expiration of this Agreement; (ii) three years after the date of the underlying medical service or medical transportation service provided by Client to a patient that is the subject of a Claim; or (iii) sixty (60) days after the expiration of the time in which a payer could bring a claim for overpayment or reimbursement against Client under applicable law. Any Claim not brought within the Claim Time Limit is waived. The Claim Time Limit applies, without limitation, to any Claim brought in arbitration under the arbitration clause below, and shall be deemed

to have been satisfied if an arbitration demand asserting such Claim is received by the American Arbitration Association (or other arbitration administrator as may be mutually agreed on by EMS|MC and Client) within the Claim Time Limit. Notwithstanding the foregoing, if a Claim has been asserted in arbitration within the Claim Time Limit, a proceeding in court to confirm, enforce, vacate, modify, correct, or amend an arbitration award resulting from such arbitration may be brought outside the Claim Time Limit as long as it is brought within the time period required by applicable law.

- (e) To the fullest extent allowed by law, EMS|MC and Client waive Claims against each other for consequential, indirect, special, punitive, exemplary, and treble damages, and for any other damages in excess of direct, compensatory damages (the “Non-Direct Damages Waiver”).
  
- (f) Subject to the Liability Cap and the Claim Time Limit, but notwithstanding the Non-Direct Damages Waiver, EMS|MC agrees to indemnify, hold harmless, and defend Client with reasonably acceptable counsel from and against any fines, penalties, damages, and judgments that Client becomes legally obligated to pay to a third party proximately caused by EMS|MC’s negligence or breach of this Agreement. Provided, however, that this indemnity is subject to the following further conditions and limitations: (i) Client must provide prompt written notice to EMS|MC of the matter for which indemnity is or may be sought, within such time that no right of EMS|MC is prejudiced, and in no event no later than thirty (30) days after Client first becomes aware of the facts that give rise or may give rise to a right of indemnity; (ii) Client must allow EMS|MC the opportunity to direct and control the defense and handling of the matter for which indemnity is or may be sought; (iii) Client must not agree to any settlement or other voluntary resolution of a matter for which indemnity is or may be sought without EMS|MC’s express consent; and (iv) Client shall not seek or be entitled to indemnity for amounts that Client reimburses or refunds to Medicaid, Medicare, any governmental entity, any insurer, or any other payer as a result of medical services or medical transportation services for which Client should not have received payment in the first place under

applicable rules, regulations, standards and policies. Client waives all rights of indemnity against EMS|MC not in accordance with this subsection.

- (g) All Claims between EMS|MC and Client shall be resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association then in effect, except that either party may, at that party's option, seek appropriate equitable relief in any court having jurisdiction. The hearing in such arbitration proceeding shall take place in Charlotte, North Carolina, or in such other location as may be mutually agreed on by EMS|MC and Client. The arbitrator in such proceeding, or if more than one arbitrator, each arbitrator, shall be an attorney with at least fifteen (15) years of experience in commercial litigation or in health care law. The arbitrator(s) shall have no authority to enter an award against EMS|MC that: (i) exceeds the Liability Cap; (ii) is based on a Claim brought after the Claim Time Limit; (iii) includes any damages waived by the Non-Direct Damages Waiver; or (iv) is otherwise in contravention of this Agreement. An award entered by the arbitrator(s) shall be enforceable in the United States District Court for the Western District of North Carolina or in any other court having jurisdiction.
  
- (h) In any arbitration proceeding or permitted court proceeding regarding any Claim, the prevailing party shall be entitled to recover from the non-prevailing party the reasonable costs and expenses incurred by the prevailing party in connection with such proceeding, including, without limitation, the reasonable attorneys' fees, arbitration or court filing fees, arbitrator compensation, expert witness charges, court reporter charges, and document reproduction charges incurred by the prevailing party. Which party is the prevailing party shall be determined in light of the surrounding circumstances, such as comparing the relief requested with that awarded, and shall not be determined simply by whether one party or the other receives a net monetary recovery in its favor.

## 10. GENERAL.

Status of Parties. Nothing contained in this Agreement shall be construed as establishing a partnership or joint venture relationship between EMS|MC and Client, or as establishing an agency relationship beyond EMS|MC's service as a billing and collection agent of Client under the express terms of this Agreement. EMS|MC and its employees and representatives shall have no legal authority to bind Client.

Assignment. Neither this Agreement nor any rights or obligations hereunder shall be assigned by either party without prior written consent of the other party, except that this Agreement may be assigned without consent to the survivor in any merger or other business combination including either party, or to the purchaser of all or substantially all of the assets of either party.

Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, assigns (where permitted), and transferees.

Notices. Any notice or other communication required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date delivered personally or deposited in the United States Postal Service, certified mail, return receipt requested, with adequate postage affixed, addressed as follows:

Client:  
City of Washington  
PO Box 1988  
Washington, NC 27889

EMS|MC:  
EMS Management & Consultants, Inc.  
2540 Empire Drive  
Suite 100  
Winston-Salem, NC 27103

With Copy to:

Karen M. Wilson  
Wall Esleeck Babcock, LLP  
1076 West Fourth Street  
Winston Salem, NC 27101

Either party may change its address for notices under this Agreement by giving written notice of such change to the other party in accordance with the terms of this paragraph.

Governing Law. This Agreement and the rights and obligations to the parties hereunder shall be construed in accordance with and governed by the laws of the State of North Carolina, notwithstanding any conflicts of law rules to the contrary.

Integration of Terms. This instrument constitutes the entire agreement between the parties, and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to its subject matter. Without limiting the foregoing, this Agreement supersedes and takes precedence over any inconsistent terms contained in any Request for Proposal ("RFP") from Client and any response to that RFP from EMS|MC.

Amendment and Waiver. This Agreement may be amended or modified only by an instrument signed by all of the parties. A waiver of any provision of this Agreement must be in writing, designated as such, and signed by the party against whom enforcement of the waiver is sought. The waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent or other breach thereof.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed on the later of the dates set forth below.

EMS|MC:

CLIENT:

EMS Management & Consultants, Inc.

City of Washington

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## REQUEST FOR CITY COUNCIL ACTION

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**To:** Mayor Jennings & Members of the City Council  
**From:** Brian M. Alligood, City Manager  
**Date:** November 18, 2013  
**Subject:** Release of Lot 105 in Northgate Subdivision  
**Applicant Presentation:** N/A  
**Staff Presentation:** Brian Alligood

### RECOMMENDATION:

I move that City Council authorize the Mayor and the City Attorney to execute the release of lot 105 in the Northgate Subdivision.

### BACKGROUND AND FINDINGS:

Lot 105 in the Northgate Subdivision is scheduled to close on December 11, 2013 and is a part of the CDBG Affordable Housing Grant. Washington Housing Nonprofit, Inc. will deposit \$6,000.00 into The City Attorney's trust account pursuant to and consistent with the Legally Binding Commitment by and between the City of Washington and Washington Housing Nonprofit, Inc.

### PREVIOUS LEGISLATIVE ACTION

### FISCAL IMPACT

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

### SUPPORTING DOCUMENTS

Release

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**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)

**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)

**City Manager Review:** AWA Concur \_\_\_\_\_ Recommend Denial \_\_\_\_\_ No Recommendation

11/13/13 Date

November 18, 2013

PREPARED BY and RETURN TO:  
RODMAN, HOLSCHER, PECK & EDWARDS, P.A.  
Attorneys at Law  
320 North Market Street  
Post Office Box 1747  
Washington NC 27889  
Telephone: (252) 946-3122

**STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT**

THIS RELEASE is made and entered into this the \_\_\_\_ day of November, 2013,  
by and between **THE CITY OF WASHINGTON**, a North Carolina Body Politic, and  
**FRANZ F. HOLSCHER**, as Trustee, Grantors, to **WASHINGTON HOUSING  
NONPROFIT INC. d/b/a WASHINGTON HOUSING INCORPORATED**, a North  
Carolina nonprofit corporation, Grantee.

**WITNESSETH**

That the Grantors, for and in consideration of the sum of Ten and no/100 Dollars  
(\$10.00) and other good and valuable consideration to them paid by the Grantee, the receipt  
and legal sufficiency of which is hereby acknowledged, do hereby release from the lien and  
operation of that certain Deed of Trust recorded in the Beaufort County Registry in Deed  
Book 1749, Page 675 that portion of land therein described as follows:

LYING AND BEING IN WASHINGTON TOWNSHIP, BEAUFORT COUNTY,  
NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT BEING ALL OF Lot No. ONE HUNDRED FIVE (105) of NORTHGATE  
SUBDIVISION as the same is shown on the survey prepared by Rivers & Associates, Inc.

entitled "Final Plat Northgate Subdivision Addition" of record in Plat Cabinet G, Slide 34-4 through 34-8, Beaufort County Registry, to which survey plat reference is herein made and incorporated for a more complete and detailed description.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors or assigns, free and discharged of the lien of said Deed of Trust, but the lien thereof as to the remaining properties therein described is expressly retained.

IN WITNESS WHEREOF, the said FRANZ F. HOLSCHER, as Trustee, has hereunto set his hand and adopted as his seal, the typewritten word "SEAL" appearing beside his name, and the said THE CITY OF WASHINGTON, a municipal corporation, Grantor, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereto affixed, all by proper corporate authority duly given, this the day and year first above written.

**CITY OF WASHINGTON**

(corporate seal)

BY: \_\_\_\_\_ (SEAL)  
N. Archie Jennings, III, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk

BY: \_\_\_\_\_ (SEAL)  
Franz F. Holscher, Trustee

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

I, \_\_\_\_\_, 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**, Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, this day personally appeared **FRANZ F. HOLSCHER**, as Trustee, and acknowledged the due execution by him of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_



## REQUEST FOR CITY COUNCIL ACTION

**To:** Mayor Jennings & Members of the City Council  
**From:** Brian M. Alligood, City Manager  
**Date:** November 18, 2013  
**Subject:** Release of Lots 52 and 53 in Northgate Subdivision  
**Applicant Presentation:** N/A  
**Staff Presentation:** Brian Alligood

### RECOMMENDATION:

I move that City Council authorize the Mayor and the City Attorney to execute the release of lots 52 and 53 in the Northgate Subdivision.

### BACKGROUND AND FINDINGS:

Lots 52 and 53 in the Northgate Subdivision have been conveyed to a builder by Northgate Development. LLC and Northgate is requesting a partial release from the deed of trust for which the City is a beneficiary. The deed of trust is security for Northgate Development's performance of a \$1,620,000 Crisis Housing Infrastructure Funds Grant which the City received to assist Northgate in constructing infrastructure for the subdivision. The City has received confirmation from the State that Northgate Development, LLC has satisfied the grant requirement of conveying 32 homes to low to moderate income households. There is an outstanding issue between the City and Northgate regarding sidewalks in the subdivision that were not constructed. Staff has been in conversation with Mr. Briley and his attorney regarding this matter and anticipates bringing a proposal to Council at the December 9, 2013 meeting for its resolution.

### PREVIOUS LEGISLATIVE ACTION

### FISCAL IMPACT

Currently Budgeted (Account \_\_\_\_\_)  Requires additional appropriation  
 No Fiscal Impact

### SUPPORTING DOCUMENTS

Release

**City Attorney Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**Finance Dept Review:** \_\_\_\_\_ Date By: \_\_\_\_\_ (if applicable)  
**City Manager Review:** \_\_\_\_\_ Concur \_\_\_\_\_ Date \_\_\_\_\_  
 \_\_\_\_\_ Recommend \_\_\_\_\_ Denial \_\_\_\_\_ No Recommendation

PREPARED BY and RETURN TO:  
RODMAN, HOLSCHER, PECK & EDWARDS, P.A.  
Attorneys at Law  
320 North Market Street  
Post Office Box 1747  
Washington NC 27889  
Telephone: (252) 946-3122

**STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT**

THIS **RELEASE** is made and entered into this the \_\_\_\_ day of November, 2013,  
by and between **THE CITY OF WASHINGTON**, a North Carolina Body Politic, and  
**FRED N. HOLSCHER**, as Trustee, Grantors, to **NORTHGATE DEVELOPMENT,  
L.L.C.**, a North Carolina Limited Liability Company, Grantee.

**W I T N E S S E T H**

That the Grantors, for and in consideration of the sum of Ten and no/100 Dollars  
(\$10.00) and other good and valuable consideration to them paid by the Grantee, the receipt  
and legal sufficiency of which is hereby acknowledged, do hereby release from the lien and  
operation of that certain Deed of Trust recorded in the Beaufort County Registry in Deed  
Book 1287, Page 218 which has been re-recorded in Book 1296, Page 125, that portion of  
land therein described as follows:

LYING AND BEING IN WASHINGTON TOWNSHIP, BEAUFORT COUNTY,  
NORTH CAROLINA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

IT BEING ALL of Lot Nos. FIFTY-TWO (52) and FIFTY-THREE (53) of NORTHGATE  
SUBDIVISION as the same are shown on the survey prepared by Rivers & Associates, Inc.

entitled "Final Plat Northgate Subdivision Addition" of record in Plat Cabinet G, Slides 34-4 through 34-8, Beaufort County Registry, to which survey plats reference is herein made and incorporated for a more complete and detailed description.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors or assigns, free and discharged of the lien of said Deed of Trust, but the lien thereof as to the remaining properties therein described is expressly retained.

IN WITNESS WHEREOF, the said FRED N. HOLSCHER, as Trustee, has hereunto set his hand and adopted as his seal, the typewritten word "SEAL" appearing beside his name, and the said THE CITY OF WASHINGTON, a municipal corporation, Grantor, has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its corporate seal to be hereto affixed, all by proper corporate authority duly given, this the day and year first above written.

**CITY OF WASHINGTON**

(corporate seal)

BY: \_\_\_\_\_ (SEAL)  
N. Archie Jennings, III, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia S. Bennett, City Clerk

BY: \_\_\_\_\_ (SEAL)  
Fred N. Holscher, Trustee

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

I, \_\_\_\_\_, 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**, Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF BEAUFORT

Before me, the undersigned Notary Public in and for the State and County aforesaid, this day personally appeared **FRED N. HOLSCHER**, as Trustee, and acknowledged the due execution by him of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official seal, this the \_\_\_\_\_ day of November, 2013.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_