

The Washington City Council met in a continued session on Monday, December 18, 2006 at the Municipal Building at 4:30 P.M. Present were: Judy Jennette, Mayor; Darwin Woolard, Mayor Pro tem; Ed Gibson, Councilman; Richard Brooks, Councilman; Mickey Gahagan, Councilman; Archie Jennings, Councilman; James Smith, City Manager; Franz Holscher, City Attorney; and Reatha B. Johnson, Assistant City Clerk.

Also present were: Allen Lewis, Public Works Director; Joey Toler, Interim DWoW Director, Mike Voss; of the Washington Daily News, and Leanne Smith of Beaufort Observer.

Mayor Jennette called the meeting to order.

Councilman Gibson delivered the invocation.

AGREEMENT BETWEEN MARICK HOME BUILERS, LLC AND THE CITY OF WASHINGTON REGARDING WATER AND SANITARY SEWER SERVICE AND EASEMENT

Mayor Jennette informed Council that a conference call had been set up with Chris McCoy, an attorney with Kennedy Covington Lobdell & Hickman, L.L.P., who developed the Marick Home Builders, LLC contract.

James C. Smith, City Manager, stated that Council would need to decide if the reporters could attend the conference call since this falls under client/privilege. Franz Holscher, City Attorney, stated that Council would properly like to consider exercising discretion (if it chooses) to go into closed session. Mr. Holscher said it would be wise to go into close session under G. S. 143-318.11(a)(3) to consult with the attorney.

On motion of Mayor Pro-tem Woolard, seconded by Councilman Gahagan, Council unanimously agreed to go into closed session at 4:40 p.m. under G. S. 143-318.11(a)(3) Attorney/Client Privilege.

On motion of Mayor Pro-tem Woolard, seconded by Councilman Brooks, Council unanimously agreed to come out of closed session at 5:20 p.m.

On motion of Councilman Jennings, seconded by Councilman Gahagan, Council unanimously agreed to table the agreement between Marick Home Builders, LLC and the City of Washington regarding Water and Sanitary Sewer Service and Easement until the regular City Council meeting on January 8, 2007.

AGREEMENT BETWEEN TRADEWIND AVIATION AND THE CITY OF WASHINGTON

James C. Smith, City Manager, stated this action was not ready for Council approval. Mr. Thomas Dolder, owner of Tradewind Aviation, had not had a chance to review it with his lawyers. Mr. Dolder did not receive the paperwork until Friday and Mayor Jennette stated we could all speak to the importance of taking our time and doing it right. Mayor Jennette had spoken with Mr. Dolder and Mr. Smith had emailed him also, to make him aware of the action to be taken tonight.

On motion of Councilman Jennings, seconded by Councilman Brooks, Council unanimously agreed to table the agreement between Tradewind Aviation and the City of Washington until the regular City Council meeting on January 8, 2007.

AGREEMENT "INDEMNIFICATION FOR CARVER MACHINE WORKS"

Mr. Tom Thompson, Director of Economic Development Commission, stated that Carver Machine Works has a plan to expand their facility which allows us the opportunity to get Community Block Grant financing. Allen Lewis, Director of Public

Works, passed out a sheet showing the estimated cost for sewer extension would be \$1,662,000 with a potential shortfall of \$188,000. Mr. Thompson said that Beaufort County would have to be the applicant, but they would like it understood that the potential shortfall should it come to a cash outlay will have to be negotiated with Council. The County would like to make it clear that they are not committing to the \$188,000 should it become a liability. Allen Lewis stated even though there is \$188,000 the shortfall now (if not mistaken) has a \$92,000 cash match. Councilman Gahagan asked if that should be part of the \$188,000 and Mr. Lewis said yes. Mr. Thompson stated that if the grant is approved and the company does not meet their employment criteria or some of the employees don't meet the income criteria, then there is a legal requirement that a prorated portion has to be paid back. Mr. Smith stated basically it is a County project it is not in the City limits but it will belong to the City when it is constructed. "We still have to find a way to come up with the other \$188,000", Smith said. Smith stated this is not a done deal; there are some risks involved. The potential liability for the City is \$7,500 if Carver Machine Works fails to create the 50 new jobs.

On motion of Councilman Jennings, seconded by Councilman Gahagan, Council unanimously approve the indemnification for Carver Machine Work regarding their participation in a Community Development Block Grant Economic Development Program, to facilitate the creation of 50 new jobs and extension of a sanitary sewer line.

On motion of Councilman Jennings, seconded by Councilman Gibson, Council unanimously adjourned the meeting at 5:40 p.m.

LEGALLY BINDING COMMITMENT

STATE OF NORTH CAROLINA

BEAUFORT COUNTY (APPLICANT)

CARVER MACHINE WORKS (COMPANY)

PUBLIC FACILITIES AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of the 28th day of December, 2006, by and between Carver Machine Works, a corporation authorized to transact business within the State of North Carolina (hereinafter referred to as the "Corporation") and Beaufort County, North Carolina (hereinafter referred to as the "Applicant"). This Agreement will not become effective until all conditions placed upon the Applicant's funding approval are satisfied and funds are released by the Department of Commerce (hereinafter "DOC") pursuant to a Community Development Block Grant (hereinafter "CDBG") with the Applicant.

WITNESSETH

WHEREAS, the Applicant anticipates receiving a Community Development Block Grant from the Department of Commerce in the amount of \$750,000 to be used primarily to benefit low to moderate-income persons by financing the economic development project to be undertaken by the Applicant and the Corporation (the "Project").

NOW, THEREFORE, in consideration of the promised and the mutual covenants and promises set forth herein, the Corporation and the Applicant hereby agree as follows:

I. AGREED ACTIONS

A. The Corporation shall execute its responsibilities as identified in Corporation's narrative exhibits and the employment profiles contained in the Applicant's CDBG application to DOC. Those exhibits and commitments are incorporated herein by reference, as if set out in full. The Corporation agrees to build and operate the Project in a timely manner. Briefly, those documents describe the construction of a 50,000 square foot manufacturing facility (the "Facility") on a 7 acre site located adjacent to the City of Washington in Beaufort County, North Carolina (the "County"). The Corporation currently has continuing operations in the County that employ 65 people and commit to employ 50 additional people by December 28, 2009 (date). The Corporation can request DOC verify the creation of the additional jobs stated above prior to December 28, 2009, (date) and release the Corporation from further job creation documentation. In addition, the Corporation commits to employ persons whose household income is within low to moderate-income limits in sixty percent (60%) of all jobs stated above at the Corporation's Facility. The Corporation agrees that if it fails to create and maintain 50 jobs prior to December 28, 2009 (date) or verified by DOC, Beaufort County and the City of Washington at a pro rata share of 50%/50% respectively will reimburse DOC \$ 15,000.00 for each job not created. All parties agree that if at the end of the grant agreement the number of prior low to moderate-income people employed at the Facility falls below fifty one percent (51%) of the total employment at the Facility, the entire grant amount will be due and payable to DOC by Beaufort County and the City of Washington. Beaufort County's and the City of Washington's liability under this Agreement shall not exceed the dollar amount of the grant made by the Department of Commerce. If unforeseen calamity, an Act of God or financial disaster is the cause of action under this section of the Agreement, the Corporation and the Applicant may appeal to DOC for an extraordinary modification of this responsibility. Such modification shall be at the discretion of the Secretary of the Department of Commerce. The requirement that persons of low to moderate income must hold a minimum of fifty-one percent (51%) of all jobs created cannot be waived.

B. Each party shall keep and maintain books, records, and other documents relating directly to the receipt and disbursement of grant funds and fulfillment of this Agreement.

C. Each party agrees that any duly authorized representative of the Applicant, DOC, the United States Department of Housing and Urban Development, and the Comptroller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all of the books, records, and other documents relating to the grant and the fulfillment of the Agreement for a period of five (5) years following the completion of all close-out procedures respecting the CDBG funds, and the final settlement and conclusion of all issues arising out of the CDBG funds.

D. Notwithstanding anything herein to the contrary, the parties hereto acknowledge the due execution of the CDBG Grant Agreement between the Applicant and DOC and agree that any conflict between the provisions, requirements, duties, or obligations of this Agreement and the CDBG Grant Agreement shall be resolved in favor of the CDBG Grant Agreement.

II. ENFORCEMENT

A. If at the end of the approved project period the Corporation has failed to create the full number of job positions and low to moderate-income job positions presented in Agreed Actions Section I of this Agreement, or to incur the full level of private investment committed to in its grant application, as provided above, then the Corporation will not have to pay to the Applicant any amount calculated in the manner set out in Section I-A of this Agreement.

B. This Agreement constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina.

III. PUBLIC RECORDS LAW

The Corporation acknowledges that it has read and understands North Carolina's laws regarding the treatment of public records and confidential information, and their application to economic development projects, including without limitation, those provisions set forth in Exhibit A.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under Seal as of the date first above written.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Rita A. Thompson
RITA A. THOMPSON, CMC
CITY CLERK

Rita A. Thompson, CMC
City Clerk

Notes taken by Reatha B. Johnson, Assistant City Clerk