

The Washington City Council met in a regular session on Monday, September 28, 2015 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Mac Hodges, Mayor; Doug Mercer, Mayor Pro tem; William Pitt, Councilman; Richard Brooks, Councilman; Larry Beeman, Councilman; Bobby Roberson, Interim City Manager; Cynthia S. Bennett, City Clerk and Franz Holscher, City Attorney.

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

APPROVAL OF MINUTES:

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council approved the minutes of September 14, 2015 as presented.

APPROVAL/AMENDMENTS TO AGENDA:

Mayor Hodges reviewed the requested amendments to the agenda:

- **Move:** From Consent Agenda – Item D to Old Business Item J: Adopt – Budget Ordinance Amendment to appropriate funds for the ADA Improvement Study at Susiegray McConnell Sports Complex
- **Move:** From Consent Agenda Item E to New Business Item A: Authorize – Recreation Manager to apply for the Public Beach & Coastal Waterfront Access Funds 2015-2016 Grant

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

PRESENTATIONS



**WASHINGTON 8U ROOKIE
DIVISION ALL-STAR**
*Winner—Cal Ripken District
Tournament
Third Place—Little Tarheel State
Tournament*

<i>Wright Collins Jeffrey Dobson Matthew Jefferson Cade Mixon Cayden Pake Jacob Spivey</i>	<i>Nolan Dixon Will Glover Wayland Mitchell Tanner Moore Gavin Sawyer Bryce Williams</i>
<i>Coach Zack Mixon Coach Bryan Sawyer</i>	<i>Coach Keith Mitchell Coach Stanley Dixon</i>



**WASHINGTON 10U MINOR
DIVISION ALL-STAR**
*Winner—Cal Ripken District
Tournament
Runner Up—Little Tarheel State
Tournament*

<i>Reid Apple Austin Cherry Conner Flowers Zac Lilley Dawson Mitchell</i>	<i>Keifer Boyd Connor Edwards Eli Huynh Hodges Manning Hayden Moore</i>
<i>Coach Chip Edwards Coach Keith Mitchell</i>	<i>Evan Waters Coach Adam Waters</i>

ADDITIONAL AMENDMENT TO AGENDA:

- **Add:** Under Appointments: Board of Library Trustees Appointment

By motion of Councilman Pitt, seconded by Councilman Brooks, Council approved the additional amendment to the agenda.

CONSENT AGENDA:

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

- A. **Adopt** – Budget Ordinance Amendment in the Solid Waste Fund for loose leaf collections

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, NC FOR THE FISCAL YEAR 2015-2016

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

Section 1. That the Solid Waste appropriations budget be increased or decreased in the following accounts to provide funds for loose leaf collection:

38-90-4710-0300	Salaries – Part Time	\$6,373
38-90-9990-9900	Contingency	(6,373)

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 28th day of September 28, 2015

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

- B. **Approve** – Police Vehicle Purchase and Approve the attached purchase orders
**Requisition #778, Capital Ford, \$24,811 to replace vehicle #136 ~ budgeted*
**Requisition #779, Capital Ford, \$24,811 to replace vehicle #142 ~ budgeted*
**Requisition #775, Capital Ford \$27,824 to replace vehicle #164 ~ budgeted*
**Requisition #774, Capital Ford \$27,964.46 to replace vehicle #160 ~ budgeted*

- C. **Award/Approve** – Bid to B.E. Singleton & Sons to pave the parking lot at the City warehouse and **Approve** accompanying purchase order

Bid for: Warehouse Parking Lot
Opened: August 17, 2015

Item	Description	Garris Paving	BE Singleton & Sons	Barnhill Contracting	ST Wooten
1	Warehouse Parking Lot Paving	\$75,300.00	\$68,665.00	no bid	no bid
2	Project Completion Time	15 days	30 days	N/A	N/A

- D. *Moved to Old Business Item J: **Adopt** – Budget Ordinance Amendment to appropriate funds for the ADA Improvement Study at Susiegray McConnell Sports Complex*
- E. *Moved to New Business Item A: **Authorize** – Recreation Manager to apply for the Public Beach & Coastal Waterfront Access Funds 2015-2016 Grant*

COMMENTS FROM THE PUBLIC:

Gerald Seighman addressed the vacancy on City Council. Mr. Seighman referred to the City Code regarding the requirements for filling the vacant seat. He expressed that citizens should take note of Council not filling the vacant seat when they vote for candidates on November 3rd.

Susan Zachary discussed the proposed boardwalk under bridge near Havens Gardens and noted potential safety concerns if the boardwalk were to be installed. She continued by discussing the design changes to the Municipal Pier. Inquiries were made regarding the ADA Compliance report for the Susiegray McConnell Complex. Ms. Zachary encouraged Council to fill the vacant Council seat.

PUBLIC HEARING – ZONING: 6:00PM NONE

PUBLIC HEARING: OTHER NONE

SCHEDULED PUBLIC APPEARANCES: NONE

CORRESPONDENCE AND SPECIAL REPORTS:
DISCUSSION: GRANT UPDATES:

Mayor Pro tem Mercer expressed concerns with revenues being low and expenditures higher than 20%.

Chief Finance Officer, Matt Rauschenbach explained the \$300,000 difference in revenue from last year is due to three main items:

1. \$74,000 privilege license
2. State EMS Medicare reimbursement (\$200,000) ~ came in around September 11th.
3. Sales/utility tax

Interim City Manager, Bobby Roberson stated that he encouraged staff to go ahead and spend the funds on their CIP items and not wait until April/May 2016.

Grant Executive Summary
as of 8/31/2015

Active Fund	Grant Description	Dates			Financials				Deliverable			Notes	
		Award	Expiration	Completion	Revenue		Expense		Metric	Total	Achieved		Bal.
50	CDBG Affordable Housing	04/09/10	10/31/14	09/30/15	227,700	185,719	227,700	185,719	LMI homes	10	6	4	6 completed, CO issued on #7, extension expires 9/30
53	Downtown Development				85,500	13,000	85,500	34,500					Options to purchase have been executed, phase II being conducted
55	idX/Impressions NC One Grant	09/30/13	09/30/16		300,000	-	300,000	-	Jobs/investment	160	0	160	Jobs created but not since award date
59	idX Building Reuse	12/18/15	12/18/16		512,500	4,000	512,500	2,500	Jobs/investment	50		50	Grant agreements executed, Mid-East administering
61	Pedestrian Plan Grant	05/20/13	09/30/13	12/31/14	10,000	10,900	10,000	-					Committee formed and meeting monthly
66	Airport Terminal Grant	04/04/13	07/01/15	03/31/15	1,254,488	1,251,207	1,254,488	1,127,901					Final expenditure being disbursed
67	Facade Grant Program	07/01/15	06/30/16	06/30/16	20,000	3	20,000	5,660					Two pending, 3 reimbursed (2 from prior year)
69	Way Finding			04/01/15	150,000	150,495	150,000	20,913					Reviewing w/ DOT, cost estimate & recommendation pending
71	Airport Lighting Rehab				460,121	87,278	460,121	49,475					Construction begun, complete mid October
72	Municipal Pier Access Grant	07/01/14	11/30/15		135,000	15,000	135,000	28,437					Construction begun, complete by Nov 30th
74	Sewer I&I rehab/CWSRF	06/03/15			2,000,000	-	2,000,000	-					Preliminary engineering underway
75	Firefighter's Assistance- Exhaust	08/08/14	08/07/15		50,000	47,165	50,000	47,165					Complete
76	EDA Water Projects	09/11/13	03/11/17	02/28/17	1,428,262	706,133	1,428,262	195,038					0 Expected completion end of December
77	EDA Sewer Grants	09/11/13	03/11/17	02/28/17	1,423,894	703,974	1,423,894	316,034					0 Expected completion end of December
	CDBG Keyville Rd.	2005	6/4/2013	06/30/16	320,000	320,000	320,000	320,000					0 Lot 2 LMI qualifies, closing conducted 9/10/15
10	EZ Technology Library Grant	06/09/15			4,863	-	4,863	-					Grant awarded in July
10	Historic Preservation Grant	07/01/14	08/21/15		11,000	-	15,000	12,500					Survey updated and first draft National Register nomination completed

Applications/Awards	Pre-App	Selected	Final App	Grant	Match	Total	
FEMA AFG Fire Engine/Resc. Tools	11/30/14			353,929	18,571	372,500	Awaiting determination
Havens Garden PARTF				250,000	250,000	500,000	Application submitted, award notification October
Recreation Trails Program	7/14/15			19,500	6,500	26,000	Partnered with Sound Rivers
Play Together Playground-Trillium				225,000	0	225,000	Grant awarded in August
Project Hotel- New Age Properties				319,000	105,000	424,000	Awarded August 21st, developer to pay match, Mid East administering

DISCUSSION – PROJECT UPDATES: Project updates accepted as presented

Capital Project Status FY 2015/2016								9/18/2015	
Fund/Department	Account	Description	Budget \$	Spent	Open PO	Balance	Status	Notes	
General Fund:									
Finance	10-90-4130-7400	Financial Software	50,000	0	0	50,000	Evaluating vendors, software demos		
Purchasing	10-90-4131-7400	Parking lot 1/3	25,000	0	0	25,000	Award bid in September		
		Lighting	32,530	0	0	32,530	Go out for bid		
Capital Pr	IT	10-90-4132-7400	Network switches	12,306	3,954	2,686	5,666	In progress	9/18/2015
Police	86-60-4930-4310	Vehicles #136,142,160,&164	142,000	0		142,000	Place order in September		
Fund/Dep:	Fire	10-10-4341-7400	Defibrillator	30,000	0	0	30,000	Go out for bid	Notes
		86-60-4930-4341	EMS truck 1	150,000	0	148,066	1,934	On order, October delivery	
Storm W:	Code Enforcement	86-60-4930-4350	Vehicle #121	20,000	0	22,508	(2,508)	On order, budget transfer to repl fund	
Powell Bill	10-20-4511-4500	Street Paving	55,000	1,642	0	53,358			
Street Maintenance	86-60-4930-4510	Dump truck #455	75,000	0	64,706	10,294	On order		
Electric:	Electric Di	10-40-6121-7400	Bobby Andrews Roof	54,000	0	0	54,000	Go out for bid	
Senior Center	10-40-6123-7400	HVAC	6,500	0	0	6,500	bid in October		
Electric M	Rec. Maintenance	10-40-6130-7400	Grasshopper mower	11,000	11,000	0	0	Complete	
			Ballfield rake	13,000	12,983	0	17	Complete	
Total General Fund			676,336	29,579	237,966	408,791			
Water:									
Substation	Miscellaneous	30-90-6610-7400	Network switches	12,306	3,954	2,686	5,666	In progress	
		30-90-6610-7400	GIS 1/2	12,100	0	0	12,100	Planning for project begun	
		30-90-6610-7400	Utility billing software	18,182	0	0	18,182	Begin evaluating vendors	
Treatment	Maintenance	30-90-8100-7400	Vehicle #550	28,000	0	27,963	37	On order	
		30-90-8140-7400	Vehicle #416	24,000	0	23,614	386	On order	
Total Water Fund			94,588	3,954	54,263	36,371			
Sewer:									
Power Lin	Miscellaneous	32-90-6610-7400	Network switches	12,306	3,954	2,686	5,666	In progress	
		32-90-6610-7400	GIS 1/2	12,100	0	0	12,100	Planning for project begun	
		32-90-6610-7400	Utility billing software	18,182	0	0	18,182	Evaluating vendors, software demos	
Treatment		32-90-8220-7400	Vehicle #551	27,000	0	26,454	546	On order	
Power Lin	Lift Stations	32-90-8220-7400	Video surveillance system	25,000	0	0	25,000	In place February 2016	
		32-90-8230-7400	Springs Rd panel A	20,000	0	0	20,000	In place February 2016	
		32-90-8230-7400	Springs Rd panel B	20,000	0	0	20,000	In place February 2016	
Total Sewer Fund			134,588	3,954	29,140	101,494			
Total Power Line Construct			492,500	24,856	26,819	440,825			
Total Electric Fund			834,202	46,612	135,512	652,078			
Cemetery Fund	39-90-4740-7400	Vehicle #510	20,000	0	18,762	1,238	On order		
		Zero turn mower	6,800	6,500	0	300	Complete		
Total Cemetery			26,800	6,500	18,762	1,538			
Grand Total			2,066,514	90,659	475,643	1,500,212			

Notes:
1 PO carryforward
2 Project carryforward

MEMO – MUNICIPAL PIER (approved as presented)

John Rodman, Community & Cultural Services Director

Community & Cultural Services Director, John Rodman explained the problem with distance with the end of the free dock and “T” on Pier are safety concerns – the distance was only 21’. The decision to alter the design was made after meeting with CAMA in order to alleviate the safety concerns. This was done with the knowledge that there would be no additional cost. The main purpose of the pier is to maintain public access and the reconfiguration has not changed that, it may actually allow more people on the pier.

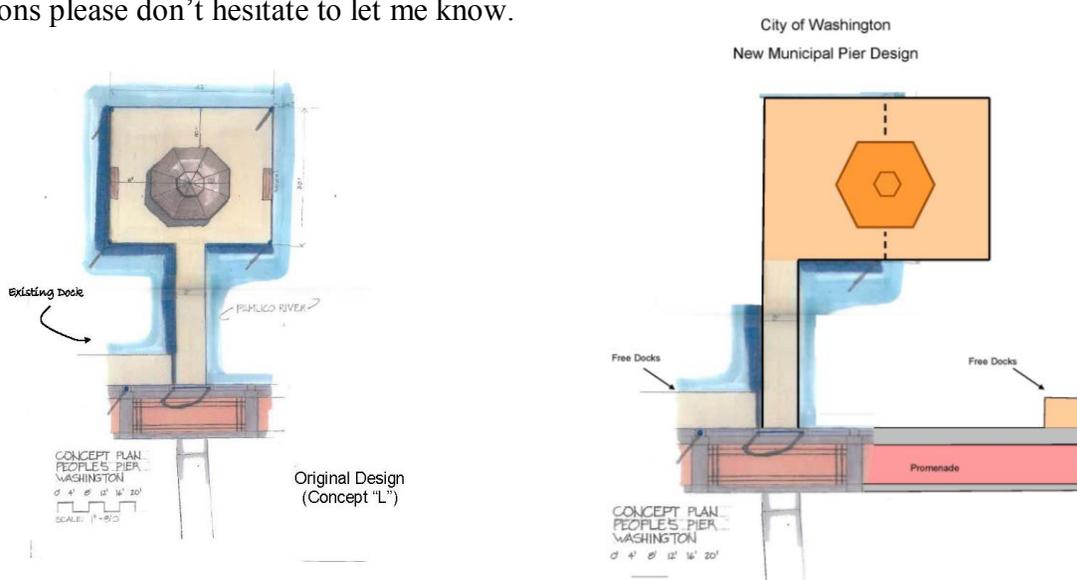
Mayor Hodges mentioned the gazebo is not lined up now and viewable coming down Market Street. Mr. Rodman said the project had already been delayed and didn’t want to delay the project any longer.

Mr. Roberson voiced there had been a series of public hearings regarding the boardwalk. This change now keeps the “view corridor” along the waterfront. Mr. Rodman reiterated the only thing that changed was “T” to “L” – first 30 feet of walkway are same as in the original design. Councilman Beeman stated the pier is perpendicular to bulkhead and not the sidewalk.

MEMO -Municipal Pier

As most of you have probably noticed there is a different configuration of the approved municipal pier. As construction began on the pier we noticed a possible safety hazard in the configuration with one of the existing free docks. The approved diagram shows the layout of the public pier to be a “T” shaped design platform that is to be 42 feet by 35 feet in size or 1470 square feet. The modification has the platform design as “L” shaped. The reason for the change is to allow boaters docked at the free dock to have better maneuverability around the pier in order to leave the dock. We felt the turning radius for docked boats that were trying to leave may not be made safely with the short distance between the dock and the pier. This is the reason for the request for modification of the platform. The new design will be less of a safety hazard to the boaters. The new design will not increase the size of the pier in any way. The distances and the square footage will remain the same. Also, there has been no change in the budget in regards to the modifications. The reason for the change is better illustrated in the attached designs.

All modifications have been approved by the Division of Coastal Management. If you have any questions please don’t hesitate to let me know.



MEMO – REQUEST OF THOMAS P. GRIFFIN (approved as presented)

Allen Lewis, Public Works Director

Mr. Thomas P. Griffin is interested in clearing up an issue with a home with an address of 315 West 2nd Street which appears to barely encroach onto City property of the parking lot for the Civic Center. Currently, the southeast corner of the home appears to encroach onto this piece of City property as shown on the attached copy of a survey done for Mr. Griffin. As such, he would like to acquire a small portion of the City property to prohibit any future problems. City staff has no issue with deeding a small portion of this lot so that he would have a maximum of two (2) feet of clearance at the southeast corner of his home. Assuming that Mr. Griffin would pay for all survey, attorney and recording fees, we would like Council’s direction as to how you would like to move forward with this process.

Mr. Roberson reviewed the memo with Council noting that he has directed staff (Allen Lewis and John Rodman) to meet with the property owner and bring back a suggested solution to the next City Council meeting.

MEMO – BUDGET TRANSFERS (approved as presented)

Matt Rauschenbach, Administrative Services Director/C.F.O.

The Budget Officer transferred \$2,000 of funds between the City Manager and Code Enforcement/Inspections divisions of the General Fund appropriations budget for library property cleanup. \$13,000 of funds were transferred between the Miscellaneous and Power Line Maintenance divisions of the Electric fund to reallocate property insurance premium.

NCGS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes.

MEMO – REPORTING OF BAD DEBT WRITE-OFFS FY 2015 (approved as presented)

Matt Rauschenbach, Administrative Services Director/C.F.O.

The following accounts have been written off in accordance with the City of Washington’s Policy for Write-off of Uncollectible Accounts Receivable.

<u>Category</u>	<u>Category Description</u>	<u>Criteria for Write-off</u>	<u>Total Write-off</u>
27	Miscellaneous G/F	>5 years old	2,844.23
29	Misc. Electric Fund	>5 years old	1,618.28
44	Electric Property Damage	>5 years old	497.16
Utility	Utilities	>5 years old	84,678.64
EMS	EMS Charges	>5 years old	347,270.07
	TOTAL		\$436, 90.38

Lot mowing, demolition, and assessment liens that were previously placed against properties remain in place with the hopes that if the property is ever sold, the City will collect proceeds from the sale to satisfy the debt.

The EMS write-offs are consistent with past performance. Our collections represent 72% and are consistent with the industry norm. Medicare and Medicaid pay 96% after contractual allowances, insurance 79%, and patients 11%. Our revenue has increased from \$350,000 to \$615,000/year since we began using EMS Management Consultants for our billing and collection in 2010. EMS write-offs will continue to be substantial in the future due to contractual allowances and expected collection rate.

Policy for Write-off of Uncollectible Accounts Receivable was adopted July 18, 2011.

Mayor Pro tem Mercer expressed concern with the write-off amounts.

OLD BUSINESS:

DISCUSSION – DON STROUD – REQUEST FOR MORATORIUM ON SUBDIVIDING SINGLE FAMILY DWELLINGS INTO MULTIFAMILY DWELLINGS IN B1H ZONING DISTRICT

Mr. Don Stroud, resident of 127 East Second Street, presented the information to Council regarding to City Code Section(s) 40-302, 40-387, 40-299 thru 40-302. Mr. Stroud stated the boarding house project should be stopped. He requested Council to vote on issuing a moratorium in order to prevent the subdivision of homes that were constructed as single-family dwellings. He noted that he interprets the Code to cover the restriction of subdividing homes in the B1H zoning district. Mr. Stroud discussed the potential parking problem if this project is allowed.

Mr. Scott Campbell, resident of 213 North Market Street in the B1H zoning district stated he is opposed to imposing a moratorium on this project. Mr. Campbell presented Council with a letter citing the following:

- Investor legally purchased property
- Owner has met with Planning Department and discussed plans
- Owner presented plans to Historic Preservation Commission to modify exterior – request was approved
- Previous Owner had permission for apartments(structure was to be used as a Hospice House)
- Owner is working with and under supervision of City Building Inspector and Fire Code Officials

- Entered into and signed contracts to enter into legal & permitted construction on his property
- Hired local laborers, etc.
- Paid City for permits and waiting for them to be issued
- Parking – not a problem downtown area
- 121 East Second Street in compliance
- Deny request for moratorium
- Current project is fully compliant with City Code

Mr. Stroud commented that no permit has been issued yet.

Ms. Mona Penner, owner of 121 East Second Street voiced they pride themselves in restoring historical structures. The siding is in bad shape and they are sealing all cracks on the inside of the structure. She further noted that the property has been vacant for six (6) years. Ms. Penner noted that Mr. Stroud never spoke with them regarding the project. She said the structure has three (3) parking spots in front of the building and Mr. Stroud has seven (7) spots (3 in front and 4 on Bonner), but he's been parking in front of their house for the last week.

Ms. Penner noted that before they purchased the building they meet with the Planning Department and the City building officials assured her and Calvin McLean, the other owner, that their plans to convert the building into 11 apartments is allowed under city zoning and building regulations.

Apartments are the highest and best use of their property. Their project will in turn have less people and less need for parking than the previously approved Hospice House.

Mayor Pro tem Mercer asked when the structure was a single family dwelling. The structure has had apartments for ages so why are we calling it single family? Mr. Rodman voiced it was originally built in 1929 as single family dwelling and since then there has been at least four apartments in the structure. In 2003 the structure was being developed as a Hospice House. Mr. Rodman suggested this issue be sent to the Planning Board for a recommendation on a moratorium as well as possible conflicts in the Zoning Ordinance. Mr. Rodman is not sure if the suggested moratorium would actually impact the current project and referred this matter to Mr. Holscher. Mayor Pro tem Mercer asked the City Attorney if the plans have already been presented to the inspections office, would the moratorium stop this project. Mr. Holscher said he would have to review this further – if the owner has reached certain steps in the project, then he may have a vested right. Council would not be able to act on a moratorium tonight as there are several steps that are required prior to enacting a moratorium. Mr. Holscher reviewed NCGS 160A-381 regarding moratoriums.

Mr. Rodman asked if this discussion stops the owner from proceeding. Mr. Holscher noted there is nothing in place to stop the project at this time. Mayor Pro tem Mercer noted that if the property owner comes to City Hall tomorrow morning requesting a permit and as long as he is in compliance with City Code, then there is nothing restricting the issuance of the permit.

Councilman Brooks said the Planning Board needs to review this and make a recommendation to the Council.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council tabled the discussion pending this item being reviewed by the Planning Board (as their time allows them to work on this) and a recommendation being forwarded back to Council.

Mr. McLean asked if this action means that the project is put on hold. Mr. Holscher noted nothing has been done at this moment to stop the project. Mr. McLean noted that his engineer has submitted plans in order to obtain a building permit.

Linda Bisset of 206 East Second Street came forward and acknowledged that we all bought "dumps" and turned them into something they love. They want single family homes in the neighborhood and the residents don't like apartments.

REPORTS FROM BOARDS, COMMISSIONS AND COMMITTEES: NONE

APPOINTMENTS:

By motion of Councilman Pitt, seconded by Councilman Beeman, Council appointed Clyde F. Swanner, Jr. to the Board of Library Trustees, to fill a vacant position, term to expire June 30, 2021.

ADOPT – BUDGET ORDINANCE AMENDMENT FOR PURCHASE OF FIRE ENGINE

Fire Chief Robbie Rose explained the request is for a brand new truck. These types of trucks are typically built and taken to tradeshow, but this truck hasn't left the factory yet. The truck can be here within 60 days and meets all requirements of the department. Four senior staff members have researched our needs and this vehicle meets our needs and are fully satisfied with this truck. The company is located in Rocky Mount and currently service our entire fleet of trucks.

By motion of Mayor Pro tem Mercer, seconded by Councilman Brooks, Council adopted a budget ordinance amendment to appropriate funds for the purchase of a 2015 Fire Engine for C. W. Williams Company and approved the associated purchase order in the amount of \$450,000

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2015-2016

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

- Section 1. That account number 86-60-4930-4340, Vehicle Purchases-Fire, of the Vehicle Replacement Fund appropriations budget be increased in the amount of \$450,000 to provide funds for the replacement of Fire Engine 1.
- Section 2. That the Estimated Revenues in the Vehicle Replacement Fund be increased in the amount of \$450,000 in the account Fund Balance Appropriated, account number 86-60-3991-9910.
- 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 28th day of September, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

AMEND – CHAPTER 18, SECTION 123 – DESIGNATED PROHIBITED PARKING AREAS, CHAPTER 18, SECTION 124 – FIFTEEN-MINUTE PARKING AREAS

During the September Airport Advisory Board meeting, the issue of parking around the circle at the end of Airport Road was discussed, specifically, parking in front of the terminal annex building. After investigating the referenced ordinance, it was determined that the ordinance needed to be changed to prohibit parking around the entire circle on either side. At the September 14, 2015 council meeting, it was noted that parking in front of the terminal building will need to be limited for loading and unloading. The Washington-Warren Airport Advisory Board approved the proposed changes.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council approved an ordinance to amend Chapter 18, Section 123, Designated prohibited parking areas, and Chapter 18, Section 124, Fifteen-minute parking areas, in reference to no parking around the circle at the end of Airport Road, as outlined in the attached ordinance, with an effective date of October 1, 2015.

AN ORDINANCE TO AMEND CHAPTER 18, ARTICLE V, SECTION 18-123: DESIGNATED PROHIBITED PARKING AREAS, AND CHAPTER 18, ARTICLE V. SECTION 18-124: FIFTEEN MINUTE PARKING AREAS, OF THE WASHINGTON CITY CODE

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

- Section 1. That Chapter 18 Section 18-123 – Designated prohibited parking areas, be amended to remove the following.
- Airport Circle (both sides), excluding fifty (50) feet at the end of the circle next to the Airport Terminal Building
- Section 2. That Chapter 18 Section 18-123 – Designated prohibited parking areas, be amended to add the following:
- Airport Circle (both sides) excluding thirty (30) feet centered in front of the Airport Terminal Building
- Section 3. That Chapter 18 Section 18-124 – Fifteen-minute parking areas, be amended to remove the following:
- Airport Circle, the last fifty (50) feet next to the Airport Terminal Building
- Section 4. That Chapter 18 Section 18-124 – Fifteen-minute parking areas, be amended to add the following:
- Airport Circle, the thirty (30) feet centered in front of the Airport Terminal Building
- Section 5. All ordinances in conflict with this ordinance are hereby repealed.
- Section 6. This ordinance shall become effective October 1, 2015.

Adopted this the 28th day of September, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

AUTHORIZE – THE MANAGER TO EXECUTE THE ATTACHED LEASE AND FIXED BASE OPERATIONS (FBO) AGREEMENT WITH SKYDIVE LITTLE WASHINGTON, LLC.

The proposed terminal building annex lease and FBO agreement with Skydive Little Washington, LLC was included in the agenda packet. The lease agreement will allow Skydive Little Washington to continue to operate out of the terminal annex building and provide parachuting operations as well as scenic tours. The Washington-Warren Airport Advisory Board approved the lease/agreement with conditions.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council authorized the manager to execute the lease and Fixed Base Operations (FBO) agreement with Skydive Little Washington, LLC.

NORTH CAROLINA
BEAUFORT COUNTY

**TERMINAL BUILDING ANNEX LEASE AND
FIXED BASE OPERATIONS – JUMP SCHOOL, SCENIC TOURS - AGREEMENT**
(Parachute Operations Under 14 CFR Part 105 and 91.307)
(Commercial Air Tours Under 14 CFR Part 136 and 91.147)

THIS TERMINAL BUILDING ANNEX LEASE AND FIXED BASE OPERATIONS – JUMP SCHOOL, SCENIC TOURS - AGREEMENT ("Agreement") is made, entered into and executed in duplicate originals as of the 1st day of November, 2013, by and between the CITY OF WASHINGTON, a body politic and corporate under Chapter 160A of the North Carolina General Statutes having a mailing address of P.O. Box 1988, Washington, North Carolina, 27889, ("Lessor") and Skydive Little Washington, LLC, a North Carolina limited liability company having a mailing address of PO Box 841, Washington, North Carolina, 27889, ("Operator").

WITNESSETH

WHEREAS, the parties hereto entered into that certain Terminal Building Annex Lease and Fixed Base Operation - Jump School Agreement effective November 1, 2013 and now desire to terminate said agreement as well as replace the same with this Agreement, effective as of the day first above written.

WHEREAS, Lessor is the owner of the Washington-Warren Airport ("Airport"), with improvements thereon, which is located in Washington Township, Beaufort County, North Carolina and desires to contract with Operator to lease certain portions of said Airport as well as provide certain fixed base operations at the Airport.

WHEREAS, Operator desires to lease certain portions of said Airport as well as provide certain fixed base operations at the Airport.

WHEREAS, Operator has represented that Operator is fully capable of performing the fixed base operations described in this Agreement and Lessor has relied on such representations to select Operator to perform this Agreement.

NOW THEREFORE, pursuant to Chapter 63 of the North Carolina General Statutes, including but not limited to North Carolina General Statute § 63-53 and other relevant statutory authority, and for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein as well as the valuable consideration paid and to be paid, Lessor does hereby demise and lease unto Operator, and Operator does hereby accept from Lessor, that certain building known by the parties hereto as the Terminal Building Annex ("Annex" or "premises"), as more particularly shown on an excerpt from the Airport

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Lessor hereby grants Operator the non-exclusive privilege to engage in, and Operator agrees to engage in, 1) a jump school operation, including but not limited to a parachute rigging facility, classroom facility, and/or sky diving/parachute school instruction ("jump school") and 2) a commercial air tours operation ("scenic tours") in and from the Annex. No other use of the premises will be permitted without the written consent of Lessor and this Agreement does not authorize Operator to engage in any other fixed base operation or to provide any other aeronautical service to third parties. If Operator desires to engage in any other fixed base operation or to provide any other aeronautical service to third parties, a separate fixed base operation agreement would be required.

Said jump school and scenic tours shall meet any and all applicable Federal Aviation Administration ("FAA"), North Carolina Division of Aviation ("NC DOA"), and Airport Rules and Regulations requirements and shall be operated in a businesslike manner. In this regard, Operator shall perform its fixed base operations in a manner such that Operator serves as an ambassador of and to Lessor. All parachute jumps onto or intended to be onto the Airport shall be conducted in accordance with the latest publications of the Federal Aviation Regulation (FAR) Part 105, Parachute Operations; the FAA's Aeronautical Information Manual (AIM), Section 3-5-4, Parachute Jump Aircraft Operations; and 4-1-9, Traffic Advisory Practices at Airports Without Operation Control Towers; the Basic Safety Regulations (BSR) of the United States Parachuting Association (USPA); and the policy and procedures of the Airport as set forth in the Airport Rules and Regulations, as the same may be amended and all of which are incorporated herein by reference as if fully set forth. All scenic tours conducted by the Operator shall be conducted in accordance with the latest publication of the FAR Part 136, Commercial Air Tours, and the policy and procedures of the Airport as set forth in the Airport Rules and Regulations, as the same may be amended and all of which are incorporated herein as if fully set forth.

By virtue of the interest of the public in, and the efficient operation of, the Airport and the responsibility reposed in Lessor to see that such interest is protected as nearly as may be, Lessor reserves the right, during the term of this Agreement, to authorize additional operators to enter upon the Airport and use the buildings and properties situated thereon, saving and excepting therefrom the premises leased to Operator and the other areas or grounds specifically identified herein.

**SECTION III
Parking Space**

Operator and Operator's permittees may utilize such parking areas and/or parking spaces as are provided by Lessor at the Airport. Lessor reserves the right for Lessor's Airport Operations Technician or other personnel designated by the City Manager ("Lessor's designated Airport operator") to designate the specific parking areas and/or parking spaces that are to be utilized by Operator and Operator's permittees. First consideration and priority shall be given to the general public's use of such parking areas and/or parking spaces, their convenience, and their use of the Airport.

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Layout Plan, which excerpt is attached hereto as Exhibit A and incorporated herein by reference for a more complete and accurate description.

TO HAVE AND TO HOLD said land and premises, together with all privileges and appurtenances thereto belonging to it, Operator, upon the following terms and conditions.

**SECTION I
Use of Airport**

Subject to the express conditions contained in Section VII, Part B hereof, Lessor grants Operator the non-exclusive use, in common with others similarly authorized, of the Airport, together with all adequate space and facilities consisting of sufficient ground area to permit efficient taxiing, servicing, and taking off; equipment; improvements and services which have been or may hereafter be provided at or in connection with the Airport from time to time, including, but not limited to, the landing field and any extensions thereof or additions thereto, roadways, runways, aprons, taxiways, floodlights, landing lights, beacons, signals, radio aids; and any and all other conveniences for flying, landing, and takeoff.

Lessor grants Operator the non-exclusive right, in common with others similarly authorized, to load and unload persons and property as is customary in said Airport so long as the normal routine of Airport operations is not interfered with or made burdensome and to install, maintain, and operate radio communications, meteorological and aerial navigations and such other equipment and facilities, in, on or about the premises herein leased, as may be necessary and convenient for Operator's fixed base operations so long as all applicable city, county and governmental regulations are complied with.

Lessor grants Operator, its employees, contractors, customers, passengers, guests, and other licensees or invitees (collectively, "Operator's permittees"), the non-exclusive use, in common with others similarly authorized, of all public space in the terminal building of the Airport as well as all additional public space that may hereafter be made available therein and any additions thereto.

**SECTION II
Acceptance, Maintenance and Use of Premises**

Operator agrees to accept the premises in the physical condition in which the same now is. Operator further agrees to maintain the same and the grounds immediately adjacent thereto in at least a like condition during the term of this Agreement, normal wear and tear excepted. Operator further agrees to maintain the premises and the grounds immediately adjacent thereto in a clean, neat and orderly manner so as to promote the use of the Airport, and further agrees to abide by such reasonable requests as may be made by Lessor for the proper use and maintenance of the Airport to the end that the general welfare of the public may be promoted and served thereby, and that there not be permitted any accumulation of non-aviation equipment or discarded junk or the discharge of hazardous or regulated chemicals onto the Airport. Operator further agrees to surrender the premises back to Lessor in as good a condition as the same now is, ordinary wear and tear excepted, upon termination of this Agreement.

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**SECTION IV
Right of Ingress and Egress**

Operator shall have at all times the full and free right of ingress to and egress from the premises and facilities referred to in this Agreement for Operator and Operator's permittees. Such rights also extend to persons or organizations supplying materials or furnishing services to Operator, to include vehicles, machinery and equipment reasonably required by such persons or organizations.

**SECTION V
Term**

Subject to earlier termination as provided herein, the term of this Agreement shall be for a period of five (5) years, commencing on the 1st day of November, 2013 and ending on the 31st day of October, 2018.

Either party hereto shall have the right and option to terminate this Agreement, without recourse from or by the other party, by giving the other party written notice of such termination at least thirty (30) days prior to such termination.

**SECTION VI
Rental**

A. Operator shall pay Lessor for the use of the premises, facilities, rights, services, and privileges granted in this Agreement the sum of \$4,800.00 annually. Said sum shall be due and payable each year in monthly installments of \$400.00, beginning on or before November 1, 2013 and on or before the 1st day of each and every month thereafter until the termination of this Agreement.

B. The parties hereto expressly acknowledge that the annual amount paid by Lessor to Operator for November 1, 2014 through October 31, 2015 was/is \$4,910.04, payable in monthly installments of \$409.17. The parties hereto further expressly acknowledge that this Agreement was renegotiated prior to October 31, 2015 in order to authorize Operator to engage in the additional fixed base operation of scenic tours. In light of the foregoing and notwithstanding anything herein to the contrary, the parties hereto expressly agree that, beginning on November 1, 2015, Operator shall pay Lessor for the use of the premises, facilities, rights, services, and privileges granted in this Agreement the sum of \$5,160.00 annually. Said sum shall be due and payable each year in monthly installments of \$430.00, beginning on or before November 1, 2015 and on or before the 1st day of each and every month thereafter until the termination of this Agreement.

C. The annual rental amount due hereunder shall be subject to an annual rental increase not to exceed the annual percentage increase in the Bureau of Labor Statistics CPI (South Class Size D Series Id. CUURD300SA0) or five percent (5%), whichever is less. The readjusted annual amount due hereunder shall be applicable for the next year until the next readjustment consistent herewith.

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SECTION VII
Rights, Privileges, Obligations, and Responsibilities

A. In its use of the Airport as well as related facilities, Operator is granted the following specific rights and privileges.

(1) Operator has the right to add any additional capital improvements on the premises under the exclusive control of Operator, including the right to install, maintain, and remove additional, adequate storage facilities and appurtenances for the purpose of carrying out any of the activities provided for herein, subject to advance approval from Lessor as well as any other conditions herein generally or particularly set forth. Unless removal is authorized or required by Lessor, all improvements so added by Operator will be and become the property of Lessor at the termination of this Agreement without cost to Lessor. Any improvements that involve alterations to other Airport premises under the non-exclusive control of Operator shall be subject to approval in advance by Lessor and all improvements so added by Operator will be and become the property of Lessor at the termination of this Agreement without cost to Lessor as further consideration hereof unless removal is authorized or required by Lessor.

B. In its use of the Airport as well as related facilities and in conjunction with Operator's fixed base operations, Operator accepts the following obligations and responsibilities.

(1) Operator shall provide a jump school program and scenic tours service as more specifically described herein.

(2) Operator shall require each participant in its jump school program and scenic tours service to initial and sign a release of liability agreement which indemnifies and holds harmless Washington-Warren Airport, the City of Washington, its officers, employees, agents, and representatives from any and all injuries and/or damages to the participant or any other person, and any and all damages to property belonging to the participant or any other person, that may occur during or incidental to each participant's participation in the jump school program or scenic tours service, including but not limited to parachuting jumps conducted by the participant onto or intended to be onto the Airport. Said release of liability agreement, its form, substance and any revision thereof, shall be subject to Lessor's approval. Operator shall conduct its fixed base operations in accordance with the applicable Airport Rules and Regulations, as may be amended. Said Airport Rules and Regulations, as may be amended, are incorporated herein by reference as if fully set forth.

(3) Operator shall provide at least one aircraft for sky diving/parachute operations and at least one helicopter for the scenic tours service. Operator shall base all aircraft, including helicopters, that are utilized in the fixed base operations authorized hereunder at the Airport and enter into a lease or other contractual agreement with Lessor

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(10) Operator will make no unlawful, improper or offensive use of the premises.

(11) Any and all activities in furtherance of the jump school as well as the scenic tours service and any and all improvements to and use of the premises or Airport shall conform to and be consistent with the then current Airport plan, the minimum standards, and the Rules and Regulations adopted for the Airport by Lessor, as may be amended.

(12) Operator, in its operation of the jump school as well as the scenic tours service and its use of and improvements to the premises and facilities of the Airport shall not, on the grounds of race, color, sex, or national origin, discriminate or permit discrimination against any person or group of persons in any manner prohibited by law and shall otherwise use the premises in compliance with all other requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964, as may be amended.

(13) In performing jump school or scenic tours services and activities contemplated by this Agreement which may affect the overall operation of the Airport, Operator shall consult as well as coordinate with Lessor's designated Airport operator, as necessary and appropriate, and advise as well as report to Lessor's designated Airport operator, as necessary or appropriate, such compliance or other matters that come to its attention with respect to any FAA, NC DOA, USPA or other regulatory agencies.

(14) Operator shall provide the jump school and scenic tours services and activities contemplated by this Agreement on a reasonable, and not unjustly discriminatory, basis to all users thereof, and charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Operator may be allowed to make reasonable and non-discriminatory discounts, rebates, or other similar types of price reductions to volume customers and purchasers.

C. Lessor accepts the following obligations and responsibilities.

(1) It is understood by the parties hereto that the major structural and maintenance aspects of the Annex shall remain the responsibility of Lessor. Lessor's repair and maintenance obligation shall include structural repairs and replacements, including the replacement of any currently existing building parts, doors, and installations (electrical, heating and air conditioning, gas, water and sewer) that may become necessary. Notwithstanding the foregoing and as more specifically provided for hereinabove, Operator shall be responsible for any repair to the Annex that is necessitated or caused by Operator's use of the Annex. In the event there is damage to or destruction of all or a material part of the Annex due to a calamity or an act of God, Lessor may elect, in its sole discretion and without any recourse on the part of Operator, whether to repair or replace the Annex. In the event Lessor elects not to repair or replace the Annex, this Agreement shall terminate upon Operator's receipt of Lessor's written notice without recourse from Operator.

(2) Consistent with the Airport Layout Drawing, Lessor's designated Airport operator shall designate the area to be utilized by Operator at the Airport as a drop zone, which

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concerning such aircraft, including helicopters, required hereunder to be based at the Airport.

(4) Operator shall coordinate all jump school activities with Lessor's designated Airport operator.

(5) Operator shall publish, maintain, and keep regular hours of operation.

(6) The use and occupancy of the premises and the use and maintenance of the grounds immediately adjacent thereto by Operator shall be without cost or expense to Lessor. It is understood and agreed that Lessor is obligated to furnish utility services such as electricity, water, and sewer to Operator during the period of occupancy. If Lessor operates or maintains utility services to the premises, it will continue to furnish such utility services at the request of Operator provided that Operator shall assume and pay any and all costs or charges for any meters that are necessary for measuring said service and the charges for providing such service. Operator also shall assume and pay any and all costs or charges for additional utility services furnished to or required by Operator during the term hereof, including any and all extensions or connections of such services as may be necessary or required in the operation and maintenance of the premises to any and all existing storm and sanitary sewers, water, and utility outlets and shall otherwise pay for any and all service charges incurred or used on the premises.

(7) Operator shall maintain and be responsible for all minor repairs to the Annex and any repair to the Annex that is necessitated or caused by, in any way, Operator's use of the Annex. Operator agrees, at its own expense, to cause the premises and the buildings, improvements, and appurtenances thereto, including grounds immediately adjacent thereto, to be maintained in a presentable condition and equal in appearance and character to other, similar improvements on the Airport. Unless specifically provided for herein or expressly permitted by Lessor's designated Airport operator, all of Operator's tools, machines, parts and maintenance equipment shall be stored in the Annex.

(8) Operator agrees, at its own expense, to cause all waste, garbage and rubbish to be removed from the premises and agrees not to deposit the same on any of the Airport premises, except Operator may temporarily deposit the same on the premises in an approved container or enclosure in connection with their collection or removal. Operator agrees it will not allow the accumulation of rubbish, waste, foul material, contaminant, or otherwise create an unhealthy or hazardous condition on the premises.

(9) Subject to the approval of Lessor's designated Airport operator and consistency with any applicable ordinance, Operator shall be permitted to establish as well as maintain a normal company identification sign(s) on the premises and a sign(s) or other posting(s) on the Airport premises that describes Operator's services and the location of Operator's fixed base operations. Operator will not suffer or permit to be maintained upon the outside of any improvements located on the leased premises any billboards or advertising signs except as specifically provided for hereinabove.

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drop zone shall be the point of intended landing for all jumps onto, or intended to be onto, the Airport. Upon receiving advance approval from Lessor's designated Airport operator, Operator may make certain alterations to, and maintain, the drop zone or portions thereof. Notwithstanding the foregoing, Lessor's designated Airport operator shall retain full authority over the drop zone and any such alterations and maintenance shall be kept, altered, removed, continued or discontinued, as the case may be, at the direction of, and in the discretion of, Lessor's designated Airport operator.

SECTION VIII
Taxes and Assessments

Operator shall be responsible for and promptly pay before default any and all real and personal property taxes or special assessments, if any, that may be levied or assessed against the premises or any improvements or other property situated thereon, it being the mutual intention of the parties that Lessor shall not be required to pay any taxes on real or personal property by reason of permitting Operator to use the premises as herein described. Operator also agrees to indemnify Lessor against any loss or liability resulting from any and all claims or liens in connection with such taxes and assessments.

Operator shall insure that Operator's aircraft, including but not limited to helicopter(s), that are utilized in Operator's jump school and scenic tours operations are listed on the tax rolls of Beaufort County, North Carolina. Operator shall verify, if requested, that any of Operator's personal property that is located on the premises or Airport and that is required to be listed on the tax rolls of Beaufort County, North Carolina for the current year and any of Operator's aircraft, including but not limited to helicopter(s) that are utilized in Operator's jump school and scenic tours operations, are listed on the tax rolls of Beaufort County, North Carolina for the current year.

SECTION IX
Maintenance and Utilities

Except as otherwise specified herein, during the term of this Agreement, Lessor shall maintain and keep in good repair so much of the Airport premises as are not under the exclusive control of the individual operators and lessees, including but not limited to the terminal building; vehicle parking areas; and all roadways, runways, aprons and taxiways. Subject to the conditions expressly set forth in Section VII Part B hereof, Lessor shall also maintain and operate all sewage and water facilities, electrical and electronic facilities and such other appurtenances and services as are now or hereafter connected with the operation of the Airport.

SECTION X
Rules and Regulations

Operator agrees to comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, assurances, and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials, officers and other parties, foreseen

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or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the jump school or scenic tours service; the Airport including premises or any part thereof, or any of the adjoining property; or any use or condition of the premises or any part thereof. Further, Operator shall comply with any and all local, state, federal or other rules and regulations as well as all applicable environmental rules and regulations, including, but not limited to, such rules and regulations regulating hazardous or similar substances or conditions, their storage and disposal.

Operator agrees to observe and obey the rules and regulations with respect to the operation of the jump school as well as scenic tours service and use of the Airport premises, including premises; provided, however, that such rules and regulations shall be consistent with all rules, regulations, and orders of the FAA; and provided further, that such rules and regulations shall not be inconsistent with the provisions of this Agreement or the procedures prescribed or approved from time to time by the FAA with respect to Operator's jump school, Operator's scenic tours service, or Operator's use of the Airport, including premises. Operator further agrees to indemnify and hold Lessor harmless for any and all damage of any kind arising from Operator's failure to comply with the aforementioned rules and regulations, including, but not limited to, the cost of clean-up, restoration fees, mitigation costs, and attorney's fees caused or occasioned by Operator and Operator's permittees.

Operator agrees to abide by and cooperate with Lessor in the enforcement and implementation of all applicable Airport security regulations, safety plan standards, and measures as may be adopted by Lessor.

SECTION XI Subordination

This Agreement shall be subject and subordinate to the provisions of any existing or future agreement between Lessor and the United States, the State of North Carolina, or any agencies thereof, relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development or operation of the Airport or as a condition precedent to the acquisition of the Airport facilities by Lessor. It is specifically understood by Operator that this Agreement is subject to the recapture clause and other conditions of grant agreements and/or grant assurances with the Department of Navy, FAA, the Civil Aeronautics Administration, and the State of North Carolina, respectively. Lessor shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Operator in the jump school, scenic tours service, and to the premises, and to compensation for the taking thereof, interference therewith and damage thereto, caused by such agreements or by actions pursuant thereto by Lessor or the other parties named hereinabove.

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compliance with this requirement, with the exception of statutory worker's compensation or employer's liability insurance, name Lessor as additional insured and provide a thirty (30) day written notice to Lessor of termination, material change in the terms thereof or non-renewal of such policies.

Operator shall also provide Lessor with a copy of the Certificate of Insurance for any aircraft, including but not limited to helicopter(s), utilized in conjunction with the jump school and scenic tours operations. Operator shall insure that any person who participates in a jump or skydive possesses or has third party liability insurance coverage.

A. **Waiver of Subrogation.** Operator releases and relieves Lessor and waives Operator's entire rights of recovery against Lessor for loss or damage arising out of or incident to any of the perils insured against under this Agreement as well as any insurance policy Operator might own, whether loss or damage is due to the negligence of Lessor or their agents, employees and/or invitees. Operator shall give notice to its insurance carriers that this waiver of subrogation is contained in this Agreement and cause the carriers to accept this waiver of subrogation, to the extent permissible by applicable law.

SECTION XIV Termination and Default

A. This Agreement shall terminate at the end of its original term, unless sooner terminated as provided for herein. No holding over by Operator after the expiration or earlier termination of this Agreement shall operate to extend or renew this Agreement for any further term whatsoever; but Operator will, by any such holding over, become the tenant at will of Lessor. After any written notice by Lessor to vacate the premises, continued occupancy thereof by Operator shall constitute Operator a trespasser.

B. This Agreement shall be subject to termination by either party in the event of any one or more of the following events.

- (1) The abandonment of the Airport as an airport or airfield for any type, class, or category of aircraft.
- (2) Damage to or destruction of all or a material part of the premises or Airport facilities necessary for the Operator's jump school or scenic tours service.
- (3) The lawful assumption by the United States, the State of North Carolina, or any authorized agency thereof, of the operation, control or use of the Airport, or any substantial part or parts thereof, in such a manner as to restrict substantially Operator from operating a jump school or scenic tours service for a period in excess of ninety (90) days.

C. This Agreement shall be subject to termination by Operator in the event of any one or more of the following events.

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SECTION XII Indemnification

Lessor shall stand indemnified by Operator as hereinafter provided. It is expressly understood and agreed by and between the parties hereto that Operator herein is and shall be deemed to be an independent contractor, responsible to all parties for its acts or omissions as well as the acts or omissions of Operator's permittees and Lessor shall in no way be responsible therefor. It is further agreed that, in the use of the Airport, the maintenance, erection, or construction of any improvements thereon, and the exercise or enjoyment of the privileges herein granted, Operator agrees to indemnify, defend and hold harmless Lessor from any negligence of Operator or Operator's permittees.

Operator specifically agrees to indemnify, defend and hold harmless Lessor against any and all liability for injuries to persons or damage to property caused by, arising from, or in any way related to Operator's jump school and scenic tours service or caused or occasioned by Operator's or Operator's permittees' negligent use or occupancy of the premises or Airport; provided, however, that Operator shall not be liable for any injury, damage, or loss occasioned by the negligence of Lessor or its agents or employees; and provided further that Lessor shall give to Operator prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly, contingent or otherwise, affects or might affect Operator, and Operator shall have the right to compromise and defend such claim or suit to the extent of its own interest.

SECTION XIII Insurance

Operator shall procure and maintain in force necessary commercial general liability insurance, including contractual liability, coverage for the premises and Operator's activities thereon in the minimum amount of \$1,000,000.00 for personal injury, death and property damage resulting from each occurrence and \$1,000,000.00 aggregate to indemnify and hold harmless Lessor from any and all liability for claims of loss, damage, or injury to persons or property caused by, arising from, or in any way related to the use of the premises or the Airport by Operator or Operator's permittees or their respective activities on or at the Airport during the term of this Agreement. In addition, Operator shall procure and maintain in force necessary insurance coverage as follows: 1) third party liability insurance which provides coverage for the jump school and scenic tours activities, including but not limited to jumps and/or skydives; 2) \$1,000,000.00 - products/completed operational aggregate limit; 3) \$1,000,000.00 - personal/advertising injury aggregate limit; and 4) statutory worker's compensation insurance in amounts required by law and, unless exempted by applicable law, employer's liability insurance at a minimum of \$500,000.00 for bodily injury by accident each employee, \$500,000.00 for bodily injury by disease each employee, and \$500,000.00 bodily injury by disease policy limit.

All insurance shall be carried by a responsible company and shall be in a form satisfactory to Lessor. Lessor shall be furnished any and all copies of all insurance policies obtained by Operator in compliance with this requirement on or before Operator begins operation of the jump school or the scenic tours service. Operator agrees to maintain sufficient coverage on a current status and that all such insurance policies obtained by Operator in

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- (1) The default by Lessor in the performance of any of the terms, covenants, or conditions of this Agreement and the failure of Lessor to remedy, or to undertake to remedy, such default for a period of thirty (30) days after receipt of notice from Operator to remedy the same.

D. This Agreement shall be subject to termination by Lessor in the event of any one or more of the following events.

- (1) The default by Operator in the performance of any of the terms, covenants, or conditions of this Agreement, and the failure of Operator to remedy or undertake to remedy such default for a period of thirty (30) days after receipt of written notice from Lessor to remedy the same. Notwithstanding the foregoing, if Operator abandons the premises for any period of time or fails or neglects to make any payment of rental when due, Lessor may, at its option and without any other notice, demand, or legal proceedings, declare this Agreement void, terminate this Agreement, require Operator to vacate, enter the premises, and eject Operator therefrom or may pursue any other lawful right or remedy.

- (2) Operator has a petition filed against it for an involuntary proceeding under any applicable bankruptcy, insolvency, or similar law now or hereafter in effect and such petition shall not have been dismissed within sixty (60) days of filing.

- (3) A Court having jurisdiction shall have appointed a receiver, liquidator, assignee, custodian, trustee, sequester, or similar official of such party for any substantial portion of its property or ordered the winding up or liquidation of its affairs.

- (4) Operator files a voluntary proceeding or reorganization plan under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect; shall have made a general or other assignment for the benefit of creditors; shall have failed generally to pay its debts as they become due; or is adjudicated as bankrupt.

SECTION XV Surrender of Possession: Title to Improvements and Repairs

Upon termination by expiration of the original term of this Agreement or upon earlier termination under any circumstances, Operator's rights to use the premises, facilities, and services described in this Agreement shall cease, and Operator shall vacate the premises without unreasonable delay. Operator shall surrender the premises in approximately the same condition as upon taking of possession, allowing for reasonable wear and tear. Upon any such above termination, Operator shall have no further right or interest in any of the premises, Airport, or the improvements thereon. It is mutually agreed that title to any and all improvements currently situated, hereafter erected, or hereafter constructed upon the premises or Airport shall remain, revert to, or become owned and possessed, as the case may be, by Lessor upon the expiration or earlier termination of this Agreement, without any additional payment or consideration to Operator therefor, free and clear of all claims or liens through or on the part of Operator on account of any repair or improvement work. The vesting of title in Lessor at the time specified is

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a part of the consideration for this Agreement. Lessor shall not be liable to Operator or Operator's contractors or subcontractors for the value of such improvements currently situated on, hereafter erected, or hereafter constructed upon the premises.

SECTION XVI
Inspection by Lessor

Lessor may enter the premises now or hereafter leased exclusively to Operator at any reasonable time for any purpose necessary or incidental to the performance of its obligations under this Agreement. Operator will provide access to the premises including the Annex for inspection by Lessor. This inspection may be made at least semi-annually with a fire department official. Any discrepancies or violations must be corrected within thirty (30) days or this Agreement may be terminated.

SECTION XVII
Assignment and Subletting

Operator shall not at any time sublease, assign, or in any manner surrender personal control of any part of the property or rights herein contracted for without the written consent of Lessor. Provided, however, that the foregoing shall not prevent the assignment or subletting of such rights to any corporation with which Operator may merge or consolidate, or which may succeed to the business of Operator, or to the United States government or any agency thereof. No such assignment or subletting contemplated hereunder shall release Operator from its obligations to pay any and all of the rentals and other charges set forth in this Agreement. It is recognized that the interest of all parties will be promoted and served by the increased use of the Airport facilities and it is not the intention of this provision to so restrict this use, but rather to insure that the same is accomplished with the view of serving the public interest vested in Lessor.

SECTION XVIII
Notices

Notices provided for in this Agreement shall be sufficient if sent by registered mail, postage prepaid, and addressed as follows:

TO LESSOR: Attn: City Manager
City of Washington
Post Office Box 1988
Washington, NC 27889

TO OPERATOR: Attn: Ingrid A. Stephan
Skydive Little Washington, LLC
Post Office Box 841
Washington, NC 27889

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SECTION XXIII
Effect of Agreement

All covenants, conditions, or provisions in this Agreement shall extend to and bind the legal representatives, permitted successors and permitted assigns of the respective parties. This Agreement is in lieu of any agreement heretofore executed between the parties hereto and any such prior agreement is hereby cancelled and no longer in effect. Without limiting the foregoing, upon execution of this Agreement, this Agreement shall be a novation of and replace, in its entirety, the previous Terminal Building Annex Lease and Fixed Base Operation - Jump School Agreement and the same shall be void, cancelled and of no further legal effect.

SECTION XXIV
Attorney's Fees

In the event any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay under this Agreement, a reasonable sum for the successful party's attorney's fees.

SECTION XXV
Entire Agreement

This Agreement shall constitute the sole agreement between the parties hereto and it is understood that the provisions contained herein shall not be altered, modified or changed in any manner except by written agreement executed by Lessor and Operator, and no oral contract or agreement, or informal memorandum shall have the effect of so modifying, altering or changing this Agreement. Any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

SECTION XXVI
Modification of Agreement

Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement, shall be binding only if in writing signed by each party or an authorized representative of each party.

Notwithstanding anything herein to the contrary, this Agreement shall be interpreted and, if necessary, amended, to ensure and preserve its compliance with any applicable Federal obligation. If Operator refuses to effectuate any amendment that may be required to ensure and preserve its compliance with any applicable Federal obligation, such refusal shall constitute an event of default and this Agreement may be terminated as a result thereof upon notice from Lessor to Operator.

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Any notice so given to either party hereunder shall be conclusively considered to have been received on the third business day following the proper mailing thereof. Each party shall give written notice to the other of any change of address at least thirty (30) days in advance of the date such change is to become effective, whereupon the address so given shall control.

SECTION XIX
Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of North Carolina.

SECTION XX
Severability

Any covenant, condition, or provision of this Agreement that is held to be invalid by any court of competent jurisdiction shall be considered deleted from this Agreement, but such deletions shall in no way effect any other covenant, condition or provision of this Agreement, so long as such deletion does not materially prejudice Lessor or Operator in its respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

SECTION XXI
Effect of Waiver

The waiver of any breach, violation or default in or with respect to the performance or observance of the covenants and conditions contained herein shall not be taken to constitute a waiver of any such subsequent breach, violation or default in or with respect to the same or any other covenant or condition hereof.

SECTION XXII
Arbitration

In the event of any disagreement as to whether there has been a breach of contract under this Agreement, the questions shall be submitted to arbitration, each party hereto selecting one arbitrator and the two so selected selecting a third arbitrator (but if no agreement can be reached as to the third arbitrator, he shall be appointed by the Clerk of Superior Court of Beaufort County), which board of arbitrators shall sit within two weeks following the date of their appointment, and, after proper notice to both parties, shall hear the evidence presented by both sides and render their decision. The decision of the majority of the board of arbitrators shall be binding on both Lessor and Operator, and it shall be made and announced as soon as possible, and in no event later than two weeks after the aforementioned hearing. Each party shall pay the arbitrator appointed by it, and the third arbitrator shall be paid jointly by Lessor and Operator. In this connection, attention is invited to the fact that the management of said Airport, its general appearance and the manner in which the general public is met and served is of paramount importance to Lessor, and in the event of any disagreement requiring adjustment or adjudication by arbitration, as herein provided, said arbitrators shall give particular attention to these considerations to the extent that Operator shall comply with all requirements of this Agreement.

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SECTION XXVII
Confidentiality

All books, records, information, and data that are exchanged or received between the parties shall remain confidential and shall not be disclosed to any other person, except as specifically authorized or as may be required by law.

SECTION XXVIII
Negation of Membership or Joint Venture

Nothing contained in this Agreement shall constitute, or be construed to be or to create, a partnership or joint venture between Operator and Lessor.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be duly and properly executed as evidenced by the authorized signatures below.

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


Matt Rauschenbach,
Chief Financial Officer

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(CORPORATE SEAL)

ATTEST:

Cynthia S. Bennett, City Clerk

LESSOR:
CITY OF WASHINGTON

By: 
Bobby Roberson, Interim City
Manager
Date: 9-29-2015

OPERATOR:
SKYDIVE LITTLE
WASHINGTON, LLC

By: 
Ingrid A. Stephan, Member,
Date: 9/30/15

STATE OF NORTH CAROLINA
COUNTY OF Beaufort

Before me, a Notary Public in and for the County and State aforesaid, this day personally appeared Ingrid A. Stephan and acknowledged that she is Member of SKYDIVE LITTLE WASHINGTON, LLC, and acknowledged the due execution by her of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the 30 day of September, 2015.


Notary Public
My Commission expires: 6-15-18



STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Reatha B. Johnson, a Notary Public of the State and County aforesaid, do hereby certify that CYNTHIA S. BENNETT personally appeared before me this day and acknowledged that she is the City Clerk for the CITY OF WASHINGTON, a body politic and incorporate, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Interim City Manager, sealed with its corporate seal and attested by herself as its City Clerk.

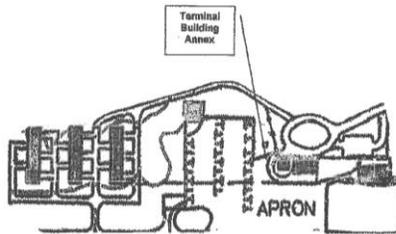
WITNESS my hand and Notarial Seal, this the 29 day of September, 2015.


Notary Public

My Commission expires: 12/14/2019



Exhibit A



AUTHORIZE – THE MANAGER TO EXECUTE THE ATTACHED OPTION AND GROUND LEASE WITH USCOC OF GREATER NORTH CAROLINA, LLC.

The request is for an option and ground lease with USCOC for the placement of a monopole tower for cellular use on City property next to our water tower off the Linnie Perry Road. This tower is adjacent to the current idX Impressions building, formerly known as the Hamilton Beach property. This project has been ongoing since at least January of 2012 and we have reached terms that appear to be acceptable to both parties. The initial option will generate \$1,200 of revenue for the water fund. The initial option is for six (6) months with an additional option of six (6) months at the tenant’s request for another \$1,200. If the tenant exercises the option for the ground lease, the initial rent will be \$1,200 per month for the first year with the rent increasing by three percent (3%) each year on the anniversary of the commencement date. The term of the initial lease is five (5) years with five (5) subsequent five (5) year term extensions possible. As with the first term, the rent will increase by three percent (3%) each year over the previous year’s rent on the anniversary of the commencement date. There is a liquidated damages clause that will require USCOC to pay the City \$5,000 if they choose to terminate the lease within the first ten (10) years. If USCOC sublet space on this tower, the City must give written consent and will receive an additional \$200 per month for each subtenant or licensee.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council authorized the manager to execute the option and ground lease with USCOC.

OPTION AND GROUND LEASE

This Option and Ground Lease ("Lease") is made and entered into by and between the City of Washington, a North Carolina body corporate and politic whose address is Municipal Building, 102 East Second Street, Washington, North Carolina 27889, hereinafter referred to as "Landlord," and USCOC of Greater North Carolina, LLC, a Delaware limited liability company, having an address at Attention: Real Estate Lease Management, 8410 West Bryn Mawr Avenue, Chicago, Illinois 60631, hereinafter referred to as "Tenant" (each may be referred to singularly as "Party" and collectively as "Parties").

WHEREAS, Landlord is the fee owner of property located at Lat 35 34' 44.3", Long 77 03' 49.1" with an address of off Linnie Perry Road in the City of Washington, County of Beaufort, State of North Carolina and legally described in Exhibit A attached hereto and incorporated herein by reference (the "Landlord's Parcel").

WHEREAS, Tenant desires to occupy, and Landlord is willing to provide Tenant such Premises (as hereinafter defined) on the Landlord's Parcel for Tenant's use, as set forth in this Lease.

NOW THEREFORE, in consideration of the mutual promises, conditions, and other good and valuable consideration of the Parties hereto, the receipt and legal sufficiency of which is hereby acknowledged, it is covenanted and agreed as follows.

1. Option to Lease.

- a. Landlord hereby grants to Tenant an option (the "Option") to lease from Landlord the following described parcel (may be referred to herein as the "Leasehold Parcel" and/or "Premises"):

Approximate dimensions: 60' x 60'

Approximate square footage: 3,600

Legal descriptions of Landlord's Parcel and Tenant's Premises are contained in Exhibit A which is attached hereto and incorporated herein by reference and a Site Plan of the Leasehold Parcel is attached hereto as Exhibit B and incorporated herein by reference.

- b. During the Initial Option Term (as hereinafter defined), any Extended Option Term (as hereinafter defined), the Initial Term (as hereinafter defined), and any Renewal Term (as hereinafter defined) of this Lease, Tenant and its agents, engineers, surveyors and other representatives will have the right to enter upon the Leasehold Parcel to inspect, examine, conduct soil borings, drainage testing, material sampling, and other geological or engineering tests or studies of the Leasehold Parcel (collectively the "Tests"); to apply for and obtain licenses, permits, approvals, or other relief required of or deemed necessary or appropriate at Tenant's sole discretion for its use of the Premises (as hereinafter defined) and include without limitation applications for zoning variances, zoning ordinances, amendments, special use permits, and construction permits (collectively referred to as "Governmental Approvals"); and

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otherwise to do those things on or off the Leasehold Parcel that, in the opinion of Tenant, are necessary in Tenant's sole discretion to determine the physical condition of the Leasehold Parcel, the environmental history of the Leasehold Parcel, Landlord's title to the Leasehold Parcel, and the feasibility or suitability of the Leasehold Parcel for Tenant's Permitted Use (as hereinafter defined), all at Tenant's sole expense. Upon request of Landlord, Tenant shall provide Landlord with a copy of any document generated by or from said Tests or determinations described above. Tenant shall, at Tenant's sole expense, return the Leasehold Parcel to its original condition if, after the Initial Option Term and any Extended Option Term, Tenant does not exercise the Option to lease the Leasehold Parcel.

- c. In consideration of Landlord granting Tenant the Option, Tenant hereby agrees to pay Landlord the sum of one thousand two hundred and No 00/100 dollars (\$1,200.00) within fifteen (15) days of full execution of this Lease by Landlord and Tenant. The Option will be for an initial term of six (6) months (the "Initial Option Term") and may be renewed by Tenant, at the election of Tenant, for an additional six (6) months ("Extended Option Term") upon written notification to Landlord and the payment of an additional one thousand two hundred and No 00/100 dollars (\$1,200.00) no later than fifteen (15) days prior to the expiration date of the Initial Option Term. Landlord shall provide a complete and accurate IRS form W9 to Tenant for the Payee of the Option sum upon request.
- d. During the Initial Option Term and during the Extended Option Term, if any, as the case may be, Tenant may exercise the Option by notifying Landlord in writing at any time prior to the expiration of the Initial Option Term and the Extended Option Term, if any, as the case may be. If Tenant exercises the Option, then Landlord shall lease the Leasehold Parcel to the Tenant on, and subject to, the terms and conditions of this Lease.
- (i) Tenant's exercise of the Option by notifying Landlord in writing at any time prior to the expiration of the Initial Option Term or the Extended Option Term as more specifically provided for herein shall serve as 1) acknowledgement by Tenant that Tenant has inspected and is familiar with the condition of the Premises and 2) agreement by Tenant that Tenant accepts the same in its then current "AS IS" condition. Tenant's subsequent taking possession of the Premises shall be conclusive evidence against Tenant that Tenant has accepted the same "AS IS" and that Landlord is under no duty to repair anything, furnish any services for, or otherwise improve in any way the Premises to accommodate Tenant's use thereof.
2. Grant of Easements. Upon Tenant's exercise of the Option, Landlord hereby grants to Tenant an access and utility easement to the nearest accessible public right-of-way and to the nearest suitable utility company-approved service connection points (may be referred to herein singularly as "Access Easement" and/or "Utility Easement" and collectively as "Easements"; the lands underlying the Easements are collectively referred to herein as the "Easement Parcels," which Easements and Easement Parcels are further described in Exhibits "A" and "B" attached hereto and incorporated herein). Landlord retains the right

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to relocate the Easements, upon written notice to Tenant, in order to maximize the use of the surrounding property. The grant of these Easement Parcels only becomes effective upon the Commencement Date of this Lease (as hereinafter defined) and shall terminate upon expiration of this Lease. The Easement Parcels are assignable in conjunction with the Leasehold Parcel and are created only for the purposes set forth herein. The Easements granted herein shall include, but not be limited to,

- a. The right to clear vegetation, cut timber, and move earthen materials upon the Easement Parcels,
- b. The right to improve an access road within the Access Easement Parcel,
- c. The right to place utility lines and related infrastructure within the Utility Easement Parcel,
- d. The right to enter and temporarily rest upon Landlord's adjacent lands, provided that Landlord's adjacent lands are restored to its original condition immediately thereafter, for the purposes of
- (i) Installing, repairing, replacing and removing the Improvements (as defined below) and any other personal property of Tenant from the Leasehold Parcel and
- (ii) Improving the Easement Parcels, including the right to bring in and use all necessary tools and machinery, and
- e. The right of pedestrian and vehicular ingress and egress to and from the Leasehold Parcel at any time over and upon the Access Easement Parcel. The Leasehold Parcel and the Easement Parcels are collectively referred to herein as the "Premises." Subject to the Parties reaching a written agreement concerning the same, Landlord may make such additional direct grants of easement as Tenant may request in order to further the purposes for which Tenant has been granted the Easements set forth in this Section 2.
3. Use of the Premises. Tenant shall be entitled to use the Premises to construct, operate, modify as necessary, and maintain thereon a communications antenna tower (including aviation hazard lights when required), an access road, one or more equipment buildings, back-up power devices and a security fence, together with all necessary lines, anchors, connections, devices, legally required signage and equipment for the transmission, reception, encryption, and translation of voice and data signals by means of radio frequency energy and landline carriage (collectively, the "Improvements"). Tenant's use described in this Section 3 is herein referred to as the ("Permitted Use"). Tenant shall have unlimited access to the Premises 24 hours per day, 7 days a week.
- a. Tenant's use of the Premises as more specifically described herein shall at all times comply with and conform to all laws and regulations applicable thereto, including but not limited to Section 40-359 and all other applicable provisions of Chapter 40, Zoning, Article XIV, Telecommunication Towers and Antennas, of the Code of the City of Washington, as may be amended.
4. Initial Term. In the event Tenant, in Tenant's sole discretion, exercises the Option, the initial Lease term will be five (5) years (the "Initial Term"), commencing upon the

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Commencement Date (as hereinafter defined) and terminating at midnight on the day on which the fifth (5th) anniversary of the Commencement Date falls.

5. **Option to Renew.** The Initial Term of this Lease shall automatically extend for up to five (5) additional terms of five (5) years each (each, a "Renewal Term"), upon a continuation of all the same provisions hereof, unless Tenant gives Landlord written notice of Tenant's intention to terminate this Lease at least sixty (60) days before the expiration of the Initial or any Renewal Term. Notwithstanding the foregoing, there shall be no automatic renewal of the Initial Term or any Renewal Term if Tenant is in default of any material provision hereof at the expiration of any such term.
6. **Option to Terminate.** Tenant shall have the right to terminate this Lease at any time by giving Landlord written notice of the date of such termination ("Termination Date") and paying Landlord the amount of \$5,000.00 in liquidated damages if terminated before the expiration of the first Renewal Term, and no liquidated damages will be assessed after the first Renewal Term. The indemnification obligations of each party contained in Section 12 and Tenant's obligations to remove improvements as well as continue to pay rent until the improvements are removed as more specifically provided for in Section 22 shall survive any termination of this Lease.
7. **Base Rent.** Commencing on the date that Tenant exercises the Option to lease the Premises (the "Commencement Date"), Tenant shall pay Base Rent to Landlord in the amount of one thousand two hundred and No 00/100 dollars (\$1,200.00) per month, the first payment of which shall be due on the Commencement Date, and installments thereafter on that same day of each successive calendar month. Landlord shall submit to Tenant a complete and accurate IRS form W9 upon request. Landlord shall specify the name, address, and taxpayer identification number of a sole payee (or maximum two joint payees) who shall receive Rent on behalf of the Landlord. Rent will be prorated for any partial month. Any change to the Payee must be requested in accordance with the Notice provision herein, and a new IRS form W9 must be supplied upon request.
8. **Adjusted Rent.** On each anniversary of the Commencement Date throughout the duration of the Lease as renewed and extended, the Rent shall be increased by three percent (3%) over the previous year's rent.
9. **Utilities.** Tenant shall solely and independently be responsible for all costs of providing utilities to the Premises, including the separate metering, billing, and payment of utility services consumed by Tenant's operations.
 - a. The provision of utilities, including water, sewer, and electricity, if any, shall be made available under the then current, customary practices of Landlord regarding utilities and Tenant shall be responsible for all applicable charges, including but not limited to "hook-up" and customary monthly charges for the same. Notwithstanding the foregoing, it is expressly understood by the Parties that Tenant shall be responsible for the installation of, in the manner required by Landlord, and the paying for any additional utilities that may be required.
10. **Property Taxes.** Tenant shall be responsible for and promptly pay before default any and all real and personal property taxes or special assessments, if any, that may be levied or

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Environment and Natural Resources, Division of Water Quality, Aquifer Protection and Groundwater Sections (Reference: Incident # 144338, Hamilton Beach, 234 Springs Road, Washington, Beaufort County, North Carolina). Notwithstanding the foregoing, Landlord will have no liability to Tenant to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of Tenant, or of Tenant's agents, employees or contractors.

13. **Insurance.**
 - a. Tenant shall maintain commercial general liability insurance insuring against liability for bodily injury, death or damage to personal property with minimum limits of One Million and No 00/100 Dollars (\$1,000,000) each occurrence and general aggregate. Landlord shall be named as an additional insured on said commercial general liability insurance policy. In addition, Tenant shall maintain worker's compensation in statutory amounts; employer's liability insurance with a limit of One Million and No 00/100 Dollars (\$1,000,000) for each accident, One Million and No 00/100 Dollars (\$1,000,000) bodily injury; automobile liability insurance insuring against claims for bodily injury or property damage with combined single limits of One Million and No 00/100 Dollars (\$1,000,000); and all risk property insurance covering all Tenant fixtures, improvements, and personal property for full replacement value. With the exception of said all risk property insurance, Tenant shall provide Landlord with evidence of such insurance in the form of a certificate of insurance within thirty (30) days of the execution hereof and throughout the Initial Term of this Lease and any Renewal Term. Tenant shall provide Landlord with evidence of said all risk property insurance in the form of a certificate of insurance on or before the Commencement Date and throughout the Initial Term of this Lease and any Renewal Term.
 - b. Landlord shall maintain general liability insurance insuring against liability for bodily injury, death or damage to personal property with minimum limits of One Million and No 00/100 Dollars (\$1,000,000) each occurrence and general aggregate. In addition, to the extent required by law, Landlord shall maintain worker's compensation in statutory amounts and employer's liability insurance with a limit of One Million and No 00/100 Dollars (\$1,000,000) for each accident, and One Million and No 00/100 Dollars (\$1,000,000) bodily injury. It is expressly acknowledged by Tenant that Landlord's participation in the North Carolina League of Municipalities IRFFNC or its equivalent and Landlord's self insurance with regard to worker's compensation will satisfy all of Landlord's obligations regarding liability insurance hereunder.
14. **Interference.** Except as specifically permitted hereinafter, neither party shall use, nor shall Landlord permit its tenants to use, any portion of the Premises or Landlord's Parcel in any way which interferes with the operations of the other Party. Such interference shall be deemed a material breach by a Party, and the breaching Party shall have the responsibility to promptly cause any such interference to be eliminated. If said interference cannot be eliminated within twenty-four (24) hours after receipt of notice that such interference is occurring, the breaching Party shall discontinue or cause to be discontinued the operation of any equipment causing the interference until the same can be corrected. In the event any such interference does not cease promptly after the breaching Party's receipt of notice

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assessed against the Premises or any improvements or other property situated thereon, it being the mutual intention of the Parties that Landlord shall not be required to pay any taxes on real or personal property by reason of permitting Tenant to use the Premises as herein described. Tenant also agrees to indemnify Landlord against any loss or liability resulting from any and all claims or liens in connection with such taxes and assessments.

11. **Repairs and Maintenance.** Tenant shall be responsible for all repairs and maintenance of the Improvements and the Premises, and may at its own expense alter or modify the Improvements to suit its needs consistent with the intended use of the Premises. Landlord will maintain the areas surrounding Tenant's Premises to the same standard as on the remainder of Landlord's surrounding property.
12. **Mutual Indemnification.**
 - a. To the extent permitted by law, Tenant agrees to defend, indemnify and save harmless Landlord from and against all claims, losses, costs, expenses, or damages from a third party, arising from
 - (i) Or in any way related to, connected with, or growing out of this Lease and all of Tenant's activities as well as uses permitted hereunder, including but not limited to the negligence or willful misconduct of Tenant, or its agents, employees, or contractors;
 - (ii) Any material breach by Tenant of any provision of this Lease; or
 - (iii) The exacerbation by Tenant of the environmental conditions described in Section 25. This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Notwithstanding the foregoing, Tenant will have no liability to Landlord to the extent any claims, losses, costs, expenses, or damages arise out of or result from any act, omission, or negligence of Landlord, or of Landlord's agents, employees or contractors.
 - b. To the extent permitted by law and without waiving any applicable defense of sovereign immunity, Landlord agrees to defend, indemnify and save harmless Tenant from and against all claims, losses, costs, expenses, or damages from a third party, arising from
 - (i) The negligence or willful misconduct of Landlord or its agents, employees, or contractors; or
 - (ii) Any material breach by Landlord of any provision of this Lease. This indemnity and hold harmless agreement will include indemnity against all reasonable costs, expenses, and liabilities incurred in or in connection with any such claim, and the defense thereof. Furthermore, Landlord agrees to protect, indemnify, and defend and hold harmless Tenant from and against any liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses, arising out of, caused by, or in any manner whatsoever connected to hazardous substances, hazardous waste or contamination as currently on file with the North Carolina Department of

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of said interference, the non-breaching Party shall have the right, in addition to any other right that it may have at law or in equity, to seek an injunction to enjoin such interference or to terminate this Lease. Notwithstanding the foregoing, nothing hereinabove shall prohibit or limit, in any way, Landlord's customary use of the water tower located on Landlord's Parcel in conjunction with Landlord's municipal water system enterprise or Landlord's customary use of the sewer lift station located on Landlord's Parcel.

- a. The Parties hereto expressly acknowledge that Landlord currently has installed and operates remote transmitting units ("RTUs") on Landlord's Parcel or in close proximity to Landlord's Parcel and shall continue to operate the same. Notwithstanding anything herein to the contrary, Tenant shall not use any portion of the Premises in any way which interferes with Landlord's operation of the RTUs. Such interference shall be deemed a material breach by Tenant, and Tenant shall have the responsibility to promptly cause any such interference to be eliminated. If said interference cannot be eliminated within twenty-four (24) hours after receipt of notice that such interference is occurring, Tenant shall discontinue or cause to be discontinued the operation of any equipment causing the interference until the same can be corrected. Tenant shall be responsible, and pay Landlord for, any damages caused by Tenant's interference with Landlord's equipment, including RTUs.
15. **Default.** Tenant shall be in default of this Lease if Tenant fails to make a payment of rent when due and such failure continues for fifteen (15) days after Landlord notifies Tenant in writing of such failure. If Landlord or Tenant fails to comply with any non-monetary provision of this Lease, the other party shall serve written notice of such failure upon the defaulting party, whereupon a grace period of thirty (30) days shall commence to run during which the defaulting party shall undertake and diligently pursue a cure of such failure at its sole cost and expense. Such grace period shall automatically be extended for an additional thirty (30) days, provided the defaulting party makes a good faith showing that diligent efforts toward a cure are continuing. This Section shall not apply in the case of interference, which instead shall require immediate and effective curative action as more specifically provided for in Section 14 hereof.
16. **Compliance with Laws.** Tenant shall, at Tenant's cost and expense, 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, agencies, 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 improvements contemplated herein; and Tenant's use of the Premises. Further, Tenant shall comply with any and all local, state, federal, or other rules and regulations as well as all applicable environmental rules and regulations, including but not limited to such rules and regulations regulating hazardous or similar substances or conditions, their storage or disposal. Tenant shall not intentionally or knowingly use the Premises for any purpose or in any manner in violation of any law, ordinance, rule, or regulations adopted or imposed by any federal, state, county, municipal body, or other governmental agency. Tenant further agrees to indemnify and hold Landlord harmless for any and all damages of any kind arising from Tenant's failure to comply with the aforementioned rules and regulations, including, but not limited to, the cost of clean-up,

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restoration fees, mitigation costs, and reasonable attorney's fees caused or occasioned by Tenant.

17. **Assignment of Lease by Tenant.** Tenant's interest(s) under this Lease shall be freely assignable by Tenant in connection with the transfer of Tenant's FCC or similar authorization to operate a commercial mobile radio base station on the Premises, so that the name and identity of the holder of Tenant's interest(s) hereunder can be consistent with the name and identity of the holder of said FCC or similar authorization. Any other assignment of this Lease by Tenant shall require Landlord's prior written consent, which consent may be withheld or conditioned in Landlord's sole discretion. No assignment shall be effective pursuant to this Section unless Tenant shall notify Landlord in writing setting forth the name, address, and telephone number of such proposed assignee and Landlord provides Tenant with written consent in the case of an assignment that is not in connection with the transfer of Tenant's FCC or similar authorization to operate a commercial mobile radio base station on the Premises. Further, any such assignment shall be subject to the limitation that the Premises shall be used for the purposes permitted herein and those purposes only.
18. **Subleasing.** Tenant may sublet or license portions of the Premises to subtenants or licensees only upon obtaining Landlord's written consent. Tenant shall be liable to Landlord and shall indemnify Landlord for any liability, whatsoever, for any claims and damages that might arise due to the acts or omissions of a sublessee or licensee. Furthermore Tenant shall pay to Landlord the sum of two hundred and No 00/100 (\$200.00) per month for each future subtenant or licensee, which amount will be added to the then current rent at the time of the installation of such future subtenant or licensee.
19. **Right of First Refusal.** Intentionally Omitted.
20. **Compliance with FCC Radio Frequency Emissions Requirements.**
 - a. It shall be the responsibility of Tenant to ensure that Tenant's use, installation, or modification of the Premises, including communications equipment, antenna tower, and related equipment as well as other improvements, does not cause radio frequency exposure levels on the Premises and in the surrounding vicinity (including all of Tenant's communications equipment, Landlord's equipment as well as RTUs, and all other transmitting equipment in the surrounding vicinity) to exceed those levels permitted by the FCC or Chapter 40, Zoning, Article XIV, Telecommunication Towers and Antennas, including but not limited to Section 40-354(c) and Section 40-355(g) of the Code of the City of Washington, as may be amended.
 - b. Tenant agrees that, in the event there is any change to any applicable rules, regulations, and procedures governing exposure to radio frequency radiation which places the Premises and/or surrounding vicinity in non-compliance, Tenant will cooperate with Landlord to bring the Premises and the surrounding vicinity into compliance.
21. **Execution of Other Instruments.** Landlord agrees to execute, acknowledge, and deliver to Tenant such other instruments respecting the Premises as Tenant or Tenant's lender may reasonably request from time to time. Such instruments may include, but are not limited to, a memorandum of lease that may be recorded in the appropriate local land records.

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property, in the soil and groundwater on, under, around, within, or originating from said adjacent property as the same is defined, described, and established by the administrative record, reports, and other documentation currently on file with the North Carolina Department of Environment and Natural Resources, Division of Water Quality, Aquifer Protection and Groundwater Sections (Reference: Incident #14338, Hamilton Beach 234 Springs Road, Washington, Beaufort County, North Carolina).

26. **Notices.** Any notice, request or demand required or permitted to be given pursuant to this Lease shall be in writing and shall be deemed sufficiently given if delivered by messenger at the address of the intended recipient, sent prepaid by Federal Express (or a comparable guaranteed overnight delivery service), or deposited in the United States first class mail (registered or certified, postage prepaid, with return receipt requested), addressed to the intended recipient at the address set forth below or at such other address as the intended recipient may have specified by written notice to the sender in accordance with the requirements of this paragraph. Any such notice, request, or demand so given shall be deemed given on the day it is delivered by messenger at the specified address, or on the day that is five (5) days after deposit in the United States mail, as the case may be.

TENANT:	USCOC of Greater North Carolina, LLC, Attention: Real Estate Lease Management 8410 West Bryn Mawr Avenue Chicago, Illinois 60631 Phone: 1-866-573-4544
LANDLORD:	City of Washington Attention: City Manager 102 E. Second Street Washington, North Carolina 27889 Phone: 252-975-9319
27. **Contingencies.** Tenant shall have the right to terminate this Lease upon written notice to Landlord if Tenant, acting reasonably and in good faith, shall be unable to obtain any or all licenses or permits required to construct its intended Improvements upon the Premises or conduct Tenant's business at the Premises at any time during the Term; if Tenant's technical reports fail to establish to Tenant's satisfaction that the Premises are capable of being suitably engineered to accomplish Tenant's intended use of the Premises; if the Premises are taken by eminent domain by a governmental entity or a title commitment; or if a report obtained by Tenant with respect to the Premises shows as exceptions any encumbrances or restrictions which would, in Tenant's opinion, interfere with Tenant's intended use of the Premises.
28. **Surrender.** Intentionally Omitted.
29. **Attorneys' Fees.** In any action on this Lease at law or in equity, the prevailing party shall be entitled to recover from the other party the reasonable costs and expenses incurred by such party in such action, including reasonable attorneys' fees and costs of appeal.

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Landlord also agrees to cooperate with Tenant's efforts to obtain all private and public consents related to Tenant's use of the Premises.

22. **Removal of Improvements; Surrender.** The Improvements are agreed to be Tenant's personal property and shall never be considered fixtures to the Premises. Tenant shall at all times be authorized to remove the Improvements from the Premises. Upon the expiration or earlier termination of this Lease, Tenant shall, at Tenant's sole cost, remove all above ground improvements as well as below ground improvements to eighteen (18) inches below grade, including but not limited to the antenna tower, structures, footings, foundations, equipment, fences, and lines, from the Premises and return the Premises to good condition within the time period required by Section 40-363 of the Code of City of Washington (currently one hundred eighty (180) days), comply with all other applicable provisions of said Section 40-363, and surrender the Premises to Landlord in good condition, reasonable wear and tear excepted. In the event Tenant fails to comply with this provision, Landlord may remove all of Tenant's above described property and improvements from the Premises, dispose of the same in Landlord's discretion without liability to Tenant therefor, return the Premises to good condition, and recover Landlord's costs and expenses for such removal, disposal, and return from Tenant. Tenant shall be entitled to abandon, in place, all footings, foundations and other below ground improvements that are located deeper than eighteen (18) inches below grade.
 - a. Notwithstanding anything herein to the contrary, Tenant shall continue to pay rent to Landlord, despite any termination of this Lease, until all of Tenant's above described property as well as improvements have been removed from the Premises and the Premises have been returned to good condition. This obligation shall survive any termination of this Lease.
23. **Quiet Enjoyment.** Subject to the provisions contained herein, Landlord covenants that Tenant shall have quiet and peaceable possession of the Premises throughout the Initial Term and any Renewal Term, if any, as the case may be, and that Landlord will not otherwise intentionally disturb Tenant's enjoyment thereof as long as Tenant is not in default under this Lease.
24. **Subordination and Non-Disturbance.** Tenant agrees to subordinate this Lease to any mortgage or trust deed which may hereafter be placed on the Premises by Landlord, provided the mortgagee or trustee thereunder shall ensure to Tenant the right to possession of the Premises and other rights granted to Tenant herein so long as Tenant is not in default beyond any applicable grace or cure period, such assurance to be in writing and otherwise in form and substance reasonably satisfactory to Tenant. If requested by Tenant, Landlord agrees to use Landlord's best efforts to assist Tenant in obtaining from any holder of a security interest in Landlord's Parcel a non-disturbance agreement in form and substance reasonably satisfactory to Tenant.
25. **Environmental Conditions.** Tenant expressly acknowledges receipt of notice that there may be located on the Premises or Landlord's Parcel 1) hazardous waste, hazardous substances, or contamination in conjunction with the customary operation of Landlord's municipal water system enterprise or sewer lift station and 2) certain hazardous waste, hazardous substances, and contamination originating from and/or existing on adjacent

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30. **Governing Law.** This Lease has been entered into in the State of North Carolina, County of Beaufort, and all questions with respect to the construction and performance of this Lease and the rights and liabilities of the parties hereto shall be governed by and construed pursuant to the laws of the State of North Carolina. The parties agree that the exclusive venue for any legal action initiated or concerning this Lease, or arising in any way from or out of this Lease, shall be brought in Beaufort County Superior Court, North Carolina. The parties hereto hereby submit to the jurisdiction of said Court and waive any right they may have to venue in any other jurisdiction.
31. **Binding Effect.** All of the covenants, conditions, and provisions of this Lease shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns as the same may be specifically permitted herein. The Parties are duly authorized and empowered to enter into this Lease; and the persons executing this Lease on behalf of the respective Parties warrant themselves to be duly authorized to bind their respective Party hereto.
32. **Entire Agreement; Waiver.** This Lease constitutes the entire agreement of the Parties, and may not be modified except in writing signed by both Parties. No waiver at any time of any of the provisions of the Lease will be effective unless in writing. A waiver on one occasion will not be deemed to be a waiver at any subsequent time.
33. **Modifications.** This Lease may not be modified, except in writing signed by both Parties.
34. **Recording.** Each Party, on request of the other, agrees to execute a short form lease in recordable form and complying with applicable laws and reasonably satisfactory to both Parties, which will be recorded in the appropriate public records. The Party requesting the short form lease shall bear the expense of its preparation and the costs of its recording.
35. **Headings.** The section headings throughout this instrument are for convenience and reference only, and are not to be used to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease.
36. **Invalidity of Particular Provision.** If any term or provision of this Lease, or the application of such term or provision to any person or circumstance, to any extent, is invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.
37. **Remedies.** The Parties shall be entitled to the application of all appropriate remedies available to them under state and federal law in the enforcement of this Lease.
38. **Errors and Omissions.** Landlord and Tenant agree as part of the basis of their bargain for this Lease to cooperate fully in executing any and all documents (including amendments to this Lease) necessary to correct any factual or legal errors, omissions, or mistakes, and to take any and all additional action that may be necessary or appropriate to give full force and effect to the terms and intent of this Lease.
39. **Non-Binding Until Full Execution.** Both Parties agree that this Lease is not binding on either Party until both Parties execute the Lease.

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40. **Electronic Reproductions.** The Parties agree that a scanned or electronically reproduced copy or image of this Lease, as executed, shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of such agreement, notwithstanding the failure or inability of either Party to produce or tender an original executed counterpart.

PRE-AUDIT CERTIFICATE

This 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

Matt Rauschenbach (SEAL)

Matt Rauschenbach,
Chief Financial Officer

[END OF LEASE - SIGNATURE PAGE FOLLOWS]

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Exhibit A

Legal Descriptions

5567-61-3599

LEGAL DESCRIPTION FOR PROPOSED INGRESS-EGRESS & UTILITY EASEMENT (EASEMENT PARCELS):

Beginning at a magnetic nail set located at the centerline intersection of an unnamed street and SR 1536 - Linnie Perry Road thence N 02-52-09 E, 30.07 feet to a point located on the northern right of way of SR 1536 - Linnie Perry Road the POINT OF BEGINNING; thence from said point of beginning and running along the northern right of way of SR 1536 - Linnie Perry Road S 84-47-12 W, 20.00 feet to a point located on the northern right of way of SR 1536 - Linnie Perry Road; thence leaving said right of way N 05-22-28 W, 56.65 feet to an iron pipe set; thence N 84-37-32 E, 60.00 feet to an iron pipe set; thence S 05-22-28 E, 20.00 feet to a point; thence S 84-37-32 W, 40.00 feet to a point; thence S 05-22-28 E, 36.70 feet to the point of beginning containing 0.044 acres.

LEGAL DESCRIPTION FOR PROPOSED LEASE AREA FOR TOWER SITE (LEASEHOLD PARCEL):

Beginning at a magnetic nail set located at the centerline intersection of an unnamed street and SR 1536 - Linnie Perry Road thence N 02-52-09 E, 30.07 feet to a point located on the northern right of way of SR 1536 - Linnie Perry Road; thence running along the northern right of way of SR 1536 - Linnie Perry Road S 84-47-12 W, 20.00 feet to a point located on the northern right of way of SR 1536 - Linnie Perry Road; thence leaving said right of way N 05-22-28 W, 56.65 feet to an iron pipe set the POINT OF BEGINNING; thence from said point of beginning N 05-22-28 W, 60.00 feet to an iron pipe set; thence N 84-37-32 E, 60.00 feet to an iron pipe set; thence S 05-22-28 E, 60.00 feet to an iron pipe set; thence S 84-37-32 W, 60.00 feet to the point of beginning containing 0.083 acres.

LEGAL DESCRIPTION FOR PARENT PARCEL (LANDLORD'S PARCEL):

Beginning at a point located on the northern right of way of SR 1536 - Linnie Perry Road said point being the common corner of Tract Two and Tract Four of the property now or formerly belonging to the City of Washington as recorded in Plat Cabinet H, Slide 52-9 and Plat Cabinet I, Slide 15-9 and Slide 15-10, Beaufort County Registry; thence leaving the northern right of way of SR 1536 - Linnie Perry Road N 05-28-54 W, 127.25 feet to a point; thence N 45-37-17 E, 146.67 feet to a point; thence N 84-37-17 E, 99.93 feet to a point; thence S 05-30-43 E, 30.00 feet to a point; thence S 50-26-43 E, 22.65 feet to a point; thence S 05-32-50 E, 174.17 feet to a point located on the northern right of way of SR 1536 - Linnie Perry Road; thence running along the northern right of way of SR 1536 - Linnie Perry Road S 84-46-29 W, 230.30 feet to the point of beginning.

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto bind themselves to this Lease as of the date of full execution of this Lease.

LANDLORD: City of Washington

TENANT: USCOC of Greater North Carolina, LLC,

By: *Bobby Roberson*

By: *Narothum Saxena*

Printed: Bobby Roberson

Printed: **Narothum Saxena**
Vice President

Title: Interim City Manager

Title: *Manager*

Date: *11-09-2015*

Date: *November 2, 2015*

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

Form approved at
USCell by *aga*

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that Bobby Roberson, known to me to be the same person(s) whose name(s) are subscribed to the foregoing Lease, appeared before me this day and acknowledged that they signed the said Lease as their free and voluntary act for the purposes therein stated.

Given under my hand and seal this *9* day of *November*, 2015.



STATE OF ILLINOIS
COUNTY OF COOK

I, the undersigned, a notary public in and for the State and County aforesaid, do hereby certify that *Narothum Saxena*, Manager, for USCOC of Greater North Carolina, LLC, known to me to be the same person whose name is subscribed to the foregoing Lease, appeared before me this day in person and acknowledged that, pursuant to his authority, he signed the said Lease as his free and voluntary act on behalf of the named Tenant, for the uses and purposes therein stated.

Given under my hand and seal this *2nd* day of *November*, 2015.



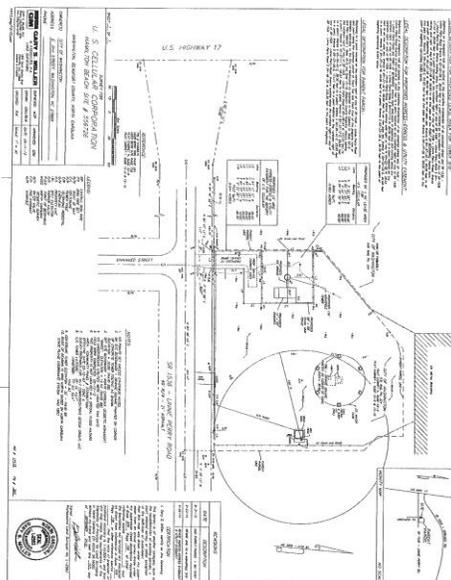
Notary Public
My commission expires *5-28-18*

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Exhibit B

Site Plan



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ADOPT – NON-WARRANTY DEED TO THE GREATER WASHINGTON CHAMBER OF COMMERCE, INC.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council adopted the following resolution: that the City authorize, approve, execute and deliver the attached Non-Warranty Deed, and convey the property referenced therein, to the Greater Washington Chamber of Commerce, In. ("Chamber") pursuant to the State legislative authority contained in a 1983 Session Law (Chapter 941, House Bill 1498) as well as 1993 Session Law (Chapter 133, House Bill 265) and in exchange for the Chamber's past and future activities upon the property that fulfill public purposes and that the recitals in said deed be incorporated in this resolution by reference as if more fully set forth.

BK 188376923

FOR REGISTRATION REGISTER OF DEEDS
Service: Legal & Title
Beaufort County, NC
October 06, 2015 07:44:15 PM
Book 1883 Page 923-926
Fee: \$28.00
INSTRUMENT # 2015004944

BK 188376924



INSTRUMENT # 2015004944

BEAUFORT COUNTY LAND RECORDS
ROUTING FORM 43538
PR 9/30/15
Land Records Official Date

PREPARED BY AND RETURN TO:
RODMAN, HOLSCHER, PECK & EDWARDS, P. A.
Attorneys at Law
320 N. Market Street
Post Office 1747
Washington NC 27889
Telephone: (252) 946-3122

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

NON-WARRANTY DEED

THIS DEED is made and entered into this the 29th day of SEPTEMBER, 2015, by the CITY OF WASHINGTON, a municipal corporation of the State of North Carolina, Grantor, whose address is: 102 East 2nd St. Washington, NC 27889, to the GREATER WASHINGTON CHAMBER OF COMMERCE, INC., a North Carolina non-profit corporation, Grantee, whose address is: 102 Stewart Parkway, Washington, NC 27889.

WITNESSETH

WHEREAS, by virtue of a 1983 Session Law (Chapter 941, House Bill 1498) enacted on June 21, 1984, the General Assembly of North Carolina authorized Grantor to convey certain real property to Grantee without monetary consideration and exempt from all

NO TITLE WORK REQUESTED OR PERFORMED BY RODMAN, HOLSCHER, PECK & EDWARDS, P.A.

THIS IS NOT THE PRIMARY RESIDENCE OF GRANTOR.

provisions, restrictions, and limitations as to methods and procedures contained in Article 12 of Chapter 160A of the North Carolina General Statutes;

WHEREAS, by deed dated July 16, 1984 and recorded in Deed Book 837, Page 912 of the Beaufort County Registry, Grantor conveyed said real property to Grantee;

WHEREAS, Grantee later constructed a building upon said real property;

WHEREAS, by virtue of a 1993 Session Law (Chapter 133, House Bill 265) enacted on June 8, 1993, the General Assembly of North Carolina authorized Grantor to convey certain additional, adjacent real property to Grantee without monetary consideration and exempt from all provisions, restrictions, and limitations as to methods and procedures contained in Article 12 of Chapter 160A of the North Carolina General Statutes;

WHEREAS, through apparent administrative oversight, no deed evidently was recorded pursuant to said legislative authority for said additional, adjacent real property;

WHEREAS, Grantee later constructed an addition to the above referenced building upon said additional, adjacent real property for which no deed evidently was recorded; and

WHEREAS, Grantor and Grantee desire to record this deed in order to effectuate the legislative authority recited hereinabove and the past intentions of the parties hereto.

NOW THEREFORE, pursuant to the legislative authority recited hereinabove and/or North Carolina General Statute § 160A-279 and

NO REAL ESTATE TAX PAID

BK 188376926

IN WITNESS WHEREOF, 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 hereunto affixed, all by proper corporate authority duly given, this the day and year first above written.



CITY OF WASHINGTON

BY: Jay MacDONALD HODGES (Seal)
JAY MacDONALD HODGES, Mayor

CYNTHIA BENNETT, City Clerk

BK 188376925

for and in consideration of the sum of One Dollar (\$1.00) as well as the public purposes fulfilled by Grantee's activities upon the real property described herein since 1984 and 1993, which public purposes, to the extent any grant or conveyance referenced herein from Grantor might be construed as an appropriation to Grantee, offset or exceed any such appropriation, and other valuable considerations to it paid or rendered by Grantee, the receipt whereof and legal sufficiency of which consideration is hereby acknowledged, has given, granted, bargained, sold and does hereby convey unto the Grantee, GREATER WASHINGTON CHAMBER OF COMMERCE, INC., its successors and assigns, that certain tract or parcel of land lying and being in the City of Washington, Beaufort County, North Carolina, more particularly described as follows:

Said tract or parcel being that parcel of land upon which the Greater Washington Chamber of Commerce, Inc.'s building, including previous addition, site, and said parcel being shown as running from point A1 to point B1, to point C1, to point D1, to point E1, to point F1, and back to point A1, the point of beginning, on that survey of Sorrell Land Surveying, Inc. entitled "A Survey for: Greater Washington Chamber of Commerce, Inc." surveyed on April 1, 2015 and revised on April 2, 2015, April 27, 2015, and May 28, 2015 and recorded in the Beaufort County Registry in Deed Book 1877, Page 44. Reference is herein made to said survey and the same is incorporated herein for a more complete and accurate description.

TO HAVE AND TO HOLD the same, together with all and singular, the rights, ways, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Grantee, its successors and assigns, in fee simple.

Grantor makes no warranty, express or implied, as to title to the property hereinabove described.

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, Reatha B. Johnson, a Notary Public of the State and County aforesaid, certify that CYNTHIA 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 JAY MacDONALD HODGES, its Mayor, sealed with its corporate seal and attested by herself as its City Clerk.

WITNESS my hand and official seal, this the 29 day of September, 2015.

Reatha B. Johnson
NOTARY PUBLIC

My Commission expires: 12/16/2019.



AMEND – BUDGET ORDINANCE AMENDMENT TO FUND CDBG AFFORDABLE HOUSING PROJECT ~ REIMBURSEMENT TO DEPARTMENT OF COMMERCE

The final extension for this ten home grant expires September 30 with reimbursement for unoccupied LMI homes due at that time. Mr. Roberson reiterated the State will not extend after September 30th. Documentation for the 7th house was submitted September 22 and it is anticipated will be accepted by the Department of Commerce. Based on that acceptance the reimbursement would be \$55,716 offset by \$36,000 being held in trust (release fee of \$6000 per lot). Staff will need to write the Housing Authority a letter advising them of their need to reimburse the City for the funds associated with failing to meet the grant requirements as well as fees for any legal expenses associated with the grant.

By motion of Councilman Pitt, seconded by Mayor Pro tem Mercer, Council adopted a Budget Ordinance Amendment to fund the CDBG 09-C-2050 Affordable Housing project reimbursement to the Department of Commerce.

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2015-2016

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$55,716 in the account Fund Balance Appropriated, account number 10-00-3991-9910.

Section 2. That the following account number in the Miscellaneous department of the General Fund appropriations budget be increased in the amount indicated to pay the CDBG grant claw back for the 09-C-2050 Affordable Housing project:

10-00-4400-5701	Miscellaneous Expense	\$ 55,716
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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 28th day of September, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

AUTHORIZE – RECREATION MANAGER TO ENTER INTO CONTRACT WITH TRILLIUM HEALTH RESOURCES AND ADOPT GRANT PROJECT ORDINANCE TO APPROPRIATE FUNDS FOR THE INCLUSIVE PLAYGROUND AT HAVENS GARDENS

Background information: Parks & Recreation Manager, Kristi Roberson stated the attached contract was emailed to the Recreation Manager on September 23, 2015. It had not been reviewed by legal yet and Franz will provide any needed feedback during the September 28, 2015 City Council meeting. There is no match associated with this grant.

Mayor Pro tem Mercer noted several areas of concern with the contract as it is submitted, notably the project deadline and potential cost to the City. Kristi Roberson explained that the City has been awarded \$225,000 and we will not go beyond the grant proceeds – the design of the playground is reimbursable with grant funds. The City Attorney agreed that there were some concerns with the contract. We can work on revising the contract language with Trillium. This is a great opportunity and we don't want to lose the funding opportunity with Trillium.

Councilman Beeman inquired if tabling the item would impact the grant. Ms. Roberson stated that Trillium advised that it would impact the grant because the next Council meeting is not until October 19th.

A motion was made by Mayor Pro tem Mercer to table this matter until the City Attorney presents Council with a revised contract. Motion died for lack of a second.

Councilman Brooks asked if we could approved the grant agreement subject to the revisions by the City Attorney and Mr. Roberson said that we could do that.

Councilman Brooks asked if there was a provision in the grant that if the City didn't finish the playground on time that we would be reimbursed for our expenses. Kristi Roberson noted that the terminology covering that situation is included in the agreement.

Kristi Roberson explained that once the contract is in place, a series of public input meetings will be held. She has been advised that once the design has been finalized there is a two week turnaround for the equipment to come in and a two week turnaround for the installation of the equipment.

A motion was made by Councilman Brooks to allow the Parks and Recreation Manager to enter into the contract with Trillium Health Resources subject to the corrections that will be made by the City Attorney. As well as verifying language is included that if the project is not completed by the deadline that the City will be reimbursed for the incurred expenses associated with this project. The motion was seconded by Councilman Beeman. Motion carried 4-1 with Mayor Pro tem Mercer opposing.

*Subsequent motion made later in the meeting for clarification regarding the Grant Project Ordinance: By motion of Councilman Brooks, seconded by Councilman Beeman, Council adopted the Grant Project Ordinance to appropriate funds for the Inclusive Playground at Havens Gardens.

**A GRANT PROJECT ORDINANCE FOR TRILLIUM HEALTH RESOURCES CONTRACT
0049T-000-FY16 CITY OF WASHINGTON, N.C. FOR FISCAL YEAR 2015-2016**

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

Section 1. The project authorized is for the Trillium Health Resources Playground Equipment Grant.

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

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

51-60-4930-5601	Playground Equipment	\$225,000
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Section 4. The following revenue is anticipated to be available to complete this project:

51-60-3480-0000	Trillium Health Grant	\$225,000
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Section 5. The Finance Director is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to satisfy the requirements of the grant agreements.

Section 6. Funds may be advanced by the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grant agencies in an orderly and timely manner.

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

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

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

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

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

Adopted this the 28th day of September, 2015.

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

**DISCUSSION – HARTWELL WRIGHT – NC LEAGUE OF MUNICIPALITIES:
PROCESS FOR RECRUITING CITY MANAGER**

Hartwell Wright explained there are currently 32 City/County Manager positions advertised in Southern City. Mr. Wright explained the three major steps in the process are: (1) advertise (making sure to stay away from words “Must” “Required” and use words such as “Preferred” (2) Assessment (3) Hire Manager. This process could take up to six months. The average suggested salary for a City Manager for a town the size of Washington would be around \$119,500.

Discussion Paper

Selecting A City Manager

(Outline Format)

A. Roles

1. League

- Identify Positive Process to the elected body

2. City

- Conduct Process? (Select Staff/Resource Person; Clerical Support will be necessary.)
- Confidentiality? (When does it become public?)
- Employee search firm? (determine how much you will do and what you want the search firm to do)

B. Importance of Process

- The Manager “manages your City”, this equates the importance.
- Possibly the most important decision in your term of office.

C. Agree on What You Want In Manager

1. Consider:

(a) Where the City is administratively

- Look at needs of City
- Look at strengths and weaknesses
- Past successes and failures

(b) Manager should mirror the executive and administrative needs of the

City

3. Publication of Vacancy

- ICMA Newsletter (bi-weekly newsletter)
- National League of Cities publication
- League Letter
- Southern Cities
- Local Newspaper
- Statewide Newspaper(s) with general distribution in community; Raleigh and Charlotte newspapers in particular.

4. Screening Process

(a) Alternatives

- Use full elected body, with Staff/Resource person.
- Use committee of elected body, with Staff/Resource person.
- Let Search Firm screen down to a set number

Note: Preferably use full elected body, all gets involved in selection of Manager; most municipalities use this process.

(b) Procedure

- Accept resumes, BUT require each candidate to complete a City application to be considered further.
- Acknowledge receipt of each application - this is important.
- Eliminate applicants who do not meet minimum qualifications or complete an application; Staff/Resource person can assist here.
- Another device to assist with the screening is to ask each applicant to answer one to three supplementary questions using no more than one page to answer each question. Some sample supplementary questions are attached. (See attachment A)
- Screen down to 5-7 (preferable 7) top candidates; each committee member does this individually; meet and compare notes - you will be surprised how close each of you will come to same consensus on candidates.

(c) Express the above in the form of desirable qualifications
This becomes the guideline for screening of applicants

Examples

Education: MA in Public or Business Administration Preferred/Required

Experience: 3-5 years of Local Government Manager/Asst. Manager experience Required/Preferred

Special Qualifications: (competence, skill, abilities)

Degree?
Finance Experience?
Engineering Experience?
Previous Manager Experience?
Computer Skills?
Budget Experience?
Water/Sewer experience?

D. Agree on Time Frame/Procedure for Selection

1. Timeframe

- Plan on a 6 months time frame; it could be less, however.
- Selection Timetable:

2 months	Application Process
1 month	Screening Down, Interview Process
1 month	Selecting the candidate; the Manager gives notice in present position (4-8 weeks)
2 months	Manager on board

2. Salary Range (Perks)

A competitive starting salary range for this position based upon Washington’s size, service delivery, geographic area, and population is roughly \$110,000 to \$130,000. (Car or allowance? Life insurance plan? disability insurance? deferred income? cover cost of individuals state retirement contribution? health care for dependents? etc.)

Alternative

- Let Staff/Resource person screen down to 5-7 candidates and each committee member review all and concur (or not).
- Staff/Resource person or other designated person does preliminary background review and investigation. (See Attachment “B”)
- After the preliminary review and investigation, you may lose 1-2 candidates - preferably have 5 candidates to interview.
- Recent technology allows for interactive TV interviews, using PCs, with candidates anywhere in the USA. Also 30 minute video tape interviews are available anywhere in the USA. Using one of these methods would allow a personal look at a larger number of candidates for less cost than bringing the candidates on site. It would boost the effectiveness of the screening process. (See Attachment “C”)

5. Interview - Process

- Notify each applicant (letter from Mayor) of the City’s interest and notice to interview giving all particulars; Staff/Resource person to assist here.
- Send with letter, copy of City Charter, budget and Organizational Chart.
- Send with letter, Personal Agenda of Interview Day Activities (chronology of activities on day of interview); (See Attachment “D”)
- Pay travel expenses for the applicant? Spouse? Pay moving expenses?

6. Interview Session with Board

- The interview session should be planned and organized. Prepare questions ahead of time. Some sample questions are attached to get you started. The same interviewer should ask the same question of each candidate to help maintain consistency of treatment of all candidates. (See Attachment “E”)

- The applicant should sense that the interview session is being done in a dignified business like manner.
- Complete evaluation form on each candidate as soon as the interview is concluded. (See Attachment "F")
- Remember, the applicant is looking at the City's elected body as his potential employer and source of livelihood and commitment for the next foreseeable future. Therefore, the applicant has as big a "stake" in you as you have in him. You are not just hiring a Manager, you are selecting the leader of your City Government and a community leader.

7. Select (Appoint) Top Candidate

The final step is to make the job offer. This can be done by phone, preferably from a written document outlining all conditions that are part of the job offer. The job offer is then confirmed in writing, including a request for a written acceptance.

Write remaining candidates informing them of the selection.

COMPENSATION STUDY

Hartwell Wright explained that the League of Municipalities has two vendors that are available to perform compensation studies for League members. The positions will be evaluated based on similar positions of towns with the 10k-20k population. Mayor Pro tem Mercer asked that the positions also be compared to Rocky Mount, Kinston and Wilson. Mr. Wright explained that if Council does not have the funding to implement the suggested shortcomings that will arise from the study, then don't do the study at all.

ADOPT – BUDGET ORDINANCE AMENDMENT TO APPROPRIATE FUNDS FOR THE ADA IMPROVEMENT STUDY AT SUSIEGRAY MCCONNELL SPORTS COMPLEX

Mayor Pro tem Mercer expressed concern with pulling from fund balance to pay for this study and inquired about the funds needed to implement the changes. This study was not included in the budget. Councilman Beeman stated we need to move forward with the project.

By motion of Councilman Beeman, seconded by Councilman Brooks, Council adopted a Budget Ordinance Amendment to appropriate funds for the ADA Improvement Study at the Susiegray McConnell Sports Complex. Voting for the motion: Beeman and Brooks; against: Mercer and Pitt. Mayor Hodges broke the tie and voted in favor of the motion. Motion carried 3-2.

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, NC FOR THE FISCAL YEAR 2015-2016

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

- Section 1. That account number 10-40-6130-0400, Professional Services, Parks & Grounds Maintenance portion of the General Fund appropriations budget be increased in the amount of \$6,500 to provide funds for an ADA improvement study at the Susiegray McConnell Sports Complex.
- Section 2. That the Estimated Revenues in the General Fund be increased in the amount of \$6,500 in the account Fund Balance Appropriated, account number 10-00-3991-9910.
- 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 28th day of September 28, 2015

ATTEST:

s/Cynthia S. Bennett
City Clerk

s/Jay MacDonald Hodges
Mayor

NEW BUSINESS:

AUTHORIZE – RECREATION MANAGER TO APPLY FOR THE PUBLIC BEACH & COASTAL WATERFRONT ACCESS FUNDS 2015-2016 GRANT

The grant application is to construct the Runyon Creek Boardwalk and will be completed in two phases. Phase I will connect Havens Gardens to the existing concrete walkway under the Highway 32 Bridge. Phase II will eventually connect to the Havens Gardens Boat Launch side. The grant requires a 10% match (\$10,000), at least half of the local match must be cash (\$5,000). The remainder may be in-kind non-cash match (\$5,000). The project is on the Recreation Advisory Committee Priority List. The pre-application was approved and the City was invited to apply for the 2015-2016 Funding Cycle.

Mayor Pro tem Mercer expressed concern with safety issues and noted the project is too expensive he would rather build a fishing pier at Havens Gardens. Bobby Roberson stated this project is a priority for the Recreation Advisory Board.

A motion was made by Councilman Brooks and seconded by Councilman Beeman to authorize the Recreation Manager to apply for the Public Beach & Coastal Waterfront Access Funds Grant in the amount of \$100,000. Voting for the motion: Brooks and Beeman; against: Pitt & Mercer. Mayor Hodges broke the tie and voted against the motion. Motion failed 2-3.

ANY OTHER ITEMS FROM CITY MANAGER:

DISCUSSION – LIBRARY FEES FOR NON-PROFIT ORGANIZATIONS

In prior years, non-profit agencies who used the Library, were not charged for using the conference rooms. The new fee schedule for this year requires that non-profit agencies pay for renting the conference room. This item was inadvertently omitted from the new Fee Manual and it is suggested that non-profits continue to use the conference room at no cost.

By motion of Mayor Pro tem Mercer, seconded by Councilman Beeman, Council authorized staff to modify the Fee Manual to include the language to give the Library Director authority to waive the fees for non-profit organizations for use of the multipurpose room.

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

CLOSED SESSION: UNDER NCGS§143-318.11(a)(3) ATTORNEY/CLIENT PRIVILEGE AND (a)(6) PERSONNEL

By motion of Councilman Pitt, seconded by Councilman Brooks, Council agreed to enter into closed session under NCGS § 143-318.11(a)(3) Attorney/Client Privilege and (a)(6) Personnel at 8:10 pm.

By motion of Councilman Brooks, seconded by Councilman Beeman, Council agreed to come out of closed session at 8:40pm.

ADJOURN:

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adjourned the meeting at 8:40 pm until Monday, October 19, 2015 at 5:30 pm, in the Council Chambers.

Cynthia S. Bennett, MMC
City Clerk