



MAY 14, 2012
5:30 PM

Opening of Meeting

Nondenominational Invocation

Roll Call

Approval of minutes from April 9 & April 23, 2012 (**page 4**)

Approval/Amendments to Agenda

Presentations: Ms. Wendee Bailey – DREAM Provider Care Services Inc,
Ms. Lydie Jennings – Youth Prayer Breakfast

I. Consent Agenda:

- A. Adopt – Resolution directing the City Clerk to investigate a petition for a non-contiguous annexation from Eastern Pride Inc. received under General Statutes 160A-31 (**page 35**)
- B. Accept/Adopt – Accept grant funds from the National Football League (NFL) “Summer Youth Football Camp” **and** Adopt a budget ordinance amendment (\$4,000) (**page 41**)
- C. Declare Surplus/Authorize – Sale of a piece of equipment through electronic auction using GovDeals (Kubota Mower) (**page 43**)
- D. Adopt – Budget Ordinance Amendment Workers Compensation Reserve Fund (**page 44**)
- E. Adopt – Budget Ordinance Amendment for the Harding Square Fence project (**page 49**)
- F. Approve – Purchase Orders >\$20,000 (**page 51**)

II. Comments from the Public:

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

- A. None –

IV. Public Hearing – Other:

- A. Adopt/Approve – Resolution authorizing the City of Washington to participate in an Economic Development Project – Spinrite Services, Inc. and Spinrite Acquisition Corp **and** Approve a Grant Project Ordinance and a Budget Ordinance Amendment (**page 57**)



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- V. Scheduled Public Appearances:
- A. Ms. Mae Rodgers - "Together We Can" event **(page 83)**
 - B. Mr. David & Mrs. Sandra Gossett – Wildlife Festival **(no write-up)**
 - C. Mr. Alvin Powell – Formation of Police Athletic League (PAL) **(no write-up)**
- VI. Correspondence and Special Reports:
- A. Memo – Reporting of Bad Debt Write-Offs **(page 84)**
- VII. Reports from Boards, Commissions and Committees:
- A. Human Relations Council **(page 86)**
 - B. Washington Tourism Development Authority **(page 87)**
 - C. Washington Harbor District Alliance **(page 88)**
 - D. Financial Reports **(emailed as available)**
- VIII. Appointments:
- A. None
- IX. Old Business:
- A. Adopt – Capital Project Ordinance Amendment for the Impressions Building Improvement project **(page 90)**
 - B. Adopt/Authorize – Recommendation supporting the reduction of the ETJ **and** Authorize staff to move forward on the areas of reduction **(page 92)**
 - C. Discuss – Airport RFP proposals **(no write-up)**
- X. New Business:
- A. Adopt – Budget Ordinance Amendment **and** a Grant Project Ordinance for the FEMA Fire Grant to purchase a rescue vehicle and equipment for the Fire Department **(page 99)**
 - B. Approve – Bid award for Construction of Rescue/Equipment Truck **(page 103)**
 - C. Authorize – Mayor to sign Grant of Easement for Piedmont Natural Gas Company, Inc. **(page 106)**



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- D. Adopt/Authorize – Budget Ordinance **and** Authorize the Mayor to execute the Grant Agreement between the City of Washington and the NC Department of Commerce **and** Authorize the City Manager and City Attorney to further negotiate and revise the agreement as necessary to execute the Sub-recipient Agreement between City of Washington and Snug Harbor, LLC (Old City Hall) **(page 110)**
- E. Approve/Authorize – Agreement with the Rural Development Center and the Performance and Loan Agreement with Weir Valve & Controls, USA for a building retrofit grant **and** Authorize Mayor to sign necessary documents and agreements **(page 176)**
- XI. Any Other Items From City Manager:
A. None –
- XII. Any Other Business from the Mayor or Other Members of Council
A. Discuss – Picnic Benches on the Waterfront – Councilman Pitt **(no write-up)**
- XIII. Closed Session – Under § NCGS 143-318.11(a)(6) Personnel
- XIV. Adjourn – Until Tuesday, May 29, 2012 at 5:30 pm, in the Council Chambers at the Municipal Building.

**CITY COUNCIL MINUTES
WASHINGTON, NORTH CAROLINA**

APRIL 9, 2012

The Washington City Council met in a regular session on Monday, April 9, 2012 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Bobby Roberson, Mayor Pro tem; Josh Kay, City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Gloria Moore, Library Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Stacy Drakeford, Interim Fire and Police Services Director; Susan Hodges, Human Resources Director and Mike Voss, Washington Daily News.

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

Josh Kay, City Manager introduced Stacy Drakeford as the Interim Fire and Police Services Director.

APPROVAL OF MINUTES

Councilman Mercer noted that staff has corrected an item on page 14 of the March 12th minutes. Correction as follows: (begin)Mayor Jennings reminded Council that the Housing Authority appointment is a Mayoral appointment. Mayor Jennings ~~nominated~~ **appointed** Donald Sadler to fill the unexpired term of John Morgan on the Washington Housing Authority.

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, **Council endorsed the appointment of** ~~appointed~~ Donald Sadler to the Washington Housing Authority, to fill the unexpired term of John Morgan, term to expire June 30, 2012.(end)

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the minutes of March 12th as amended and March 26th, 2012 as presented.

APPROVAL/AMENDMENTS TO AGENDA

Councilman Mercer requested adding an item under XII. B: Report from Power Agency Meeting.

Mayor Jennings made the following changes to the agenda:

1. Remove: IV.A: Public Hearing: Adopt Resolution authorizing submission of 2012 Public Waterfront Access Grant Fund application.
2. Add: Scheduled Public Appearances: (B) Dee Congleton (C) Beaufort County Pirates Club
3. Amended Ordinance: Consent D: Budget Ordinance Amendment Capital Outlay – Installment Purchases

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

CONSENT AGENDA

By motion of Mayor Pro tem Roberson, seconded by Councilman Mercer, Council approved the consent agenda with the Amended Ordinance for Consent D: Budget Ordinance Amendment Capital Outlay – Installment Purchases.

- A. Approve – Youth Sports Agreement (**copy attached**)
- B. Authorize/Approve – Purchase of a Bucket Truck through the piggyback of the City of Washington’s purchase order # 46840 **and** Approve the purchase order to be written

<u>Vendor</u>	<u>Cost Per Unit</u>	<u>Delivery</u>	<u>Less Trade-In</u>
Altec	\$183,033.00	180 days	N/A

- C. Adopt – Ordinance to Amend the Festival Park Capital Project

**AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE
FOR THE FESTIVAL PARK PROJECT CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012**

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

Section 1. That the following accounts in the Festival Park Capital Project be increased or decreased by the following amounts:

62-40-6120-0400	Planning & Design	\$ 7,481
62-40-6120-8000	Construction	18,769
62-40-6120-9900	Contingency	<u>(26,250)</u>
	Total	\$ 0

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 9th day of April, 2012.

Attest:

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

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

- D. Adopt – Budget Ordinance Amendment Capital Outlay – installment purchases

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

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

Section 1. That the Estimated Revenues in the General Fund be increased or decreased in the following accounts and amount:

10-00-3920-9101	Proceeds From Lease Purchase	\$(317,066)
10-00-3991-9910	Fund Bal. Appropriated	<u>254,251</u>
		\$(62,815)

Section 2. That the General Fund appropriations budget be increased or decreased in the following fund accounts and amount:

10-10-4341-7403	Installment Purchases	\$(149,500)
10-20-4510-7403	Installment Purchases	(85,066)
10-10-4310-7404	Installment Purchases	(82,500)
10-10-4341-7400	Capital Outlay	147,000
10-20-4510-7400	Capital Outlay	85,066
10-10-4310-7400	Capital Outlay	40,000
10-50-4020-8100	Principal Payments Notes	(10,730)
10-50-4020-8300	Interest Payments Notes	(2,285)
10-50-4020-8000	Proposed Installment Note Pymt.	(4,800)
		\$(62,815)

Section 3. That the Estimated Revenues in the Electric Fund be increased or decreased in the following accounts and amount:

35-90-3920-9100	Installment Note Proceeds	\$(630,000)
35-90-3991-9910	Fund Bal. Appropriated	<u>584,646</u>
		\$(45,354)

Section 4. That the Electric Fund appropriations budget be increased or decreased in the following fund accounts and amount:

35-90-7250-7403	Installment Purchases	\$(35,000)
35-90-8370-7403	Installment Purchases	(255,000)
35-90-8375-7403	Installment Purchases	(70,000)
35-90-8390-7403	Installment Purchases	(270,000)
35-90-7250-7400	Capital Outlay	35,000
35-90-8370-7400	Capital Outlay	255,000
35-90-8375-7400	Capital Outlay	70,000
35-90-8390-7400	Capital Outlay	260,000
35-90-4020-8300	Installment Note Principal	(29,150)
35-90-4020-8301	Installment Note Interest	(6,204)
		\$(45,354)

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. This ordinance shall become effective upon its adoption.

Adopted this the 9th day of April, 2012.

Attest:

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

- E. Authorize – City Manager to enter into a three year agreement with Compensation Claims Solutions (\$20,000) **(copy attached)**
- F. Adopt – Resolution Authorizing the Deputy Finance Officer to sign Pre-audit certificate

RESOLUTION AUTHORIZING THE DEPUTY FINANCE OFFICER TO SIGN THE PRE AUDIT CERTIFICATE

WHEREAS, G.S. 159-28 requires that the pre audit certificate be signed by the Finance Officer or a Deputy Finance Officer approved for this purpose by the governing board;

WHEREAS, there are times when the Finance Officer is not available to sign the pre audit certificate;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD THAT:

Section 1. The Governing Board hereby authorizes the Deputy Finance Officer authority to sign the pre audit certificate.

Section 2. This Resolution shall become effective upon adoption.

Adopted this the 9th day of April, 2012.

Attest:
s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

- G. Approve – Capital Improvement Plan FY 2012-2013

Fund	Manager Prioritization	Project	Total Project Amount	FY 12/13 Operating Cash - Estimated	CIP Page #
General Fund	1	Fire rescue truck replacement	\$350,000	\$17,500	12
	2	Civic Center decking replacement	\$125,000	\$35,000	1
	3	Replace 2 police cars	\$55,000	\$55,000	11
	4	Replace City Hall chillers	\$90,000	\$90,000	4
	5	Replace Logics server	\$45,000	\$45,000	4
	6	Install fiber to com center	\$65,000	\$65,000	6
	7	West-end restrooms on Stewart Parkway	\$300,000	\$50,000	28
	8	Replace street sweeper	\$240,000	\$52,000	21
	9	Replace 2 Library servers	\$48,000	\$48,000	26
	10	2nd (of 5) year boardwalk replacement	\$19,000	\$19,000	29
	11	Planning - Replace Ford Ranger (Vehicle #122)	\$19,000	\$19,000	10
	12	Streets - Replace 2-ton dump truck	\$70,000	\$70,000	
	13	New adult softball field at McConnell	\$102,000	\$20,000	31
	14	Fire - Replace support vehicle	\$19,000	\$19,000	13
	15	Civic Center restrooms repairs/updates	\$35,000	\$35,000	2
	16	Planning - Replace Ford Taurus (Vehicle #124)	\$19,000	\$19,000	9
	17	IT - Wireless Canopy Upgrade	\$35,000	\$35,000	8
Storm Water	1	Replace Vehicle #457 '98 Pickup)	\$30,000	\$30,000	24
Water Fund	1	Parrallel Water Line	\$675,000	\$46,000	40
	2	AMR Meter Changeout	\$300,000	\$300,000	41
	3	Replace 3/4 ton pickup truck (#413)	\$40,000	\$40,000	49
	4	Chlorine disinfection at WTP and storage building (engineering)	\$40,000	\$40,000	42
	5	Replace Ford Tractor (#553)	\$40,000	\$40,000	50
Sewer Fund	1	Lift Station generator	\$32,000	\$32,000	53
	2	Replace sewer flusher (#4008)	\$90,000	\$90,000	62
	3	Degritter	\$45,000	\$45,000	56
	4	Water & Bonner Street lift station	\$500,000	\$33,276	57
Electric	1	Replace bucket truck (#606)	\$200,000	\$46,000	78
	2	Long Range & Sectionalizing Plans	\$80,000	\$80,000	64+65
	3	Wire tensioner	\$40,000	\$40,000	79
	4	Replace (#619)	\$50,000	\$50,000	80
	5	34 kV Substation Regulators	\$85,000	\$85,000	88
	6	Highland Drive circuit breaker	\$45,000	\$45,000	87
	7	Replace (#622)	\$30,000	\$30,000	81
	8	Terra Ceia Rebuild	\$325,000	\$75,000	69
	9	Engineering for 2nd & 5th Street rebuild	\$100,000	\$100,000	70
	10	Engineering for Grimesland Road rebuild	\$90,000	\$90,000	71
	11	Engineering for Whitepost to Slatestone 12kV tie	\$100,000	\$100,000	72
	12	Engineering for downtown improvements	\$100,000	\$100,000	86
Airport Fund	1	Drainage Repairs	\$383,000	\$38,000	94
	2	Vision 100 Grant projects	\$167,000	\$16,700	95
Solid Waste	1	Replace rear-load garbage truck (#483)	\$140,000	\$32,177	96
Cemetery	1	Replace '01 pick-up truck (#511)	\$15,000	\$15,000	102
	2	Replace '96 2-ton dump-truck w/1-ton (#513)	\$35,000	\$35,000	103

H. Declare Surplus/Authorize – Declare surplus and authorize the sale of the following vehicle through electronic auction using GovDeal Vehicle Make/Model Serial Odometer

Vehicle Number	Make/Model Description	Serial Number	Odometer Reading
#657 (511)	2001 Dodge Ram 1500 Truck	1B7HC16YX1S676765	135,631

I. Approve – Purchase Orders >\$20,000

*Requisition #11045, \$23,182.50 to Talbert & Bright for design services of the pavement rehabilitation grant project at the airport, account 37-90-4530-45 12.

Mayor Pro tem Roberson thanked the City Manager and the Finance Department for the reduction in installment purchases, those items are now being paid for upfront, thus reducing finance charges.

MS. DEE CONGLETON – INSTALLATION OF FENCE AT HARDING SQUARE

Ms. Dee Congleton came forward asking for approval of a three foot, ornamental, black fence to be installed at the Harding Square Garden. The fence will help protect the garden from vandalism, which has occurred in the past. The Washington Area Historic Foundation and the Washington Garden Club, have adopted the Harding Square Garden as their yearly project. The fence will give a “complete” look to the garden and will affect the view of the garden. The fence will be located inside the brick area and will have a gate on each end. Ms. Congleton stated the gate will be closed at times when there are large crowds (Summer Festival, Music in the Streets, etc.) in order to protect the garden. The following groups have approved the fence: Parks and Recreation Department, Washington Area Historic Foundation, Washington Garden Club, Beautification Committee and the Historic Preservation Committee. The total cost for the fence is \$5500. To date donations from the following have been made: Washington Area Historic Foundation - \$3000; Don Stroud - \$1000; Washington Garden Club - \$500. Ms. Congleton asked if the if \$1000 could be found in the Parks and Recreation Department budget to cover the remaining balance. Philip Mobley, Parks and Rec. Director stated that this is a valuable project and their budget could cover the remaining \$1000.

Councilman Mercer explained that the fence could help direct pedestrian traffic along the walkway, instead of pedestrians walking through the garden.

Bill Sykes came forward and expressed concern with the operating practices of the fence, regarding locking the fence gate during major city events. Mayor Jennings explained that Council, via the Parks and Recreation Department, will determine how the gate/fence will be used.

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council approved the installation of the 3 foot, ornamental, black fence on public property (around the Harding Square Garden).

By motion of Councilman Mercer, seconded by Mayor Pro tem Roberson, Council authorized staff to pull \$1000 from the Parks and Recreation Department budget to fund the balance of the cost of the fence.

MR. KEVIN CLANCY - LITTLE WASHINGTON SAILING CLUB

Mr. Kevin Clancy, Little Washington Sailing Club presented the following update to Council:

2011 Highlights:

- 79 students
- Offered 1 week all day beginner and advanced class
- Classroom across from Chamber of Commerce
- Ended season with a positive cash flow
- WUNC-TV segment on sailing school
- Article in Blue Water Sailing with international distribution, plus 2 articles in other sailing magazines(one in an East Coast publication, the other in a national publication)
- Received new major funding from PCS(Potash Corp) and Wells Fargo Bank
- Purchased new motor for one safety boat
- Lost 2 boats to Hurricane Irene(located 2 replacements boats to be delivered later this week)
- Considerable positive community feedback

Plans for 2012

- Hire lead instructor for season
- June - 2 week 1/2 day classes, July - 1 week all day classes, August - advanced classes
- Chartering Sea Scout program
- Replace boats lost in storm. Have located and in process now.
- Move away from WHDA. Partner with another 501c3
- Major emphasis on recruiting scholarship students.
- Maintain positive cash flow.

Current Needs

- New partner with 501c3 status or create our own
- 2 replacement sailboats
- Offseason storage space for boats and work area. (approx. 5000 sq.)

Councilman Pitt inquired about the requirements for students to participate in the class. Mr. Clancy noted the child must weigh at least 70lbs and pass the swimming test. The class costs \$200 each and the scholarship would cover the tuition for the class.

**MS. AMY WARD & MR. MAC HODGES-
BEAUFORT COUNTY PIRATES CLUB – FESTIVAL PARK PARTNER**

Ms. Amy Ward, Beaufort County Pirates Club came forward to request being added to the Festival Park Partner list and discussed the upcoming Bluegrass Festival in May. Mayor Jennings stated that in setting precedent with granting partnership status to a certain organization, this will open up a line of people who want the same thing. He suggested that instead of granting the partnership to the Pirate Club, that maybe the partnership should be granted to the Bluegrass Festival instead. Councilman Mercer noted that he felt the Pirates Club should be added to the list of Festival Partners due to their previous contributions to events downtown and Mayor Pro tem Roberson agreed.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council added the Beaufort County Pirates Club as a Festival Park Partner.

COMMENTS FROM THE PUBLIC (none)

**(Removed from Agenda) PUBLIC HEARING – ADOPT RESOLUTION AUTHORIZING
SUBMISSION OF 2012 PUBLIC WATERFRONT ACCESS GRANT FUND APPLICATION**

**PUBLIC HEARING – AUTHORIZE SUBMISSION OF FY 11 COMMUNITY DEVELOPMENT
BLOCK GRANT FUNDS, CATALYST GRANT**

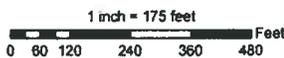
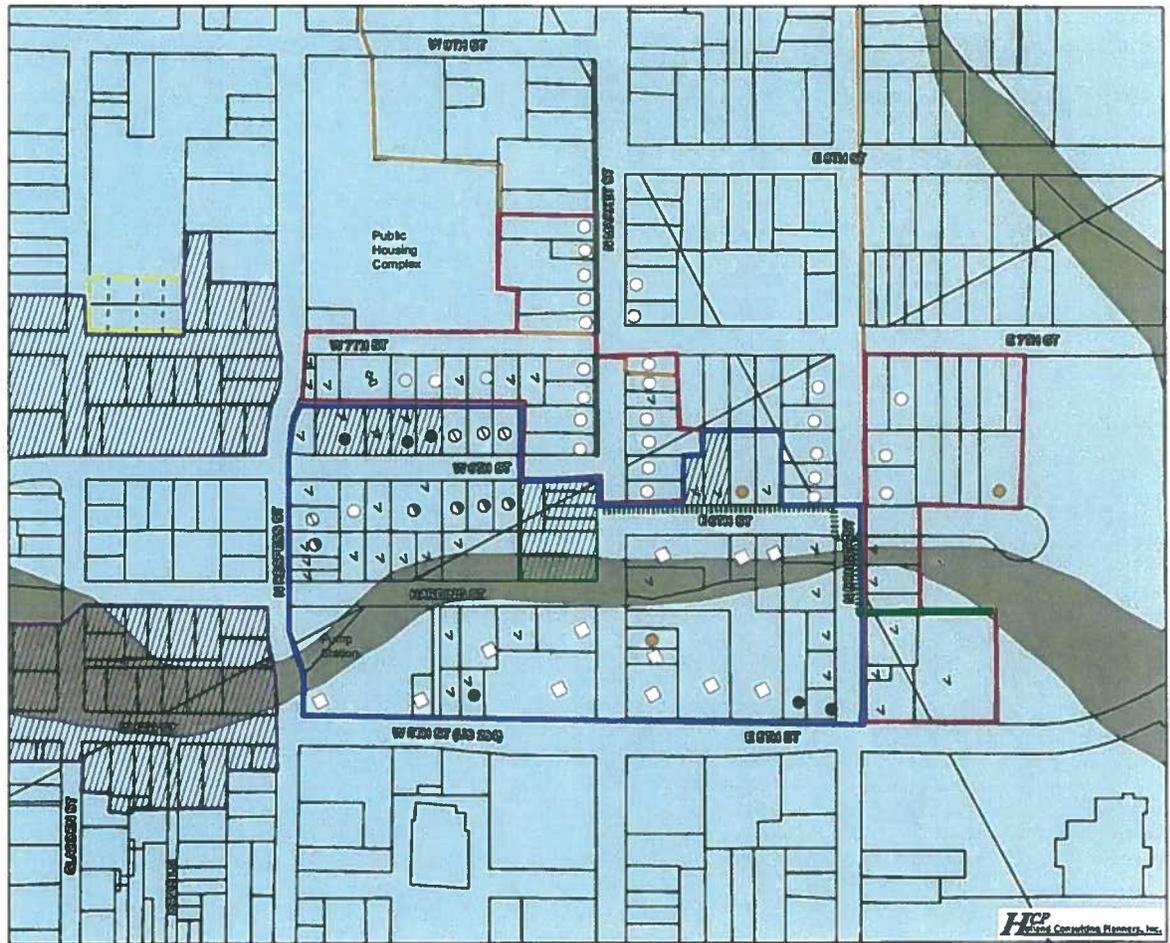
Mayor Jennings opened the public hearing. Reed Whitesell, Holland Consulting Planners explained to Council that this is the 2nd required public hearing in order for the City to submit a \$500,000 Catalyst Grant application. The purpose of the public hearing is to describe the activities that will take place, should the proposal be funded. Approved activities through the FY 11 Catalyst program limit the city to completing either housing activities (acquisition/clearance/rehabilitation) or public facility/parks and recreation improvements with these funds. \$500,000 is the maximum award. The City contribution is contingent upon receipt of a CDBG grant agreement and would be appropriated for the FY 2012-2013 and FY 2013-2014 budget years. The Old Fort Community is the optimum site for this grant. There will be no infrastructure with this project. Councilman Brooks inquired if areas outside of the target location could be addressed, more specifically, Market & 7th Street areas. Mr. Whitesell explained that housing needs can be addressed outside of the target area and can be addressed with City funds. Councilman Mercer inquired as to when the application was due and Mr. Whitesell noted the due date is April 30th. Councilman Pitt inquired if the dwellings had to be owner or renter occupied and Mr. Whitesell explained, owner occupied dwellings are preferred. Mr. Whitesell reviewed the distributed map with Council. The City has a historical pattern of expanding the Jack's Creek Greenway and this is also a component in this grant. There is also the possibility of acquiring land for proposed park space, this area will be left as open space and have no physical improvements.



City of Washington, NC
FY11 CDBG Catalyst Program

Map 2: Old Fort Community
Development Target Area

- Historic District
- FY07 CDBG-CR Target Areas
- FY09 HD
- FY11 Catalyst Target Area
- Catalyst Phase 2
- Flood Hazard
100 Year
- Floodway (Jack's Creek)
- Proposed Infill Development
- Proposed Park
- Pedestrian Infrastructure
- Proposed Greenway Connection
- Existing Sidewalk
- Existing Greenway
- Housing Conditions**
- Previous Elevation
- Church
- Vacant Unit or Parcel
- Standard Unit**
- Frame Built
- Commercial
- Moderately Deteriorated Unit
- Severely Deteriorated Unit
- Frame Built
- Dilapidated Unit
- Frame Built



Mayor Jennings asked for comments from the public at this time.

Dot Moate came forward and noted she was not for or against the submission of the grant, but commented that the audience couldn't hear the presentation. She asked that future presentations be projected so the audience could see the maps/presentation as well.

There being no further comments, Mayor Jennings closed the public hearing.

Councilman Mercer agreed that the acoustics in this room are terrible, even with the current amplification system. He noted that with the due date of the grant application being April 30th, Council will need to either act tonight or at the Comm. of the Whole. He expressed concern with some of the elements of the grant and stated he would have preferred more time to review the application. Mr. Whitesell noted that two of the lots in the proposed open space/park space are Fran/Floyd FEMA properties and are vacant in perpetuity. Mayor Pro tem Roberson discussed potential program income. Mr. Whitesell estimated that over a ten year period, this grant could generate possibly \$20-\$25,000.

By motion of Councilman Moultrie, seconded by Mayor Pro tem Roberson, Council voted to support the submission of a \$500,000 proposal to the North Carolina Department of Commerce, Division of Community Investment and Assistance's Catalyst grant program, and that the City of

Washington approved a \$50,000 local commitment from the City General Fund to supplement CDBG acquisition funds.

Memorandum

To: John Rodman, Planning Director
City of Washington

From: Reed Whitesell, AICP
Holland Consulting Planners, Inc.

Re: City of Washington FY11 CDBG Catalyst Application

Date: March 29, 2012

John: As you are aware, the City Council has agreed to submit an FY11 CDBG Catalyst application to the Division of Community Investment and Assistance on or before 4/30/12. The city has already held one public hearing to advise the public of the application process and is required to hold a second public hearing to present the specifics of the project – this public hearing has been scheduled at 6:00 PM on 4/9/11 (see attached PH advertisement).

The city is limited to completing either housing activities (acquisition/clearance/rehabilitation) or public facility/parks and recreation improvements with these funds. HCP has discussed several project alternatives with you and other city staff members and we feel that the most competitive housing target area is located in the southeastern quadrant of the “Old Fort” community development area. This area is adjacent to one of the FY07 CDBG-CR sub-areas, and also is adjacent to areas in which the city has acquired open space or provided elevation assistance in past flood mitigation programs. We will provide two maps for the agenda package going to the city clerk on Monday. I have attached rough versions of both maps, and Chris Hilbert is working on some refinements for Monday – please understand that we are in the process of surveying the actual target area bounded by Bonner and Respass and 5th and 7th Streets and will not have actual household survey data until mid-April.

We understand that the city has identified several priority rehab and demolition structures on 7th Street west of the proposed FY11 Catalyst target area. However, it is imperative that the City Council understand that this project area was selected over other potential areas in the larger “Old Fort” community development area because of the “community facilities” component allowed within this area. The proposed bikeway/greenway extension from Bonner to Market is listed as a high priority within the City’s adopted Pedestrian Plan. The project also deals with city-identified demolition priorities and other substandard housing that is appropriate and cost-effective for rehabilitation (as well as reduction/elimination of flood hazards along the Jack’s Creek floodway). The previous 6th/7th Street area CDBG-CR subareas were selected because of the availability of the “infrastructure” component allowed in the previous CR category (and that application was the highest rated application that fiscal year). These new “Catalyst” projects do not allow infrastructure improvements and they need to show some economic and public use benefit. That’s why the greenway improvements and the removal of dilapidated units within the commercial zoning along US 264 & Market Street in the target area are

important to the competitiveness of the application. Those activities would not be possible if we focused on the West 7th Street area.

This project could be considered “Phase I” of a proposed Old Fort Community Development Initiative. We have budgeted \$15,000 in planning funds for the city staff to utilize to develop a Strategic Plan for redevelopment of the entire old Fort CD area – Phase II of the project would undoubtedly include elimination of priority housing needs along 7th Street west of the Phase I (FY11) area.

An important component of the proposed Catalyst project is acquisition and clearance to provide vacant parcels for future standard residential development to improve the overall neighborhood character and city tax base. We have contacted Metropolitan CDC and First South Bank to obtain letters of support for standard redevelopment of acquired parcels. Washington Housing Incorporated will be redeveloping three parcels to the west of the Catalyst target area on 7th Street with FY09 CDBG-HD funds concurrent to implementation of this project (if funded), which is a complementary element.

Obviously, there are not enough funds to provide a 100% treatment of the substandard conditions in the target area. A positive element of the Catalyst category is that the city is not required to address all needs in the target area – we can address the most pressing needs and also negotiate exclusively with owners who are supportive of the project, rather than engaging in prolonged negotiation/code enforcement as we have been dealing with in past CDBG target areas. We are in the process of pulling the tax cards and surveying the target area in order to prioritize needs/treatment as follows:

Acquisition/Clearance/Code Enforcement/Redevelopment

Acquire approximately 6-8 residential parcels within the target area for recombination of parcels and development of new housing. Also acquire some vacant commercial/dilapidated residential properties on 5th Street for sale to existing or new commercial owners. This could possibly involve trade-offs so the city could acquire some additional open space on the south side of Jacks Creek. This effort would include code enforcement if property can't be acquired or is unsuitable for redevelopment, and clearance of any dilapidated structures on these parcels. This component would also involve the displacement and relocation of 2-3 tenants to decent, safe, and sanitary housing.

Rehabilitation

Prioritization of approximately 5-6 potential owner-occupant rehabilitation beneficiaries based on a rating system that includes severity of housing need, income, special population, etc. (similar to HCP's CDBG Scattered Site rating system).

Parks/Recreation

Extension of bikeway/greenway from Bonner St. to Market St. as shown on target area map. Chris and Bianca are discussing the cost of this and attendant improvements such as landscaping and lighting/benches, etc., with the city's recreation and public works staff.

Planning

Budget approximately \$15,000 in planning funds to continue to develop the community development capacity of the city planning department, with particular emphasis on development of a Strategic Plan for the Old Fort community development area to guide in applying for future projects, active code enforcement, and partnership with the area's public housing. We would like to obtain a letter of support from WHA to include in the application.

City Contribution: I suggest that city commit a minimum of \$50,000 to this project. These funds would be used to supplement CDBG acquisition funds. I would appreciate it if you could resolve this with the city manager prior to Monday so I can prepare a resolution of commitment for the agenda package.

**PUBLIC HEARING – ADOPT RESOLUTION SUPPORTING SUBMISSION OF DIVISION OF
COMMUNITY INVESTMENT AND ASSISTANCE’S SMALL BUSINESS
ENTREPRENEURIAL ASSISTANCE GRANT PROGRAM (\$240,000)**

Mayor Jennings opened the public hearing. John Rodman, Planning Director and Bianca Gentile Shoneman, Community Development Planner came forward to explain the request to Council. The purpose of the public hearing is to describe the activities that will take place, should the proposal be funded. This grant was designed to assist local governments that are already in the process of developing a coordinated effort to support and grow their community’s small businesses. The local government would identify small businesses ready to hire additional full-time people but in need of funding to make this possible. The Division of Community Assistance will provide the business with \$25,000 for each new employee hired. This money can go toward the following eligible activities, that will in-turn free-up some capital to allow them to hire new employees. There is no match required from the City, but the participating businesses will provide a match. Five businesses submitted sufficient documentation. The grant provides working capital for existing businesses to be able to hire additional full-time employees.

Eligible activities:

- Infrastructure improvements (e.g., water, sewer, roads)
- Purchase of land
- Construction of a building or other improvements
- Renovation of an existing building to accommodate the business
- Construction of tenant improvements/finishes
- Leasing space in or purchasing an existing building
- Purchasing capital equipment
- Providing job training that can be linked to specific jobs at a specific firm.

In early 2012 planning staff released a “Call for Participation” to various media outlets including the Washington Daily News, Chamber of Commerce and the City’s website. Interest in the program was strong. Small businesses from as far away as Fayetteville called to inquire about participating. Potential participants were sent a letter requesting information to describe their need for participation in the grant program. In the end five businesses submitted sufficient documentation. The business has to provide a small business plan and include 2 years of financial documents. The businesses had to show that the new employee wages meet certain income requirements. The grant does not directly provide salaries for the new employees. The grant application is due on April 30th.

Councilman Mercer inquired what the funding will be used for by the five applicants. Mrs. Shoneman reviewed the list with Council.

Tayloe Drug: working capital and offer additional training to existing employees

East Carolina Imports: purchase new equipment and make building improvements

Park Boat Company: purchase new equipment including a truck, two trailers, repairs to existing trailers, add new software to the computer system and a yard arm.

Pamlico Fence: purchase new equipment including a trailer

FRE Plumbing: purchase new equipment

Councilman Mercer asked, “What guarantee do we have that once the company hires the individual, that they will be there longer than the required one year?” Mrs. Shoneman stated the grant requires that the individual be hired for at least six months, while working a minimum of 35 hours per week. The business will enter into a legally binding commitment stating they will retain the employee for a minimum of six months. Councilman Mercer expressed concerns with a “give-away program” and he is not in favor of that. Mayor Pro tem Roberson stated he is in favor of helping businesses in the City. Councilman Brooks inquired how many jobs would be funded/created with the grant? Mrs. Shoneman explained 8 jobs would be created and if additional funding became available, more businesses could apply in the next round of funding. Councilman Mercer noted a correction to be made to the resolution “.....funding to benefit the previously named companies, *who will invest....*”

Company	Number of jobs	Salary of new employees	Total grant request	Company match	Project total
Tayloe Drug Company, Inc. AKA Hospital Pharmacy	2 FT: a. Pharmacist (shifting part-time to full time) b. assistant position	a. \$ 125,000 b. \$ 21,000 Full benefits (health, dental, vision) 3% retirement match	\$50,000	\$111,000, (Salary and Benefits)	\$161,000
East Carolina Imports	1 FT a. Mechanic	b. \$19.50 billable hours	\$25,000	\$500 (equipment)	\$25,500
Park Boat Company	3 FT: a. Mobile Serve Tech b. Parts and Service Salesman c. Yard Equipment Technician	a. \$25,000-\$35,000 b. \$25,000-\$35,000 c. \$20,000-\$25000 Some benefits;	\$75,000	\$25,000 (equipment)	\$100,000
Pamlico Fence	1 FT a. Fence salesman and estimator	a. \$25,000, no benefits PTO, 1 WEEK \$500	\$25,000	\$40,000	\$84,000
FRE Plumbing	1 FT: a. Plumber	a. \$20,000, no benefits	\$25,000	\$0.00	\$25,000
			Total job creation grant request	\$200,000	
			Grant administration	\$35,000	
			Planning	\$ 5,000	
			Total grant request	Total Match	Project Total
			Total grant request	\$240,000	\$176,500
					\$416,500

**Pamlico Fence Company match was increased to \$59,000*

There being no comments from the public, Mayor Jennings closed the public hearing.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council adopted an amended resolution supporting the submission of a \$240,000 proposal to the North Carolina Department of Commerce, Division of Community Investment and Assistance Small Business Entrepreneurial Assistance grant program. Councilman Mercer opposed and the motion carried 4-1.

**RESOLUTION FOR THE CITY OF WASHINGTON’S APPLICATION FOR
COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING FOR THE SMALL
BUSINESS ENTREPRENEURIAL ASSISTANCE GRANT PROJECT**

WHEREAS, the Washington City Council has previously indicated its desire to assist in economic development efforts for small businesses/entrepreneurs within the City and,

WHEREAS, the City Council has held two public hearings concerning the proposed application for Community Development Block Grant funding to benefit Tayloe Drug Company, Pamlico Fence, Park Boat Company, East Carolina Imports and FRE Plumbing; and,

WHEREAS, the City Council wishes the City of Washington to pursue a formal application for Community Development Block Grant funding to benefit the previously named companies; who will invest monies in the amount of \$176,500 or 45% of the project total into the project as committed to in the application.

WHEREAS, the City Council certifies it will meet all federal regulatory and statutory requirements of the State of North Carolina Community Development Block Grant Program,

NOW, THEREFORE BE IT RESOLVED, by the City Council that the City of Washington is authorized to submit a formal application to the North Carolina Department of Commerce for approval of a Community Development Block Grant for Small Business & Entrepreneurial Assistance to benefit Tayloe Drug Company, Pamlico Fence, Park Boat Company, East Carolina Imports and FRE Plumbing

Adopted this the 9th day of April, 2012 in Washington, North Carolina.

Attest:

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor

MEMO – BEAUFORT COUNTY ARTS COUNCIL

(memo)RE: NC SmART Initiative

In the fall of 2010, the North Carolina Arts Council established a Task Force to develop an arts-driven economic development plan for the cities and towns of North Carolina. The Task Force met over the course of a year and published The SmART Initiative, which details its research and recommendations. One of the key recommendations is to create The SmART Initiative Pilot Grant Program. The Beaufort County Arts Council, in conjunction with several community stakeholders, submitted a request for funding to this unique Pilot Grant Program. The proposal seeks to create an arts and cultural district with the same boundary lines as the harbor district.

If funded, NC Arts Council resource teams will work with each pilot community to develop plans for utilizing its arts and cultural assets to create arts-driven economic development on a substantial

scale. The resulting plans will outline strategies for how to generate a greater investment in the arts, stimulate community vitality and economic growth, and develop cultural districts and other impactful place-making projects. Cities and towns that receive pilot funding will be eligible for further support during the next phase of The SmART Initiative grant program.

Grant amounts will range from \$20,000 to \$30,000. The majority of these funds will cover the costs of the resource team. Some funds may be used to begin project implementation. Respectfully, Joey Toler, Executive Director (Council accepted the memo as written.)

MEMO – EAST CAROLINA WILDFOWL GUILD BUDGET TRANSFER

The Budget Officer transferred \$487 of funding between the Miscellaneous and Outside Agency divisions of the General Fund to provide funds for reimbursement of fees and services billed to the East Carolina Wildfowl guild above the \$2,500 maximum for the Wildlife Arts Festival. NC GS 159-15 states that this shall be reported to the Council at its next regular meeting and be entered in the minutes. (Council accepted the memo as written)

	Department	Account Number	Object Classification	Amount
FROM:	10-00	4400	5701	\$487
TO:	10-40	6170	9109	\$487

For the purpose of: Transfer funds from miscellaneous department to reimburse the East Carolina Wildfowl Guild fees and services billed above \$2,500 annual max for event.

HUMAN RELATIONS COUNCIL

Discussion Ed Peed Commemoration held on Saturday, February 18, 2012. Chairman O’Pharrow noted the event was well executed and attended. If growth continues we need to discuss a change in venue.

Appoint Committee members to the Multicultural Festival working in conjunction with the Beaufort County Arts Council. By consensus, Board members agreed to the appointment of Vice-chairwoman Cherry and Board member Howard as committee members on the Multicultural Festival working in conjunction with the Beaufort County Arts Council.

Approval/Discussion “Taste of Washington”/Fair Housing event (inclusive of the material sponsored by the District Attorney’s office) and approval of the date hosting the event in April. Board member Harvey advised that she had been in contact with a representative from Attorney General Roy Cooper’s office. Ms. Lisette Whittington, Victims and Citizens Services, representing the Attorney General’s office accepted the invitation to make a presentation during “A Taste of Washington”. Council Liaison Pitt stated he would contact Ms. Katherine Keech, and Board member Howard suggested contacting Ms. Lisa Woolard, Director of Beaufort/Hyde Partnership for Children to combine the Week of the Young Child together and this event together. (April 10th at 6:30pm- Temple of Jesus Christ)

Update concerning the Domestic Violence Shelter Board member Barr advised of a meeting held with the Eastern Regional Director for Women on February 15, 2012. At present, they are ready to go; beds are in place, doctor on call as well as the building. Board member Barr shared they are waiting on Board

member Davis to contact the gentleman who has offered a one-time start-up fee of \$50,000 \$100,000. Chairman O'Pharrow advised that Board member Davis resigned effective Tuesday, 3-14-12 due to health reason. He would contact Mr. Davis to see where we stand on this issue and would table further discussion until this issue can be resolved.

Councilman Liaison Pitt shared ways of retooling/reorganizing Boards/Committees/Commissions Chairman O'Pharrow requested having this as an action item on May 8, 2012 agenda. Mr. O'Pharrow stated what works for one Board may not work for the Human Relations Council; some events need to be kept in front of us. Vice-chairwoman Cherry suggested setting a schedule as to what the Board sponsors annually.

FYI

All reminders and announcements were discussed at this time, inclusive of March report submitted to City Council, proclamation signage and funding contribution received from Ms. Edith Jenkins. (Council accepted the report as written.)

WASHINGTON TOURISM DEVELOPMENT AUTHORITY

February-March 2012

- Branding Committee continues to progress. A presentation by Eye Integrated was made to the initial stakeholder group and met with much success. A proposed logo has been developed that can be used by various partners, but still presents a consistent image to the public. It is the hope of the committee that a presentation will be made to City Council in the near future.
 - The WTDA will participate in the effort being led by the Arts Council and City's Planning Department to apply for a SmART initiative grant from the Department of Cultural Resources.
 - The WTDA supported the proposed partnership between the Jeanie B and City of Washington, as having it docked on our waterfront will be an attraction to visitors.
 - This fiscal year the WTDA has awarded grants to various organizations for the purpose of marketing and promotion. Those organizations include: Pamlico River Quilter's Guild, Walk in the Light Productions, Washington Girls Fastpitch Softball League, and Finish Strong Series.
 - Planning continues for the upcoming Cycle North Carolina Spring Ride. Registration has exceeded 1100, with participants coming from 26 states. The organizers of the event anticipate this will be a record-breaking year. The WTDA has been working in conjunction with various City, County and State departments to coordinate this event locally, and ensure the safety of all who participate. Cyclists will begin arriving on Thursday, April 12, with the routes opening on Friday, April 13.
 - The WTDA is partnering with other communities and entities along Highway 264 to explore the feasibility of marketing the corridor. The group consists of representatives from Washington, Belhaven, and Hyde County.
 - Washington advertisements will be appearing in the April edition of Carolina Country and May edition of Our State magazine.
 - The WTDA and Civic Center staff continue to explore ways to increase bookings Monday Thursday. Very few Saturdays are available for rent the remainder of the year.
- WTDA board of director meetings are held monthly, on the 3rd Wednesday at noon in the Leff Room of the Washington Civic Center. (Council accepted the report as written)

FINANCIAL REPORTS

There were no comments regarding the Financial Reports at this time.

**APPOINTMENTS: – WASHINGTON HOUSING AUTHORITY AND
PARKS & RECREATION ADVISORY BOARD**

Mayor Jennings appointed Gil Davis to the Washington Housing Authority to fill the unexpired term of Rosalind Bailey, term to expire June 30, 2014. By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council endorsed the appointment of Gil Davis to the Washington Housing Authority.

The appointment to the Parks and Recreation Board will take place at a later date.

**APPROVE/AUTHORIZE – DIRECTOR OF PARKS AND RECREATION TO EXECUTE
WATERFRONT DOCKING AGREEMENT WITH NCSB, LLC FOR THE
SCHOONER, JEANIE B**

On February 22, 2012, Dr. Lee Sutton, Owner of the schooner, Jeanie B presented a proposal of docking the Jeanie B along the Washington Waterfront to a group that included representatives from the Department of Parks and Recreation, Washington Recreation Advisory Committee, Washington Harbor District Alliance, Washington Maritime Team, Tar-Pam Guide Service and Carolina Wind Yachting Center. The group took the opportunity to ask questions and make suggestions to Dr. Sutton.

On March 5, 2012, Dr. Sutton presented the revised proposal to the Washington Recreation Advisory Committee. The Committee recommends the dockage of the 72' Schooner, Jeanie B at the Washington Waterfront Docks.

Josh Kay, City Manager reviewed the request with Council and stated that on March 12, 2012, Dr Sutton presented the proposal to City Council. The presented document solidifies previous Council action.

Councilman Mercer inquired about the phrase “in arrears” in the rental agreement. City Attorney, Franz Holscher explained “in arrears”, is his way of capturing the parties agreement. Most payments are due in advance. The owners agreed to pay \$2700 or 20% of the total revenues generated from any/all sailings from the waterfront. The only way to know what the total revenues, would be to wait until the end of the year. Council discussed various options for determining the amount due.

By motion of Councilman Pitt, seconded by Mayor Pro tem Roberson, Council approved and authorized the Director of Parks and Recreation or his designee to execute the Waterfront Docking Agreement with NCSB, LLC for the schooner, Jeanie B.

(copy attached)

**AUTHORIZE – CITY MANAGER TO SIGN THE FY 2013-2017 TIP SUBMISSION FOR
WARREN FIELD**

Josh Kay, City Manager stated that NCDOT Aviation Division has requested the submission of the FY 2013-2017 Transportation Improvement Plan for Warren Field. It is the recommendation of our engineer (Talbert & Bright) as well as staff's recommendation to approve the submission of this

document. According the Talbert & Bright, by signing and submitting this form the City of Washington is not committing any funds to these projects. This submission is being made to allow the Division of Aviation to prioritize airport improvement projects throughout the state of North Carolina. Once the Division of Aviation awards grant funds to an airport sponsor, at that time only will you be asked to secure the local matching funds. Mr. Kay stated the transportation improvement plan is simply a capital improvement plan for the airport. Over a four year period, the estimated cost of improvements would be \$7.6 million and funding will be sought for these improvements. The list is revised on an annual basis.

By motion of Councilman Moultrie, seconded by Councilman Brooks, Council authorized the manager to sign the FY 2013-2017 Transportation Improvement Plan (TIP) submission for Warren Field.

WARREN FIELD TRANSPORTATION IMPROVEMENT PROGRAM (TIP) 2013 - 2017 PROJECT LISTING			
PROJECT	DESCRIPTION	FISCAL YEAR	TOTAL EST. COST
Division of Aviation Minimums:			
Total Cost to bring airport up to Division of Aviation minimums:			\$ -
Division of Aviation Recommended:			
1. Runway Length - Construction	A 500-ft extension of the Runway 5 approach end, along with the required RSA and parallel taxiways can be accomplished without acquisition of land beyond that owned by the airport and the City. The Threshold Sliding Surface for a 500-ft extension is clear of obstructions. The 100-ft wide by 500-ft long runway and 1,000-ft long taxiway will be constructed of 30,000# DWL ACP pavement. The embankment needed for the runway, taxiway, and RSA will be approximately 700-ft long, 500-ft wide for the runway and taxiway, 300-ft wide for the graded RSA, and be approximately 20-ft high at it's maximum depth.	2014	\$ 1,100,000
2. Runway Protection Zone - Runway 5	Purchase Runway 5 RPZ in fee for extended runway. Includes purchase of 5 acres non-residential land, 6 homes and relocation of residents.	2013	\$ 950,000
3. Airfield Maintenance Equipment Storage Building	Building to provide storage for airfield maintenance equipment	2014	\$ 75,000
4. Standard Instrument Approach Procedure	Establish LPV and LNAV approach to extended Runway 5 (Survey and coordination costs only)	2013	\$ 50,000
5. Approach Lighting	Install an ODALS for Runway 5 to improve visibility minimums	2015	\$ 100,000
6. Taxiway and Apron Edge Lighting	Medium Intensity Edge Lighting for Taxiways A, B, and C.	2013	\$ 250,000
7. Runway Extension - Design	A 500-ft extension of the Runway 5 approach end, along with the required RSA and parallel taxiways can be accomplished without acquisition of land beyond that owned by the airport and the City. The Threshold Sliding Surface for a 500-ft extension is clear of obstructions. The 100-ft wide by 500-ft long runway and 1,000-ft long taxiway will be constructed of 30,000# DWL ACP pavement. The embankment needed for the runway, taxiway, and RSA will be approximately 700-ft long, 500-ft wide for the runway and taxiway, 300-ft wide for the graded RSA, and be approximately 20-ft high at it's maximum depth.	2013	\$ 125,000
Total Cost to bring airport up to Division of Aviation recommended:			\$ 2,650,000
Additional Airport Requested Projects:			
8. Runway Protection Zone - Runway 35	Purchase RPZ for Runway 35 in fee (vacant land-Robin Moore land)	2013	\$ 150,000
9. Parallel Taxiway	Construction of 1,100 feet of parallel taxiway to service the 500-ft extension of Runway 5. The costs for the pavement and supporting embankment have been included in the costs for the runway extension.	2015	\$ 680,000
10. 6-Unit T-Hangar and Taxiway (Phase I)	Includes Construction of a new 6-Unit T-Hangar, Site Preparation, and T-Hangar Taxiway located south of the existing T-Hangar development	2014	\$ 540,000
11. Corporate Hangars (Phase I)	Includes Construction of one new corporate hangar, 80'x80'. Includes hangar foundation, floor slab, electrical and hangar door. Also includes construction of apron and vehicle parking lot. Does not include any office space for tenant or other utilities.	2015	\$ 820,000
12. 6-Unit T-Hangar and Taxiway (Phase II)	Includes Construction of a new 6-Unit T-Hangar, Site Preparation, and T-Hangar Taxiway located north of the existing T-Hangar development	2016	\$ 540,000
13. Glide Slope	Install Glideslope for Approach to Runway 5 to provide Precision Approach to Runway 5	2016	\$ 300,000
14. Corporate Hangars (Phase II)	Includes Construction of two new corporate hangars, 80'x80' Each. Includes hangar foundation, floor slab, electrical and hangar door. Also includes construction of apron and vehicle parking lot. Does not include any office space for tenant or other utilities.	2017	\$ 1,420,000
15. Runway 5-23 Edge Light System Replacement	Project will include design, bidding, construction and construction administration phase services for replacing the existing runway light system along Runway 5-23	2013	\$ 250,000
16. Terminal Building Improvements	Project will include design, bidding, construction and construction administration phase services for improvements to the terminal building	2013	\$ 150,000
Total Cost for airport requested projects:			\$ 4,850,000
Total all improvements			\$ 7,500,000

I CERTIFY THAT THE PROJECTS REQUESTED IN THIS 2013 – 2017 TIP SUBMISSION HAVE BEEN REVIEWED BY THE GOVERNING BOARD OF THE SPONSOR RESPONSIBLE FOR FUNDING THE LOCAL SHARE OF THE PROJECT AND THAT SAID BOARD HAS FORMALLY APPROVED THE SUBMISSION OF THESE REQUESTS FOR STATE AID TO AIRPORTS (AND THE STATE BLOCK GRANT PROGRAM WHERE APPLICABLE)

Signed Joshua L Kay Date 04/10/12
 Name & Title (print) JOSHUA L KAY, City Manager

AUTHORIZE/APPROVE – CITY MANAGER TO NEGOTIATE AN ENGINEERING CONTRACT FOR PARALLEL WATER LINE FROM THE WATER TREATMENT PLANT AND APPROVE THE CORRESPONDING PURCHASE ORDER

Mr. Kay explained that staff requested proposals from engineering firms to provide engineering services for design, construction administration, surveying, environmental studies and permitting. The proposal was for a 16” waterline from the water treatment plant to roughly Beaufort County Community College where a dual line is located. This will allow for parallel lines from the water treatment plant to our distribution center. The request for proposals on February 23, 2012, resulted in two proposals being submitted, one by The East Group and the other by Rivers and Associates, Inc., both out of Greenville, NC. After careful consideration of all both proposals, it is staff’s recommendation that Rivers and Associates be awarded this project. Rivers has far more experience with our existing system and this is the reason their firm was chosen for this particular project. In the current fiscal year budget, there is a line item of \$125,000, this would be the maximum used for engineering. Discussion was held regarding the hourly rates submitted with the proposals and noted there were different rates from each firm.

By motion of Councilman Pitt, seconded by Councilman Mercer, Council authorized the manager to negotiate an engineering contract with Rivers and Associates, Inc. not to exceed \$125,000 for a 16” parallel water line from the water treatment plant and approve the corresponding purchase order, not to exceed \$125,000.

ADOPT/AUTHORIZE – ADOPT RESOLUTION TO LEASE PROPERTY OFF WATER STREET AND ADJOINING THE OLD “MCQUAY” BUILDING TO FRIEDMAN-RAVENWOOD, LLC AND AUTHORIZE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH FRIEDMAN-RAVENWOOD, LLC

Mr. Kay explained that Council has previously adopted a resolution and approved an agreement to lease this property to a prior business owner/restaurant. A new lease agreement needs to be executed to lease the property to Friedman-Ravenwood, LLC for a term of ten years for an annual rental payment of ten dollars. Mr. Kay requested that Council approve the lease subject to the City Attorney and City Manager further defining what the use of the facility will be, specifically placing limitations on the use of City property. Mayor Jennings explained the prior agreement specifically stated “restaurant”, while the new agreement states “business” in regards to the lease of the patio and grease trap.

Dot Moate inquired as to why the wording was changed from “restaurant” to “business”? She also stated that we need to be very careful with what types of businesses are allowed on the waterfront. Franz Holscher, City Attorney explained that when he was advised this location would house an oyster bar, he was unsure if that was actually qualified as a restaurant, hence the reason to change the wording to business. Council reviewed the specifics of the lease agreement. Council, by consensus agreed to change the wording back to restaurant.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adopted a Resolution to lease property off Water Street and adjoining the old “McQuay” Building to Friedman-Ravenwood, LLC and Authorized City Manager to execute a lease agreement with Friedman-Ravenwood, LLC with the necessary changes to be made by the City Attorney to incorporate the word “restaurant” in place of “business”.

(copy attached)

**RESOLUTION TO LEASE PROPERTY
OFF WATER STREET AND ADJOINING THE OLD “McQUAY” BUILDING
TO FRIEDMAN-RAVENWOOD, LLC**

WHEREAS, the City of Washington (“City”) owns property located at the intersection of Market and Water streets, including that certain property labeled “Patio & Grease Trap Ground Lease” as more specifically shown on Exhibit “A” attached hereto and incorporated herein by reference (“Premises”), which Premises the City finds it does not currently have a use for.

WHEREAS, the City Council therefore finds the Premises is currently surplus to the City’s needs and will not be needed by the City for the term of the lease proposed hereby.

WHEREAS, Friedman-Ravenwood, LLC (“Lessee”) desires to lease said Premises from the City in order that the same may be utilized in conjunction with a potential business to be operated on the property adjacent to the Premises.

WHEREAS, the City desires to lease said Premises to Lessee in an effort to boost the local economy, including but not limited to downtown business, and tourism.

WHEREAS, North Carolina General Statute § 160A-272 authorizes the City to enter into leases of up to 10 years upon a resolution of the City Council adopted at a regular meeting after 10 days public notice.

WHEREAS, the required public notice has been published and the City Council is convened in a regular meeting.

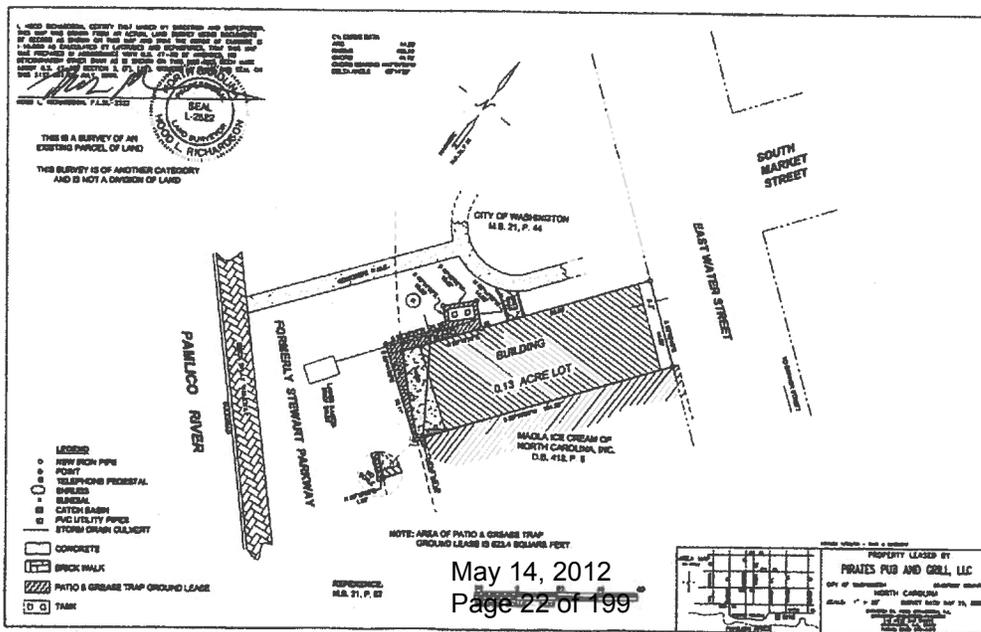
NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Washington that: The City Council hereby approves the proposed lease of said Premises owned by the City to Lessee for a term often (10) years as well as for an annual rental payment often dollars (\$10.00) and authorizes the City Manager to further negotiate, if necessary, and execute said lease.

Adopted this 9th day of April, 2012.

Attest:

s/Cynthia S. Bennett, CMC
City Clerk

s/N. Archie Jennings, III
Mayor



ADOPT – ORDINANCE TO AMEND CH. 2 ADMINISTRATION, ARTICLE X, HOUSING AUTHORITY, AND ARTICLE XX, BOARDS, COMMISSIONS AND COMMITTEES

City Manager, Josh Kay stated during the most recent City Code codification, it was determined that the City Code conflicted with NC General Statutes regarding the appointment, removal and election of Chairman of Housing Authority members. The City Code stated the Council will make appointments, while the NCGS states the Mayor makes appointments to the Housing Authority. In order to be consistent with NCGS, an amendment to Chapter 2, Administration, Article X, Housing Authority, and Article XX, Boards, Commissions and Committees will need to be adopted.

Mayor Pro tem Roberson asked staff/attorney to review payment in lieu of taxes from the Housing Authority and the legalities of the City taking over the accounting practices for the Housing Authority. Councilman Mercer followed up, by stating, the language being proposed tonight puts the City ordinances in line with the general statutes. He also stated that the Housing Authority is required to make an annual report to the Council and we should require that report include the information regarding payment in lieu of taxes. Staff will follow up with the Housing Authority regarding these issues.

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adopted an Ordinance Amending Chapter 2, Administration, Article X, Housing Authority, and Article XX, Boards, Commissions and Committees, of the Code of the City of Washington, North Carolina to clarify certain provisions for the appointment and removal of Commissioners, and the election of Chairman, of the Housing Authority as provided for by State Statute.

Recess 7:10pm-7:15pm

REPORT – REVISED PROCEDURES FOR UTILITY CONSTRUCTION AGREEMENTS & PAYMENT PROCESS (NCDOT) – (COUNCILMAN PITT)

MEMORANDUM TO: Mr. Terry R, Gibson. PE, State Highway Administrator

FROM: Robert Memory, State Utility Agent

SUBJECT: Revised Procedures for Utility Construction Agreements & Payment Process

Ms. Sandy Nance and I have recently undertaken a comprehensive review of the current guidelines for reimbursement for utility work performed by the Department at the request of another local entity. The guidelines have not been revised since May 2006 and with the current fiscal climate and economic constraints, we have received more frequent requests from local governments for various reimbursement conditions.

As part of this review, we have considered feedback from divisions and various units as well as the municipalities themselves. Over the past few years, we have had more frequent requests for extended repayment periods and difficulty in timely reimbursements after the agreement was executed. We recommend that the current payment process be simplified and ensure a more efficient reimbursement schedule to the department.

Current Payment Process:

Billing Procedures are based on the following:

- A. When the amount of work is \$200,000 or less the Department’s Accounts Receivable Unit will bill the Governmental Agency and/or Utility Company upon completion of the Utility work.

- B. When the amount of work is \$200,000 up to one million (\$1,000,000) the Department will invoice 50% of the estimated utility cost (one) 1 year after Project Let Date with the remaining balance due upon completion of utility work and generate a pay item listing within 60 days of completion of utility work. Accounts Receivable will submit pay item listing to the Utility Agent for review and final approval prior to invoicing by the fiscal staff.
- C. When the amount of utility work is one million (\$1,000,000) or above, the Department will invoice 50% of the estimated utility cost (one) 1 year after Project Let Date and the remaining balance will be billed quarterly based upon contract quantities and prices as suited in HICams System.
- D. If a hardship situation is noted, the State Utility Agent may request exceptions to the billing terms noted above.

Revised Payment Process

Billing Procedures are based on the following:

- A. When the amount of work is \$250,000 or less, the Department's Accounts Receivable Unit will bill the Governmental Agency and/or Utility Company upon completion of the utility work.
- B. When the amount of work exceeds \$250,000, the Accounts Receivable Unit will invoice three (3) annual payments with the first payment due one year after Project Let Date. The first two equal payments will be based on the estimated amount due set forth in the agreement. The third and final payment (remaining balance) will be based upon actual contract quantities and prices for actual cost of completed utility work as stated in HICams and Resident Engineers cost submittals.
- C. If a severe hardship situation is identified, the State Utility Agent in coordination with the Manager of Local Program Management Unit may request to the Highway Administrator's office an exception to the reimbursement guidelines as noted above.

We believe that the recommended above revisions would simplify the process, keep reimbursement to a three-year period (which in most cases is the project timeline), and avoids lengthy reimbursement periods and interest payments. Agreements are now being prepared twelve months prior to the Project Let Date. With the first payment not due until one year after the project's been let (which allows time for costs to be incurred for the utility work), this gives adequate time for a Local government to budget and anticipate payment due to the department under the terms of the executed agreement. The revised guidelines should reduce the number of requests from the municipalities for exceptions to the payment process and avoids the department being placed in the role of the 'banker'.

Additionally, to avoid financial exposure by the department, utility work should not be included in a construction contract without an executed agreement with the other party. Future agreements (and those not yet executed) will be written by the Departments Local Program Management Office in accordance with these guidelines.

Thank you for your attention to this matter. If you have any comments or concerns, please contact me or Sandy Nance. (end memo)

Below are issues committee members identified as the top issues/areas for improvement in their communities. Many, but not all, are topic areas that fall under the General Government LAC's purview.

Note that some issues may overlap with the work of the Tax & Finance LAC with regards to funding. For the General Government LAC, the number of committee members mentioning each topic is indicated in parentheses after the issue.

- **General Government**
- Transportation: Funding, utility relocation, DOT communication and processes, transit improvements, equity formula (12)
- Economic development: Downtown & small town revitalization and restoration, industrial recruitment and site development, additional incentives (11)
- Public safety: Crime prevention and reduction, funding for drug enforcement officers, equipment funding (6)
- Regionalism/intergovernmental cooperation (3)
- ABC system: Defense of current system, local input (2)
- Electronic notification of meetings (1)
- Sweepstakes (1)
- Hurricane preparation & recovery (1)
- **Tax & Finance**
- Water and wastewater infrastructure
- Economic/downtown development
- Parks and recreation funding
- Potential for sales tax reductions by the state
- **Planning & Environment**
- Minimum housing code enforcement
- Clean energy/sustainability
- Water and wastewater infrastructure
- Parks and recreation funding
- Zoning/land use authority & ETJ
- Municipal growth post-annexation reform

ADDITIONAL AREAS OF DISCUSSION/CONCERN

- State Budget and Economy
- ETJ
- Non-Voted Debt/Local Government Debt Transparency
- Annexation
- Hydraulic Fracturing (Fracking)
- Transportation/Road Maintenance
- 911/PSAPs
- Building Design Controls
- Municipal Incorporation
- Billboards
- Gun Control in Parks/Recreational Facilities
- Eminent Domain
- Town Hall Day June 6

REPORT FROM NCEMPA MEETING

Councilman Mercer reported that the NCEMPA agenda will be submitted electronically and he will forward the agenda to the other Council members. He also reported that during the NCEMPA meeting, a resolution supporting the issuance of \$500 million worth of bonds was discussed and voted on. \$370 million of the bonds will be for early refunding of bonds issued in earlier years. Ultimately, by refunding those bonds on an early basis, the Power Agency will save approximately \$3.7 million per year. \$110 million of the bonds are for capital improvements at the facilities. Although, the projected cost for all the capital improvements are \$220 million, the remaining \$110 million will come from wholesale rates. Councilman Mercer noted that he questioned the NCEMPA staff about what the \$3.7 million in savings could be used for and was advised there are limitations on the uses. He also explained that he voted against the resolution as he didn't agree with some of the conditions outlined in the resolution. We (members of NCEMPA) have accumulated an additional \$110 million in debt to be paid by the Power Agency, while Washington's portion of this additional debt is almost \$7 million.

CLOSED SESSION – UNDER § NCGS 143-318.11(A)(1) DISCLOSURE OF CONFIDENTIAL INFORMATION AND § NCGS 143-318.10(E) THE PUBLIC RECORDS ACT

By motion of Councilman Pitt, seconded by Councilman Brooks, Council entered into closed session at 7:30pm under § NCGS 143-318.11(A)(1) Disclosure of Confidential Information and § NCGS 143-318.10(E) the Public Records Act.

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

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adjourned the meeting at 7:45pm until April 23, 2012 at 5:30pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

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

The Washington City Council met in a continued session on Monday, April 23, 2012 at 5:30pm in the City Council Chambers at the Municipal Building. Present were: Archie Jennings, Mayor; Doug Mercer, Councilman; Ed Moultrie, Councilman; William Pitt, Councilman; Richard Brooks, Councilman; Bobby Roberson, Mayor Pro tem; Josh Kay, City Manager; Cynthia Bennett, City Clerk and Franz Holscher, City Attorney.

Also present were: Matt Rauschenbach, Chief Financial Officer; Robbie Rose, Fire Chief; Allen Lewis, Public Works Director; Gloria Moore, Library Director; John Rodman, Planning Director; Keith Hardt, Electric Director; Interim Fire and Police Services Director, Stacy Drakeford; Susan Hodges, Human Resources Director and Mike Voss, Washington Daily News.

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

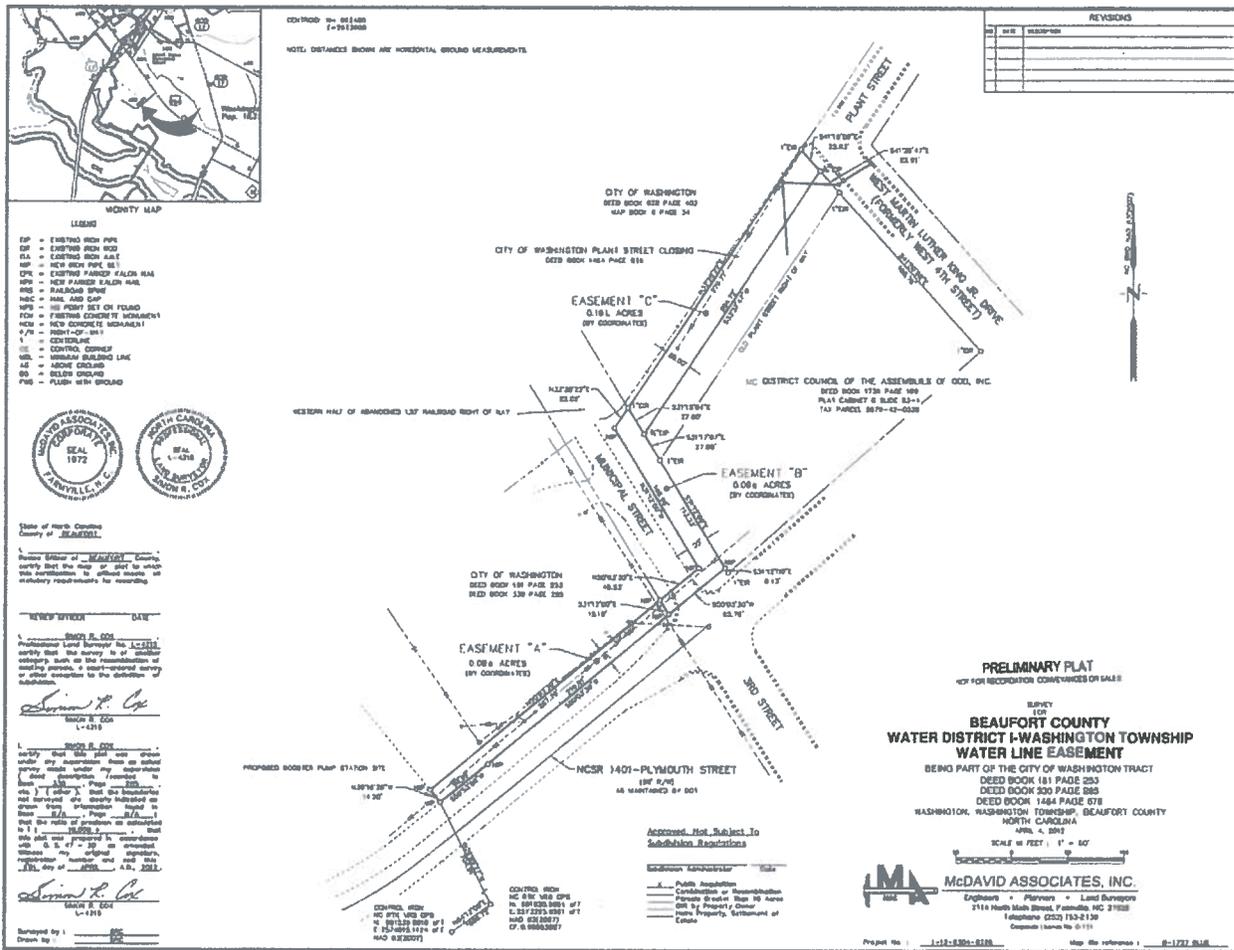
APPROVAL/AMENDMENTS TO AGENDA

Mayor Jennings added a closed session discussion under NCGS 143-318.11(a)(6) Personnel and 143-318.11(a)(3) Attorney/Client Privilege.

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

**APPROVE - BEAUFORT COUNTY WATER DISTRICTS I – VI REQUEST FOR THREE
ADDITIONAL EASEMENTS TO ACCOMMODATE WATER TRANSMISSION LINE
INSTALLATION IN THE VICINITY OF THE INTERSECTION OF THIRD AND
PLYMOUTH STREET**

Josh Lewis, City Manager introduced Mr. Van Lewis, McDavid Associates, Inc. Mr. Lewis asked Council to also authorize the City Manager and City Attorney to finalize the documents and to authorize the Mayor to execute the documents. Mr. Lewis explained that based upon prior Council authorization the Districts have identified a 0.42 +/- acre parcel of land owned by the City of Washington. The property is located at the intersection of Second Street and Plymouth Street and adjacent to the abandoned water treatment plant site which the Districts propose to purchase for the construction of a booster pump station. Due to the close proximity of the proposed site to the City's operation center, the Districts agree not to use gas chlorine for disinfection at the proposed site. In addition, if for any reason, the Districts fail to construct the proposed Booster Pump Station within a specified time frame (suggest 48 to 60 months), the Districts will deed the proposed site back to the City in exchange for value paid. A copy of the survey of the site is enclosed marked as Exhibit "A". The site selection was mutually selected and agreed upon by county/city representatives. Appraiser Eddie Dozier has been authorized to proceed with an appraisal, said appraisal being expected on or before April 20, 2012. Mr. Lewis thought it would be appropriate to have an appraisal for a basis of final price determination/negotiation. In addition for clarification, the City of Washington owns three underlying parcels of land south of the river on which the existing Washington Electrical Transmission line and associated easement crosses between pole 49 and pole 79. To eliminate all legal questions regarding the legal right to place the water transmission line in the location previously described, a legal description of the proposed water transmission line as it crosses Washington owned property is included in the easement package and is in accordance with the prior Council approval.



Mayor Pro tem Roberson inquired about potential issues with the easements. Mr. Lewis stated the roads in that area only leave about 5 or 6 feet from the back of the curb to the right of way and there are a lot of pipes in the existing right of ways. These three easements will allow for a safer installation and allow for the avoidance of many of the existing utilities. Councilman Mercer expressed concerns with the different size easements and why wouldn't the same easement width be satisfactory on all streets? Mr. Lewis explained there is a power pole located in that area on Plymouth Street and this is the typical easement (15 feet) you would get when you have a waterline utility. The 20 foot easement on Municipal Street is typically what they ask for and they try to put the water line close to the center. The 25 foot easement represents a street closing plus there are other utilities in that easement as well. Councilman Mercer expressed concern with easement issues with the 25 foot easement. Mr. Van Lewis suggested including in the easement that the City of Washington retains property rights. Mayor Jennings clarified that the City would not be giving up its right to use its own easement. Mr. Holscher stated the City would continue to have the right to the underlying fee of that property; it just couldn't infringe upon the right that you have granted to the Districts. This could be clarified for the purpose of memorializing the agreement.

Mayor Jennings requested clarification from staff regarding the recommendation and Mr. Kay stated they were comfortable with the continued partnership with Beaufort County and supports Mr. Lewis' request.

By motion of Mayor Pro tem Roberson, seconded by Councilman Moultrie, Council approved the request for the conveyance of three easements for Beaufort County Water Districts I – VI to accommodate water transmission line installation in the vicinity of the intersection of Third and Plymouth Street as well as the property on Plymouth Street for a booster pump station as presented and depicted and authorized the City Attorney and City Manager to finalize, and the Mayor to execute, the documents necessary to effectuate the conveyances.

Mr. Lewis thanked staff for their cooperation.

DISCUSSION - EXTRA-TERRITORIAL JURISDICTION REDUCTION

Mr. Kay noted that Council had requested staff to evaluate the Extra-Territorial Jurisdiction (ETJ) and the size of the ETJ and services that was offered within it. Planning and Development Director, John Rodman explained the purpose and intent of an ETJ (which is to protect activities on the edge of a community from being encroached by incompatible adjacent activities). The City's authority to set up an ETJ is under Article 19 of Chapter 106A-360 under the North Carolina General Statutes. Mr. Rodman stated the City of Washington received special legislative authority to extend ETJ 1/12 miles beyond city limits.

- **Extraterritorial Jurisdiction (ETJ)** is the legal ability of a government to exercise authority beyond its normal boundaries.
- **Extraterritorial Jurisdiction (ETJ)** is a zoning “overlay” that allows a town to zone areas outside its limits in order to plan for future growth.
- A city may not extend its regulatory or police powers beyond the city limits without specific legislative authority.
- In North Carolina, the state gives municipalities broad powers to control planning and growth for up to three miles beyond their borders (up to one mile for smaller towns).
- The NC Supreme Court ruled in 1894 that the Town of Washington did not have the authority to regulate the throwing of dead fish from a pier into the Pamlico River. The city limits extended only to the low water mark of the river, so the portion of the pier over the river itself was not within the city's regulatory jurisdiction. Because no expanded jurisdiction had been granted by the legislature, the city could not enforce its ordinance.
- Smaller towns are less likely to have ETJs than larger cities, but most North Carolina towns have taken advantage of the statutory authority to exercise extraterritorial jurisdiction, according to the School of Government at UNC.

- As zoning and other land use regulations first came into widespread use in North Carolina, this activity was almost exclusively a municipal concern. While most cities of any size were adopting zoning, only a few counties were doing so.
- N.C. authorized city “perimeter zoning,” which is now known as municipal extraterritorial jurisdiction.
- When a city adopts an ETJ ordinance, the city acquires jurisdiction for all of its ordinances adopted under Article 19 of Chapter 160A of the General Statutes inclusive of zoning & subdivision regulations, housing & building codes, historic district regulations, floodplain management
- The purpose of an ETJ is to help cities and towns plan for developing areas that may require municipal services in the future by applying consistent guidelines for development. This helps avoid a mix of development standards.
- NC General Statute 160A-360(b) provides that the area chosen must be based on “existing or projected urban development and areas of critical concern to the city,”
- “ETJ extensions should only be granted for areas anticipated to be substantially developed and annexed within ten (10) years.”

Staff suggested the following schedule to be considered by Council:

- 1.) Present report to City Council
- 2.) Planning Board Public Hearing
- 3.) City Council Public Hearing/Adopt Resolution
- 4.) Establish effective Date for Offer to Relinquish

Mr. Rodman stated 72% of cities/towns exercise ETJs and we are not allowed to regulate – nuisance ordinance in the ETJ:

- 1923 – Zoning act
- 1949 – Zoning outside city
- 1959 – General Assembly Statewide ETJ

Mr. Rodman reviewed the steps involved:

- Will notify all property owners affected
- 60 day period zoning in effect
- Man hours

Suggested reduction areas:

Area #1 – Whichards Beach
2,385 acres, 377 properties (175 vacant)

Population: 470

Area #2 – Cherry Road
 1,215 acres, 162 properties (67 vacant)
 Population: 216

Area #3 – Hwy 17 N
 698 acres, 49 properties (20 vacant)
 Population: 67

Mr. Rodman shared the reduction in flood insurance rating by 15% due to CRS participation by the City.

The North Carolina General Statute essentially provides for a sixty-day period during which the City would maintain zoning jurisdiction over the area or until the regulation of the area is adopted by the County, not to exceed 60 days.

Mr. Rodman said they looked at what it would cost the City to do this not in actual man hours of inspectors and planning and zoning staff but what it would cost to do a reduction.

Cost:

First Class Mailings	\$250.00
Verify the Description	\$500.00
Map Preparation	<u>\$500.00</u>
Total (approximate)	\$1,250.00 - \$1,500.00

Mayor pro tem Roberson requested at the next presentation on area # 1 we take a look at the railroad line off of Whichard’s Beach Road as it is not reflected on the map. Mr. Rodman shared staff had actually looked at the railroad and explained their findings and that activity for those areas is not very high.

Mayor Jennings stated the city provided services for area # 1 – Whichard’s Beach and part of the agreement had to do with some voluntary annexation agreements inside the provision of service. Would this create a problem if we essentially pull back our zoning from an area we may request to voluntarily annex? Mr. Rodman said it could be a problem but if we pulled back it would be quite a bit further. Mayor Pro tem Roberson suggested if we want to control the growth it is all about water and sewer (policy).

Councilman Mercer felt the City has an enforcement issue where people are doing things illegally and that is the City problem which needs to be corrected - Mayor Pro tem Roberson stated he understood and suggested you can’t do it with one person doing zoning enforcement for the jurisdiction we have inside the City limits. The City does not have enough code enforcement officers to monitor just the minimum housing inside the corporate limits of the City. We do not have the staff capabilities to enforce the zoning and subdivision regulations beyond the corporate limits of the City of Washington; further, we have enough code violations that would take our inspectors the rest of this year to go over on the western part of our boundaries.

Mr. Rodman stated the County does not participate in the Community Rating System (CRS) program, the County's flood rating is at a 10 while the City's flood rating is at a 7 because of its participation in the CRS. This means the County pays full premium. The citizens of Washington and the ETJ citizens are entitled to a 15% reduction because the City participates in the CRS program.

Councilman Mercer voiced concern that reducing the size of the ETJ could remove some protections that residents in the ETJ now have. Councilman Mercer posed as hypothetical situation:

Councilman Mercer "I'm living in — I don't care which one of the zones you're talking about, one, two or three — I have come in and I have complied with all the city regulations and built according to whatever the regulations are," Councilman Mercer said. "Now, you come along and you say, 'Well, I'm going to take you out of my ETJ and this will eliminate any of the restrictions that the city has imposed in that area for 25-plus years.' Now, I can come and buy the lot right next door and I can put up a tin shack, and it's subject to no regulations whatsoever. I'm sitting here right next door in a \$250,000 house. Next door is a \$500 tin shack, simply because we have eliminated our control authority over that piece of property. When I built my house, I built it under the assumption that I was in an area that the city was going to adequately protect for me, and now you tell me I'm not going to protect you. Councilman Mercer felt we are doing the people who have complied with our regulations for the last 25 years a disservice if we all of sudden kick them out (of the ETJ)."

Councilman Mercer noted what would further compound the situation of removing property owners now in the city's ETJ and leaving them without zoning and land-use protections they have now is that Beaufort County has no zoning regulations. Property owners removed from the city's ETJ would "fall out of any kind of protection they've been enjoying for 25-plus years."

Mayor Pro tem Roberson also voiced concern similar to Councilman Mercer's. Mayor Pro tem Roberson noted that most counties in North Carolina have some form of zoning and land-use regulations.

Mr. Rodman stated reducing the City's ETJ could save the City money because it would not have to enforce the City's zoning and land-use regulations in the areas removed from the City's ETJ. Mr. Rodman presented some scenarios: "Let me give you some figures. What we are trying to do is balance some areas that we may not think have a higher potential for development," Rodman said. "Can we better use those man-hours that our inspectors are doing or our planning staff is doing? Can we use those man-hours to concentrate more on what we think are high-development areas? So, we're looking at it that way."

Mayor Pro tem Roberson inquired if Beaufort County has stepped up to the plate and adopted a zoning ordinance. Councilman Mercer suggested his advice to the County Commissioners is that if we move that area out (of the ETJ), maybe the County should entertain getting in land-use controls like the rest of the 80 or 90 counties that we have in the state of North Carolina to protect those Beaufort County citizens which elect them into office. We've been saying that to the County Commissioners for the last 10 years. It hasn't gone anywhere, and it will not go anywhere for a number of years to come. I just hate to see us put citizens that we have protected for this long period of time cast out with the bath water.

Mayor Pro tem Roberson stated he didn't mind protecting them as long as the ultimate goal is to annex the property. "If you're urban in character ... it should be inside the corporate limits of the city. What I'm seeing for the future is that we are doing away with those kinds of regulations, and the burden is going to be on the City if we don't step up and do something in terms of annexation and the ETJ."

Mayor Archie Jennings weighed in, saying, "As we know, that one's (annexation) being bandied about in the court system, so we'll have to wait and see."

There was some question about whether if property owners in the ETJ would pay more for flood insurance if they were removed from the ETJ. The city participates in the community rating system, which is part of the National Flood Insurance Program, but Beaufort County does not.

Mr. Rodman stated those county residents who do not live in a municipality are paying full rates for flood insurance. Washington residents and those who live in the city's ETJ are entitled to a 15-percent reduction in their flood-insurance premiums. Residents removed from the city's ETJ could face paying higher premiums. Mr. Rodman stated this has not been verified.

Councilman Pitt asked the number of actual County employees who actually go out and take care of the problem that the City is now doing. Mr. Rodman stated the County and City has two building inspectors. The County does not have a zoning enforcement officer but they have an emergency manager coordinator. Councilman Pitt "does the County have an interest in taking this land back?" Mr. Rodman stated he has not mentioned this to the County Planning Board. He did not want to go anywhere else until he received direction from City Council. Mayor Jennings stated the County doesn't have any planning codes so it would just mean the City would be pulling back from their own boundary.

Mayor Jennings directed staff to supply the fee revenue dollars lost (permits, inspections etc.) by not doing inspections in those areas. Mr. Rodman will gather this cost for Council. Mayor Jennings stated Council will provide guidance on this matter at the May 14th, 2012 meeting.

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

By motion of Councilman Pitt, seconded by Councilman Brooks, Council entered into closed session under § NCGS 143-318.11(A)(6) and NCGS § 143-318.11(A)(3) Attorney/Client Privilege at 6:30 pm.

By motion of Mayor Pro tem Roberson, seconded by Councilman Brooks, Council agreed to come out of closed session at 6:48pm.

ADJOURN

By motion of Councilman Pitt, seconded by Councilman Brooks, Council adjourned the meeting at 6:50pm until May 14, 2012 at 5:30pm in the Council Chambers at the Municipal Building.

(Subject to the Approval of the City Council)

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



City of Washington REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Glen Moore, Planning Administrator
Date: April 19, 2012
Subject: Resolution directing City Clerk to investigate a petition for a non-contiguous annexation from Eastern Pride, Inc.
Applicant Presentation: N/A
Staff Presentation: John Rodman / Glen Moore, Planning & Development

RECOMMENDATION:

Adopt the resolution directing the City Clerk to investigate a petition for a non-contiguous annexation received under General Statutes 160A-31.

BACKGROUND AND FINDINGS:

On April 5, 2012, Eastern Pride, Inc. presented a petition for a non-contiguous annexation for a parcel of land. The property contains 1.76 acres and is located on River Road just east of Brick Kiln Road.

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

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

___ Currently Budgeted (Account _____) ___ Requires additional
Appropriation ___ No Fiscal Impact

SUPPORTING DOCUMENTS

Attached map, resolution, & petition

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *JO* Concur _____ Recommend Denial
_____ No Recommendation 5/8/12 Date
May 14, 2012

PETITION REQUESTING A NON-CONTIGUOUS ANNEXATION

Date: 4/5/12

To the City Council of the City of Washington:

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

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

See Attached Deed

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

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

<u>Name</u>	<u>Address</u>	<u>Do you declare vested rights? (Indicate yes or no.)</u>	<u>Signature</u>
1. Eastern Pride Inc	2405-F Nash Street Wilson, N C 27896	no	<i>CE Bagh</i> for Eastern Pride Inc
2.			
3.			

BK 1 7 7 7 PG 4 0 3

FOR REGISTRATION REGISTER OF DEEDS
Jennifer Legett Whitehurst
Beaufort County, NC
March 12, 2012 02:58:56 PM
Book 1777 Page 403-406
FEE: \$28.00
NC REVENUE STAMP: \$180.00
INSTRUMENT # 2012001431

BEAUFORT COUNTY LAND RECORDS
ROUTING FORM 37481
LMH 3-12-12
Land Records Official Date



INSTRUMENT # 2012001431

-----[SPACE ABOVE THIS LINE RESERVED FOR RECORDING DATA]-----

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

Prepared By: HORNE & HORNE, PLLC
Return To: GRANTEE

NO TITLE SEARCH PERFORMED OR REQUESTED

Tax Parcel No: _____

Excise Tax: \$ _____

GENERAL WARRANTY DEED

The Preparer is informed that all or a portion of the property herein conveyed does/ does not include the principal residence of the Grantor.

THIS DEED, made and entered into this the 12th day of March, 2012, by and between, CLARED, LLC, a North Carolina Limited Liability Company whose address is 123 Riverview Drive, Washington, NC 27889, hereinafter called GRANTOR, and EASTERN PRIDE, INC., a corporation organized and existing under and by virtue of the laws of North Carolina whose address is 2405-F West Nash Street, Wilson, NC 27896, hereinafter called GRANTEE;

WITNESSETH:

That Grantor, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration to him in hand paid by Grantee, the receipt of which is hereby acknowledged, has given, granted, bargained, sold and conveyed and by these presents does give, grant, bargain, sell and convey unto the said Grantee, his heirs and assigns, in fee simple, the following described real property, to-wit:

See attached Exhibit "A"

TO HAVE AND TO HOLD the above described real property with all the rights, privileges and

EXHIBIT A

Lying and being in Long Acre Township, Beaufort County, North Carolina, more particularly described as follows:

BEGINNING at an iron pipe located on the Northerly edge of River Road, said iron being located South 73° 6' 30" East 384.78 feet from an existing PK nail at the centerline intersection of River Road and SR 1303; thence from said fixed point of beginning North 42° 46' 47" East 211 feet to an iron pipe; thence North 45° 58' 37" West 50 feet to an iron pipe; thence North 42° 41' 46" East 183.80 feet to a point located in the centerline of the run of Maple Branch; thence following the centerline of Maple Branch the following courses and distances: South 74° 46' 16" East 20.31 feet; thence South 80° 54' 47" East 25.05 feet; thence South 73° 46' 16" East 57.64 feet; thence South 75° 46' 51" East 61.90; thence South 71° 52' 34" East 40.73 feet; thence South 38° 57' 32" West 475.04 feet to an iron located on the Northerly edge of the right of way of River Road; thence North 48° 39' West 22.88 feet to a point; thence North 52° 15' 31" West 87.91 feet; thence North 57° 10' 7" West 53.55 feet to the point of beginning, containing 1.76 acres as shown on survey by Jarvis Associates, PA, dated January 27, 1997 entitled, "Property of River City Real Estate & Development, LLC", a copy of which is recorded in Book 1067, Page 445, Beaufort County Registry. Reference is also made to deed in Book 1067, Page 444, Beaufort County Registry. Reference is further made to deed in Book 1252, Page 648, Beaufort County Registry. Reference is further made to deed in Book 1266, Page 362, Beaufort County Registry.

OWNER: EASTERN PRIDE, INC.
2400-F NASH STREET
WASHINGTON, NC

GENERAL CONTRACTOR: STOCKS AND TAYLOR
CONSTRUCTION, INC.
WASHINGTON, NC

THE PROPERTY IS SHOWN ON FLOOD INSURANCE RATE
MAP 170288000, DATED MAY 15, 2003 AND A PORTION
IS THE PROPERTY IS LOCATED IN A SPECIAL FLOOD
HAZARD AREA AS LOCATED IN SHADING ZONE A-1.
THE REMAINDER OF THE PROPERTY IS IN ZONE X.

SUMMARY OF SITE:

GENERAL BUILDING INFORMATION
BUILDING USE: COMMERCIAL - RETAIL
BUILDING SIZE: 8000 SF
BUILDING FOOTPRINT: 8000 SF
300 SF STORAGE

ZONING INFORMATION
ZONING: R2
SETBACKS: MINIMUM BUILDING SETBACKS (UNLESS NOTED)
FRONT: 30 FEET
SIDE: 20 FEET
REAR: 20 FEET

UTILITIES:
WATER LINE - BEAUFORT CO. WATER DISTRICT
WASTEWATER - CITY OF WASHINGTON/BEAUFORT CO.

WASTEWATER SERVICE: 2" FORCE MAIN
WATER SERVICE: 1" SERVICE LINE
ELECTRIC SERVICE: CITY OF WASHINGTON
NATURAL GAS - FREDMONT NATURAL GAS 1" SERVICE

ALL NEW SERVICES SHALL MEET ALL
NC BUILDING CODE REQUIREMENTS
ALL EXISTING UTILITIES ARE SHOWN
BASED ON FIELD EVIDENCE

BEFORE ANY DIGGING OR ONE CALL SHALL
BE CALLED AND CONFIRM LOCATION AND SIZE
OF ALL EXISTING UTILITIES.

LANDSCAPING AND VEGETATION

BUFFER YARD A
A - 5' BUFFER YARD ALONG PERIMETER OF SITE
B - 5' BUFFER YARD ALONG EAST TOWN PROPERTY LINE
D - 10' BUFFER YARD WITH 6" WOODEN FENCE ALONG RESIDENTIAL SIDE
BUFFER YARD A REQUIREMENTS: 1M-24 FT
20 SHRUBS/100 LF
BUFFER YARD B REQUIREMENTS: 24 FT
3 EVERGREEN TREES/100 LF
3 SMALL TREES/100 LF
BUFFER YARD D REQUIREMENTS: 24 FT
12 EVERGREEN TREES/100 LF
3 SMALL TREES/100 LF
LANDSCAPE MAY BE REDUCED BY 50% IF FENCE IS INSTALLED

PARKING REQUIREMENTS
PARKING SPACES TO BE TYPICAL (9' X 18' OR 16' X 20') UNLESS
OTHERWISE NOTED
PARKING SPACES REQUIRED: 38
PARKING BUILDING CODE REQUIREMENTS: 11 SPACE PER 200 SF RETAIL
PARKING PROVIDED TOTAL: 38
HANDICAPPED ACCESSIBLE: 2
HANDICAPPED ACCESSIBLE PARKING TO BE 1:2 EQUAL SPACES
IF APPLICABLE CODE

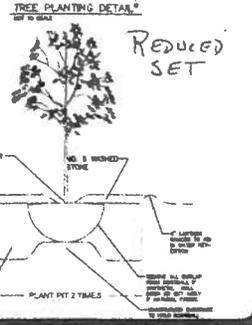
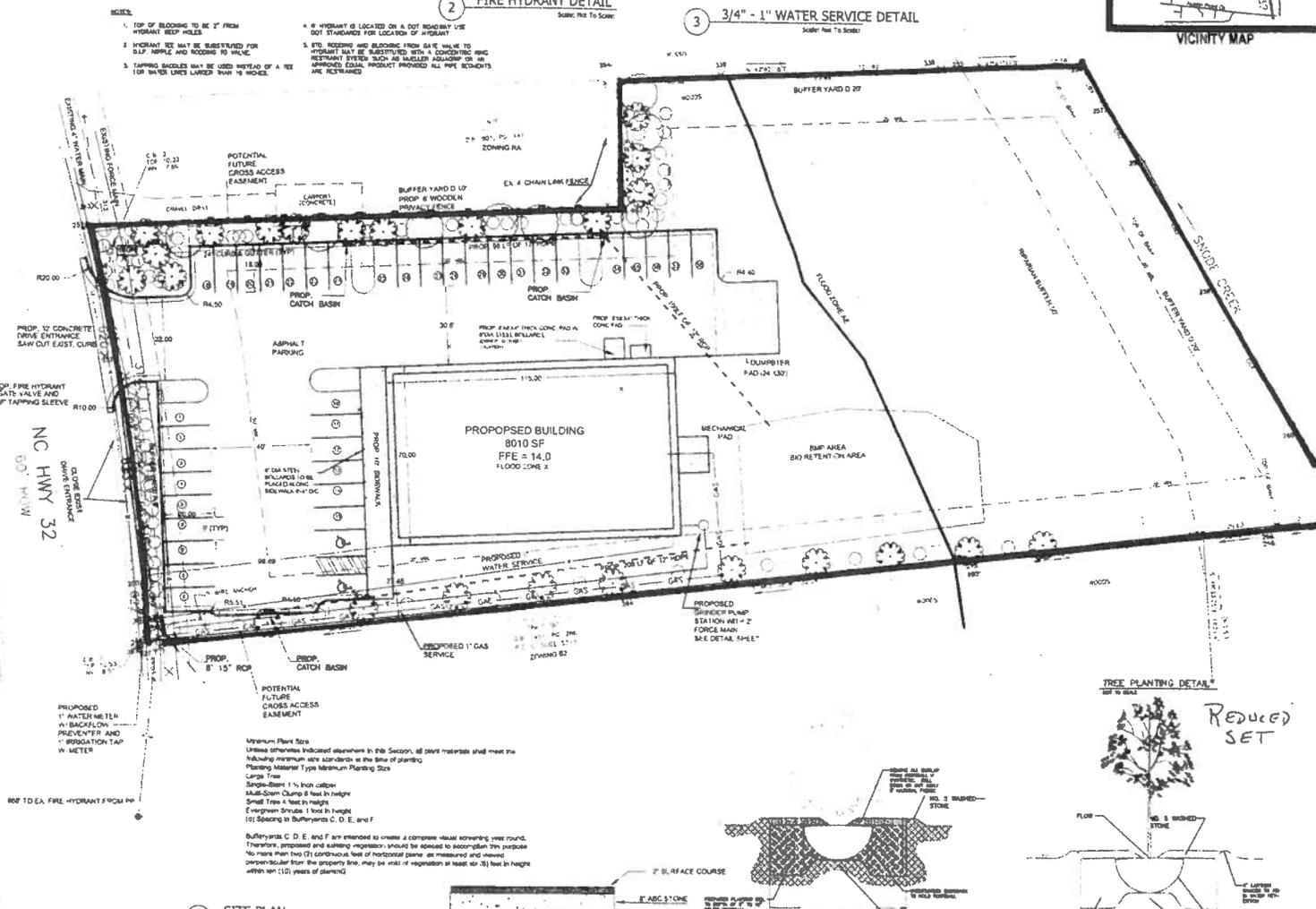
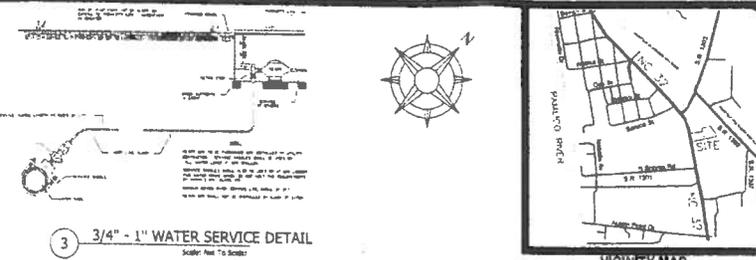
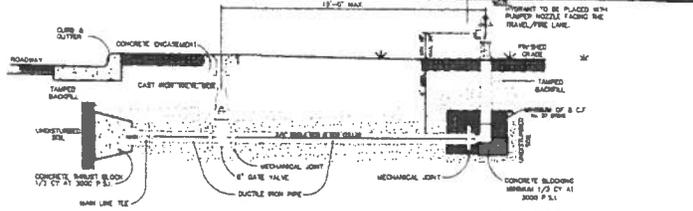
PLANTING REQUIREMENTS

- 32 SHRUBS BUFFER YARD A
 - 10 EVERGREEN SHRUBS
 - 10 SMALL TREES BUFFER YARD B
 - 8 LARGE TREES
 - 12 SMALL TREES
 - AT SHRUBS OR BUFFER YARD D WITH A 6" WOODEN FENCE
- A. LARGE TREE CATEGORY**
TROPICAL PINE
- B. SMALL TREE CATEGORY**
ORLEANS PEAR
- C. EVERGREEN SHRUB CATEGORY**
ADVANCE PRIVATE

Fencing
When there is an existing fence which creates a non-compliant setback for at least
five (5) feet in height on an adjoining property owner's parcel, and the fence address
along

a minimum of 80% (80) percent of the existing yard in question as determined by the
Contractor of Planning and Development. When the developer may need to use one of the
applicable alternative buffer zones:

- (1) Buffer Zone D - minimum width - ten (10) feet required plant or landscape per zone
number
- (2) Buffer Zone E - minimum width - ten (10) feet required plant or landscape per zone
number
- (3) Buffer Zone F - minimum width - ten (10) feet required plant or landscape per zone
number



FAMILY DOLLAR WASHINGTON

CITY-STATE: WASHINGTON, NC

ADDRESS: 128 ABBEY LANE

PROFESSIONAL SEAL: PEES

PAULCO ENGINEERING SERVICES
128 ABBEY LANE
WASHINGTON, NC 27889
252-261-9953
paulco@earthlink.net

REVISIONS:

11021

1" = 20'

C-001

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

WHEREAS, a petition requesting annexation of an area described in said petition was received on April, 5, 2012 by the Washington City Council; and

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

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

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

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

N. Archie Jennings, Mayor

ATTEST:

Cynthia S. Bennett, Clerk

Annexation # 12-A-01
Eastern Pride, Inc.



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Stacy Drakeford, Director of Police / Fire Services
Date: May 14, 2012
Subject: Motion to accept grant funds & adopt a budget ordinance amendment (\$4,000.00)

Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

I respectfully request that the Council accept grant money from the National Football League (NFL), granted on behalf of Terrance Copper, in the amount of \$4,000.00 to be used to fund a "Summer Youth Football Camp"; and adopt a budget ordinance amendment appropriating the funds in the Police Department budget.

BACKGROUND AND FINDINGS:

This grant will fund a "Summer Youth Football Camp" for young people in the Washington area. It will be directed by Terrance Copper, a Washington native & NFL player, along with several of his colleagues and volunteers from the Washington Police Department. This is another initiative of the Washington Police Department to foster better relations with the community's youth. There is no local match of money required with this grant.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

None.

SUPPORTING DOCUMENTS

None.

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: JD Concur _____ Recommend Denjal _____ No Recommendation
5/8/12 Date

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-12**

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

Section 1. That account number 10-10-4310-3303, Supplies – Football Grant, Police Department portion of the General Fund appropriations budget be increased in the amount of \$4,000 to provide funds for a summer football camp.

Section 2. That the Estimated Revenues in the General Fund be increased in the amount of \$4,000 in the account Miscellaneous Revenue, account number 10-00-3839-8900.

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 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 05-02-12
Subject: Declare Surplus/Authorize Electronic Auction of Equipment through GovDeals

Applicant Presentation: N/A
Staff Presentation: N/A

RECOMMENDATION:

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

BACKGROUND AND FINDINGS:

The purpose of this Council Action is to declare surplus the following piece of City equipment and authorize the sale of this equipment through electronic auction using GovDeals.

<u>Vehicle Number</u>	<u>Make/Model Description</u>	<u>Serial Number</u>	<u>Odometer Reading</u>
5012	Kubota 54" Zero Turn Mower	ZG227Z	N/A

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

N/A

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *(K)* Concur Recommend Denial No Recommendation *5/6/12* Date



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 14, 2012
Subject: Budget Ordinance Amendment Workers Comp Reserve
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Budget Ordinance Amendment to appropriate funds to replenish the workers compensation reserve fund.

BACKGROUND AND FINDINGS:

An appropriation of \$208,000 will replenish the fund to \$600,000 and provide a reserve for estimated claims on incidents that have been reported. The General Fund and the Electric Fund will contribute \$104,000 each. The City's self funded workers compensation fund has been in place for three years and resulted in a cumulative net benefit of \$202,721 or \$67,574/year. Our out of pocket cost has averaged \$225,000/year and compares to the fully insured cost in FY 2009 of \$292,000.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Budget Ordinance Amendment
Workers Comp Replenishment
Self Funded Benefit

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: CR Concur _____ Recommend _____ Denial _____ No Recommendation
5/8/12 Date May 14, 2012
Page 44 of 199

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

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

Section 1. That account number 10-00-4400-5402, Worker's Compensation Insurance, Miscellaneous Non-Departmental portion of the General Fund appropriations budget be increased in the amount of \$104,000 to provide funds for payment to the Worker's Compensation Internal Service Fund.

Section 2. That the Estimated Revenues in the General Fund be increased in the amount of \$104,000 in the account Fund Balance Appropriated, account number 10-00-3991-9910.

Section 3. That account number 35-90-6610-5402, Worker's Compensation Insurance, Miscellaneous Non-Departmental portion of the Electric Fund appropriations budget be increased in the amount of \$104,000 to provide funds for payment to the Worker's Compensation Internal Service Fund.

Section 4. That the Estimated Revenues in the Electric Fund be increased in the amount of \$104,000 in the account Fund Balance Appropriated, account number 35-90-3991-9910.

Section 5. That the Estimated Revenues in the Worker's Compensation Internal Service Fund be increased in the following accounts by the amounts shown:

85-60-3940-1000	Payments from General Fund	\$ 104,000
85-60-3940-3500	Payments from Electric Fund	<u>104,000</u>
	Total	\$ 208,000

Section 6. That the following account numbers in the Worker's Compensation Internal Service Fund be increased in the following accounts by the amounts shown:

85-60-4930-1000	WC Claims - General Fund	\$ 104,000
85-60-4930-3500	WC Claims - Electric Fund	<u>104,000</u>
	Total	\$ 208,000

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

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

Adopted this the 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK

Worker's Comp Fund Replenishment

WC Fund Balance at 4/30/12	\$656,114
Estimated May/June Claims	(30,913)
Estimated Accrual Entry	<u>(186,323)</u>
Estimated Balance @ 6/30/12	\$438,878
Less: Required Reserve	(600,000)
Less: Add'l FY 12/13 Estimated Claims	<u>(47,495)</u>
Funding Needed	(208,617)

Self Funded Workers Comp Benefit Since Inception

5/4/2012

	Cummulative	Average/ Year
Self Funded Cost		
Claims paid	490,485	163,495
Third Party Administrator	60,000	20,000
Excess Reinsurance	<u>124,261</u>	<u>41,420</u>
Total Cost	674,746	224,915
 Fully Insured Cost	 877,467	 292,489
 Self Funded Benefit	 202,721	 67,574



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 14, 2012
Subject: Harding Square Fence Budget Ordinance Amendment
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Budget Ordinance Amendment for the Harding Square Fence project.

BACKGROUND AND FINDINGS:

A project to install a perimeter fence at Harding Square has been estimated to cost \$5,500 and it is anticipated that \$4,000 will be received from local contributions. The additional \$1,500 is being provided from the Parks & Grounds budget of the Recreation Department.

PREVIOUS LEGISLATIVE ACTION

Council authorized the project during the April 9, 2012 Council Meeting

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Budget Ordinance Amendment

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: MR Concur _____ Recommend Denial _____ No Recommendation
5/8/12 Date

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

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$4,000 in the account Contributions to Recreation, account number 10-40-3612-8402.

Section 2. That account number 10-40-6130-1501, Maint/Repair Grounds, Park Grounds and Maintenance portion of the General Fund appropriations budget be increased in the amount of \$4,000 to provide funds for fencing at Harding Square.

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 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 14, 2012
Subject: Purchase Orders > \$20,000 Approval
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council approve the attached purchase orders.

BACKGROUND AND FINDINGS:

Requisition #11129, \$44,000 to Carver Machine Works to rebuild pump 1 at the storm water pump station, account 34-90-5710-1601.

Requisition #11130, \$28,000 to Hendrix Barnhill Co. for deep gravity sewer line repair work, account 32-90-8200-4500.

Requisition #11132, \$36,000 to Concrete Conservation Inc. for manhole rehab work primarily in Smallwood, account 32-90-8210-4500.

Requisition #11134, \$50,000 to Greenville Paving & Contracting Inc. for asphalt for street repairs, account 10-20-4511-4500.

Requisition # 11254, \$35,000 to Atlantic Power Systems of NC for repair of 300kW generator located at Piggly Wiggly on River Rd., account 35-90-8370-1600.

PREVIOUS LEGISLATIVE ACTION

2011-2012 adopted budget and amended budget.

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Requisitions

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: _____ Concur May 14, 2012 Recommend Denial _____ No Recommendation
_____ Date Page 51 of 199

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #: 11129
PO #: Not Assigned
User Name: Frankie Buck

Date: 04/20/2012

Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$44,000.00

CARVER MACHINE WORKS, INC.
129 CHRISTIAN RD.
WASHINGTON, NC 27889

Ship To:
CITY OF WASHINGTON WAREHOUSE (PW)
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions: DO NOT MAIL

Quantity	Description	Job Number	Unit Price	Extended
1	PUMP REBUILD AND WIRING		\$44,000.00	\$44,000.00
Sub Total				\$44,000.00
Total Tax				\$0.00
Total				\$44,000.00

Account Number	Account Description	Amount
34-90-5710-1601	MAINT/REPAIR JACKS	\$44,000.00
Total		\$44,000.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:11130
PO #: Not Assigned
User Name: Frankie Buck

Date: 04/20/2012

Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$28,000.00

HENDRIX-BARNHILL CO.
PO BOX 1904
GREENVILLE, NC 27835

Ship To:
CITY OF WASHINGTON WAREHOUSE (PW)
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions: DO NOT MAIL PER FRANKIE BUCK

Quantity	Description	Job Number	Unit Price	Extended
1	SEWER LINE REPAIR WORK		\$28,000.00	\$28,000.00
Sub Total				\$28,000.00
Total Tax				\$0.00
Total				\$28,000.00

Account Number	Account Description	Amount
32-90-8200-4500	CONTRACT SERVICES	\$28,000.00
Total		\$28,000.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____

Requisition Form

City Of Washington

P.O BOX 1988

WASHINGTON, NC 27889

Requisition #:11132

PO #: Not Assigned

User Name: Frankie Buck

Date: 04/20/2012

Approved By:

Approved Code: Awaiting Final Approval

Total Amount: \$36,000.00

Ship To:

CITY OF WASHINGTON WAREHOUSE (PW)

203 GRIMES ROAD

WASHINGTON, NC 27889

CONCRETE CONSERVATION, INC.

PO BOX 24354

JACKSONVILLE, FL 32210

Vendor Instructions:DO NOT MAIL PER FRANKIE BUCK

Quantity	Description	Job Number	Unit Price	Extended
1	MANHOLE REHAB. WORK		\$36,000.00	\$36,000.00
Sub Total				\$36,000.00
Total Tax				\$0.00
Total				\$36,000.00

Account Number	Account Description	Amount
32-90-8210-4500	CONTRACT SERVICES SEWER REHAB	\$36,000.00
Total		\$36,000.00

Approval List

Dept Level Approval: _____

Department Head: _____

PO Level Approval: _____

Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #: 11134
PO #: Not Assigned
User Name: Frankie Buck

Date: 04/20/2012

Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$50,000.00

GREENVILLE PAVING AND CONTRACTING, INC.
PO BOX 7088
GREENVILLE, NC 27835

Ship To:
CITY OF WASHINGTON WAREHOUSE (PW)
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions: DO NOT MAIL PER FRANKIE BUCK

Quantity	Description	Job Number	Unit Price	Extended
1	ASPHALT AND CRS-1 LIQUID ASPHALT FOR STREET PATCHING		\$50,000.00	\$50,000.00
Sub Total				\$50,000.00
Total Tax				\$0.00
Total				\$50,000.00

Account Number	Account Description	Amount
10-20-4511-4500	STREET PAVING	\$50,000.00
Total		\$50,000.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____

Requisition Form

City Of Washington
P.O BOX 1988
WASHINGTON, NC 27889

Requisition #:11254
PO #: Not Assigned
User Name: Ed Pruden

Date: 05/09/2012

Approved By:
Approved Code: Awaiting Final Approval
Total Amount: \$35,000.00

ATLANTIC POWER SYSTEMS OF NC, INC.
3252 SAINT DELIGHT'S CH. RD.
NEW BERN, NC 28560

Ship To:
CITY OF WASHINGTON WAREHOUSE (ELEC)
203 GRIMES ROAD
WASHINGTON, NC 27889

Vendor Instructions: ELECTRIC DEPT, ED PRUDEN 252-975-9365

Quantity	Description	Job Number	Unit Price	Extended
1	REPAIR 300 kW GENERATOR LOCATED AT PIGGLY WIGGLY RIVER RD, TO INCLUDE ALL LABOR, EQUIPMENT, & MATERIALS		\$35,000.00	\$35,000.00
Sub Total				\$35,000.00
Total Tax				\$0.00
Total				\$35,000.00

Account Number	Account Description	Amount
35-90-8370-1600	MAINT/REPAIR EQUIP	\$35,000.00
Total		\$35,000.00

Approval List

Dept Level Approval: _____
Department Head: _____
PO Level Approval: _____
Purchase Order Prep: _____



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Joshua Kay, City Manager *JK*
Date: March 12, 2012
Subject: Public Hearing - Spinrite Economic Incentive
Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

I move that the City Council adopt a resolution authorizing the City of Washington to participate in an economic development project with, and contribute economic development incentives to, Spinright Services, Inc. and Spinright Acquisition Corp. I further move that City Council approve a Grant Project Ordinance and a Budget Amendment Ordinance to effectuate the City's participation in said economic development project.

BACKGROUND AND FINDINGS:

N/A

PREVIOUS LEGISLATIVE ACTION

None

FISCAL IMPACT

Currently Budgeted Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

- Resolution with accompanying grant agreements
- Grant Project Ordinance
- Budget Amendment Ordinance

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: *JK* Concur _____ Recommend Denial
 _____ No Recommendation *5/8/12* Date

**A GRANT PROJECT ORDINANCE FOR
SPINRITE ECONOMIC DEVELOPMENT GRANT
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2011-2012**

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

Section 1. The project authorized is for economic development incentives to Spinrite Services, Inc. and Spinrite Acquisition Corp to assist in the location of a craft yarn manufacturing plant in Washington.

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:

65-60-4930-4500	Economic Development Incentives	\$ 90,000
-----------------	---------------------------------	-----------

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

65-60-3980-1000	Transfer from General Fund	\$ 45,000
65-60-3980-3000	Transfer from Water Fund	22,500
65-60-3980-3200	Transfer from Sewer Fund	<u>22,500</u>
	Total	\$ 90,000

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.

This the 14th day of May, 2012.

Mayor

Attest:

City Clerk

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

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$45,000 in the account Fund Balance Appropriated, account number 10-00-3991-9910.

Section 2. That account number 10-00-4400-9215, Transfer to Local Grants, Miscellaneous Non-Departmental portion of the General Fund appropriations budget be increased in the amount of \$45,000 to provide funds for a grant match to the Spinrite Economic Development Incentive Grant Fund.

Section 3. That the Estimated Revenues in the Water Fund be increased in the amount of \$22,500 in the account Fund Balance Appropriated, account number 30-90-3991-9910.

Section 4. That account number 30-90-6610-9280, Transfer to Grant Funds, Miscellaneous Non-Departmental portion of the Water Fund appropriations budget be increased in the amount of \$22,500 to provide funds for a grant match to the Spinrite Economic Development Incentive Grant Fund.

Section 5. That the Estimated Revenues in the Sewer Fund be increased in the amount of \$22,500 in the account Fund Balance Appropriated, account number 32-90-3991-9910.

Section 6. That account number 32-90-6610-9280, Transfer to Grant Funds, Miscellaneous Non-Departmental portion of the Sewer Fund appropriations budget be increased in the amount of \$22,500 to provide funds for a grant match to the Spinrite Economic Development Incentive Grant Fund.

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

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

Adopted this the 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK

**RESOLUTION AUTHORIZING THE CITY OF WASHINGTON (“CITY”)
TO PARTICIPATE IN AN ECONOMIC DEVELOPMENT PROJECT WITH,
AND CONTRIBUTE ECONOMIC DEVELOPMENT INCENTIVES TO,
SPINRITE SERVICES, INC. AND SPINRITE ACQUISITION CORP.
(COLLECTIVELY “SPINRITE”)**

WHEREAS, North Carolina General Statute § 158-7.1(a) authorizes a city to undertake an economic development project by extending financial assistance to a company in order to cause the company to locate or expand its manufacturing enterprises in or near the city.

WHEREAS, the City Council of the City of Washington held a public hearing to consider whether to participate in an economic development project through which the City would appropriate as well as expend up to ninety thousand dollars (\$90,000.00) in economic development incentives to Spinrite over a three (3) year period to assist Spinrite in locating a craft yarns manufacturing plant at 1481 West Second Street in the City of Washington, Beaufort County, North Carolina. Said economic development incentives represent one-half of the required local government match in order for Spinrite to receive grant funding through Beaufort County from the One North Carolina Fund in the amount of one hundred eighty thousand dollars (\$180,000.00) pursuant to North Carolina General Statute § 143B-437.70 et seq. Beaufort County will fund the balance (\$90,000.00) of the required local match.

WHEREAS, said economic development incentives will be conditioned upon Spinrite satisfying certain performance requirements including, but not limited to, the creation of up to ninety (90) new, permanent full-time jobs and the investment of up to \$9.1 million over the next three (3) years for facility upgrades and personal property expenditures. These conditions will be contained in a Company Performance Agreement The One North Carolina Fund between Spinrite and Beaufort County, a Local Government Grant Agreement The One North Carolina Fund between Beaufort County and the North Carolina Department of Commerce, and a Local Incentive Agreement between Spinrite and Beaufort County as well as possibly the City.

WHEREAS, it is anticipated that Spinrite’s total payroll for the newly created jobs will exceed \$2.0 million.

WHEREAS, the City Council will fund said economic development incentives with available revenues from its General Fund.

WHEREAS, this economic development project will stimulate, diversify, and stabilize the local economy; strengthen the local tax base; promote business in the City as well as Beaufort County; and result in the creation of a substantial number of new, permanent jobs in the City as well as Beaufort County.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Washington, this 14th day of May, 2012, as follows.

Section 1. The City is authorized to contribute up to ninety thousand dollars (\$90,000.00) of City funds as one-half of the required local match for the above described economic development project and shall adopt a budget ordinance amendment to appropriate the funds necessary for said contribution.

Section 2. Said contribution is contingent upon Beaufort County contributing the balance (\$90,000.00) of said required match and The One North Carolina Fund extending a grant of one hundred eighty thousand (\$180,000.00) to Spinrite through Beaufort County. Said contribution is also contingent upon Spinrite and Beaufort County entering a Company Performance Agreement The One North Carolina Fund, Beaufort County and the North Carolina Department of Commerce entering a Local Government Grant Agreement The One North Carolina Fund, and Spinrite and Beaufort County as well as possibly the City entering a Local Incentive Agreement, all of which will require Spinrite to satisfy certain performance requirements including, but not limited to, the creation of up to ninety (90) new, permanent full-time jobs and the investment of up to \$9.1 million over the next three (3) years.

Section 3. The City Manager and City Attorney are hereby authorized to negotiate as well as draft any document necessary to effectuate this Resolution. Any such document that is negotiated and drafted shall be presented to the City Council for final approval and authorization or, if required by circumstances beyond the City's control, ratification.

Adopted this 14th day of May, 2012.

ATTEST:

Cynthia S. Bennett
City Clerk

N. Archie Jennings, III
Mayor

LOCAL GOVERNMENT GRANT AGREEMENT
THE ONE NORTH CAROLINA FUND

Local Government Name: **Beaufort County** Grant No. **2011-8139**

Project Name: **Spinrite Services, Inc. (with Spinrite Acquisition Corp. as Guarantor)**

STATE OF NORTH CAROLINA

GRANT AGREEMENT

COUNTY OF WAKE

This Local Government Grant Agreement (the “**LGGA**”) is effective the 17th day of January, 2012 (the “**Effective Date**”) by and between the **County of Beaufort, North Carolina** (hereinafter referred to as the “**Local Government**”), and the **North Carolina Department of Commerce** (hereinafter referred to as “**DOC**”);

WITNESSETH:

WHEREAS; the Local Government desires to stimulate and develop the local economy of its region, alleviate the problems of unemployment and underemployment by creating and/or retaining jobs for its citizens, and develop its local tax base; and

WHEREAS; the General Assembly has created the One North Carolina Fund (the “**Program**”) to make funding available within North Carolina “to secure commitments for the recruitment, expansion or retention of new or existing businesses”; and

WHEREAS; the General Assembly has authorized Program funds to be used for installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings; and construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for new or proposed buildings to be used for manufacturing and industrial operations; and

WHEREAS; the Local Government has applied for funds in connection with activity to be undertaken by Spinrite Services, Inc. (the “**Company**”), a business that has competitively chosen to locate or expand operations for the following project (the “**Project**”) in North Carolina:

A location of a manufacturing plant at which the company will manufacture craft yarns at 1481 West 2nd Street, in the Town of Washington, in Beaufort County, North Carolina.

WHEREAS; the Local Government has committed to provide matching funds and resources for the Project equal to at least the amount of any funds awarded from the Program (the “**Match**”); and

WHEREAS; the Local Government’s application (the “**Local Government Application**”) has been approved by DOC for funding, based on the Local Government’s commitments, and the commitments made by the Company in its Program application (the “**Company Application**”);

WHEREAS, the Company has executed an agreement (the “**Company Performance Agreement**” or “**CPA**”) with the Local Government reflecting the Company’s commitments to expand, create and/or retain jobs and to take other actions that will support North Carolina’s economic development, and the terms on which funds will be made available for such activity from the Program;

NOW THEREFORE, in consideration of the mutual covenants and promises set forth below, the Local Government and DOC hereby agree as follows:

I. DOC COMMITMENTS AND GRANT CONDITIONS

(a) DOC agrees to provide Program fund in the maximum amount of One Hundred Eighty Thousand Dollars (\$180,000) for the Project (the “**Grant**”), in accordance with the terms of this LGGA and the CPA.

(b) Grant payments disbursed under this LGGA will be disbursed to the Local Government pursuant to N.C. Gen. Stat. § 143B-437.70 *et seq.*, the terms of the Program Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund, established pursuant to N.C. Gen. Stat. § 143B-437.73 and in effect as of the effective date of this LGGA (the “**Program Guidelines**”), consistent with the terms and schedule established in the CPA.

(c) Grant disbursements are conditioned upon the execution of the CPA between the Local Government and the Company, and any other required parties thereto, in a form acceptable to DOC. In addition to the Company and the Local Government, the following are required parties to the CPA: Spinrite Acquisition Corp. (the “**Guarantor**”).

(d) To receive a Grant disbursement, the Local Government must provide or cause to be provided to DOC a properly executed CPA, proof that the Company has performed its obligations under the CPA, proof that the Local Government has met its obligation to provide the Match, a duly executed completed disbursement request and certification in the form of Exhibit A hereof (the “**Local Government Disbursement Request**”), and a duly executed completed Company’s disbursement request and certification in the form of Exhibit A to the CPA (the “**Company Disbursement Request**”).

II. LOCAL GOVERNMENT’S COMMITMENTS

(a) The Local Government agrees to perform the Program and to abide by all commitments, terms and representations in the Local Government Application.

(b) The Local Government agrees to provide the Match in a manner consistent with N.C. Gen. Stat. § 143B-437.72(c)(1), the Program Guidelines and Procedures, and the Local Government Application. The Local Government will provide to the DOC a copy of the duly executed agreement between the Local Government (or other local entity) and the Company governing the local incentives that will be provided to the Company for the Project (the “**Local Incentive Agreement**”), at the time the Local Government returns the executed LGGA. The Company will be ineligible for a Grant disbursement until the Local Incentive Agreement is provided to the DOC. The Local Government will report to the DOC the amount of each incentive payment that is provided to the Company under the Local Incentive Agreement, within thirty (30) days of the date on which it is provided, whether or not the CPA remains in effect.

- (c) The Local Government agrees to take all steps reasonably necessary to ensure and to establish to DOC that the required levels of jobs are created and/or retained, the required salary levels are achieved, the required levels of investments are made, statutorily qualifying expenses are incurred, any required environmental permits are obtained, and any other required performance criteria are satisfied, and that no Grant funds are disbursed until the performance criteria in the CPA have been met.
- (d) The Local Government agrees to take whatever steps may be reasonably necessary to ensure and to establish to DOC that Grant funds disbursed by the Local Government are used only for purposes allowed under the statutory authority creating the Program.
- (e) The Local Government agrees to take whatever steps may reasonably be required, after consultation with the Secretary of DOC (the “Secretary”) and not inconsistent with the Secretary’s authority under the CPA, to recapture all disbursed funds for which the Local Government and DOC have a right to be reimbursed.
- (f) The Local Government acknowledges that DOC has a right to recapture funds under the CPA and that such right does not relieve the Local Government of its own responsibility to recapture funds.
- (g) The Local Government agrees to otherwise reimburse DOC for any funds improperly disbursed, provided, however, that Local Government is under no obligation to reimburse DOC for any improperly disbursed funds that were disbursed with DOC’s prior permission.
- (h) The Local Government agrees to keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and the fulfillment of this LGGA. The Local Government shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly. If the Local Government fails to keep and maintain books and records necessary for verifying fulfillment of this LGGA, the Secretary may in his discretion declare this LGGA to be in default, withhold payments for or under this LGGA, and/or require reimbursement of all or any portion of Grant funds previously paid. Prior to taking such action, the Secretary will endeavor to communicate with the Local Government and the Company to discuss the circumstances and the actions being contemplated.
- (i) The Local Government agrees to provide any duly authorized representative of DOC or the State of North Carolina at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the Grant for a period of three years following the last payment of Grant funds or for the inspection period specified in the CPA, whichever is longer. To the extent any information or documents gathered pursuant to this section would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (to include, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the “Public Records Act”), the Local Government shall clearly identify and mark them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure by DOC and its authorized representatives. If the Local Government fails to provide such access and right of inspection, the Secretary may exercise discretion to declare this LGGA in default, to withhold payments under this LGGA and/or require reimbursement of all or any portion of the Grant paid.
- (j) The Local Government shall comply with all lawful requirements of DOC, all applicable requirements of the General Statutes of the State of North Carolina, and any other applicable laws and/or Executive Orders currently or hereafter in force.
- (k) In the event that the Company or Guarantor fail to fulfill their responsibilities under the Company Application and/or CPA, including their responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, the Local Government, after consultation with the Secretary and not inconsistent with the Secretary’s authority under the CPA, shall promptly exercise its rights and remedies to require repayment of funds, or to assess such other penalties as may be provided for in the CPA.

(l) In addition, in the event that the Company or Guarantor fail to fulfill their responsibilities under the Company Application and/or CPA, including their responsibilities to create and/or retain jobs, make investments, and incur statutorily qualifying expenses, and the Local Government recaptures funds from the Company or Guarantor, the Local Government shall promptly pay to DOC the Grant amounts which it is able to collect.

(m) By not later than January 15 of each year following a calendar year until the full Match has been disbursed to the Company, the Local Government shall submit to the DOC a report detailing Match payments made during the calendar year just ended, together with a cumulative tally of all Match payments made through the end of that calendar year. In addition, the Local Government shall report all other Local Government financial contributions made for the Project. This is required in order to comply with N.C. Gen. Stat. §143B-437.07. Failure to timely file this report will result in ineligibility for Grant payments.

III. GENERAL PROVISIONS

(a) The parties to this LGGA agree and understand that the payment of all sums specified in this LGGA is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds to DOC for this purpose.

(b) Failure of DOC at any time to require performance of any term or provision of this LGGA shall in no manner affect the rights of DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of DOC of any condition or the breach of any term, provision or representation contained in this LGGA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

(c) The recitals are an integral part of this LGGA.

(d) This LGGA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The parties agree and submit, solely for matters concerning this LGGA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this LGGA, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement, shall be determined.

(e) This Grant award shall terminate and be null and void on [REDACTED], if by that date the Local Government has not delivered back to the DOC, an original of this LGGA and of the CPA, duly executed by an authorized official of the Local Government, and attested in the manner provided below, together with a copy of the Local Incentive Agreement.

Upon execution of this LGGA by DOC and the Local Government in the spaces below, the Local Government hereby accepts the Grant on the terms of this LGGA, effective on the date indicated above, and further certifies that the official signing below has been duly authorized by the Local Government's governing body to execute this LGGA.

North Carolina Department of Commerce

Date: _____

By: _____

Dale B. Carroll, N.C. Deputy Secretary of Commerce

*Local Government Grant Agreement
Signature page follows*

County of Beaufort (Local Government)

Date: _____

(Official Seal)

By: _____

Name: _____

Title: _____

Authorized Official

Date: _____

ATTEST:

_____, Clerk

DRAFT

ND: 4840-9157-9407, v. 1

COMPANY PERFORMANCE AGREEMENT

THE ONE NORTH CAROLINA FUND

STATE OF NORTH CAROLINA

COUNTY OF WAKE

This Company Performance Agreement (the “CPA”), effective the 17th day of January, 2012 (the “Effective Date”), by, between, and among Spinrite Services, Inc., a Novo Scotia private corporation authorized to do business in North Carolina (the “Company”), and Spinrite Acquisition Corp., a British Columbia private corporation (the “Guarantor”), who, together with the Company shall be jointly and severally liable for the obligations under this CPA, and Beaufort County, North Carolina (the “Local Government,” and together with the Company and Guarantor, the “Parties”);

WITNESSETH:

WHEREAS, the Local Government has applied for a One North Carolina Fund grant from the North Carolina Department of Commerce (the “DOC”); and

WHEREAS, a One North Carolina Fund grant award in the amount of One Hundred Eighty Thousand Dollars (\$180,000) (the “Grant”) has been negotiated and agreed to by DOC and the Parties; and

WHEREAS, the Grant has been approved by DOC for disbursement to the Local Government pursuant to the terms of the One North Carolina Fund Local Government Grant Agreement between the Local Government and DOC (the “LGGA”); and

WHEREAS, the Grant is to be used by the Company toward the goal of creating ninety (90) new jobs (the “Target New Jobs”) which shall be permanent full-time jobs (each, a “New Job”) and _____ (\$ _____) (the “Target Investment”) in new investment in the State of North Carolina; and

WHEREAS, the Company and Guarantor have represented that the Grant is necessary to enable the investment and job creation by the Company to occur and go forward in North Carolina; and

WHEREAS, the Grant will stimulate economic activity and create new jobs for the citizens of this State; and

WHEREAS, the Grant is issued pursuant to and subject to the terms of N.C. Gen. Stat. § 143B-437.70 *et seq.* and the Guidelines and Procedures for Commitment of Funds from the One North Carolina Fund (the “Program Guidelines”); and

WHEREAS, the Guarantor has agreed to guarantee the performance and obligations of the Company hereunder, and its guaranty is made for the benefit of the DOC and the Local Government and to induce the DOC and the Local Government to enter into this CPA, in consideration of the benefits provided to the Company and to the Guarantor by virtue of its ownership interests;

NOW, THEREFORE, in consideration of the representations set forth above and the mutual covenants and promises set forth below, the Company, the Guarantor, and the Local Government hereby agree as follows:

1.0 PERFORMANCE CRITERIA

In order to be eligible for the full amount of the Grant, the Company must fulfill the following requirements:

1.1 The Company shall undertake and operate in a timely manner the following project at the following location (the “**Project**”):

A location of a manufacturing plant (the “**Facility**”) at which the company will manufacture craft yarns at 1481 West 2nd Street, in the Town of Washington, in Beaufort County, North Carolina.

1.2 The Company shall maintain its current operations at its facilities in North Carolina.

1.3 The Company shall make good faith efforts to create and maintain the Target New Jobs as part of the Project, as described in the Company’s application to DOC (the “**Company Application**”). The New Jobs must be filled by employees hired for the Project on or after the Effective Date, who work for at least thirty-five (35) hours per week, and whose wages are subject to withholding under Article 4A of Chapter 105 of the General Statute. Independent contractors, consultants, seasonal and temporary employees are not to be included as New Jobs. In order to be eligible for the full Grant, the Company must create eighty one (81 New Jobs (the “**Required New Jobs**”) 90% of the Target New Jobs), by January 17, 2015 (the “**Grant End Date**,” which shall be three years from the date on which the Grant was formally awarded) (the period between January 17, 2012 and January 17, 2015, the “**Grant Period**”).

The New Jobs will be new jobs and cannot be existing North Carolina positions or employees of the Company or the Guarantor or any of their related members that are transferred or shifted such that a previously existing North Carolina job, or a North Carolina job that was not previously part of the Project, is counted towards performance under this CPA.

1.4 The average weekly wage of the group of all permanent full-time jobs at the Facility, including the New Jobs, will equal or exceed Three Hundred Ninety Dollars (\$435.00) per week (the “**Wage Standard**”).

1.5 The Company shall provide health insurance for all permanent full-time employees at the

Facility, including the New Jobs, in at least the minimum amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d).

1.6 The Company shall make good faith efforts to make the Target Investment in the form of privately funded investment in real property and/or machinery and equipment as part of the Project, and must invest at _____ (\$ _____) by the Grant End Date (the **“Required Investment”**) (90% of the Target Investment).

1.7 The proceeds of the Grant may be used only to offset statutorily qualifying expenses as set out in N.C. Gen. Stat. § 143B-437.71(b) (**“Statutorily Qualifying Expenses”**). Those expenses are installation or purchase of equipment; structural repairs, improvements, or renovations to existing buildings to be used for expansion; construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines or equipment for existing buildings, or for new or proposed buildings to be used for manufacturing and industrial operations; or such other expenses as specifically provided for by an act of the General Assembly.

1.8 Release of any Grant funds under this CPA is contingent on the Company providing verification that the Project has received all of its required environmental permits.

2.0 DISBURSEMENT OF GRANT

2.1 Proceeds of the Grant up to a total amount of One Hundred Eight Thousand Dollars (\$180,000) will be disbursed by DOC to the Local Government in four installments based on creation and maintenance of the New Jobs and satisfaction of other performance criteria set out in Section 1.0 above (**“Performance Criteria”**). The number of New Jobs to be counted shall be determined as provided in paragraph 6.1 hereof. At the time of any requested disbursement, the Company must certify its performance by submitting a duly executed disbursement request and certification in the form of Exhibit A hereto (the **“Company Disbursement Request”**), and the Local Government must submit a duly executed disbursement request and certification in the form of Exhibit A to the LGGA (the **“Local Government Disbursement Request”**). Disbursement will occur on the following schedule and will be subject to any adjustments required by this CPA:

a. The first twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than twenty-five percent (25%) of the Target New Jobs (i.e., 23 New Jobs), (ii) satisfied the Wage Standard and health insurance requirements; (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses, and (iv) obtained all required environmental permits.

b. The second twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than fifty percent (50%) of the Target New Jobs (i.e., 45 New Jobs); (ii) satisfied the Wage Standard and health insurance requirements; and (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses.

- c. The third twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained not less than seventy-five percent (75%) of the Target New Jobs (i.e., 68 New Jobs); (ii) satisfied the Wage Standard and health insurance requirements; and (iii) invested the amount to be disbursed in Statutorily Qualifying Expenses.
- d. The final twenty-five percent (25%) of the Grant will be disbursed to the Local Government upon proof that the Company has (i) created and retained the Required New Jobs; (ii) satisfied the Wage Standard and health insurance requirements; and (iii) made the Required Investment; and (iv) invested the amount to be disbursed in Statutorily Qualifying Expenses.

The Local Government will submit or cause to be submitted to DOC each Company Disbursement Request and Local Government Disbursement Request, upon proof of the creation of the required number of New Jobs and the satisfaction of all other Performance Criteria necessary for disbursement. Following receipt of Grant funds from DOC, the Local Government will disburse funds to the Company.

The Company may qualify for disbursement of multiple installments on a single date.

2.2. DOC will close out the Grant on the first to occur of

(i) The date as of which DOC shall have received and accepted proof reasonably satisfactory to it that the Project has been completed and the Performance Criteria satisfied.

(ii) The Grant End Date.

(“Closeout”).

Following Closeout, to the extent any Grant proceeds may be due and upon submission of a duly completed Company Disbursement Request and Local Government Disbursement Request, a final Grant payment will be disbursed. A request for final payment, if not made previously, must be made to DOC within thirty (30) days following Closeout.

3.0 OBLIGATION TO REPAY GRANT

3.1 **Failure to Provide Health Insurance.** If, at any time during the Grant Period or during the period set forth in Section 5.0 hereof, the Company fails to provide health insurance to all permanent full-time employees at the Facility in the amount required for eligibility for tax credits under Article 3J in N.C. Gen. Stat. § 105-129.83(d), the Company will be in default of this CPA and the Company and/or Guarantor will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.

3.2 **Ceasing Project Operations.** If at any time during the Grant Period, or during the period set forth in Section 5.0 hereof, the Company substantially ceases operations at the Facility, the

Company and/or Guarantor shall immediately repay all Grant funds previously disbursed in accordance with this CPA.

3.3 **Failure to Achieve Wage Standard.** If at any time during the Grant Period, or during the period set forth in Section 5.0 hereof, the average weekly wage of the group of all permanent full-time jobs at the Facility fails to equal or exceed the Wage Standard, the Company will be in default under this CPA, no further disbursement will be made, and the Company and/or Guarantor will reimburse DOC the total amount of the Grant previously disbursed in accordance with this CPA.

3.4 **Reserved.**

3.5 **Other Failures to Comply.** The Company and/or Guarantor may be required to reimburse Grant funds previously disbursed for failure to comply with Paragraphs 6.3 and 6.15 hereof, or as provided in Paragraphs 4.1 and 5.3.

3.6 **Recovery of Costs.** If the Company and/or Guarantor fail to reimburse any amount payable hereunder, on demand, the Local Government and DOC may recover the costs of collection to obtain recovery, from the Company and/or Guarantor, including reasonable attorneys' fees.

4.0 **ADJUSTMENTS TO GRANT AT CLOSEOUT**

4.1 If Closeout occurs on the Grant End Date and the Company has failed to create and retain the Required New Jobs, has failed to make the Required Investment, or has failed to invest an amount equal to 100% of the Grant in Statutorily Qualifying Expenses, the amount of the Grant shall be reduced to the smallest of the following amounts (the "**Adjusted Grant**"):

a. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required New Jobs and the numerator of which is the number of New Jobs actually created and retained as of that date, as expressed in the following formula:

$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{New Jobs Actually Created and Retained}}{\text{Required New Jobs}}$$

b. The amount obtained by multiplying the Grant by a fraction the denominator of which is the Required Investment and the numerator of which is the investment actually made as of that date, as expressed in the following formula:

$$\text{Adjusted Grant} = \text{Original Grant Amount} \times \frac{\text{Investment Actually Made}}{\text{Required Investment}}$$

c. The amount the Company has spent on Statutorily Qualifying Expenses

4.2 To the extent the amount of the Adjusted Grant is less than the amount that has been previously disbursed to the Company, the Company shall reimburse DOC for the difference between the Adjusted Grant and the amount previously disbursed.

5.0 OBLIGATIONS BEYOND CLOSEOUT

5.1 If Closeout occurs on or before the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for two (2) years after the date of Closeout.

5.2 If Closeout occurs after the date that is exactly one year prior to the Grant End Date, the Company will maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout until the date that is the one year anniversary following the Grant End Date.

5.3 If the Company fails to maintain at least ninety percent (90%) of the number of New Jobs in place at Closeout for the required time period following Closeout, as specified in Paragraphs 5.1 and 5.2, the Company will be in default of this CPA and shall reimburse to DOC the total amount of the Grant funds previously disbursed in accordance with this CPA.

6.0 ADDITIONAL PROVISIONS

6.1 The Company and Guarantor shall provide to DOC and the Local Government all documentation deemed necessary by DOC or the Local Government to verify creation and retention of New Jobs, salary levels, health insurance, investments, Statutorily Qualifying Expenses, environmental permits and other Performance Criteria specified in this CPA, including copies of N.C. Employment Security Commission (“ESC”) worksite forms (“NCUI 101”) described in the Program Guidelines, a list of all positions used in accounting for the Grant and the names of the individuals filling those positions. The threshold numbers of New Jobs created for the Company to be eligible for disbursements under paragraph 2.1, shall be measured by adding the three figures that represent the average number of New Jobs (calculated after deducting any positions that do not qualify as New Jobs) that have been created during the Grant Period and have been retained during each of the three months of the quarter reported in the Company’s NCUI 101, and dividing that sum by three, or in such other manner determined by the DOC to reasonably reflect New Job creation. **The Company shall not include in such count, any temporary, seasonal, contract, or part-time employees, employees that were hired prior to the Effective Date, or employees that were hired from affiliates of the Company or Guarantor in North Carolina, even if those employees are included in the NCUI 101s. The Company and Guarantor will certify how many of the employees listed on the NCUI 101s in each month qualify under the definition of New Jobs. The Company’s compliance with the job creation and/or retention, investment, Statutorily Qualifying Expense, environmental permit and other Performance Criteria set out in this CPA shall be attested to under oath by an officer of each of the Company and the Guarantor. In addition, in order to comply with N.C. Gen. Stat. §143B-437.07, by**

not later than November 15 of each year during the Grant Period, and through the date established pursuant to paragraph 5.0 hereof, the Company shall submit to the DOC a copy of its third calendar quarter ESC 101, together with the details and calculations described in this paragraph 6.1 with respect to the employees reflected on the third quarter ESC 101. Failure to timely submit this report will result in ineligibility for Grant payments.

- 6.2 If unforeseen calamity, an Act of God, or financial disaster is the cause of the Company's failure to satisfy or perform its obligations under this CPA, the Company and the Local Government may request an extraordinary modification of this CPA from the Secretary of DOC (the "**Secretary**"). The Parties agree that any decision to allow such modification shall be at the sole discretion of the Secretary and that the Secretary's decision regarding any extraordinary modification shall be final and not subject to review or appeal.
- 6.3 The Company and Guarantor shall keep and maintain books, records, and other documents relating to the receipt and disbursement of the Grant and fulfillment of this CPA, including, but not limited to, records to verify employment, salaries, health insurance, investment amounts, Statutorily Qualifying Expenses and environmental permits.

Subject to any applicable federal or North Carolina laws or regulations respecting employee privacy, the Company and Guarantor each agree that any duly authorized representative of the Local Government or the State of North Carolina, including the DOC, the Office of the North Carolina State Auditor, and the Office of State Budget and Management, shall, at all reasonable times and on reasonable notice, have access to and the right to inspect, copy, audit, and examine all of the relevant books, records, and other documents relating to the Grant and the fulfillment of this CPA throughout the Grant Period and for a period of six years thereafter.

If the Company or Guarantor fail to keep and maintain books and records necessary for verifying fulfillment of this CPA, including, but not limited to, adequate records for the verification of employment, salaries, investment amounts, Statutorily Qualifying Expenses and environmental permits, or if the Company or Guarantor fail to provide access and right of inspection sufficient to verify compliance with this CPA, the Local Government or the Secretary, as applicable, may in its or his discretion declare this CPA to be in default, withhold payments for or under this CPA or the LGGA, and/or require reimbursement of all or any portion of the Grant previously paid.

The Company and/or Guarantor shall provide any information DOC requests in order to produce reports or compile data required by the General Assembly.

- 6.4 To the extent any information or documents gathered by or provided to the Local Government or the DOC would be regarded as confidential or not subject to disclosure under federal law or the North Carolina General Statutes (including, without limitation, N.C. Gen. Stat. §§ 132-1 *et seq.*, commonly referred to as the "**Public Records Act**"), the Company or Guarantor, as applicable, shall clearly identify and mark them as such and that information will, to the extent allowed by law, be treated as confidential and not subject to disclosure

by the Local Government and DOC and their authorized representatives.

The Company and Guarantor have read and understand North Carolina's laws regarding the treatment of public records and confidential information, including without limitation, those provisions set forth in Exhibit B.

The Company and Guarantor shall be responsible for any and all costs, expenses, fees, or losses that they or the Local Government or DOC or any other State entity may incur as a result of responding to or resisting any request, subpoena, legal complaint, court order, or other demand seeking to compel such party to release or disclose records, documents, or information pertaining to the Company or Guarantor, to the extent that the Company or Guarantor notified the State entity that it objects to such disclosure or release and the State defends against such release; and the Company and Guarantor shall indemnify the Local Government, DOC, and State entities and their authorized representatives for all costs associated therewith, provided that, no such indemnified party shall be obligated to take any such action.

6.5 Notwithstanding anything herein to the contrary, the Parties acknowledge the due execution of the LGGA and agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and the LGGA shall be resolved in favor of the LGGA. The Parties further agree that any conflict between the provisions, requirements, duties, or obligations of this CPA and any program documentation for this Grant other than the LGGA shall be resolved in favor of this CPA.

6.6 The Company and Guarantor acknowledge that none of the North Carolina operations owned by the Company or Guarantor or any related entity or affiliate shall be curtailed as a result of the Project.

6.7 The Company and Guarantor shall perform and abide by all commitments they made in the Company Application, except as otherwise expressly stated herein. The Company and Guarantor affirm their commitments made in the Company Application, and the commitments contained therein are incorporated herein by reference, as if set out in full. The Parties agree that any conflict between the provisions of this CPA and any commitments made in the Company Application to DOC shall be resolved in favor of this CPA.

6.8 The Company and Guarantor indemnify and hold harmless the Local Government, DOC, and State entities, and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties arising out of or any act or omission of the Company and/or Guarantor in connection with the performance of this CPA, and for all losses arising from implementation of this CPA. Without limiting the generality of the foregoing, the Company and Guarantor release the Indemnified Parties from, and agree that such Indemnified Parties are not liable for, and agree to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties, and civil judgments, resulting from

or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with or on or about the Facility, or resulting from any defect in the fixtures, machinery, equipment, or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions, or negligence of the Company or Guarantor or any of their agents, contractors, servants, employees, licensees, lessees, or assignees). Each Indemnified Party is an express, third party beneficiary of the Company's and Guarantor's obligations under this Paragraph.

- 6.9 The representations made by the Company and Guarantor in the Company Application to DOC or as part of the application process are incorporated herein by reference and deemed by the Parties to be material to this CPA. The Company and Guarantor affirm these representations. The Parties agree that any conflict between any representations contained in this CPA and those representations contained in the Company Application to DOC or made as part of the One North Carolina Fund application process shall be resolved in favor of this CPA.
- 6.10 The recitals are an integral part of this CPA.
- 6.11 If the Company or Guarantor has an overdue tax debt owing to the State of North Carolina, as defined in N.C. Gen. Stat. § 105-243.1, no payments will be made under this CPA or the LGGA until that tax debt has been satisfied. If an overdue tax debt goes unsatisfied by the Company or Guarantor for more than one year, this CPA may be declared in default and terminated at the direction of DOC.
- 6.12 The Local Government's obligation to make disbursements to the Company under this CPA is contingent upon the Local Government's receipt under the LGGA of the necessary disbursements from DOC, which are, in turn, contingent on appropriation, allocation and availability of funds for the Grant to DOC.
- 6.13 This CPA constitutes a legally enforceable contract and shall be governed and construed in accordance with the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this CPA, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purpose, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this CPA, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to its validity, construction, interpretation, and enforcement, shall be determined.
- 6.14 The Parties agree that the State of North Carolina Department of Commerce is a third party beneficiary of this CPA and may, at its option, enforce the terms of this CPA or appear as a party in any litigation concerning it.
- 6.15 The Company and Guarantor shall comply with all applicable federal, state, and local laws and regulations. If the Company or Guarantor fail to comply with any law or regulation

applicable to them, the Secretary may, in his sole discretion, terminate the Grant and declare that no future Grant disbursement shall be due and payable and/or require the Company and/or Guarantor to reimburse DOC all or part of any Grant funds previously disbursed following the date of any such violation. The Secretary may determine, in his sole discretion, that where the Company or Guarantor is under investigation for an act involving violation of federal, state, local law or regulation, Grant funds be withheld until such time as a determination of culpability or liability is made, and, if the Company or Guarantor is determined to be in violation, the Grant may be terminated and the Company and/or Guarantor may be required to reimburse the DOC for all or part of any Grant funds previously disbursed. If such investigation is not concluded within two (2) years of the Grant End Date, the DOC may terminate the Grant.

- 6.16 Failure of the Local Government or DOC at any time to require performance of any term or provision of this CPA shall in no manner affect the rights of the Local Government or DOC at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Local Government or DOC of any condition or the breach of any term, provision or representation contained in this CPA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
- 6.17 The Company is encouraged to utilize the services of North Carolina small businesses and minority, female, and disabled contractors, to offer positions in connection with the Project to North Carolina residents, and to use the North Carolina state ports when reasonable and commercially practicable.
- 6.18 In addition to any rights and remedies provided to the Local Government and DOC by law, DOC has the right, without prior notice to Company or Guarantor, any such notice being expressly waived by Company and Guarantor to the extent permitted by applicable law, upon the occurrence of any event herein which would result in the Company's obligation to repay some or all of Grant monies disbursed hereunder (including without limitation Section 3, 4 and 5 hereof), to set-off and apply against any amounts due hereunder, any amount owing from DOC to the Company or Guarantor.
- 6.19 **This Grant award shall terminate and be null and void on _____, 2012, if by that date the Company has not delivered back to the DOC, two originals of this CPA, duly executed by authorized officer of each of the Company and of the Guarantor, and attested in the manner provided below. This Grant is also subject to the requirement that the Local Government deliver to the DOC, one original each of the LGGA and this CPA, duly executed by an authorized official of the Local Government, within sixty (60) calendar days following the date on which the DOC sends the LGGA and CPA to the Local Government, together with a copy of the agreement with the Company governing the local incentives to be provided for the Project.**

7.0 GUARANTY

- 7.1 The Guarantor represents and warrants, as of the date hereof, and as of the date of any disbursement of Grant funds, that (a) both the Company and Guarantor are duly organized, validly existing and in good standing under the laws of the state of their registration, with power adequate for the carrying out their businesses; (b) the execution, delivery, and performance of this CPA are within the Company's and the Guarantor's power and authority and the Company and Guarantor have duly authorized, executed and delivered this CPA; (c) this CPA is signed by an authorized representative of each of the Company and the Guarantor, and is a legally valid and binding obligation of the Company and the Guarantor, enforceable against them in accordance with its terms, except as may be limited by bankruptcy, insolvency, or similar laws affecting creditors' rights; (d) it has taken or will take all actions reasonably necessary to carry out and give effect to the transactions contemplated by this CPA; (e) all written statements, representations, and warranties made by or on behalf of the Company and the Guarantor to the DOC, the State, and the Local Government in connection with the Grant are true, accurate and complete in all material respects, to its best knowledge and belief, and the Company is eligible for this Grant; (f) the Company and the Guarantor are financially solvent and not subject of any bankruptcy proceedings; and have no interest, and shall not acquire any interest, direct or indirect, which would conflict with the performance of their obligations under this CPA; (g) the Guarantor owns 100% of the membership interests/shares of the Company and will derive substantial benefit from the transactions contemplated by the CPA; and (h) the making and performance of this Guaranty will not violate any provision of or result in the acceleration of any obligation under any instrument or agreement, order, judgment or decree to which the Guarantor is a party or by which it or any of its property is bound. There are no conditions precedent to the effectiveness of this Guaranty that have not been satisfied or waived.
- 7.2 In order to induce the Local Government to enter this CPA, and the Local Government and DOC to enter the LGGA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor unconditionally and irrevocably guarantees, as primary obligor and not as surety, the full, prompt, and punctual performance by the Company of all of the Company's obligations, agreements and covenants under and with respect to this CPA. The Guarantor unconditionally guarantees, the prompt, payment (and not merely the collection) of all amounts that may now or in the future be owing to the DOC or the State, or the Local Government under this CPA and the LGGA, or any extension or renewal thereof however and whenever made, and shall be liable for any remedies or recoveries (including the cost of attorney fees incurred in enforcing this CPA and the LGGA) available to the DOC or the State, or the Local Government under or with respect to this CPA. The liability of the Guarantor shall be primary, joint and several.
- 7.3 This Guaranty shall operate as a continuing and absolute guaranty and shall remain in full force and effect without regard to, and shall not be affected or impaired by, any amendment of the CPA, any sale or transfer of all or any part of the Guarantor's ownership interest in the Company, any voluntary or involuntary liquidation, dissolution, merger, sale of assets, insolvency, reorganization, bankruptcy or filing for bankruptcy of the Company or the Guarantor or any subsidiary, any rescission of a payment made hereunder, or any

extension of time or other forbearance, compromise, adjustment, modification or indulgence granted to the Company by the DOC, the State, or the Local Government. The Guaranty shall remain in full force and effect until termination of the CPA; provided, however, that the Guarantor shall not be released from its obligation hereunder so long as there is any claim of DOC or the Local Government against the Company, which claim arises out of, or related to, directly, or indirectly, this CPA, that is not settled or discharged in full.

7.4 The DOC and the Local Government may exercise their rights against the Guarantor without first having to take action or exhaust remedies against the Company. The Guarantor expressly waives notice of non-performance, in any respect, by Company of any of its duties and obligations. The Guarantor unconditionally waives any defense available to it, including all suretyship defenses or defenses in the nature thereof; all requirements of notice, demand, presentment or protest in case of any default by the Company, as well as rights of set-off, redemption, and counterclaim which may be alleged to exist in favor of the Company.

7.5 This Guaranty shall inure to the benefit of the DOC and the Local Government and their respective successor and assigns, and shall be binding on the Guarantor, and its successors and assigns, and shall not be discharged or affected by the death of any party.

Signature pages follow

Company Performance Agreement
Signature pages continued

IN WITNESS WHEREOF, the Company, the Guarantor, and the Local Government have executed this Company Performance Agreement effective as of the day and year first written above. This CPA is intended to be under seal for purposes of any statute of limitations.

Approved and Accepted:
County of Beaufort
(Local Government)

(Official Seal) By: _____

Name: _____

Title: _____

ATTEST: Authorized Official

_____, Clerk Date: _____

Signature Pages Follow

Company Performance Agreement
Signature pages continued

Spinrite Services, Inc.
(Company)

(Corporate Seal)

By: _____

Name: _____

Title: _____

ATTEST: Authorized Corporate Officer

_____, Secretary Date: _____

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of said State and County, do hereby certify that _____ (the "principal") personally appeared before me this day, and/or (i) I have personal knowledge of the identity of the principal, and/or (ii) I have seen satisfactory evidence of the principal's identity, by current State or Federal identification with the principal's photograph, and such principal acknowledged to me that he or she voluntarily signed the foregoing document for the purpose therein and in the capacity indicated.

Notary Public Signature

Notary Printed or Typed Name

Witness my hand and official seal or stamp, this ____ day of _____, 20____

(Official Seal or Stamp) My Commission expires on _____, 20__

Company Performance Agreement
Signature page continued

Spinrite Acquisition Corp.
(Guarantor)

By: _____
(Corporate Seal) Name: _____
Title: _____
Authorized Corporate Officer

Date: _____
ATTEST:

_____, Secretary

STATE OF _____
COUNTY OF _____

I, _____, a Notary Public of said State and County, do hereby certify that _____ (the "principal") personally appeared before me this day, and/or (i) I have personal knowledge of the identity of the principal, and/or (ii) I have seen satisfactory evidence of the principal's identity, by current State or Federal identification with the principal's photograph, and such principal acknowledged to me that he or she voluntarily signed the foregoing document for the purpose therein and in the capacity indicated.

Notary Public Signature

Notary Printed or Typed Name

Witness my hand and official seal or stamp, this ____ day of _____, 20____

(Official Seal or Stamp) My Commission expires on _____, 20__

120455-00003
ND: 4840-9157-9407, v. 1

General Manager Mae Rodgers & The Vine Connection 1320AM, wants to invite you to come share with us as we lift up the name of Jesus. Two action packed days(June 15-16) promoting unity in our community, based on the on the foundation motto that "we do it better when we do it together. " Together we are able to positively change our community, our city, state and even our world.

We need your support in getting the word out that June 15Th 2012 at 3:00pm we will be hosting a welcome service at Washington Metropolitan A.M.E. Zion Church and the praise will continue that evening at 7pm with concert featuring a brand new southern gospel group Cristal River and the Award Winning Joe Ligon and The Mighty Clouds of Joy!

The following day Saturday June 16Th starting at 9am 1320am is having a family and friends fun day to be held on the campus of the station (408 N. Market Street) This event is free to the public. This is where we need the aid of our city with the following items

- *Porta-Johns
- * Handouts about the city of Washington
- * Bottles of water to be passed out
- * Any other types of resources that can be provided

Then on Saturday evening at 6pm we conclude this awesome weekend with a concert from Micheal Combs and Tammy Edwards and the Edward Sisters! Mae Rodgers along with The Mr. Sock-Hop himself John Moore will MC this event.

Thank you for your time;
Mae Rodgers

--

AM 1320 "The Vine" 408 North Market St. Washington, NC 27889 Phone: 252-975-1320



City of Washington
MEMORANDUM

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, CFO
Date: May 14, 2012
Subject: Reporting of Bad Debt Write-Offs.
Applicant Presentation: N/A
Staff Presentation: N/A

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>
23/24	Retiree Insurance	> 5 years old	\$ 318.47
25	Water Taps	> 5 years old	536.54
27	Miscellaneous G/F	> 5 years old	2,932.00
28	Miscellaneous Sewer Fund	> 5 years old	291.00
29	Miscellaneous Electric Fund	> 5 years old	16,018.22
36	Rents	> 5 years old	59.00
44	Electric Property Damage	> 5 years old	26,166.96
45	Pole Attachments	> 5 years old	160.68
55	Solid Waste Fees	> 5 years old	796.00
57	Miscellaneous Water Fund	> 5 years old	1,738.00
65	Hydrant Usage	> 5 years old	2,852.76
31	Lot Mowing	> 10 years old	16,921.78
33	Building Demolition	> 10 years old	14,590.00
EMS	EMS Charges	> 5 years old	<u>1,670,176.12</u>
	Total		\$1,753,557.53

This is the first significant review and write-off of the City’s accounts receivable. The City utilizes late payment notices, liens where applicable, a collection agency, and debt set off to collect delinquent accounts. Once these efforts have been exhausted or the statute of limitations has expired the debt is written off.

Lot mowing and demolition 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 represent fourteen years. In 2010 we began using a third party, EMS Management Consultants, for billing and collection. Our collections have improved from 50% to 72% which is consistent with the industry norm. Medicare and Medicaid pay 96% after contractual allowances, insurance 79%, and patients 12%. Our revenue has increased from \$350,000 to

Agenda Date: May 14, 2012

\$525,000/ year. EMS write-offs will continue to be substantial in the future due to contractual allowances and expected collections.

Debt setoff has been a successful collection tool for us. Over \$65,000 has been collected this year and is double what was achieved in the previous year.



HUMAN RELATIONS COUNCIL

102 East 2nd Street

Washington, NC 27889

Phone: 252.975.1280

Fax: 252.974.6167



Human Relations Council (HRC) Report for the month of April Monday May14, 2012 City Council Meeting

MISSION STATEMENT

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

Fair Housing Forum @ 6:00 pm – Mr. Brandon Madden, Victims and Citizens Services, representing Attorney General Roy Cooper’s office. Mr. Madden addressed informative topics inclusive of:

Identity Theft
 Frauds and Scams
 Child Internet Safety
 Health Insurance
 Methamphetamine
 Telemarketing Fraud
 Address Confidentiality Program and Internet Scams

“Taste of Washington”

Sponsors:

Edith Dudley Jenkins	\$100
Washington Housing Authority	\$ 50
Holland Consulting Planners	\$ 50
Human Relations Council	\$180

Restaurants’/Entrepreneur’s:

Nana’s & Papa’s
 Cakes & Things by Jennette
 Hardee’s of Washington
 Foodlion Highway 264 East
 Franks Pizza
 Mazatlan Mexican Restaurant

Washington Tourism Development Authority
March-April 2012

Meetings

- Participated in stakeholder meeting to hear the results of the Eye Integrated branding research and logo development. Results are now being presented to the stakeholder groups and paying partners for their support.
- Continue meeting with members of the county's 300th anniversary committee. The group will have a presence at Cycle NC to assist with showcasing the area to newcomers and visitors. I coordinated the development of banner stands/trade show display for use throughout the year.
- Attended a meeting of the Highway 264 Corridor marketing committee in Belhaven. The group saw a brochure mock-up and discussed other ways of marketing the corridor. It was decided to have a rack-card developed, but to invest in a website that would be more easily kept up to date. There are still some logistics to be considered, but the group is on the same page.
- The local group of public information officers met with the new publisher of the Washington Daily News to familiarize him with our groups and see what partnerships can be formed.

Marketing

- In an effort to keep our partners engaged in our tourism efforts a new e-newsletter was developed. This will serve as a way to communicate valuable information about our programs and trends and opportunities in the hospitality world.
- To ensure that our restaurant partners are prepared for Cycle NC, I visited the restaurants with information about the event and expectations for increased business during the event.
- Continue to use social media to communicate with participants of Cycle NC. This has helped to spread the word about opportunities during the weekend that require reservations.
- The majority of this month has been spent coordinating the final details for the Cycle NC spring ride: meeting with city representatives, caterers, civic groups, vendors, preparing marketing materials and packages for riders, etc.
- I am presently collecting information from various publications and other media to develop our marketing plan for the coming year. It will consist of the development of new ads and collateral material once the branding initiative is complete. An RFP for website redesign/development will also be included in this.
- Worked with Beth Byrd for development of a Civic Center ad for the new Beaufort County wedding guide out in mid-April.

Management

- Management work has consisted mainly of developing a budget for next fiscal year, taking into consideration projections for the current budget year.
- The City Council has reviewed capital improvement projects for inclusion in the FY12-13 budget cycle. The civic center decking was one of the top priorities identified for the year.

Washington Harbor District Alliance Report
Monday, May 14, 2012 City of Washington Council Meeting

Old City Hall- Main Street Solutions Fund Grant

The Old City Hall grant agreement and revised Council Action form are before you as presented by Bianca Gentile Shoneman. We ask that the City accept the grant and approve the resolution to support the Old City Hall Main Street Solutions Fund Grant. We ask that the Mayor execute the grant agreement and that the City manager is authorized to sign the sub-recipient agreement between the City of Washington and Snug Harbor LLC. Environmental Assessments are being completed by NC State.

WHDA Changing By-Laws

The major changes are: Establishes the position of Vice President. VP would stand in for the president in case they needed to step down or could not run a meeting. Specifies that we will have four committee chairs - and names them. The terms will change to 2 years and provide for Co-Chairs for each committee and establish voting rights for the co-chairs in the chair's absence. Eliminates all references to the Merchant's Association (used to have a board position with a person named by the Merchant's Association, which is defunct). Increases total number of board member positions to 11 (from 9). Eliminates all references to "advisors", this was a fig leaf WHDA established five years ago when we reduced the number of board members from 36 to 9.

Little Washington Sailing Club

LWSC has applied to form a separate 501c3. WHDA will continue to support the club until the incorporation is completed.

Successful Start of Event Season

MITS was moved forward one week to accommodate the NC Cycle event in Washington. MITS was well received by those in Washington for the NC Cycle. Many could not believe that MITS was held monthly in Washington. The 2011 Music in the Streets Compilation CD was completed just in time for the first MITS. Fifteen artists from the 2011 season have submitted a wonderful collection of songs. The CD is available at the BC Chamber of Commerce and the Inner Banks Artisans Center for \$10.00

The Annual Washington Marine market was held April 28th in conjunction with the BC Arts Council's BOCO Music Festival. Even though it was a cloudy, cold day many hundreds came out to the event. The maritime vendors were happy with the event, as long as they are happy we plan to continue to host this event that highlights the marine industry in Beaufort County.

Intern Starting in May

Jessica Davis is a double major (Animation and Interactive Design and Applied Economics) ECU student who will work up to 20 hours per week. Jessica will be given specific projects to accomplish like a marketing piece to attract hotel developers to Washington or revamping the WHDA website. Ms. Davis will receive a stipend of \$100 a week.

Motown Concert Date Set

WHDA is proud to announce that we will bring ECU Jazz Professor Carroll Dashiell's Motown Review to Washington on September 15, 2012. The concert will take the place of the beach music festival usually held in September. WHDA hopes that this concert will not only be highly entertaining but will also go a long way to involve everyone in the Beaufort County community.

Branding Logo Approved by Board

The board was asked to give its approval of the branding logo and brand position. A motion was made and carried to approve the logo, but ask that the word "friendly" be added to the brand position because that is one of the most important aspects of Washington.

Ross Hamory Officially Announces Departure from WHDA Board

Ross Hamory announced that he and his wife Chris intend to move from Washington. Ross announced that Chris Furlough will be taking his place as president of the WHDA board.

Beaufort County Wedding Guide Complete

The first BC Wedding Guide produced by WHDA will be distributed the second week in May. It will also be available online. WHDA hope that this piece will promote Washington as a wonderful place to hold a wedding, thereby growing the wedding industry in Washington.

Board Continues to Meet:

The WHDA Board meets every third Wednesday of the Month at 8:30AM at the Inner Banks Artisans Center. The meetings are open to the public and any interested person is invited to attend.



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 14, 2012
Subject: Impressions Building Improvement Capital Project Amendment
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Capital Project Ordinance amendment for the Impressions Building Improvement Project.

BACKGROUND AND FINDINGS:

The major projects of replacing/repairing the roof, fire protection system, and fire supply line have been completed as well as painting the building, cleaning ductwork, and replacing an HVAC system. These projects were completed within budget. The remaining contingency funds will be utilized for other major maintenance and repair projects that will surface over the remainder of the five year lease of this 50+ year old facility or will be used to reduce the supplemental rent paid for these improvements at the end of the lease.

PREVIOUS LEGISLATIVE ACTION

Capital Project Ordinance Amendment

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Capital Project Ordinance Amendment

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: MR Concur _____ Recommend Denial _____ No Recommendation
5/8/12 Date May 14, 2012
Page 90 of 199

**AN ORDINANCE TO AMEND THE CAPITAL PROJECT ORDINANCE FOR
THE IMPRESSIONS BUILDING IMPROVEMENT PROJECT
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2011-2012**

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

Section 1. That the following appropriation accounts in the Impressions Building Improvement Capital Project be increased or decreased by the following amounts:

56-60-4930-4500	Construction	\$	66,629
56-60-4930-9900	Contingency		<u>(66,629)</u>
	Total	\$	0

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 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: John Rodman, Planning and Development
Date: May 7, 2012
Subject: ETJ Reduction: Adopt a recommendation supporting the reduction of the ETJ and authorize staff to move forward on the areas of reduction.
Applicant Presentation: John Rodman, Planning and Development
Staff Presentation: None

RECOMMENDATION:

I move that the Washington City Council support the recommendation of the Planning Board and authorize staff to move forward on the reduction of the City's Extra-Territorial Jurisdiction (ETJ) in the Whichards Beach, Cherry Road, and US Hwy 17 North areas as indicated by the attached map.

BACKGROUND AND FINDINGS:

Staff had been directed to investigate the procedure for possible relinquishment of the Extraterritorial Jurisdiction (ETJ) in the Washington area as requested. The areas for the proposed reduction in ETJ limits are indicated on the map. Staff recommendation is that the ETJ relinquishment be limited to these areas. In researching this, it was determined that there is a procedure that is driven by the North Carolina General Statutes, and that the following schedule is being suggested for Council consideration:

- 1) Present report to City Council
- 2) Planning Board Public Hearing
- 3) City Council Public Hearing/Adopt Resolution
- 4) Establish effective Date for Offer to Relinquish

The North Carolina General Statute essentially provides for a sixty-day period during which the City would maintain zoning jurisdiction over the area or until the regulation of the area is adopted by the County, not to exceed 60 days.

PREVIOUS LEGISLATIVE ACTION

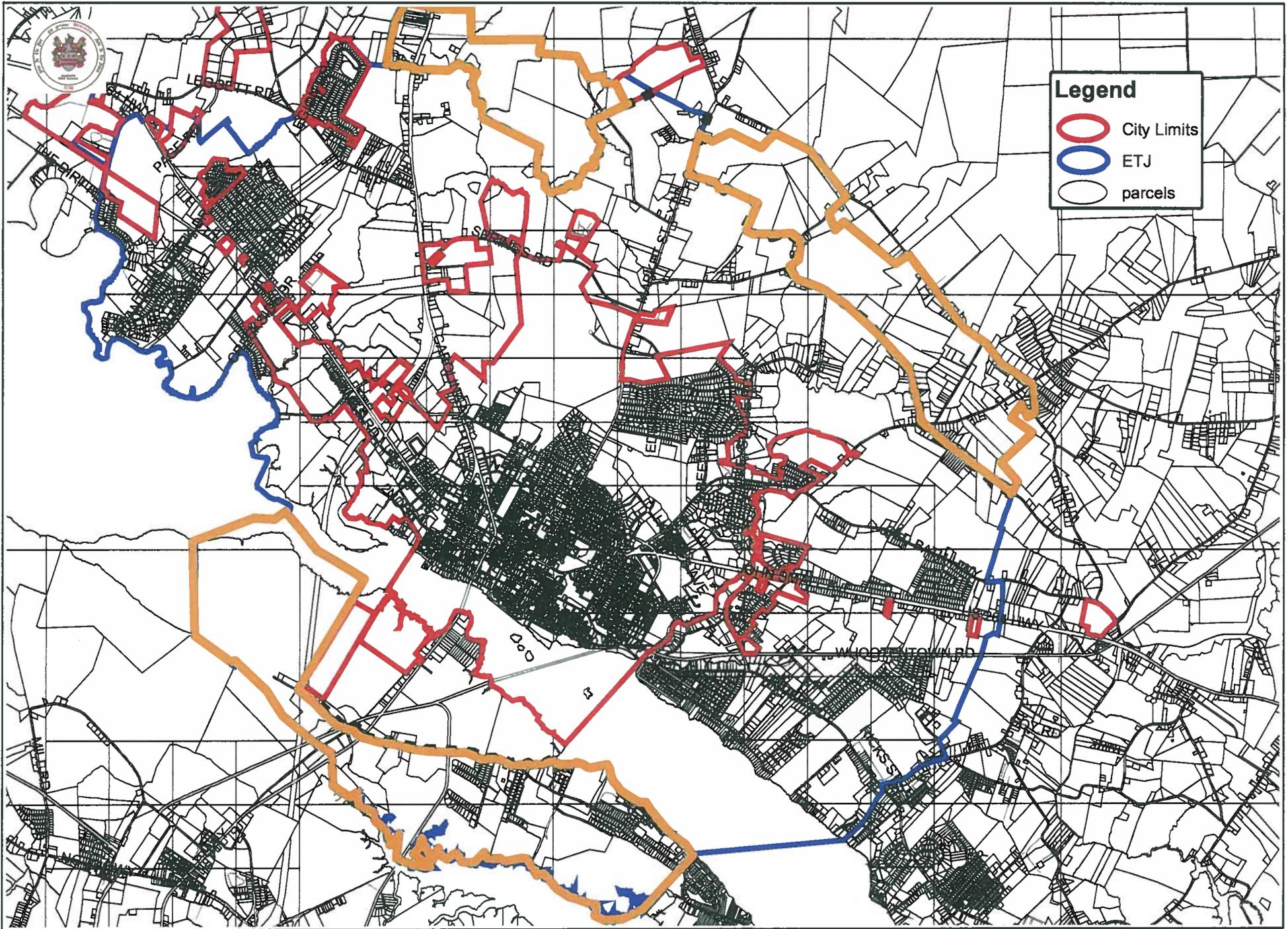
City Council – 3/12/12
City Council – 4/23/12
Planning Board – 4/24/12

FISCAL IMPACT

_____ Currently Budgeted _____ Requires additional appropriation _____ No Fiscal Impact

SUPPORTING DOCUMENTS

Target area map,
Whichards Beach – Costs/Benefits
Chocowinity's Extra-Territorial Jurisdiction



Legend

- City Limits
- ETJ
- parcels



City of Washington
 May 14, 2012
 Proposed ETJ Changes

1 inch = 5,000 feet



Whichards Beach Area
ETJ Reduction – Costs and Benefits*

Building Inspections
January '05 – December '11

<u>Permits Issued</u>	<u>Num</u>	<u>Fees Collected</u>
Building Permits	30	\$3,832
Electrical Permits	12	\$1,315
Plumbing Permits	5	\$1,037
Mechanical Permits	7	\$1,026
Manufactured Home Permits	3	\$ 382
Other permits	<u>1</u>	<u>\$ 44</u>
Total Permits	58	\$7,636

<u>Total Inspections</u>	<u>154</u>	<u>Inspection Costs</u>
Total Inspection Hours	76 x \$30/hr	\$2,280
Total Administrative Hours	15 x \$30/hr	\$ 450
Total Ride Hours	24 x \$30/hr	\$ 720
Fuel	10 miles/insp	<u>\$ 400</u>
Total Costs		\$3,850

Building Inspections January '05 – December '11

Total Revenue	\$7,636
Total Costs	\$3,850

Planning and Zoning
January '05 – December '11

<u>Application for Permits</u>	<u>Num</u>	<u>Fees Collected</u>
Special Use Permits	2	\$ 250
Rezoning	5	\$ 750
Variance	4	\$ 600
Admin Hearing	<u>1</u>	<u>\$ 125</u>
Total Permits	12	\$1,725

Total Costs		
Total Administrative Hours	12 x \$30/hr	\$ 360
1 st Class Mailings	120 x .40	\$ 48
Advertisement	12 x \$120	<u>\$1,440</u>
Total Costs		\$1,848

Planning and Zoning January '05 – December '11

Total Revenue	\$1,725
Total Costs	\$1,848

Building Inspections
January '11 – December '11

<u>Permits Issued</u>	<u>Num</u>	<u>Fees Collected</u>
Building Permits	3	\$ 225
Electrical Permits	0	\$ 0
Plumbing Permits	0	\$ 0
Mechanical Permits	0	\$ 0
Manufactured Home Permits	1	\$ 125
Other permits	<u>0</u>	<u>\$ 0</u>
Total Permits	4	\$ 350

<u>Total Inspections</u>	<u>11</u>	<u>Inspection Costs</u>
Total Inspection Hours	6 x \$30/hr	\$ 180
Total Administrative Hours	1 x \$30/hr	\$ 30
Total Ride Hours	2 x \$30/hr	\$ 60
Fuel	10 miles/insp	<u>\$ 28</u>
Total Costs		\$ 298

Building Inspections January '05 – December '11

Total Revenue	\$ 350
Total Costs	\$ 298

Planning and Zoning
January '11 – December '11

<u>Application for Permits</u>	<u>Num</u>	<u>Fees Collected</u>
Special Use Permits	0	\$ 0
Rezoning	0	\$ 0
Variance	0	\$ 0
Admin Hearing	0	\$ 0
Subdivision Review (minor)	<u>2</u>	<u>\$ 0</u>
Total Permits	0	\$ 0

Total Costs		
Total Administrative Hours	2 x \$30/hr	\$ 60
1 st Class Mailings	0 x .40	\$ 0
Advertisement	12 x \$120	<u>\$ 0</u>
Total Costs		\$ 60

Planning and Zoning January '11 – December '11

Total Revenue	\$ 0
Total Costs	\$ 60

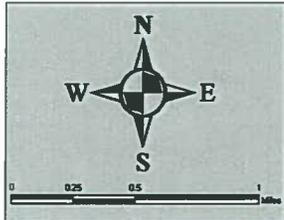
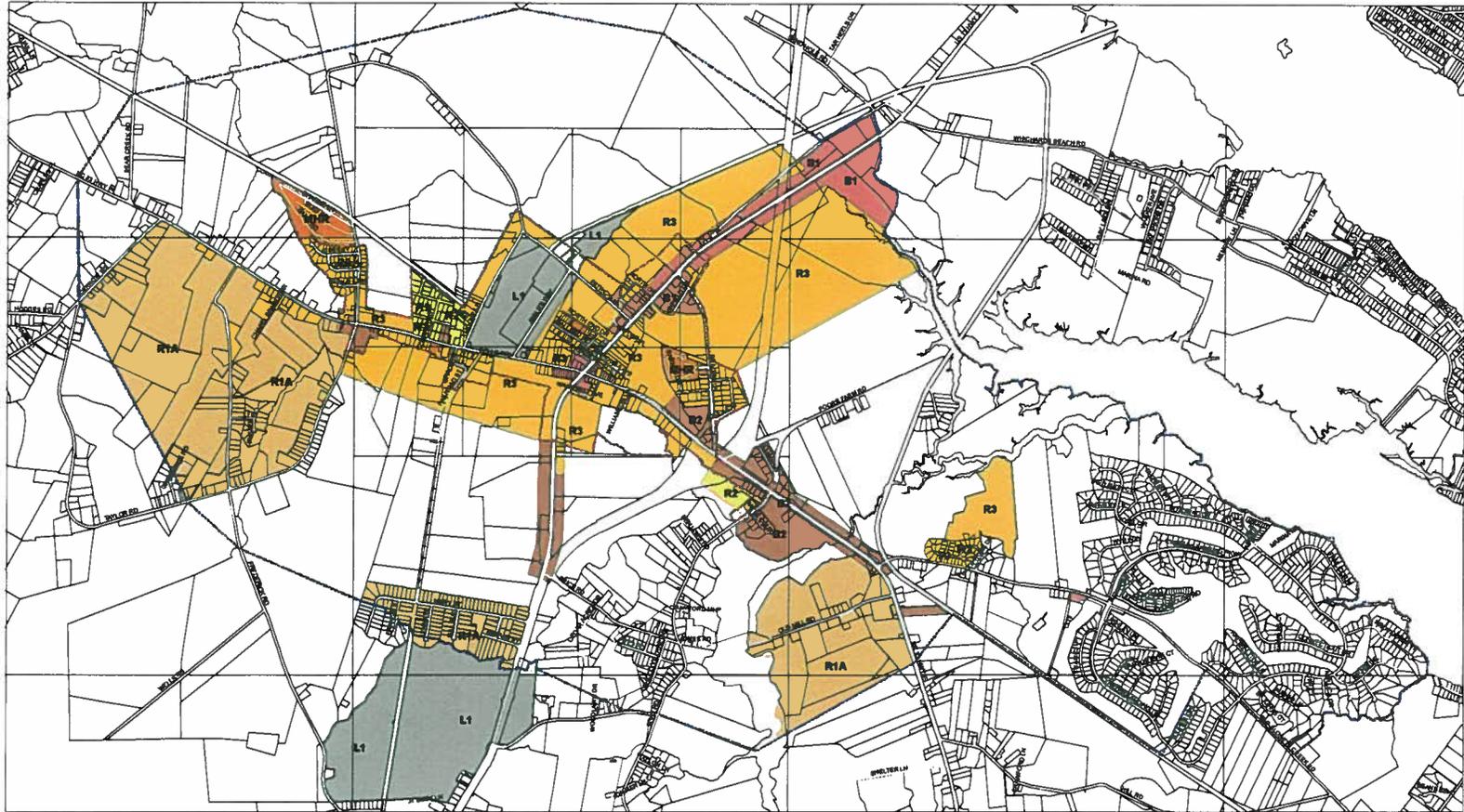
*All costs and benefits are approximate calculations.

DRAFT MAP

Town of Chocowinity

Beaufort County, North Carolina

DRAFT MAP



Zoning Districts		Legend	
— Chocowinity Corporate Limits	B1 General Business	MHR Mobile Home Residential	R3 Medium Density Residential
— Extraterritorial Jurisdiction	B2 Highway Business	R1 Low Density Residential	R3 Residential Conditional Use Business Overlay
□ beaparcels	L1 Light Industrial	R1A Low Density Residential	
		R2 Limited Low Density Residential	

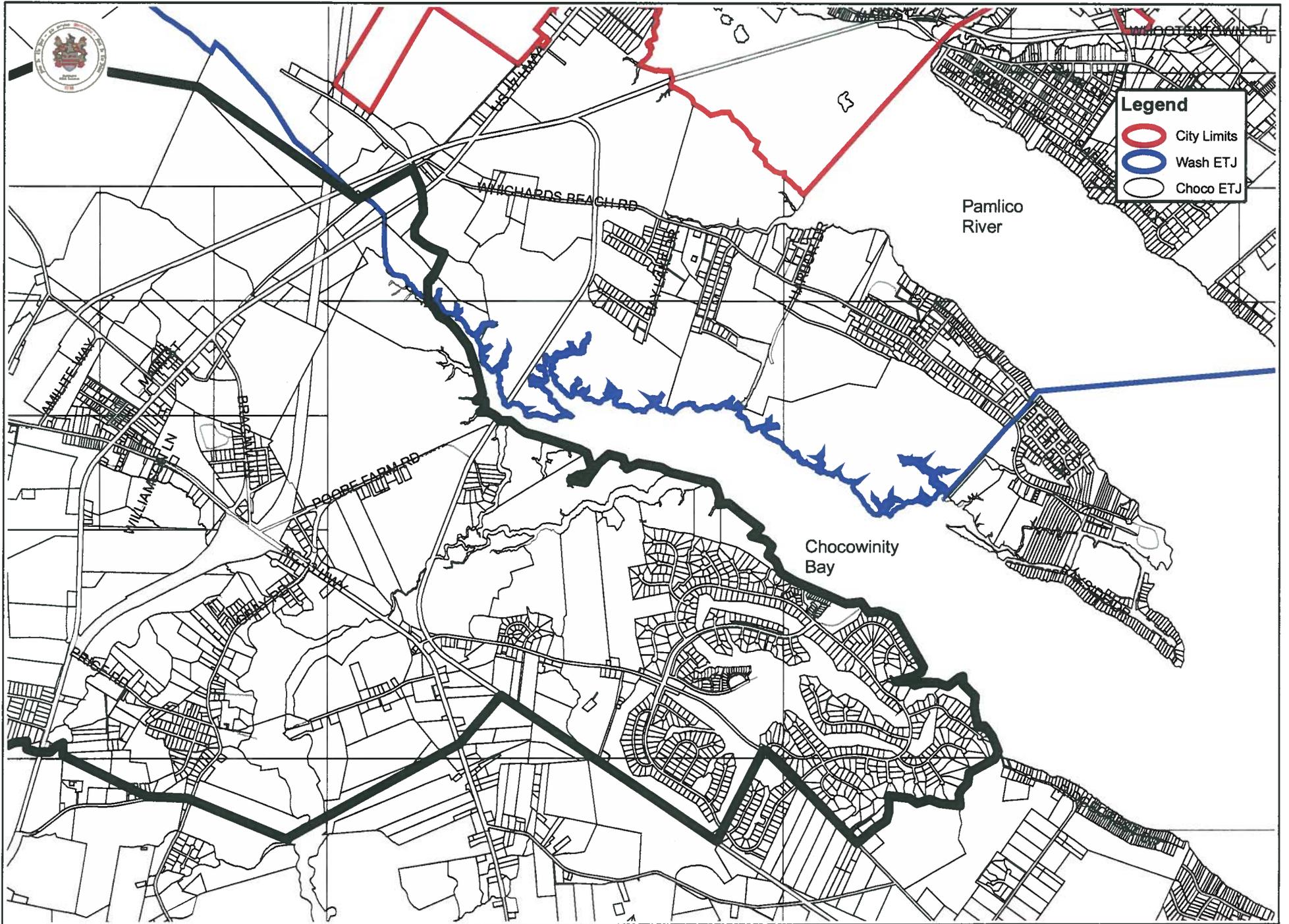
Prepared by
Bryant Smith
M&E Civil Corporation
PO Box 1770
Wilmington, NC 27680



The Town, Executive Center
6501 Duke, Planning Office
April 27, 2010

Final Date: March 15, 2010

This map represents a compilation of information from various sources, not all of which are current, which may result in inaccuracies among the features represented on this map. The M&E Civil Corporation assumes no responsibility for the accuracy of the source information.

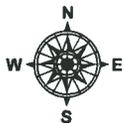


City of Washington

May 14, 2012

Page 199

1 inch = 2,800 feet





City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Matt Rauschenbach, C.F.O.
Date: May 14, 2012
Subject: FEMA Grant Rescue Vehicle Budget Ordinance Amendment and Grant Project Ordinance
Applicant Presentation: N/A
Staff Presentation: Matt Rauschenbach

RECOMMENDATION:

I move that City Council adopt a Budget Ordinance Amendment and a Grant Project Ordinance for the FEMA Fire Grant to purchase a rescue vehicle and equipment for the Fire Department.

BACKGROUND AND FINDINGS:

A \$350,300 FEMA Fire Grant was awarded January 27, 2012 for the purchase of a rescue vehicle and equipment. The federal portion is \$332,785 and the City's share is \$17,515. The Grant Project Ordinance must be adopted in the fiscal year that it is awarded. \$17,500 was included in the FY 2012/2013 budget submitted to Council and will be removed prior to adoption.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

Currently Budgeted (Account _____) Requires additional appropriation
 No Fiscal Impact

SUPPORTING DOCUMENTS

Budget Ordinance Amendment
Grant Project Ordinance

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: (SR) Concur _____ Recommend Denial _____ No Recommendation
5/8/12 Date

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

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$17,515 in the account Fund Balance Appropriated, account number 10-00-3991-9110.

Section 2. That account number 10-00-4400-9200, Transfer to Federal Grants, Miscellaneous Non-Departmental portion of the General Fund appropriations budget be increased in the amount of \$17,515 to provide funds for a 5% grant match for the construction of a rescue vehicle.

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 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK

**A GRANT PROJECT ORDINANCE FOR
ASSISTANCE TO FIREFIGHTERS GRANT AWARD # EMW-2011-FV-00583
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2011-2012**

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

Section 1. The project authorized is for the construction of a rescue vehicle, to be financed with 95% grant funds.

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:

75-10-4341-0400	Administration	\$ 300
75-10-4341-7400	Capital Outlay	<u>350,000</u>
	Total	\$350,300

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

75-10-3434-3300	FEMA Grant Funds	\$332,785
75-10-3980-1000	Transfer from General Fund	<u>17,515</u>
	Total	\$350,300

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.

This the 14th day of May, 2012.

Mayor

Attest:

City Clerk



City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
 From: Robbie Rose, Fire Chief *RR*
 Date: May 3, 2012
 Subject: Bid Award for Construction of Rescue/Equipment Truck
 Applicant Presentation:
 Staff Presentation:

RECOMMENDATION:

I move that the City Council approve the bid award for construction of the Rescue/Equipment vehicle to VT Hackney, Inc., using the alternate bid proposal for the 2013 Kenworth T370 chassis in the total amount of \$327,833.00; and also authorize purchase orders for pre-payment of chassis and completed vehicle.

BACKGROUND AND FINDINGS:

A bid process was conducted by the city purchasing agent (Mike Whaley) for the construction of the Rescue/Equipment vehicle being purchased through the FEMA Fire Grant. There were 11 bid packages submitted to potential bidders prior to the sealed bid opening on April 11, 2012. We received three letters of decline to bid, seven no responses, and one bid proposal package from VT Hackney, Inc. Within the bid specifications we included a bid for construction with an International chassis and an alternate bid for a Kenworth chassis to provide pricing options for chassis. With the Kenworth being the more desired chassis based on our research, and with the pricing difference not significant, we are recommending the use of the Kenworth chassis. We are also recommending taking advantage of the chassis pre-payment option to recognize an additional savings. The excess funds remaining in this grant will be used to purchase rescue power equipment for the truck after purchase.

PREVIOUS LEGISLATIVE ACTION

FISCAL IMPACT

95% Federal funding with 5% match

___ Currently Budgeted (Account _____) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Bid proposal and alternate proposal from VT Hackney, Inc.

City Attorney Review: _____ Date By: _____ (if applicable)
 Finance Dept Review: _____ Date By: _____ (if applicable)
 City Manager Review: *RR* Concur _____ Recommend Denial _____ No Recommendation *5/8/12* Date



VT Hackney

A company of VT Systems

Alternate Bid Proposal

**To: City of Washington
102 E. Second Street
PO Box 1988
Washington, NC 27889**

Date: April 11, 2012

FOR: 2012 Hackney model DF0964R heavy rescue body mounted on a 2013 Kenworth T370 cab and chassis, as per enclosed Proposal Specifications and Drawings

Total Bid Price - \$327,833.00

Terms: Net on delivery

Delivery: Not more than 210 calendar days after receipt of order and Pre-Construction Conference

F.O.B: Washington, NC

Chassis Pre-Payment Discount: If the amount of \$86,885.00 is paid within ten (10) days of the receipt of the chassis at the manufacturing facility in Washington, NC, the amount of \$2001.00 will be deducted from the final invoice.

VT Hackney, Inc.

Eddie L. Smith, Director
Emergency Vehicles Group

All contracts and any subsequent payments shall be issued only to VT Hackney, Inc.

Price does not include any applicable taxes or license fees, unless noted herein.

Price valid for a maximum of 30 days, unless noted elsewhere herein.

Delays in receipt of subsequent Order Supplements requested by the purchaser will not be calculated against contractual delivery date stated above.

911 West 5th Street – P.O. Box 880 - Washington, NC 27889-0880

Phone 252-946-6521 - FAX 252-975-8393

www.vthackneyev.com

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VT Hackney

A company of VT Systems

Bid Proposal

To: City of Washington
102 E. Second Street
PO Box 1988
Washington, NC 27889

Date: April 11, 2012

FOR: 2012 Hackney model DF0964R heavy rescue body mounted on a 2013 International Durastar 4400 cab and chassis, as per enclosed Proposal Specifications and Drawings

Total Bid Price - \$327,143.00

Terms: Net on delivery

Delivery: Not more than 210 calendar days after receipt of order and Pre-Construction Conference

F.O.B: Washington, NC

Chassis Pre-Payment Discount: If the amount of \$84,803.00 is paid within ten (10) days of the receipt of the chassis at the manufacturing facility in Washington, NC, the amount of \$1,982.00 will be deducted from the final invoice.

VT Hackney, Inc.

Eddie L. Smith, Director
Emergency Vehicles Group

All contracts and any subsequent payments shall be issued only to VT Hackney, Inc.

Price does not include any applicable taxes or license fees, unless noted herein.

Price valid for a maximum of 30 days, unless noted elsewhere herein.

Delays in receipt of subsequent Order Supplements requested by the purchaser will not be calculated against contractual delivery date stated above.

911 West 5th Street – P.O. Box 880 - Washington, NC 27889-0880

Phone 252-946-6521 - FAX 252-975-8393

www.vthackney.com

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City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Allen Lewis, Public Works Director *Allen Lewis*
Date: 05-08-12
Subject: Authorize Mayor to Sign Grant of Easement for Piedmont Natural Gas Company, Inc.
Applicant Presentation: N/A
Staff Presentation: Allen Lewis

RECOMMENDATION:

I move that City Council authorize the Mayor to sign the attached Grant of Easement for the placement of a 4" natural gas main across City-owned property as shown on the attached sketch..

BACKGROUND AND FINDINGS:

The purpose of this Council Action is to authorize the Mayor to sign a Grant of Easement for the relocation of a 4" gas main across City property in conjunction with the ongoing stormwater project in the Jack's Creek basin. The attached Grant of Easement provides Piedmont Natural Gas (PNG) a five (5) foot wide easement centered over the proposed relocation of approximately 350 lf of 4" gas main that is in conflict with the project near the Bobby Andrews Recreation Center. There is a sketch attached also showing the approximate location of the proposed line.

PREVIOUS LEGISLATIVE ACTION

N/A

FISCAL IMPACT

Currently Budgeted (Account) Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

N/A

City Attorney Review: Date By: (if applicable)
Finance Dept Review: Date By: May 14, 2012 (if applicable)
City Manager Review: Concur Referred Denial No Recommendation 5/8/12 Date

GRANT OF EASEMENT

Return Recorded Document to:
Sandy Ogint
Administrator Property Records
Piedmont Natural Gas Company, Inc.
PO Box 33068
Charlotte, NC 28233

STATE OF NORTH CAROLINA

COUNTY OF _____

PROJECT NUMBER _____

THIS GRANT OF EASEMENT made this _____ day of _____, 20____, from

(hereinafter designated as GRANTOR), to PIEDMONT NATURAL GAS COMPANY, INC., (hereinafter designated as GRANTEE).

WITNESSETH

That GRANTOR, for and in consideration of the sum of \$ _____, and other valuable considerations, the receipt of which is hereby acknowledged, hereby bargains, sells, and grants unto GRANTEE, its successors and assigns, a perpetual right of way and easement for the purpose of laying, constructing, maintaining, operating, inspecting, repairing, altering, adding to, replacing, removing, and protecting a pipeline for the transportation of natural gas under, upon, over, through, and across the land of GRANTOR (or in which GRANTOR has interest) situated in _____

Township,

County, North Carolina, as described in deed(s) recorded in Book _____, Page _____, Office of the Register of Deeds for _____ County, North Carolina.

The right of way herein granted is five (5) feet wide, extending two and one half (2 1/2) feet on each side of the centerline of the pipeline, the location of which has been mutually agreed upon between GRANTOR and GRANTEE. The pipeline as actually installed shall determine the centerline of said right of way.

GRANTEE shall have the free and full right of ingress and egress over and across the aforesaid land and to keep said right of way cleared of trees, shrubs, buildings, structures, and other obstructions. GRANTOR shall not construct nor permit to be constructed any house, structure, or other obstruction on or over said right of way.

GRANTOR hereby binds GRANTOR and GRANTOR's heirs, representatives, successors, and assigns to warrant and forever defend all and singular said premises unto GRANTEE, its successors and assigns, against the claims of all persons whomsoever.

To have and to hold said right of way and easement unto GRANTEE, its successors and assigns, perpetually and continuously. GRANTOR expressly gives GRANTEE, its successors and assigns, the right to assign, license, lease, or otherwise transfer, in whole or part, this GRANT OF EASEMENT or any rights given herein, to any person or entity, including but not limited to, any affiliated parent or subsidiary entity of GRANTEE, for the uses and purposes expressly stated herein.

IN WITNESS WHEREOF, this GRANT OF EASEMENT has been signed and sealed by duly authorized officers of GRANTOR, as of the date first above written.

Corporation:

By: _____ Sign
_____ Print

Subscribing Witness: (Optional)

Title: _____ President

_____ Sign
_____ Print

Attest: _____ Sign
_____ Print

Title: _____ Secretary

Corporate Seal

(USE STANDARD ACKNOWLEDGMENT UNLESS THERE IS A SUBSCRIBING WITNESS)

STANDARD ACKNOWLEDGMENT

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged that he (she) is _____ Secretary, of _____, GRANTOR, and that by authority duly given and as an act of the corporation, the foregoing GRANT OF EASEMENT was signed in its name by _____ President sealed with its corporate seal, and attested by himself (herself) as its _____ Secretary.

Witness my hand and seal this _____ day of _____, 20____.

Notary Seal

Notary Public

Sign

My Commission Expires: _____

Print

SUBSCRIBING WITNESS ACKNOWLEDGMENT

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____ (subscribing witness) personally appeared before me this day and being duly sworn, stated that in his (her) presence _____ acknowledged that he (she) is _____ Secretary of _____, GRANTOR, and that by authority duly given and as an act of the corporation, the foregoing GRANT OF EASEMENT was signed in its name by _____ President sealed with its corporate seal, and attested by himself (herself) as its _____ Secretary.

Witness my hand and seal this _____ day of _____, 20____.

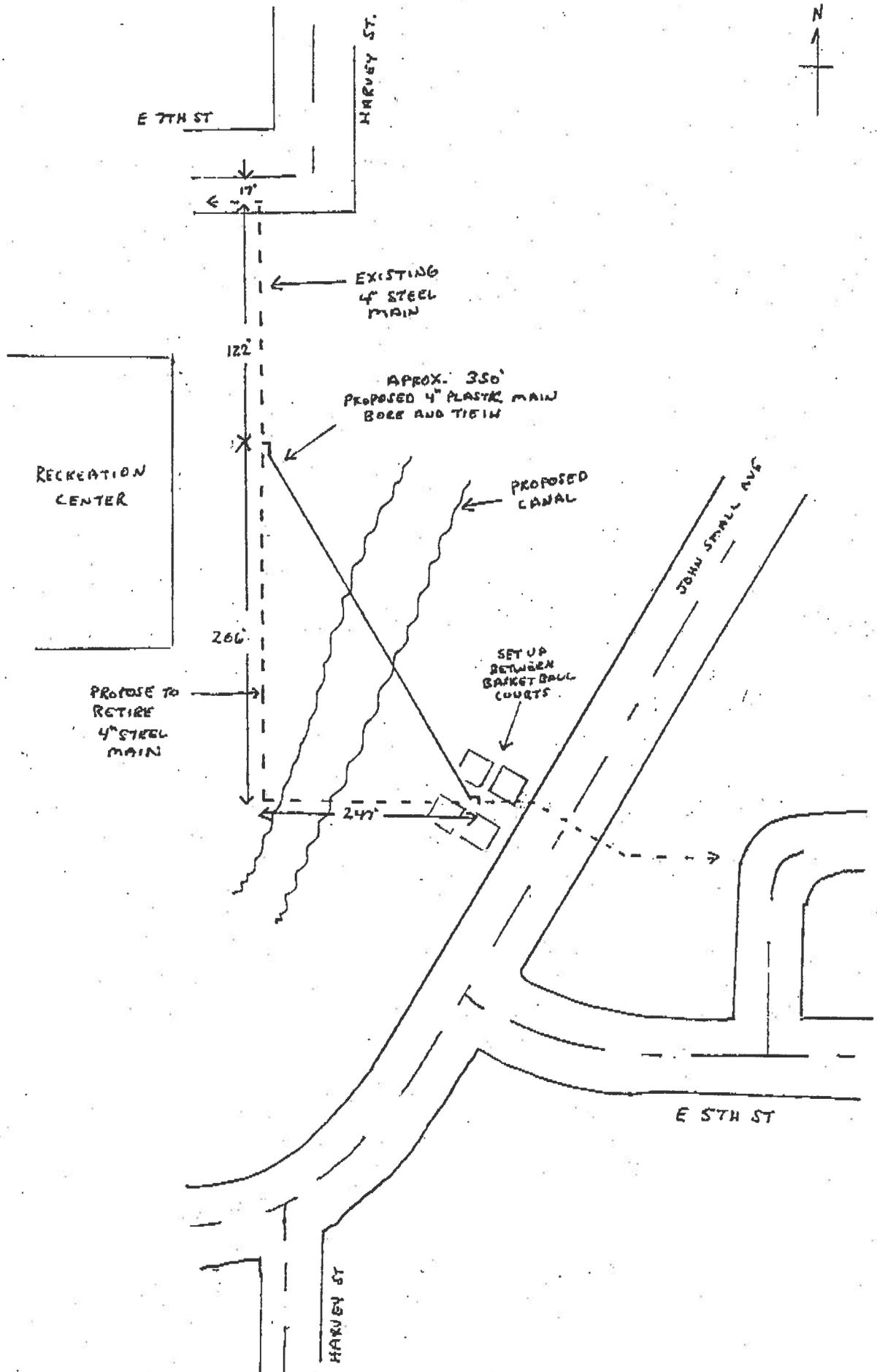
Notary Seal

Notary Public

Sign

My Commission Expires: _____

Print





City of Washington

REQUEST FOR CITY COUNCIL ACTION

To: Mayor Archie Jennings & Members of the City Council
From: John Rodman, AICP: Planning and Development
Date: May 14, 2012
Subject: Main Street Solutions Fund, Budget Ordinance, Grant Agreement and Sub-Recipient Agreement
Applicant Presentation: N/A
Staff Presentation: As requested

RECOMMENDATION:

On behalf of the Main Street Solutions Fund, I move that Council adopt the budget ordinance and authorize the Mayor to execute the Grant Agreement between the City of Washington and the NC Department of Commerce. Moreover, I authorize the City Manager and City Attorney to further negotiate and revise the Agreement as necessary to execute the Sub-recipient Agreement between the City of Washington and Cedar Grove Plantation, LLC

BACKGROUND AND FINDINGS:

North Carolina Main Street Solutions Fund is a program designed to provide economic development planning assistance and coordinated grant support to designated micropolitans located in active Main Street communities. The goals of the program are:

1. To provide direct financial benefit to small businesses
2. To retain and create jobs in association with small businesses
3. To spur private investment in association with small businesses

The Main Street Solutions Fund is a reimbursable, matching grant program. This highly competitive process provides up to \$200,000 to local governments. In March, 2012 the City of Washington was awarded the maximum grant award, \$200,000, to redevelop the property located at 126 N. Market Street, also known as "Old City Hall". The supporting documents, especially Appendix B of the Grant Agreement, describe in detail the specific project job creation, and construction goals.

Additionally, please note that the environmental review is currently underway and awaiting comments from the NC State Clearinghouse.

PREVIOUS LEGISLATIVE ACTION

Convey property through upset bid process to D.B.A. Snug Harbor
December 12, 2011: Adopt resolution to submit application

FISCAL IMPACT

Currently Budgeted Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

Budget Ordinance
Grant agreement
Sub-recipient agreement

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: TR Concur _____ Recommend Denial _____ No
Recommendation 5/8/12 Date

**A GRANT PROJECT ORDINANCE FOR
MAIN STREET SOLUTIONS GRANT AWARD # MSSF_ Washington2011
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2011-2012**

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

Section 1. The project authorized is for the rehabilitation of the Old City Hall building through a Sub-recipient Agreement between the City of Washington and Snug Harbor, LLC.

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:

68-60-4930-7300	Building Improvements	\$200,000
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Section 4. The following revenue is anticipated to be available to complete this project:

68-60-3480-3400	Grant Funds	\$200,000
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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.

This the 14th day of May, 2012.

Attest:

City Clerk

May 14, 2012
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Mayor

**City of Washington
Main Street Solutions Fund
Sub-Recipient Agreement**

This Sub-Recipient Agreement (“Sub-Recipient Agreement”) is made as of the 14th day of May, 2012 by and between the City of Washington, a municipal corporation of the State of North Carolina, whose address is 102 East 2nd Street, Washington, North Carolina 27889 (“City” or “Recipient”), and Cedar Grove Plantation, LLC, a limited liability company of the State of North Carolina, whose address is 316 Riverside Drive, Washington, North Carolina 27889 (“Entity” or “Sub-Recipient”), which collectively may be referred to as the “Parties”.

WITNESSETH

WHEREAS, North Carolina General Statute § 143B-472.35 (the “Statute”) has established the North Carolina Main Street Solutions Fund (“MSSF”) to be administered by the State of North Carolina Department of Commerce (“DOC”).

WHEREAS, said Statute authorizes DOC and the North Carolina Main Street Center to award reimbursable, matching grants from MSSF of up to \$200,000.00 to eligible local governments to be used for eligible activities.

WHEREAS, DOC has awarded the City a matching grant of \$200,000.00 from MSSF to assist in the renovation of the structure located at 126 North Market Street and owned by Cedar Grove Plantation, LLC as a destination restaurant and as more specifically described in Exhibit B of the Match Grant Agreement (“Grant Agreement”), by and between the City and DOC signed by DOC on April 10, 2012, as the same may be amended from time to time, and as further described in the City’s MSSF Application Summary (“Application”) dated December 12, 2011 (“Project”), which Grant Agreement and Application are incorporated herein by reference as if fully set forth. Said Grant Agreement, including certain lettered exhibits, is attached hereto as Exhibit 1.

WHEREAS, said Grant Agreement incorporates provisions of the second round of funding for DOC’s North Carolina MSSF Operating Guidelines 2010-2011 (“Guidelines”), including all appendices and amendments thereto, as contained in Exhibit A of the Grant Agreement attached hereto; the City’s Application as approved by DOC; and North Carolina General Statute §143B-472.35 attached hereto as Exhibit 2. All of the above are incorporated herein by reference as if fully set forth and may be referred to collectively as the “Grant Agreement Documents”. Said Grant Agreement Documents or portions thereof that are not attached hereto may be reviewed in the City’s Planning Department, 102 E. 2nd Street, Washington, North Carolina.

WHEREAS, City and Entity desire to enter into this Sub-Recipient Agreement so that City may apply for as well as receive MSSF assistance, in the form of reimbursement for eligible expenditures, and disburse said MSSF assistance to Entity as more specifically provided for in the Grant Agreement Documents.

WHEREAS, said Project is also subject to the terms and conditions of a Conservation, Historic Preservation And Maintenance Agreement And Deed Of Easement For Historic Preservation

("Preservation Agreement") by and between the City and Entity dated December 16, 2011 and recorded in Deed Book 1769 at Page 821 of the Beaufort County Registry. Said Preservation Agreement is attached hereto as Exhibit 3 and incorporated herein by reference as if fully set forth.

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

1. **Definitions.** Except to the extent modified or supplemented by this Sub-Recipient Agreement, any term defined in the Guidelines shall have the same meaning when used herein.
 - a. "Grant Agreement" means the North Carolina Main Street Solutions Fund Match Grant Agreement by and between the City and DOC and all exhibits as well as any other documents incorporated therein, the approved portions of City's Application and other submissions included with the Application, along with any subsequent amendments or supplements to any of the foregoing.
 - b. "Sub-Recipient Agreement" means this Sub-Recipient Agreement and all exhibits as well as any other documents incorporated herein along with any subsequent amendments or supplements to any of the foregoing.
 - c. "Assistance" or "Grant" means the Grant funds provided to City under the Main Street Solutions Fund Grant Program, the related Grant Agreement, and this Sub-Recipient Agreement in the amount of **\$200,000.00**.
 - d. "Full-Time Job" shall mean a job maintained for at least six (6) consecutive months after completion of the Project consisting of at least thirty-five (35) hours per week of employment, eligibility for all benefits generally available for full-time employees of the business where the employees are employed, at a wage at least equal to minimum wage, and located in North Carolina. A position filled by an illegal alien shall not be considered a "Full-Time Job."
 - e. "Program" means the Main Street Solutions Fund program described in and created by North Carolina General Statute § 143B-472.35.
 - f. "Project" means the downtown development program, project, or other activities for which Assistance is being provided under this Sub-Recipient Agreement, as described in the Grant Agreement Documents.
 - g. "Main Street Solutions Fund" or "MSSF" means the fund governed by North Carolina General Statute § 143B-472.35 and other applicable laws, rules, regulations and requirements, which comprises the source of the Grant.
 - h. "Sub-Recipient" or "Entity" means the party to this Sub-Recipient Agreement receiving the benefit of Grant funds from and through the City to undertake Project activities.
 - i. "sub-recipient" means an entity receiving some portion of the Grant funds from Recipient or from Sub-Recipient to undertake Project activities.
2. **Sub-Recipient Agreement.** This Sub-Recipient Agreement includes and incorporates by reference as if fully set forth the Grant Agreement Documents referenced hereinabove, as

may be amended. All of which Grant Agreement Documents are binding on the Entity with respect to the Entity's participation in the Project. Said Grant Agreement Documents, including but not limited to this Sub-Recipient Agreement, constitute the entire agreement between the Parties and supersede all prior oral or written statements, agreements, or understandings. Entity shall fulfill all of its own, the City's, and sub-recipient's(s') obligations under MSSF funding and pursuant to said Grant Agreement Documents that are either directly or indirectly dependent upon the Entity for fulfillment. Entity should consult with the City on any questions concerning compliance with these requirements.

3. Amount of Grant. The amount of the Grant available under this Sub-Recipient Agreement shall not exceed \$200,000.00, which amount shall be provided in accordance with the terms of this Sub-Recipient Agreement and the Grant Agreement Documents. Said Assistance shall match funds provided by the Sub-Recipient and/or other non-State sources on the basis of \$2.00 in non-State dollars for every \$1.00 in State dollars provided through MSSF.
4. Term. The term of this Sub-Recipient Agreement shall begin as of the day first above written and shall continue until February 23, 2015, unless the term is amended by DOC and the City. Pursuant to North Carolina General Statute § 143B-472.35(g)(3), Sub-Recipient shall lose any MSSF grant funds that have not been used as of April 7, 2014. For the purposes of the Grant Agreement and this Sub-Recipient Agreement, and pursuant to North Carolina General Statute § 143B-472.35(g)(1), funds are deemed "used" if the City is legally committed to spend the funds on approved activities. In any event, time is of the essence in the performance of this Sub-Recipient Agreement. Notwithstanding the foregoing, any provision or obligation in this Sub-Recipient Agreement that, by its nature, is required to survive the termination hereof in order to be fulfilled, including but not limited to recordkeeping, auditing, and access to the Entity's records, shall survive the termination of this Sub-Recipient Agreement. Furthermore, City's right to enforce violations of this Sub-Recipient Agreement shall continue until the applicable statute of limitations has expired.
5. Third Party Beneficiary. All parties to this Sub-Recipient Agreement agree that DOC is an intended third party beneficiary of this Sub-Recipient Agreement. DOC may, at its option, pursue all legal and equitable remedies against some or all of the Parties for breach of this Sub-Recipient Agreement, including enforcing the terms of this Sub-Recipient Agreement against a breaching party through specific performance, appearing as a party in any litigation concerning this Sub-Recipient Agreement, enforcing any rights or remedies available to some or all of the Parties under this Sub-Recipient Agreement, or otherwise bringing an action for damages for breach of this Sub-Recipient Agreement.
6. Obligations of Recipient and Sub-Recipient. The Parties shall each, jointly and severally, have the duty to ensure that every aspect of this Project is performed in accordance with DOC's approval and in compliance with all applicable laws, rules regulations, or requirements now or hereafter in effect, including (without limitation) the Guidelines,

North Carolina General Statute § 143B-472.35, all terms of the Grant Agreement and all other applicable laws, rules, regulations, requirements, DOC bulletins or Executive Orders, including (without limitation) all North Carolina building codes and local ordinances, all requirements and conditions of the State Environmental Protection Act ("SEPA"), the State Environmental Clearinghouse, requirements of the State Historic Preservation Office ("SHPO"), and the Secretary of the Interior's Standards attached hereto as Exhibit F of the Grant Agreement (Exhibit 1), etc. If any aspect of the Project cannot move forward due to a violation of or non-compliance with any law, rule, regulation or requirement (including, without limitation, a North Carolina building code or local ordinance, or failure to successfully clear the SEPA or State Environmental Clearinghouse regulations or the SHPO guidelines), the City and Entity may forfeit the entire Grant and Assistance or any relevant portion thereof (in DOC's sole discretion), which DOC may then award to third parties. The City and Entity further acknowledge that DOC has no responsibility to ensure the fulfillment of any State building codes or local ordinances or SHPO or SEPA guidelines with respect to the Project, such responsibility resting solely with City, Entity and any sub-recipient. Entity shall provide any and all assistance that may be necessary to complete the Project within the time allowed and shall comply with the terms of this Sub-Recipient Agreement as well as the terms of said Grant Agreement Documents.

7. Governing Law, Jurisdiction and Venue. The validity, construction, interpretation or enforcement of this Sub-Recipient Agreement or any of its terms or provisions, as well as the rights and duties of the Parties under this Sub-Recipient Agreement, are governed by the laws of the State of North Carolina. Notwithstanding anything in this Sub-Recipient Agreement to the contrary, however, Recipient and Sub-Recipient agree that no terms, provisions or language in this Sub-Recipient Agreement shall be presumed or construed against any other party to this Sub-Recipient Agreement based on its involvement in the drafting of this Sub-Recipient Agreement. The Parties agree and submit, solely for matters concerning this Sub-Recipient Agreement, to the exclusive jurisdiction of the courts of the State of North Carolina and agree, solely for such purposes, that the only venue for any legal proceedings involving this Sub-Recipient Agreement, its enforcement, its construction, and/or its interpretation shall be Wake County, North Carolina. The place of this Sub-Recipient Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined. The above Wake County venue requirements shall apply only if DOC, the State or the Federal government is a party, or becomes a party, to a legal proceeding arising hereunder.
8. No Overdue Tax Debt Certification. The undersigned signatories to this Sub-Recipient Agreement certify on behalf of their respective organizations that their organization does not have any overdue tax debts as defined by North Carolina General Statute § 105-243.1 at the federal, state, or local level. The undersigned further understands that any person who makes a false statement in violation of North Carolina General Statute § 143C-6-23(c) is guilty of a criminal offense punishable as provided by North Carolina General Statute § 143C-10-1 and other law.

9. Non-Compliance With Requirements. The Parties recognize and agree that, when DOC determines (i) that this Sub-Recipient Agreement has not been complied with, (ii) that the objectives of the Project or the objectives as described in any application to DOC with respect to funds described in this Sub-Recipient Agreement have not been met, or (iii) that any applicable law, rule, regulation, requirement or policy has not been followed, DOC may take one or more of the actions authorized below. In each instance, the action taken will be designed to first, prevent a continuance of the deficiency (e.g., lack of progress, nonconformance, noncompliance, lack of continuing capacity); second, mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and third, prevent a recurrence of the same or similar deficiencies. However, the choice of corrective action taken shall be in the sole discretion of DOC.

The actions that DOC may take include:

- a. Requiring some or all Parties to submit additional information:
 - i. concerning the administrative, planning, budgeting, management and evaluation functions to determine any reasons for lack of progress;
 - ii. explaining any actions being taken to correct or remove the causes for delay;
 - iii. documenting that activities undertaken were not in conformance with the approved Project or were in noncompliance with applicable laws or regulations; and
 - iv. demonstrating that the Recipient, Sub-Recipient, or sub-recipients has a continuing capacity to carry out the approved Project in a timely manner;
 - b. Requiring some or all Parties to submit progress schedules for completing approved activities;
 - c. Issuing a letter of warning that advises some or all Parties of the deficiency and puts some or all Parties on notice that more serious sanctions will be taken if the deficiency is not corrected or is repeated;
 - d. Instructing some or all Parties that a certification will no longer be acceptable and that additional information or assurances will be required;
 - e. Requiring some or all Parties to suspend, discontinue or not incur costs for the affected activity;
 - f. Requiring some or all Parties to reprogram funds from affected activities to other eligible activities; provided, that such action shall not be taken in connection with any violation of any other law, rule, regulation or requirement;
 - g. Requiring some or all Parties to reimburse DOC for any amounts DOC deems to be improperly expended; and
 - h. Reducing, withholding funds or withdrawing any North Carolina Main Street Solutions Grant funds that comprise any funds described in this Sub-Recipient Agreement, except for funds already expended on otherwise eligible activities which may not otherwise be recaptured.
10. Obligations of Entity With Respect to Job Creation. Entity agrees that the Project shall be required to create eight [8] Full-Time Jobs, by **February 23, 2015** and that such jobs will

be retained for at least six (6) months after the completion of Recipient's entire Main Street Solutions Fund Project. Entity hereby acknowledges that the Project funding is predicated upon the satisfaction of this objective by Entity, that failure to achieve this objective will constitute a material default under the terms of this Sub-Recipient Agreement, unless some amendment to this Sub-Recipient Agreement is made. In the event of a default due to a failure to create and retain the requisite number of Full-Time Jobs, DOC and the City shall be entitled to pursue any remedy set forth in the Grant Agreement and/or herein. For the purposes of this Sub-Recipient Agreement "Full-Time Job" shall mean a job maintained for at least six (6) consecutive months consisting of at least thirty-five (35) hours per week of employment, eligibility for all benefits generally available for full-time employees of the Entity where the employees are employed, at a wage at least equal to minimum wage, and located in North Carolina.

11. Verification of Jobs. Entity shall verify its Full-Time Job numbers to DOC (and to DOC's satisfaction) (i) at the time of the Project commencement date and/or execution of Grant award, (ii) annually, (iii) six (6) months following the completion of Recipient's and Sub-Recipient's Main Street Solutions Fund Project, and (iv) any other time requested by DOC during the term of this Sub-Recipient Agreement. Entity shall provide to the City and DOC, or their respective designees, full and complete access to all records of the business requested by the City or DOC, including (without limitation) records that would be reasonably necessary to verify the number and types of Full-Time Jobs created or retained, and the wages paid to employees, including certain filings provided to the Employment Security Commission. Entity's failure to ensure such access is provided upon reasonable request shall constitute a default under the terms of this Sub-Recipient Agreement.
12. Failure to Create/Retain Jobs. Under the Guidelines, Sub-Recipient is eligible, through Recipient, for a maximum of \$25,000.00 in MSSSF Grant funds for each Full-Time Job created and retained, up to the maximum of a \$200,000.00 total Grant. If Sub-Recipient fails to create and/or retain eight (8) Full-Time Jobs, the Grant shall be reduced in the amount of \$25,000.00 for each job Sub-Recipient failed to create and/or retain. In the event that all or part of the Grant is provided to Sub-Recipient prior to the City's or DOC's discovery of Sub-Recipient's failure to create and/or retain the required number of Full-Time Jobs for the required time period, the failure to create and/or retain such Full-Time Jobs shall result in Sub-Recipient's liability to DOC and the City in the amount of \$25,000.00 per job not created and retained (whether or not such failure was the fault of Sub-Recipient or some other third party).
13. Duties of Sub-Recipient with Respect to Third Party Relationships. Sub-Recipient is responsible to DOC and Recipient for ensuring compliance with the provisions of this Sub-Recipient Agreement and all applicable laws, rules, regulations and requirements, even when a sub-recipient or third party or parties ("third party") is designated to undertake all or any part of the Project.

Where any third party is used to undertake all or part of the Project (whether or not Sub-Recipient contracts directly with that third party), the contract with that third party must

require the third party to comply with the Grant Agreement Documents and this Sub-Recipient Agreement, all applicable laws, rules, regulations and requirements, including but not limited to the standards set forth in the Guidelines (as may be modified) and North Carolina General Statute § 143B-472.35.

In any event, the Sub-Recipient is liable to the City and DOC for any improper expenditures, damage, loss or harm resulting from the failure of any person or entity to comply with any applicable law, rule, regulation or requirement regarding the MSSF Grant-funded Assistance and/or the Project, including (without limitation) an act or omission by a third party. Additionally, the Sub-Recipient agrees to periodically and rigorously monitor and audit its sub-recipients and third party(ies) to ensure compliance with all applicable requirements.

Any subcontracts or sub-recipient agreements entered into by the Sub-Recipient with Grant funds, or subsequently reimbursed funds, shall be subject to all terms and conditions of the Grant Agreement Documents and this Sub-Recipient Agreement and shall contain the provisions set forth in Exhibit D of the Grant Agreement. Payment of all subcontractors, sub-recipients and third party(ies) shall be the sole responsibility of the Sub-Recipient, and the City and/or DOC shall not be obligated to pay for any work performed by any subcontractor, sub-recipient or other third party.

14. Reimbursement to City for Improper Expenditures of Grant-Funded Assistance Received. Entity will reimburse City for any amount of Assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Entity shall be responsible for the performance of all subcontractors and sub-recipients and shall not be relieved of any of the duties and responsibilities of this Sub-Recipient Agreement as a result of entering into subcontracts or sub-recipient agreements.
15. Timely Execution. Entity's failure to execute and return a copy of this Sub-Recipient Agreement within sixty (60) days of the date of DOC's representative's signature on the Grant Agreement may be deemed by the City to constitute Entity's rejection of the MSSF Grant (Assistance) and cause for DOC to determine the Grant funds available for reallocation to other entities.
16. Timely Submission of SEPA and SHPO Requests. Entity must submit, or do whatever is necessary in order for the City to submit, all required documentation to SHPO and the State SEPA Clearinghouse within sixty (60) days of the DOC's representative's signature on the Grant Agreement. In the event such submissions are not made, the City and/or DOC may deem such failure to constitute Entity's rejection of the MSSF Grant (Assistance) and cause for DOC to determine the funds are available for reallocation to other entities.
17. Reports. Entity must assist and provide the City, in a timely manner, with any information that is necessary for the City to prepare and file an annual written progress report to the North Carolina Main Street Center prior to July 15th of each year until the

close-out of the Grant. In addition to any other information that may be requested by the City, Entity shall provide the City with the following for the City's annual report:

- a. The total amount of public and private funds that was committed and the amount that was invested in the Project during the preceding fiscal year.
- b. The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
- c. A description of how the grant and funds from private investors were used during the preceding fiscal year.
- d. A description of the economic impact on small business, including jobs retained or created.
- e. Details regarding the types of private investment created or stimulated; the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

In addition, Sub-Recipient shall assist and provide the City, in a timely manner, with any information that is necessary for the City to prepare and file other reports as may be required or requested by DOC, including quarterly reports due on October 15th, January 15th and April 15th of each year of the Grant, in addition to the annual report due to DOC on July 15th of each year of the Grant, unless waived by DOC. In addition, Entity shall, as needed, provide any information requested by the City to the City, in a timely manner, to assist or allow the City to satisfy any other applicable reporting requirements. Entity also shall submit, in a timely manner, any backup materials and supporting documentation as may be deemed necessary by the City and/or DOC.

Any misrepresentation by Sub-Recipient in any report to DOC or City shall constitute a breach of this Sub-Recipient Agreement and shall entitle DOC and/or the City to any remedy as set forth herein in the Grant Agreement or as otherwise allowed by law.

18. Access to Records. Sub-Recipient hereby grants the City, the State of North Carolina, and any of its related agencies, commissions or departments (including, without limitation, DOC, the North Carolina State Auditor and the North Carolina Office of Budget and Management) and any of their authorized representatives, at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the Grant (Assistance) for a period of five (5) years (or such longer time as may be provided by applicable law, rule, regulation or requirement) following the completion of all Grant close-out procedures.
19. Audits and Monitoring. Sub-Recipient agrees to ensure compliance with such monitoring and auditing requirements as requested by the City as well as DOC and Sub-Recipient agrees to provide its assistance to the City. Additionally, Sub-Recipient shall constantly monitor all performance under Grant-supported activities, including activities performed by sub-recipients to ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved.

Such obligations to comply with the City's monitoring activities shall survive Grant closeout and the termination of this Sub-Recipient Agreement.

20. Disbursements. Disbursements from the City to Sub-Recipient will be made on a reimbursement basis upon completion of the Project and upon DOC as well as City approval. Among other items that may be requested by DOC or the City, Sub-Recipient shall submit back-up/supporting documentation for all Assistance requested, in form and content satisfactory to DOC or the City and as DOC or the City may request, for DOC or the City to review and approve prior to disbursement. Sub-Recipient acknowledges that no disbursement will be made until DOC and the City have approved all expenditures as eligible (in DOC's and the City's discretion). Items that must be provided to DOC and the City prior to disbursement include (without limitation) a certificate of occupancy for any Project properties (or some proof of completion from a building inspector or other sign-off if a certificate of occupancy is not required). In DOC's discretion, DOC may allow reimbursement payments for certain distinct and self-contained portions of the Project (upon receipt and approval of the items set forth above as they related to each distinct portion of the Project) prior to completion of the entire Project and the final reimbursement.

21. Insurance. During the term of this Sub-Recipient Agreement, Sub-Recipient shall ensure commercial insurance is provided of such type and with such terms and limits as may be required by DOC and the City. Unless otherwise agreed by DOC in writing, Sub-Recipient shall ensure the provision and maintenance of the coverage and limits described in Exhibit E of the Grant Agreement.

Ensuring the provision and maintenance of adequate insurance coverage is a material obligation of Sub-Recipient and is of the essence of this Sub-Recipient Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Sub-Recipient shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Sub-Recipient Agreement. The limits of coverage under each insurance policy maintained by Sub-Recipient shall not be interpreted as limiting Sub-Recipient's liability and obligations under this Sub-Recipient Agreement.

22. Sub-Recipient's Administrative Costs Not Eligible for Grant Funding. Administrative expenses of Sub-Recipient are not eligible for Grant funding. Any such use of Grant funds to cover Sub-Recipient's administrative costs is a violation of the terms of the Grant and this Sub-Recipient Agreement.

23. Release; Hold Harmless; Indemnification. Sub-Recipient hereby releases and agrees to hold entirely harmless the City, the State, DOC and all their respective sub-agencies (including, but not limited to, the Community Development Division and the Urban Development Division), employees, agents, attorneys, independent contractors, officers

and directors (collectively, the "State") from any and all liability for any purpose whatsoever, and recognizes and affirms that the City/State has not waived any immunities provided by state or federal law, such immunities being expressly preserved. Additionally, Sub-Recipient agrees to fully indemnify and provide at its sole expense, a defense for the City/State in the event of any legal proceeding, complaint or grievance where the City/State (or any part thereof), is for any reason, named as a defendant or a responding party where such proceeding relates in any way to any matter related to: (i) the Grant Agreement, (ii) this Sub-Recipient Agreement, (iii) Sub-Recipient's use or non-use of the funds described in this Sub-Recipient Agreement, or (iv) any alleged failure of any person or entity to comply with any law or duty with respect to the funds described in the Grant Agreement or this Sub-Recipient Agreement.

24. Certification Regarding Prior Loans. Sub-Recipient recognizes that, per North Carolina General Statute § 143B-431.2, DOC and the City may not make a grant award to any individual, organization or governmental unit if that individual, organization or governmental unit is currently in default on any loan made by the North Carolina Department of Commerce. Sub-Recipient hereby certifies that it is not currently in default on any loan made by DOC. As with a violation of any other section of this Sub-Recipient Agreement, DOC and the City may pursue any remedy described in the Grant Agreement or this Sub-Recipient Agreement, if it is determined that Sub-Recipient's representation under this Paragraph is false. As with other false representations under this Sub-Recipient Agreement, DOC and the City may consider all Grant funds to be "improperly expended" by Sub-Recipient if it is determined that Sub-Recipient's representation under this Paragraph is false.
25. Appropriation. Sub-Recipient recognizes that the expenditure of money deposited in the State treasury is subject to acts of appropriation by the General Assembly.
26. Bankruptcy of Third Parties.
- a. In the event any sub-recipient (or other entity other than Sub-Recipient) receiving Grant funds files bankruptcy owing Sub-Recipient, Recipient, DOC or other entities any money, it shall be the responsibility of Sub-Recipient to (i) immediately notify Recipient and (ii) pursue the claim against the debtor in bankruptcy and obtain the maximum payment allowed by law. To the extent Sub-Recipient fails to pursue the debtor in bankruptcy and obtain the maximum payment allowed by law, Sub-Recipient shall be liable to Recipient and/or DOC for all amounts that should have been awarded to Sub-Recipient in the bankruptcy proceeding if Sub-Recipient had taken the necessary action (notwithstanding whether such amounts actually would have been paid by the debtor).
 - b. If any sub-recipient should become the subject of any bankruptcy, dissolution, or insolvency proceeding, Sub-Recipient shall notify Recipient within twenty (20) days of the commencement of such proceeding. Failure to provide such notice constitutes a material default under the Sub-Recipient Agreement. In the event that Sub-Recipient or sub-recipients become the subject of any bankruptcy,

dissolution, or insolvency proceeding, the Grant shall be immediately terminated upon actual notice of such provided by DOC to Recipient.

27. Beneficiaries to this Sub-Recipient Agreement. Except as specifically provided otherwise, this Sub-Recipient Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Sub-Recipient Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to City, DOC and Sub-Recipient. Nothing contained in this Sub-Recipient Agreement shall give or allow any claim or right of action whatsoever by any other third person against the City or DOC. It is the express intention of City and DOC that any such person or entity, other than City or DOC, receiving services or benefits under this Sub-Recipient Agreement shall be deemed an incidental beneficiary only. Notwithstanding anything in this paragraph, however, nothing in this Sub-Recipient Agreement shall affect the right of City or DOC to be considered an intended third-party beneficiary of any additional agreement entered into by Sub-Recipient.
28. Subcontracting or Partnering. Sub-Recipient must provide City copies of all agreements relating to the Grant and/or Grant-funded Assistance to which Sub Recipient is a party and all such agreements must contain all applicable provisions required by law, rule, regulation, policy or other requirement. Failure to ensure that (i) these provisions are incorporated within any subcontract or other third-party contract relating to the Grant and/or Grant-funded Assistance to which Sub Recipient is a party, (ii) these provisions are complied with and/or (iii) that any other third party complies with these provisions shall constitute a material breach of this Sub-Recipient Agreement and shall entitle DOC and the City to withhold and/or recapture from Sub-Recipient any funds already disbursed or to be disbursed under this Sub-Recipient Agreement related to such failure. In addition to any provisions normally required by applicable law, rule, regulation and requirement, such provisions required for subcontracts or other third-party contracts to which Sub-Recipient is a party include the requirements listed as Exhibit D of the Grant Agreement. For Sub-Recipient's protection, it is recommended that Sub-Recipient require its sub-recipients, contractors, agents or assigns to include these provisions in their contracts.
29. Waiver of Default. Waiver by DOC or the City of any default or breach in compliance with the terms of this Sub-Recipient Agreement by Sub-Recipient shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification of the terms of this Sub-Recipient Agreement unless stated to be such in writing, signed by an authorized representative of DOC, the City and Sub-Recipient, and attached to this Sub-Recipient Agreement.
30. Survival of Promises. All promises, requirements, terms, conditions, provisions, representations, guarantees, obligations of and warranties by Sub-Recipient, as well as DOC's and the City's ability to recover any funds used inappropriately or take other corrective action, as described herein, shall survive the contract expiration or termination date unless specifically provided otherwise herein.

31. Future Cooperation. City and Sub-Recipient agree to cooperate fully with one another, to execute any and all supplementary documents and/or agreements that may be necessary or helpful to give full force and effect to the terms of this Sub-Recipient Agreement and to the Parties' intentions in entering this Sub-Recipient Agreement.
32. Severability. Each provision of this Sub-Recipient Agreement is intended to be severable and, if any provision of this Sub-Recipient Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Sub-Recipient Agreement, but this Sub-Recipient Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
33. Illegal Aliens. No costs incurred as a result of work performed by illegal aliens shall be eligible for reimbursement by Grant funds. As such, in submitting a reimbursement request to City for payment, Sub-Recipient shall be required to certify to DOC and the City that the expenses for which reimbursement is sought were not incurred as a result of work performed by illegal aliens.
34. Project Changes. For the purposes of this Sub-Recipient Agreement, a "Project Change" is defined as any alteration, addition, deletion, or expansion of the Project description included in the Grant Agreement Documents or in any approved application to DOC relating to the Grant. Examples of Project Changes include (without limitation) changes to construction or rehabilitation, the terms or conditions of revolving loans, tenants or tenant mix, anticipated jobs, or changes in direct or private investment to small businesses. Additionally, any of Sub-Recipient's sub-recipients, contractors, agents or assigns filing of bankruptcy prior to project closeout shall be deemed to be a Project Change.
35. Project Amendment Request. Sub-Recipient acknowledges and understands that upon the occurrence of any event that necessitates a Project Change, Recipient has sixty (60) days from the date of the occurrence to submit a Project Amendment Request (supported by appropriate minutes, resolution or other authorizing action) in writing to DOC requesting a Project Change which outlines the reasons and timeline for these changes. If such Project Amendment Request is not submitted within sixty (60) days from the occurrence of the event necessitating the Project Amendment Request, DOC (in DOC's sole discretion) may declare the entire Grant forfeited. In any event, **this Project Amendment Request must be submitted prior to additional expenses being incurred.**

Upon receipt of a Project Amendment Request, DOC requires thirty (30) days to review the proposed Project Change. After such time, DOC will respond in writing to Recipient. All Project Amendment Requests will be rated on the same criteria as the initial application and may be approved or disapproved at the sole discretion of DOC. If such Project Amendment Request is denied, then the applicable funds related to that request shall be forfeited back to the State, which may include the total Grant.

36. Property Access. Sub-Recipient shall permit DOC and Recipient reasonable access to Sub-Recipient's property for monitoring and inspections by DOC as well as Recipient to, among other things, verify performance of the Project. Sub-Recipient acknowledges that additional state and Federal officials may have certain rights to access Sub-Recipient's property as well as the Project, and records related thereto, as more particularly specified in the terms and conditions herein and in the Grant Agreement Documents.
37. Funds Availability. Any and all payments contemplated to be made or made hereunder are contingent upon funds being provided to Recipient solely for these purposes by, and not thereafter being recalled from Recipient by, DOC. Payment of any Assistance amount is dependent as well as contingent upon and subject to the appropriation, allocation, and continuing availability of funds for these purposes to DOC and Recipient.
38. Recovery of MSSF Grant Funds. Sub-Recipient expressly acknowledges and accepts Recipient's and DOC's absolute right in their respective, sole discretions to withhold, discontinue, or recover in part or in full from Sub-Recipient any monies awarded and/or distributed pursuant to this Sub-Recipient Agreement if it is determined that the Sub-Recipient has engaged in unlawful conduct or conduct which violates the spirit and intent or the terms of the Program, including but not limited to the Grant Agreement Documents, or if the Sub-Recipient fails to comply with the terms of this Sub-Recipient Agreement. If an audit determines that Sub-Recipient expended or otherwise benefitted from any amount of this Assistance improperly or that the Sub-Recipient has failed to comply with certifications, representations, warranties and covenants made for the Assistance or that the Sub-Recipient has failed to keep records and provide access to such records as required hereunder, Sub-Recipient shall, at a minimum, be required to reimburse DOC and the City or State may pursue such other action as it deems appropriate.
39. No Assignment or Amendment. Sub-Recipient shall not assign any of its rights or obligations under this Sub-Recipient Agreement. This Sub-Recipient Agreement may not be amended or revised without written approval of both Parties and appropriate concurrence from any third party that may be required.
40. Limitation on State's and Recipient's Liability. Neither DOC; any State entity, department, board, or subdivision; or Recipient shall be liable in any manner whatsoever to any person with respect to commitments under this Sub-Recipient Agreement. Sub-Recipient's rights, if any, with respect to the MSSF Grant Assistance arise solely out of this Sub-Recipient Agreement, and it has no independent right or claim to receive, or benefit from, MSSF Grant Assistance apart from any right or claim which may arise under this Sub-Recipient Agreement. Sub-Recipient acknowledges that, in addition to the limitation on funds available as set forth hereinabove, funds available for the MSSF Grant Assistance are subject to and dependent on funding of the MSSF Grant, which is dependent on Recipient's compliance with the Grant Agreement Documents.
41. Indemnification. The Sub-Recipient agrees to indemnify and hold harmless Recipient, DOC, the State of North Carolina, and all their respective officers, agents and employees,

from any claims of third parties arising out of any act or omission of the Sub-Recipient in connection with the performance of the Sub-Recipient Agreement.

- a. Recipient assumes no liability with respect to accidents, bodily injury, illness, breach of contract, or any other damages or loss, or with respect to any claims arising out of any activities related to this Sub-Recipient Agreement, whether with respect to persons or property of Sub-Recipient or third parties. Sub-Recipient agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, Sub-Recipient agrees to indemnify, defend, and save harmless Recipient and its officers, agents and employees from any and all claims and losses arising from this Sub-Recipient Agreement, including but not limited to those claims and losses accruing or resulting to any and all authorized contractor(s), subcontractors, materialmen, laborers, and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the work contemplated by this Sub-Recipient Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by any and all authorized contractor(s) or subcontractors in the performance of the work contemplated by this Sub-Recipient Agreement.

42. Notice. All notices permitted or required to be given by one Party to the other and all questions about this Sub-Recipient Agreement from one Party to the other shall be addressed and delivered to the other Party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the Parties' respective initial Contract Administrators are set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other Party.

For the Recipient:
Blanca Shoneman, Planner
City of Washington
P.O. Box 1988
102 East 2nd Street
Washington, NC 27889
Telephone: 252-402-6888
Fax: 252-948-1965
Email: bgentile@washingtontnc.gov

For the Sub-Recipient:
Laura A. Darré, Member/Manager
Kathryn Pisciotta, Member/Manager
Cedar Grove Plantation, LLC
316 Riverside Drive
Washington, North Carolina 27889
Telephone: _____
Fax: _____
Email: _____

43. Relationship of Parties. In carrying out the terms and conditions of this Sub-Recipient Agreement, Sub-Recipient is an independent party from Recipient and is not an agent or employee of Recipient. Nothing in this Sub-Recipient Agreement shall create or be construed as creating a partnership, joint venture, or employee relationship between Recipient and Sub-Recipient.

44. Execution. This Sub-Recipient Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same agreement that shall be sufficiently evidenced by one such original counterpart.

IN WITNESS WHEREOF, upon execution of this Sub-Recipient Agreement by duly authorized representatives of Recipient and Sub-Recipient, Sub-Recipient hereby accepts the Assistance on the terms of this Sub-Recipient Agreement, effective on the date first above written. The Parties agree that this document is executed under seal for the purposes of any applicable statute of limitations.

PRE-AUDIT CERTIFICATE

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

(CITY OF WASHINGTON

_____) (SEAL)

Matt Rauschenbach,
Chief Financial Officer

**RECIPIENT:
CITY OF WASHINGTON**

ATTEST:

By: _____ (SEAL)

Joshua L. Kay, City Manager

Date: _____

Tax ID Number: 56-6001364

End of Fiscal Year: June 30th

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

**SUB-RECIPIENT:
CEDAR GROVE PLANTATION, LLC**

By: _____ (SEAL)

Date: _____

Tax ID Number: _____

End of Fiscal Year: _____

EXHIBIT 1

**Grant Agreement, including the following exhibits
as required or referenced components of this Sub-Recipient Agreement**

Exhibit A – North Carolina Main Street Solutions Fund Operating Guidelines 2010-2011

Exhibit B – Main Street Solutions Fund Grant and Project Description

Exhibit E – Insurance Requirements for Main Street Solutions Fund (“MSSF”) Projects

Exhibit F - The Secretary of the Interior’s Standards for Rehabilitation

DRAFT



North Carolina
Main Street

North Carolina Main Street Solutions Fund
Grant Program

Match Grant Agreement

The North Carolina Department of Commerce (the "DOC") represents that the City of Washington, (the "Recipient" and collectively with DOC, the "Parties"), has been selected to receive a matching grant from the North Carolina Main Street Solutions Fund, as described herein, pursuant to N.C. Gen. Stat. § 143B-472.35 and other applicable laws, rules, regulations and requirements. This agreement shall become effective on the date the Grant Agreement is signed by Recipient, subject to the terms and conditions set forth herein.

- I. **Definitions.** Except to the extent modified or supplemented by this Agreement, any term defined in Exhibit A, the Main Street Solutions Fund Operating Guidelines, shall have the same meaning when used herein.
 - (a) "Agreement" means this grant agreement and all Exhibits, which are fully incorporated herein, the approved portions of Recipient's application and other submissions included with the application, along with any subsequent amendments or supplements to any of the foregoing.
 - (b) "Assistance" or "Grant" means the grant funds provided under this Agreement in the amount of \$200,000.
 - (c) "Full-Time Job" shall mean a job maintained for at least six consecutive months after completion of the Project consisting of at least 35 hours per week of employment, eligibility for all benefits generally available for full-time employees of the business where the employees are employed, at a wage at least equal to minimum wage, and located in North Carolina. A position filled by an illegal alien shall not be considered a "Full Time Job."
 - (d) "Program" means the Main Street Solutions fund program described in and created by N.C. Gen. Stat. § 143B-472.35.
 - (e) "Project" means the downtown development program, project, or other activities for which assistance is being provided under this agreement, as described in Exhibit B.
 - (f) "Main Street Solutions Fund" or "MSSF" means the fund governed by N.C. Gen. Stat. § 143B-472.35 and other applicable law, rules, regulations and requirements, which comprises the source of the Grant.
 - (g) "Sub-recipient" means an entity receiving some portion of Grant funds from Recipient or another Sub-recipient to undertake Project activities.

I

2. **Match Grant.** The Grant is designed to provide funds to the Recipient to match funds from eligible local governments, main street organizations, downtown organizations, downtown economic development organizations, and sources other than the State or federal government on the basis of a minimum of two non-State dollars (\$2.00) for every one dollar (\$1.00) provided by the State from Main Street Solutions Fund (or such other matching amount as set forth in Exhibit B, if a higher matching requirement is specified).
3. **Duties of the Recipient.** Recipient shall perform the Project as specified in this Agreement, including (without limitation) Exhibit B, and in Recipient's Grant application as approved by DOC. Additionally, Recipient shall ensure compliance with all lawful requirements of DOC now or hereafter established regarding the Grant and the Project, including (without limitation) the Main Street Solutions Fund Program Guidelines, attached hereto as Exhibit A and fully incorporated herein, N.C. Gen. Stat. § 143B-472.35, all other applicable laws, rules, regulations, requirements or Executive Orders currently or hereafter in force. Failure to ensure compliance with any aspect of the Project (except as may be amended pursuant to this Agreement) may result in forfeit of the entire Grant or any portion thereof (in DOC's sole discretion).

Additionally, Recipient specifically acknowledges that the Grant was awarded to Recipient contingent upon Recipient's ability to ensure that all laws, rules, regulations, requirements and Executive Orders relating to the Grant and the Project are followed, including (without limitation) all North Carolina building codes and local ordinances, all requirements and conditions of the State Environmental Protection Act ("SEPA"), the State Environmental Clearinghouse, requirements of the State Historic Preservation Office ("SHPO"), the Secretary of the Interior's Standards attached hereto as Exhibit F, etc. If any aspect of the Project cannot move forward due to a violation of or non-compliance with any law, rule, regulation or requirement (including, without limitation, a North Carolina building code or local ordinance, or failure to successfully clear the SEPA or State Environmental Clearinghouse regulations or the SHPO guidelines), Recipient shall forfeit the relevant portion of the Grant and it may be awarded to third parties. In any event, DOC itself has no responsibility to ensure the fulfillment of any State building codes or local ordinances or SHPO or SEPA guidelines with respect to the Project, such responsibility resting solely with Recipient and its related Sub-recipients.

4. **Duties of Recipient with Respect to Third Party Relationships.** Recipient is responsible to DOC for ensuring compliance with the provisions of this Agreement and all applicable laws, rules, regulations and requirements, even when a third party or parties is designated to undertake all or any part of the Project.

Where any third party is used to undertake all or part of the Project (whether or not Recipient contracts directly with that third party), the contract with that third party must require the third party to comply with this Agreement, all applicable laws, rules, regulations and requirements, including but not limited to the standards set forth in

Exhibit A, the Main Street Solutions Fund Program Guidelines (as may be modified) and N.C. Gen. Stat. § 143B-472.35.

In any event, the Recipient is liable to DOC for any improper expenditures, damage, loss or harm resulting from the failure of any person or entity to comply with any applicable law, rule, regulation or requirement regarding the Grant funds and/or the Project, including (without limitation) an act or omission by a Sub-recipient or other third party. Additionally, the Recipient agrees to periodically and rigorously monitor and audit its Sub-recipients and other third parties to ensure compliance with all applicable requirements.

Any subcontracts or Sub-recipient agreements entered into by the Recipient with Grant funds shall be subject to all terms and conditions of this Agreement and shall contain the provisions set forth in Exhibit D. Payment of all subcontractors and Sub-recipients shall be the sole responsibility of the Recipient, and DOC shall not be obligated to pay for any work performed by any Sub-recipient.

5. Duties of Recipient with Respect to Job Creation and Retention. Recipient agrees that the Project shall be required to create or retain the number of Full-Time Jobs described in Exhibit B. Full-Time Jobs to be created must be created by the completion of the Project and retained for at least six consecutive months following completion of the Project. Likewise, Full-Time Jobs to be retained must be retained for at least six consecutive months following completion of the Project. Recipient hereby acknowledges that the Grant funding is predicated in part upon the satisfaction of this objective by Recipient and other third parties designated by Recipient. Such failure to achieve this objective will constitute a material default under the terms of this Agreement unless a Project Amendment Request (described in Paragraph 30 of this Agreement) is approved by DOC. In the event of a default due to a failure to create or retain the requisite number of Full-Time Jobs, DOC shall be entitled to pursue any remedy set forth in this agreement regarding a default by Recipient, including (without limitation) the remedies described in Paragraph 7 of this Agreement.
6. Verification of Jobs. Recipient shall ensure that any business involved in the Project shall: verify its Full-Time Job numbers to DOC (and to DOC's satisfaction) (i) at the time of the Project commencement date and/or Grant award (ii) annually, (iii) six months following the completion of the Project, and (iv) any other time requested by DOC during the term of this Agreement. Recipient shall cause the business creating or retaining the jobs to provide to Recipient and DOC, or their respective designees, full and complete access to all records of the business requested by DOC, including (without limitation) records that would be reasonably necessary to verify the number and types of Full-Time Jobs created or retained, and the wages paid to employees, including certain filings provided to the Employment Security Commission. Recipient's failure to ensure such access is provided upon reasonable request shall constitute a default under the terms of this Agreement.

7. Failure to Create/Retain Jobs. Under the MSSF Program Guidelines (Exhibit A), applicants were eligible for a maximum of \$25,000 in MSSF grant funds for each Full-Time Job retained or created per business, up to the maximum of a \$200,000 total grant. For example, applicants providing for the creation or retention of only four Full-Time Jobs would be eligible for a maximum grant of \$100,000 and applicants providing for the creation of eight or more jobs would be eligible for a maximum grant of \$200,000. As stated above, Recipient's Grant was based in part on Recipient's commitment to create and/or retain a certain number of Full-Time Jobs, as set forth in Exhibit B. If Recipient fails to create or retain eight or more Full-Time Jobs, Recipient's Grant shall be reduced in the amount of \$25,000 for each job Recipient failed to create or retain. For example, if Recipient was awarded a \$100,000 grant based, in part, on its commitment to ensure the creation or retention of four Full-Time Jobs, Recipient's Grant would be reduced to \$75,000 if Recipient was only able to create or retain three jobs for the period required by this Agreement. However, if Recipient agreed (for example) in its application and this Agreement to create or retain 15 Full-Time Jobs, and was awarded a \$200,000 grant, Recipient's grant will not be reduced if Recipient is able to create or retain only 12 Full-Time Jobs for the relevant time period set forth in this Agreement, provided Recipient seeks and obtains a Project Amendment from DOC, as discussed in Paragraphs 34 and 35 below.

In the event that all or part of the Grant is provided to Recipient prior to DOC's discovery of Recipient's failure to create or retain the required number of Full-Time Jobs for the required time period, the failure to retain or create such Full-Time Jobs shall result in Recipient's liability to DOC in the amount that the Grant was reduced as set forth in this Paragraph (whether or not such failure was the fault of Recipient or some other third party).

8. Reimbursement to DOC for Improper Expenditures of Grant Funds Received. Recipient will reimburse DOC for any amount of Assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Recipient shall be responsible for the performance of all subcontractors and Sub-recipients and shall not be relieved of any of the duties and responsibilities of this Agreement as a result of entering into subcontracts or Sub-recipient agreements.
9. Remedies for Recipient's Non-Compliance. Remedies for Recipient's non-compliance are set forth in Exhibit C, which is fully incorporated herein.
10. Timely Execution. Recipient's failure to execute and return a copy of this Agreement within 60 days of the date of the DOC representative's signature on this Agreement may be deemed by DOC to constitute Recipient's rejection of the Grant and cause for DOC to determine the funds are available for reallocation to other entities.
11. Timely Submission of SEPA and SHPO Requests. Recipient must submit all required documentation to SHPO and the State SEPA Clearinghouse within 60 days of the DOC representative's signature on this Agreement. In the event such submissions are not made, DOC may deem such failure to constitute Recipient's

rejection of the Grant and cause for DOC to determine the funds are available for reallocation to other entities.

12. **Reports.** Recipient must prepare and file an annual written progress report to the North Carolina Main Street Center prior to July 15 of each year until the closeout of the Grant. In addition to any other information requested by DOC (or other State entity), Recipient shall include the following in its annual report:
 - a. The total amount of public and private funds that was committed and the amount that was invested in the designated micropolitan or designated downtown area during the preceding fiscal year.
 - b. The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
 - c. A description of how the grant and funds from private investors were used during the preceding fiscal year.
 - d. A description of the economic impact on small business, including jobs retained or created.
 - e. Details regarding the types of private investment created or stimulated; the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

In addition, Recipient shall provide such other reports as may be requested by DOC, including quarterly reports due on October 15, January 15 and April 15 of each year of the Grant in addition to the annual report due to DOC on July 15 of each year of the Grant, unless waived by DOC.

Any misrepresentation by Recipient in any report to DOC shall constitute a breach of this Agreement and shall entitle DOC to any remedy as set forth in Exhibit C or as otherwise allowed by law.

13. **Access to Records.** Recipient hereby grants the State of North Carolina, and any of its related agencies, commissions or departments (including, without limitation, DOC, the North Carolina State Auditor and the North Carolina Office of Budget and Management) and any of their authorized representatives, at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the Grant for a period of five years (or such longer time as may be provided by applicable law, rule, regulation or requirement) following the completion of all close-out procedures. Likewise, Recipient shall ensure that any Sub-recipient provides the same access.
14. **Audits and Monitoring.** Recipient agrees to ensure compliance with such monitoring and auditing requirements as requested by DOC and Recipient agrees to provide its assistance to DOC. Additionally, Recipient shall constantly monitor all performance under Grant-supported activities, including activities performed by Sub-recipients, to ensure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. Such

obligations to comply with DOC's monitoring activities shall survive grant closeout and the termination of this Agreement.

15. **Timing on Use of Funds.** Pursuant to N.C. Gen. Stat. §143B-472.35(g)(3), Recipient shall lose any funds that have not been used within three years of being selected for a grant, which is April 7, 2014. For the purposes of this Agreement, and pursuant to N.C. Gen. Stat. §143B-472.35(g)(1), funds are deemed "used" if Recipient is legally committed to spend the funds on approved activities. In any event, time is of the essence in the performance of this Agreement.
16. **Term.** The term of this Agreement shall be until February 23, 2015, unless the Parties otherwise agree. However, DOC's right to enforce violations of this Agreement shall continue until the applicable statute of limitations is expired.
17. **Disbursements.** Disbursements from DOC to Recipient will be made on a reimbursement basis upon completion of the Project and upon DOC approval. Among other items that may be requested by DOC, Recipient shall submit back-up/supporting documentation for all Assistance requested, in form and content satisfactory to DOC and as DOC may request, for DOC to review and approve prior to disbursement. Recipient acknowledges that no disbursement will be made until DOC has approved all expenditures as eligible (in DOC's sole discretion). Items that must be provided to DOC prior to dispersal include (without limitation) a certificate of occupancy for any Project properties (or some proof of completion from a building inspector or other sign-off if a certificate of occupancy is not required). In DOC's sole discretion, DOC may allow reimbursement payments for certain distinct and self-contained portions of the Project (upon receipt and approval of the items set forth above as they related to each distinct portion of the Project) prior to completion of the entire Project and the final reimbursement.
18. **Insurance.** During the term of this Agreement, Recipient shall ensure commercial insurance is provided of such type and with such terms and limits as may be required by DOC. Unless otherwise agreed by the Department in writing, Recipient shall ensure the provision and maintenance of the coverage and limits described in Exhibit E to this Agreement.

Ensuring the provision and maintenance of adequate insurance coverage is a material obligation of Recipient and is of the essence of this Agreement. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Recipient shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement. The limits of coverage under each insurance policy maintained by Recipient shall not be interpreted as limiting Recipient's liability and obligations under this Agreement.

19. Recipient's Administrative Costs Not Eligible for Grant Funding. Administrative expenses of Recipient are not eligible for Grant funding. Any such use of Grant funds to cover Recipient's administrative costs is a violation of the terms of this Grant and this Agreement. However, Recipient may use some of its administrative costs as matching funds to the Grant (rather than the Grant funds themselves), to the extent set forth in Exhibit A.
20. Release; Hold Harmless; Indemnification. Recipient hereby releases and agrees to hold entirely harmless the State, , DOC and all its sub-agencies (including, but not limited to, the Community Development Division and the Urban Development Division), employees, agents, attorneys, independent contractors, officers and directors (collectively, the "State") from any and all liability for any purpose whatsoever, and recognizes and affirms that the State has not waived any immunities provided by state or federal law, such immunities being expressly preserved. Additionally, Recipient agrees to fully indemnify and provide at its sole expense, a defense for the State in the event of any legal proceeding, complaint or grievance where the State (or any part thereof), is for any reason, named as a defendant or a responding party where such proceeding relates in any way to any matter related to: (i) this Agreement, (ii) Recipient's use or non-use of the funds described in this Agreement, or (iii) any alleged failure of any person or entity to comply with any law or duty with respect to the funds described in this Agreement.
21. Certification Regarding Prior Loans. Recipient recognizes that, per N.C. Gen. Stat. § 143B-431.2, DOC may not make a grant award to any individual, organization or governmental unit if that individual, organization or governmental unit is currently in default on any loan made by the North Carolina Department of Commerce. Recipient hereby certifies that it is not currently in default on any loan made by DOC. As with a violation of any other section of this Agreement, DOC may pursue any remedy described in this Agreement, if it is determined that Recipient's representation under this Paragraph is false. As with other false representations under this Agreement, DOC may consider all Grant funds to be "improperly expended" by Recipient if it is determined that Recipient's representation under this Paragraph is false.
22. Appropriation. Recipient recognizes that the expenditure of money deposited in the State treasury is subject to acts of appropriation by the General Assembly.
23. Bankruptcy of Third Parties. In the event that any Sub-recipient (or other entity other than Recipient) receiving Grant funds files bankruptcy owing Recipient, DOC or other entities any money, it shall be the sole responsibility of Recipient to (i) immediately notify DOC and (ii) pursue the claim against the debtor in bankruptcy to obtain the maximum payment allowed by law. To the extent that Recipient fails to pursue the debtor in bankruptcy and obtain the maximum payment allowed by law, Recipient shall be liable to DOC for all amounts that should have been awarded to Recipient in the bankruptcy proceeding if Recipient had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the debtor).

24. Bankruptcy of Sub-Recipients. If any of Recipient's Sub-recipients should become the subject of any bankruptcy, dissolution or insolvency proceeding, Recipient shall notify DOC within 20 days of the commencement of such proceeding. Failure to provide such notice constitutes a material default under this Agreement. In the event that any of Recipient's Sub-recipients become the subject of any bankruptcy, dissolution or insolvency proceeding, the Grant shall be immediately terminated upon actual notice of such provided by DOC to Recipient. However, upon receipt of such notice from DOC, Recipient will have sixty (60) days to submit an entirely new application for funding of a new or similar project. Upon receipt of a new application from Recipient, DOC requires thirty (30) days to review the proposed new project. After such time, DOC will respond in writing to Recipient. All new applications will be rated on the same criteria as the initial application and may be approved or disapproved at the sole discretion of the DOC. If the new application is denied, then the Grant and the applicable funds related to that request shall be forfeited back to the State for awarding to third parties.
25. Beneficiaries to this Agreement. Except as specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DOC and Recipient. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person against the DOC. It is the express intention of DOC and Recipient that any such person or entity, other than DOC or Recipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only. Notwithstanding anything in this paragraph, however, nothing in this Agreement shall affect the right of DOC to be considered an intended third-party beneficiary of any additional agreement entered into by Recipient.
26. Subcontracting or Partnering. Recipient must provide to DOC copies of all subcontract, partner or other agreements relating to the Grant to which Recipient is a party and all such agreements must contain all applicable provisions required by law, rule, regulation, policy or other requirement. Failure to ensure that (i) these provisions are incorporated within any subcontract or other third-party contract relating to the Grant to which Recipient is a party, (ii) these provisions are complied with and/or (iii) that any Sub-recipient or other third party complies with these provisions shall constitute a material breach of this Agreement and shall entitle DOC to withhold and/or recapture from Recipient any funds already disbursed or to be disbursed under this Agreement related to such failure. In addition to any provisions normally required by applicable law, rule, regulation and requirement, such provisions required for subcontracts or other third-party contracts to which Recipient is a party include the requirements listed as Exhibit D. For Recipient's protection, it is recommended that Recipient require its own Sub-recipients to include these provisions in contracts with third parties as well.
27. Waiver of Default. Waiver by DOC of any default or breach in compliance with the terms of this Agreement by Recipient shall not be deemed a waiver of any subsequent

default or breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of DOC and Recipient, and attached to the Agreement.

28. Survival of Promises. All promises, requirements, terms, conditions, provisions, representations, guarantees, obligations of and warranties by Recipient, as well as DOC's ability to recover any funds used inappropriately or take other corrective action, as described herein shall survive the contract expiration or termination date unless specifically provided otherwise herein.
29. Controlling Law. The validity, construction, interpretation or enforcement of this Agreement or any of its terms or provisions, as well as the rights and duties of the parties under this Agreement, are governed by the laws of the State of North Carolina. Notwithstanding anything in this Agreement to the contrary, however, DOC and Recipient agree that no terms, provisions or language in this Agreement shall be presumed or construed against any other party to this Agreement based on its involvement in the drafting of this Agreement.
30. Jurisdiction and Venue. The Parties agree and submit, solely for matters concerning this Agreement, to the exclusive jurisdiction of the courts of the State of North Carolina and agree, solely for such purposes, that the only venue for any legal proceedings involving this Agreement, its enforcement, its construction, and/or its interpretation shall be Wake County, North Carolina. The place of this Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.
31. Future Cooperation. DOC and Recipient agree to cooperate fully with one another, to execute any and all supplementary documents and/or agreements that may be necessary or helpful to give full force and effect to the terms of this Agreement and to the Parties' intentions in entering this Agreement.
32. Severability. Each provision of this Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
33. Illegal Aliens. No costs incurred as a result of work performed by illegal aliens shall be eligible for reimbursement by Grant funds. As such, in submitting a reimbursement request to DOC for payment, Recipient shall be required to certify to DOC that the expenses for which reimbursement is sought were not incurred as a result of work performed by illegal aliens.
34. Project Changes. For purposes of this Agreement, a "Project Change" is defined as any alteration, addition, deletion, or expansion of the Project description included in

Exhibit B to this Agreement or in any approved application to DOC relating to the Grant. Examples of Project Changes include (without limitation) changes to construction or rehabilitation, the terms or conditions of revolving loans, tenants or tenant mix, anticipated jobs, or changes in direct or private investment to small businesses. Additionally, any Sub-recipients' filing of bankruptcy prior to project closeout shall be deemed to be a Project Change.

35. **Project Amendment Request.** Upon the occurrence of any event that necessitates a Project Change, Recipient has sixty (60) days from the date of the occurrence to submit an amendment requesting a Project Change (a "Project Amendment Request") in writing (supported by appropriate minutes, resolution or other authorizing action) which outlines the reasons and timeline for these changes. If such Project Amendment Request is not submitted within sixty (60) days from the occurrence of the event necessitating the Project Amendment Request, DOC (in DOC's sole discretion) may declare the entire Grant forfeited. In any event, this Project Amendment Request must be submitted prior to additional expenses being incurred.

Upon receipt of a Project Amendment Request, DOC requires thirty (30) days to review the proposed Project Change. After such time, DOC will respond in writing to Recipient. All Project Amendment Requests will be rated on the same criteria as the initial application and may be approved or disapproved at the sole discretion of the DOC. If such Project Amendment Request is denied, then the applicable funds related to that request shall be forfeited back to the State, which may include the total Grant.

Upon execution of this Agreement by DOC and Recipient in the spaces below, Recipient hereby accepts the Assistance on the terms of this Agreement and as specified in Exhibit B, effective on the date indicated below, and further certifies that the official signing below has been duly authorized by Recipient's governing body to execute this Agreement.

Secretary of the North Carolina Department of Commerce

Date: April 10, 2012

By: 
Elizabeth H. Parham,
Director,
Urban Development Division,
North Carolina Department of Commerce

City of Washington

Date: _____

By: _____
Signature of Authorized Official

Printed Name

Title

**Exhibit A
Main Street Solutions Fund Program Guidelines**

**NORTH CAROLINA MAIN STREET SOLUTIONS FUND
OPERATING GUIDELINES
2010-2011**

I. FUND

A fund to be known as the Main Street Solutions Fund (the "Fund") is established in the Department of Commerce (the "Department") through N.C. Gen. Stat. § 143B-472.35 (the "Act"). This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all funds as provided in the legislative language and in these guidelines.

The Main Street Solutions Fund is a reimbursable, matching grant program. The Department of Commerce and the North Carolina Main Street Center are authorized to award grants from the Main Street Solutions Fund totaling not more than two-hundred thousand dollars (\$200,000) to each eligible local government. Funds from eligible local governments, main street organizations, downtown organizations, downtown economic development organizations, and sources other than the state or federal government must be committed to match the amount of any grant from the Main Street Solutions Fund on a basis of a minimum of two non-state dollars (\$2.00) for every one dollar (\$1.00) provided by the State from the Main Street Solutions Fund.

This is the second round of funding for this program. Only a limited number of awards are anticipated, likely between six and ten. Funds will be awarded statewide.

II. PURPOSE OF THE PROGRAM

The Program's purpose is to provide economic development planning assistance and coordinated grant support to designated micropolitans located in Tier 2 and 3 counties and to active North Carolina Main Street communities. To achieve the purposes of the program, the North Carolina Main Street Center has developed criteria for community participation and shall provide technical assistance and strategic planning support to eligible local governments. Local governments, in collaboration with a main street organization, downtown organization, or downtown economic development organization, and the small businesses that will directly benefit from these funds, may apply for grants from the Main Street Solutions Fund.

The Program is intended to strengthen the local economy and its role as a regional growth and employment hub. This is accomplished by leveraging the state's resources for small business development, spurring private investment, and providing economic development planning assistance and coordinated grant support.

The goals of this Program are:

- To provide direct financial benefit to small businesses.
- To retain and create jobs in association with small business.
- To spur private investment in association with small business.

III. ELIGIBLE APPLICANTS

Monies in the Fund shall be available to designated micropolitans located in Tier 2 and Tier 3 counties and to active North Carolina Main Street communities, including communities in a Tier 1, 2 or 3 county that have been selected by the Department to participate in the Main Street Program or the Small Town Main Street Program and that have met the reporting and eligibility requirements of the respective program by the July 31, 2010 deadline. For purposes of these guidelines, a micropolitan is a geographic entity containing an urban core and having a population of between 10,000 and 50,000 people, according to the most recent federal decennial census (2000).

Eligible communities must meet at least ONE of the following designations:

- a. Designated as a micropolitan in Tier 2 and 3 counties OR
- b. Designated as an ACTIVE North Carolina Main Street community in Tier 1, 2 or 3 counties OR
- c. Designated as an ACTIVE Small Town Main Street community in Tier 1, 2 or 3 counties.

In addition, the final list of eligible communities is determined by attendance at one of the two required Main Street Solutions Information Workshops, held on October 26, 2010 in Morganton, N.C., and November 3, 2010 in Wilson, N.C. At least one representative from either the public or the private sector from each community MUST attend one of the mandatory workshops in order to be eligible to submit a 2010-2011 application for the Main Street Solutions Fund. (The FINAL map of eligible communities will be available following the November 3, 2010 workshop.)

Municipalities are the proper legal applicants for money from the Main Street Solutions Fund. If a local Main Street organization, downtown organization, or local downtown economic development organization exists within the municipality, the municipality must submit the application jointly with the organization AND the small businesses that will directly benefit from these funds. The Main Street organization, downtown organization or downtown economic development organization may develop and propose projects to the city, which in turn may submit applications on their behalf. In addition, a small business owner, private property owner or developer may develop and propose projects to the city, Main Street organization, downtown organization or downtown economic development organization, but the projects must support the communitywide vision and economic development goals for the community and must directly benefit small businesses.

IV. ELIGIBLE ACTIVITIES

Monies in the Fund shall be used for the following activities:

- 1) Downtown economic development initiatives that do any of the following:
 - ✓ Encourage the development or redevelopment of traditional downtown areas by increasing the capacity for mixed-use centers of activity within the downtown core area. Funds may be used to support the rehabilitation of properties, utility infrastructure improvements, new construction, and the development or redevelopment of parking lots or facilities.
 - Projects must spur private investment.
 - Projects must provide direct benefit to small business retention, expansion or recruitment.
 - Projects must retain or create jobs in association with small business.
 - ✓ Attract and leverage private sector investments and entrepreneurial growth in downtown areas through strategic planning efforts, market studies and downtown master plans.
 - Projects must spur private investment.
 - Projects must provide direct benefit to small business retention, expansion or recruitment.
 - Projects must retain or create jobs in association with small business.
 - Projects must provide community education that builds a local entrepreneurial environment.
 - ✓ Attract and stimulate the growth of business professionals and entrepreneurs within downtown core areas.
 - Projects must spur private investment.
 - Projects must provide direct benefit to small business retention, expansion or recruitment.
 - Projects must retain or create jobs in association with small business.
 - Projects must provide community education that builds a local entrepreneurial environment.
 - ✓ Establish a revolving loan program for private investment and small business assistance in downtown historic properties.
 - Projects must spur private investment.
 - Projects must provide direct benefit to small business retention, expansion or recruitment.

- Projects must retain or create jobs in association with small business.
 - Projects must foster long-term property improvements and/or provide operating capital with direct benefit to small businesses.
 - Projects must demonstrate business commitment to use funds at the time of application.
 - Managing entities must have extensive experience and must demonstrate and document previous success with a revolving loan program.
- ✓ Encourage public improvement projects that are necessary to create or stimulate private investment in the designated downtown area.
- Projects must spur private investment.
 - Projects must retain or create jobs in association with small business.
 - Projects must provide direct benefit to small business retention, expansion or recruitment
- 2) Historic Preservation initiatives outside the downtown core area:
- Projects must spur private investment.
 - Projects must enhance community economic development initiatives.
 - Projects must enhance small business retention, expansion and recruitment.
 - Projects must enhance community or regional job retention or creation in association with small business.
 - Projects must provide proof of historic designation at the time of application.
- 3) Public improvement and public infrastructure outside of the downtown core area.
- Projects must spur private investment.
 - Projects must demonstrate sound municipal planning.
 - Projects must provide support for community economic development initiatives.
 - Projects must provide direct benefit to small business retention, expansion and recruitment.
 - Projects must enhance community or regional job retention or creation in association with small business.
- 4) Interlocal small business economic development projects.
- Projects must spur private investment.
 - Projects must provide direct benefit to small business retention, expansion and recruitment.
 - Projects must retain or create community or regional job creation in association with small business.
 - Projects must enhance community or regional economic growth.

Applications will be accepted where funds will be used to develop new projects or for developing another phase of an existing project, within the context of the eligible activities. Funds are not eligible for projects that are currently under construction or underway.

V. DEFINITIONS

- 1) Active North Carolina Main Street Community – A community in a Tier 1, 2 or 3 County that has been selected by the Department of Commerce to participate in the Main Street Program or the Small Town Main Street Program and that meets the reporting and eligibility requirements of the respective Programs.
- 2) Tier 1, 2 or 3 Counties – North Carolina counties annually ranked by the Department of Commerce based upon the counties' economic well-being and assigned Tier designations. The 40 most distressed counties are designated as Tier 1, the next 40 as Tier 2 and the 20 least distressed as Tier 3.
- 3) Main Street Program - The program developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic

preservation. The Office of Urban Development, under the North Carolina Department of Commerce, Division of Community Assistance, is the designated agency to administer this program for North Carolina.

- 4) **Small Town Main Street Program** – A program based upon the Main Street Program, developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic preservation. The purpose of the Small Town Main Street Program is to provide guidance to local communities that have a population of less than 7,500 and do not have a downtown manager.
- 5) **Designated Micropolitan** – A geographic entity containing an urban core and having a population of between 10,000 and 50,000 people, according to the most recent federal decennial census (2000).
- 6) **Designated Downtown Area** – A designated area within a community that is considered the primary, traditional downtown business district of its community.
- 7) **Downtown Economic Development Organization** – An agency that is part of a public-private partnership intended to develop and recruit business opportunities or to undertake economic development projects that will create jobs.
- 8) **Downtown Organization** – An agency that is part of a public-private partnership on the local level whose core mission is to revitalize the traditional downtown business district.
- 9) **Eligible Local Government** – A municipal government that is located in a designated micropolitan or an active North Carolina Main Street community.
- 10) **Historic Properties** – Properties that have been designated as historically significant by the National Register of Historic Places or a local historic properties commission.
- 11) **National Register of Historic Places** – The official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, the National Park Service's National Register of Historic Places is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources.
- 12) **Local Historic Properties Commission** – In North Carolina, the creation of such commissions is a local option authorized and governed by N.C.G.S. 160A-400.1-400.14, which enables local governing boards to establish commissions to study and recommend designation of local historic districts and landmarks. Commissions are appointed by the local governing board and operate in strict adherence to procedures and standards required by the enabling legislation.
- 13) **Interlocal Small Business Economic Development Project** – A project or a group of projects in a cluster of communities and counties or in a region that share a common economic development strategy for small business growth and job creation.
- 14) **Mixed-Use Centers** – Areas, zoned and developed for a mix of uses, including retail, service, professional, governmental, institutional and residential.
- 15) **Main Street Organizations** – An agency working in public-private partnership on the local level, guided by a professional downtown manager, board of directors or revitalization committee, and charged with administering the local Main Street Program initiative and facilitating revitalization initiatives in the traditional downtown business district through appropriate design, promotion and economic restructuring activities.

- 16) Main Street Center -- The North Carolina Main Street Center is located within the North Carolina Department of Commerce, Division of Community Assistance, Office of Urban Development, and shall receive applications and make decisions in respect to the Main Street Solutions Fund grant applications from eligible local governments.
- 17) Private Investment -- A project or a group of projects in a designated area that will spur private investment and improve property. A project must be owned and maintained by the private entity and must provide a direct benefit to small businesses.
- 18) Public Improvements and Public Infrastructure -- The improvement of property or infrastructure that is owned and maintained by a city or county.
- 19) Revolving Loan Programs for Private Investment -- A property redevelopment or small business assistance fund that is administered on the local level and that may be used to stabilize or appropriately redevelop properties located in the downtown area in connection with private investment or that may be used to provide necessary operating capital for small business creation or expansion in connection with private investment in a downtown area.
- 20) Operating Capital -- Capital that is available for the operations of a business.
- 21) Small Business - An independently owned and operated business with less than 100 employees and with annual revenues less than \$6 million.
- 22) Program -- the Main Street Solutions Fund Program and the associated grant.
- 23) Grant -- Monies awarded to eligible grantees for activities that carry out the specific purposes of the Program.

VI. GRANT AMOUNTS

The Main Street Solutions Fund is a reimbursable, matching grant program. The Department of Commerce and the North Carolina Main Street Center are authorized to award grants from the Main Street Solutions Fund totaling no more than a maximum of two-hundred thousand dollars, (\$200,000), to each eligible local government. The minimum grant that may be requested is twenty-five thousand dollars, (\$25,000). Funds from eligible local governments, main street organizations, downtown organizations or downtown economic development organizations and sources other than state or federal government must be committed to match the amount of any grant from the Main Street Solutions Fund on a basis of a minimum of two non-state/federal dollars (\$2.00) for every one dollar (\$1.00) provided by the State from the Main Street Solutions Fund.

Eligible grants are calculated based on the following formula: Applicants may apply for a maximum of \$25,000 per full-time permanent job retained or created per business. Part-time jobs may not be added together to equal a full-time job. The maximum grant award per community is \$200,000, therefore, in order for a community to receive \$200,000 in grants funds, they must:

- 1) Retain or create 8 full-time permanent jobs in the businesses that will directly benefit from the funding AND
- 2) Commit \$400,000 in non-state or federal funding to match the grant award AND
- 3) Spur private investment

If, in the performance of a particular Program, the requisite number of jobs are not created, the Department may choose to reduce the amount of the Grant available to the Grantee in an amount proportional to the level of non-performance (e.g., for a \$200,000 grant, if only 6 positions are created or retained, then the total grant may be reduced to \$150,000).

The grant match may constitute a combination of any of the following; local public or private funding which may

include:

- Cash, AND/OR
- Local community grant, AND/OR
- Investments, AND/OR
- The donation of property (an appraisal completed by a licensed appraiser, must be submitted to document value), AND/OR
- Administrative costs to administer the Main Street Solutions Grant, up to 10% (ten percent) of the total amount of the Grant, or \$40,000, whichever is less.

VII. APPLICATION DATES

All applicants must attend one of the required information workshops. Applications are due and must be received no later than close of business (5:00 p.m.) Thursday, February 10, 2011. Only completed applications that are received by the deadline will be considered. One original plus three complete copies of the application must be submitted in 3-ring loose-leaf notebooks. The original must contain an original signature of the chief elected official, the signature of the President or Chair of the Main Street Organization, Downtown Organization, or Downtown Economic Development Organization AND the signature of the CEO/CFO of all small businesses that will directly benefit from these funds on the Application Summary Form. Applications should be directed to Gloria Nance-Sinus, Director, Division of Community Assistance, 4313 Mail Service Center, Raleigh, NC 27699-4313.

VIII. GRANT AWARDS AND GRANT ADMINISTRATION

Representatives of the North Carolina Department of Commerce - Community Development programs, including but not limited to the Division of Community Assistance and the North Carolina Main Street and Small Town Main Street Programs shall:

- (1) Review a local government's application.
- (2) Determine whether the activities listed in the application are activities that are eligible for a grant.
- (3) Determine which applicants are selected to receive funds from the Main Street Solutions Fund.

A city whose application is denied may file a new or amended application.

However, award selections are not final (and the North Carolina Main Street Center and the State are not bound by any award determinations or selections of any applicant or grant) until all applicable local government parties have:

- (1) Signed a grant agreement with the State regarding the grant funds AND
- (2) Submitted applicable sub-recipient grant agreements or loan documents that have been signed by the local government and all small businesses that will receive funds AND
- (3) Have received clearance from the State Environmental Policy Act ("SEPA") AND
- (4) Have received clearance from the State Historic Preservation Office ("SHPO").

The local government grantee is responsible for monitoring any private entity benefiting from Main Street Solutions Fund money to ensure that all Project commitments are being carried out in accordance to the grant application and in a timely fashion. Main Street Solutions Fund money may not be used to pay for administrative costs; however, administrative costs may constitute up to 10% (ten percent) of the Grant, or \$40,000, whichever is less, of the applicant's matching funds or a portion of the project's leverage. Projects that use administrative costs as a portion of the match or as leverage must document these costs.

The local government grantees shall agree to release, indemnify and hold the State harmless with respect to any Main Street Solutions Funds. Additionally, grantees are required to ensure compliance with all applicable laws, rules, regulations, requirements and policies. Such requirement applies to all Project activities, whether or not the work is performed by the grantee or some other third party and whether or not Grant funds have been awarded or distributed to any third parties or sub recipients. To the extent that applicable laws, rules, policies or requirements are not followed (including, but not limited to representations made by a grantee in its application), the State can take a

variety of corrective actions, including but not limited to those remedies described in 4 N.C.A.C. 19L .1104. Among other things, this includes the right of the State to (i) withhold or deny reimbursement of the full amount of the Grant to grantee where there is noncompliance with any applicable law, rule, policy or requirement (even when such noncompliance is the result of a third party's action) and/or (ii) require the local government to repay all or part of a Grant where improper use of the funds or non-compliance with any law, rule, regulation or requirement has occurred.

IX. ACCOUNTS

The Department shall establish an account in the amount of the grant for each city that is selected. Disbursements from the Department to grant recipients will be made on a reimbursement basis upon completion of the entire Program (or distinct portions of the Program), including but not limited to revolving loan programs, and upon the Department's approval, after the grant recipient's submission of required back-up and supporting documentation and certifications to the Department.

- 1) A local government that has been selected to receive a grant shall use the full amount of the grant for the activities that were approved pursuant to the provision of this section. Funds are deemed used if the local government is legally committed to spend the funds on the approved activities.
- 2) A local government that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any funds that have not been used within three years of being selected. These unused funds shall be credited to the Main Street Solutions fund. A local government that fails to satisfy the conditions set forth in subdivision (1) of this subsection may file a new application.
- 3) Any funds repaid or credited to the Main Street Solutions Fund pursuant to subdivision (2) of this subsection shall be available to other applicants as long as the Main Street Solutions Fund is in effect.

X. MONITORING

The North Carolina Main Street Center staff will monitor the project through phone/email/letter correspondence, quarterly and annual reports (submitted by the grant recipient), all published press articles about the project (provided by the local government), on-site staff visits and other methods as the Department may deem necessary.

North Carolina Main Street Center staff will notify the grantee at least 10 days before on-site monitoring visits and will provide copies of monitoring forms to be used. Any performance findings or administrative concerns resulting from the monitoring review must be mutually resolved before a grant can be formally closed.

XI. REPORTING

The local government grant recipient must prepare and file an annual written progress report to the North Carolina Main Street Center prior to July 1 of each year AND quarterly progress reports to the North Carolina Main Street Center prior to October 15, January 15 and April 15 of each year. In addition to any other information requested by the Department (or other State entity), the local government shall include the following in its annual report:

- 1) The total amount of public and private funds that was committed and the amount that was invested in the designated micropolitan or designated downtown area during the preceding fiscal year.
- 2) The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
- 3) A description of how the grant and funds from public private investors were used during the preceding fiscal year.

- 4) A description of the economic impact on small business, including jobs retained or created.
- 5) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses retained or started, and number of jobs retained due to the approved activities. Grant recipients will be required to verify the job numbers through a certification sent to the Department and by submitting Employment Security Commission reports at the time of the grant award, annually, and six months following the close of the project.
- 6) Prior to the Department's payment of any Grant funds to a local government, the local government will also be required to provide the Department with detailed certifications of compliance with all other terms of the Grant and the Program, in such form as may be provided by the Department (unless otherwise allowed by the Department in its sole discretion).

Local government grant recipients will be subject to state audits.

In addition, The North Carolina Main Street Center will expect participants to share their success stories with the North Carolina Main Street Center. The North Carolina Main Street Center requests copies of all published press articles, TV coverage, scheduled ribbon cuttings, and other events and milestones. Periodic photographs should document project stages, events and successes.

If the proposed project requires changes prior to completion, the applicant must submit a revised application request which outlines the reasons and timeline for these changes. This must be submitted prior to additional expenses being incurred. The North Carolina Main Street Center requires thirty (30) days to review the proposed changes. The North Carolina Main Street Center will respond in writing to the applicant. All project revision requests will be rated on the same criteria as the initial application and may be approved or disapproved in the sole discretion of the North Carolina Main Street Center.

After a project financed in whole or in part pursuant to this Act has been completed, the applicant must report the actual cost of the project to the North Carolina Main Street Center.

XII. RULES

The Department may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of the Act and regulations interpreting and applying the provisions of the Act as provided in the Administrative Procedure Act.

Additionally, the Department of Commerce, Division of Community Assistance, or the North Carolina Main Street Center may amend or supplement these operating guidelines and/or application requirements at any time.

XIII: REVIEW CRITERIA

All Main Street Solutions Fund project applications will be reviewed to ensure that they meet the minimum eligibility requirements and that proposals are complete. Incomplete proposals and those that do not meet the eligibility requirements will be rejected. Alternatively, the Department (in its sole discretion) may allow applicants to repurpose aspects of a proposal to ensure eligibility.

The representatives selected to review applications will determine which applicants are recommended to receive money from the Fund. A city whose application is denied may file a new or amended application if funds are available.

Grant Selection Criteria:

- | | |
|---|-----------------|
| 1) Develops innovative solutions that directly address the needs of small businesses. | 0 - 20 points |
| 2) Spurs private investment. | 0 - 15 points |
| 3) Commits job creation and retention. | up to 15 points |
| 4) Outline benefits and impact on the community, the project area and small business. | 0 - 15 points |

- | | |
|---|-------------------------|
| 5) Demonstrates understanding of small business priorities and needs. | 0 - 15 points |
| 6) Establishes economic make-up and physical condition needs of project area. | 0 - 15 points |
| 7) Supports the vision and goals for project area | 0 - 15 points |
| 8) Establishes economic need based on NC County Tier Designation. | up to 15 points |
| 9) Establishes timeline for implementation and use of Grant funds. | up to 15 points |
| 10) Demonstrates financial feasibility. | 0 - 15 points |
| 11) Commits all project financing sources. | 0 - 15 points |
| 12) Establishes small business sustainability. | 0 - 15 points |
| 13) Leverages public and private resources (federal, state and local) for maximum impact. | 0 - 15 points |
| TOTAL | up to 200 POINTS |

XIV: RATING, RANKING & SCORING

Each application is scored competitively on criteria derived from statutory, regulatory and policy considerations. Ratings are based on general review criteria, performance and timeliness, and application response and materials received as a result of these guidelines. Each application that is determined to be complete and eligible will be scored on a two hundred (200) point scale, based on the following criteria. *Additionally, applicants that develop innovative solutions that directly address the needs of small businesses within the project area which are ready for implementation and demonstrate measurable outcomes will receive the highest scores.*

- A. **Economic Need (up to 45 points)** – Measures the applicants’ understanding of the current small business needs and conditions in the project area. Applications should outline public and private infrastructure needs, environmental needs, socio-economic needs, financial needs, etc. Applicants with the greatest need will receive the highest scores.

Criteria:

- Demonstrates understanding of small business priorities and needs 0 - 15 points
 - Application must outline all factors that hinder small business growth and success.
- Establishes economic make-up and physical condition needs of project area. 0 - 15 points
 - Application must document baseline need of all property that will directly benefit.
- Establishes economic need based on current NC County Tier Designation up to 15 points
 - (Tier 1-15 points, Tier 2-10 points, Tier 3-5 points)

UP TO 45 POINTS

- B. **Economic Innovation (up to 50 points)** – Measures the applicants’ ability to develop an innovative proposal for the Main Street Solutions Fund. The proposal described must provide direct support to small businesses in project area. The strategies should be innovative, creative and sustainable, and they must address the small business needs of downtown. Applicants that develop the most innovative solutions will receive the highest scores.

Criteria:

- Develops innovative solutions that directly address the needs of small businesses. 0 - 20 points
 - Solutions must directly address the needs of small business in the project area.
- Supports the vision and goals for the project area. 0 - 15 points
 - Proposal must outline directly how the local economy will be strengthened and improved.
- Establishes small business sustainability. 0 - 15 points
 - Strategies should establish best practices that offer long-term economic change.

UP TO 50 POINTS

- C. **Project Timeline & Capability (up to 45 points)** – Measures the applicants’ ability to complete the proposed scope of the project within the estimated timeframe as outlined in the proposal. Applicants must demonstrate that the project is ready for implementation. Proposals should exhibit a clear understanding of the costs and timeline for project completion, indicate the financial feasibility of the project based on the local market, and provide commitment from all project funding sources. Applicants that demonstrate immediate results will receive the

highest scores.

Criteria:

- Establishes timeline for implementation and use of Grant funds. (15 points – 1 year, 10 points – 2 years, 5 points – 3 years)
 - Applicant must attach project timeline.
- Demonstrates financial feasibility.
 - Applicant must attach project budget/pro forma analysis.
- Commits all project financing sources.
 - Applicant must attach commitment letters.

Up to 15 points

0 - 15 points

0 - 15 points

UP TO 45 POINTS

D. Economic Impact (up to 60 points) – Measures the impact that the proposed project will have on small business. The project proposed must effectively leverage public and private resources; demonstrate small business and job retention, expansion and/or creation; and spur private investment. Applicants that demonstrate the greatest impact will receive the highest scores.

Criteria:

- Spurs private investment.
 - Proposal must outline how investments will support small businesses.
- Commits job creation and retention.
 - Proposal must outline job commitment.
- (15 points – > 8 full-time permanent jobs plus any number of part-time jobs,
10 points – Between 4 and 8 full-time permanent jobs plus any number of part-time jobs,
5 points – Between 1 and 3 full-time permanent jobs plus any number of part-time jobs)
- Outlines benefits and impact on the community, the project area and small business. 0 - 15 points
 - Proposal must outline the short-term and long-term benefits and impact the project will have.
- Leverages public and private resources (federal, state & local) for maximum impact. 0 - 15 points
 - Proposal must outline how small businesses will directly benefit both financially and through services.

0 - 15 points

Up to 15 points

UP TO 60 POINTS

**Exhibit B
MAIN STREET SOLUTIONS FUND GRANT AND PROJECT DESCRIPTION**

Main Street Solutions Fund monies will be used to renovate the Old Town Hall and Central Fire Station, built in 1845, for a restaurant. The restaurant will be renovated according to the Secretary of the Interior's Standards for Rehabilitation. The small business will create at least 8 new full time jobs.

JOB COMMITMENT:

List each business that will retain or create jobs as a direct result of grant funds.	Total Number of existing permanent full-time employees at the time of application.	Total Number of existing permanent part-time employees at the time of application.	Total Number of permanent full-time jobs <u>retained</u> as a direct result of grant funds.	Total Number of permanent part-time jobs <u>retained</u> as a direct result of grant funds.	Total Number of permanent full-time jobs <u>created</u> as a direct result of grant funds.
Cedar Grove Plantation LLC/Old Town Hall	0	0	0	0	8

SOURCE OF FUNDS:

Source of Funds <i>(include all public & private funding sources plus all other assets)</i>	Amount	Proposed Use of Funds	Proposed or Committed	Date Funds will be Available
Cedar Grove Plantation, LLC	\$400,000	Renovation-start-up	Committed	December 16, 2010
Darre/Miller LLC	\$250,000	Renovations	Committed	June 2012
Bank Fund	\$200,000	Fixtures/Equipment	Verbal Commitment	February 2012
Business line of Credit	\$300,000	Renovation/Construction	Pending	February 2012
MS Solutions Fund	\$200,000	Renovation of Historic Building	Proposed	January 2013
Total	\$1,350,000.00			

List each federal, state or local partner.	List the resources (funds and services) that are anticipated to accomplish this project.	Are the resources Proposed or Committed?	Measure the anticipated impact of the project as a result of the resource.
City of Washington	Grants, Planning	Committed	Building Purchase, Grant Application
Beaufort County Community College (Business and Industry Services)	Resource to Business	Committed	Business guidance, plan and SBA funds
USDA	Guaranteed Business Loan	Verbal	Small Business Loan
SCORE	Business Guidance	Committed	Business Guidance
NC State Historic Preservation Office	Historic Preservation Guidance, Tax Credits	Committed	Restoration assistance and Tax Credits
Wells Fargo	Small Business Loan	Proposed	Restoration and New Construction Funds
Small Business & Technology Development Center (SBTDC)	Business plan, Business Counseling	Committed	Business Guidance, Start up assistance

DETAILED BUDGET:

Break down:

Renovation/Construction:	\$721,000.00
Inventory, Equipment Lease, POS system, Furniture, Advertising, Accounting, Tableware, Utensils, Utilities *See Pro-forma	\$55,217
Total:	\$776,217.00

Renovation Costs

<u>Work Description</u>	<u>Cost Estimate</u>
Exterior Building Renovation	
• Properly repair and restore front façade, Clean Brick, Repair and trim Windows, repair and paint Trim.	\$50,000
• Front Door, replacement , repair and paint	\$20,000
• Replace front historic awnings	\$16,000
• Install electrical Service	\$45,000
• Install HVAC system	\$40,000
• Run sewer and water to building	\$15,000
Interior Improvements	
• Demolition , clean-up and removal	\$20,000
• Repair Structure according to Structural Engineering Report	\$20,000
• Run HVAC duct system	\$20,000
• Rough in and trim electrical	\$25,000
• Repair ceiling, insulate and add missing tongue and groove boards	\$22,000

• Install furring strips, insulation and sheet rock to all exterior walls	\$35,000
• Trim out molding and seal windows	\$ 5,000
• Stabilize and point up brick interior walls	\$10,000
• Paint ceiling, walls and trim	\$30,000
• Rough in and trim plumbing	\$35,000
• Refinish and fill floor on first floor	\$20,000
• Repair and refinish floor on second floor	\$25,000
• Reconfigure main stairway	<u>\$15,000</u>
Total	\$468,000

Additional Work funded by Cedar Grove Plantation LLC

• Build commercial kitchen to code	\$100,000
• Install alarm system	\$ 15,000
• Purchase and install all restaurant equipment	\$ 70,000
• Purchase and install POS System	\$ 30,000
• Build out Bar and provide seating	\$ 30,000
• Install Dumb waiter	<u>\$ 8,000</u>
Total	\$253,000

**Exhibits C and D of Grant Agreement
Intentionally Omitted from Exhibit 1 of this Sub-Recipient Agreement**

DRAFT

Exhibit E
Insurance Requirements for Main Street Solutions Fund ("MSSF") Projects

Unless otherwise allowed by the North Carolina Department of Commerce ("DOC") in writing, Recipient shall carry, or cause to be carried, the following insurance:

(a) Commercial Property (Hazard) Insurance.

Commercial property insurance, including hazard policies, for the benefit of Recipient, the property owner (if different from Recipient) and DOC must be provided regarding MSSF-assisted property (including all fixtures and personal property). The hazard insurance certification must be in the form of an Acord 28 Evidence of Commercial Property Insurance, and the insurance must provide for thirty (30) days notice prior to cancellation. This notification requirement must be specifically stated on the evidence of property insurance. Such insurance shall name DOC as an additional insured and loss payee.

- The amount of coverage must be equal to the replacement cost.
- Deductibles in an amount satisfactory to DOC.

(b) Commercial General Liability Insurance.

Comprehensive (also known as commercial) general liability insurance on an "occurrence" basis against claims for "personal injury" liability and liability for death, bodily injury and damage to property, products and completed operations, in limits satisfactory to DOC with respect to any one occurrence and the aggregate of all occurrences per project. The liability insurance must be in the form of an Acord 25 Certificate of Liability Insurance. Such insurance shall name DOC as an additional insured and have an Additional Insured Endorsement as well as an endorsement for Notice of Non-Renewal or Cancellation.

- The amount of coverage shall be in a minimum amount of \$1,000,000.00 for bodily injury and property damage for any single occurrence and \$2,000,000.00 aggregate per location or project.
- Defense costs shall be in excess of the limit of liability.
- Deductibles in an amount satisfactory to DOC.

(c) Workers' Compensation Insurance.

If applicable, Recipient shall maintain (or shall cause to be maintained), and shall cause any MSSF-assisted property's management company to maintain, workers' compensation insurance for all employees in such amount as is required by North Carolina law.

(d) Business Interruption Insurance.

If applicable, Recipient shall maintain loss of rental value insurance or business interruption insurance in an amount acceptable to DOC and shall name DOC as an additional insured.

(e) Builder's Risk Insurance.

During any period of construction on any MSSF-assisted property, Recipient must carry, or cause to be carried, All-Risk Builder's Risk Insurance for the MSSF-assisted property providing for one hundred percent (100%) of the full replacement cost of work in place and materials stored at or upon the MSSF-assisted property. For rehabilitation projects, the building value is to be included in the Builder's Risk policy or under a separate policy. DOC is to be listed as an additional insured.

In addition to the foregoing, during any period of construction on any MSSF-assisted property, Recipient shall cause the General Contractor to provide and maintain comprehensive (commercial) general liability insurance and workers' compensation insurance for all employees of the General Contractor meeting, respectively, the requirements of items b and c above.

(f) Flood Insurance.

If at any time any portion of a MSSF-assisted structure is insurable against casualty by flood and is located in a special flood hazard area under the Flood Disaster Protection Act of 1973, as amended, a flood insurance policy in form and amount acceptable to DOC but in no amount less than the amount sufficient to meet the requirements of applicable law as such requirements may from time to time be in effect.

Each policy of insurance (i) shall be issued by one or more insurance companies each of which must have an A.M. Best Company financial and performance rating of A - VIII or better, (ii) shall be admitted in the State of North Carolina, (iii) shall provide that such policy shall not be canceled or modified without at least thirty (30) days prior written notice to Recipient and DOC (the clause shall not state that the insurer will "endeavor" to send such notice or that no liability attaches to the insurer for failure to send such notice), (iv) shall provide that any loss otherwise payable thereunder shall be payable notwithstanding any act or negligence of Recipient or other insured which might, absent such agreement, result in a forfeiture of all or a part of such insurance payment, and (v) shall list DOC's name and address exactly as:

"North Carolina Department of Commerce, Urban Development Division , 4313 Mail Service Center, Raleigh, NC 27699-4313"

Recipient shall promptly pay or cause to be paid all premiums when due on all insurance policies and, not less than thirty (30) days prior to the expiration dates of such policies, Recipient will deliver to DOC evidence satisfactory to DOC reflecting that all required insurance is current and in force.

During the term of the MSSF Project, DOC may require modifications to existing insurance or require additional insurance in its reasonable discretion.

Exhibit F
The Secretary of the Interior's Standards for Rehabilitation

North Carolina
State Historic Preservation Office

Department of Cultural Resources
Office of Archives and History
Division of Historical Resources



The Standards that follow were originally published in 1977 and revised in 1990 as part of Department of the Interior regulations (36 CFR Part 67, Historic Preservation Certifications). They pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment as well as attached, adjacent or related new construction.

The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

EXHIBIT 2

**North Carolina General Statutes
Chapter 143B: Executive Organization Act of 1973.
Article 10. Department of Commerce.
Part 15. Main Street Solutions.**

§ 143B-472.35. Establishment of fund; use of funds; application for grants; disbursal; repayment; inspections; rules; reports.

(a) A fund to be known as the Main Street Solutions Fund is established in the Department of Commerce. This Fund shall be administered by the Department of Commerce. The Department of Commerce shall be responsible for receipt and disbursement of all funds as provided in this section. Interest earnings shall be credited to the Main Street Solutions Fund.

(a1) The Main Street Solutions Fund is a reimbursable, matching grant program. The Department of Commerce and the North Carolina Main Street Center are authorized to award grants from the Main Street Solutions Fund totaling not more than two hundred thousand dollars (\$200,000) to each eligible local government. Funds from eligible local governments, main street organizations, downtown organizations, downtown economic development organizations, and sources other than the State or federal government must be committed to match the amount of any grant from the Main Street Solutions Fund on the basis of a minimum of two non-State dollars (\$2.00) for every one dollar (\$1.00) provided by the State from the Main Street Solutions Fund.

(a2) Definitions. – For purposes of this section, the following definitions shall apply:

- (1) Active North Carolina main street community. – A community in a Tier 1, 2, or 3 county that has been selected by the Department of Commerce to participate in the Main Street Program or the Small Town Main Street Program and that meets the reporting and eligibility requirements of the respective Program.
- (2) Designated downtown area. – A designated area within a community that is considered the primary, traditional downtown business district of the community.
- (3) Designated micropolitan. – A geographic entity containing an urban core and having a population of between 10,000 and 50,000 people, according to the most recent federal decennial census.
- (4) Downtown economic development organization. – An agency that is part of a public-private partnership intended to develop and recruit business opportunities or to undertake economic development projects that will create jobs.
- (5) Downtown organization. – An agency that is part of a public-private partnership on the local level and whose core mission is to revitalize a traditional downtown business district.
- (6) Eligible local government. – A municipal government that is located in a designated micropolitan or an active North Carolina main street community.

- (7) Historic properties. – Properties that have been designated as historically significant by the National Register of Historic Places or a local historic properties commission.
- (8) Interlocal small business economic development project. – A project or group of projects in a cluster of communities or counties or in a region that share a common economic development strategy for small business growth and job creation.
- (9) Main Street Center. – The agency within the North Carolina Department of Commerce, Office of Urban Development, which receives applications and makes decisions with respect to Main Street Solutions Fund grant applications from eligible local governments.
- (10) Main Street Organization. – An agency working in a public-private partnership on the local level, guided by a professional downtown manager, board of directors, or revitalization committee, and charged with administering the local Main Street Program initiative and facilitating revitalization initiatives in the traditional downtown business district through appropriate design, promotion, and economic restructuring activities.
- (11) Main Street Program. – The program developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic preservation.
- (12) Mixed-use centers. – Areas zoned and developed for a mix of uses, including retail, service, professional, governmental, institutional, and residential.
- (13) Private investment. – A project or group of projects in a designated downtown area that will spur private investment and improve property. A project must be owned and maintained by a private entity and must provide a direct benefit to small businesses.
- (14) Public improvements and public infrastructure. – The improvement of property or infrastructure that is owned and maintained by a city or county.
- (15) Revolving loan programs for private investment. – A property redevelopment or small business assistance fund that is administered on the local level and that may be used to stabilize or appropriately redevelop properties located in the downtown area in connection with private investment or that may be used to provide necessary operating capital for small business creation or expansion in connection with private investment in a designated downtown area.
- (16) Small business. – An independently owned and operated business with less than 100 employees and with annual revenues of less than six million dollars (\$6,000,000).
- (17) Small Town Main Street Program. – A program based upon the Main Street Program developed by the National Trust for Historic Preservation to promote downtown revitalization through economic development within the context of historic preservation. The purpose of the Small Town Main Street Program is to provide guidance to local communities that have a population of less than 7,500 and do not have a downtown manager.
- (18) Tier 1, 2, or 3 counties. – North Carolina counties annually ranked by the Department of Commerce based upon the counties' economic well-being and

assigned a Tier designation. The 40 most distressed counties are designated as Tier 1, the next 40 as Tier 2, and the 20 least distressed as Tier 3.

(a3) The purpose of the Main Street Program is to provide economic development planning assistance and coordinated grant support to designated micropolitans located in Tier 2 and 3 counties and to active North Carolina main street communities. To achieve the purposes of the Main Street Program, the Main Street Center shall develop criteria for community participation and shall provide technical assistance and strategic planning support to eligible local governments. Local governments, in collaboration with a main street organization, downtown organization, or downtown economic development organization, and the small businesses that will directly benefit from these funds may apply for grants from the Main Street Solutions Fund as provided in this section.

(a4) The Secretary of Commerce, through the Main Street Center, shall award grants from the Main Street Solutions Fund to eligible designated micropolitans and active North Carolina main street communities. Grant funds awarded from the Main Street Solutions Fund shall be used as provided by the provisions of this section and any rules or regulations adopted by the Secretary of Commerce.

(b) Funds in the Main Street Solutions Fund shall be available only to designated micropolitans in Tier 2 and 3 counties and to active North Carolina main street communities in the State. Funds in the Main Street Solutions Fund shall be used for any of the following eligible activities:

- (1) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (1a) Downtown economic development initiatives that do any of the following:
 - a. Encourage the development or redevelopment of traditional downtown areas by increasing the capacity for mixed-use centers of activity within downtown core areas. Funds may be used to support the rehabilitation of properties, utility infrastructure improvements, new construction, and the development or redevelopment of parking lots or facilities. Projects under this sub-subdivision must foster private investment and provide direct benefit to small business retention, expansion, or recruitment.
 - b. Attract and leverage private-sector investments and entrepreneurial growth in downtown areas through strategic planning efforts, market studies, and downtown master plans in association with direct benefit to small business retention, expansion, or recruitment.
 - c. Attract and stimulate the growth of business professionals and entrepreneurs within downtown core areas.
 - d. Establish revolving loan programs for private investment and small business assistance in downtown historic properties.
 - e. Encourage public improvement projects that are necessary to create or stimulate private investment in the designated downtown area and provide a direct benefit to small businesses.
- (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (2a) Historic preservation initiatives outside of downtown core areas that enhance:
 - (i) community economic development and small business retention, expansion, or recruitment; and
 - (ii) regional or community job creation.
- (3) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.

- (3a) Public improvements and public infrastructure outside of downtown core areas that are consistent with sound municipal planning and that support community economic development, small business retention, expansion, or recruitment, and regional or community job creation.
- (4) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (4a) Interlocal small business economic development projects designed to enhance regional economic growth and job creation.
- (5)-(7) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (c) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (c1) The application shall include each of the following:
 - (1) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
 - (1a) The proposed activities for which the funds are to be used and the projected cost of the project.
 - (2) The amount of grant funds requested for these activities.
 - (3) Projections of the dollar amount of public and private investment that are expected to occur in the designated micropolitan or designated downtown area as a direct result of the proposed activities.
 - (4) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
 - (5) An explanation of the nature of the private investment in the designated micropolitan or designated downtown area that will result from the proposed activities.
 - (6) Projections of the time needed to complete the proposed activities.
 - (7) Projections of the time needed to realize the private investment that is expected to result from the proposed activities.
 - (8) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
 - (9) Any additional or supplemental information requested by the Division.
- (d) A local government whose application is denied may file a new or amended application.
- (e) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (f) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
- (g)
 - (1) A local government that has been selected to receive a grant shall use the full amount of the grant for the activities that were approved pursuant to the provisions of this section. Funds are deemed used if the local government is legally committed to spend the funds on the approved activities.
 - (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
 - (3) A local government that fails to satisfy the condition set forth in subdivision (1) of this subsection shall lose any funds that have not been used within three years of being selected. These unused funds shall be credited to the Main Street Solutions Fund. A local government that fails to satisfy the conditions set forth in subdivision (1) of this subsection may file a new application.
 - (4) Any funds repaid or credited to the Main Street Solutions Fund pursuant to subdivision (3) of this subsection shall be available to other applicants as long as the Main Street Solutions Fund is in effect.
- (h) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
- (i) After a project financed pursuant to this section has been completed, the local government shall report the actual cost of the project to the Department of Commerce.

(j) Inspection of a project for which a grant has been awarded may be performed by personnel of the Department of Commerce. No person may be approved to perform inspections who is an officer or employee of the unit of local government to which the grant was made or who is an owner, officer, employee, or agent of a contractor or subcontractor engaged in the construction of any project for which the grant was made.

(k) The Department of Commerce may adopt, modify, and repeal rules establishing the procedures to be followed in the administration of this section and regulations interpreting and applying the provisions of this section, as provided in the Administrative Procedure Act.

(l) The Department of Commerce and local governments that have been selected to receive a grant from the Main Street Solutions Fund shall prepare and file on or before September 1 of each year with the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division a consolidated report for the preceding fiscal year concerning the allocation of grants authorized by this section.

The portion of the annual report prepared by the Department of Commerce shall set forth for the preceding fiscal year itemized and total allocations from the Main Street Solutions Fund for grants. The Department of Commerce shall also prepare a summary report of all allocations made from the fund for each fiscal year; the total funds received and allocations made and the total unallocated funds in the Fund.

The portion of the report prepared by the local government shall include each of the following:

- (1) The total amount of public and private funds that was committed and the amount that was invested in the designated micropolitan or designated downtown area during the preceding fiscal year.
- (2) Repealed by Session Laws 2010-31, s. 14.6A, effective July 1, 2010.
- (3) The total amount of grants received from the Main Street Solutions Fund during the preceding fiscal year.
- (4) Repealed by Session Laws 2009-451, s. 14.10, effective July 1, 2009.
- (5) A description of how the grant funds and funds from public and private investors were used during the preceding fiscal year.
- (6) Details regarding the types of private investment created or stimulated, the dates of this activity, the amount of public money involved, and any other pertinent information, including any jobs created, businesses started, and number of jobs retained due to the approved activities.

(m) The Department of Commerce may annually use up to seventy-five thousand dollars (\$75,000) of the funds in the Main Street Solutions Fund for expenses related to the administration of the Fund. (1989, c. 751, s. 9(c); c. 754, ss. 40(b)-(m); 1991, c. 689, s. 140(a); 1991 (Reg. Sess., 1992), c. 959, s. 72; 1993, c. 553, ss. 50, 51; 1997-456, s. 27; 2009-451, s. 14.10; 2010-31, s. 14.6A.)

EXHIBIT 3

Conservation, Historic Preservation And Maintenance Agreement
And Deed Of Easement For Historic Preservation

PK 1769 PG 8 21

FOR REGISTRATION REGISTER OF DEEDS
Jennifer Capwell, Registrar
Deerford County, NC
December 16, 2011 03:56:59 PM
Book 1759 Page 821-832
F&S, s28.08
INSTRUMENT # 2011006513



INSTRUMENT # 2011006513

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

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

CONSERVATION, HISTORIC PRESERVATION AND MAINTENANCE AGREEMENT
AND DEED OF EASEMENT FOR HISTORIC PRESERVATION

THIS CONSERVATION, HISTORIC PRESERVATION AND MAINTENANCE AGREEMENT AND DEED OF EASEMENT FOR HISTORIC PRESERVATION ("Preservation Agreement"), is made and entered into this the 16th day of December, 2011, by and between CEDAR GROVE PLANTATION LLC, a limited liability company of the State of North Carolina, (hereinafter "Grantor"), whose address is 316 Riverside Drive, Washington, North Carolina, 27889, and, and to, the CITY OF WASHINGTON, a municipal corporation of the State of North Carolina, (hereinafter "Grantee"), whose address is 102 East 2nd Street, Washington, North Carolina 27889.

I. RECITALS

A. WHEREAS, the North Carolina General Assembly has enacted the Conservation and Historic Preservation Agreements Act, North Carolina General Statute ("NCGS") Chapter 121, Article 4 (the "Act") validating restrictions, reservations, easements, covenants, conditions or otherwise, in any deed or other instrument executed by any owner of land appropriate to preservation of a structure or site historically significant for its architectural, archaeological or historical associations to forbid or limit any or all alteration, alterations in exterior or interior features of the structure, changes in appearance or condition of the site, uses not historically appropriate or other acts or uses not supportive of or detrimental to appropriate preservation of the structure or site.

B. WHEREAS, Grantee, as a city and municipal corporation of the State of North Carolina, qualifies as a holder of preservation agreements pursuant to the Act.

C. WHEREAS, Grantor owns the real property described below upon which there is located a structure that once housed the City of Washington Fire House and later City Hall and is

THE GRANTOR HERIN STATES THAT THE PROPERTY DESCRIBED IN THIS DEED IS _____
OR IS NOT ITS PRINCIPAL RESIDENCE. (Please initial correct blank)

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

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commonly known alternatively as the original Washington Fire House and Old City Hall (any hereinafter be referred to as the "Property" and/or "Old City Hall").

D. WHEREAS, said Property and Old City Hall is of recognized historical, cultural and architectural significance and preservation thereof is vital to preserving the history of the City of Washington and will contribute to efforts to revitalize the City of Washington's Downtown Business District as well as help to build and redefine the brand for the City of Washington.

E. WHEREAS, Grantor and Grantee agree that the exterior architectural features of Old City Hall are elements contributing to the historical, cultural, and architectural significance of the Property, shall be retained or replaced only in kind and only so long as any such retention or replacement is in keeping with the period reflected by the front façade of the structure, and may be referred to hereinafter collectively as the Property's "Conservation Values" and/or "Architectural Features". Notwithstanding anything herein to the contrary, it is understood by the parties hereto that Grantor intends and will be allowed to construct an addition to the rear of the structure to house a modern commercial kitchen and restrooms.

F. WHEREAS, Grantee and Grantor desire that Old City Hall be rehabilitated and preserved for the enjoyment and edification of future generations.

G. WHEREAS, Grantee and Grantor recognize that Old City Hall may need to be adapted and altered, where necessary, to provide for contemporary conveniences, and to accommodate contemporary uses, while at the same time retaining its Conservation Values and Architectural Features.

H. WHEREAS, Grantee and Grantor both desire and agree that the Property shall not be subdivided except to allow for first floor commercial/retail usage, and second floor commercial retail or residential usage in order to preserve the integrity of the site.

I. WHEREAS, the parties hereto acknowledge the conveyance from Grantor to Grantee of this Preservation Agreement pursuant to the Act will provide a method for preserving the Property.

J. WHEREAS, the parties hereto intend this document to be a conservation and/or preservation agreement as defined by the Act, and to create an interest in real property held by Grantee.

K. WHEREAS, the designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter gender as required by context.

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) and in consideration of the promises as well as the mutual benefits recited herein, together with other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged by the parties, and pursuant to the Act, the parties hereto enter into this Preservation Agreement, and Grantor hereby unconditionally and irrevocably gives, grants, bargains, sells and does hereby convey forever and in perpetuity to Grantee, its successors and assigns, and Grantee hereby accepts, an easement in gross, in perpetuity, of the nature and character and to the extent herein set forth, together with the right to preserve and protect the Conservation Values as well as Architectural Features and to further the conservation as well as

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preservation purposes as described herein, in, on, and to that certain tract or parcel of land located in the City of Washington, Beaufort County, North Carolina, commonly known as 126 North Market Street, Washington, and more particularly described as follows.

BEGINNING at an X out in concrete, said X being more particularly located by beginning at US Coast and Geodetic Station "Z-25" and running therefrom South 60° 30' 10" West 240.44 feet to an X in concrete, the point and place of beginning. Thence from said beginning point so located South 41° 30' 00" West 42.24 feet to a nail set in a common wall between the property described herein and the property now or formerly owned by Gregory M. Ward; thence with the centerline of said wall and continuing North 47° 51' 48" West 101.94 feet to an iron rebar; thence North 42° 01' 15" East 41.29 feet to a magnetic nail; thence South 48° 23' 55" East 101.56 feet to an X out in concrete, the point and place of beginning and being the same property as shown on that certain survey by Waters Surveying, Inc. dated May 29, 2009 and being that same property deeded to the City of Washington by deed dated October 7, 2009 recorded in Book 1699, Page 981, Beaufort County Registry, to which survey and deed reference is herein made for a more complete and adequate description.

TO HAVE AND TO HOLD the same, together with all and singular, the rights, ways, privileges and appurtenances thereto belonging or in anywise appertaining unto the said Grantee, his successors and assigns, subject, however, to the recitals hereinabove and the following.

II. DURATION OF EASEMENT

Except for termination as expressly provided for herein, this Preservation Agreement shall remain in effect in perpetuity. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its personal representatives, heirs, successors, assigns, licensees, agents, and licensees.

III. CONSERVATION PURPOSE

It is the purpose of this Preservation Agreement to assure that the Conservation Values as well as Architectural Features, and the historic as well as cultural features of the Property, will be retained and maintained forever in their current condition for conservation and preservation purposes, and to prevent any use or change of the Property that will impair or interfere with the Property's Conservation Values or Architectural Features. Grantor and Grantee agree that in order to preserve the Conservation Values as well as Architectural Features, no removal, relocation or alteration of the Property's Conservation Values or Architectural Features should be made except as provided for herein.

IV. GRANTOR'S RESERVATION OF RIGHTS AND DECLARATION OF WARRANTIES, COVENANTS AND OBLIGATIONS

Grantor, for itself, its administrators, successors or assigns, agrees as follows.

A. Title. Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Preservation Agreement; that the Property is free and clear of any and all encumbrances, except easements, rights-of-way and restrictions of record in the Beaufort County Registry, none of which would nullify, impair or limit in any way the terms or effect of this Preservation

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Agreement; Grantor warrants and shall defend the title against the lawful claims of all persons claiming by, under or through said Grantor; and Grantor covenants that Grantee, its successors and assigns, shall have the right to monitor and defend the terms of this Preservation Agreement.

B. Reservation of Rights. Grantor reserves unto itself the right to engage in all of those acts and uses that (i) are permitted by law; (ii) do not impair the Conservation Values or Architectural Features; and (iii) are not inconsistent with the terms of this Agreement or with the conservation as well as preservation purposes hereof.

C. Rehabilitation. Grantor shall work diligently to complete the work necessary to preserve, rehabilitate and restore Old City Hall ("Preservation Project") in accordance with the following.

1. The parties hereto entered into an Offer to Purchase and Contract dated November 14, 2011 that contained a Preservation Plan. Said Offer to Purchase and Contract as well as Preservation Plan are incorporated herein by reference as if fully set forth. Said rehabilitation, including Preservation Project and Preservation Plan, shall be subject to any and all certificates and permits that may be required and shall not obviate Grantor's obligation to obtain any and all certificates or permits that may be required. The bodies or individuals responsible for issuing any such certificates or permits shall retain complete approval authority for the same, in their respective sole discretions, and their decisions thereon shall not be influenced or affected in any way by said Offer to Purchase and Contract, this Preservation Agreement, or the existence of said Preservation Plan.

2. Said rehabilitation, including Preservation Project and Preservation Plan, shall be performed consistent with the City's Historic District Guidelines for Existing Structures, as may be amended ("Guidelines"), and *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*, as may be amended ("Secretary Standards"), and any other law, code, rule or guideline applicable to the Property and said work. The above referenced Guidelines and Secretary Standards are incorporated herein by reference as if fully set forth. In the event of any conflict or inconsistency between this Preservation Agreement, the Guidelines, and the Secretary Standards, this Preservation Agreement, the Guidelines, and the Secretary Standards shall prevail in that order.

3. Prior to commencing any work on the Preservation Project, Grantor shall finalize said Preservation Plan and, in any event, shall promptly apply within ninety (90) days hereof for, pursue diligently as well as in good faith, and be responsible for obtaining and paying any requisite fee(s) for, any and all certificates and permits required for the Preservation Project, including but not limited to a Certificate of Appropriateness from the City of Washington's Historic Preservation Commission ("HPC"). Finalization of the Preservation Plan shall be consistent with the spirit and concept of the Preservation Plan as initially submitted and accepted. No work shall be permitted on the Property unless the same is consistent with said applicable certificates and permits that are required and obtained.

4. Grantor shall commence the work in furtherance of the Preservation Project within thirty (30) days of receipt of all required certificates and permits and shall

5) Conservation, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

complete all work consistent with all such certificates and permits within twelve (12) months of the date hereof. Grantor covenants and agrees to complete the Preservation Project according to the terms, conditions, and deadlines of this Preservation Agreement and any and all required certificates or permits. In the event the City Manager, in his sole discretion, finds that circumstances have occurred that were beyond Grantor's control; then, in that event, the City Manager, in his sole discretion, may extend the above twelve (12) month deadline.

D. Continuing Maintenance and Repair Obligation. After completion of the Preservation Project, Grantor covenants and agrees to continuously maintain, repair, and administer the Property in accordance with this Preservation Agreement, the Guidelines and the Secretary Standards so as to preserve the historical integrity of features, materials, appearances, workmanship and environment of the Property. Any necessary and appropriate maintenance required by this provision shall continuously be provided by Grantor, its heirs, successors and assigns.

E. Compliance with Laws. Any rehabilitation, construction or repair work or improvements on the Property shall be performed in accordance with all applicable federal, state, local and agency laws, ordinances, rules and regulations. Also, in making use of the Property, Grantor shall abide by all federal, state, local and agency laws, ordinances, rules and regulations. In the event that Grantor receives a notice of a violation or lien relating to the Property from any governmental authority, Grantor shall immediately, and in no event less than five (5) days from the date of receipt of said notice, furnish to Grantee a copy of such notice.

F. Subdivision. In the event the structure is subdivided, the exterior facade and bell tower shall remain a part of, and shall not be separated from, the first floor property. In the event the second floor or any portion thereof is subdivided and/or conveyed separate and apart from the first floor, no legal, property, or other legal right or interest in the exterior facade or the bell tower shall be conveyed or included with said interest in the second floor. It is the intent of this provision that the exterior facade and bell tower shall forever remain and be included with the legal interest held in the first floor.

G. No Alteration. No alteration, no physical or structural change, no changes in color, material or surfacing, shall be made to the Property, and no placement of signs or markers shall be made on the exterior of the Property without the prior written approval of HPC and only so long as the same is in compliance with any applicable ordinance in the Code of the City of Washington.

H. No Permits without Approval. No alteration, addition or additional structure shall be constructed upon the Property, nor shall permits for any such construction be applied for or obtained, unless the plans and designs for such structure, addition or additional structure have been approved in advance in writing by HPC.

I. No Demolition. Neither the Property nor any part thereof may be removed or demolished without the prior written approval of HPC.

J. Taxes. Grantor shall immediately pay when due, all taxes, special assessments and any other fees or charges that may become a lien on the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for

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the same. If Grantee ever elects to pay any taxes or assessments due on the Property in order to protect its interest in the Property, Grantor will immediately reimburse Grantee for the same.

K. Upkeep, Maintenance and Insurance. Grantor shall be solely responsible for the upkeep and maintenance of the Property, and Grantee shall have no obligation therefor. Grantor shall keep insurance on the Property and keep the Property in good repair. The Property insurance shall be obtained from an insurance company rated "A1" or better by Best's for the full replacement value against loss from the perils commonly insured under standard fire and extended coverage policies and comprehensive general liability insurance against claims for personal injury, death, and property damage. Property damage insurance shall include change in condition and building ordinance coverage, in form and amount sufficient to replace fully the damaged Property without cost or expense to Grantor or contribution or coinsurance from Grantee. Such insurance shall include Grantee's interest and name Grantee as an additional insured. Grantor shall deliver to Grantee, within ten (10) business days of Grantee's written request therefor, certificates of insurance coverage. Provided however, that whenever the Property is encumbered with a mortgage or deed of trust, nothing contained in this section shall jeopardize the prior claim, if any, of the mortgagee/lender to the insurance proceeds.

L. Casualty Loss. In the event that the Property or any part thereof is damaged or destroyed by fire, flood, windstorm, hurricane, earth movement, or other casualty, Grantor shall restore/reconstruct the Property consistent with the Guidelines, Secretary Standards, and any other law, code, rule or guideline applicable to the Property and said work.

M. Liability and Indemnification. Grantor agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless Grantee, its officers, agents, directors and employees, from and against any and all claims, actions, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorneys fees) arising out of or in connection with this Preservation Agreement including but not limited to injury to or death of any person; damage to property; injury or damage suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation, or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the Property, unless such injury or damage is caused by Grantee's negligence, or the negligence of any agent, director, or employee of Grantee.

N. Environmental Condition. The Property may contain certain hazards and hazardous materials, including but not limited to hazards or hazardous materials that result from outdated building practices or use of certain materials that may contain lead paint, asbestos, or some other hazardous material that may need to be removed or encapsulated before said structure is able to be occupied. The Grantee is not liable in any way for any such hazards, hazardous materials, defects, or other problems with the Property and Grantor expressly releases and discharges the Grantee from any and all responsibility or liability for any such hazards, hazardous materials, defects or other problems whatsoever with the Property.

V. GRANTEE'S RIGHTS AND OBLIGATIONS

This Preservation Agreement shall be administered solely by Grantee, its successors in interest or assigns; and in all subsequent conveyances of the Property, Grantee, its successors in interest or assigns shall be the sole party entitled to administer these covenants. In order to ensure the effective enforcement of this Preservation Agreement, Grantee shall have, and

7) Construction, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

Grantor hereby grants Grantee, the following rights and Grantee hereby accepts said rights and affirms the following obligations.

A. Right of Entry. At reasonable times and upon reasonable notice, the right to enter upon the Property for the purpose of inspecting the buildings and grounds to determine if there is compliance by Grantor with the terms of these covenants, and for the purpose of enforcing the terms of this Preservation Agreement.

B. Right to Monitor and Enforce. The right to prevent any activity or use on the Property that is inconsistent with the purpose of this Preservation Agreement, and to require the restoration of such areas, values or features of the Property that may be damaged by inconsistent activity or use, pursuant to the remedies set forth hereinbelow.

C. Review of Plans. In reviewing the plans and designs for any alteration, addition or additional structure, Grantee and/or HPC shall consider, among other things, the following criteria: exterior building materials; height, fenestration; roof shapes, forms and materials; surface textures; expression of architectural detailing; scale; relationship to any additions to the main structure; general form and proportion of structures; orientation to street; setback; spacing of buildings, defined as the distance between adjacent buildings; lot coverage; use of local or regional architectural traditions; and effect on archeological resources. Contemporary designs for alterations, additions or additional structures shall not be discouraged when such alterations, additions or additional structures do not negatively impact significant historical, architectural, or cultural material, and such design is contemporarily compatible with the size, color, material and character of the Property and its environment.

D. Signage. The right (i) to place a marker on the Property providing historical information and/or indicating Grantee's ownership of this Preservation Agreement, and (ii) to keep such marker clean and visible from the street.

E. Public Access: Use for Education Purposes. Researchers, scholars and groups especially interested in historic preservation shall have access to view the exterior and interior of the Property by special appointment at various times and intervals during each year. Grantee may make photographs, drawings, and other representations documenting the significant historical, cultural and architectural characteristics and features of the Property, and distribute them to magazines, newsletters, or publicly available publications, or use them to fulfill charitable and educational purposes.

VI. ADMINISTRATION, ENFORCEMENT AND REMEDIES

A. Remedies: Delay No Waiver. In the event of a violation of these covenants and restrictions, all legal and equitable remedies, including injunctive relief, specific performance, and damages, and the option to purchase the Property as further described below, shall be available to Grantee. No failure on the part of Grantee to enforce any covenant or restriction herein nor the waiver of any right hereunder by Grantee shall discharge or invalidate such covenant or restriction or any other covenant, condition or restriction hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

B. Option to Purchase. In the event of a violation of any covenant contained herein, Grantee then shall have an option to purchase the Property, provided it shall give Grantor written notice of the nature of the violation and Grantor shall not have corrected the same within the

8) Conservation, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

ninety (90) days next following the giving of said notice. The purchase of the Property, pursuant to the exercise of the option retained hereby, shall be at a price equal to the purchase price paid by Grantor to Grantee for the Property plus any documented and verifiable costs of the materials used in furtherance of the Preservation Project. Provided, however, that if there are any outstanding deeds of trust or other encumbrances against the Property, any right to purchase shall be subject to said deeds of trust or encumbrances.

C. Notice. Any notice which by any provision of this instrument is required or allowed to be given by either party to the other shall be in writing and shall be deemed to have been sufficiently given for all purposes when sent by certified or registered United States mail, postage prepaid, and addressed as follows:

If to Grantor:

Cedar Grove Plantation LLC
Laura A. Darré
Kathryn Piselotta
316 Riverside Drive
Washington, N.C. 27889

If to Grantee:

City Manager
City of Washington
102 E. Second St.
P.O. Box 1988
Washington, N.C. 27889

D. Changed Conditions. The grant or donation of this Preservation Agreement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Preservation Agreement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs which makes impossible or impractical any continued protection of the Property for conservation and preservation purposes, the restrictions contained herein may only be extinguished by written agreement executed by the parties and recorded in the Beaufort County Registry or by judicial proceedings. Upon such proceedings, such portion shall be equal to the proportionate value that Grantee's, its successors' and assigns' interest in the Property bears to the value of the Property as a whole as of the date of the recording of this Preservation Agreement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, *minus* Grantor's expenses from such transaction or proceeding. Grantee shall use its share of the proceeds from the sale in a manner consistent with the conservation and preservation purposes set forth herein.

E. Acts Beyond Grantor's Control. Nothing contained in this Preservation Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property caused by third parties, resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to Property or harm to the Property resulting from such causes.

F. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Preservation Agreement against Grantor, including, without limitation, attorney's fees, costs

9) Conservation, Historic Preservation and Maintenance Agreement and Deed of Easement For Historic Preservation - Cedar Grove Plantation LLC
of mediation, and any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Preservation Agreement, shall be paid by Grantor to Grantee.

VII. PROTECTIVE COVENANTS

The terms, conditions, provisions, and covenants of this Preservation Agreement are hereby incorporated by reference as if fully set forth as covenants into that Deed from the City of Washington to Cedar Grove Plantation, LLC recorded before but simultaneously herewith in Deed Book 1769, Page 818 of the Beaufort County Registry.

VIII. MISCELLANEOUS

A. Right of First Refusal. In case of any contemplated sale of the Property or any portion thereof by Grantor or any successor in title thereto, first refusal as to any bona fide offer to purchase must be given to Grantee, its successors or assigns. If Grantee so decides to purchase, it shall notify the then owner of its willingness to buy upon the same terms within thirty (30) days of receipt of written notice of such bona fide offer. Failure of Grantee to notify the then owner of its intention to exercise this right of first refusal within such thirty (30) day period shall free the owner to sell pursuant to the bona fide offer. In any event, the owner shall furnish a copy of this Preservation Agreement to the proposed purchaser and Grantee shall have the opportunity to explain to the proposed purchaser the terms of the Preservation Agreement prior to the closing of any sale.

B. Other Liens Subordinate. Nothing in this Preservation Agreement shall be construed to prohibit Grantor's ability to use the Property as collateral for subsequent liens or mortgages. All subsequent mortgages, liens and rights in the Property of all mortgagees as well as lienholders are subject and subordinate at all times to the rights of Grantee to enforce the purposes of this Preservation Agreement. Grantor will provide a copy of this Preservation Agreement to all mortgagees and lienholders of the Property. The subordination provisions as described above relate only to the purposes of the Preservation Agreement, namely the preservation of the Conservation Values and Architectural Features of the Property.

C. Covenants Run with the Land. Grantor hereby covenants to carry out the duties specified herein, and these restrictions shall be covenants and restrictions running with the land, which shall bind Grantor, Grantor's administrators, successors and assigns, and Grantor agrees for Grantor's administrators, successors and assigns, that, in the event the Property is sold or otherwise disposed of, the covenants and restrictions contained herein will be inserted in the deed or other instrument conveying or disposing of the Property. Provided however, that these covenants shall terminate and be of no further force or effect in the event that this Preservation Agreement is terminated pursuant to Section VI, D, hereof.

D. Assignment. Grantee may convey, assign, or transfer this Preservation Agreement to a unit of federal, state or local government or to a similar local, state, or national organization that is a *qualified organization* under Section 170(h) of the Internal Revenue Code of 1986, as may be amended, and a *qualified holder* under the Act.

E. Interpretation. This Preservation Agreement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation as well as preservation purposes protected herein.

EX 1769PO830

10 | Conservation, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

F. Merger. The Parties agree that the terms of this Preservation Agreement shall survive any merger of the fee and easement interest in the Property or any portion thereof.

G. Entire Agreement. This Preservation Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference as if fully set forth.

H. Headings. The headings of the various sections of this Preservation Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Preservation Agreement.

I. Amendments. Grantor and Grantee are free to jointly amend this Preservation Agreement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Preservation Agreement or affects the perpetual duration of this Preservation Agreement. Such amendment(s) require the written consent of both Grantor and Grantee and shall be effective upon recording in the public records of the Beaufort County Registry.

(The Remainder of this Page Intentionally Left Blank)

BK 1789 PG 831

11 | Conservation, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

IN WITNESS WHEREOF, Grantee has caused this Preservation Agreement to be executed in its name by its Mayor by proper authority duly given and Grantor has caused this Preservation Agreement to be executed in its name by its Members/Managers by proper authority duly given. This Agreement has been executed in duplicate originals, one of which is being retained by each of the parties, all as of the date first above written.

PRE-AUDIT CERTIFICATE

This Preservation 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

Anita C. Radcliffe (SEAL)
MATT RAUSCHENBACH; Anita C. Radcliffe
Chief Financial Officer
Asst. Finance Director

GRANTOR:
CEDAR GROVE PLANTATION LLC

By: *[Signature]* (SEAL)
LAURA A. DARRE, Member/Manager

By: *[Signature]* (SEAL)
KATHRYN PISCIOTTA, Member/Manager

GRANTEE:
CITY OF WASHINGTON

By: *[Signature]* (SEAL)
N. ARCHIE JENNINGS, III, Mayor



ATTEST:
[Signature] (SEAL)
CYNTHIA S. BENNETT, City Clerk

PK 1789 PG 832

12] Conservation, Historic Preservation and Maintenance Agreement and Deed Of Easement For Historic Preservation - Cedar Grove Plantation LLC

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that LAURA A. DARRÉ and KATHRYN PISCIOTTA, as Members/Managers of CEDAR GROVE PLANTATION LLC, a limited liability company of the State of North Carolina, personally came before me this day and acknowledged the due execution of the foregoing instrument for the purposes and intents therein expressed.

Witness my hand and official seal, this the 16th day of December, 2011

Carolyn A. Worsley
NOTARY PUBLIC



My Commission Expires: 10/14/2012

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

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

Witness my hand and official seal, this the 16th day of December, 2011.

Carolyn A. Worsley
NOTARY PUBLIC



My Commission Expires: 10/14/2012

Misa Raynor 3/3 gm



City of Washington
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Jennings & Members of the City Council
From: Joshua Kay, City Manager
Date: May 3, 2012
Subject: Weir Valve Building Retrofit Grant
Applicant Presentation:
Staff Presentation:

RECOMMENDATION:

I move that the City Council approve the Agreement with the Rural Development Center and the Performance and Loan Agreement with Weir Valves & Controls, USA for a building retrofit grant. Moreover I authorize the Mayor to sign all necessary documents and agreements to complete the agreements.

I further move that City Council approve the corresponding Grant Project Ordinance and Budget Amendment Ordinance for the Weir Valve Building Retrofit Grant.

BACKGROUND AND FINDINGS:

Weir Valve is upgrading its facility in order to retool for a new product line. The total project is estimated to be approximately \$999,977, and will result in 82 new jobs at the Washington plant. The City of Washington, with assistance from the Mid-East Commission, applied for and received a grant through the Rural Development Center, Inc for a grant of \$410,000. Weir Valve will provide the majority of the match through construction costs (\$569,477) and the City of Washington will provide \$20,500 to pay for administrative and management services for the grant.

Should Weir Valve not create the jobs, they would be required to pay back the grant (via the enclosed performance/loan agreement and promissory note).

This project will require a capital project account and an unbudgeted appropriation.

PREVIOUS LEGISLATIVE ACTION

None

FISCAL IMPACT

Currently Budgeted Requires additional appropriation No Fiscal Impact

SUPPORTING DOCUMENTS

None

City Attorney Review: _____ Date By: _____ (if applicable)
Finance Dept Review: _____ Date By: _____ (if applicable)
City Manager Review: JK Concur _____ Recommend Denial
_____ No Recommendation s/s/r Date
May 14, 2012

**A GRANT PROJECT ORDINANCE FOR
NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER GRANT
GRANT AWARD # 2012-220-60501-118
CITY OF WASHINGTON, N.C.
FOR FISCAL YEAR 2011-2012**

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

Section 1. The project authorized is for the rehabilitation of the Weir Valves & Controls building.

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:

74-60-4930-0400	Administration	\$ 20,500
74-60-4930-7300	Building Improvements	410,000
	Total	\$ 430,500

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

74-60-3480-3400	Grant Funds	\$ 410,000
74-60-3980-1000	Transfer from General Fund	20,500
	Total	\$ 430,500

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.

This the 14th day of May, 2012.

Mayor

Attest:

City Clerk

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

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

Section 1. That the Estimated Revenues in the General Fund be increased in the amount of \$20,500 in the account Fund Balance Appropriated, account number 10-00-3991-9110.

Section 2. That account number 10-00-4400-9201, Transfer to State Grants, Miscellaneous Non-Departmental portion of the General Fund appropriations budget be increased in the amount of \$20,500 to provide funds for a 5% grant match for administration of the NC Rural Economic Development Center Grant – Weir Valves and Controls.

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 14th day of May, 2012.

MAYOR

ATTEST:

CITY CLERK

PRIVATE OWNER AGREEMENT

THIS AGREEMENT, entered into this the 27th day of April, 2012, by and between the **City of Washington** (hereinafter referred to as "GRANTEE") and the **Rural Economic Development Center, Inc.** (hereinafter referred to as "CENTER"), a North Carolina non-profit corporation.

WITNESSETH:

THAT, WHEREAS, the CENTER was organized for the purpose of stimulating economic development and job creation in distressed areas; and

WHEREAS, in its efforts to stimulate and encourage economic development and job creation, the CENTER contracts with local governments to conduct development activities to solidify the location of a business or industry in its jurisdiction;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. Scope of Program/Other Agreements.

(a) The GRANTEE shall cause the Property Owner to execute a Loan/Performance Agreement, to develop, perform and complete the work set out in Exhibit A, B, C, and D (hereinafter referred to as the "Project") and said Project being that work described in a proposal entitled "**Project Renovate (Weir Valves & Controls USA)**" as approved by the CENTER.

(b) The parties acknowledge that the funds provided hereunder have been provided in order to facilitate the creation of jobs in the community, and are subject to return to the CENTER if such jobs are not created and maintained. Therefore, GRANTEE agrees to enter into a Loan/Performance Agreement (the "Performance Agreement") substantially in the form attached hereto as Exhibit E with the owner of any real estate on which the Project is located. In the event any sums are repaid under the Performance Agreement, all such amounts will be paid to the CENTER. The GRANTEE will insure that the Loan Performance Agreement and Promissory Note are properly executed by the Owner and GRANTEE and that the execution constitutes an enforceable agreement against the Owner. Default under this provision will obligate the GRANTEE to repay any sums due back to the Center that may not be recovered from the Owner.

(c) GRANTEE agrees to provide CENTER with any information obtained pursuant to the Performance Agreement, and to allow the CENTER to execute any rights of the GRANTEE thereunder, including any rights of access, review or monitoring.

(d) GRANTEE agrees to exercise all of its rights and duties under the Performance Agreement in a prudent manner to ensure the use of the funds for the intended purposes and objectives and to preserve the rights of the CENTER hereunder and thereunder.

2. Changes in the Project.

(a) If changes or extra work are requested and authorized in writing by the CENTER, the GRANTEE will be available to furnish, or obtain from others, the services required.

(b) Any work referred to in paragraph 2(a) above shall be the subject of a separate written agreement between the CENTER and the GRANTEE stating the costs and schedule for completing said extra work.

(c) The GRANTEE shall immediately notify the CENTER of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this paragraph.

3. Term of Agreement. The effective period of this Agreement shall commence on 4/18/2012 and shall terminate on 4/18/2014 unless sooner terminated under Paragraph 11 (the "Termination Date").

4. Funding.

(a) The CENTER grants to the GRANTEE an amount not to exceed \$410,000.00, for expenditures relating to the Project. The GRANTEE hereby represents and warrants that all such sums as may be awarded under this grant shall be utilized exclusively for the purpose of the Project.

(b) In the event the GRANTEE breaches any of the covenants or agreements contained in this Paragraph 4, or if any of the representations and warranties of Paragraph 14 are untrue as to a material fact, the GRANTEE agrees to repay to the CENTER the full amount of sums awarded under this Agreement.

5. Independent Status of the GRANTEE.

(a) It is agreed between the parties that neither this Agreement nor any provisions hereof shall be deemed to create a partnership or joint venture between the CENTER and the GRANTEE. It is further agreed that except for the rights expressly granted to the CENTER in this Agreement, it shall not have any proprietary rights in the Project.

(b) The parties acknowledge that the GRANTEE is an independent entity. The GRANTEE shall not represent itself as an employee of the CENTER nor is the Agreement intended to be construed so as to make the GRANTEE an employee of the CENTER. The GRANTEE shall not have the ability to bind the CENTER to any agreement for payment of goods or services, nor shall it represent to any person that it has such ability. The GRANTEE shall be responsible for payment of all its expenses, including rent, office expenses and all forms of compensation to employees. The GRANTEE shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Agreement. All expenses incurred by the GRANTEE are its sole responsibility, and the CENTER shall not be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. The sums awarded under this agreement shall be paid to the GRANTEE in accordance with the Schedule of Payments attached hereto as Exhibit B. Each payment set forth in Exhibit B will be paid within twenty (20) days after receipt of a written

request for payment from the GRANTEE, which request shall certify that GRANTEE has performed the required work under this Agreement and that it is entitled to receive the amount so requested.

7. Obligation of Funds. Funds provided by the CENTER may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement. All obligations outstanding as of the termination date shall be liquidated within thirty days. Prior approval shall not be required for changes, which affect the approved budget unless a budget category is exceeded by ten (10) percent or \$500.00, whichever is greater. Any changes in the approved budget, which would result in the addition or deletion of a budget category, shall require prior approval from the CENTER.

8. Reports.

(a) The GRANTEE will furnish the CENTER with detailed written progress reports on a quarterly basis or other periods specified in Exhibit C.

(b) The reports referred to in paragraph 8(a) above should describe the progress made by the GRANTEE toward achieving the purpose(s) for which the funds were awarded. This should include the successes and problems encountered during the reporting period.

(c) Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until the CENTER is in receipt of the delinquent report.

(d) All funds awarded to the GRANTEE under this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the GRANTEE acknowledges and agrees that it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of funding received by GRANTEE, and are subject to change from time to time. Upon completion, the GRANTEE agrees to forward to the CENTER one copy of any audited financial statements and accompanying reports generated covering the period that the GRANTEE has an active award contract with the CENTER. In addition to the audit and reporting requirements mandated by the State of North Carolina, the GRANTEE agrees to comply with any requests made by the CENTER from time to time for other financial and organizational materials to permit the CENTER to comply with its fiscal monitoring responsibilities.

(e) The GRANTEE agrees that within thirty (30) days after the termination of this Agreement, a Final Report shall be submitted to the CENTER, which describes the activities and accomplishments of the Project. The Final Report will include a review of performance and activities over the entire project period and will include a one-page program summary, which the CENTER can use for future publication. In that brief summary, the GRANTEE should describe the project, how it is implemented, to what degree the established project objectives were met and the difficulties encountered, what the project changed, and its cost. In addition to accounting for the use of the Project funds during the current fiscal year, the GRANTEE will submit a detailed final financial report by category showing all expenditures during the entire Project period and reports the source and amount of all other funds used to support the Project.

(f) The CENTER may request from the GRANTEE certain information, which will assist the CENTER with evaluation of the short- and long-range impact of its programs. The GRANTEE recognizes that such request may occur after the termination of this Agreement and agrees, to the extent possible, to provide such information to the CENTER.

9. Project Records.

(a) The GRANTEE shall maintain full, accurate and verifiable financial records, supporting documents, and all other pertinent data for this Project in such a manner as to clearly identify and document the expenditure of the CENTER funds provided under this Agreement separate from accounts for other awards, monetary contributions, or other revenue sources for this Project.

(b) The GRANTEE shall retain all financial records, supporting documents, and all other pertinent records related to the Project for a period of five years from the date of termination of this Agreement. In the event such records are audited, all project records shall be retained beyond the three-year period until any and all audit findings have been resolved.

(c) The GRANTEE agrees to make available to the CENTER, or its designated representative, all of its records which relate to the Project, and agrees to allow the CENTER or said representative to audit, examine and copy any and all data, documents, proceedings, records and notes of activity relating in any way to the Project. Access to these records shall be allowed upon request at any time during normal business hours and as often as the CENTER or said representative may deem necessary.

10 Publications.

(a) At the request of the CENTER, any reports, data, or other information given to, prepared or assembled by the GRANTEE under the Agreement must contain the following acknowledgment and disclaimer statement: "This material is based upon work supported in whole or part by the Rural Economic Development Center." All materials must also contain the following statement: "Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views and policies of the Rural Economic Development Center."

(b) Except as provided in paragraph 10a) above, the GRANTEE may publish or arrange for the publication of scientific and technical information resulting from work carried out under this Agreement.

(c) Upon publication of materials resulting from the work of the project, the GRANTEE shall furnish a minimum of two copies of reprints to the CENTER.

11 Termination; Availability of Funds.

(a) If the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall violate any of the covenants or stipulations of this Agreement, the CENTER shall thereupon have the right to terminate this Agreement by giving written notice to the GRANTEE of such termination and by specifying the effective date of termination. In such event, the CENTER shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the GRANTEE shall repay all unspent grant funds upon the demand of the CENTER.

(b) It is understood that the CENTER'S obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the CENTER may terminate this Agreement upon thirty (30) days written notice to the GRANTEE. All obligations of the CENTER to make payments under this Agreement shall cease as of the Termination Date.

12. Liabilities and Loss. The CENTER assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the GRANTEE under this Agreement, whether with respect to persons or property of the GRANTEE, or third parties. The GRANTEE agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the GRANTEE, to the extent allow by law, agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the GRANTEE'S violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or other unlawful matter contained in such information. The GRANTEE, to the extent allowed by law, also further agrees to indemnify, defend and save harmless the CENTER and its officers, agents and employees from any and all claims and losses accruing or resulting to any

and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the GRANTEE or its agents in the performance of the Project and this Agreement.

13. Entire Agreement. This agreement supersedes all prior agreements between the CENTER and the GRANTEE, and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both the GRANTEE and the CENTER.

14. GRANTEE Representations and Warranties. The GRANTEE hereby represents and warrants that:

(a) The GRANTEE is a unit of local government located in one of the state's 85 rural counties or an economically distressed urban county designated as Tier 1, 2, or 3 by the North Carolina Department of Commerce.

(b) The execution and delivery of this Agreement have been duly authorized by all necessary GRANTEE action and are not in contravention of law nor in contravention of the provisions of any indenture agreement or undertaking to which it is a party or by which it is bound.

(c) There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the GRANTEE'S knowledge, threatened against or affecting it, that could or might adversely affect the Project or any of the transactions contemplated by this Agreement or the validity or enforceability of this Agreement or the GRANTEE'S ability to discharge its obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, the GRANTEE shall be liable to the CENTER for repayment of the entire amount of the grant and this Agreement may be terminated by the CENTER effective upon notice.

(d) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the GRANTEE or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The GRANTEE shall provide the CENTER with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

(e) The GRANTEE is solvent.

15. Special Provisions and Conditions.

(a) Nondiscrimination. The GRANTEE agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(b) Conflict of Interest. The GRANTEE certifies that to the best of its knowledge no GRANTEE employee or officer of the GRANTEE has any pecuniary interest in the business of the CENTER or of the Agreement, and that no person associated with the GRANTEE has any interest that would conflict in any manner with the performance of the Agreement.

(c) Compliance with Laws. The GRANTEE shall at all times observe and comply with all laws, ordinances, and regulation of the State, Federal and Local governments which may in any manner affect the performance of the Agreement.

(d) Non-Assignability. The GRANTEE shall not assign any interest in the Agreement and shall not transfer any interest in the same without prior written consent of the CENTER; provided, however, that claims for money due to the GRANTEE from the CENTER under this Agreement may be assigned to any commercial bank or other financial institution without such approval.

(e) Personnel. The GRANTEE represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Agreement. Such employees shall not be employees of the CENTER. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

16. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the CENTER, Attn: **Melody Adams**
Rural Economic Development Center, Inc.
4021 Carya Drive
Raleigh, NC 27610

If to the GRANTEE: Attn: **The Honorable N. Archie Jennings, III**
City of Washington
PO Box 2226
Washington, NC 27889-2226

or addressed to such other address or to the attention of such other individual as the CENTER or the GRANTEE shall have specified in a notice delivered pursuant to this subsection.

17. Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.

18. Construction. This Agreement shall be construed and governed by the laws of the State of North Carolina.

19. Acceptance. If you agree to the grant conditions as stated, please return the original contract with your signature in the space provided. This grant may be withdrawn if your acceptance has not been received by the Rural Center within one month from the date the contract is received.

IN WITNESSETH WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

City of Washington

By: _____

Title: _____

Date: _____

Rural Economic Development Center, Inc.

By: Susan Edmunds

Title: Vice President, Finance & Administration

Date: 4/27/12



EXHIBIT A
SCOPE OF SERVICES

Project # 2012-220-60501-118

City of Washington
Project Renovate (Weir Valves & Controls USA)

NC Economic Infrastructure Fund
Building Reuse and Restoration Occupied Grant

The City of Washington will carry out the terms of this contract as follows:

I. General Project Description

The City of Washington requested **\$410,000** to support the improvement of a 45,000 sq. ft. building located at 339 Old Bath Highway. The building was constructed in 1971 and the company has operated in the facility for 39 years. Weir Valves & Controls, USA will improve the facility to accommodate the production of new high pressure flow equipment for the oil and gas industry. The company will discontinue its current production of valves and spare parts in favor of the new components. The company has a baseline employment of 66 in North Carolina and will create four **82** new, full-time jobs with an average annual salary of \$40,965 (\$26,208-\$65,000). The company will provide benefits. The total project cost is \$999,977.

Recommendation: Fund with the following modification: paving and concrete drive is excluded from reimbursement.

Objective:

Applicants and their partners must engage in the activities necessary to make fit the project building to accommodate the business needs. All work should be completed according to the eligible costs provided in the application and contractor's cost estimates submitted. All activities must meet or exceed all applicable state and local building code requirements.

For the Vacant Properties Category: only eligible work completed within the existing building footprint can be included in costs eligible for reimbursement and the required match.

For the Occupied Properties Category: only eligible work completed within the existing building footprint and/or additions to the existing building can be included in costs eligible reimbursement and the required match.

For the Rural Hope/Rural Health Category: eligible work completed within the existing building footprint and/or additions to the existing building, and/or new construction can be included in costs eligible for reimbursement and the required match.

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, fire alarm/suppression system, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

No company or its employees, in which, any project partner has an ownership or management interest in, may be used as a contractor for the renovation/construction project unless that company holds a valid NC General Contractors license. Licensed contracting companies owned or operated by any project partner that are used in the renovation/construction will be required to submit original invoices from the provider for labor, materials and subcontracted work plus proof that those invoices have been paid in full.

II. Project Financing

Financing Source(s)		Amount
City of Washington	\$	\$20,500.00
Weir Valve		\$569,477.00
NC Rural Center		\$410,000.00
Total Project Financing	\$	<u>\$999,977.00</u>

III. Project Reporting

The City of Washington will adhere to the conditions and regulations outlined in the Contract Agreement and the Loan/Performance Agreement. The City of Washington will also file reports on the dates set forth in **Exhibit C** of this contract.

EXHIBIT B PAYMENT SCHEDULE

The Rural Economic Development Center, Inc. shall make payable to the City of Washington a sum in the amount of \$410,000.00 as outlined below. The grant requires a cash match equal to the amount of Rural Center funding, which may come from either public or private sources or a combination of both. Funds provided for the match must contribute to the eligible project cost. Building acquisition equipment or startup costs will not be considered for the match. The unit of local government must contribute 5% of the grant in cash or in in-kind services.

Eligible expenses:

Eligible costs under the program include, but are not limited to: materials and labor to install HVAC, electrical, plumbing, roofing, flooring, carpentry, drywall, paint, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The following costs are specifically prohibited under the program and may not be submitted for reimbursement or the matching funds requirement: building purchase, architectural costs, engineering costs, permit fees, surveys, legal fees, machinery & equipment, telephone hardware and software, computer hardware and software, furnishings, paving, fencing, kitchen equipment, refrigeration equipment, etc. This is not an exhaustive list, grantees should contact the Rural Center for questions regarding whether a specific expense is eligible under the program.

The Rural Center will make all checks payable to the local government grantee. The Rural Center will reimburse 50% of the eligible expenditures submitted. (For example: If invoices for eligible expenses totaling \$20,000 with proof of payment are submitted, the Rural Center will reimburse \$10,000).

To request reimbursement, grantees must submit the following:

1. A completed financial request form,
2. Copies of project invoices that support the reimbursement request,
3. Proof of payment: applicants must provide copies of checks that have cleared the bank or electronic remittance information as evidence that the invoices requested for reimbursement have been paid in full, and
4. Progress reports must be up to date. See "Exhibit C" of the grant agreement for a reporting schedule specific to your project. Reimbursements will not be made if progress reports are not submitted according to the reporting schedule.

**EXHIBIT C
REPORTING SCHEDULE**

In accordance with the contractual agreement between the **City of Washington** and the Rural Economic Development Center, Inc., progress and final reports should be submitted according to the following guidelines:

Progress and Final Reports:

Grantees should submit progress reports to the Rural Center at least every six months. Refer to the reporting schedule below.

Grantees should submit a Final Report to the Rural Center when all aspects of the construction/renovation, job creation and six-month job verification period are complete.

Due Date:	Report Due:	Reporting Period:
11/18/12	Progress Report	4/18/12 to 10/18/12
5/18/13	Progress Report	10/19/12 to 4/18/13
11/18/13	Progress Report	4/19/13 to 10/18/13
5/18/14	Final Report	10/19/13 to 4/18/14

Progress/Final Reporting forms can be found under the Grant Applications and Reporting Forms link on our website at www.ncruralcenter.org

EXHIBIT D
JOB REPORTING AND CLOSE OUT REQUIREMENTS

Building Reuse/Rural Health Care/Rural Hope loans will be forgiven once the project company creates the required number of jobs and maintains that required number for at least six consecutive months. The jobs must be full-time (at least 35 hours per week) and the number must be above the baseline employment level reported in the application.

Job verification requires the submission of the following:

1. **Letter Certifying Job Creation**—the grantee must submit a letter from the project company that attests to the creation of the number of jobs committed to receive the grant. The letter should include the number of baseline employees reported at the time of application; the total number of current employees; and the six-month date range that the jobs were created and maintained. The letter should be printed on company letterhead and signed by the company's chief operating officer or chief financial officer.
2. **NCUI101 Forms**—the grantee must submit copies of the company's Employment Security Commission *Employer's Quarterly Tax and Wage Report* (NCUI 101) forms as evidence of job creation and maintenance. The forms must correspond to the six-month date range that the required jobs were maintained. If the company has more than one location in North Carolina, the names of the employees working in the project building should be highlighted.
3. **Final Report**—grantees must submit a final report that describes the activities and outcomes of the project.

Loan Release

Once all progress reports, the final report and job verification information are received and approved by the Rural Center, the applicant will be notified that the terms of the grant/loan have been met.

PRIVATE OWNER LOAN/PERFORMANCE AGREEMENT

This Loan Performance Agreement (the "Agreement") is entered into this _____ day of _____, _____ by and between the Owner of the Property located at _____ (hereinafter referred to as the "Owner") and _____ (hereinafter referred to as the "Governmental Unit"), who hereby agree as follows:

WITNESSETH:

WHEREAS, Governmental Unit has provided loan support to or for the benefit of the Owner in order to stimulate and support economic development in the local geographic area by making the Property available to the Business to create new jobs (the "Business"); and

WHEREAS, a portion of such support has come from the Rural Economic Development Center, Inc. (the "Center") pursuant to its mission to stimulate and support economic development in the rural areas of North Carolina; and

WHEREAS, the Center requires the Owner to enter into this Loan/Performance Agreement as a condition of providing the support to the Governmental Unit for this project;

NOW, THEREFORE, in consideration of the mutual promises and other valuable considerations as shall be set out herein, the parties hereto do mutually agree to the following terms and conditions:

1. **Program.** The parties have agreed to develop, perform, and complete the work set out in *Exhibits A, B, C, and D* (hereinafter referred to as the Project) and said Project being that work described in the proposal entitled **Project Renovate (Weir Valves & Controls USA)** as approved by the Center.
2. **Loan.** Governmental Unit hereby loans to the Owner the sum of **410,000.00** to fund the Project. The parties acknowledge that this Loan will be repayable only in the event the Business fails to achieve certain job creation goals described in paragraph 3 below. In the event such job creation goals are not achieved, the Owner agrees to pay to the Governmental Unit for redistribution back to the Center, the amount set forth in paragraph 5 below. As evidence of the obligation of the Owner hereunder, the Owner shall execute the promissory note, which shall also be executed by any individual owning in the aggregate at least 75% owner, which is attached hereto and incorporated herein by reference.
3. **Job Creation.** The Owner agrees that the Business shall be required to create **82** number of Jobs (defined below) within twenty-four months of **4/18/2012**, the date of the grant's approval by the Center. The Owner hereby acknowledges that the funding by the Center and the Governmental Unit is predicated upon the satisfaction of this objective by the Business, that failure to achieve this objective will constitute a material default under the terms of this Agreement, and that any such failure shall require the Owner to repay all or a portion of the Loan pursuant to the provisions of paragraph 5 below. For purposes of this Agreement, a "Job" shall mean a full-time job (consisting of at least 35 hours per week of employment and eligibility for all benefits generally available for full-time employees of the Business) with the Business, at a wage at least equal to minimum wage, and located in North Carolina. The owner agrees that the Business reported the existence of **66** full-time jobs in North Carolina (Baseline Number) at the time the application of application to the Center AND the Owner hereby acknowledges that the Jobs created to satisfy the job creation objective must exist above the Baseline Number AND that the Business must maintain the full employment level required to meet the Job Creation objective for a period of six consecutive months.

4. Verification of Jobs. On the date that the required number of required new jobs have been created and maintained for six consecutive months the Owner shall cause the Business to notify the Governmental Unit so that the Governmental Unit and the Center can verify satisfaction of the conditions. The Owner shall cause the Business to provide to the Governmental Unit and the Center, or their respective designees, full and complete access to all records of the Business that would be reasonably necessary to verify the number and types of jobs created, and the wages paid to employees. Failure to provide such access upon reasonable request shall constitute a default under the terms of this Agreement.

5. Repayment. If the Business fails to create the required number of Jobs within twenty-four months from the date of the grant's approval by the Center, the Owner shall repay to the Governmental Unit, for redistribution back to the Center, an amount equal to the product of (i) \$5,000 (the amount of loan funds divided by the number of Jobs in paragraph 3) and (ii) the number of Jobs required to be created under paragraph 3, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. If a requirement exists to repay any sums hereunder, the Governmental Unit shall notify the Owner in writing of the amount to be repaid, and shall direct it to pay such amount directly to the Center. All such amounts due hereunder shall be due upon demand by the Governmental Unit or the Center. If not paid within 30 days following demand hereunder, the unpaid amount due hereunder or any instrument securing this obligation, shall bear interest at the rate of 10 % per annum after demand until paid. Upon default in such payment, the Governmental Unit or the Center may employ an attorney to enforce their rights and remedies, and the Owner hereby agrees to pay the reasonable attorney's fees or the Governmental Unit or the Center, not exceeding a sum of 15% of the outstanding balance owing hereunder, plus all other reasonable expenses incurred by such party in exercising any of the its rights and remedies upon such defaults.

Termination of the Business prior to completion of the job creation requirements will constitute default and will cause the Local Government to suspend any further payments to the Property Owner and will require the Property Owner to repay to the Local Government any sums previously paid.

6. Records. The Owner agrees to maintain, and to cause the Business to maintain, full, accurate and verifiable records, supporting documents, and all other pertinent data for this Project to enable the verification of the requirements contained in this Agreement. All such financial records, supporting documents, and other pertinent records related to the Project shall be maintained for a period of at least 3 years from the Job Commitment Date. In the event any such records are audited, all such records shall be retained beyond the 3-year period until any and all audit findings have been resolved. The Owner agreed to make available, and to cause the Business to make available, to the Governmental Unit, the Center, or their designated representatives, all of its records which relate to the Project and the creation of Jobs, and agree to allow the Governmental Unit or the Center or their representatives to audit, examine, and copy any and all data, documents, proceedings, records and notes of activity related in any way to the Project or such Job creation. Access to these records shall be allowed upon request at any time during normal business hours, and as often as the Governmental Unit or the Center or said representatives may deem necessary.

7. Reports. The parties acknowledge that a portion of the funds which are the subject of this Agreement are appropriated by the North Carolina General Assembly. Accordingly, the Owner acknowledges and agrees that it may be subject to the audit and reporting requirements prescribed by N.C.G.S. §159-34, Local Government Finance Act-Annual Independent Audit; rules and regulations, or N.C.G.S. §143-6-23, State Grant Funds; Administration; oversight and reporting requirements; as applicable. The Owner agrees to comply with any reasonable requests made from time to time by the Center for other financial and organizational materials to permit the Center to comply with its fiscal monitoring responsibilities.

8. Representations and Warranties. The Owner hereby represents and warrants that:
 - (a) It is duly organized and existing, and, if a corporation, is duly incorporated under the laws of the state of North Carolina.

- (b) The execution and delivery of this Agreement has been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws, or other applicable organizational documents of such party, nor the provisions of any indenture, agreement, or undertaking to which it is a party or by which it is bound.
- (c) There is no action, suit, proceeding, or investigation at law or in equity for any court, public board, or body pending, or to such party's knowledge, threatened against or affecting it, that could or might adversely affect the Project, the creation of the Jobs, or any of the transactions contemplated by this Agreement, or the validity or enforceability of this Agreement or such party's ability to discharge its obligations under this Agreement. If it is subsequently found that an act, suit, proceeding or investigation did or could threaten the development of the Project or the creation of such Jobs, such party shall be liable to the Governmental Unit and to the Center for repayment of the entire amount of the Loan.
- (d) Such party shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself, and agrees in writing to be bound by all of the obligations and undertakings of such party contained in this Agreement. If such party so merges, consolidates, or sells its assets without such an undertaking being provided, such party agrees to repay to the Governmental Unit and the Center the full amount of sums loaned under this Agreement.
- (e) No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by such party or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. Such party shall provide the Governmental Unit or the Center with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.
- (f) Such party is solvent.

9. Termination; Availability of Funds

- (a) If the Owner shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or shall, violate any of the covenants or stipulations of this Agreement, the Governmental Unit shall thereupon have the right to terminate this Agreement by giving written notice to the Owner of such termination and by specifying the effective date of termination. In such event, the Governmental Unit shall have no responsibility to make additional payments under this contract after the date of termination. No further expenditures shall be made under this Agreement except for such work as shall have already been performed prior to the date of termination and the Owner shall repay all unspent grant funds upon the demand of the Governmental Unit.
- (b) It is understood that the Governmental Unit's obligation to pay any amounts under this Agreement is contingent upon the availability and continuation of funds for such purpose. In the event that funds for this Project become unavailable, the Governmental Unit may terminate this Agreement upon thirty (30) days written notice to the OWNER. All obligations of the Governmental Unit to make payments under this Agreement shall cease as of the Termination Date.

10. Liabilities and Loss. As between the Owner and the Governmental Unit, the Governmental Unit assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the Owner under this Agreement, whether with respect to persons or property of the Owner, or third parties. The Owner agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the Owner agrees to indemnify, defend and save harmless the Governmental Unit and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the Owner's violation of any proprietary right or right of privacy arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any information published resulting from the work of the Project or based on any libelous or

other unlawful matter contained in such information. The owner also further agrees to indemnify, defend, and save harmless Governmental Unit and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project and the performance of this Agreement and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Owner or its agents in the performance of the Project and this Agreement.

11. Special Provisions and Conditions.

- (a) Nondiscrimination. The Owner agrees that it will not, and will ensure that the Business will not, discriminate by reason of age, race, religion, colors, sex, national origin, or handicap related to the activities of this Agreement.
- (b) Compliance with Laws. The Owner shall at all times comply, and to cause the Business to comply, with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of the Agreement.
- (c) Non-Assignability. The Owner shall not assign any interest in the Agreement, nor should they transfer any interest in the same, without the written consent of the Governmental Unit; provided however, that claims for money due to the Owner from the Governmental Unit under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (d) Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

To the Governmental Unit: Attn: _____

If to the Owner: Attn: _____

or addressed to such other address or to the attention of such other individual as either party above shall specify in a notice pursuant to this subsection.

- (e) Execution. This Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same Agreement which shall be sufficiently evidenced by one of such original counterparts.
- (f) Construction. This Agreement shall be construed and governed by the laws of the state of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GOVERNMENTAL UNIT NAME: _____

By: _____

Title: _____

OWNER NAME: _____

By: _____

Title: _____

PRIVATE OWNER PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned (which means all the undersigned, jointly and severally) (collectively, the "Borrower") promises to pay to City of Washington, or assigns (the "Holder"), the principal sum described below, not to exceed 410,000.00, together with interest after default as described below.

The Borrower acknowledges that the Holder has agreed to advance up to the dollar amount indicated above pursuant to a Loan/Performance Agreement of even date by and among the Borrower and the Holder (the "Agreement"), which requires the creation of certain full-time jobs by the Business. In the event all or a portion of the required number of jobs are not created within the time periods indicated in the Agreement, all or a portion of the amount indicated above shall be subject to repayment to the Holder. The Borrower hereby agrees to repay to the Holder, in accordance with the Agreement, an amount equal to the product of (i) \$5,000 and (ii) number of jobs required to be created under the Agreement, minus the number of jobs created, above the baseline number reported, that have been in existence for 6 consecutive months. All such amounts due hereunder shall be due upon demand by the Holder, and shall be paid directly to the Rural Economic Development Center. Holder shall have the right to assign this Note at any time to the Rural Economic Development Center. If not paid within 30 days following demand hereunder, the unpaid principal of this Note, and all other sums due under this Note or any instrument securing this Note, shall bear interest at the rate of 10 % per annum after demand until paid.

Upon default, the Holder may employ an attorney to enforce the Holder's rights and remedies, and the maker, principal, surety, guarantor, and endorsers of this Note hereby agree to pay the Holder reasonable attorney's fees not exceeding a sum of 15% of the outstanding balance owing on the Note, plus all other reasonable expenses incurred by the Holder in exercising any of the Holder's rights and remedies upon defaults. The rights and remedies of the Holder as described in this Note and any instrument securing this Note shall be cumulative and may be pursued singly, successively, or together against the property described in any such security instrument, or any other funds, property, or security held by the Holder for payment or security, in the sole discretion of the Holder. The failure to exercise any such right or remedy shall not be a waiver or release of such rights or remedies or the right to exercise any of them at another time.

All parties to this Note, including the Borrower and any sureties, endorsers, or guarantors hereby waive protest, presentment, notice of dishonor, and notice of acceleration and maturity and agree to remain bound for the payment of principal, interest, and all other sums due under this Note or the Agreement and any instrument securing this Note or the Agreement notwithstanding any change or changes by way of release, surrender, exchange, modification, or substitution of any security for this Note, or by way of any extension or extensions of time for the payment of principal and interest; and all such parties waive all and every kind of notice of such change or changes and agree that the same may be made without notice or consent of any of them.

Holder shall not, by any act, delay, omission, or otherwise, be deemed to have waived any of its rights under this Note or the Agreement. No waiver by the Holder of any of its rights under this Note or the Agreement shall be valid unless in writing, and then only to the extent therein set forth. Waiver by the Holder of any right or remedy under the terms of this Note or the Agreement on any one occasion shall not be construed as a bar to the Holder exercising any right or remedy on any future occasion. This Note may not be amended, changed, or altered except in writing executed by the Holder and the Borrower.

This Note evidences a debt payable by the Borrower.

_____ If initialed by the Borrower, this Note is secured by a deed of trust on certain property owned by the Borrower.

The law governing this transaction shall be that of the State of North Carolina, excluding its conflict of laws provisions. Any capitalized term not defined in the Promissory Note shall have the meanings ascribed in the Agreement.

IN WITNESS WHEREOF, the undersigned has (have) caused these presents to be executed under seal, pursuant to authority duly given, the day and year first above written.

Dated as of _____, 20____.

If By Individual: Borrower: _____ (SEAL)

Borrower Printed Name: _____

If By Entity:

By: _____

Name: _____

Title: _____

LIMITED WAIVER OF CONFIDENTIALITY
UNEMPLOYMENT TAX AND WAGE RECORDS

Name of Taxpayer _____

Address _____

Phone _____

Federal Tax Identification Number _____

NC Unemployment Insurance Account Number _____

I hereby waive the right to confidentiality, as found in N.C.G.S. 96-4(t), for the limited purpose of authorizing disclosure of certain information contained in the above company's quarterly unemployment insurance tax records filed with the North Carolina Employment Security Commission (the "NC ESC") to the City of Washington and program administrators (collectively, the City of Washington) for the limited purpose of administering a Building Reuse and Restoration Grant, Rural Health Care Initiative Grant, Economic Infrastructure Water/Sewer Grant, Economic Innovations Grant, or any other program administered by the Rural Center from which the above-referenced company has sought assistance.

NC ESC is hereby authorized to disclose information contained in the above company's quarterly unemployment insurance tax records to the Rural Center for this purpose.

Unemployment insurance tax information provided in the aggregate to the NC ESC and disclosed to the Rural Center, and the company's aggregated tax and wage information provided to or otherwise in possession of the Rural Center, may be treated as public information. This waiver is not intended to release the Rural Center from any obligation it may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Signature Chief Financial Officer or Other Authorized Company Official

Print Name: _____

Title: _____

Date: _____