

The Washington City Council met in a regular session on Monday, November 10, 2008 at 4:30 p.m. in the Council Chambers at the Municipal Building. Present were: Judy Jennette, Mayor; Doug Mercer, Mayor Pro tem; Darwin Woolard, Councilman; Richard Brooks, Councilman; Gil Davis, Councilman; Archie Jennings, Councilman; Jim Smith, City Manager; Cynthia S. Bennett, City Clerk; and Franz Holscher, City Attorney.

Also present were: Jimmy Davis, Fire Chief; Allen Lewis, Public Works Director; Bobby Roberson, Planning and Community Development Director; Philip Mobley, Parks & Recreation Director; Mick Reed, Police Chief; Susan Hodges, Human Resources Director; Lynn Lewis, Washington Tourism Director; Ray Midgett, IT Director; Mike Voss, Washington Daily News; and Jay Niver, Beaufort Observer.

Mayor Jennette called the meeting to order and Councilman Woolard delivered the invocation.

APPROVAL/AMENDMENTS TO AGENDA

Mayor Jennette added Scheduled Public Appearances Item C. Wayland Sermons, Moss Marina; Item D. Master Gardeners; VI.B.3 Request to upgrade water quality designation between railroad trestle and Highway 17 Bridge; VI.B.4 Park Space designation between Evans Seafood Property and Estuarium; Item IV.H (a) Report from Recreation Advisory Committee; Items B, E & G were removed from the Consent Agenda and listed as items 5, 6 & 7 under VI.A. Old Business.

On motion of Councilman Jennings, seconded by Councilman Brooks, Council unanimously approved the agenda, as amended

APPROVAL OF MINUTES

On motion of Councilman Brooks, seconded by Councilman Woolard, Council unanimously approved the minutes of October 20, 2008, as amended.

RECOGNITION – WELLNESS COMMITTEE

Susan Hodges, Human Resources Director recognized the Wellness Committee members and stated her appreciation for their hard work and dedication to this Committee. Ms. Hodges noted the Wellness Committee had applied for and received a grant for \$3,000.

APPROVAL OF CONSENT AGENDA

On motion of Councilman Woolard, seconded by Councilman Brooks, Council unanimously approved the Consent Agenda as amended.

- A. Adopt – Budget Ordinance Amendment in the CDBG Program Income Fund for Sewer Impact fees for Metropolitan Housing Authority \$3,455 (Hope Village)

AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE CITY OF WASHINGTON, N.C. FOR THE FISCAL YEAR 2008-2009

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

Section 1. That the Estimated Revenues in the C.D.B.G. Program Income Fund be increased in the amount of \$3,455 in the account Miscellaneous Revenue, account number 60-60-3350-8000.

Section 2. That account number 60-60-4930-3300, Transfer to Sewer Capital Reserve Fund, C.D.B.G. Program Income Fund appropriations budget be increased in the amount of \$3,455 to provide funds for sewer impact fees.

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 10th day of November, 2008.

s/Judy M. Jennette
**JUDY M. JENNETTE
MAYOR**

ATTEST:

s/Cynthia S. Bennett
**CYNTHIA S. BENNETT
CITY CLERK**

- B. **ITEM MOVED TO VI.A.5 -Accept** – Public Safety Interoperable Communications Program Grant **and** Adopt Budget Ordinance Amendment (\$1,358.07)
- C. Adopt – Resolution of Support in applying for NCDOT Bicycle Comprehensive Plan

**RESOLUTION STATING THE SUPPORT OF THE CITY OF WASHINGTON
FOR SUBMITTING A BICYCLE SYSTEM PLANNING GRANT TO THE NORTH
CAROLINA DEPARTMENT OF TRANSPORTATION**

A meeting of the City Council of the City of Washington was held in the Washington City Hall, the regular meeting place, on November 10, 2008. There were five City Council members present.

The City Council members were advised that the City intends to submit an application for grant funding in the amount of \$25,000 to the North Carolina Department of Transportation. The grant application will be submitted under the North Carolina Department of Transportation Bicycle and Pedestrian Planning Grant Program to develop a City wide bicycle trail system plan for the City of Washington. There is a local match of 20% that will be required of the City.

Council Member Woolard introduced the following resolution, which was read:

- 1) That the City of Washington is aware of the community's needs with respect to providing a safe and efficient transportation system including access for cyclists.
- 2) That the City of Washington fully supports submission of an application by the City Parks and Recreation Department to the North Carolina Department of Transportation for funding to develop a bicycle trail system plan.
- 3) That the Director of Parks and Recreation be hereby authorized to sign and execute the grant application to be submitted to the North Carolina Department of Transportation.
- 4) That upon completion of the application the completed document will be filed in the City of Washington City Hall. Upon motion of Council Member Woolard by Council Member Brooks said resolution was unanimously passed.

5) That if the application for funding is successful, the Washington City Council authorizes the use of \$5,000 in general funds to be utilized as a local match required under the terms of the North Carolina Department of transportation Bicycle and Pedestrian Planning Grant Program."

I, Cynthia S. Bennett, Clerk of the City of Washington, North Carolina, do hereby certify that the foregoing is a true copy of the proceedings of the Washington City Council, at a meeting held November 10, 2008, as related to submittal of an application for grant funding to the North Carolina Bicycle and Pedestrian Planning Grant Program.

WITNESS my hand and seal of the said City of Washington, this 17th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

D. Accept – Wellness Grant (\$3,000)

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2008-2009**

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 \$3,000 in the account Wellness/EAP Grant, account number 10-00-3470-0004.

Section 2. That account number 10-00-4125-4500, Wellness Program, Human Resources portion of the General Fund appropriations budget be increased in the amount of \$3,000 to provide funds for wellness programs.

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 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

E. **ITEM MOVED TO VI.A.6 - Adopt** – Resolution Designating Applicant's Agent

- F. Accept – Operational Agreements with the Beaufort County Board of Education to provide School Resource Officers (SRO) for Washington High School & P.S. Jones Middle School

**NORTH CAROLINA BEAUFORT COUNTY
WASHINGTON HIGH SCHOOL 2008-2009**

OPERATIONAL AGREEMENT

WITNESSETH:

WHEREAS, the BOARD is concerned about the increasing violence in the community and desires to secure a law enforcement officer for assignment to Washington High School as a designated Resource Officer; and

WHEREAS, it is anticipated that a Resource Officer will be an armed law enforcement officer selected by the LAW ENFORCEMENT AGENCY, through its designated personnel; and

WHEREAS, is anticipated that any selected Resource Officer will perform his or her duties under the direct supervision of the head of such LAW ENFORCEMENT AGENCY, and with day to day supervision by the Principal of the high school to which the Resource Officer is assigned; and

WHEREAS, the BOARD and LAW ENFORCEMENT AGENCY desire to set forth in writing their agreements with respect to the hiring, training, and supervision of each such Resource Officer.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promised and covenants set forth herein, BOARD and LAW ENFORCEMENT AGENCY do hereby agree each with the other as follows:

1.0 Administration and Control

- 1.1 The Resource Officer is and shall be an employee of the LAW ENFORCEMENT AGENCY and shall be subject to the administration, supervision, and control of the LAW ENFORCEMENT AGENCY, except to the extent such administration, supervision and control is expressly delegated under the terms and conditions of the Agreement.
- 1.2 The LAW ENFORCEMENT AGENCY shall take the lead in the hiring process with the principal or his designee serving as a member of the interview team.
- 1.3 A Resource Officer shall be a certified officer.
- 1.4 While working as a Resource Officer with the Beaufort County Schools System, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the Resource Officer normally possesses. While on duty at a school location, the Resource Officer shall respond to the day-to-day supervision by the Principal, but shall remain subject to the lawful operational commands of his superior officers in the Washington City Police Department. Resource Officer shall, for personnel and administrative purposes, remain under control of the Washington City Police Department, including for purposes of pay, benefits, insurance, worker's compensation, liability coverage and all other normal administrative coverage's provided by the Beaufort County.
- 1.5 LAW ENFORCEMENT AGENCY shall not utilize a Resource Officer during the designated workday for duties other than that set forth herein, except in rare and serious emergencies.
- 1.6 Throughout the term of this Operation Agreement, BOARD shall pay the LAW ENFORCEMENT AGENCY in quarterly payments in the amount of \$9,459.50 includes salary, benefits, uniforms) due

and payable on the first day of the month, in the second month of each quarter, for the Resource Officer assigned to work in the Beaufort County Schools.

2.0 Basic Qualifications of Resource Officer. To be a Resource Officer, an officer must first meet all the following basic qualifications:

- 2.1 Should have three (3) years of law enforcement experience;
- 2.2 Prefer experience in working with youth;
- 2.3 Shall possess a sufficient knowledge of the applicable Federal and State Laws, including the Juvenile Code of North Carolina, County Ordinances, and Board of Education Policies and Administrative Regulations;
- 2.4 Shall be capable of conducting in-depth criminal investigations;
- 2.5 Shall possess even temperament and set a good example for school students;
- 2.6 Shall possess communication skills, which would enable the officer to function effectively within the school environment.

3.0 Duties of Resource Officer

- 3.1 To provide law enforcement services to the School System at assigned school locations in accordance with terms of this agreement.
- 3.2 To counsel school students in special situations, such as student suspected of engaging in criminal misconduct, when requested by the Principal or the Principal's designee or by the parents of that student;
- 3.3 To answer questions that students may have about North Carolina criminal or juvenile law, and to make classroom presentations at the request of teachers as his or her schedule permits, but not to give legal advice;
- 3.4 To assist other law enforcement officers with outside investigations concerning students attending the school to which Resource Officer is assigned;
- 3.5 To work (10 months) on the school calendar schedule of the Beaufort County Schools as duly adopted each year; and
- 3.6 To maintain minimum in-service training and certification requirements as are normally applied to all other certified officers, whenever possible during the summer months when regular school is not in session;
- 3.7 Coordinated traffic and security at all athletic events and social functions on school premises for the school to which the Resource Officer is assigned.
- 3.8 Resource Officer has the right and obligation to decline to participate in an activity/event that would violate department or state procedures.

4.0 Chain of Command

- 4.1 Resource Officers who are employees of the LAW ENFORCEMENT AGENCY shall follow the chain of command as set forth in LAW ENFORCEMENT AGENCY Standard Operating Procedures Manual.

5.0 Duty Hours

- 5.1 Resource Officer hours shall be set by the BOARD at the direction of the head of the LAW ENFORCEMENT AGENCY and the Principal or the Principal's designee of the school to which the officer is assigned. The maximum number of hours that a Resource Officer shall work in any four (4) week period shall be 171 hours.

- 5.2 Unless modified by the head of the LAW ENFORCEMENT AGENCY or the Principal or Principal's designee, Resource Officer shall be on duty at assigned school with a schedule worked out jointly with Resource Officer and Principal of the school throughout the year (10 months), or for minimum of seven and one-half (7 1/2) hours per day on average, or a minimum of forty (40) hours each week on average, in the event the opening *or* closing of school is delayed or the school schedule is modified. Provided, however, Resource Officer shall also be at school during lunch hours and through the school bus boarding period, but Resource Officer shall be allowed thirty (30) minutes of lunch each day. The remainder of the Officer's workweek shall be assigned to provide afternoon and/or evening security at school events and/or to pursue criminal investigations of school related crimes.

6.0 Training/Briefing

- 6.1 Resource Officer shall attend training and briefing sessions as required by the LAW ENFORCEMENT AGENCY. Coordination of meetings between school personnel, the Resource Officer and Commanding Officers in the LAW ENFORCEMENT AGENCY may be scheduled as required or needed for the exchange of information and coordination of efforts.
- 6.2 Resource Officer shall be required to maintain minimum in-service training and certification requirements as would normally apply to all other certified officers in the Department. The BOARD may provide training in Board of Education policies, regulations and procedures.

7.0 Uniforms, Equipment and Weapons -

- 7.1 Resource Officer shall be required to wear Departmental issued uniforms, and to use departmental equipment and weapons, which shall be the responsibility of the LAW ENFORCEMENT AGENCY to provide. BOARD shall reimburse LAW ENFORCEMENT AGENCY for the cost of providing uniforms for the Resource Officer, as appropriate.
- 7.2 Access to an air-conditioned and properly lighted office, which shall contain a telephone, which may be used for general business purposes.
- 7.3 A location for files and records, which can be properly locked and secured.
- 7.4 A desk with drawers, a chair, worktable, a filing cabinet and office supplies.
- 7.5 Reasonable access to a typewriter and/or secretarial assistance.
- 7.6 A radio or walkie-talkie (school based) or pager for the Resource Officer as to avoid using the radio frequency of the LAW ENFORCEMENT AGENCY.

8.0 Transporting Students

- 8.1 Resource Officer shall not transport students in their vehicle except when the students are victims of a crime, under arrest, or when other emergency circumstances exist, except that Resource Officer shall transport student being sent home from school pursuant to school disciplinary actions if the student's parent or guardian has refused or is unable to pick up the child within a reasonable time period and the student is disruptive/disorderly and his/her continued presence on campus is a threat to the safety of other students and school personnel.
- 8.2 Resource Officer shall not transport students in their personal vehicles. If the Resource Officer does not have a LAW ENFORCEMENT AGENCY or BOARD vehicle, then a patrol unit shall

be dispatched by the LAW ENFORCEMENT AGENCY to assist the officer.

8.3 Resource Officer shall notify the school Principal or the Principal's designee before removing a student from campus.

9.0 **Interview and Arrest Procedure.** Resource Officer shall adhere to the procedures set forth in Chapter 7 A of the General Statutes of the State of North Carolina when dealing with juveniles.

10.0 **Cooperative Understanding.** The attached Cooperative Understanding between the BOARD and LAW ENFORCEMENT AGENCY is attached hereto and incorporated herein by reference.

11.0 **Evaluation.** It is mutually agreed that the Principal/Resource Officer's supervisor shall evaluate annually the Resource Officer Program and the performance of each Resource Officer on forms developed jointly by the parties. It is further understood that the evaluation of each officer is advisory only and that the LAW ENFORCEMENT AGENCY retains the final authority to evaluate.

OPERATIONAL AGREEMENT This OPERATIONAL AGREEMENT made and entered into for fiscal year July 1, 2008 through June 30, 2009, when it shall terminate, by and between the Beaufort County Board of Education, hereinafter referred to as "BOARD", and the Washington City Police Department, hereinafter referred to as "LAW ENFORCEMENT AGENCY".

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

**BEAUFORT NORTH CAROLINA BEAUFORT COUNTY
P.S JONES MIDDLE SCHOOL 2008-2009**

OPERATIONAL AGREEMENT

WITNESSETH:

WHEREAS, the BOARD is concerned about the increasing violence in the community and desires to secure a law enforcement officer for assignment to P.S. Jones Middle School as a designated Resource Officer; and

WHEREAS, it is anticipated that a Resource Officer will be an armed law enforcement officer selected by the LAW ENFORCEMENT AGENCY, through its designated personnel; and

WHEREAS, is anticipated that any selected Resource Officer will perform his or her duties under the direct supervision of the head of such LAW ENFORCEMENT AGENCY, and with day to day supervision by the Principal of the high school to which the Resource Officer is assigned; and

WHEREAS, the BOARD and LAW ENFORCEMENT AGENCY desire to set forth in writing their agreements with respect to the hiring, training, and supervision of each such Resource Officer.

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- 1.2 The LAW ENFORCEMENT AGENCY shall take the lead in the hiring process with the principal or his designee serving as a member of the interview team.
- 1.3 A Resource Officer shall be a certified officer.
- 1.4 While working as a Resource Officer with the Beaufort County Schools System, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the Resource Officer normally possesses. While on duty at a school location, the Resource Officer shall respond to the day-to-day supervision by the Principal, but shall remain subject to the lawful operational commands of his superior officers in the Washington City Police Department. Resource Officer shall, for personnel and administrative purposes, remain under control of the Washington City Police Department, including for purposes of pay, benefits, insurance, worker's compensation, liability coverage and all other normal administrative coverage's provided by the Beaufort County.
- 1.5 LAW ENFORCEMENT AGENCY shall not utilize a Resource Officer during the designated workday for duties other than that set forth herein, except in rare and serious emergencies.
- 1.6 Throughout the term of this Operation Agreement, BOARD shall pay the LAW ENFORCEMENT AGENCY in quarterly payments in the amount of \$9,459.50 (includes salary, benefits, uniforms) due and payable on the first day of the month, in the second month of each quarter, for the Resource Officer assigned to work in the Beaufort County Schools.

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- 3.3 To answer questions that students may have about North Carolina criminal or juvenile law, and to make classroom presentations at the request of teachers as his or her schedule permits, but not to give legal advice;
- 3.4 To assist other law enforcement officers with outside investigations

concerning students attending the school to which Resource Officer is assigned;

- 3.5 To work (10 months) on the school calendar schedule of the Beaufort County Schools as duly adopted each year; and
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- 7.3 A location for files and records, which can be properly locked and secured.
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10.0 Cooperative Understanding. The attached Cooperative Understanding between the BOARD and LAW ENFORCEMENT AGENCY is attached hereto and incorporated herein by reference.

11.0 Evaluation. It is mutually agreed that the Principal/Resource Officer's supervisor shall evaluate annually the Resource Officer Program and the performance of each Resource Officer on forms developed jointly by the parties. It is further understood that the evaluation of each officer is advisory only and that the LAW ENFORCEMENT AGENCY retains the final authority to evaluate.

OPERATIONAL AGREEMENT

This OPERATIONAL AGREEMENT made and entered into for fiscal year July 1, 2008 through June 30, 2009, when it shall terminate, by and between the Beaufort County Board of Education, hereinafter referred to as "BOARD", and the Washington City Police Department, hereinafter referred to as "LAW ENFORCEMENT AGENCY".

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett

CYNTHIA S. BENNETT
CITY CLERK

- G. **ITEM MOVED TO VI.A.7 -Adopt** – Budget Ordinance Amendment – final payment to Hudson Brother’s Contractors purchase of generator (\$76,665)

MR. JERRY NARRON – MAINTENANCE CONCERNS JACK’S CREEK & VETERANS PARK

Mr. Jerry Narron presented a slide presentation to Council representing his maintenance concerns at Jack’s Creek and Veteran’s Park. Mr. Narron offered his assistance to the City to help maintain that area.

MR. WAYLAND SERMONS – MOSS MARINA EASEMENT

Mr. Wayland Sermons noted that he and Franz Holscher, City Attorney, have worked on modifications to the Moss Marina Easement Agreement that Council originally approved in November 2007. Mr. Sermons gave a brief history of the easement agreement and the marina modifications. Moss Landing has closed 15 units at an estimated cost of \$500,000 each. Mr. Sermons urged Council to approve the modifications tonight so construction on the docks and piers can begin in approximately 3-4 weeks. The amendments presented allow the documents to match the state easement and CAMA permits. Mayor Pro tem Mercer said this allows a continual easement over the length of the boardwalk where the prior maps had breaks in it.

On motion of Mayor Pro tem Mercer, seconded by Councilman Davis, Council unanimously approved and authorized the Mayor to execute the Withdrawal of Easement Agreement and Easement Agreement, both between the City of Washington and Moss Property Partners, LLC, subject to: 1) the provision of the requisite notice to the North Carolina Clean Water Management Trust Fund, 2) as to Ramp F, exclusively, approval of its location by the Director of Public Works in harmony with the existing City improvements, and 3) revisions to the Agreements and related plat required by the City Attorney.

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

THIS WITHDRAWAL OF EASEMENT AGREEMENT, made and entered into this ___ day of November, 2008, by and between the **CITY OF WASHINGTON, a North Carolina Municipal Corporation**, hereinafter referred to as “**SELLER**”, and **MOSS PROPERTY PARTNERS, LLC**, hereinafter referred to as “**BUYER**”.

WITNESSETH

WHEREAS, SELLER and BUYER entered into an Easement Agreement dated September 20th, 2007, and recorded in Book 1608, Page 533 of the Beaufort County Registry, providing to **BUYER** certain multiple pedestrian easements and other easements, rights, and obligations; and

WHEREAS, the easements so conveyed were shown on a map recorded in Plat Cabinet H, Slide 3-2, 3 and 4; and

WHEREAS, the parties have agreed to alter or change the location of said easements, and desire to withdraw in its entirety that easement agreement referred to above;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, and the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged,

SELLER and **BUYER** do hereby **WITHDRAW** and **TERMINATE** any and all easement rights conveyed in that Easement Agreement dated September 20, 2007, and recorded in Book 1608, Page 533, and **BUYER** does hereby convey and quit claim back unto **SELLER**, any and all rights obtained by **BUYER** as a result of said Easement Agreement recorded in Book 1608, Page 533, of the Beaufort County Registry.

TO HAVE AND TO HOLD, said reconveyance, withdrawal and termination, unto the **SELLER**, it being agreed that the rights created in that easement recorded in Book 1608, Page 533, are hereby withdrawn and terminated.

The **BUYER** covenants with the **SELLER** that it has done nothing to impair such title as **BUYER** received, and that it will warrant and defend the title against the lawful claims of all persons claiming by, under, or through said **BUYER**.

IN WITNESS WHEREOF, **SELLER** has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk, and its municipal seal to be hereunto fixed, and **BUYER** has caused this instrument to be executed in its name by its Operating Manager, all by property authority duly given.

CITY OF WASHINGTON, a Municipal Corporation in the State of North Carolina

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

NORTH CAROLINA
BEAUFORT COUNTY

THIS EASEMENT AGREEMENT, made and entered into this _____ day of November, 2008, by and between the **CITY OF WASHINGTON, a North Carolina Municipal Corporation**, hereinafter referred to as "**SELLER**", and **MOSS PROPERTY PARTNERS, LLC**, hereinafter referred to as "**BUYER**".

WITNESSETH

WHEREAS, **SELLER** and **BUYER** entered into an Agreement dated the 28th day of May, 2003, which was revised on the 28th day of November, 2005 and again on the 27th day of February, 2007, and Agreement dated the 1st day of December, 2005, all providing for the purchase and sale of real property as well as other rights (hereinafter referred to collectively as "Revised Agreement");

WHEREAS, paragraph 19 of the Revised Agreement provides that the **SELLER** shall convey to **BUYER** certain multiple pedestrian easements upon which **BUYER** may construct elevated pedestrian walkways across the wetlands property owned by **SELLER** to the Pamlico River, as allowed by the Conservation Easement Created Wetland/Grassed Swale dated August 26, 2003 by and between **SELLER** and the State of North Carolina recorded in Deed Book 1350, Page 252 of the Beaufort County Registry (hereinafter referred to as "Conservation Easement");

WHEREAS, said Revised Agreement provides that the exact locations of said easements and walkways would be mutually agreed upon

between the parties, and at all times would remain available and open to the general public; and

WHEREAS, the plans and specifications of the marina component of **BUYER'S** project have been finalized, the parties have agreed to the location of such easements and walkways, and the parties desire to enter into a written Easement Agreement pursuant to the terms of the Revised Agreement.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other valuable considerations, the receipt and legal sufficiency of which are hereby acknowledged, **SELLER** does hereby give, grant, bargain and sell, and does hereby convey unto **BUYER**, its successors and assigns, easements, as more particularly described on Exhibit A attached hereto.

1. These easements are given for the purpose of allowing **BUYER**, its successors or assigns, to construct and maintain elevated pedestrian walkways leading from the upland property now or formerly owned by **BUYER**, its successors or assigns, over the wetlands property, to and from the existing boardwalk maintained by **SELLER**, and over the Conservation Easement to **BUYER'S** proposed landings, marina

EXHIBIT A

Lying and being in the City of Washington, County of Beaufort, State of North Carolina, more particularly described as follows.

Those certain easements as shown on that certain plat by Mayo and Associates, PA that is recorded in the Beaufort County Registry in Plat Cabinet _____, Slide _____. Reference is herein made to said plat and the same is incorporated herein for a more complete and adequate description of said easements.

2. **BUYER** agrees that at all times any and all improvements, excluding utilities, made by **BUYER** and located within the bounds of **SELLER's** property shall remain open and available for use by the general public. **BUYER** shall be responsible for and hold **SELLER** harmless from any claims whatsoever arising from the public's use of **BUYER'S** improvements as described herein.
3. **BUYER** agrees to keep said elevated pedestrian walkways maintained in a good and useable condition, reasonable wear and tear excepted. In any event, at a minimum, **BUYER** shall construct and maintain said elevated pedestrian walkways consistent and in keeping with the construction, materials, appearance, and lighting of the existing boardwalk constructed over the wetlands property. Said elevated pedestrian walkways as well as any utility improvements, including water and electricity, necessary for **BUYER'S** Other Amenities shall not, unless deemed appropriate by the City, be directly attached to nor in any manner place any torsional stress, weight, chafe nor in any way undermine the structural integrity of the existing boardwalk. **BUYER** shall be responsible for constructing and maintaining any and all intersections of said elevated pedestrian walkways with said existing boardwalk and making any necessary improvements to ensure the structural integrity, load bearing, and stabilization requirements of the elevated walkways and existing boardwalk. **BUYER** must obtain the express written consent of **SELLER** before making any modifications to the existing boardwalk. **BUYER** shall provide **SELLER** with plans and specifications for said elevated pedestrian walkways for **SELLER's** approval prior to construction of the same. Upon completion of construction of

said elevated pedestrian walkways, **SELLER** shall inspect the same and **BUYER** shall make any reasonable modifications required by said inspection.

4. **BUYER** warrants that its construction, exercise, and use of said easements and/or elevated pedestrian walkways as well as installation of utility improvements, including water and electricity, necessary for **BUYER'S** Other Amenities shall be subject to and consistent with any and all provisions, restrictions, and requirements of said Conservation Easement, including but not limited to the ten percent (10%) improvement of total area restriction contained in Article II Subsection C of the Conservation Easement.
5. **BUYER** shall be responsible for obtaining any and all necessary permits or other official permission required by any federal, state, or local law or regulatory agency and comply with all applicable permits, laws, and regulations in its exercise and use of the rights and easements conveyed hereby, including but not limited to the installation of utility improvements such as water and electricity necessary for **BUYER'S** Other Amenities.
6. **BUYER** shall reimburse or compensate **SELLER** for any expenses incurred by **SELLER** to repair the existing boardwalk due to damage or injury to the existing boardwalk caused by **BUYER'S** elevated pedestrian walkways, Other Amenities, or other improvements or caused by those using the same.
7. In the event the existing boardwalk or a part thereof is damaged, destroyed, or ceases to exist; such damage prevents **BUYER** from fully utilizing the easements contemplated herein; and **SELLER** confirms in writing in response to written notice from **BUYER** that **SELLER** does not intend to repair the existing boardwalk in a sufficient manner to allow **BUYER** to fully utilize the easements contemplated herein, **BUYER** may reconstruct so much of the existing boardwalk as is necessary to allow **BUYER** to fully utilize the easements conveyed herein.
8. Subject to the foregoing conditions, **SELLER** does hereby give, grant and convey easements in and over its property as described on Exhibit A attached hereto.
9. In the event **BUYER** (a) is unable to obtain any necessary permission and/or approval from any federal, state, or other regulatory agency to construct said elevated pedestrian walkways or said Other Amenities as contemplated by the Revised Agreement or (b) fails to construct either of the above all within three years of the execution hereof, said easements along with any and all rights, interests, and privileges herein conveyed shall revert to **SELLER** and **BUYER** shall execute any document required in order to effectuate said reversion.

TO HAVE AND TO HOLD said rights and easements to it, the **BUYER**, its successors and assigns; it being agreed that the rights and easements hereby granted are appurtenant to and run with the land and rights now owned by **BUYER** which adjoins subject property.

The **SELLER** covenants with the **BUYER** that it has done nothing to impair such title as said **SELLER** received, other than those matters that are of public record including but not limited to the Conservation Easement referred to hereinabove, and it will warrant and defend the title against the lawful claims of all persons claiming by, under, or through said **SELLER**.

IN WITNESS WHEREOF, **SELLER** has caused this instrument to be executed in its name by its Mayor, attested by its City Clerk and its municipal seal to be hereunto fixed, and **BUYER** has caused this instrument to be

executed in its name by its Operating Manager, all by proper authority duly given.

CITY OF WASHINGTON, a Municipal Corporation in the State of North Carolina

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

MR. DOUG SOLOMON- TRAPEZE SCHOOL

Mr. Doug Solomon, presented a slide presentation for the proposed Inner Banks Trapeze School. Mr. Solomon cited possible locations for the school: Washington, Greenville, New Bern, Jacksonville and Morehead City. The preferred location is Washington because its waterfront provides an attractive setting that would draw many spectators.

Adrian Solomon, who has more than 10 years of experience as a trapeze instructor, would serve as the school's director.

The trapeze school would primarily serve as a recreational activity. The school's basic program is a two-hour class for about eight to ten people, with each person paying \$40 to take the class. The trapeze school could be used in the following ways: birthday parties, summer camps, corporate events, team building, social groups, fundraising events, church-group functions, family gatherings, community outreach programs and to attract tourists.

Mr. Solomon noted the school needs a flat piece of land, 150 feet by 75 feet. The green space between the former McQuay and Maola buildings and the promenade along the Pamlico River would serve as a good location for the school. The facility would be about 24 feet off the ground, when students are standing on the board from which they would begin their trapeze training. The trapeze school would operate outside from late March to mid-November, possibly moving indoor during the winter months. The trapeze school would require additional lighting and an 8-foot-tall chain-link fence. The trapeze school requires no permanent structure, with its poles, nets, guy wires, bars and other equipment being easy to disassemble.

Mayor Jennette asked if a feasibility study had been completed to determine its success rate in Washington. Mr. Solomon noted they had not, but they are willing to take a chance and locate the school here and are confident it will be successful. The school would provide the insurance coverage needed by the school, as well as the lighting, Doug Solomon said. Adrian Solomon noted evening classes should end by 9:00pm.

Mayor Jennette explained the Planning Board, Recreation Advisory Committee and Historic Preservation Commission will need to review the proposal and submit their recommendations to the City Council.

BEAUFORT COUNTY MASTER GARDENER PROGRAM

Ann Darkow reminded Council that at the last meeting she requested financial assistance from the City by waiving the tap fees. She announced they are doing their best to raise money for those fees by applying for grants and with donations. They are asking for the City's blessing so they can begin to prepare the land for planting. Councilman Jennings praised the Master Gardener Program for their efforts in locating funding for such fees and not being dependent on the City.

On motion of Mayor Pro tem Mercer seconded by Councilman Woolard, Council unanimously granted a 5 year lease on the 1.1 acres requested at the airport site.

ECONOMIC DEVELOPMENT COMMISSION

Councilman Jennings noted he will request a written report from Tom Thompson.

TOURISM DEVELOPMENT AUTHORITY

Mayor Jennette noted the Tourism Development Authority has not met since Council's last meeting.

HUMAN RELATIONS COUNCIL

Mayor Jennette explained the Human Relations Council will meet on November 18th.

DOWNTOWN WASHINGTON ON THE WATERFRONT

Tom Miller stated the City of Washington should do everything possible to assist the Solomon's project for the Inner Banks Trapeze School.

CITIZENS FOR REVITALIZATION

Councilman Jennings noted that he and Mayor Pro tem Mercer attended the last meeting and they are continuing to work on developing a comprehensive plan.

WARREN FIELD AIRPORT

Jim Smith reported the jet fuel tank has been cleaned and jet fuel is now available. He hopes by the December meeting to have a proposal and time schedule from the engineer to rebuild the fuel system. The State has approved funds for this project.

CITY OF WASHINGTON –CABLE CHANNEL 9 ADVERTISING

Jim Smith highlighted "Washington Business Blocks" as a partnership with the City of Washington, DWOW, and the Washington-Beaufort County Chamber of Commerce. These one minute business profiles will air on Channel 9 at least one time a day for 365 days (a year). The 1 minute business profiles will also be available after production to stream on the business owner's website or use for their own purposes. The business profiles will be produced by WITN and made in a timeless fashion that will not outdate. We will have the first 20 up and running by the first of December.

ANNEXATION REPORT

Councilman Jennings noted the Committee has not met.

HAVEN'S GARDEN REPORT

Philip Mobley, Director of Parks and Recreation, stated we need an encroachment agreement with DOT and a Major CAMA permit if we plan to put the walkway under the bridge. He spoke with Mr. Eatmon and they are hoping to start on the bridge project in May 2009. Mr. Mobley noted at the last meeting with DOT we were told that DOT would not let the City put pilings in once the bridge is removed. Mr. Mobley noted we could use a laminated beam for a

pedestrian walk way, which is what New Bern uses. Mr. Mobley explained that an engineering firm has not been hired, but he hopes to have this ready for Council in December.

Councilman Jennings noted a citizen voiced concern to him over the parking lot being between the playground and the rest of the park as this was a safety issue for children. Mr. Mobley explained that would be taken into consideration with the re-design of Haven's Gardens.

Mr. Mobley updated Council on the new T-docks at the waterfront. We are in the process of applying for a Major CAMA permit and an environmental assessment; both are under contract with Bill Forman. In July of 2009 we will apply for an extension on the grant which will give us another year to complete the project.

RECREATION ADVISORY COMMITTEE

Joe Taylor, Chairman of the Recreation Advisory Committee, reported to Council on a seminar he and several members of the Committee attended in Greenville. The seminar focused on the economic impacts of parks and recreation in the community.

Jim Smith invited the Recreation Advisory Committee to attend the Rails to Trails meetings.

HARBOR MANAGEMENT REPORT

David Emmerling reported on the most recent activity from the Harbor Management Committee and had several items to present to Council.

1. Request Council to draft an Ordinance to extend zoning to encompass the harbor area. (Franz Holscher, City Attorney will research this issue.)
2. Request Council to pass a Resolution for the Division of Water Quality to evaluate a change in the water quality designation from the Highway 17 Bridge to Runyon Creek.
3. Mooring field alternatives:
 - a. Public/ Private venture between City of Washington and Mr. Suggs
 - b. Private/Private venture between Mr. Suggs and another private party. Mr. Emmerling noted the Committee was informed that discussions were held and determined that a private/private venture would be feasible with Mr. Suggs and David Norwood and an application is in process.
 - c. Update on seminar regarding grant writing workshop for funding sources for water quality issues as well as continued development of the harbor.
 - d. Recognize the excellent work of the Parks and Recreation Department, particularly Teresa Hamilton and the local Sea Tow team for their efforts in removing the derelict boat.

Franz Holscher, City Attorney noted he would need more information regarding zoning the harbor area and would research that and update the Council in December.

REQUEST TO UPGRADE WATER QUALITY DESIGNATION BETWEEN RAILROAD TRESTLE AND HIGHWAY17 BRIDGE

On motion of Councilman Jennings, seconded by Mayor Pro tem Mercer, Council authorized the City Manager to begin the process to upgrade the water quality designation between the railroad trestle and the Highway 17 Bridge.

Mr. Emmerling will obtain the documentation regarding changing the water quality designation.

Council convened for a break and reconvened at 6:00pm

**ADOPT – ANNEXATION ORDINANCE TO EXTEND CORPORATE LIMITS
FOR NON-CONTIGUOUS ANNEXATION OF RMH LEASING, LLC**

Bobby Roberson, Director of Planning and Development stated the property is located at 2407 West 5th Street. The building was formerly occupied by Base Camp and Electric Services Limited and will be the future home of the Corps of Engineers' Regional Office, which is currently housed at the Carawan Building. The Corps is required to be in a building connected to municipal water and sewer, thus the reason for annexation. This is a satellite annexation and is in close proximity to Lee Chevrolet. Mr. Roberson presented the estimated general fund revenues/costs. The estimated general fund revenues for the first year will be \$1785; estimated general fund costs for the first year will be \$1000; while the estimated fees to be paid by the property owner will be \$2356.

Mayor Jennette opened the public hearing. There being no public comment, the public hearing was closed.

On motion of Councilman Woolard, seconded by Councilman Brooks, Council unanimously adopted an annexation ordinance to extend the corporate limits for the non-contiguous annexation of RMH Leasing LLC located at 2407 West 5th Street.

**AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE
CITY OF WASHINGTON, NORTH CAROLINA**

WHEREAS, the Washington City Council has been petitioned under G.S. 160A-58.1 to annex the area described below; and

WHEREAS, the Washington City Council has by resolution directed the City Clerk to investigate the sufficiency of the petition; and

WHEREAS, the City Clerk has certified the sufficiency of the petition and a public hearing on the question on of this annexation was held at the City Council Chambers on the 2nd floor of the municipal building located at 102 East 2nd Street at 6:00 p.m. on Monday, November 10, 2008 after due notice by the Washington Daily News on November 1, 2008 & November 8, 2008;

WHEREAS, the Washington City Council finds that the area described herein meets the standards of G.S. 160A-58.1(b), to wit:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the City of Washington.
- b. No point on the satellite corporate limits is closer to another municipality than to the City of Washington.
- c. The area described is so situated that the City of Washington will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits.
- d. No subdivision, as defined in G.S. 160A-376, will be fragmented by this proposed annexation;
- e. ~~The area within the proposed satellite corporate limits when added to the area within all other satellite corporate limits, does not exceed ten~~

~~percent (10%) of the area within the primary corporate limits of the City of Washington.~~ **This Standard does not apply to the City of Washington.**

WHEREAS, the Washington City Council further finds that the petition has been signed by all of the owners of real property in the area who are required by law to sign; and

WHEREAS, the Washington City Council further finds that the petition is otherwise valid, and that the public health, safety and welfare of the City of Washington and of the area proposed for annexation will be best served by annexing the area described;

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

Section 1. By the virtue of the authority granted by G.S. 160A-58.2, the following described non-contiguous territory is hereby annexed and made part of the City of Washington as of December 31, 2008:

All that certain lot or parcel of land lying and being in Washington Township, Beaufort County, North Carolina, and being more particularly described as follows:

FIRST TRACT: BEGINNING in the southwestern side line of U.S. Highway No. 264 at a common corner between the lands hereinafter described and the lands conveyed to Edward L. Paul and wife; thence from said beginning point South 48° 7' West 300.51 feet to a corner; thence North 42° 9' West 100 feet to a corner; thence North 48° 7' East to the southwestern side line of U.S. Highway No. 264; thence with the southwestern side line of said highway 100 feet to the point of beginning. This is the same property conveyed to James W. Latta and wife, Gladys H. Latta, by deed from Herbert A. Perry and wife, Lois C. Perry, dated January 7, 1985, and recorded in Book 844, Page 651, Beaufort County Registry.

SECOND TRACT: BEGINNING in the southwestern side line of U.S. Highway 264 at the northeastern corner of the lot conveyed to James W. Latta, et ux by deed dated January 7, 1985 and of record in Book 844, Page 651 of Beaufort County Registry; thence with the southwestern side line of said U.S. Highway 264, North 41 ° 53' West 100 feet to a corner; thence South 48° 7' West 300 feet, more or less, to the northeastern side line of a 60 foot right of way; thence with the northeastern side line of said right of way, South 42° 9' east 100 feet to a corner; thence with the western line of the lot conveyed to James W. Latta, et ux by deed of record in Book 844, Page 651 of Beaufort County Registry 300.51 feet to the point of beginning. This is the same property conveyed to James W. Latta and wife, Gladys H. Latta, by deed from Herbert A. Perry and wife, Lois C. Perry, dated March 4, 1986, and recorded in Book 861, Page 446, Beaufort County Registry.

Section 2. Upon and after December 31, 2008, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the City of Washington and shall be entitled to the same privileges and benefits as other parts of the City of Washington. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the City of Washington shall cause to be recorded in the office of the Register of Deeds of Beaufort County, and in the office of the Secretary of the State in Raleigh, North Carolina, an accurate map of the annexed property, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the County Board of Elections, as required by G.S. 163-288.1.

Adopted this 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

s/Franz Holscher
FRANZ HOLSCHER
CITY ATTORNEY

**ACCEPT – FINALIZE THE CDBG INDIVIDUAL DEVELOPMENT ACCOUNT
PROGRAM AND TERMINATE THE PROGRAM ACTIVITIES**

Bobby Roberson, Director of Planning and Development stated the City of Washington received a Community Development Block Grant in 2004. The grant amount of \$40,000 was to be used to assist first time home buyers in purchasing single family dwellings for low to moderate income families. The original grant was a “pass through” to Beaufort County Program for the Rural Carolinas (BCPRC). After the funding source was eliminated for BCPRC the Washington Housing Authority agreed to participate and develop the program. Subsequently, the grant dollars were transferred over to the Housing Authority, who created Washington Housing Incorporated to carry out the mission of creating affordable housing for low to moderate first time home buyers. During this grant process the City of Washington is held accountable for program activities and any misappropriation of expenses.

Grant amount:	\$40,000	
Spent:	(\$10,000)	Administration BCPRC & WHI
	(\$2,000)	Down payment assistance
	<u>(\$6,292.68)</u>	Administration – City PO #42286
Amount sent back to DCA	\$21,707.32	

Gina Amaxopulos, Washington Housing Incorporated discussed some of the successes of the program. She stated the program had eight successful home purchases. She further noted that 159 residents participated in the credit counseling program and 305 residents participated in the money management, budgeting and homeownership workshops. Mr. Roberson noted that when these funds become available in the future, they will definitely re-apply.

Mayor Jennette opened the public hearing. There being no one to speak in regards to this issue, the public hearing was closed.

On motion of Councilman Woolard, seconded by Councilman Brooks, Council unanimously accepted the recommendation from the Director of Planning and Development and closed out the activities for the CDBG Individual Development Account program.

COMMENTS FROM THE PUBLIC

Gary Tomasulo, President of Downtown Merchants Association stated the City Council has a unique opportunity with the Inner Banks Trapeze School and suggest Council do whatever it takes to, “make it happen”.

Mr. Tomasulo reminded the Council of his presentation last month of Randy Walker's proposal to videotape the Council meetings and asked them to consider this proposal.

Mr. Tomasulo also voiced concern over the façade grant program being omitted from the budget. He noted this was a very successful project for the last 16 years and he doesn't understand why it was omitted.

Mr. Tomasulo thanked the Council for reducing the privilege license fee. He questioned why the business owners have to foot the bill for the entire City of Washington. He stated Council should increase property taxes and let all property owners carry the load and not just burden the business owners.

Bill Sykes suggested the City follow suit of the CAMA Major Permit process which facilitates applications and has a pre-application meeting and coordinate with all parties involved to expedite the application process. Mr. Sykes suggested the City organize something similar to this to facilitate the Inner Banks Trapeze School.

Scott Campbell, 213 North Market Street supports the Inner Banks Trapeze School and suggests that the City help this project by appointing a facilitator to help them in any way possible and keep them on the right track. He also voiced concern over the elimination of the Façade Grant Program and urged Council to find a way to implement this again.

Jean Thompson, owner of Cat Bamboo stated she supports the Inner Banks Trapeze School and suggest the Council do all they can to support this project. Ms. Thompson volunteered to be the facilitator of this project to keep it on track and make sure the proper steps are followed to get this project up and running. Ms. Thompson also urged Council to find a way to implement the Façade Grant Program again.

Mayor Jennette asked Ms. Thompson if they had talked to the neighbors regarding lights and noise from the Inner Banks Trapeze School. Ms. Thompson stated they had talked to the neighbors regarding these issues and will continue to discuss this with the neighbors.

Councilman Jennings asked to respond to some of these issues from the public. He noted that Council is looking into the suggestion from Mr. Tomasulo regarding filming the Council meetings. He also said the privilege license issue will be revisited at the next budget cycle. The façade grant program was actually income from a UDAG grant and that has ended. There was money in the budget for the façade grant program but that money has already been spoken for from façade grant applications. Mayor Jennette noted this will be revisited at the next budget cycle and we understand it was a great program and hope to be able to find money to fund it again. Councilman Jennings stated we have to find another source of funds to be able to fund the façade grant program again.

FINANCIAL REPORTS

The presentation of the financial reports was continued until the Committee of the Whole meeting on November 24, 2008.

APPOINTMENTS – FOR THE COASTAL RESOURCES ADVISORY COUNCIL

Mayor Jennette noted this is a nomination not an appointment. The member not seeking re-appointment to the CRAC is Don Yousey, Local Health Director for Brunswick County. Mayor Jennette has placed a call to Roxanne Holloman, Director of the Beaufort County Board of Health, but she is out of the office until next week.

Mayor Pro tem Mercer stated that the Council makes a nomination and then the CRAC actually determines who is appointed. He further noted that the Coastal Resources Advisory Council needs to have representation from Beaufort County.

On motion of Councilman Jennings, seconded by Councilman Woolard, Council unanimously nominated Mayor Pro tem Doug Mercer to serve on the Coastal Resources Advisory Council.

**CONTINUED - ADOPT – BUDGET ORDINANCE AMENDMENTS FOR E911
SURCHARGE (\$88,502)**

On motion of Councilman Jennings, seconded by Councilman Woolard, Council unanimously voted to continue the request until December 8, 2008 and present this item along with the interlocal agreement.

**AUTHORIZE – MANAGER, CITY ATTORNEY, AND DIRECTOR OF
PLANNING AND DEVELOPMENT TO FINALIZE A “CONTRACTING AGENCY
AGREEMENT” BETWEEN THE CITY OF WASHINGTON AND THE TURNAGE
THEATERS FOUNDATIONS, INC. (\$200,000)**

Mr. Bobby Roberson, Director of Planning and Development stated the City of Washington was successful in obtaining a grant from USDA in the amount of \$150,000 with a local match of \$50,000 from the City. The purpose of the grant was to relocate the utility services at the rear of the new addition. In addition, handicap access was provided for both the rear and front entrances with sidewalk construction around the exterior perimeter of the addition with brick pavers and new curb and gutter.

Mr. Roberson noted that all of the construction has been completed in accordance with the grant and the only item lacking is the Contracting Agency Agreement. The agreement is to verify that the unit cost provided by DS Simmons for the renovation work will be the same unit cost used in the construction phase of the grant under USDA. The USDA grant requires the Contracting Agency Agreement to be completed prior to the final invoice being paid.

On motion of Mayor Pro tem Mercer, seconded by Councilman Woolard, Council unanimously authorized the City Manager, Jim Smith; City Attorney, Franz Holscher and Director of Planning and Development, Bobby Roberson to finalize a “Contracting Agency Agreement” between the City of Washington and the Turnage Theaters Foundation, Inc. concerning the USDA grant in the amount of \$200,000 and authorize the Mayor to execute the agreement once it has been finalized.

CONTRACTING AGENT AND GRANT PERFORMANCE AGREEMENT

This Contracting Agent and Grant Performance Agreement (the “Agreement”) is entered into as of the 11th day of November, 2008 by and between Turnage Theaters Foundation, Inc., a North Carolina corporation with an office located at 150 West Main Street, Washington, North Carolina (hereinafter referred to as the “Turnage”) and the City of Washington, a municipal corporation organized under the laws of the State of North Carolina having an address of 102 East Second Street, Washington, North Carolina (hereinafter referred to as the “City”), who hereby agree as follows.

WITNESSETH:

WHEREAS, the Turnage is the owner of certain real estate located at 150 West Main Street, Washington, North Carolina (hereinafter referred to as “Property”).

WHEREAS, the City was awarded a Rural Business Enterprise Grant

(hereinafter referred to as "Grant") from the United States Department of Agriculture, Rural Development Office (hereinafter referred to as "USDA") through the North Carolina Rural Economic Development Center Building Reuse and Restoration Grants Program to or for the benefit of the Turnage in order to stimulate reuse of the Property and support economic development in the local geographic area.

WHEREAS, the Grant was funded by USDA with an OMB approval no. _____ and federal grant no. 38-007-566001364, pursuant to their mission to stimulate and support economic development in the rural areas of North Carolina.

WHEREAS, the USDA requires the Turnage to enter into this Agreement as a condition of providing Grant funding to the City for this Project that will assist the Turnage in relocating certain utilities and making other, certain improvements at the rear of the existing structure in conjunction with the expansion of the Turnage Theater.

NOW, THEREFORE, in consideration of the mutual promises and other valuable considerations as shall be set out herein, the receipt and legal sufficiency of which are hereby acknowledged, the parties hereto do mutually agree to the following terms and conditions.

1. **Project.** The Turnage, in conjunction with the City, has or shall develop, perform, and complete and/or contract for as the City's contracting agent the work set out in Exhibit A attached hereto and incorporated herein by reference; any and all obligations, including bidding requirements, of the City under said Grant including exhibits thereto as well as related application (Exhibit B), all of which are incorporated herein by reference as if fully set forth; and the work described in the proposal entitled "Turnage Theaters Utilities Relocation Improvements" as approved by USDA (herein all referred to collectively as the "Project"). The Turnage shall perform for or will do whatever is requested or necessary, including but not limited to furnishing the City with all requested or necessary information, documentation, and reports in a timely manner, to enable and assist the City in performing and satisfying all of its obligations under said Grant in a timely fashion.

2. **Grant.** The City hereby offers to the Turnage an amount up to and not to exceed \$200,000.00 to fund the Project. The Turnage hereby represents and warrants that all such sums spent under this Agreement shall be utilized exclusively for the purposes of this Project. The parties acknowledge that said Grant funds will be repayable by the Turnage in the event said Grant funds are/were used for unauthorized purposes or the USDA otherwise requires repayment of the same for whatever reason. In which events, the Turnage agrees to pay to the City or its designee for redistribution back to the USDA, the amount funded or required.

a. It is understood that the City's obligation to provide said Grant funding under this Agreement is contingent upon the availability and continuation of the funds to the USDA for such purpose. In the event that funds for this Project become unavailable and/or the USDA terminates its Grant with the City, the City may terminate this Agreement without liability to or recourse from the Turnage. All obligations of the City to make available said Grant funding under this Agreement shall cease upon such termination.

b. The Turnage shall maintain and provide upon request all documentation, including invoices, to support the payment of said eligible expenses as more specifically provided for hereinabove, including but not limited to a breakdown of said eligible expenses and related invoices paid for through said Grant funding.

3. **Unit Cost.** In determining the unit cost for this Project, DS Simmons, Inc., a licensed general contractor in North Carolina, was awarded the lowest responsible bid for the restoration of the Turnage Theater and the new addition located at the rear of the structure. The actual cost of completing the Turnage Theater Utilities Relocation and Improvement Project was determined by using the existing schedule of values in the contract with DS Simmons, Inc. in order to provide invoices to the City for the work contemplated by and performed under this Agreement.

4. **Records.** The Turnage agrees 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 5 years from the date of last payment. In the event any such records are audited, all such records shall be retained beyond the 5 year period until any and all audit findings have been resolved. The Turnage agrees to make available to the City, the USDA, or their designated representatives, all of its records which relate to the Project, and agrees to allow the City, the USDA, 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. Access to these records shall be allowed upon request at any time during normal Turnage hours, and as often as the City, the USDA, or said representatives may deem necessary.

5. **Reports.** All funds awarded to the Turnage under this Agreement are appropriated by the USDA and the City. Accordingly, the Turnage acknowledges and agrees that it will be subject to any audit and reporting requirements required by law. Such audit and reporting requirements may vary depending upon the amount and source of funding received by the Turnage and are subject to change from time to time. In addition to the audit and reporting requirements mandated by law, the Turnage agrees to comply with any requests made by USDA from time to time for other financial and organizational materials to permit USDA to comply with its fiscal monitoring responsibilities.

6. **Representations and Warranties.** The Turnage hereby represents and warrants the following:

(a) It is duly organized and existing, and, if a corporate entity, 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 before 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, 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, such party shall be liable to the City and to the USDA for repayment of the entire amount of the Grant funds.

(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 City and the USDA the full amount of Grant funds 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 City or the USDA 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.

7. **Liabilities and Loss.** The City assumes no liability with respect to accidents, bodily injury, illness, breach of contract or any other damages or loss, or with respect to any claims arising out of any activities undertaken by the Turnage under this Agreement, whether with respect to persons or property of the Turnage, or third parties. The Turnage agrees to obtain insurance or otherwise protect itself or others as it may deem desirable. Further, the Turnage agrees to indemnify, defend and save harmless the City and its officers, agents and employees against any liability, including costs and expenses and attorneys' fees, for the Turnage'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 Turnage also further agrees to indemnify, defend and save harmless the City and its officers, agents and employees from any and all claims and losses accruing or resulting to any and all subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the 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 Turnage or its agents in the performance of the Project and this Agreement.

8. **Special Provisions and Conditions.**

(a) Nondiscrimination. The Turnage agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or handicap related to the activities of this Agreement.

(b) Compliance with Laws. The Turnage shall at all times comply with all laws, ordinances, and regulations of the State, Federal and Local Governments which may in any manner affect the performance of this Agreement.

(c) Non-Assignability. The Turnage shall not assign any interest in this Agreement, nor should it transfer any interest in the same, without the written consent of the City.

(d) Personnel. The Turnage 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 the Grant, this Agreement and the Project. Such employees shall not be employees of the City. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

9. **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 Mails, certified, return receipt requested, postage prepaid, and addressed as follows:

To the City: Attn: City Manager
City of Washington
P.O. Box 1988
Washington, NC 27889

With a copy to: United States Department of Agriculture
Rural Development
Wayne D. Causey
Pitt County Office Complex
403 Government Circle, Suite No. 3
Greenville, N.C. 27834

If to the Turnage: Attn: Robert Chumbley, Executive Director
Turnage Theaters Foundation, Inc.
150 West Main Street
Washington, NC 27889

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.

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

11. **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.

12. **Construction.** This Agreement shall be construed and governed by the laws of the state of North Carolina.

13. **Entire Agreement.** This Agreement supercedes all prior agreements between the Turnage and the City, and expresses an entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by the Turnage and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, pursuant to authority duly given, as of the date first above written.

PRE-AUDIT CERTIFICATE

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

s/Anita C. Radcliffe
ANITA RADCLIFFE,
INTERIM FINANCE DIRECTOR

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK
TURNAGE THEATERS FOUNDATION, INC.

s/Robert Chumbley
ROBERT CHUMBLEY
EXECUTIVE DIRECTOR

ADOPT – AMENDMENT TO FY08-09 BUDGET ORDINANCE

Jim Smith, City Manager explained these reductions will hopefully get us through this fiscal year and explained he has worked diligently with department heads to make these reductions. When the FY08-09 Municipal Budget was formulated in March/April of 2008 the depth of the current economic recession was not anticipated. The proposed reductions were designed with the assistance of every Department Head to execute reductions without major impacts on programs or employee layoffs. Mr. Smith noted that an across the board reduction was not feasible as many of the City's largest expenses such as debt service, insurance, and utilities are fixed costs which cannot be reduced. It was further noted that the City has worked hard to improve its financial reserves in all funds. In addition, the City has worked to assure that the Local Government Commission, International City/County Management Association, and Government Finance Officers Association recommendations on fund balance for communities in storm prone areas are implemented. A major storm event can easily result in a loss and/or deferral of revenues for a period of at least two months and reserves must be banked against this.

Mayor Pro tem Mercer noted concern that reductions were not taken in the IT Department, EMS or at the Aquatics Center. He felt there was still room for reductions to be taken and money could be found in these areas.

Councilman Davis stated he was concerned that funds were being reduced for grounds maintenance at the sports complex. He felt this shouldn't be deleted as it will cause major problems and make it difficult to play sports on fields that aren't properly maintained.

A motion was made by Councilman Brooks and seconded by Councilman Jennings to adopt the proposed amendment to the FY08-09 Budget Ordinance.

Councilman Davis motioned to amend Councilman Brooks' motion to reflect the following: that \$4135 from line item 10-40-6130-4501 Contract Services- Grounds, be deleted from items to be reduced. The amendment dies for lack of a second.

The original motion was restated as follows: on motion of Councilman Brooks, seconded by Councilman Jennings, Council adopted the proposed amendment to the FY08-09 Budget Ordinance.

AYES:
Councilman Woolard
Mayor Pro tem Mercer
Councilman Jennings
Councilman Brooks

NAYES:
Councilman Davis

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE
OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2008-2009**

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 amounts and accounts shown:

10-00-3834-8600	Rents	\$196,368
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10-20-3316-3300	Powell Bill Funds	(45,970)
10-00-3831-0000	Interest Earned	(157,000)
10-00-3324-3100	Utility Franchise Tax	(50,000)
10-00-3260-1108	Privilege License Tax	(20,000)
10-10-3435-4100	Building Permits	<u>(145,000)</u>
		\$(221,602)

Section 2. That the following accounts in the City Council portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4110-1400	Employee Development	\$330
10-00-4110-7400	Capital Outlay	<u>750</u>
		\$1,080

Section 3. That the following accounts in the Mayor portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4111-1400	Employee Development	\$100
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Section 4. That the following accounts in the City Manager portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4120-0200	Salaries	\$14,536
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Section 5. That the following accounts in the Finance Director portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4130-0200	Salaries	\$14,537
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Section 6. That the following accounts in the Purchasing/Warehouse portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4131-7400	Capital Outlay	\$2,270
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Section 7. That the following accounts in the Information Services portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4132-7400	Capital Outlay	\$4,745
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Section 8. That the following accounts in the Revenue Collections portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4133-4501	Bad Debt Collection Fees	\$4,000
10-00-4133-4502	BC Tax Collection Fees	<u>1,745</u>
	Total	\$5,745

Section 9. That the following accounts in the Billing Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4234-1200	Printing and Publishing	\$1,000
10-00-4134-1101	Postage	<u>1,530</u>
	Total	2,530

Section 10. That the following accounts in the Customer Service Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4135-1201	Marketing and Promotions	\$6,378
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Section 11. That the following accounts in the Municipal Building Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4260-7400	Capital Outlay	\$2,450
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Section 12. That the following accounts in the Miscellaneous Non-Departmental portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-00-4400-5400	Insurance & Bonds	\$12,315
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Section 13. That the following accounts in the Police Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-10-4310-0200	Salaries	\$29,330
10-10-4310-3600	Uniforms	4,000
10-10-4310-5601	Materials – Ammo/Batteries	5,000
10-10-4310-7400	Capital Outlay	<u>6,221</u>
	Total	\$44,551

Section 14. That the following accounts in the E-911 Communications Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-10-4311-7400	Capital Outlay	\$5,138
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Section 15. That the following accounts in the Fire Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-10-4340-0200	Salaries	\$14,970
10-10-4340-1400	Employee Development	2,000
10-10-4340-1500	Maint/Repair Building	8,000
10-10-4340-5600	Materials	<u>5,000</u>
	Total	\$29,970

Section 16. That the following accounts in the Planning/Zoning Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-10-4341-0400	Professional Services	\$1,000
10-10-4341-1100	Telephone	300
10-10-4341-1200	Printing & Publishing	850
10-10-4341-1400	Employee Development	737
10-10-4341-1401	Employee Dev – Boards	600
10-10-4341-3300	Departmental Supplies	950
10-10-4341-4502	Contract Services – Maps	<u>1,100</u>
	Total	\$5,537

Section 17. That the following accounts in the Equipment Services Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-20-4250-1400	Employee Development	\$200
10-20-4250-1600	Maint/Repair Equipment	<u>850</u>
	Total	\$1,050

Section 18. That the following accounts in the Street Maintenance Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-20-4510-1500	Maint/Repair Building	\$2,000
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Section 19. That the following accounts in the Powell Bill Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-20-4511-4500	Street Paving	\$45,970
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Section 20. That the following accounts in the Public Works Director Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-30-4700-1400	Employee Development	\$500
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Section 21. That the following accounts in the Cemeteries Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-30-4740-0400	Professional Services	\$100
10-30-4740-1500	Maint/Repair Buildings	500
10-30-4740-5600	Materials	<u>800</u>
	Total	\$1,400

Section 22. That the following accounts in the Brown Library Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6110-3300	Departmental Supplies	\$1,000
10-40-6110-3400	EDP Supplies	1,000
10-40-6110-5600	Materials	4,225
10-40-6110-1500	Maint/Repair Building	<u>1,000</u>
	Total	\$7,225

Section 23. That the following accounts in the Recreation Administration Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6120-1400	Employee Development	\$400
10-40-6120-0201	Salaries – Overtime	346
10-40-6120-3300	Departmental Supplies	<u>319</u>
	Total	\$1,065

Section 24. That the following accounts in the Events & Facilities Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6121-5600	Athletic Programs	\$215
10-40-6121-0201	Salaries – Overtime	<u>2,320</u>
	Total	\$2,535

Section 25. That the following accounts in the Athletics & Programs Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6122-5600 Athletic Materials \$2,140

Section 26. That the following accounts in the Senior Programs Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6123-3300	Departmental Supplies	\$500
10-40-6123-1400	Employee Development	500
10-40-6123-3301	Janitorial Supplies	<u>200</u>
	Total	\$1,200

Section 27. That the following accounts in the Waterfront Docks Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6124-1500 Maint/Repair Buildings \$500

Section 28. That the following accounts in the Parks & Grounds Maintenance Department portion of the General Fund appropriations budget be decreased in the amounts shown to cover the anticipated revenue shortfall.

10-40-6130-4501 Contract Services-Grounds \$4,135

Section 29. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 30. This ordinance shall become effective upon its adoption.

Adopted this the 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

AMEND – PERSONNEL POLICY REVISIONS

Mayor Pro tem Mercer stated the Committee has had several lengthy meetings and have agreed upon the language regarding the salary portion of the policy, but have not come to a conclusion on the use of city equipment, vehicles or car allowances. Mayor Pro tem Mercer suggested Council continue this item until December to give the committee the opportunity to finalize this process.

A motion was made by Mayor Pro tem Mercer, seconded by Councilman Jennings, to adopt Article I & III of the Personnel Policy as proposed and continued the remaining portion regarding usage of city equipment, vehicles and car allowances until the December 8th meeting. No vote was taken at this time.

Susan Hodges noted a correction regarding the City Manager approving an increase above 5% of the hiring rate. Mr. Smith noted these corrections need to be taken up at the Committee meeting.

Franz Holscher, City Attorney suggested that since there is discussion regarding possible changes, the Council should continue the entire thing.

Councilman Jennings noted that at an earlier meeting he made a motion that if the changes were not adopted by November 10, 2008, then Mayor Pro tem Mercer's suggested changes would be implemented.

A motion was made by Mayor Pro tem Mercer, seconded by Councilman Jennings, to adopt Article I & III of the Personnel Policy as proposed and continued the remaining portion regarding usage of city equipment, vehicles and car allowances until the December 8th meeting. All voted against the motion and the motion failed.

On motion of Mayor Pro tem Mercer, seconded by Councilman Jennings, Council unanimously voted to continue the discussion on the personnel policy to allow the committee time to finalize the language and to continue implementation of the language he presented at the last meeting until December 8th.

**ACCEPT – PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS
PROGRAM GRANT AND ADOPT BUDGET ORDINANCE AMENDMENT
(\$1,358.07)**

Mr. Smith stated this was pulled from the consent agenda because the ordinance amendment was mistakenly left out of the agenda package. The Washington Police Department was awarded an equipment grant on September 16, 2008 in the amount of \$6,790.33. The grant was received from the National Telecommunications and Information Administration (NTIA) and the Department of Homeland Security (DHS). The purpose of this grant is to enhance interoperable communications through development of the Voice Interoperability Planer for Emergency Responders (VIPER). This grant provides funding to purchase 1 consolette to be installed in the Washington Police Department Telecommunications Center.

This grant requires a local match of \$1,358.07. Purchase of this equipment was previously approved under the NC Governor's Crime Commission "Project Next Step" grant. Therefore, the required local match of \$1,358.07 has already been approved and can be converted from the "Project Next Step" grant match funds.

On motion of Councilman Woolard, seconded by Councilman Brooks, Council unanimously accepted the Public Safety Interoperable Communications Program Grant and adopted a Budget Ordinance Amendment in the amount of \$1,358.07.

**AN ORDINANCE TO AMEND THE BUDGET ORDINANCE OF THE
CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2008-2009**

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

Section 1. That a Radio Communications Interoperability Fund 10-10-3433-3307 be established and the amount of \$6,790.33 be appropriated therein for the purpose of enhanced interoperable communications; and,

Section 2. That \$5,432.26 be appropriated to the said Fund from a grant from the National Telecommunications and Information Administration and the US Department of Homeland Security; and,

Section 3. That \$1,358.07 be authorized within the Contract Services Police Department budget, account number 10-10-4310-4500 to provide required matching grant funds for the said enhanced interoperable communications equipment

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

ADOPT – RESOLUTION DESIGNATING APPLICANT’S AGENT

On motion of Mayor Pro tem Mercer, seconded by Councilman Jennings, Council unanimously adopted the Resolution designating Fire Chief Jimmy Davis as the primary agent and Anita C. Radcliffe, Interim Finance Director as secondary agent to process the City’s application to FEMA for reimbursement of expenses from Tropical Storm Hanna.

RESOLUTION DESIGNATION OF APPLICANT’S AGENT

North Carolina Division of Emergency Management

WHEREAS, the City of Washington is applying to the Federal Emergency Management Agency for reimbursement of expenses incurred in response to Tropical Storm Hanna; and,

WHEREAS, in order to administer the anticipated application response, the City of Washington must designate primary and secondary agents to represent the City:

NOW THEREFORE, BE IT RESOLVED BY the governing body of the City of Washington (a public entity duly organized under the laws of the State of North Carolina) that the above-name Primary and Secondary Agents are hereby authorized to execute and file applications for federal and/or state assistance on behalf of the Organization for the purpose of obtaining certain state and federal financial assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (Public Law 93-288 as amended) or as otherwise available.

BE IT FURTHER RESOLVED that the above-named agents are authorized to represent and act for the City of Washington in all dealings with the State of North Carolina and the Federal Emergency Management Agency for all matters pertaining to such disaster assistance required by the grant agreements and the assurances printed on the reverse side hereof

BE IT FINALLY RESOLVED THAT the above-named agents are authorized to act severally.

PASSED AND APPROVED this 10 day of November 2008.

CERTIFICATION

I, Cynthia s. Bennett duly appointed and City Clerk of the Governing Body, do hereby certify that the above is a true and correct of a resolution passed and approved by the Governing Body of the City of Washington on the 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

**ADOPT – BUDGET ORDINANCE AMENDMENT – FINAL PAYMENT TO
HUDSON BROTHER’S CONTRACTORS PURCHASE OF GENERATOR
(\$76,665)**

Chief Jimmy Davis explained that enough money was being moved into the equipment account to cover the purchase of the generator.

On motion of Mayor Pro tem Mercer, seconded by Councilman Jennings, Council unanimously adopted a budget ordinance amendment relocating funding within the Second Fire Station Capital Fund to allow for final payment to be made to Hudson Brothers Contractors in the amount of \$76,665.

**AN ORDINANCE TO AMEND THE SECOND FIRE STATION CAPITAL
PROJECT FUND ORDINANCE OF THE CITY OF WASHINGTON, N.C.
FOR THE FISCAL YEAR 2008-2009**

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

Section 1. That account number 63-10-4340-4500, Construction portion of the Second Fire Station Capital Project Fund be decreased in the amount of \$76,665 to provide funds for the purchase of a generator.

Section 2. That account number 63-10-4340-7400, Equipment Purchases portion of the Second Fire Station Capital Project Fund be increased in the amount of \$76,665 to provide funds for the purchase of a generator.

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 10th day of November, 2008.

s/Judy M. Jennette
JUDY M. JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

**AUTHORIZING – MAYOR AND CITY CLERK TO EXECUTE THE ATTACHED
MUNICIPAL AGREEMENT WITH NCDOT FOR THE BROWN STREET
BRIDGE REPLACEMENT PROJECT**

Allen Lewis, Director of Public Works presented the municipal agreement which is required by NCDOT for our participation in their Municipal Bridge Program. This program will provide federal aid funds for 80% of the project cost

with the remaining 20% being a local match by the City. At this time, the project is in the STIP with \$500,000 in funding requiring a \$100,000 match.

On motion of Mayor Pro tem Mercer, seconded by Councilman Woolard, Council unanimously authorized the Mayor and City Clerk to execute the Municipal Agreement with NCDOT for the Brown Street Bridge Project.

NORTH CAROLINA-BEAUFORT COUNTY – 10/28/08
NC DEPT. OF TRANSPORTATION
MUNICIPAL BRIDGE AGREEMENT
PROJECT: B-5174
DESCRIPTION: REPLACEMENT OF BRIDGE #80 ON BROWN
STREET OVER JACKS CREEK

DIVISION: 2 –
WBS: 42395.1.1 PE
42395.2.1 ROW
42395.3.1 CON

THIS AGREEMENT is made and entered into on the last date executed below, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina, hereinafter referred to as the Department, and the CITY OF WASHINGTON, a municipal corporation, hereinafter referred to as the Municipality.

WITNESSETH:

WHEREAS, Federal Regulations provided funding for a Federal-Aid Highway Bridge Program including bridges located on public roads other than those on the Federal-Aid system; and, WHEREAS, the Municipality proposes to make certain improvements under the Federal-Aid Highway Bridge Program; and,

WHEREAS, the Municipality and the Department are authorized to enter into an agreement for such improvement under the provision of G.S. 136-18 (12), G.S. 136-41.3, and G.S. 136-66.1; and,

WHEREAS, the Council of the Municipality has approved the construction of the hereinabove referenced project and has agreed to participate in certain costs thereof in the manner and to the extent as hereinafter set out.

NOW, THEREFORE, the Department and the Municipality agree as follows:

GENERAL PROVISIONS: Detailed Municipal Bridge Program Guidelines, Contacts and Forms, are located on the Municipal Bridge Website: <http://www.ncdot.org/planning/development/rIP/mbridge/mbridge.html> Execution of this agreement certifies that the Municipality shall abide by the Municipal Bridge Guidelines.

PROFESSIONAL ENGINEERING SERVICES:

1. If the Municipality causes the professional engineering services required by this Agreement to be performed partially or in full by contracting with a private engineering firm, it is agreed as follows:

- (A) The Municipality shall ensure that a qualified contractor is obtained through an equitable selection process, and that prescribed work is properly accomplished in a timely manner, at a just and reasonable cost.
- (B) The Municipality, when procuring architectural, professional and engineering services, must adhere to North Carolina Department of Transportation *Rules and Regulations for Major Professional or Specialized Services Contracts*. This policy conforms to N.C.G.S. 143-64, Parts 31 and 32, and Title 23 of the Code of Federal Regulations, Part 172. The Municipality shall comply with the policies and standards for negotiated contracts as contained in the Federal-Aid Policy Guide, Part 172; said policies and standards being incorporated in this Agreement by reference, and currently available at (www.fhwa.dot.gov/legsregs/legislat.html).
- (C) The Municipality shall submit all professional services contract Proposals to the Department for review and prior to execution of the professional services contract by the Municipality. In the event that the professional services contract proposal (profession~1 and/or engineering) exceeds \$30,000, a pre-negotiation audit must be requested from the Department's External Audit Branch.
- (D) The Municipality shall perform project administration in accordance with all State and Federal policies and procedures. If the Municipality elects to procure a private consulting firm to conduct project administration, the Municipality shall be responsible for submitting the consulting firm's proposal to the Department for review and approval.
2. The Municipality shall prepare or cause to be prepared the Project Planning Report, including environmental reports and applications for permits, in accordance with the Department's standard practices and submit it to the Department for review and approval. During the review of the planning report, it will be determined if a public hearing is required.
 3. If a public hearing is required, the Municipality shall prepare or cause to be prepared the public hearing maps and submit them to the Department for review and approval.

PROJECT PLANS & DESIGN:

4. The Municipality shall prepare, or cause to be prepared, the project plans and specifications for the project. All work shall be performed in accordance with departmental standards and specifications and submitted to the Department for review and approval.
5. The Municipality shall design and prepare or cause to be designed and prepared preliminary right of way plans for the project in accordance with the Department's standard practices as defined in the Highway Design Branch's Roadway and Structure Design Manuals and Policy Manuals. The Municipality shall submit or cause to be submitted said preliminary plans to the Department for review and approval. The plans shall be completed to show the design profiles, typical section, construction limits, drainage, proposed right of way, easements, and a traffic handling plan. The general drawing for all structures shall also be submitted.
6. The Municipality shall complete the plans and specifications for the project in accordance with the Department's standard practices for highway construction and in accordance with the comments received from the preliminary review.

RIGHT OF WAY AND UTILITIES:

7. The Municipality, without any liability whatsoever to the Department, shall acquire right of way necessary to provide right of way of the width and length as called for in the project plans as approved by the Department. However, the Municipality shall acquire said right of way only after being authorized in

writing by the Department to proceed with said acquisition of right of way. In acquiring said right of way, the Municipality shall comply with the Right of Way Acquisition Policy contained in the Federal-Aid Policy Guide, Part 710, Subpart B; said policy being incorporated in this Agreement by reference, and currently available at <http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>. In addition, the Municipality will obtain the necessary right of way in accordance with policies and procedures as set forth in the North Carolina Department of Transportation Right of Way Manual. Prior to initiating any right of way acquisition, the Municipality shall meet with the Department's Division Right of Way Agent to review federal guidelines and regulations for right of way acquisition. Payment to the Municipality for right of way expenditures will not be made by the Department until this meeting has occurred.

8. The Municipality shall provide relocation assistance services and payments for families, businesses, and non-profit organizations being displaced by the project. Such services and payments shall be made in accordance with Public Law 91-646 and the North Carolina General Statutes, Chapter 133, Article 2, Sections 133-5 through 133-18. Relocation assistance services and payments may be accomplished by contract with any other municipal corporation, or State or Federal agency, rendering such services upon approval by the Department and the Federal Highway Administration. Appraisal and relocation guidelines will be reviewed by the Department and the Municipality at the above referenced meeting with the Division Right of Way Agent.
9. The Municipality shall accomplish or cause to be accomplished the relocation or adjustment of any and all publicly or privately-owned utilities in conflict with construction of the project. A plan showing utility conflicts shall be included in the final plans.
10. Construction:
11. In the event the project is not let to contract within six (6) months after receiving final approval of construction plans and proposals from the Department, the Municipality shall be responsible for re-submitting two (2) sets of plans and proposals to the Department for review to ensure that they remain in compliance with any revisions in the Department's standard practices and regulations.
12. Prior to advertising the project for construction bids, the Municipality shall submit or cause to be submitted for approval by the Department the final construction plans, the total contract proposal, and an estimate of the project costs. Bids received along with proper documentation of Municipal approval shall be submitted for review and approval by the Department and the Federal Highway Administration prior to the contract being awarded by the Municipality. Further, upon award of the project to contract, the Municipality shall furnish to the Department five (5) copies of the executed contract and five (5) sets of plans. The Municipality shall follow Department regulations and Federal Highway Administration regulations pertaining to bid procedures in the award of the contract. Said Federal Highway Administration regulations are contained in Title 23 code of Federal Regulations, Part 633, Subpart A and 23 CFR Part 635, Subpart A; said policy being incorporated in this Agreement by reference and currently available at (<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm>) as fully as if herein set out. Letting of contracts for construction and purchases shall be in accordance with North Carolina General Statutes 143-129.
13. Subject to successful completion of the planning document and all required environmental work, the Municipality shall construct, or cause to be constructed, the project in accordance with the plans and specifications of the project as filed with and approved by the Department. During the construction of the project, the procedures set out hereinbelow shall be followed:

(A) The Municipality shall perform or cause to be performed the necessary construction engineering, sampling and testing, and supervision required during construction of the project.

(B) During construction of the project, if any changes in the project plans are necessary, such changes must be approved by the Department's Division Engineer prior to the work being performed.

(C) The Department's Division Engineer and representatives of the Federal Highway Administration shall have the right to inspect, sample or test, and approve or reject, any portion of the project during construction.

(D) Prior to final approval and payment by the Department, said Division Engineer and a representative of the Federal Highway Administration shall make a final inspection of the completed work.

(E) The Municipality will be responsible for insuring that the contractor complies with all of the terms of the contract and any instructions issued by the Department's Division Engineer as a result of any review or inspection made by said Division Engineer.

(F) Upon completion of the project, the Municipality will furnish or cause to be furnished the Department's Division Engineer with a certification that contract administration has been accomplished in accordance with the Municipality's procedures that have been approved by the Department. The Municipality shall also furnish certification that materials used in the construction meet the requirements as set forth in the contract.

(G) Upon completion of the project, the Municipality will furnish the Department with two complete sets of "As Built" plans.

(H) The Municipality shall maintain records to document quantities for which the contractor is paid during any monthly estimate period.

(I) The Municipality shall maintain all records that establish final documentation of quantities incorporated into the project in accordance with established Department procedures.

(J) All project records developed by the Municipality that are not submitted to the Department shall be retained by the Municipality for a period of five (5) years after the final voucher is paid by the Federal Highway Administration.

(K) During construction of the project, the Municipality shall provide and maintain adequate barricades, signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformance with the traffic control plan for the project and with the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, or any subsequent revision of the same, published by the Federal Highway Administration and effective at the time of award of the contract.

(L) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department to withdraw participation on any or all of the items of work involved.

FUNDING:

14. The Department shall reimburse the Municipality to the extent of eighty percent (80%) of the approved **allowable** project costs incurred by the Municipality under this Agreement. Said reimbursement shall be subject to the policies and procedures contained in Federal-Aid Policy Guide Part 140, Subpart G and Federal-Aid Policy Guide Part 172 by reference and currently available at <http://www.fhwa.dot.gov/legsregs/legislat.html>. Said

reimbursement shall also be subject to the Department being reimbursed through the Federal Aid Highway Bridge Program of the Federal Highway Administration, which is to participate in the costs of the project to the extent of eighty percent (80%) of allowable project costs subject to compliance with all applicable federal policy and procedural rules and regulations. The **estimated** total project cost is \$600,000.00. It is understood by all parties that this is an estimated cost and is subject to change. The Municipality is responsible for paying all **actual** project costs that exceed 80% of approved allowable project costs incurred by the Municipality under this agreement. Project cost reimbursement to the Municipality shall be made as follows:

- (A) The Municipality may bill the Department for 80% of actual project costs on a quarterly basis as herein stated by submitting an invoice along with proper supporting documentation to the Municipal Bridge Coordinator for preliminary engineering and right of way costs and to the Department's Division Engineer for construction costs. The Municipal Bridge Coordinator and the Financial Management Division will reimburse the Municipality quarterly upon approval of said invoice for preliminary engineering and right of way costs. The Department's Division Engineer and the Financial Management Division will reimburse the Municipality quarterly upon approval of said invoice for construction costs. The project must progress in a satisfactory manner in the opinion of the Department and the Municipality must invoice the Department for work accomplished at least once every six (6) months to keep the project funds active and available. If the project does not remain active, the Department and/or FHWA reserves the right to de-obligate said funding. If any work is performed by the Department for review and inspection and/or at the request of the Municipality, the Department's Division Engineer shall reduce the maximum federal award amount available to the Municipality under this Agreement, accordingly.
- (B) The Municipality shall be responsible for adhering to applicable administrative requirements of 49 CFR Part 18, and currently available at:
<http://www.fhwa.dot.gov/legsregs/directives/fapgtoc.htm> and Office of Management and Budget (OMB) Circular A-102, and currently available at www.whitehouse.gov/omb/circulars/a102/a102.html.
- (C) Force account work is only allowed when there is a finding of cost effectiveness for the work to be performed by some method other than contract awarded by a competitive bidding process. Written approval from the Department is required prior to the use of force account by the Municipality. Federal Highway Administration regulations governing Force Account are contained in Federal-Aid Policy Guide, Title 23 Code of Federal Regulations, Part 635.201, Subpart B; said policy being incorporated in this Agreement by reference www.fhwa.dot.gov/legsregs/directives/cfr23toc.htm. North Carolina General Statutes governing the use of Force Account, Chapter 143, Article 8 (Public Contracts) can be found at www.ncleg.net/gascripts/Statutes/Statutes.asp.
- (D) In accordance with OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations" (www.whitehouse.gov/omb/circulars/a133/a133.html) dated June 27, 2003 and the Federal Single Audit Act Amendments of 1996, the Municipality shall arrange for an independent financial and compliance audit of its fiscal operations. The Municipality shall furnish the Department with a copy of the independent audit report within thirty (30) days of completion of the report, but not later than nine (9) months after the Municipality's fiscal year ends.
- (E) Any costs incurred by the Municipality prior to written notification by the Department of federal authorization to proceed with the work shall not be eligible for reimbursement.

- (F) A final itemized invoice listing all costs shall be submitted to the Department's Division Engineer. Upon completion of the work, the Municipality must submit an invoice that is clearly stamped or marked "Final Invoice" for reimbursement of any remaining costs to be paid under the terms of this Agreement. Upon receipt of the "Final Invoice," the Department will deobligate any remaining funds and close the project subject to final review and audit.
 - (G) The Municipality agrees that it shall bear all costs for which it is unable to substantiate actual costs, or any costs, which have been deemed unallowable by the Federal Highway Administration and/or the Department's Financial Management Division. In the event funding is withdrawn by FHWA, project reimbursement shall be subject to the availability of any remaining federal funds.
 - (H) Failure on the part of the Municipality to comply with any of these provisions will be grounds for the Department and/or FHWA to terminate participation in the costs of the work.
 - (I) All invoices must be submitted within six (6) months of completion and acceptance of the work by the Department and FHWA or said invoices will be considered ineligible items for payment.
 - (J) The Municipality agrees that, if the Federal Highway Administration does not participate in certain costs because of noncompliance with federal regulations by the Municipality, the Municipality will reimburse the Department for such costs. All costs not reimbursed to the Department by the FHWA for noncompliance by the Municipality shall be borne by the Municipality.
 - (K) The Department reserves the right to deduct monies from the Municipality's Powell Bill Fund if monies paid to the Municipality from the project funds are determined by the Department and/or FHWA, either by audit and/or inspection of books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs, not to be in compliance with the terms of this agreement.
 - (L) Reimbursement for construction contract work will be made on the basis of contract unit prices in the construction contract and any approved supplemental agreements.
 - (M) Reimbursement for construction contract administration will be made as governed by Section 106(c) Title 23 of the U.S. Code that limits federal participation, and Departmental policy that limits reimbursement for construction contract administration to no more than fifteen (15%) percent of the actual construction contract of the project.
15. The Municipality agrees that, if the Federal Highway Administration should not participate in certain costs because of noncompliance with Federal and/or State regulations, it will reimburse the Department for such costs regardless of any nonparticipation in the costs by the Federal Highway Administration. All costs not reimbursed to the Department by the Federal Highway Administration shall be borne by the Municipality. Following completion of the project, the Department shall invoice the Municipality for all costs incurred by said Department that are not reimbursed by the Federal Highway Administration. Reimbursement shall be made by the Municipality to the Department within sixty (60) days of receiving an invoice from the Department. A late payment penalty and interest shall be charged on any unpaid balance due in accordance with G.S. 147-86.23.
15. The Municipality, and/or its agent, shall also comply with the following federal policies: (a) Conflict of Interest; (b) Equal Employment Opportunity; and, (c) Title VI-Civil Rights Act of 1964 as fully as if herein set out, and currently available at: www.fhwa.dot.gov/legsregs/legislat.html.

CONSTRUCTION SUBCONTRACTOR REQUIREMENTS:

16. Any contract entered into with another party to perform work associated with the requirements of this agreement shall contain appropriate provisions regarding the utilization of Disadvantaged Business Enterprises (DBEs), or as required and defined in Title 49 Part 26 of the Code of Federal Regulations and the North Carolina Administrative Code. These provisions are incorporated into this Agreement by reference:
www.ncdot.org/doh/preconstruct/ps/contracts/sp/2006sp/municipal.html

(A) The Municipality shall not advertise nor enter into a contract for services performed as part of this Agreement, unless the Department provides written approval of the advertisement or the contents of the contract.

(B) If the Municipality fails to comply with these requirements, the Department will withhold funding until these requirements are met.

ADDITIONAL PROVISIONS:

17. The Municipality and its contractor shall maintain all books, documents, papers, accounting records, and such other evidence as may be appropriate to substantiate costs incurred under this Agreement. Further, the Municipality shall make such materials available at its office and shall require its contractor to make such materials available at its office at all reasonable times during the contract period, and for five (5) years from the date of payment of the final voucher by the Federal Highway Administration under this Agreement, for inspection and audit by the Department, the Federal Highway Administration, or any authorized representatives of the Federal Government.
18. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by signature of this agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Department or Agency and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.
19. Upon completion of the project, the Municipality shall be responsible for the establishment and maintenance of traffic operating controls on the project. Such controls shall be in accordance with the approved project plans and the Manual on Uniform Traffic Control Devices for Streets and Highways published by the Federal Highway Administration.
20. The Municipality shall be responsible for the proper maintenance of the completed improvements and for the costs thereof. However, in the event the Municipality fails to maintain or to provide for the proper maintenance and operation of the completed improvements, the Municipality hereby authorizes the Department to maintain the improvements and deduct the costs thereof from allocations made to the Municipality under the provisions of the North Carolina General Statutes, Section 136-41.1.
21. The Municipality will complete the project in accordance with the plans and specifications adopted therefore, or as altered or amended by the Department. The Department shall have the right to abandon the project at any time it sees fit prior to the time the Municipality has been called upon to perform any part of its agreement.

IT IS UNDERSTOOD AND AGREED that the approval of the project by the Department is subject to the conditions of this Agreement, and that no expenditures of funds on the part of the Department will be made until the terms of this Agreement have been complied with on the part of the Municipality.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

s/Judy Jennette
JUDY JENNETTE
MAYOR

ATTEST:

s/Cynthia S. Bennett
CYNTHIA S. BENNETT
CITY CLERK

s/Anita C. Radcliffe
ANITA C. RADCLIFFE
INTERIM FINANCE DIRECTOR

**PARK SPACE DESIGNATION BETWEEN EVANS SEAFOOD PROPERTY
AND ESTUARUM**

Councilman Jennings suggested that Council officially designate this area as a park space, which is already an accepted used by the public. Councilman Jennings asked for this item to be placed as a closed session item on the Committee of the Whole agenda. Mayor Jennette asked Franz Holscher, City Attorney to research this issue and report back to Council.

**CLOSED SESSION – UNDER G.S. 143-318.11(a)(3) ATTORNEY/CLIENT;
G.S. 143-318.11(a)(1) DISCLOSURE OF CONFIDENTIAL INFORMATION; G.S.
143-318.10(e) THE PUBLIC RECORDS ACT; G.S. 143-
318.11(a)(5) ACQUISITION OF REAL PROPERTY: PROPERTY LOCATED ON
SPRINGS ROAD & OWNED BY MS. ANNIE MAYO, LOTS OWNED BY FIRST
PRESBYTERIAN CHURCH ON RESPESS STREET, PROPERTY OWNED BY
BEAUFORT COUNTY BOARD OF EDUCATION LOCATED ON HARVEY
STREET AND PROPERTY OWNED BY OMAR PARKER LOCATED ON
HARVEY STREET.**

On motion of Councilman Woolard, seconded by Councilman Jennings, Council unanimously agreed to go into closed session under G.S. 143-318.11(A)(3) Attorney/Client; G.S. 143-318.11(A)(1) Disclosure Of Confidential Information; G.S. 143-318.10(E) The Public Records Act; G.S. 143-318.11(A)(5) Acquisition of Real Property: Property located on Springs Road & owned by Ms. Annie Mayo, Lots owned by First Presbyterian Church on Respass Street, Property owned by Beaufort County Board of Education located on Harvey Street And Property owned by Omar Parker located on Harvey Street.

On motion of Councilman Woolard, seconded by Councilman Brooks, Council unanimously agreed to come out of closed session.

**STATEMENT REGARDING THE CITY OF WASHINGTON, IMPRESSIONS
MARKETING GROUP, INC., AND HAMILTON BEACH BRANDS, INC.
SETTLEMENT AND RELEASE AGREEMENT**

The City currently owns an approximately 37 acre site at 234 Springs Road, upon which is located a manufacturing facility that the City leased to Hamilton Beach through August 31, 2006. Prior to the expiration of said lease, Hamilton Beach subleased a portion(s) of the facility to Impressions. After the expiration of said lease, Impressions and Hamilton Beach leased various portions of the facility from the City. The parties reached an Agreement dated October 7, 2008 to resolve various landlord and tenant issues and obligations in controversy between them. Under the terms of the Agreement, among other

things, Impressions is required to pay, after an offset, \$18,422.08 to Hamilton Beach. In addition, Hamilton Beach is required to pay \$42,321.40 to the City. Impressions also waives and releases claims concerning utilities and assumes the City's obligations to insure as well as repair the facility. While Impressions continues to occupy the facility, Hamilton Beach has vacated the portion it previously occupied.

DECEMBER – COMMITTEE OF THE WHOLE

On motion of Councilman Jennings, seconded by Councilman Davis, Council unanimously voted not to have a Committee of the Whole meeting in December.

VETERAN'S DAY CEREMONY

Mayor Jennette reminded Council of the Veteran's Day Ceremony beginning at 11:00am on Tuesday, November 11th. She noted the new monument will be unveiled at this event.

On motion of Councilman Davis, seconded by Councilman Brooks, Council unanimously adjourned the meeting at 9:15pm, until Monday, November 24, 2008 at 4:30 p.m. in the Council Chambers at the Municipal Building.

**Cynthia S. Bennett
City Clerk**