

## RESOLUTION NO. 10-253

RESOLUTION OF INTENT TO PERMANENTLY CLOSE SEVERAL PORTIONS OF  
UNOPENED RIGHTS OF WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS  
DEVELOPMENT AREA

WHEREAS, the City of Asheville is hereby declaring its intent to permanently close an unopened portion of Woodside Place; an unopened portion of Woodside Place; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened Elizabeth Place; and

WHEREAS, said rights-of-way are not under the control of the North Carolina Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The City Council hereby declares its intent to permanently close an unopened portion of Woodside Place adjacent to Property Identification Numbers 9649-01-9293-00000, 9649-11-0279-00000, 9649-11-0425-00000, 9649-01-8377-00000, 9649-01-8471-00000, 9649-01-8487-00000, and 9649-01-9556-00000; an unopened unnamed right of way between Gudger Street and the unopened portion of Woodside Place adjacent to Property Identification Numbers 9649-01-9293-00000, 9649-11-0279-00000, 9649-11-1215-00000 and 9649-11-1149-00000; an unopened portion of Bay Street adjacent to Property Identification Numbers 9649-01-8263-00000, 9649-01-9064-00000, 9649-01-9293-00000, 9649-11-1149-00000 and 9649-11-1182-00000; all of the unopened portion of Jason Street and a portion of City maintained Jason Street adjacent to Property Identification Numbers 9649-00-2655-00000, 9649-01-8263-00000, 9640-00-8957-00000, 9649-00-9902-00000, 9649-10-0745-00000, 9649-10-0895-00000, 9649-10-0879-00000 and 9649-01-9064-00000; all of City maintained Michael Street adjacent to Property Identification Numbers 9649-00-9549-00000, 9649-00-8754-00000, 9649-00-8810-00000, 9649-00-7856-00000, 9649-00-7879-00000, 9649-00-8866-00000, 9649-00-9717-00000 and 9649-00-9694-00000; all of the unopened right of way adjacent to Property Identification Numbers 9649-01-8263-00000, 9649-00-6986-00000, 9649-00-6992-00000 and 9649-00-8957.
2. A public hearing on the question of permanently closing an unopened portion of Woodside Place; an unopened unknown unnamed right of way between Gudger Street and the unopened portion of Woodside Place; an unopened portion of Bay Street; all of the unopened portion of Jason Street and a portion of City maintained Jason Street; all of City maintained Michael Street; and all of the unopened Elizabeth Place, thereby called for on January 11, 2011, at the regular meeting of the City Council beginning at 5:00 pm., in the City Council Chambers, 2<sup>nd</sup> floor of the City Hall Building, Asheville, North Carolina.
3. This resolution shall be published in a newspaper of general circulation in Buncombe County, North Carolina, once per week for four successive weeks prior to the aforesaid public hearing on January 11, 2011.

- 4. The notice of closing and the public hearing herein ordered (copy of this resolution being sufficient for the purpose of said notice), shall be prominently posted in at least two places along the aforementioned street. Additionally, a copy of this resolution of intent shall be sent by registered or certified mail to all owners of property abutting this alley, not joining in the petition to close, as shown on the Buncombe County tax maps. The persons effecting the said posting and mailing shall file an affidavit thereof with the City Clerk prior to the public hearing scheduled herein.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Paulson  
City Clerk

Jim Bellamy  
Mayor

Approved as to form:

[Signature]  
City Attorney

Magdalen Paulson  
City Clerk

RESOLUTION NO. 10-254

RESOLUTION AUTHORIZING SETTLEMENT OF CLAIM BY ASHEVILLE CLAIMS CORPORATION FOR DAMAGE TO PROPERTY AT 20 SOUTH SPRUCE STREET (HAYES & HOPSON BUILDING)

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WHEREAS, SWAG Holdings, LLC (herein "SWAG") owns the building located at 20 South Spruce Street, known as the Hayes & Hopson Building; and

WHEREAS, SWAG has made a claim against the City for damage in the amount of \$35,150.54 to said building resulting from water intrusion from the adjacent City County Plaza Property, and the construction activity thereon; and

WHEREAS, the Asheville Claims Corporation has reviewed said claim and recommended payment of it, subject to approval by the Asheville City Council, pursuant to City Resolution 93-145;

NOW, THEREFORE, BE IT RESOLVED BY THE ASHEVILLE CITY COUNCIL AS FOLLOWS:

1. A monetary settlement in the amount of \$35,150.54 be paid to SWAG Holdings, LLC, on behalf of the City of Asheville for damage to its property at 20 South Spruce Street, be and the same is hereby, approved, subject to the execution of appropriate of settlement documents and releases as approved by the City Attorney.
2. That the City Manager be and is hereby, authorized to execute any and all documents necessary to give effect to this Resolution.
3. Nothing herein may be construed as a waiver of governmental immunity with respect to any claims against the City of Asheville.

Read, approved, and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Boulson                      Angela Bellamy  
 City Clerk                                      Mayor

Approved as to form:  
[Signature]  
 City Attorney

Magdalen Boulson  
 City Clerk

RESOLUTION NO. 10-255

RESOLUTION ADOPTING THE 2011 CITY COUNCIL MEETING SCHEDULE

WHEREAS, the Asheville City Council is authorized, pursuant to N. C. Gen. Stat. sec. 160A-71, to fix the time and place for its regular meetings;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The following schedule of the meetings of the Asheville City Council for 2010 be, and the same is, hereby established as follows:

City Council Formal Meetings  
5:00 p.m.  
2<sup>nd</sup> and 4<sup>th</sup> Tuesdays of each month  
Council Chamber – 2<sup>nd</sup> Floor  
City Hall Building, Asheville, N.C.

City Council Community Meetings  
6:30 p.m.  
5<sup>th</sup> Tuesday of any month  
March 29, 2011 – South – Roberson High School Auditorium – 224 Long Shoals Road  
May 31, 2011 – West – Vance Elementary School – 98 Sulphur Springs Road  
August 30, 2011 – North – Reuter Center on UNC-A Campus

BE IT FURTHER RESOLVED THAT:

The following meetings are hereby cancelled: Tuesday, July 12, 2011; Tuesday, December 27, 2011.

This schedule may be amended or modified by resolution.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Margaret Boulton  
CITY CLERK

Tommy Bellamy  
MAYOR

Approved as to form:  
[Signature]  
CITY ATTORNEY

Margaret Boulton  
City Clerk

RESOLUTION AUTHORIZING CHANGES IN THE CITY OF ASHEVILLE WATER RESOURCES DESIGN AND CONSTRUCTION MANUAL

WHEREAS, pursuant to N.C.G.S. § 160A-312, the City of Asheville has authority to operate a public enterprise; and

WHEREAS, pursuant to N.C.G.S. § 160A-312(b), the City of Asheville may adopt rules to protect and regulate any public enterprise system belonging to or operated by it both within and outside the corporate limits of the city; and

WHEREAS, the City Council previously adopted water distribution design standards incorporated in a manual entitled "The Water Resources Design and Construction Manual," (herein "Manual"), on February 23, 2010, with an effective date of March 1, 2010; and

WHEREAS, the Manual must be updated to remain compliant with rules and regulations of North Carolina state agencies providing for the protection of public water supplies;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City of Asheville Water Resources Design and Construction Manual be amended as proposed by the City of Asheville Water Resources Department.

Read and approved this 14th day of December, 2010.

Magdalen Boulson  
City Clerk

Tom Bellamy  
Mayor

Approved as to form:

R.W. Jones  
City Attorney

Magdalen Boulson  
City Clerk



**Exhibit A**  
**Water Resources Department**  
**Revision to the Design & Construction Manual**

**Reason for Revision:**

The Water Design & Construction Manual is revised to provide a higher level of protection for the City public system, and to comply with state and federal requirements concerning protection of the water supply.

**Date:**

The revised Manual is available to go into effect November 24, 2010

**Summary of Significant Changes:**

1. **Higher protection for a fire system with an FDC.** Previously a backflow prevention device with a lower level of protection (Double Check Backflow) was permitted with a system that included a Fire Department Connection (FDC). The FDC allows fire truck pumping into the system creating a risk due to increased pressure. The revision requires backflow prevention with a higher level of protection (Reduced Pressure Zone or RPZ assembly). This revision also ensures that our regulations are in compliance with NCDENR.
2. **Swing check valve to prevent backpressure.** The RPZ is prone to damage and failure from pressure changes without the protection of a swing check valve as a minimum before the backflow preventer. Requiring the swing check valve before all RPZ's will prevent backpressure and subsequent backflow prevention damage. This helps prevent future repairs and maintenance incumbent on the water customer.
3. **UL/FM approved.** Previously the manual did not require UL/FM approved valves which prevent valve shut-off in the closed position. A revision to require this in a fire supply system for Pressure Reducing Valves (PRV) and swing check valves would ensure water is available in case of fire. The UL/FM approved valves in a fire system are mandated by the National Fire Protection Agency (NFPA 13).
4. Minor grammar corrections throughout the document.

Also, revisions to the Standard Details have been prepared to reflect the changes in the Manual.

RESOLUTION NO 10- 257RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH  
CANDLER CONCRETE WORKS, INC. FOR THE DOGWOOD GROVE AND NORTHWOOD ROAD  
CURBING PROJECT

WHEREAS, in accordance with N.C.G.S. § 143-129, informal bids were solicited for the project known as Dogwood Grove, Northwood Road Curbing Project; and

WHEREAS, the Project involves the furnishing of labor, material, equipment and incidentals for the repair and installation of the concrete curbing in the Dogwood Grove Development and Northwood Road area; and

WHEREAS, Candler Concrete Works, Inc., of Candler, North Carolina, was the lowest responsive/responsible bidder for the Project in the amount of \$123,456.78;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to execute on behalf of the City of Asheville a contract with Candler Concrete Works, Inc. for the Dogwood Grove, Northwood Road Curbing Project and is further authorized to execute any and all change orders within the budgeted amount.

Read, approved and adopted this the 14<sup>th</sup> day of December, 2010.

Magdalen Baulson  
City Clerk

Jimmy Ballantyne  
Mayor

[Signature]  
City Attorney

Magdalen Baulson  
City Clerk

RESOLUTION NO. 10-258

RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON MATCHING GRANT FROM THE NORTH CAROLINA DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, DIVISION OF EMERGENCY MANAGEMENT FOR THE PURCHASE OF EQUIPMENT FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

WHEREAS, the City has authority pursuant to N.C.G.S. §160A-17.1 to apply for and receive grants from the State and Federal government, and

WHEREAS, the Department of Crime Control and Public Safety, Division of Emergency Management has awarded RRT 6 – Asheville a non-matching grant in the amount of \$51,428.57 for the purchase of specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to enter into an agreement with the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, for a non-matching grant in the amount of \$51,428.57 to purchase equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists attacks or major disasters.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Bourleson  
City Clerk

Ingobullan  
Mayor

Approved as to form:

Mr. Datz  
City Attorney

Magdalen Bourleson  
City Clerk

## RESOLUTION NO. 10-259

## RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE SMARTER CITIES CHALLENGE GRANT FROM IBM CORPORATION.

WHEREAS, the City has authority pursuant to article III of N.C.G.S. Chapter 160A, to contract with private entities, including contracts with grant funding, and

WHEREAS, IBM Corporation is currently taking applications for municipalities to receive a donation of IBM services and/or technology valued at \$250,000-\$400,000 USD to address a specific problem or opportunity selected by the city in collaboration with IBM; and

WHEREAS, grantee cities will also have access to a wide array of IBM resources throughout the grant engagement, potentially including: technological expertise, assistance with strategic planning, workshops on social networking tools, and City Forward, a powerful new tool which allows cities to analyze, compare and visualize data across systems.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to allow staff to apply for and receive a donation of IBM services and/or technology valued at up to \$400,000 USD, to address a specific problem or opportunity selected by the city in collaboration with IBM.

Read, approved and adopted this the 14<sup>th</sup> day of December, 2010.

Magdalen Boulson  
City Clerk

Jim Bellamy  
Mayor

Approved as to form:

Ken Tate  
City Attorney

Magdalen Boulson  
City Clerk

RESOLUTION NO. 10-260

RESOLUTION AUTHORIZING A LEASE AGREEMENT BETWEEN KEVIN T. AND LISA A. FOX AND THE CITY OF ASHEVILLE FOR A HEALTH SERVICES OFFICE AT 155 BILTMORE AVENUE

WHEREAS, N. C. Gen. Stat. sec. 160A-19 and N. C. Gen. Stat. sec. 160A-240.1 authorize the City to acquire leases of real property for use by any department of the City; and

WHEREAS, the City contemplates the development of a Health Services Office at 155 Biltmore Avenue; and

WHEREAS, Kevin T. and Lisa A. Fox are the owners of real property located at 155 Biltmore Avenue, identified as PIN # 9648.48-2474.00000; and

WHEREAS, the City of Asheville has offered to enter into a lease for approximately 3,422 square feet of office and medical space for an initial term three years, with the option to renew for two additional years; and

WHEREAS, the base rental rate for the leased premises is \$3,800 per month for the first year, with a 3% annual increase in rent commencing each year thereafter, plus the additional responsibility of paying utilities, property taxes and insurance as related tenant expenses; and

WHEREAS, the City's needs for the property during the term of the lease are compatible with the proposed lease;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The Mayor is hereby authorized to execute the Lease Agreement between the Kevin T. and Lisa A. Fox and the City of Asheville for property located at 155 Biltmore Avenue, PIN 9648.48-2474-00000. In addition, the Mayor be, and is hereby authorized to execute any and all documents necessary to give effect to this resolution, subject to approval by the City Attorney, and compliance with applicable North Carolina law.

Read, approved and adopted this 14th day of December, 2010.

Magdalen Boulson  
City Clerk

Imogen Bellamy  
Mayor

Approved as to form:

[Signature]  
City Attorney

Magdalen Boulson  
City Clerk

RESOLUTION NO. 10- 261

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR THE INSTALLATION OF POWER UTILITY LINES AND FACILITIES ON CITY PROPERTY ON AIRPORT ROAD (WNC AGRICULTURAL CENTER – DAVIS ARENA)

WHEREAS, the City has the authority pursuant to N.C.G.S. 160A-273 to grant easements across City property; and

WHEREAS, the City is the owner of land on which the Western North Carolina Agriculture Center (herein "WNCAC") is located, which is leased to the State of North Carolina (Department of Agriculture and Consumer Services) for the WNCAC; and

WHEREAS, in connection with an expansion of Davis Arena at the WNCAC, the electrical power service is being upgraded with a new and relocated underground supply line, for which an easement is needed;

WHEREAS, the City Council has determined that the requested easement is in the public interest;

NOW, THEREFORE, BE IT RESOLVED BY THE ASHEVILLE CITY COUNCIL AS FOLLOWS:

That the Mayor be, and is hereby, authorized to execute easements to Progress Energy across City property at the WNCAC, the form of said easements to be approved by the City Attorney.

Read, approved, and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Bouleson  
City Clerk

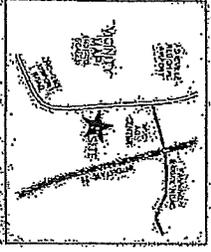
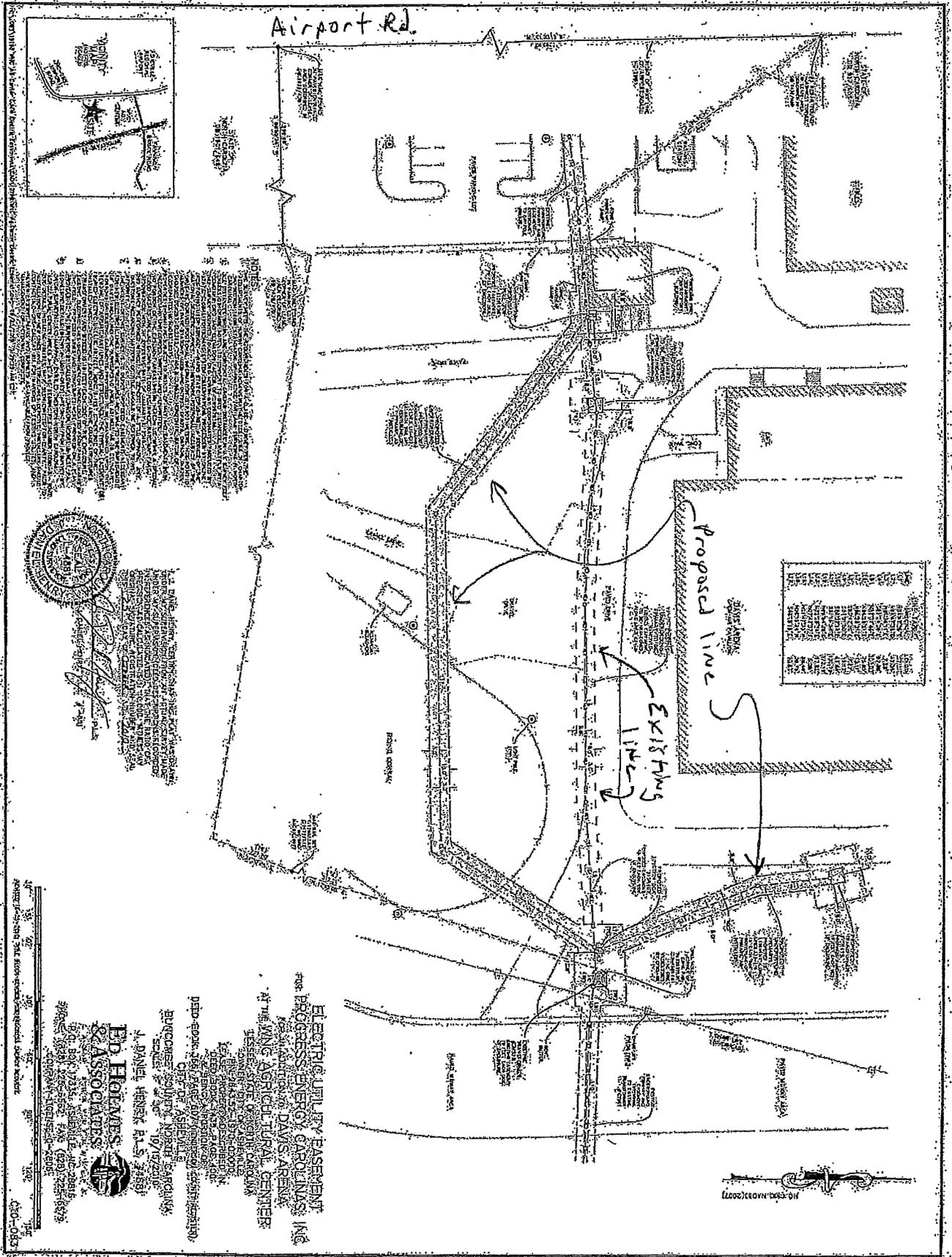
Jimmy Bellamy  
Mayor

Approved as to form:

Russ Jantz  
City Attorney

Magdalen Bouleson  
City Clerk

EXHIBIT A



**ED HOLMES & ASSOCIATES**  
 ENGINEERS  
 1000 W. 10th Street, Suite 100  
 Raleigh, NC 27603  
 Phone: (919) 877-1111  
 Fax: (919) 877-1112  
 www.edholmes.com

DATE: 05/14/2007  
 PROJECT: Airport Rd. from station 100+00 to station 100+00

**ED HOLMES & ASSOCIATES**  
 ENGINEERS

**PROGRESS ENERGY CAROLINAS INC.**  
 PROJECT MANAGER: DAVIS, ARIANNE  
 PROJECT ENGINEER: DAVIS, ARIANNE  
 PROJECT SUPERVISOR: DAVIS, ARIANNE  
 PROJECT ASSISTANT: DAVIS, ARIANNE  
 PROJECT OFFICE: DAVIS, ARIANNE  
 PROJECT PHONE: DAVIS, ARIANNE  
 PROJECT FAX: DAVIS, ARIANNE  
 PROJECT EMAIL: DAVIS, ARIANNE

**EDUCATIONAL SOLUTIONS NORTH CAROLINA**  
 PROJECT MANAGER: DAVIS, ARIANNE  
 PROJECT ENGINEER: DAVIS, ARIANNE  
 PROJECT SUPERVISOR: DAVIS, ARIANNE  
 PROJECT ASSISTANT: DAVIS, ARIANNE  
 PROJECT OFFICE: DAVIS, ARIANNE  
 PROJECT PHONE: DAVIS, ARIANNE  
 PROJECT FAX: DAVIS, ARIANNE  
 PROJECT EMAIL: DAVIS, ARIANNE

RESOLUTION NO. 10-262

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A UTILITY CUT REPAIR ENTERPRISE FUND AGREEMENT WITH PUBLIC SERVICES OF NORTH CAROLINA, INC.

Whereas, pursuant to N.C.G.S. §160A-20.1, a North Carolina Municipal Corporation may contract with and appropriate money to any person, association, or corporation, in order to carry out any public purpose that the City is authorized by law to engage in; and

Whereas, pursuant to N.C.G.S. §160A-460, any unit of local government may enter into contracts or agreements with each other in order to execute any undertaking; and

Whereas, pursuant to N.C.G.S. §160A-296, the City of Asheville (City) has certain duties as it pertains to City streets including but not limited to: keeping the street open for travel, keep the street in proper repair, and free from unnecessary obstructions; and

Whereas, pursuant to N.C.G.S. §160A-296, the City has the power to regulate and prohibit digging into the public streets, sidewalks or alleys and may if it chooses, impose a fee for activities conducted within the City's rights of way; and

Whereas, the Public Services of North Carolina, Incorporated (PSNC) routinely dig into and cut into City streets, sidewalks or alleys for infrastructure needs and otherwise, in furtherance of a public purpose; and

Whereas, City policy requires that utility cuts into City streets, sidewalks or alleys be performed consistent with City standards and be approved by the City, which at times creates confusion, delay and additional cost which could be minimized if not completely eliminated if the City performed such repairs; and

Whereas, it is in the City's best interest that PSNC utility cuts on City and State rights of way be repaired by the City; and

Whereas, the street cut repair enterprise fund was approved by City Council as part of the 2011 Annual City Budget to establish, maintain, create and foster a utility cut repair program administered by the City, consistent with City policy;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The City Manager is hereby authorized to execute a Utility Cut Repair Enterprise Fund Agreement with Public Services of North Carolina.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Bouleson  
City Clerk

Jimmy Bell  
Mayor

Approved as to form:

Russell  
City Attorney

Magdalen Bouleson

RESOLUTION NO. 10-263

RESOLUTION AUTHORIZING A LEASE AGREEMENT BETWEEN PUBLIC INTEREST PROJECTS, INC. AND THE CITY OF ASHEVILLE FOR TEMPORARY PUBLIC PARKING OF VEHICLES AT 86 SOUTH LEXINGTON STREET

WHEREAS, N. C. Gen. Stat. sec. 160A-19 and N. C. Gen. Stat. sec. 160A-240.1 authorize the City to acquire leases of real property for use by any department of the City; and

WHEREAS, Public Interest Projects, Inc. is the owner of real property located off of Lexington Street, identified as PIN's # 9648-49-3354-00000 and 9648-49-3267-00000; and

WHEREAS, the City of Asheville has offered to enter into a two year lease agreement in order to utilize the property for public parking; and

WHEREAS, the rental for the leased premises is \$3,000 per month and includes responsibility of paying property taxes, insurance and all utility bills as related tenant expenses; and

WHEREAS, the City's needs for the property for temporary parking during the construction of the proposed parking garage at 51 Biltmore Avenue;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

The Mayor is hereby authorized to execute the Lease Agreement between the Public Interest Projects, Inc. and the City of Asheville for property located off of South Lexington Street at PIN's # # 9648-49-3354-00000 and 9648-49-3267-00000. In addition, the Mayor be, and is hereby authorized to execute any and all documents necessary to give effect to this resolution, subject to approval by the City Attorney, and compliance with applicable North Carolina law.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Boulton  
City Clerk

Tom Bellamy  
Mayor

Approved as to form:

[Signature]  
City Attorney

Magdalen Boulton

RESOLUTION 10- 264

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO

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*WHEREAS*, the City of Asheville, North Carolina (the "*City*") is a validly existing municipal corporation, existing as such under and by virtue of the Constitution, statutes and laws of the State of North Carolina (the "*State*");

*WHEREAS*, the City has the power, pursuant to the General Statutes of North Carolina to (1) purchase real and personal property, (2) enter into installment purchase contracts in order to finance the purchase of real and personal property used, or to be used, for public purposes, and (3) grant a security interest in some or all of the property purchased to secure repayment of the purchase price;

*WHEREAS*, the City Council of the City (the "*City Council*") hereby determines that it is in the best interest of the City to (1) enter into an Installment Financing Contract (the "*Contract*") with a financial institution to be determined (the "*Bank*") in order to pay the capital costs of the acquisition and construction of a parking facility located at 51 Biltmore Avenue in the City (the "*Project*"), and (2) to enter into a deed of trust and security agreement (the "*Deed of Trust*") related to the City's interest in the real property on which the Project will be located (the "*Site*") that will provide security for the City's obligations under the Contract;

*WHEREAS*, the City hereby determines that the acquisition of the Project is essential to the City's proper, efficient and economic operation and to the general health and welfare of its inhabitants; that the Project will provide an essential use and will permit the City to carry out public functions that it is authorized by law to perform; and that entering into the Contract and Deed of Trust is necessary and expedient for the City by virtue of the findings presented herein;

*WHEREAS*, the City hereby determines that the Contract allows the City to purchase the Project and take title thereto at a favorable interest rate currently available in the financial marketplace and on terms advantageous to the City;

*WHEREAS*, the City hereby determines that the estimated cost of financing the acquisition and construction of the Project is an amount not to exceed \$15,500,000 and that such cost of the acquisition and construction of the Project exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances and non-voted bonds that could be issued by the City in the current fiscal year pursuant to Article V, Section 4 of the Constitution of the State;

*WHEREAS*, although the cost of financing the acquisition and construction of the Project pursuant to the Contract is expected to exceed the cost of financing the acquisition and construction of the Project pursuant to a bond financing for the same undertaking, the City hereby determines that the cost of financing the Project pursuant to the Contract and Deed of Trust and the obligations of the City thereunder are preferable to a general obligation bond financing or revenue bond financing for several reasons, including but not limited to the following: (1) the cost of a special election necessary to approve a general obligation bond financing, as required by the laws of the State, would result in the expenditure of significant funds; (2) the time required for a general obligation bond election would cause an unnecessary delay which would thereby decrease the financial benefits of acquiring and constructing the

Project; and (3) insufficient revenues are produced by the Project so as to permit a revenue bond financing;

WHEREAS, the City has determined and hereby determines that the estimated cost of financing the Project pursuant to the Contract reasonably compares with an estimate of similar costs under a bond financing for the same undertaking as a result of the findings delineated in the above preambles;

WHEREAS, the City does not anticipate a future property tax increase to pay installment payments falling due under the Contract;

WHEREAS, Parker Poe Adams & Bernstein LLP, as special counsel ("*Special Counsel*"), will render an opinion to the effect that entering into the Contract and the transactions contemplated thereby are authorized by law;

WHEREAS, no deficiency judgment may be rendered against the City in any action for its breach of the Contract, and the taxing power of the City is not and may not be pledged in any way directly or indirectly or contingently to secure any moneys due under the Contract;

WHEREAS, the City is not in default under any of its debt service obligations;

WHEREAS, the City's budget process and Annual Budget Ordinance are in compliance with the Local Government Budget and Fiscal Control Act, and external auditors have determined that the City has conformed with generally accepted accounting principles as applied to governmental units in preparing its Annual Budget ordinance;

WHEREAS, past audit reports of the City indicate that its debt management and contract obligation payment policies have been carried out in strict compliance with the law, and the City has not been censured by the North Carolina Local Government Commission (the "*LGC*"), external auditors or any other regulatory agencies in connection with such debt management and contract obligation payment policies;

WHEREAS, a public hearing on the Contract after publication of a notice with respect to such public hearing must be held and approval of the LGC with respect to entering the Contract must be received; and

WHEREAS, the City hereby determines that all findings, conclusions and determinations of the City in this Resolution are subject to modification or affirmation after all interested parties have been afforded the opportunity to present their comments at a public hearing regarding the execution and delivery of the Contract, the Deed of Trust and the project to be financed thereby.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE, NORTH CAROLINA, AS FOLLOWS:

Section 1. **Authorization to Negotiate the Contract.** That the City Manager and the Finance Director, with advice from the City Attorney and Special Counsel, are hereby authorized and directed to proceed and negotiate on behalf of the City for the financing of the Project for a principal amount not to exceed \$15,500,000 under the Contract to be entered into in accordance with the provisions of Section 160A-20 of the General Statutes of North Carolina and to provide in connection with the Contract, as security for the City's obligations thereunder, the Deed of Trust conveying a lien and interest in the Site, including the improvements thereon,

as may be required by the entity, or its assigns, providing the funds to the City under the Contract.

Section 2. **Application to LGC.** That the Finance Director or his designee is hereby directed to file with the LGC an application for its approval of the Contract and all relevant transactions contemplated thereby on a form prescribed by the LGC and to state in such application such facts and to attach thereto such exhibits regarding the City and its financial condition as may be required by the LGC.

Section 3. **Direction to Retain Special Counsel; Financial Advisor.** That the City Manager and the Finance Director, with advice from the City Attorney, are hereby authorized and directed to retain the assistance of Parker Poe Adams & Bernstein LLP, Charlotte, North Carolina, as special counsel, and DEC Associates, Inc., Charlotte, North Carolina, as financial advisor. The City Manager and the Finance Director, with advice from the City Attorney, are hereby authorized to retain the assistance of other professionals as they deem necessary and desirable to carry out the intention of this Resolution.

Section 4. **Public Hearing.** That a public hearing (the "Public Hearing") shall be conducted by the City Council on January 11, 2011 at or about 5:00 p.m. in the Council Chamber, 2<sup>nd</sup> Floor of City Hall, 70 Court Plaza, Asheville, North Carolina, concerning the Contract, the Deed of Trust, the proposed Project and any other transactions contemplated therein and associated therewith.

Section 5. **Notice of Public Hearing.** That the City Clerk is hereby directed to cause a notice of the Public Hearing, in the form attached hereto as Exhibit A, to be published once in a qualified newspaper of general circulation within the City no fewer than 10 days prior to the Public Hearing.

Section 6. **Repealer.** That all motions, orders, resolutions and parts thereof in conflict herewith are hereby repealed.

Section 7. **Effective Date.** That this Resolution is effective on the date of its adoption.

Read, approved and adopted this 14th day of December, 2010.

Magdalen Bourleson  
City Clerk

Gregory Bellamy  
Mayor

Approved as to form:

Bruce Dantz  
City Attorney

Magdalen Bourleson

**EXHIBIT A  
NOTICE OF PUBLIC HEARING**

At its December 14, 2010 meeting, the City Council (the "City Council") of the City of Asheville, North Carolina (the "City") adopted a resolution which:

1. Authorized the City to proceed to pay the capital costs of acquiring and constructing a new parking facility located at 51 Biltmore Avenue in the City (the "Project"), pursuant to an installment financing contract (the "Contract"), in a principal amount not to exceed \$15,500,000 under which the City will make certain installment payments, in order to make the Project available to the City;
  
2. Authorized the City to proceed to provide, in connection with the Contract, as grantor, a deed of trust and security agreement (the "Deed of Trust") under which the City's interest in the real property on which the Project will be located, and the improvements thereon (the "Mortgaged Property"), will be mortgaged by the City to create a lien thereon for the benefit of the entity, or its assigns, providing the funds to the City under the Contract.

On payment by the City of all installment payments due under the Contract, the Deed of Trust and any lien created thereunder will terminate and the City's title to the Mortgaged Property will be unencumbered.

*NOTICE IS HEREBY GIVEN*, pursuant to Sections 160A-20 of the General Statutes of North Carolina, that on January 11, 2011 at or about 5:00 p.m. in the Council Chamber, 2<sup>nd</sup> Floor of City Hall, 70 Court Plaza, Asheville, North Carolina, a public hearing will be conducted concerning the approval of the execution and delivery of the Contract and the Deed of Trust and the City's acquisition of the Project. All interested parties are invited to present comments at the public hearing regarding the execution and delivery of the Contract and the Project to be financed thereby.

/s/ Magdalen Burleson  
City Clerk  
City of Asheville, North Carolina

Published: \_\_\_\_\_

RESOLUTION NO. 10-265RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

WHEREAS, the terms of Jacquelyn Hallum and Precious Folston, as members on the Asheville School Board, expire April 1, 2011;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

(1) Ms. Jacquelyn Hallum, 11 Warwick Road, Asheville, N.C., be and she is hereby reappointed as a member of the Asheville School Board to serve an additional four-year term, term to expire April 1, 2015, or until her successor has been appointed.

(2) Ms. Precious Folston, 10 Alexander Drive, Asheville, N.C., be and she is hereby reappointed as a member of the Asheville School Board to serve an additional four-year term, term to expire April 1, 2015, or until her successor has been appointed.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Boulson  
CITY CLERK

Sam Ballantyne  
MAYOR

Approved as to form:

R. M. [Signature]  
CITY ATTORNEY

Magdalen Boulson  
City Clerk

RESOLUTION NO. 10- 266

RESOLUTION APPROVING SETTLEMENT WITH JOHN ROBERT FOLLETT FOR PERSONAL INJURY ARISING OUT OF AN ACCIDENT WITH AN ASHEVILLE TRANSIT BUS

WHEREAS, John Robert Follett was injured when he was struck by an Asheville transit bus on January 10, 2008; and

WHEREAS, the City and Mr. Follett, through legal counsel, participated in a pre-complaint mediation and negotiated a settlement in the amount of \$125,000, to be paid by the Asheville Claims Corporation on behalf of the City of Asheville to Mr. Follett; and

WHEREAS, the parties also agreed that the City through Asheville Claims Corporation would be responsible for payment of the mediation fees of 1,750.00; and

WHEREAS, pursuant to City Resolution No. 93-145, the Asheville City Council must approve settlement of claims covered by the Asheville Claims Corporation, if the amount of the settlement exceeds \$25,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

A monetary settlement in the amount of \$125,000 to be paid by the Asheville Claims Corporation on behalf of the City of Asheville to John Robert Follett for personal injury suffered after being hit by an Asheville Transit bus, and same is hereby, approved, subject to the execution of appropriate settlement documents and releases by the parties as approved by counsel for the City of Asheville;

The Asheville Claims Corporation shall also pay the mediation fees of \$1,750.00.

As required by N.C.G.S 143-318.11(a)(3), the terms of the settlement of the above-described matter are hereby made a matter of public record, and the City Clerk is directed to enter this Resolution in the official minutes of City Council; and

Nothing herein may be construed as a waiver of governmental immunity with respect to any claims against the City of Asheville.

Read, approved and adopted this 14<sup>th</sup> day of December, 2010.

Magdalen Boudeson  
City Clerk

Ingob Bellen  
Mayor

Approved as to form:

[Signature]  
City Attorney

Magdalen Boudeson  
City Clerk