

RESOLUTION NO. 10-144

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT TO PROGRESS ENERGY CAROLINAS, INC. FOR ELECTRIC POWER LINES ON PROPERTY LOCATED OFF OF BREVARD ROAD, IDENTIFIED AS PIN # 9636-10-3860-00000

WHEREAS, N. C. Gen. Stat. sec. 160A-273 grants authority to cities to convey easements across city property or right-of-way; and

WHEREAS, the City of Asheville, hereinafter the City, has certain reversionary interest in property located off of Brevard Road, identified as PIN # 9636-10-3860-00000; and

WHEREAS, Progress Energy Carolinas, Inc. requests that the City grant an easement measuring approximately 0.31 acres in size in order to accommodate for electric transmission lines; and

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

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

The Mayor is hereby authorized to execute any and all documents, approved by the City Attorney, to convey an easement over a portion of property located off of Brevard Road (PIN # 9636-10-3860-00000) to Progress Energy Carolinas, Inc.

Read, approved and adopted this 22nd day of June, 2010.

Magdalen Boulson
City Clerk

Jim Bellamy
Mayor

Approved as to form:

[Signature]
City Attorney

Magdalen Boulson
City Clerk

RESOLUTION NO. 10- 145

RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT GRANT FUNDS UNDER THE NORTH CAROLINA OFFICE OF JUSTICE PROGRAMS OF THE DEPARTMENT OF JUSTICE (JAG).

WHEREAS, the City has authority pursuant to N.C.G.S. 160A-17.1, to apply for and receive grants from the State and to enter into contracts for the administration of said grants; and

WHEREAS, the US Department of Justice (JAG), has allocated to the City of Asheville the amount of \$89,881 through the Office of Justice Programs (OJP) and Bureau of Justice Assistance (BJA) programs; and

WHEREAS, the City desires to apply for the grant for the purchase of In-car video systems for APD;

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

The City Manager is hereby authorized to apply for, accept, and enter into an agreement with the US Department of Justice, for a grant in the amount of \$89,881. APD will spend \$64,389 for the purchase of In-car video systems, while BCSO will be awarded \$25,492 for a robotic mobile surveillance system.

Read, approved and adopted this the 22nd day of June, 2010.

Magdalen Buileson
City Clerk

Andy Bellamy
Mayor

Approved as to form:

[Signature]
City Attorney

Magdalen Buileson
City Clerk

RESOLUTION NO. 10- 146

RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE

WHEREAS, Mr. Robert Shepherd is no longer on the RiverLink Board of Directors, thus leaving a vacancy for a member of the RiverLink Board of Directors on the River District Design and Review Committee until September 1, 2010;

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

Mr. Richard Hall, 1611 Olmsted Drive, Asheville, N.C., be and he is hereby appointed, as one of the two members of the RiverLink Board of Directors, to serve the unexpired term of Mr. Shepherd, term to begin July 1, 2010, and expire September 1, 2010, and then a full three-year term, term to expire September 1, 2013, or until his successor has been appointed.

Read, approved and adopted this 22nd day of June, 2010.

Magdalen Bouleson
CITY CLERK

Ann M Bellamy
MAYOR

Approved as to form:

RW
CITY ATTORNEY

Magdalen Bouleson
City Clerk

RESOLUTION NO. 10- 147

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE ON BEHALF OF THE CITY AN AMENDMENT TO THE MEMORANDUM OF AGREEMENT REGARDING THE PACK SQUARE PARK

WHEREAS, the City of Asheville has authority pursuant to N.C.G.S 160A-17.1 adopted Resolution 07-101, dated May 15, 2007, authorizing the execution of documents for administration of NCDOT grant agreement for the Pack Square Park Project

WHEREAS, the previously approved document is in need for amendment to address additional time needed to complete various stipulations, and

WHEREAS, the documents will be signed by all previous parties to the agreement, approving that the duration of the agreement will be extended five additional years to complete the outstanding stipulations, for a total of eight years;

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 the necessary amendment to the agreement dated May 15, 2007, regarding the terms and conditions to the aforementioned Memorandum of Agreement, subject to the approval of the City Attorney.

Read, approved and adopted this the 22nd day of June, 2010.

Magdalen Bouleson
City Clerk

Jimmy Bellamy
Mayor

Approved as to form:

[Signature]
City Attorney

Magdalen Bouleson
City Clerk

RESOLUTION NO. 10- 148

RESOLUTION OF SUPPORT FOR ADOPTION OF THE NORTH CAROLINA MOBILITY FUND

WHEREAS, the State of North Carolina is in need of new funding sources, generating revenues beyond the "Equity Formula" to help address North Carolina's critical transportation needs; and

WHEREAS, current funding levels at local, State and Federal levels are insufficient to meet the state's transportation needs, especially with respect to projects having regional, statewide and national significance; and

WHEREAS, the State of North Carolina continues to grow at a rate higher than the normal average;

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

The Asheville City Council supports adoption of the "North Carolina Mobility Fund" by the North Carolina General Assembly during its 2010 Legislative Session as a very positive means of providing upwards of \$300 Million in additional funds for transportation projects of regional or statewide significance.

Read, approved and adopted this 22nd day of June, 2010.

Magdalen Bouleson
CITY CLERK

Tom Ballantyne
MAYOR

Approved as to form:

[Signature]
CITY ATTORNEY

Magdalen Bouleson
City Clerk

RESOLUTION NO. 10- 149

RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT TO DOWNTOWN DEVELOPMENT AGREEMENT

WHEREAS, pursuant to Resolution No. 08-231, adopted on October 28, 2008, the City entered into a Downtown Development Agreement pursuant to N.C.G.S. 160A-458.3, with Public Interest Projects ("PIP") and MHG Asheville AL ("MHG") to develop certain property in downtown Asheville; and

WHEREAS, pursuant to its terms, said Agreement expires on June 30, 2010; and

WHEREAS, the parties wish to extend said Agreement until December 31, 2010, which requires that said Agreement be amended; and

WHEREAS, for the reasons set out in Resolution No. 08-213, and in the proposed First Amendment to Downtown Development Agreement, attached hereto as Exhibit A, the City Council finds that it is in the public interest to extend said Agreement;

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

1. The Mayor be, and is hereby, authorized to execute an amendment to the Downtown Development Agreement between the City, PIP, and MHG, in substantially the form shown on Exhibit A, subject to approval by the City Attorney.

2. The City Manager be, and is hereby, authorized to execute any contracts or other documents necessary to give effect to this resolution, subject to approval of the City Attorney.

Read, approved and adopted, this the 22nd day of June, 2010

Magdalen Boulson
City Clerk

Jimmy Ballantyne
Mayor

Approved as to form:

h. w. Dast
City Attorney

Magdalen Boulson
City Clerk

DRAFT

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

FIRST AMENDMENT TO
DOWNTOWN DEVELOPMENT
AGREEMENT
N.C.G.S. 160A-458.3

THIS "FIRST AMENDMENT TO DOWNTOWN DEVELOPMENT AGREEMENT" made as of this ____ day of _____, 2010, by and between the CITY OF ASHEVILLE, a North Carolina municipal corporation ("City"), PUBLIC INTEREST PROJECTS, INC., a North Carolina corporation, (herein "PIP"), and MHG ASHEVILLE AL, LP, a Georgia limited partnership authorized to do business in North Carolina (herein "MHG").

W I T N E S S E T H :

WHEREAS, pursuant to N.C.G.S. 160A-458.3, the parties entered into a Downtown Development Agreement dated November 21, 2008, (herein "Biltmore/Aston Agreement") for the design, development, and construction of a parking facility, retail space, and hotel on certain property in downtown Asheville (herein "Project"); and

WHEREAS, the location and conceptual design of the Project proposed in the Biltmore/Aston Agreement is more fully described in said Agreement; and

WHEREAS, the Biltmore/Aston Agreement provides for two six-month extensions of the "Decision Period" for terminating or proceeding with said Agreement, the most recent of which is scheduled to expire on June 30, 2010; and

WHEREAS, due to the current economic situation, MHG has encountered unanticipated difficulty obtaining financing for the Private Component of the

Biltmore/Aston Agreement, but anticipates obtaining said financing in the near future;
and

WHEREAS, all parties remain committed to the Biltmore/Aston Agreement and the Project contemplated therein, and wish to extend the Biltmore/Aston Agreement to facilitate the development and completion of the Project, and

WHEREAS, MHG has proposed reducing the size of the proposed hotel by one floor or 28 guest rooms, and PIP and the City have agreed to this revision in concept;
and

WHEREAS, PIP is willing to extend the City's option to purchase the 51 Biltmore property, and has obtained a commitment from the owners of the adjacent HDK property, for additional consideration, to extend the option for the HDK Property for a period of time;

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and agreements set forth herein, the parties hereto do hereby agree as follows:

1. The "Decision Period" specified in Paragraph 7 of the Biltmore/Aston Agreement is hereby extended to and including December 31, 2010.
2. MHG and the City shall each pay \$5,000 to PIP to extend the option on the 51 Biltmore property to December 31, 2010, and upon payment of said sums, PIP shall extend said option. Said sums, together with any sums previously paid for said option and extensions thereof shall be applied against the purchase price of the 51 Biltmore property at closing.

3. PIP shall obtain a further extension of the option to purchase the HDK property, said extension to be for at least 120 days, at a not to exceed cost of \$10,000. The City shall reimburse PIP for its cost to extend said option. Said sum, together with any sums previously paid for said option or any extensions thereof shall be applied against the purchase price of the HDK property at closing.
4. Any time periods or deadlines specified in the Biltmore/Aston Agreement that provided for any party hereto to undertake or complete any action within a certain period (based on the Decision Period and any extensions thereof), are hereby deemed extended to conform to the extension of the Decision Period as set out in Paragraph 1, above.
5. Except as modified by this First Amendment, all terms and conditions contained in the Biltmore/Aston Agreement shall remain in full force and effect, and binding on the parties hereto.
6. The parties further agree with each other in concept on a revision of the design of the project to reduce the size of the proposed hotel structure by one floor, or twenty-eight guest rooms, and will cooperate in the production of revised drawings and any further revisions to the Biltmore/Aston Agreement, or associated land use approvals required by said revision.

IN TESTIMONY WHEREOF, the City, has caused this instrument to be executed in its legal name by its duly authorized Mayor, attested by its City Clerk, and its Official Seal to be affixed hereunto, all by order of the City Council first duly given, and PIP has

caused this instrument to be executed in its respective corporate name, by its President, attested by its Secretary, and its corporate seal to be affixed hereto, all by order of its respective Board of Directors first duly given, and MHG has caused this instrument to be executed by a Partner or Member of MHG, said execution having been duly authorized act of the Partnership. All done as of the day and year first above written.

Attest:

CITY OF ASHEVILLE

City Clerk
(official seal)

By: _____
Mayor

Attest:

PUBLIC INTEREST PROJECTS

Secretary
(corporate seal)

By: _____
President

MHG Asheville AL LP

By: _____
Partner

Approved as to form:

City Attorney

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public of the County and State aforesaid certify that Magdalen Burleson personally came before me this day and acknowledged that she is the City Clerk of the CITY OF ASHEVILLE, a North Carolina municipal corporation, and that by authority given and as the act of the corporation, that foregoing instrument was signed in its name by its Mayor and attested by herself as its City Clerk.

WITNESS my hand and notarial seal this ___ day of _____, 2010.

Notary Public
Print or type name _____
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, _____, a Notary Public, certify that _____ personally came before me this day and acknowledged that he is Corporate Secretary of PUBLIC INTEREST PROJECTS, a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by ___self as its Corporate Secretary.

WITNESS my hand and notarial seal this ___ day of _____, 2010.

Notary Public
Print or type name _____
My Commission Expires: _____

STATE OF GEORGIA
COUNTY OF _____

I, _____, a Notary Public, certify that _____, a partner in MHG Asheville AL LP, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the partnership.

WITNESS my hand and notarial seal this ___ day of _____, 2010.

Notary Public

114.

Print or type name _____
My Commission Expires:

RESOLUTION NO. 10-150

RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

WHEREAS, the terms of Rhett Grotzinger and David Hillier, as members of the Asheville Regional Airport Authority, expire on June 30, 2010; and

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

Mr. David Hillier, 144 Stratford Road, Asheville, N.C., be and he is hereby reappointed as a member of the Asheville Regional Airport Authority to serve an additional four-year term, term to expire June 30, 2014, or until his successor has been appointed.

Mr. Bob Roberts, 21 Bent Oak Lane, Asheville, N.C., be and he is hereby appointed as a member of the Asheville Regional Airport Authority to serve a four-year term, term to begin on July 1, 2010, and expire on June 30, 2014, or until his successor has been appointed.

Read, approved and adopted this 22nd day of June, 2010.

Magdalen Baulson
CITY CLERK

Jim Bellamy
MAYOR

Approved as to form:

Rudger
CITY ATTORNEY

Magdalen Baulson
City Clerk