

April 21, 2014, MB#53

Regular Session, April 21, 2014 7:00 p.m.  
Catawba County Board of Commissioners

**Board of Commissioners**

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**Planning and Development**

Public Hearing to Approve Amendments to the Official Overlay Map to eliminate the WS-III Protected Area and WS-III Critical Area Classification for four properties 196 04/21/14

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The Catawba County Board of Commissioners met in regular session on Monday, April 21, 2014 at 7:00 p.m. in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Katherine W. Barnes, Vice-Chair Randy Isenhower, and Commissioners Dan Hunsucker and Barbara G. Beatty. Commissioner Lynn M. Lail was absent.

Also present were County Manager J. Thomas Lundy, Assistant County Managers Dewey Harris and Mary Furtado, Assistant County Attorney Jodi Stewart and County Clerk Barbara Morris. County Attorney Debra Bechtel was absent.

1. Chair Katherine W. Barnes called the meeting to order at 7:00 p.m.
2. Commissioner Dan Hunsucker led the Pledge of Allegiance to the Flag.
3. Vice-Chair Randy Isenhower offered the invocation.
4. Commissioner Barbara G. Beatty made a motion to approve the minutes from the Board's Regular Meeting and Closed Session of April 7, 2014. The motion carried unanimously.
5. Recognition of Special Guests: Chair Barnes recognized Amelia Kennedy, a representative of the Latino community and member of the staff of the Register of Deeds Office, who was present at the meeting with associates videotaping a portion of the proceedings to be used as an educational tool on county government at the Community College and local business events. She also recognized County Commissioner Candidate Sherry Butler, Catawba County Democratic Party President Cliff Moore and indicated that both she and Randy Isenhower were incumbents in the upcoming election. She later recognized County Commissioner Candidate Franklin Lawson when he arrived and welcomed students from St. Stephens High School Honors Civic Class.
6. Public Comments for Items Not on the Agenda:

Mr. Mike Roth of Terrell came forward to compliment County staff and express his appreciation for their response to his concerns regarding a sewer installation which involved his property. He commended Utilities and Engineering staff members Barry Edwards, Jack Chandler and Jonathan Greer, and McGill Associates employee Jerry Bowman, for their prompt responses and resolution of problems.

Catawba County Democratic Party Chairman Cliff Moore came forward to request the Board consider recording its meetings on a regular basis and making those videos available online for public viewing.
7. Presentations:
  - a. All the Board members joined Chair Barnes at the podium to issue a Statement of Support for the service and work for the nation's Guard and Reserve. The Honorable Ronald E. Bogle, State Chair, North Carolina Committee for Employer Support of the Guard and Reserve, was present to receive the Statement, as were employee reservists Ed Barton and Mike Howard and Catawba County's Veterans Service Officer Cindy Travis.
  - b. All the Board members remained at the podium and joined Chair Barnes in issuing a proclamation declaring Catawba County as a Purple Heart County to bestow honor and gratitude to all combat wounded veterans and those who have received the Military Order of the Purple Heart. Members of Chapter 634 of the Military Order of the Purple Heart were present to receive the proclamation and provided background information regarding the Order.
8. Public Hearing:

Planning and Parks Director Jacky Eubanks came forward and requested the Board conduct a public hearing to receive citizen comments and approve amendments to the County's Official Zoning Overlay Map to eliminate the WS-III Watershed Protected Area and WS-III Critical Area classification from four properties located along Highway 10 West, west of the South Fork River. In response to State legislation, Catawba County adopted a Watershed Protection Ordinance effective January 1, 1994. The ordinance established watershed protection districts in the County, which were incorporated into the Unified Development Ordinance in 2007. A watershed is land area that contributes surface water drainage to a specific point (i.e. water intake, water supply). The purpose of watershed protection districts is to limit exposure of pollutants in the watershed to the water supply by restricting built-upon area (imperviousness) of non-residential development and density of residential development.

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The parcels at issue are within the WS-III Protected and WS-III Critical Watershed areas. Stormwater drainage pipes currently carry water from this area north to a point west of the City of Newton's water intake. The City of Newton is in the process of altering the location of culverts and drainpipe on the northern side of Highway 10 so that stormwater will be directed outside the WS-III Watershed. The discharge point will be south of the city's water intake.

Staff submitted a request to the North Carolina Department of Environment and Natural Resources (NCDENR), Division of Energy, Mineral, and Land Resources to modify the watershed map. The material included construction drawings for Jacob Fork Park illustrating existing and future site conditions, a map of existing and proposed drainage patterns, and a conceptual site plan for future development of two of the parcels. NCDENR, Division of Energy, Mineral, and Land Resources reviewed the request and approved it, conditioned upon completion of the project.

Staff recommended amending the Catawba County Official Zoning Overlay Map to remove the WS-III Protected and WS-III Critical Area from the parcels at issue. The Planning Board held a public hearing on March 31, 2014. No one spoke in favor of or in opposition to the request. Mr. Alex Fulbright, the City of Newton's Assistant Planning Director, provided general information about the work the City of Newton will provide to reroute storm water and the ability to better market property for future development without the watershed designation. Mr. Ed Neill commented that the request was a smart idea and the relatively small area to come out of the watershed would have insignificant affects downstream. The Planning Board voted 9-0 to submit a favorable recommendation to the Board of Commissioners to amend the Catawba County Official Zoning Overlay Map by removing the WS-III Protected and WS-III Critical Area from the parcels at issue. Vice-Chair Isenhower clarified that this action was only deleting watershed areas, not adding any.

Chair Barnes stated that the public hearing had been duly advertised and opened the hearing. No one came forward to speak and Chair Barnes closed the public hearing. Vice-Chair Isenhower made a motion to approve amending the Catawba County Official Zoning Overlay Map to remove the WS-III Protected and WS-III Critical Areas from the parcels labeled 2,3,4 and 5 on the WS-III Watershed Reclassification Map and adopt the following Ordinance and Consistency Statement. The motion carried unanimously.

**ZONING MAP AMENDMENT CONSISTENCY STATEMENT**

On April 21, 2014 the Catawba County Board of Commissioners conducted a public hearing for the purpose of considering a zoning overlay map amendment to PINs 3619-03-43-2106, 3619-03-42-5668, 3619-03-41-8379, and 3619-03-31-2117 (Case #RZ2014-01).

Upon considering the matter, the Catawba County Board of Commissioners finds the item to be inconsistent with the Startown Small Area Plan but reasonable for rezoning based upon:

- 1) The North Carolina Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources reviewing the request and approving it conditioned upon completion of the project.

The Catawba County Board of Commissioners therefore approves the zoning overlay map amendment. This approval was affirmed by a vote of \_\_\_\_ - \_\_\_\_ of the Catawba County Board of Commissioners.

\_\_\_\_\_  
Presiding Officer

**Ordinance No. 2014-\_\_\_\_\_**

**AMENDMENT TO THE CATAWBA COUNTY ZONING OVERLAY MAP**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS**, that the Catawba County Official Zoning Overlay Atlas is hereby amended by removing the WS-III Watershed Protected and/or Critical Area from the following parcels.

Four parcels located north and south of West NC 10 Highway just west of the South Fork River in the Startown Small Area Planning District, Jacobs Fork Township, and further identified by Parcel Identification Numbers 3619-03-43-2106, 3619-03-42-5668, 3619-03-41-8379, and 3619-03-31-2117.

**PLAN CONSISTENCY STATEMENT:**

Pursuant to NCGS 153A-341, and upon consideration of the recommendations and guiding principles of the Startown Small Area Plan, the Catawba County Board of Commissioners finds the rezoning request to be inconsistent with the Small Area Plan but reasonable for rezoning based upon:

- 2) The North Carolina Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources reviewing the request and approving it conditioned upon completion of the project.

This, the 21<sup>st</sup> day of April 2014.

9. Appointments: None.

10. Consent Agenda:

County Manager J. Thomas Lundy presented the following two items on the consent agenda:

- a. A request for the Board to approve a tax refund request totaling \$2,939 made to the Tax Office by Lake Norman Security Patrol Inc. due to double payment. Records had been checked and this refund verified, and the Tax Collector asked for approval of the refund request. Under North Carolina General Statute 105-381, a taxpayer who has paid his/her taxes may request a refund (in writing) for the amount paid through error.

- b. A request for the Board to cancel its May 19, 2014, Regular Meeting and the accompanying Subcommittee Meetings. The Board is scheduled to hold budget hearings with departments and conduct subcommittee meetings on Tuesday, May 27, 2014, from 8:00 a.m. to 5:00 p.m. In addition to this day long meeting on May 27, a budget public hearing and wrap-up is scheduled for 7:00 p.m. on Thursday, May, 29. These meetings will be followed by the Board's Regular Meeting and budget adoption on Monday, June 2, 2014, at 9:30 a.m. In an effort to prevent the Board from having four meetings in a period of 15 days, staff recommended the cancellation of the Board's May 19, 2014, meeting and the accompanying subcommittee meetings. Any items that may require Board action after the Board's May 5, 2014, meeting and before its June 2, 2014, meeting will be added to the agenda for the budget public hearing and wrap-up scheduled for Thursday, May 29, 2014.

Chair Barnes asked if any Commissioner wished for an item to be broken out of the consent agenda for individual consideration. No items were requested to be broken out. Commissioner Hunsucker made a motion to approve the consent agenda. The motion carried unanimously.

11. Departmental Reports:

- a. Economic Development Corporation:

1. Economic Development President Scott Millar came forward and presented a request for the Board to consider entering into an Economic Development Agreement between the County and GKN Driveline Newton LLC, adopt a related resolution, and authorize the Chair to execute these documents along with any other needed documents. GKN Driveline Newton LLC intends to construct, up-fit and/or equip existing manufacturing facilities at two locations in the Town of Maiden, at 1848 GKN Way and 2900 Highway 321A South. They plan to invest a minimum of \$122,438,000

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and create 228 new jobs over five years. The average wage of the new jobs will be \$39,986, exceeding Catawba County's average wage of \$36,223.

GKN Driveline documented strong consideration to place this project in an existing location in Ohio. With this expansion, GKN Driveline will export product from Catawba County worldwide to support the manufacturing of various automotive assemblies. This project is a "Most Favored Business", using County categories for economic assistance, and is involved in advanced manufacturing. GKN Driveline is a division of GKN PLC, is a global engineering group that designs, manufactures and services systems and components for world manufacturers, and has facilities in Europe, Asia, Mexico and the United States. GKN Driveline develops, builds and supplies an extensive range of automotive driveline products and systems for use in the most sophisticated premium vehicles that demand the most complex driving dynamics, to the smallest ultra low-cost cars.

The incentive grant is based on a contract with obligations requiring satisfactory performance by the company and adhering to all North Carolina General Statutes. The contract requires a minimum investment of \$122,438,000, the creation of 228 new jobs, and the maintenance of 563 existing and 92 contractual jobs currently at the facilities. Each investment during an investment period would receive a five year incentive payment equal to 80% of the final assessed value as determined by the County Tax Assessor, with a maximum total incentive grant payment of \$2,595,686 and individual year maximum payments of \$164,016 in year 1; \$332,789 in year 2; \$405,378 in year 3; \$463,890 in year 4; \$519,137 in year 5; \$355,121 in year 6; \$186,348 in year 7; \$113,759 in year 8; and \$55,247 in year 9. This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other County projects. As with all incentives provided by the County, these incentives are based on an economic development agreement which requires GKN Driveline to meet minimum thresholds of investment (\$122,438,000 by 2018) and job creation (228 by 2018). Clawbacks included in the agreement require repayment should the investment and job creation amounts not be met or sustained.

Chair Barnes took the opportunity to explain how these grants are paid, after the Companies pay its taxes and after the investment and job creation requirements are met. Commissioner Hunsucker made a motion to enter into an Economic Development Agreement between the County and GKN Driveline Newton LLC, adopt a related resolution, and authorize the Chair to execute these documents along with any other needed documents. The motion carried unanimously. The following resolution and contract applies:

Resolution No. 2014-

Resolution Authorizing Economic Development Incentives for GKN Driveline Newton LLC

**WHEREAS**, GKN Driveline Newton LLC (herein referred to as "the Company") requested incentives to cause a minimum investment of \$122,438,000 in the Company's two Maiden facilities by December 31, 2018, and the creation and maintenance of a minimum of 228 new jobs by December 31, 2018, with a requirement to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below, and that the total average wage of the jobs will be above the average wage in Catawba County as determined annually by the North Carolina Department of Commerce.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Catawba County, North Carolina, as follows:

The Board of Commissioners approves a performance based grant, based on the minimum investment of \$122,438,000 and 228 new jobs, with a maximum payment of \$164,016 year 1, \$332,789 year 2, \$405,378 year 3, \$463,890 year 4, \$519,137 year 5, \$355,121 year 6, \$186,348 year 7, \$113,759 year 8 and \$55,247 year 9 (total maximum incentive of \$2,595,686). This grant will be used to reimburse the Companies' expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any



**SECTION I – GKN Newton**

1. On or before May 31, 2014 GKN Newton shall:

1.1 Deliver to County a certificate confirming that GKN Newton owns the Property and that the up-fit, and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 228 new jobs with the intention to create 228 new jobs prior to December 31, 2018, and that the overall average wage will equal or exceed the average wage requirement under North Carolina Department of Commerce contractual requirements for each year that County pays GKN Newton the economic development incentive provided for herein. GKN Newton affirms understanding of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be in the form or substantially in the form of the certificate attached to this Agreement as Exhibit "A". It is understood and agreed the 228 new jobs referred to above means original new jobs over and above the number of jobs existing at GKN Newton's Properties in Maiden on December 31, 2013.

1.2 Provide an Opinion of Counsel for GKN Newton, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by GKN Newton; and

1.3 Provide an Opinion of Counsel for GKN Newton, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against GKN Newton, in North Carolina, in accordance with its terms.

2. In order to induce County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, GKN Newton represents and warrants that, as of the execution date hereof:

2.1 GKN Newton is a Delaware limited liability company qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

2.2 GKN Newton has the corporate power and authority to own its properties and assets and to carry on its business as now being conducted and has the corporate power and authority to execute and perform this Agreement;

2.3 The undersigned representative of GKN Newton has the right, authority and duty to execute this Agreement in the name and on behalf of GKN Newton;

2.4 This Agreement (i) is the valid and binding instrument and agreement of GKN Newton, enforceable against GKN Newton in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on GKN Newton, the charter documents or operating agreement of GKN Newton or any provision of any indenture, agreement or other instrument to which GKN Newton is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which GKN Newton is a party;

2.5 There is no suit, claim, action or litigation pending, or to the knowledge of GKN Newton threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;

2.6 There is no impediment to the use of the Property for the purposes contemplated by this Agreement.

2.7 GKN Newton is not engaged in a business that would be exempt from property taxes.

3. In order to induce GKN Newton to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, County represents and warrants that, to the best of County's knowledge that, as of the execution date hereof:

3.1 County is a North Carolina body politic corporate in nature and existing under North Carolina law;

3.2 County has the power and authority to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;

3.3 The undersigned authorized representative of County has the right, authority and duty to execute this Agreement in the name and on behalf of County;

3.4 This Agreement (i) is the valid and binding instrument and agreement of County, enforceable against County in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on County, the charter documents of County or any provision of any indenture, agreement or other instrument to which County is a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which County is a party; and

3.5 There is no suit, claim, action or litigation pending, or to the knowledge of County threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein.

4. GKN Newton shall make investments to the Properties and Improvements during the Improvement Period. Cumulative expenditures will meet or exceed One Hundred Twenty Two Million, Four Hundred Thirty Eight Hundred Thousand Dollars (\$122,438,000) by December 31, 2018, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and GKN Newton further agrees to maintain in place, in good condition (ordinary wear and tear excepted), said Improvements through December 31, 2025.

5. GKN Newton shall create a minimum of 228 new jobs over and above the number of jobs existing at the Properties in Maiden by December 31, 2018 and maintain or make available these jobs in place through December 31, 2021. A job is defined as employment that provides 1600 hours or more of work in any 12 month period.

#### **SECTION II – COUNTY**

6. On or before May 31, 2014 County shall deliver to GKN Newton an Opinion of Counsel for County, in form and substance reasonably satisfactory to GKN Newton, that this Agreement has been duly authorized, executed and delivered by County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1(a) and is binding upon and enforceable against County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which County duly adopted authorizing the economic development incentives set forth in this Agreement.

7. Payment of economic development incentives for Real and Personal Investments and for Job Creation in accordance with this Agreement shall be made as follows:

a. For Real and Personal Property Investments: County will provide annual payments equal to 80% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) as paid to County for a five year period on each annual investment, commencing with the taxes payable for the tax values on December 31, 2014, and December 31 of the succeeding eligible years. Eligible investments during a single year of the Investment Period will qualify for five years of grants based on the actual assessed value for improvements made in that particular year. Eligible investments

may be considered for a maximum of five years. By way of example only, eligible investments in CY1 would qualify for grants based on the taxes paid on those eligible investments for the years specific to CY1, CY2, CY3, CY4, and CY5. Eligible investments in CY2 would qualify for grants in CY2, CY3, CY4, CY5 and CY6; and eligible grants in CY3 would qualify for grants in CY3, CY4, CY5, CY6, and CY7.

b. Upon payment of ad valorem taxes by GKN Newton to County for each of CY1 through CY9, and certification by GKN Newton in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that GKN Newton has created and maintained jobs as agreed herein, County will, within ninety (90) days, pay to GKN Newton an economic development incentive payment, the amount of which is calculated by multiplying by .8 times the total ad valorem tax revenue received by County attributable to the value of the Improvements made by GKN Newton pursuant to this Agreement in excess of the amount attributable to improvements already in place and taxed on the site as of December 31, 2013. This same process will be followed by County and GKN Newton in each of the immediately following eight (8) years.

c. Inclusive of grants for real and personal property improvements and positions created, in no event will the cumulative payments by County exceed Two Million, Five Hundred Ninety Five Thousand, Six Hundred Eighty Six dollars (\$2,595,686) for the years 2014-2022, or One Hundred Sixty Four Thousand Sixteen dollars (\$164,016) in year 1, Three Hundred Thirty Two Thousand Seven Hundred Eighty Nine dollars (\$332,789) in year 2, Four Hundred Five Thousand Three Hundred Seventy Eight dollars (\$405,378) in year 3, Four Hundred Sixty Three Thousand Eight Hundred Ninety dollars (\$463,890) in year 4, Five Hundred Nineteen Thousand One Hundred Thirty Seven dollars (\$519,137) in year 5, Three Hundred Fifty Five Thousand, One Hundred Twenty One dollars (\$355,121) in Year 6, One Hundred Eighty Six Thousand Three Hundred Forty Eight dollars (\$186,348) in year 7, One Hundred Thirteen Thousand, Seven Hundred and Fifty Nine dollars (\$113,759) in year 8, and Fifty Five Thousand, Two Hundred and Forty Seven dollars (\$55,247) in year 9. These figures are subject to actual assessment values placed on this equipment by the Catawba County Tax Assessor's Office and are subject to change in tax value due to scheduled depreciation and/or appreciation. Regardless of any depreciation or appreciation, the individual grant year payments and the maximum total shall not exceed the amounts stated above and referenced in the chart below.

<b>Investments in Calendar Year</b>	<b>Grant Year</b>	<b>Maximum Payment By County</b>
CY1-2014	1	\$164,016
CY2-2015	2	\$332,789
CY3-2016	3	\$405,378
CY4-2017	4	\$463,890
CY5-2018	5	\$519,137
CY6-2019	6	\$355,121
CY7-2020	7	\$186,348
CY8-2021	8	\$113,759
CY9-2022	9	<u>\$55,247</u>
<b>Total</b>		<b>\$2,595,686</b>

d. Said amounts shall be payable annually, beginning with taxes paid on improvements made in CY1 through CY9. For the purposes of this Agreement, "CY1" means calendar year 2014 and "CY2" through "CY9" means the succeeding eight (2015-2022) calendar years.

e. GKN Newton shall furnish to County on or before March 5th of each calendar year (or such later date as may be allowed by law), following and corresponding to the previous July 1st when taxes

are billed, the certification required by this Section 6, proof of payment of all applicable taxes, and documentation of the creation and maintenance of the jobs created under this Agreement. If requested, GKN Newton shall provide County, at County's expense, independent certification as to such expenditures and number of existing jobs.

### SECTION III - OTHER

8. Force Majeure. Notwithstanding the provisions of Paragraph 8, in the event GKN Newton is unable to meet the requirements of Paragraphs 3, 4 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of GKN Newton; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as GKN Newton shall (a) have furnished County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements. In accord with the foregoing, should the GKN Newton be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay as provided in Section II above, shall be suspended until such time as the GKN Newton is relieved from the effect of an event of force majeure and resumes completion of the improvements.

9. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- a. If GKN Newton, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining 563 permanent and 92 additional contract jobs currently at the facility as of December 31, 2013 and, in addition, a minimum of 90% of the number (228) of newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;
- b. If GKN Newton shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded specific to this project as further defined in Exhibit C, attached and incorporated herein by reference;
- c. If GKN Newton fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1<sup>st</sup> when taxes are billed, and any qualifying incentive would be due to GKN Newton, this shall be deemed a breach of the Agreement. The remedies for this breach shall be those provided in Paragraph 9 below.
- d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by GKN Newton to County in connection with the transaction described in this Agreement, shall, to GKN Newton's knowledge, to be false or misleading in any material respect at the time given;
- e. If GKN Newton shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

f. If County, except in the event of force majeure, fails to pay GKN Newton when such payment is due) or is otherwise unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of an emergency manager, receiver, trustee, liquidator or conservator or any similar entity; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or North Carolina;

g. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of GKN Newton or of the whole or any substantial part of their properties, or approves a petition filed against GKN Newton seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of GKN Newton or of the whole or any substantial part of their properties;

h. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing an emergency manager, custodian, receiver, trustee, liquidator, or conservator or any similar entity for County, or approves a petition filed against County seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of County; or

i. If GKN Newton shall allow its taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertain to the facility contemplated by this Agreement.

10. County Remedy: If GKN Newton fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and GKN Newton shall immediately refund to County all economic development incentive payments paid to GKN Newton prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the GKN Newton receives the notice of the Event of Default. GKN Newton shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, or such longer period: a) to which GKN Newton may be entitled under applicable federal, state or local laws; or b) to which the parties agree in writing.

11. GKN Newton Remedy: If County fails to cure an Event of Default for which it receives written notice from GKN Newton, the obligations of GKN Newton as set out herein shall terminate, and County shall not be entitled to any payment from GKN Newton for any alleged Event of Default caused by GKN Newton. County shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, or such longer period: a) to which County may be entitled under applicable federal, state or local laws; or b) to which the parties agree in writing. In addition, County shall pay GKN Newton an amount equal to the benefit that GKN Newton would have received under this Agreement had the County not failed to cure the Event of Default, plus all fees and costs incurred by GKN Newton that are necessary to enforce the terms of this Agreement.

12. GKN Newton and County acknowledge that any monies appropriated and expended by County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction rules to which either GKN Newton or County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, GKN Newton will make such repayment to County. In the event one or more lawsuits are brought against County or any County elected official, officer, agent or employee, or GKN Newton, challenging the legality of this Agreement, then County and GKN Newton shall exercise their best efforts to defend against any

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and all such lawsuits, at their own cost and expense. In any event, if GKN Newton is required to repay funds to County pursuant to this Section 9, the benefit of this Agreement to GKN Newton will have been lost and all further obligations of GKN Newton hereunder shall terminate.

13. All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

County of Catawba: County of Catawba  
Attn: J. Thomas Lundy, County Manager  
PO Box 389  
Newton, NC, 28658

Copy to: County Attorney  
Attn: Debra Bechtel, County Attorney  
PO Box 389  
Newton, NC, 28658

GKN Newton: GKN Driveline Newton LLC  
Attn: Kevin Ruff  
1848 GKN Way  
Newton, NC 28658

Copy to: GKN North America Services, Inc.  
Attn: Mick Nylander, Esq., Divisional General Counsel  
3300 University Drive  
Auburn Hills, Michigan 48326

County or GKN Newton may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

14. This Agreement shall inure to the benefit of, and is binding upon, County and GKN Newton and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by GKN Newton without the prior, written approval of County, which approval will not be unreasonably withheld.

15. Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

16. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.

17. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

18. Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.

19. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to GKN Newton and GKN Newton fulfilling all of its

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requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.

20. Both GKN Newton and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both GKN Newton and County. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

**IN WITNESS WHEREOF** the parties hereto have set their hands and seals as of the day and year first above written.

**County of Catawba,**  
A North Carolina Body Politic  
**Attest:**

By: \_\_\_\_\_ (Seal)  
Katherine W. Barnes

2. Economic Development Corporation President Scott Millar came forward and present a request for the Board to approve entering into an Economic Development Agreement between the County, OHM Holdings LLC and Transportation Insight, adopt a related resolution, and authorize the Chair to execute these documents along with any other needed documents. OHM Holdings LLC will purchase seven parcels and rehabilitate two existing structures in Hickory's Urban Redevelopment Zone along NC Highway 127. Known as the Lyerly Mill, the facility has been vacant for over 36 months and been underutilized for many years. Expenditures for the upfit and renovation of these facilities will be \$6 million dollars for the tenant, Transportation Insight LLC, which will be spending at least \$1 million additionally on personal property at the site. The State of North Carolina is participating in a Building Reuse grant program contractually binding OHM/Transportation Insight to create 50 new jobs in addition to the currently existing 151 jobs in the City of Hickory (161 in the State of North Carolina). The contract lists those jobs having an average salary of \$46,935, exceeding Catawba County's average wage (\$36,167) by almost 30%.

Transportation Insight is one of the largest and most experienced third-party logistics firms in North America, delivering custom logistics solutions to more than 400 corporate clients. They have other offices in Charlotte, Atlanta, and Bentonville, AR, in addition to their existing headquarters in Hickory. The project requires an energetic workforce, and the company considered locating its operation in a locality where this workforce might be easier to find and maintain, but wants to remain committed to Hickory. Charlotte was a strong consideration for this project because of the workforce opportunities in that marketplace.

The incentive grant is based on a contract with obligations requiring satisfactory performance by the companies and adhering to all North Carolina general statutes. The contract requires a minimum investment of \$7 million, the creation of 50 new jobs, and the maintenance of all current Hickory positions. Qualifying investment during an investment period will receive a five year incentive payment equal to 67% of the final assessed value as determined by the Catawba County Tax Assessor, with a maximum total incentive grant payment of \$142,040 and maximum payments of \$28,408 in any individual year. This investment will net a positive payback to the County immediately, similar to paybacks used to determine grant involvement in other County projects. As with all incentives provided by the County, these incentives will be based on an economic development agreement which requires OHM Holdings LLC/Transportation Insight LLC to meet minimum thresholds of investment (\$7 million by 2016, with a maximum potential incentivized investment of \$8 million in assessed value) and job creation (50 new positions). In the event investment and job creation amounts are not met or sustained, all incentive payments will stop immediately.

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Vice-Chair Isenhower questioned why the proposed contract and resolution did not include Transportation Insight LLC as a party as they would be the entity creating the jobs. It was agreed that the contract and resolution should be modified to include Transportation Insight LLC as a party and Vice-Chair Isenhower made a motion to approve entering into an Economic Development Agreement between the County, OHM Holdings LLC and Transportation Insight, adopt a related resolution, and authorize the Chair to execute these documents along with any other needed documents. All documents would reflect the inclusion of Transportation Insight LLC as a party. The motion carried unanimously. The following resolution and contract apply:

Resolution No. 2014-

Resolution Authorizing Economic Development Incentives for OHM Holdings, LLC and Transportation Insight, LLC

**WHEREAS**, OHM Holdings, LLC and Transportation Insight, LLC (herein referred to as "the Companies") requested incentives to cause a minimum investment of \$7,000,000 in the Companies' Hickory facilities by May 30, 2016, and the creation and maintenance of a minimum of 50 new jobs by May 30, 2016, with a requirement to not hire anyone without a minimum of a high school diploma for anyone 25 years of age or below, and that the total average wage of the jobs will be above the average wage in Catawba County as determined annually by the North Carolina Department of Commerce.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Catawba County, North Carolina, as follows:

The Board of Commissioners approves a performance based grant, based on the minimum investment of \$7,000,000 and 50 new jobs, with a maximum payment of \$28,408 in any individual year 1-5, with a total maximum incentive of \$142,040. This grant will be used to reimburse the Companies' expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any necessary resolutions or addenda between the Companies and the County under these terms and conditions and authorizes the Chair to execute these documents.

This the 21st day of April, 2014.

**Prepared by:** Debra Bechtel, County Attorney  
100A Southwest Boulevard  
Newton, NC 28658

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STATE OF NORTH CAROLINA                      CATAWBA COUNTY AND OHM HOLDINGS, LLC  
COUNTY OF CATAWBA                      AND TRANSPORTATION INSIGHT, LLC  
ECONOMIC DEVELOPMENT AGREEMENT

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This JOINT ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into this 21 day of April, 2014, by and between Catawba County, ("County") a North Carolina Body Politic Corporate in Nature, having a mailing address of 100A Southwest Boulevard, Newton, NC 28658, and OHM Holdings LLC ("OHM") and Transportation Insight, LLC, both Limited Liability Companies organized and existing under the laws of the State of North Carolina, having a mailing address of 328 First Avenue NW, Hickory, NC 28601 (OHM Holdings, LLC and Transportation Insight, LLC are sometimes herein referred to as "Companies"). The building and real property will be owned by OHM Holdings, LLC, a holding company with the same majority ownership as Transportation Insight, LLC, and this project will develop and facilitate the Headquarters and primary professional services location for Transportation Insight, LLC.

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WITNESSETH:

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WHEREAS, North Carolina General Statutes (NCGS) 158-7.1(a) authorizes the County to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries and Transportation Insight, LLC is engaged in the business of providing professional logistics and transportation services within the meaning of NCGS 158-7.1; and

WHEREAS, the County is desirous to encourage the investment, job creation, development and location of businesses within its geographic area; and

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WHEREAS, the County is desirous to support and encourage the preservation and revitalization of historic structures located within its area; and

WHEREAS, Companies intend to up-fit and equip an existing historic facility ("Improvements") located on seven tracts:

- 56 Third Street SE, Hickory, NC 28602, Parcel ID # 370208796291
- 51 Third Street SE, Hickory, NC 28602, Parcel ID # 370208799218
- 3081 Main Avenue Way SE, Hickory, NC 28602, Parcel ID # 370208797445
- 11 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799740
- 17 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799646
- 21 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799641
- 27 3<sup>rd</sup> Street SE, Hickory, NC 28602, Parcel ID # 370208799556

(collectively, the "Property"), at a cost in excess of Seven Million Dollars (**\$7,000,000**) for real and personal property improvements by Companies, with the Improvements to be constructed between April 1, 2014 and May 30, 2016 (the "Improvement Period") and intend to create fifty (50) new jobs during that improvement period; and

WHEREAS, Companies are seeking connectivity to public amenities such as walking paths and entertainment areas in the County to increase the cultural and healthful environment for its employees and as a recruiting tool for active and healthy employees, and seeks a location that will be attractive for the recruitment of such employees; and

WHEREAS, in an effort to encourage and maintain the highest educational attainment, Companies will enroll and actively participate in the Catawba County Education Matters program; and, for this and future projects, will agree to require a minimum of a high school diploma or its equivalent (GED, Adult HS Diploma, etc.) for any permanent full-time employee 25 years of age or below; and

WHEREAS, Companies expect to be community-oriented companies and intend to participate in philanthropy, community events and programs intended to increase the health and happiness of their employees and the greater community as a whole; and

WHEREAS, Companies are encouraged, to the reasonable extent possible, to purchase local services and supplies, such as, but not limited to, locally produced products, local hotel, motel and hospitality services, local building and construction services, and other products and services;

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The County and Companies agree that this Agreement shall apply only with respect to Improvements undertaken or payments for such Improvements by Companies between April 1, 2014 and May 30, 2016 (the "Improvement Period").

SECTION I – COMPANY

1. On or before May 31, 2014 Companies shall:

1.1 Deliver to the County a certificate confirming that OHM has purchased the Property and that the up-fit, and/or installation of the Improvements will result in the creation, maintenance and availability of a minimum of 50 new jobs prior to May 30, 2016 and that the overall average wage of Companies will equal or exceed the average wage requirement in Catawba County under the North Carolina Department of Commerce average for Catawba County of \$36,223 annually. Job requirements for these permanent full-time employees will include a minimum of a high school diploma or its equivalent (GED, Adult HS Diploma, etc.) for anyone 25 years of age or below as outlined by Education Matters. Companies affirm understanding of, and agree to comply with the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be in the form or substantially in the form of the certificate attached to this Agreement as Exhibit "A".

1.2 Provide Opinions of Counsel for Companies, in form and substance reasonably satisfactory to County, that this Agreement has been duly authorized, executed and delivered by Companies; and

1.3 Provide Opinions of Counsel for Companies, in form and substance reasonably satisfactory to County, stating that this Agreement is binding upon and enforceable against Companies, in North Carolina, in accordance with its terms.

2. In order to induce the County to enter into this Agreement and to appropriate and expend monies for payment of economic development incentives, Companies represent and warrant to the County that as of the execution date hereof:

2.1 OHM Holdings, LLC and Transportation Insight, LLC are limited liability corporations duly organized and existing under the laws of the State of North Carolina, have a place of business within the State of North Carolina, and are in good standing and authorized to do business in the State of North Carolina;

2.2 Companies have the corporate power and authority to own their properties and assets and to carry on their business as now being conducted and have the corporate power and authority to execute and perform this Agreement;

2.3 The undersigned Manager of Companies has the right, authority and duty to execute this Agreement in the name and on behalf of Companies;

2.4 This Agreement (i) is the valid and binding instrument and agreement of Companies, enforceable against Companies in accordance with its terms; (ii) does not violate any order of any court or other agency of government binding on Companies, the charter documents or operating agreement of Companies or any provision of any indenture, agreement or other instrument to which Companies are a party; and (iii) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which Companies are a party;

2.5 There is no suit, claim, action or litigation pending, or to the best knowledge of Companies threatened, relating to the Improvements, the use of the Improvements for their intended purpose, or any other matter contained herein;

2.6 To the best of Companies' knowledge, there is no impediment to the use of the Property for the purposes contemplated by this Agreement.

2.7 Companies are not engaged in a business that would be exempt from property taxes.

3. Companies shall make investments to the Property and Improvements during the Improvement Period. Cumulative expenditures for OHM Holdings, LLC and Transportation Insight, LLC will meet or exceed Seven Million Dollars (\$7,000,000) by May 30, 2016, all of which will qualify and result in additional value for ad valorem tax purposes with values as determined by the Catawba County Tax Office, and that it will maintain in place, in good condition (ordinary wear and tear excepted) the Improvements for three (3) years after the last incentive payment is made to the Companies by the County.

4. Transportation Insight, LLC shall create a minimum of 50 new jobs at the Property by May 30, 2016 and maintain or make available a minimum of 50 new jobs in place for three (3) years after the last incentive payment is made to the Companies by the County. A new job is defined as permanent full-time employment that provides 1600 hours or more of work in any 12 month period.

SECTION II – COUNTY

5. On or before May 31, 2014 County shall deliver to Companies an Opinion of Counsel for County, in form and substance reasonably satisfactory to Companies, that this Agreement has been duly authorized, executed and delivered by the County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1(a) and is binding upon and enforceable against the County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which the County duly adopted authorizing the economic development incentives set forth in this Agreement.

6. Payment of economic development incentives in accordance with this Agreement shall be made as follows:

a. The County will provide annual payments equal to 67% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) in excess of \$1,115,700 (the current assessed value on included properties), as paid to the County for a 5 year period commencing with the taxes payable for the new tax values on January 1, 2015, and January 1 of the succeeding 4 years. In order to qualify for any incentives, a minimum of \$7,000,000 in cumulative expenditures on real and personal property must be made. The maximum assessed value on real and personal property that will qualify for grant purposes will be \$8,000,000.

b. In no event will the cumulative payments by the County exceed One Hundred Forty Two Thousand and Forty Dollars (\$142,040) in total for the 5 years or exceed Twenty Eight Thousand Four Hundred and Eight Dollars (\$28,408) in any individual year each year 2016-2020.

Grant Year	Maximum Payment by County
2016	\$28,408
2017	\$28,408
2018	\$28,408
2019	\$28,408
2020	\$28,408
Total	\$142,040

c. Upon payment of ad valorem taxes by OHM Holdings, LLC to the County for each of years 2015-2019, and certification by Companies in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that Transportation Insight, LLC has created and maintained jobs as agreed herein, the County will, within sixty (60) days, pay to OHM Holdings, LLC an economic development incentive payment, the amount of which is calculated by multiplying by .67 times the total ad valorem tax revenue received by the County attributable to the value of the improvements made by Companies pursuant to this Agreement in excess of the amount attributable to improvements already in place (\$1,115,700) and taxed on the site as of January 1, 2014. This same process will be followed by the County and Companies in each of the immediately following four (4) years.

d. Companies shall furnish to the County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 6 and proof of payment of all applicable taxes. If requested, Companies shall provide the County, at County's expense, independent certification as to such expenditures and number of existing jobs.

SECTION III - OTHER

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7. Force Majeure. Notwithstanding the provisions of Paragraph 8, in the event Companies are unable to meet the requirements of Paragraphs 3, 4 and 6 as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of Companies; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as Companies shall (a) have furnished the County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements.

8. It shall be an Event of Default if any one or more of the following events shall occur for any reason whatsoever (and whether such occurrence shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

a. If OHM Holdings, LLC or Transportation Insight, LLC, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining the minimum number (50) of newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following the receipt of written notice from County;

b. If OHM Holdings, LLC or Transportation Insight, LLC fail to timely file Exhibit A or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1<sup>st</sup> when taxes are billed, and any qualifying incentive would be due to OHM, this shall be deemed a breach of the Agreement and, notwithstanding Section 9, below, the sole remedy will be that County will not owe Companies any incentive that may have otherwise been due had that filing properly been made;

c. If any material representation, warranty or other statement of fact contained in this Agreement or in any writing, certificate, report or statement furnished by Companies to County in connection with the transaction described in this Agreement, shall be false or misleading in any material respect when given;

d. If OHM Holdings, LLC or Transportation Insight, LLC shall be unable to pay their debts generally as they become due; file a petition to take advantage of any insolvency statute; make an assignment for the benefit of creditors; commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; file a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

e. If a Court of competent jurisdiction shall enter an order, judgment, or decree appointing a custodian, receiver, trustee, liquidator, or conservator of OHM Holdings, LLC or Transportation Insight, LLC or of the whole or any substantial part of their properties, or approve a petition filed against Companies seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute; or if, under the provisions of any other law for the relief or aid of debtors, a court of competent jurisdiction shall assume custody or control of OHM Holdings, LLC or Transportation Insight, LLC or of the whole or any substantial part of their properties; or

f. If Companies shall allow their taxable assets, employment and average wage amounts to fall below the minimum values agreed upon in this Agreement, as each of the same pertains to the facility contemplated by this Agreement.

9. Remedy: If an Event of Default occurs, the obligation of the County as set out herein shall terminate immediately.

10. Companies and the County acknowledge that any monies appropriated and expended by the County for economic development incentives, as provided in this Agreement, are for a bona fide public purpose and are expended in good faith reliance on NCGS 158-7.1. In the event a Court of competent jurisdiction, after final appeal, rules to which either Companies or the County is a party, that all monies expended by County pursuant to this Agreement were not offered and accepted in good faith and in compliance with NCGS 158-7.1 and, further, that such monies must be repaid, Companies will make such

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repayment to the County. In the event one or more lawsuits are brought against the County or any County elected official, officer, agent or employee, or Companies, challenging the legality of this Agreement, then the County and Companies shall exercise their best efforts to defend against any and all such lawsuits. In any event, if Companies are required to repay funds to County pursuant to this Section 9, the benefit of this agreement to Companies will have been lost and all further obligations of Companies hereunder shall terminate.

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~~40-11.~~ All notices, certificates or other communications required or permitted to be given or served hereunder shall be deemed given or served in accordance with the provisions of this Agreement if the notice is (i) mailed in a sealed wrapper and is deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (ii) deposited with a national overnight courier service that retains receipts for its deliveries, properly addressed as follows:

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Catawba County: Catawba County  
Attn: J. Thomas Lundy, County Manager  
100A Southwest Boulevard  
Newton, NC 28658

Copy to: County Attorney  
Attn: Debra Bechtel, County Attorney  
100A Southwest Boulevard  
Newton, NC 28658

Companies: OHM Holdings, LLC  
Transportation Insight, LLC

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Attn: D. Paul Thompson, Manager  
328 1<sup>st</sup> Avenue NW  
Hickory, NC 28601

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The County or Companies may, by notice given to the other, designate any further or different addresses to which notices, certificates, requests or other communications shall be sent.

~~44-12.~~ This Agreement shall inure to the benefit of, and is binding upon, the County and Companies and their respective successors and assigns. However, neither this Agreement, nor any rights, privileges, or claims created by this Agreement may be transferred by Companies without the prior, written approval of the County, which approval will not be unreasonably withheld.

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~~42-13.~~ Except as otherwise provided in this Agreement, this Agreement may not be amended, changed, modified or altered except by written agreement of the parties.

~~43-14.~~ If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this Agreement.

~~44-15.~~ This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such fully-executed counterpart.

~~45-16.~~ Controlling Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of North Carolina; venue of any action shall be in the general courts of justice in Catawba County, or if in Federal court in the Western District of North Carolina.

~~46-17.~~ The term of this Agreement shall commence on the date of execution and expire upon satisfaction of Companies' reporting requirements, unless earlier terminated as provided herein.

47-18. Companies and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for Companies and County. As such, the doctrine of construction against the drafter shall have no application to this Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

**Catawba County,**  
A North Carolina Body Politic in Nature.

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b. Utilities and Engineering:

1. Utilities and Engineering Director Barry Edwards presented a request for the Board to appropriate FEMA Disaster Recovery Funds in the amount of \$66,464.16 to reimburse expenditures needed to repair major damage to landfill property due to flooding on July 27, 2013. Catawba County experienced severe storms, resulting in significant flooding in all areas of the county including the Resource Recovery Facility (Blackburn Landfill). The Blackburn Landfill experienced 13 inches of rain in five and a half hours resulting in major damage to roads, storm culverts, side slopes, erosion control measures and fencing. The damage to the Landfill took weeks to repair, costing \$76,137 in salaries, benefits, materials and contracted services.

On October 30, 2013, Catawba County Emergency Management officials were informed that President Barak Obama had declared that Catawba and five other area counties were included in a disaster declaration in connection with the severe storms on July 27, 2013. The declaration ordered federal aid to supplement State and local recovery efforts in the area affected by the severe storms, flooding, landslides, and mudslides. The declaration allows federal funding to be available to the State, eligible local governments and certain private non-profit organizations on a cost-sharing basis for emergency work and the repair or replacement of facilities damaged by the severe storms and flooding. This will support work to repair and rebuild public (government maintained) roads, bridges and utilities damaged during the flooding, as well as some other public lands such as parks, government buildings and damage at schools and colleges.

On February 4, 2014, the County received \$66,464.16 from the State of North Carolina, a disbursement of federal and state disaster recovery funds, to cover the costs of repairs at the Blackburn Landfill. This amount represents approximately 87% of the total repair expenditures. Staff requested the funds be appropriated to reimburse the expense accounts used for the non-budgeted, unexpected repair costs. Commissioner Hunsucker made a motion to appropriate these FEMA funds. The motion carried unanimously. The following appropriations apply:

Appropriations:

Revenue	
525-350200-640150	\$66,646.16
FEMA Disaster Recovery Funds	

Expenditures	
525-350200-812200	\$5,000.00
Overtime Wages	
525-350200-831090	\$35,257.31
Misc Operating Supplies	
525-350200-834005	\$10,206.05
Building Supplies	
525-350200-835010	\$2,000.00
Motor Fuels Diesel	
525-350200-842530	\$10,000.00
Repair & Maint-Other Equipment	

525-350200-870100

\$4,000.80

Small Tools & Minor Equipment

2. Utilities and Engineering Director Barry Edwards presented a request for the Board to approve an engineering contract between Catawba County and McGill Associates P.A., in the amount of \$310,000, for the design, bid, and bid award of the Balls Creek Area Water Service water project. In June 2013, the Board approved a Revolving Loan Agreement with the City of Newton for the Balls Creek Water Project, which is being developed at the request of the City of Newton to serve Highway 16 South, Balls Creek Rd. and Buffalo Shoals Rd., creating hydraulic loops within the City's water system in order to improve water quality. The County will install, and the City will operate, the water lines described as the Balls Creek Water Project. The estimated cost of the project including design, permitting, fees and installation, totals \$2,646,000. The County will pay the full amount of all costs reasonably necessary for the design and installation of the water lines directly to the appropriate contractor. Under the Revolving Loan Program, the City agrees to reimburse the County 75% of the total Project cost, payable over a 10 year period in equal annual installments, beginning with the City's assumption of maintenance of the water lines in each portion of the Project.

In December 2013, the County advertised a Request for Qualifications for Engineering Services in accordance with North Carolina General Statutes. On January 30, 2014, Statements of Qualification were received from Wright & Associates, Newton, NC; Shield Engineering, Inc., Charlotte, NC; McGill Associates, P.A., Hickory, NC; and TGS Engineers, Morganton, NC.

A Selection Committee, consisting of Barry Edwards, the County's Utilities and Engineering Director; Jack Chandler, the County's Utilities and Engineering Assistant Director; Debbie Anderson, Purchasing Manager; and City of Newton representatives Wilce Martin and Dusty Wentz, met on February 5, 2014, to review the Statements of Qualification and select a firm to perform the engineering for the Project. Based on the Committee members' familiarity with these firms, interviews were not required. McGill Associates, P.A., of Hickory, NC was selected as the top-ranking firm for the following reasons: (1) in July 2013, McGill Associates performed a Preliminary Engineering Report of the proposed service area, including an extensive hydraulic study of the City's water system; (2) McGill Associates has a high level of knowledge of the City of Newton utility systems and this knowledge will facilitate the design of the project, and (3) the comfort level between the City of Newton staff and McGill Associates is critical to the success of the project.

The contract for engineering services with McGill Associates, P.A., includes the following services: Planning, Mapping, and Design Phase Services (\$180,000); Easement Mapping (\$18,000); Preliminary Site Investigation Phase Services ( \$37,000); Permitting Phase Services (\$28,000); Bidding and Award Phase Services (\$12,000) and North Carolina Department Of Transportation (NCDOT) Project Coordination Phase Services (\$35,000), for a total not to exceed \$310,000.

A significant portion of this project will be constructed along or within the NC Highway 16 right-of-way. Staff will take necessary precautions to ensure project design and development is in harmony with NC DOT planned improvements to NC Highway 16. Staff and McGill Associates will work with NC DOT in establishing project parameters along the Highway 16 corridor as the first step in project design. Commissioner Isenhower made a motion to approve an engineering contract between Catawba County and McGill Associates P.A., in the amount of \$310,000, for the design, bid, and bid award of the Balls Creek Area Water Service water project. The motion carried unanimously. The Contract No. 43-14-0360, is maintained in the Catawba County Purchasing Department.

3. Utilities and Engineering Assistant Director Jack Chandler presented a request for the Board to award a contract for pump station and storage tank construction on the Southeast Catawba County Water (SECC) Supply Loop, Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643; approve an Agreement for Construction Administration with Davis & Floyd, Inc. in the amount of \$128,700; and approve a budget revision in the amount of \$40,000.

The Southeastern Catawba County Water Supply Loop was developed in three separate but

codependent phases. Phase I, commonly referred to as the Highway 150 waterline, follows along Sherrills Ford Road, Highway 150 and East Maiden Road; Phase II follows along Kirsten Street, Beverly Lane, Sigmon Dairy Road, Rome Jones Road, Knolls Drive, Dixie Street, Business 321, Prison Camp Road, Jack Whitener Road, St. James Church Road, and Campbell Road to Providence Mill Road. Phase III follows Providence Mill Road, North Olivers Crossroad, South Olivers Crossroad, and portions of Buffalo Shoals Road, Mt. Ruhama Church Road and Anderson Mountain Road. Phases I and II were waterline installation only, while Phase III was waterline installation and the construction of a pump station and storage tank. The waterline installation is complete for all three phases and only the pump station and storage tank construction of Phase III remain.

Phase III of the SECC Water Supply Loop was bid in two stages. The first stage of Phase III was the waterline itself which is complete and in service. The second stage is comprised of the pump station and storage tank, Divisions I and II, respectively. On March 27, 2014, the County received bids for the construction of Divisions I and II of the SECC Water Supply Loop Phase III. Davis & Floyd, Inc. reviewed the bids received on March 27 for the pump station (Division I) and storage tank (Division II) from the following contractors: Gilbert Engineering of Statesville, NC, Hickory Sand Co., Inc. of Hickory, NC, Hickory Construction Co., Inc. of Hickory, NC, and Locke-Lane Construction of Stony Point, NC.

Based upon a review of the bids and qualifications of the contractors, Davis & Floyd, Inc. recommended the construction of the pump station and storage tank be awarded to the lowest responsible, responsive bidder, Locke-Lane Construction of Stony Point, NC, in the amount of \$1,838,643. Locke-Lane Construction is a Service Disabled Veteran Owned Small Business, as certified by the North Carolina Department of Veteran Affairs, with an unlimited general contractor's license in North Carolina and South Carolina. The owner and principle engineer is a West Point graduate in Civil Engineering and has an MBA from Columbus State University. Locke-Lane Construction has experience on multiple projects that are similar in nature to this project including: Town of Taylorsville: Booster Pump Station and Water Storage Tanks, \$970,608; Charlotte-Mecklenburg Utilities: Mallard Creek WWTP Effluent Pump Station and Oxidation Pump Station, \$580,584; Pre-Con Corporation, Maiden: Three Pre-Stressed Concrete Storage Tanks (76 feet in diameter), \$2,483,262, and Fort Bragg Manhole Rehabilitation Project, \$3,002,813.

The Agreement for Engineering Services between the County and Davis & Floyd, Inc. of Hickory, NC, in the amount of \$128,700, includes construction inspection and observation; final certification of Division I and II of the SECC Water Supply Loop Phase III, which includes field observation and quality of work, review and approval of shop drawings, diagrams, specifications, schedules, sample guarantees, bonds and certificates; review and approval of applications for payment; and preparation of final "As-Built" record drawings and quality assurance documents for the County, City of Hickory and State of North Carolina.

The SECC Water Supply Loop Phase III project will require an additional \$40,000 in funding. Prior project authorization was budgeted in Fiscal Year 2011/12. The current project balance is \$2,019,800.54. The bid award is \$1,838,643, construction administration is \$128,700, and a 5% contingency is \$92,000, totaling \$2,059,343. Therefore, a budget revision in the amount of \$40,000, appropriating water and sewer available fund balance, was requested. Commissioner Hunsucker made a motion to award a contract for pump station and storage tank construction on the Southeast Catawba County Water (SECC) Supply Loop, Phase III to Locke-Lane Construction, Stony Point, N.C., in the amount of \$1,838,643, approve an Agreement for Construction Administration with Davis & Floyd, Inc. in the amount of \$128,700, and approve a budget revision in the amount of \$40,000. The motion carried unanimously. The following appropriation applies:

Appropriations:

Revenue	
475-431100-690100	\$40,000.00
Fund Balance Applied	

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Expenditure	
475-431100-989100-21020	\$40,000.00
SECC Water Supply Loop	

The following contract applies:

AGREEMENT FOR CONSULTANTING SERVICES

THIS AGREEMENT, effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014 entered into by and between Catawba County, North Carolina, with office located at Newton, North Carolina (hereinafter referred to as the "Client"), and Davis & Floyd, Inc. a corporation organized and existing under the laws of the State of South Carolina, with an office located in Hickory, North Carolina. (hereinafter referred to as the "Consultant").

WHEREAS, Client proposes to do certain work toward the accomplishment of constructing a One-Million gallon ground storage tank and a Two Thousand Eight Hundred (2,800) gallon per minute water booster pump station; and

WHEREAS, the proposed project scope can generally be described as set forth in Article 1 - Scope of Work/Services; and

WHEREAS, Consultant is an enterprise duly licensed under the laws of North Carolina; and

WHEREAS, Consultant desires to undertake the performance of such services in accordance with the terms and conditions in this Agreement; and

WHEREAS, Bids for the Project were received by Client on March 27, 2014.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the parties agree as follows:

Article 1 - Scope of Work/Services

The scope of the project is to provide Construction Phase Consultant Services associated with the construction of a Two Thousand Eight Hundred (2,800) gallon per minute water booster pump station and a One-Million (1,000,000) gallon ground storage tank, The Consultant agrees to do the following:

1.1 Make periodic visits to the site as necessary to observe as an experienced and qualified design professional the progress and quality of the Contractor's work and to determine in general if the work is proceeding in accordance with the Contract Documents. The Consultant shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the contractor(s) or the safety precautions and programs, incident to the work of the contractors. During such visits and on the basis of his on-site observation, the Consultant shall keep the Client informed of the progress of the work, and shall determine if such work is proceeding in accordance with the Contract Documents.

1.2 Review Shop Drawings and samples, the results of tests and inspections and other data which any Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; determine the acceptability of substitute materials and equipment proposed by Contractors; and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractors in accordance with the Contract Documents.

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1.3 Issue all instruction of the Client to Contractors; prepare routine change orders as required; as the Client's representative, require inspection of testing of the work; act as interpreter of the requirements of the Contract Documents and judge the performance by the parties and make decisions on all claims of the Client and the Contractors relating to the execution and progress of the work and all other related matters and questions; but the Consultant shall not be liable for the results of any interpretations of decisions rendered by it in good faith.

1.4 Based upon on-site observations as an experienced and qualified design professional, and on review of Contractors' applications for payment and the accompanying data and schedules, determine the amounts owing to Contractors and approve in writing payments to Contractors in such amounts such approvals of payment will constitute a representation to the Client, based on such observations and review, that the work has progressed to the point indicated and that, to the best of Contractor's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to an evaluation of the work as a functioning Project upon Substantial Completion, to the results of any qualifications stated in the approval), but by approving an application for payment the Consultant will not be deemed to have represented that it has made any examination to determine how or for what purposes any Contractor has used the monies paid on account of the contract price, or that title to any of the Contractor's work, materials or equipment has passed to the Client free and clear of any lien, claims, security interests or encumbrances.

1.5 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled its obligations so that the Consultant may recommend in writing, final payment to each Contractor.

1.6 Based on observations, Consultant may disapprove of or reject Contractor(s) work while it is in progress if Consultant believes the work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

1.7 The Consultant's responsibilities shall not relieve the contractor of contractor's obligation to perform the work in conformity with the drawings and specifications and in a workmanlike manner; and shall not make the Consultant an insurer of the contractor's performance.

1.8 Revise Drawings to show those changes made during the construction process, based on marked-up prints, drawings and other data furnished by the Contractors. Furnish the original "Record Drawings" to the Client within ninety (90) days of Client's project acceptance.

## Article 2 - Period of Service

2.1 The Consultant's period of service shall begin upon the authorization of the Client for each task of work and shall continue until the final task is completed.

2.2 If the Client requests modifications or changes in the scope of the Project, the time of performance, outlined in Paragraph 2.3 below, shall be appropriately adjusted.

2.3 Time estimate: 300 days

2.4 Delays: Consultant shall not be liable for delays or failure to perform its Services caused directly or indirectly by circumstances beyond Consultant's control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, labor dispute, shortage, government action including regulatory requirements, changed conditions, delays resulting from actions or inactions of Client or third parties, site inaccessibility or inability of others to obtain material, labor, equipment, or transportation. Should any of the above occur, the date for Completion or any other milestone date shall be adjusted for such delay in accordance with Article 6, provided the Consultant reports the delay to the Client within a reasonable time of its' discovery.

Article 3 – Payments/Compensation to the Consultant

3.1 For the Basic Services rendered under Article 1, the Client agrees to pay Consultant the amount of One Hundred Twenty Eight Thousand Seven Hundred Dollars and no Cents (\$128,700.00). This amount includes all reimbursable expenses including, but not limited to, advertising costs, permit fees, and travel.

3.2 *Invoices.* Payment shall be due to the Consultant for services upon receipt of invoice. A service charge of one percent per month will be added on accounts outstanding over 30 days of invoice. If Client disagrees with any portion of an invoice, it must notify Consultant in writing of the amount in dispute and the reason for its disagreement within twenty-one (21) days of receipt of the invoice.

In order to be paid in accordance with Article 3, Paragraph 3.2, the Consultant must submit invoices with at least the following information: the invoice date, title of the Project, Catawba County Purchase Order Number, description of services performed and related costs and be addressed and mailed to:

Catawba County  
Utilities and Engineering  
Attention: Barry Edwards  
PO Box 389  
Newton, NC 28658

3.3 *Suspension, etc.* If payment is not received within 45 days of the invoice date Consultant may, upon 7 days notice, suspend or terminate the services and receive compensation for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

3.4 *Taxes, etc.* Unless expressly agreed in writing, Consultants' fees do not include any taxes, fees, duties or other government charges related to the goods or services provided under this Agreement, and Client shall pay such amounts or reimburse Consultant for any amounts it pays. If Client claims that any goods or services are subject to a tax exemption, it shall provide Consultant with a valid exemption certificate.

Article 4 – Services by Consultant

4.1 *Scope of Services, required standard of care.* The Consultant will perform services as described in this Agreement and in any work release documents or change orders which are issued under this Agreement and signed by both parties. Consultant will not have any obligation to perform services unless expressly described in this Agreement. In performing services, Consultant will exercise the degree of care and skill ordinarily exercised by members of the same profession currently performing the same or similar services in the same geographic area. Upon notice to Consultant and by mutual agreement between the parties, Consultant will correct those services not meeting such a standard without additional compensation. Consistent with the standard of care, Consultant will perform its professional services in accordance with applicable federal, state, and local laws, regulations and ordinances which are in effect on the date of execution of this Agreement.

4.2 *Estimates.* Any opinions of probable construction or implementation costs, financial evaluations, feasibility studies or economic analyses prepared by Consultant will represent its professional judgment based on its experience and available information. However, Client recognizes that Consultant has no control over costs of labor, material, equipment or services furnished by others or over market conditions or contractors' methods of determining prices, and that any evaluation of a facility to be constructed or work to be performed is speculative. Accordingly, Consultant does not guaranty that proposals, bids or actual costs will not vary from

opinions, evaluations or studies submitted by Consultant. If the Client wishes greater assurance as to probable construction costs, Client shall employ an independent cost estimator.

4.3 *Hazardous materials.* Consultant's services do not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of petroleum or petroleum products (collectively called "Oil") or of any contaminated non-hazardous, hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA or any other federal or state environmental laws (collectively called "Hazardous Materials"). Unless provisions have been incorporated into this Agreement to provide for the handling of Oil or Hazardous Materials, the discovery or reasonable suspicion of Oil or Hazardous Materials or hazardous conditions at a site where Consultant is to perform services shall entitle Consultant to suspend its services immediately, subject to mutual agreement of terms and conditions applicable to any further services, or to terminate its services and to be paid for services previously performed.

4.4 *Other contractors.* Consultant shall not have any duty or authority to direct, supervise or oversee any contractors of Client or their work or to provide the means, methods or sequence of their work or to stop their work. Consultant's services and/or presence at a site shall not relieve others of their responsibility to Client or to others. Consultant shall not be liable for the failure of Client's contractors or others to fulfill their responsibilities.

4.5 *Health and safety.* Consultant shall not be responsible for health or safety programs or precautions related to Client's activities or operations, Client's other contractors, the work of any other person or entity, or Client's site conditions. Consultant shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Client or others at Client's site.

4.6 *Litigation support.* Consultant will not be obligated to provide expert witnesses or other litigation support related to its services, unless expressly agreed in writing. In the event Consultant is required to respond to a subpoena, government inquiring or other legal process related to the services in connection with a proceeding to which it is not a party, Client shall reimburse Consultant for its costs and compensate Consultant at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

4.7 *Confidential information.* Although Consultant generally will not disclose without Client's consent information provided by Client or developed by Consultant in the course of its services and designated by Client as confidential (but not including information which is publicly available, is already in Consultant's possession, or is obtained from third parties), Consultant shall not be liable for disclosing such information if it in good faith believes such disclosure is required by law or is necessary to protect the safety, health, property or welfare of the public. Consultant shall notify Client (in advance, except in emergency) of any such disclosure.

4.8 *No warranty.* No warranties or guaranties, express or implied, are or will be made with respect to any goods or services provided under this Agreement, and any implied warranties or merchantability or fitness for a particular purpose are expressly disclaimed.

4.9 *Certifications.* Any certifications or representations which Consultant may be required to make shall be limited to the existence of conditions which Consultant could, within the scope of its services, reasonably ascertain, and shall be based on Consultant's then current knowledge, information, and belief.

#### Article 5 – Responsibilities of Client

5.1 *Client requirements.* Client, without cost to Consultant, shall:

- a) Provide or arrange for access and make all provisions for Consultant to enter any site where services are to be performed.

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- b) Furnish Consultant data prepared by others including with limitation exploration and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site or hydrographic surveys as may be in the possession of the Client.
- c) Furnish Consultant environmental assessments, audits, investigations and impact statements and other relevant environmental or cultural studies as to the site and adjacent areas as may be in the possession of the Client.
- d) Comply with all laws and provide any notices required to be given to any government authorities in connection with the services, except for such notices Consultant has expressly agreed in writing to give.

5.2 *Hazards.* Client does not have any knowledge of Hazardous Materials or unusually hazardous conditions at the site or of contamination of the site by Oil or Hazardous Materials.

5.3 *Documents.*

- a) All reports, notes, calculations, data, drawings, estimates specifications and other documents (collectively "Documents") and electronic files prepared by Consultant are instruments of Consultant's professional services and not products and shall remain Consultant's property. Documents or electronic files provided to Client are for Client's use only for the purposes disclosed to Consultant and Client shall not transfer them to others or use them or permit them to be used for any extension of the services or for any other project or purpose for which they were not prepared, without Consultant's express written consent. Any reuse without written consent shall be at the Client's or the user's sole risk and without liability or legal exposure to Consultant or their independent contractors or consultants.
- b) Copies of Documents that may be relied upon by Client are limited to the printed copies (also known as hard copies). Electronic files in electronic media format of text, data, graphics, or of other types that are furnished by Consultant to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- c) When transferring electronic files, Consultant makes no representations as to long-term capability, usability, or readability of such files.

Article 6 – Changes; Delays; Excused Performance

6.1 *Changes*

- a) Unless this Agreement expressly provides otherwise, Consultant's compensation and time for rendering services represent its professional estimate, taking into account the costs, effort and time it expects to expend in performing the services as it currently understands them to be, based on its reasonable assumption of the conditions and circumstances under which the services will be performed, and based on its anticipation of the orderly and continuous progress of the Work and of the Project through completion of the Work. Unless specific periods of time or specific dates for providing services are specified in this Agreement, Consultant's obligation to render services hereunder will be for a period which may reasonably be required, using due and reasonable diligence consistent with sound professional practices, for the completion of said services.
- b) As services are being performed, conditions may change or circumstances outside of Consultant's reasonable control (including changes of laws and Client directed changes) may develop which would require Consultant to expend additional costs, effort and time to complete the services, in which case Consultant will notify Client and an equitable adjustment will be made to Consultant's compensation and time for performance.
- c) If Client fails to give prompt written authorization to proceed with any task or phase of services after completion of the immediately preceding task or phase, or if Consultant's services are delayed through no fault of Consultant, in each case for a period of ninety (90) days or longer, Consultant, may, after giving seven (7) days written notice to Client, suspend services under this Agreement. An equitable adjustment to Consultant's compensation and time for performance will be made upon Client's authorization or directive for Consultant to resume performance of its services.

d) If Consultant's services are suspended or delayed in whole or in part by Client, or if Consultant's services are extended by actions or inactions of Client or its contractor for more than ninety (90) days through no fault of Consultant, Consultant shall be entitled to an equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by Consultant in connection with, among other things, such delay or suspension and reactivation, and the fact that the time performance has been revised.

e) In the event conditions or circumstances require the services to be suspended or terminated, Consultant shall be compensated for services previously performed and for costs reasonably incurred in connection with the suspension or termination.

6.2 *Force majeure.* Consultant shall not be responsible for any delay or failure of performance caused by fire or other casualty, labor dispute, government or military action, transportation delay, inclement weather, Act of God; act or omission of Client or its contractors, failure of Client or any government authority timely to review or to approve the services or to grant permits or approvals, or any other cause beyond Consultant's reasonable control, and Consultant's compensation and schedule shall be equitably adjusted to compensate it for any additional costs and delays it incurs due to any Force Majeure event.

#### Article 7 – Insurance; Dispute Resolution; Allocation of Risk

7.1 *Insurance:* During the period that Services are performed under this Agreement, Consultant will maintain, at least, the following insurance: (i) Workers' Compensation coverage in accordance with the laws of the states having jurisdiction over its employees engaged in the Services and Employer's Liability Insurance (limit of \$500,000 each occurrence.); (ii) Commercial General Liability with a limit of \$1,000,000 per occurrence and a \$2,000,000 aggregate; (iii) Commercial Automobile Liability with a limit of \$500,000 per occurrence and a \$1,000,000 aggregate; and (iv) Professional Liability coverage with a \$500,000 limit on each claim and a \$1,000,000 aggregate.

7.2 *Suspension.* If the project is suspended for more than 30 calendar days in the aggregate, Consultant shall be compensated for services performed and charges incurred prior to receipt of notice to suspend and, upon resumption, an equitable adjustment in fees to accommodate the resulting demobilization and remobilization costs. In addition, there shall be an equitable adjustment in the project schedule based on the delay caused by the suspension. If the project is suspended for more than 90 calendar days in the aggregate, Consultant, at its option, may terminate this Agreement upon giving notice in writing to the Client.

If the Client fails to make payments when due or otherwise is in breach of this Agreement, Consultant may suspend performance of services upon 7 calendar days notice to the Client. Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client.

7.3 *Certificates:* Prior to beginning Services, Certificates of insurance shall be furnished to the Client evidencing that the coverage will be in effect throughout the performance of the Services and will not be canceled or materially changed until at least thirty (30) days prior written notice has been given to the Client.

7.4 *Termination.* The Client may terminate this Agreement at any time with or without cause upon giving Consultant 30 calendar days prior written notice. Consultant may terminate this Agreement upon giving the Client 30 calendar days prior written notice for any of the following reasons:

- a) Breach by the Client of any material term of this Agreement, including but not limited to compensation provisions.
- b) Transfer of Ownership of the project by the Client to any other persons or entities not a party to this Agreement without the prior written agreement of Consultant.
- c) Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and charges for any additional services required because of such changes.

The Client shall within 30 days of termination pay Consultant for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this Agreement.

7.5 *Liability:* Consultant's liability for any and all claims arising out of this Agreement or out of any goods or services furnished under this Agreement, whether based in contract, negligence, strict liability, agency, warranty, trespass, or any other theory of liability, shall be limited to \$100,000 or the total compensation received by Consultant from Client under this Agreement, whichever is greater. In no event shall either party be liable for special, indirect, incidental or consequential damages including commercial loss, loss of use, or lost profits, even if advised of the possibility of such damages.

7.6 *Defense.* Any defense of Consultant required to be provided by Client under this Agreement shall be with counsel selected by Consultant and reasonably acceptable to Client.

#### Article 8 – Miscellaneous Provisions

8.1 *Notices.* Notices between the parties shall be in writing and shall be hand delivered or sent by certified mail or acknowledged telefax.

Client:	Consultant:
Catawba County	Davis & Floyd, Inc.
Attention: County Manager	Attention: Vice President
PO Box 389	1073 13 <sup>th</sup> Street SE
Newton, NC 28658	Hickory, NC 28602

8.2 *Assignment, etc.* Neither Client nor Consultant shall assign or transfer any rights or obligations under this Agreement, except that Consultant may assign this Agreement to its affiliates and may use subcontractors in the performance of its services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than Client and Consultant, without the express written consent of both parties. The relationship between Client and Consultant is that of independent contracting parties, and nothing in this Agreement or the parties' conduct shall be construed to create a relationship of agency, partnership or joint venture.

8.3 *Governing law.* This Agreement shall be governed by and construed in accordance with the laws of North Carolina, venue Catawba County.

8.4 *Headings.* The headings in this Agreement are for convenience only and are not part of the agreement between the parties.

8.5 *Entire agreement, etc.* The written document of which these General Conditions are a part is the entire agreement between the parties, and supersedes all prior agreements. Any amendments to this Agreement shall be in writing and signed by both parties. In no event will the printed terms on any purchase order, work order or other document provided by Client modify or amend this Agreement, even if it is signed by Consultant, unless Consultant signs a written statement expressly indicating that such terms supersedes the terms of this Agreement. In the event of an inconsistency between these General Conditions and any other writings which comprise this Agreement, the order of precedence shall be as follows: (1) Proposal/Agreement, (2) Supplemental Conditions (if applicable), (3) these General Conditions, (4) Scope of Services, and (5) Other exhibits and attachments (if applicable).

8.6 *Severability.* Any provisions of this Agreement held in violation of any law or ordinance shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties. Consultant and Client shall in good faith attempt to replace any invalid or unenforceable provisions of this Agreement with provisions that are valid and enforceable and that come as close as possible to expressing the intention of the original provisions.

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8.7 *Waiver.* A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.

8.8 *Survival.* All obligations arising prior to termination of this Agreement and all provisions of this Agreement allocating responsibility and liability between Client and Consultant shall survive the completion of the services hereunder and the termination of this Agreement.

8.9 *Third party beneficiaries.* Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Consultant. Consultant's services under this Agreement are being performed solely for the client's benefit, and no other entity shall have any claim against Consultant because of this Agreement or the performance of services hereunder.

8.10 *Statute of limitations.* The statute of limitations shall commence to run not later than the relevant date of substantial completion of the Work.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

CATAWBA COUNTY BOARD OF COMMISSIONERS

12. Other Items of Business: None.
13. Attorney's Report: None.
14. Manager's Report: None.
15. Adjournment. The Board adjourned the meeting at 8:10 p.m.

\_\_\_\_\_  
Katherine W. Barnes, Chair  
Catawba County Board of Commissioners

\_\_\_\_\_  
Barbara E. Morris  
County Clerk