

Regular Session, June 6, 2016, 9:30 a.m.  
Catawba County Board of Commissioners

**Appointments**

CVCC Board of Trustees	751	06/06/16
Juvenile Crime Prevention Council	751	06/06/16
Economic Development Corporation	751	06/06/16
NACo Annual Conference Voting Delegate and Alternate	751	06/06/16
Library Board of Trustees	751	06/06/16
Nursing and Rest Home Advisory Board	751	06/06/16
Subdivision Review Board	751	06/06/16
Public Health Board	751	06/06/16
Tax Collection/Deputy Tax Collector	751	06/06/16

**Budget**

Adoption of the Fiscal year 2016/17 Catawba County Budget	781	06/06/16
Budget Transfers	787	06/06/16

**County Manager**

Selection of Mick Berry as New County Manager	787	06/06/16
Death of Public Information Officer Dave Hardin	789	06/06/16

**Juvenile Crime Prevention Council**

Annual Plan for FY2017	752	06/06/16
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**Legal**

Land Lease and Sale of Landfill Gas	754	06/06/16
Lease of Heavner Property	788	06/06/16

**Ordinance**

Budget Ordinance	781	06/06/16
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**Partners Behavioral Health Management**

Update	751	06/06/16
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**Planning and Parks**

Duke Energy Water Resources Fund - \$100,000 Grant for Observation Platform At Riverbend Park	754	06/06/16
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**Public Comments**

Richard Harwell	751	06/06/16
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**Resolution**

Resolution Authorizing the Lease of Property	754	06/06/16
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**Sheriff's Office**

Presentation of Badge and Service Weapon of Retired Deputy Sheriff Joel Fish	751	06/06/16
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**Utilities and Engineering**

Land Lease and Sale of Landfill Gas	754	06/06/16
Execution of Lease with Duke Energy Carolinas for the Sherrills Ford Convenience Center Site	752	06/06/16

The Catawba County Board of Commissioners met in regular session on Monday, June 6, 2016, at 9:30 a.m. in the Robert E. Hibbitts Meeting Room of the 1924 Courthouse, 30 North College Avenue, Newton, North Carolina.

Present were Chair Randy Isenhower, Vice-Chair Barbara G. Beatty and Commissioners Katherine W. Barnes, Sherry E. Butler and Dan A. Hunsucker.

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

1. Chair Randy Isenhower called the meeting to order at 9:30 a.m., noting a quorum was present.
2. Vice-Chair Barbara G. Beatty led the Pledge of Allegiance to the Flag.
3. Chair Isenhower offered the invocation.
4. Commissioner Sherry E. Butler made a motion to approve the minutes from the Board's Regular Meeting of May 2, 2016, the Special Meeting and Closed Session of May 7, 2016 and the Special Meeting and Closed Session of May 22, 2016. The motion carried unanimously.
5. Recognition of Special Guests: Chair Isenhower welcomed everyone present and thanked them for their interest in the business of the County and specifically recognized Rick Davis, Chief of the Sherrills Ford-Terrell Fire Department.
6. Public Comments.  
Richard Harwell of Hickory came forward and addressed the Board regarding the sale of a lot he had purchased approximately 20 years earlier. He sold the lot in December 2015 but the new buyer's environmental health permit had been denied by the County due to the lack of required space for a septic repair area. His concerns were that the lot met requirements 20 years earlier and the buyer was not changing the footprint or the size of the home on the lot. The Permit Center had asked for a survey in order to examine options available to him. He expressed concern whether a survey would always be required and that his reputation as a developer could be tarnished by this transaction. He stated if this issue could not be resolved and he was unable to sell the lot, he wanted the Board to consider granting him a tax credit on the property. He believed that the lot should be grandfathered and not restricted by the current permitting requirements. He indicated he had worked with County Manager Tom Lundy and he was hopeful they were close to a resolution.

County Manager Lundy clarified that there was no State requirement for a new survey if the initial permit was correct and the size and location of the home was the same as that permitted 20 years earlier. Environmental Health was recommending a new survey to identify area for the required septic repair area and to explore options for Mr. Harwell to consider. Mr. Lundy indicated that the original permit 20 years prior had been issued in error and grandfathering did not apply. At this point, the survey had been completed, Mr. Harwell had submitted an application and options to comply with State law would be forthcoming from Environmental Health.

7. Presentations:
  - a. The Board honored Sheriff's Deputy Joel E. Fish, Jr, who retired effective June 1, 2016, after over 17 years with the Catawba County Sheriff's Office. Under North Carolina General Statute 20-187.2, upon a motion by Commissioner Katherine which carried unanimously, the Board declared as surplus the service weapon and badge of Deputy Fish and presented those items to Sheriff Coy Reid who will ensure they are delivered to Deputy Fish in Oregon where he is now residing.
  - b. The Board received an update on Partners Behavioral Health Management from Ms. Tara Conrad, Regional Director of Community Operations.
8. Appointments.  
Chair Randy Isenhower recommended the appointment of Commissioner Sherry Butler for a first term on the Catawba Valley Community College Board of Trustees. Commissioner Butler's term will expire June 30, 2020. Chair Isenhower recommended the reappointment of Tara Conrad for a fifth term and

the appointment of Lt. Scott Hildebrand and Billy Rogers for first terms on the Juvenile Crime Prevention Council. These terms will expire June 30, 2018. Chair Isenhower recommended the reappointment of Robin Nicholson for a second term on the Economic Development Corporation Board of Directors, with a term expiration of June 30, 2019, and the appointment of Commissioner Barnes as the voting delegate and Commissioner Hunsucker as the voting delegate alternate for the NACo Annual Conference. Vice-Chair Beatty recommended the appointment of Nicky Setzer for a first term on the Library Board of Trustees. This term will expire June 30, 2020. Vice-Chair Beatty recommended the appointment of Helen Upchurch for a first term on the Nursing and Rest Home Advisory Board, with a term expiration of June 5, 2017, and the reappointment of Jason Cloninger for a fourth term on the Subdivision Review Board, with a term expiration of June 30, 2018. Commissioner Hunsucker recommended the reappointment of John Dollar for a third term and David Hamilton and Brian Potocki for second terms on the Public Health Board. These terms will expire June 30, 2019. County Manager Lundy recommended the reappointment of Lori Mathes for a second term as Tax Collector and Jeanne Jarrett for an eighth term as the Deputy Tax Collector. These terms will expire June 30, 2018. These recommendations came in the form of a motion, which carried unanimously.

9. Consent Agenda:

County Manager Lundy presented the following two items on the Consent Agenda:

a. A request for the Board to approve the Fiscal Year 2017 Annual Plan for the Catawba County Juvenile Crime Prevention Council (JCPC). The Plan includes the JCPC-recommended proposed funding plan. The JCPC is an organization established by the North Carolina Department of Public Safety's Division of Juvenile Justice. It exists to identify risks for youth in the community; prevent crime among at-risk youth; review court data; and identify needed programs to provide intervention and prevention. Funding is allocated by the State, distributed to the County, and then to programs. Membership is determined mostly by the North Carolina General Statute that established the JCPC. Representatives on the Council are those involved with youth.

Every year, the JCPC must follow a process that begins with prioritizing risks and needs, with the final step being approval of a funding plan. The risks and needs priorities are determined in the fall and early winter, and approval of the funding plan occurs in the spring. Steps in developing the plan include identification of risk factors based on court data; development of a list of priorities to address risk factors, and review and approval of priorities. Once priorities are developed, the JCPC advertises for programs to submit proposals to address risk factors, reviews proposals and recommends a funding plan to the JCPC, which is subject to the State of North Carolina budget.

In the spring, and once proposals are received, the JCPC develops an Annual Plan and submits the Plan to the Board of Commissioners. The State has advised local JCPCs to plan for the same funding as received in FY 2016, which is \$332,366. The funding for next year and the services provided are as follows: Conflict Resolution Center: \$51,524, for mediation and Lifeskills classes; Cognitive Connection: \$104,990, for counseling regarding substance abuse, and assessments; Family Centered Treatment: \$33,264 for home based family counseling; Family Guidance Center: \$34,396 for parent education; Project Challenge: \$65,489 for restitution/community service; Repay: \$29,205 for sex offender assessment and treatment; and JCPC Administration: \$13,498. The Plan does not require any County funding.

b. A request for the Board to authorize County Manager J. Thomas Lundy to execute a Lease Amendment with Duke Energy Carolinas that allows Catawba County to continue to offer uninterrupted solid waste and recycling convenience center services to the Sherrills Ford area.

Duke Energy Carolinas has been very gracious and willing to extend the terms of the existing lease agreement through this Amendment to June 30, 2025. The time frame and annual rental amount is as follows: July 1, 2016 – June 30, 2018: \$1,100; July 1, 2018 – June 30, 2021: \$1,250; and July 1, 2021 – June 30, 2025: \$1,300.

The agreement provides an "out clause" or termination by either party by means of 60 days written notice effective on the 60<sup>th</sup> day, but allows one year for the County to vacate the property while continuing to operate the site during the one year period. The annual rent during the one year

termination period will be pro-rated based on the date the County vacates the property. County staff has reviewed and approved the agreement as written by Duke Energy Carolinas. The following lease applies:

PREPARED BY: Karol P. Mack, Associate General Counsel, Duke Energy

Mail To: Duke Energy Carolinas, LLC  
Land & Facilities Support Services  
550 S. Tryon St., DEC20A  
376150  
Charlotte, N.C. 28201

Site: 004411  
Land Unit: 1175831  
Project No.: 004411-

**STATE OF NORTH CAROLINA**

**AMENDMENT OF LEASE**

**COUNTY OF CATAWBA**

**THIS AMENDMENT OF LEASE** (the "Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **DUKE ENERGY CAROLINAS, LLC**, a North Carolina limited liability company ("Lessor") and **CATAWBA COUNTY**, whose mailing address is P. O. Box 389, Newton, North Carolina 28658 ("Lessee").

**WHEREAS**, Lessor and Lessee entered into a Lease Agreement dated July 20, 2009 (the "Lease"), whereby Lessor leased to Lessee the Leased Premises (as such term is defined in the Lease) solely for the purpose of a waste convenience site; and

**WHEREAS**, the Expiration Date of Lease is May 31, 2019, and Lessor and Lessee desire to extend the Expiration Date to June 30, 2025, and revise certain other terms of the Lease.

**NOW THEREFORE**, for and in consideration of the foregoing premises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor and Lessee, intending to be bound hereby, do hereby amend the Lease, as follows:

(1) Section 1 of the Lease is deleted in its entirety and replaced with the following:

**Term:** This Lease shall commence on June 1, 2009 ("Commencement Date") and shall expire on June 30, 2025 ("Term"). The "Expiration Date" shall be June 30, 2025. Lessee shall notify Lessor in writing six months prior to the Expiration Date if Lessee desires to extend the Term; provided however, Lessor shall have no obligation to renew the Lease.

(2) Section 2 of the Lease is deleted in its entirety and replaced with the following:

**Rent:** Lessee shall pay to the Lessor an annual rental in the amounts shown below, payable on or before August 1<sup>st</sup> of each year beginning 2017:

<u>Timeframe:</u>	<u>Annual Rental:</u>
July 1, 2016 – June 30, 2018	\$1,100.00
July 1, 2018 – June 30, 2021	\$1,250.00
July 1, 2021 – June 30, 2025	\$1,300.00

(3) Section 13 of the Lease is amended as follows:

**Notices and Correspondence:**

**Rent Payments:**

**Lessor:** Duke Energy Carolinas, LLC  
Land & Facilities Support Services  
550 South Tryon Street (DEC20A)  
Charlotte, North Carolina 28202

Duke Energy Carolinas, LLC  
Lease Administration  
P. O. Box 1321 (DEC20A)  
Charlotte, North Carolina 28201

All capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Lease.

Except as amended by this Amendment, the terms of the Lease are hereby ratified and affirmed in all respects.

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed this the day and year first above written.

**Duke Energy Carolinas, LLC**

**LESSOR:**

a North Carolina limited liability company

By:

Name: Ottis W. Allen

Title: Manager Real Estate Transactions Carolinas

Chair Isenhower asked if any Commissioner wished for an item to be removed from the consent agenda for individual consideration. None was requested. Commissioner Barnes made a motion to approve the consent agenda. The motion carried unanimously.

10. Departmental Reports.

A. Planning and Parks.

Planning and Parks Director Jacky Eubanks presented a request for the Board to approve a project budget ordinance in the amount of \$100,000 to construct a Catawba River Observation Platform at Riverbend Park, replacing a wooden structure destroyed in the 2013 flood. Catawba County Planning and Parks Department re-applied to the North Carolina Community Foundation on January 21, 2016, for Duke Energy Water Resources funds to complete this construction. The North Carolina Community Foundation awarded Catawba County a \$100,000 grant on March 30, 2016. The grant will be used for the following purposes: stone backfill: \$500; class A concrete: \$50,000; reinforcing steel: \$12,000; drilled shafts: \$25,000; Rip Rap Class II: \$2,500; and kiosks and supporting materials/supplies: \$10,000. Vice-Chair Beatty made a motion to approve the project budget ordinance; the motion carried unanimously. Robin Nicholson, District Manager, Government and Community Relations, Duke Energy, presented the \$100,000 check to the Board and Vice-Chair Beatty presented the physical award which contained water from various water systems in the State to Senior Planner Susan Ballbach for display in the County's Planning Office.

B. Utilities and Engineering.

County Attorney Debra Bechtel and Utilities and Engineering Director Barry Edwards presented a request for the Board to adopt resolution authorizing the lease of property pursuant to North Carolina General Statute (NCGS) 160A-272; approve a ground lease with Apple, Inc. to lease approximately 3.713 acres+/-; approve a Memorandum of Ground Lease (for recording with the Register of Deeds); and approve a Landfill Gas Sales Agreement with Quadrogen, Inc.

Since November 2015, County staff has been actively negotiating with Apple, Inc. regarding the lease of a portion of County property located at the Blackburn Resource Recovery Facility on Rocky Ford Road for the purpose of locating and operating a renewable energy facility. The initial term of the lease is for sixteen years with the ability to extend an additional five years if Apple so desires. NCGS 160A-272 authorizes units of local government to enter into leases with terms of more than 10 years for the location and operation of a renewable energy facility.

The annual rent for the first five years is \$1,500 per acre (\$5,569.50). Beginning with year six of the Lease, and annually thereafter, the annual rent will be adjusted by the same percentage as the percentage change in the Consumer Price Index for All Urban Consumers - South Region - All Items as

published by the United States Department of Labor – Bureau of Labor Statistics. However, the annual rent will never be less than \$1,500 per acre.

In September 2015, the County issued a Request for Proposals (RFP) for the Sale of Landfill Gas. In response to the RFP, Quadrogen, Inc. submitted a proposal to purchase raw, untreated landfill gas. County staff has subsequently negotiated a Landfill Gas Sales Agreement with Quadrogen. The agreement has an initial term of sixteen years with the ability to extend an additional five years (mirroring the term of the Apple Land Lease).

Total landfill gas flow is currently approximately 1,200 standard cubic feet per minute (SCFM). The Landfill Gas Sales Agreement is limited to a maximum continuous flow quantity of landfill gas of 475 SCFM. The instantaneous flow rate may not exceed 500 SCFM. The proposed Landfill Gas Sales Agreement will sell a maximum of approximately 40% of the total landfill gas flow. The remaining 60% of the landfill gas will continue to be used by the County to generate electricity.

The initial sales price of \$2.00 per mmBtu provides the County with an amount of revenue equal to what would be realized through electricity sales using that same landfill gas. The initial sales price is for year one through year five of the agreement. Beginning in year six, the landfill gas sales price will be increased by the same percentage that the County's sale of electricity increases. At no time during the term of the agreement will the sales price be less than \$2.00 per mmBtu. Commissioner Butler made a motion to adopt resolution authorizing the lease of property pursuant to North Carolina General Statute (NCGS) 160A-272; approve a ground lease with Apple, Inc. to lease approximately 3.713 acres+; approve a Memorandum of Ground Lease (for recording with the Register of Deeds); and approve a Landfill Gas Sales Agreement with Quadrogen, Inc. The motion carried unanimously. The following applies:

Resolution No. 2016-

Resolution Authorizing the Lease of Property

**WHEREAS**, Catawba County owns numerous parcels of property, located in Newton, collectively known as the Catawba County Blackburn Resource Recovery Facility, and is desirous of leasing an approximate 3.713 acre portion, along with appropriate easements, to Apple Inc. for purposes of a renewable energy facility.

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

The Board of Commissioners determines that the approximate 3.71 acre portion of property along Rocky Ford Rd., Newton will not be needed for the term of the lease which is up to twenty years. The purpose of the lease is to generate to site a renewable energy facility and is consistent with North Carolina General Statute 160A-272.

This the 6th day of June, 2016.

**County of Catawba**  
**State of North Carolina**

**Sale of Landfill Gas**  
**Agreement**

This Landfill Gas Sales Contract (the "**Agreement**") made, entered, and effective on this [6<sup>th</sup>] day of June, 2016, by and between the **County of Catawba**, a political subdivision of the State of North Carolina (the "**County**") with a mailing address of PO Box 389, Newton, NC 28658 and **Quadrogen, Inc.**, a California company authorized to do business in the State of North Carolina, with a mailing address of 3530 W. Garry Avenue, Santa Ana, CA 92704-6423 ("**Quadrogen**").

**WITNESSETH:**

**WHEREAS** the County owns and operates a permitted municipal solid waste landfill known as the Blackburn Resource Recovery Facility (the “**Landfill**”), located at 4017 Rocky Ford Road, Newton, NC 28658;

**WHEREAS** contemporaneously with entering into this Agreement, County has entered into a separate ground lease agreement (the “**Ground Lease Agreement**”) with Apple, Inc. (“**Apple**”) to provide for the construction and operation by Apple of a facility and related infrastructure on a portion of the Landfill (the “**Property**”) to generate electricity using fuel cell technology powered by raw, untreated landfill gas (“**LFG**”) that has undergone a filtration and treatment process to be performed by Quadrogen;

**WHEREAS** contemporaneously with entering into this Agreement, Quadrogen has entered into a separate clean landfill gas purchase agreement (the “**Gas Purchase Agreement**”) with Apple to provide for the sale by Quadrogen of filtered and treated LFG from the Landfill to Apple;

**WHEREAS** the County desires to sell a portion of its LFG and Quadrogen, in response to the County’s request for proposals for the sale of LFG issued on September 9, 2015 (the “**RFP**”), desires to purchase LFG, which Quadrogen shall subsequently treat and sell to Apple under the Gas Purchase Agreement for purposes of generating clean, renewable electricity from a fuel cell;

**WHEREAS**, for the purposes of this Agreement, the “**Facility**” means, collectively: (i) a fuel cell that shall use filtered and treated LFG to generate electricity; (ii) equipment to treat and filter the LFG before it is used by the fuel cell, such as Quadrogen’s Integrated Landfill Clean-up System (the “**Gas Cleaning System**”); (iii) natural gas storage tanks to provide an additional fuel source for the fuel cell; and (iv) related improvements, infrastructure, pads, equipment, pipes, wires, conduits and metering equipment; and

**WHEREAS** Apple shall own Quadrogen’s Gas Cleaning System used at the Landfill, but Quadrogen shall be responsible for the continuous operation, maintenance and repair of the Gas Cleaning System.

**NOW, THEREFORE**, in consideration of the mutual terms and conditions contained herein, the parties agree as follows:

#### **SECTION 1 - Purpose**

The purpose of this Agreement is to establish the terms by which Quadrogen shall purchase a portion of the County’s LFG from the Landfill.

#### **SECTION 2 – QUADROGEN’S OBLIGATIONS**

- 2.1 Quadrogen is responsible for acquiring and paying for all costs associated with any construction, operational, regulatory, and environmental licenses and permits in its name, which are or may become necessary for the construction, operation, and maintenance of the Gas Cleanup System at the Landfill, which shall be owned by Apple but operated by Quadrogen pursuant to the Gas Purchase Agreement, and for maintaining compliance with all such licenses and permits at all times throughout the term of this Agreement, including any amendments or extensions thereof. Quadrogen shall keep the County informed of all regulatory and environmental licenses and permits necessary to operate the Gas Cleanup System at the Landfill, and shall be solely responsible for any incremental regulatory or environmental permits, licenses or approvals, including all associated costs, required by the County or other governmental agencies as a result of Quadrogen’s activity at the Landfill.
- 2.2 Quadrogen shall use its commercial best efforts to minimize the impact on the County’s gas production system that produces gas from decomposition of materials buried at the Landfill (the “**LFGE System**”), its permits, regulatory compliance, or any other activities at the Landfill and be in compliance with all such permits and licenses during the Term.
- 2.3 Quadrogen shall use its commercial best efforts to setup the Gas Cleaning System at the Landfill to correlate with the LFGE System such that nothing Quadrogen connects, adds or attaches to the LFGE system will directly interfere with the County’s standard operations as required by State and Federal law. If the setup of the Gas Cleaning System at the Landfill creates an unintentional interference with the LFGE System, County shall have the right to stop the flow of LFG at the POI (as hereinafter defined) in order to protect the LFGE System and ensure that the LFGE System remains in compliance with all permits and licenses for so long as such interference exists. For greater certainty, County shall be obligated to resume the flow of LFG at the POI as soon as practicable upon the resolution of any interference of the Gas Cleaning System with the LFGE System.
- 2.4 Quadrogen shall pay the County for the LFG that passes through the point of interconnection (the “**POI**”) between the LFGE System and the Gas Cleaning System, which Quadrogen shall meter to include volume, flow rate, Btu content, pressure and dewpoint temperature at such interconnection. For greater certainty, Quadrogen shall only be required to pay for the LFG that passes the POI, and Quadrogen shall have the right, at its sole discretion, to control and determine the volume of LFG it wishes to accept. Quadrogen shall pay the County for the LFG that passes the POI at the

following rates, as applicable:

For year one (1) through year five (5) of this Agreement - at \$2.00 (Two United States Dollars) per mmBtu. Quadrogen shall also pay for the LFG during the start-up and commissioning of Quadrogen's Gas Cleaning System at the same \$2.00 per mmBtu rate.

Starting on the first day of year six (6) of this Agreement until the termination of this Agreement in accordance with its terms, Quadrogen shall pay for the LFG based on a floating annual price. The calculation of the floating annual price for the above noted years shall be based on the following formula:

X = Electricity sales price between County and Duke Energy on the commencement date of this Agreement.

Y = Revised electricity sales price between County and Duke Energy on the fifth (5<sup>th</sup>) anniversary date of the Commencement Date (as hereinafter defined) and then annually on each successive anniversary of the Commencement Date, as determined for the applicable year.

Price of LFG that Quadrogen shall pay the County (calculated on annual basis):

$$\$2.00 \text{ USD} / \text{mmBtu} * (1 + ((Y-X)/X))$$

At no time during the Term shall the price of LFG that Quadrogen shall pay the County be less than \$2.00 USD per mmBtu.

Should the County sell or otherwise dispose of all of its LFG and no longer generate electricity for sale to Duke Energy, the above formula shall be replaced and the price in place at the time when electricity sales end shall be increased annually by the CPI (Consumer Price Index for all Urban Consumers CPI-U) for the South Region of the County. For greater certainty, the Consumer Price Index shall be the Consumer Price Index for All Urban Consumers (CPI-U) South Region All Items (1982-84=100), as published by the United States Department of Labor - Bureau of Labor Statistics, as available as of the date nearest to the date as of which the adjustment in the annual rate is to be calculated. If such Consumer Price Index is no longer published or reasonably available, an equivalent successor index measuring the cost of living in the Southeast region of the United States shall be designated by County.

- 2.5 Quadrogen shall be responsible for installing, maintaining, and calibrating (on at least a quarterly basis, starting on the Commencement Date) flow and heat content (i.e., mmBtu) measuring devices at the point of interconnection between the LFGE System and the Gas Cleaning System. Calibration data shall be made available by Quadrogen upon request by the County. Quadrogen shall allow the County to connect to the data feed for such devices so that the County can view and compile such data in real time. The County shall prepare monthly invoices based on this data. Whenever the flow and/or heat content measuring devices of the LFG stream are inoperable, missing flow and/or heat content data shall be substituted using similar data from the previous comparable month. Quadrogen shall pay the County for LFG used within thirty (30) days of receiving an invoice. County has the right to shut off the LFG supply if payment is not received within that thirty (30)-day period.
- 2.6 Quadrogen shall supply the County, within ten (10) business days of receiving such request, any operational data that the County may need in support of demonstrating compliance with any permits Quadrogen holds.
- 2.7 Quadrogen shall be responsible for installing any and all equipment that it deems necessary to determine that the County's LFG is suitable for treatment and ultimate delivery to the fuel cell at the Landfill. This equipment shall be capable of detecting LFG that is unsuitable and shutting off the supply line from the County. Subject to Section 3 of this Agreement, the County shall not be responsible for the characteristics/composition of the LFG delivered and it shall be the responsibility of Quadrogen and its monitoring equipment to determine if the LFG is suitable for use in the Facility. Provided the LFG meets the characteristics/composition requirements of Section 3 of this Agreement, once the LFG passes Quadrogen's monitoring equipment, it shall be considered suitable and no longer owned in any way by the County. Subject to Section 3 of this Agreement, LFG that passes Quadrogen's monitoring equipment shall become the property of Quadrogen and the County shall bear no responsibility should it be determined at any point that unsuitable LFG has fouled or otherwise impacted the performance of the fuel cell and/or Quadrogen's Gas Cleaning System equipment.

**SECTION 3 – COUNTY’S OBLIGATIONS**

- 3.1 For the duration of this Agreement, the County shall provide a connection point for the Gas Cleaning System from the LFGE System for the delivery of LFG.
- 3.2 County shall provide LFG at the POI. The LFG shall be conveyed to the Gas Cleaning System via a gas pipeline installed by Apple and conveyance equipment (e.g., blower) provided by Apple and/or Quadrogen.
- 3.3 County shall provide LFG with a minimum available flow rate of at least four hundred seventy five (475) standard cubic feet per minute (“SCFM”) for the duration of this Agreement. Quadrogen reserves the exclusive right to control the amount of gas actually used by the Gas Cleaning System, provided that the instantaneous flow rate does not exceed five hundred (500) SCFM. Quadrogen’s actual LFG flow rates are expected to regularly vary from zero SCFM (no flow) to the maximum continuous flow rate of four hundred seventy five (475) SCFM. The parties understand that the County’s LFG supply may be interrupted from time to time due to scheduled maintenance activities and/or unplanned outages due to power outages or force majeure incidents. The County shall provide Quadrogen with as much notice as possible for scheduled down times and for both scheduled and unscheduled outages and make reasonable efforts to restore the supply of LFG as soon as possible.
- 3.4 Subject to Section 3.5 and to County obtaining all required permits and authorizations, County, at its own cost, shall take and accept all effluent (waste liquid produced by the Gas Cleaning System) (the “Effluent”) for disposal or permitted use thereof by County. Quadrogen shall have the right to deliver the Effluent to mutually agreeable location(s) on the Landfill (for greater certainty, County and Quadrogen agree that delivery may be made by piping the Effluent to County’s existing storage tanks on the Landfill that are part of the LFGE System) at Quadrogen’s sole cost and County shall be deemed to have taken control of the Effluent at such location(s).
- 3.5 County’s obligation to take and accept the Effluent is subject to the chemical composition of the Effluent being similar to or cleaner than the composition of the liquid or waste water produced by the LFGE System (the “County’s Condensate”) on the Commencement Date. If the Effluent has altered chemical composition that is different from (but not cleaner than) the County’s Condensate, County will only be obligated to accept such Effluent if combining such Effluent with the County’s Condensate will not create any hazards or interfere with the performance or operation of the LFGE System and is permissible in accordance with all local, state and federal laws and regulations. Quadrogen agrees it shall be responsible for any additional costs incurred by County associated with handling and processing (including disposing of, if applicable) any Effluent with altered chemical composition that County rejects because it does not meet the requirements in this Section 3.5.

**SECTION 4 – Notices**

All notices, signed agreements, payments and communications under this Agreement shall be given in writing at the address shown below until written notice is provided by either party to the other of a change of such address, and may be delivered or, except in the case of payments, faxed (with receipt confirmed) or emails. All notices shall be effective upon receipt.

**Quadrogen, Inc.**

CT Corporation System  
c/o Quadrogen, Inc.  
150 Fayetteville Street, Box 1011  
Raleigh, NC, USA 27601  
Attention: Alakh Prasad  
Fax: (604) 221-3001  
Email: alakhprasad@quadrogen.com

**Catawba County**

100 A Southwest Blvd.  
Newton, NC, USA  
28658  
Attention: Barry B. Edwards, P.E.  
Fax: (828) 465-8962  
Email: barrye@catawbacountync.gov

**SECTION 5 – Indemnification**

Quadrogen shall indemnify, defend and hold harmless County from and against any loss, liability, claim, damage, or expense directly arising out of any breach of any representation, warranty or covenant made by Quadrogen, specifically including any damage caused to County by Quadrogen’s connecting to the County’s LFGE System, except to the extent such

damage is based on or results directly out of any breach by County of its obligations under this Agreement or the negligent or willful acts or omissions of County, its agents, subcontractors, directors, officers and employees. Further, Quadrogen shall, to the greatest extent authorized by law, defend, indemnify and hold harmless County from all claims based on injury to persons or damage to third party property, and all resulting damages, losses, and expenses including, but not limited to, reasonable attorneys' fees and other costs of defense related thereto, to the extent based on or resulting from the installation, operation, maintenance or repair of the Facility by Quadrogen and/or its contractors and/or subcontractors, including without limitation (i) the negligence or willful misconduct by Quadrogen and/or its contractors and/or subcontractors in connection with the construction, repair, maintenance, replacement or use of the Facility, (ii) any violation by Quadrogen and/or its contractors and/or subcontractors of any applicable law relating to the Facility or the use of the Facility, or (iii) the failure by Quadrogen and/or its contractors and/or subcontractors to keep the Facility in a safe operating condition.

#### **SECTION 6 – Insurance**

Quadrogen agrees to maintain in full force and effect for the entire Term insurance in such amounts as shown below. County shall continuously be shown as an additional insured on the Commercial General Liability insurance required below. Prior to the beginning of the Term and annually thereafter, Quadrogen shall deliver to County certificates of insurance, including additional insured endorsements, in a form reasonably acceptable to County, which show that the insurance set forth herein are in effect. In the event of cancellation or non-renewal of any insurance during the Term, Quadrogen shall promptly replace the effected insurance so that no lapse in coverage occurs. If there is a lapse in insurance coverage, County has the right to immediately stop selling LFG to Quadrogen.

- a. Commercial General Liability Insurance. Quadrogen shall maintain in full force and effect during the Term, and at its own expense, commercial general liability insurance for bodily injury, property damage, personal injury, advertising injury, contractual liability assumed under the provisions of this Agreement, and products/completed operations liability arising out of, or related to, the use of the Facility, such insurance to provide liability limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, combined single limit. County shall be named as additional insured on said policy to the extent of liabilities falling within Quadrogen's indemnity obligations under the terms of this Agreement.
- b. Workers' Compensation Insurance. In the event that Quadrogen has employees for whom workers' compensation insurance is required to be carried under North Carolina law, Quadrogen shall maintain Workers' Compensation and Employer's Liability Insurance covering all of its employees to be engaged in the work related to the use of the Facility, providing the required statutory benefits under North Carolina Workers' Compensation Law and Employer's Liability Insurance providing limits at least in the amount of One Million Dollars (\$1,000,000) applicable to claims due to bodily injury by accident or disease. In addition, Quadrogen shall cause its contractor and any subcontractors using the Facility and any operator of the Facility to maintain Workers' Compensation and Employer's Liability Insurance in connection with its activities at the Facility as required herein and by North Carolina law.
- c. Business Automobile Liability Insurance. Quadrogen shall maintain in full force and effect during the Term, and at its own expense, business automobile liability insurance with liability limits of not less than One Million Dollars (\$1,000,000) combined single limit, covering owned, non-owned and leased vehicles used by Quadrogen with respect to the use of the Facility.

#### **SECTION 7 – Term**

The initial term of this Agreement (the "**Term**", which shall include any extension thereof) shall be for sixteen (16) years, commencing on the date of this Agreement (the "**Commencement Date**"). Provided that Quadrogen is not in default beyond applicable notice and cure periods under this Agreement at the time the option to extend this Agreement is exercised, Quadrogen shall have the right to extend the Term for an additional period of five (5) years by giving County notice of Quadrogen's decision to so extend the Term at least six (6) months prior to the expiration of the initial Term.

#### **SECTION 8 – Termination**

- 8.1 Either party may terminate this Agreement upon a default by the other party of such party's obligations under this Agreement, which default is not cured within thirty (30) days of such party receiving written notice of such default.
- 8.2 If either Apple or County terminates the Ground Lease Agreement, this Agreement shall automatically terminate on the same date as the Ground Lease Agreement is terminated.
- 8.3 If the Gas Purchase Agreement is terminated by either Apple or Quadrogen or is not otherwise extended by Apple in accordance with the terms of the Gas Purchase Agreement, and if Apple elects not to effect the assignment of this Agreement to Apple as a result of such termination (as contemplated under the terms of the Rider (as hereinafter defined)), then this Agreement shall automatically terminate on the same date as the Gas Purchase Agreement is terminated.

**SECTION 9 – Miscellaneous**

- 9.1 **ASSIGNMENT:** This Agreement or any right hereunder, shall not be assigned by either party, nor shall any duty hereunder be delegated by either party, without the express written consent of the other party. Any attempt at assignment or delegation without such consent shall be void to the full extent permitted by law.
- 9.2 **CHOICE OF LAW:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina. Venue for any adversarial proceeding shall be set in Catawba County.
- 9.3 **COMPLIANCE WITH LAWS:** Quadrogen shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.
- 9.4 **AMENDMENT:** This Agreement may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the County and Quadrogen.
- 9.5 **E-VERIFY:** Quadrogen shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes. Further, if Quadrogen utilizes a subcontractor, Quadrogen shall require the subcontractor to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes.
- 9.6 **IRAN DIVESTMENT ACT CERTIFICATION:** Quadrogen certifies that, as of the date listed below, it is not on the Final Divestment List or the Iran Parent and Subsidiary Guidance List as created by the State Treasurer pursuant to NCGS 147-86.58. In compliance with the requirements of the Iran Divestment Act (Article 6E of Chapter 147 of the North Carolina General Statutes), Quadrogen shall not utilize, in the performance of the contract, any subcontractor that is identified on the Final Divestment List or the Iran Parent and Subsidiary Guidance List.

**SECTION 10 – Rider Attached**

See the attached rider (the “**Rider**”) regarding certain provisions that have been agreed to for the direct benefit of Apple, and if there is any conflict between the provisions of this Agreement and provisions set forth in the Rider, the provisions set forth in the Rider shall govern.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands on the day and year above first written.

**CATAWBA COUNTY:**

By: \_\_\_\_\_  
C. Randall Isenhower  
Board of Commissioners, Chair

Attest:

By: \_\_\_\_\_  
Barbara Morris, Clerk to the Board

Seal

**QUADROGEN, INC:**

By: \_\_\_\_\_  
Alakh Prasad  
President and CEO

Attest:

By: \_\_\_\_\_ Seal

**THIS INSTRUMENT** has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act as amended.

Date: \_\_\_\_\_  
Bob Miracle, Finance Director

**APPROVED AS TO FORM:**

Date: \_\_\_\_\_  
Debra N. Bechtel, County Attorney

**Rider to the Sale of Landfill Gas Agreement**

**PROVISIONS FOR THE BENEFIT OF APPLE:** The terms of this Rider shall be deemed to be a part of and incorporated into the Agreement to which it is attached as if fully set forth therein, and the capitalized terms used in this Rider shall have the same meaning as set forth in the Agreement, unless specifically defined herein.

Apple and County have entered into a separate Ground Lease Agreement relating to a portion of County’s Property, on which Apple will install the Facility as described in the Agreement, including the Gas Cleaning System to be used by Quadrogen to treat the LFG purchased by Quadrogen from County under the Agreement. Apple and Quadrogen have entered into a separate Gas Purchase Agreement pursuant to which Apple will purchase from Quadrogen treated LFG which will be used to power Apple’s fuel cells and produce electricity. Because of Apple’s contractual relationships with County and Quadrogen under such separate agreements and because of Apple’s own investment in the Facility and related equipment, County and Quadrogen acknowledge and agree that Apple is a third-party beneficiary of the Agreement and is entitled to the benefit of certain agreements by County and Quadrogen and the rights associated therewith, as follows:

- a. A copy of any notice, including without limitation any notice of default, given in connection with the Agreement by County to Quadrogen or by Quadrogen to County, shall be simultaneously given to Apple in accordance with the formalities of the Agreement at the following address:

Apple Inc.  
1 Infinite Loop, MS 119-RE  
Cupertino, CA 95014

Attention: Real Estate Department

With a copy to:

Apple Inc.  
1 Infinite Loop, MS 4-DLAW  
Cupertino, CA 95014  
Attention: Real Estate Counsel

- b. County and Quadrogen will not amend the Agreement, assign the Agreement or any rights hereunder, delegate any duty hereunder, or exercise any right to terminate the Agreement without the prior written consent of Apple (except that the consent of Apple shall not be required if the Agreement is terminated by County following a default by Quadrogen that is not cured within the applicable cure period after notice thereof is given to Quadrogen and Apple). If Quadrogen wishes to terminate the Agreement following a default by County that is not cured within the applicable cure period after notice thereof is given to County and to Apple, then either: (i) Apple must consent to such termination; or (ii) if Apple does not consent, then Quadrogen shall assign all of its rights and obligations under the Agreement to Apple and Apple shall accept such assignment unconditionally (provided that the acceptance of such assignment by Apple shall not be deemed to be an assumption of any liability or obligation of Quadrogen that arose prior to the effective date of such assignment).
- c. County agrees that: (i) Quadrogen may assign the Agreement to Apple without requiring the prior approval of County, (ii) Quadrogen may assign the Agreement to a third party designated by Apple, but subject to the prior approval of such third party by County, not to be unreasonably withheld, conditioned or delayed, (iii) if Apple succeeds to the interests of Quadrogen under the Agreement by any legal means, County will recognize Apple as the successor in interest without requiring the prior approval of County, and (iv) if the Agreement is assigned to Apple or if Apple otherwise becomes the successor in interest to Quadrogen, then Apple may thereafter assign the Agreement to a third party designated by Apple, but subject to the County's prior approval of such third party, not to be unreasonably withheld, conditioned or delayed. The acceptance by Apple or its designee of any assignment of this Agreement from Quadrogen shall not be deemed to be an assumption of any liability or obligation of Quadrogen that arose prior to the effective date of such assignment.
- d. The right of Quadrogen to exercise its option to extend the term of the Agreement is subject to and conditioned upon: (i) County and Apple extending the term of their Ground Lease Agreement and (ii) Quadrogen and Apple extending the term of their Gas Purchase Agreement, such that the term of all three agreements are equal and co-terminus.
- e. Quadrogen will provide to Apple a copy of any notice of default under the Agreement received by Quadrogen from County within three (3) business days after receipt thereof, together with a description by Quadrogen of the steps, if any, that Quadrogen intends to take to address any such default.
- f. County and Quadrogen agree that Apple shall be entitled, but not required, to cure any default by Quadrogen under the Agreement if Apple elects to do so in Apple's discretion, and County agrees to accept the performance by Apple of the cure of any such default.
- g. County agrees that Apple may cure any default by Quadrogen within the greater of: (i) the actual cure period provided under the Agreement or in the notice of default provided by County, or (ii) twenty one (21) days after Apple's receipt of such notice of default from County. If such default cannot be cured by the payment of money and Apple gives County notice that Apple intends to undertake the cure of such default and begins to undertake the steps necessary to cure such default within the time period specified in the previous sentence, and if Apple diligently continues to undertake the steps necessary to cure such default, such time period will be extended for as long as is reasonably necessary for Apple to complete the cure of such default.
- h. If Quadrogen defaults under the Agreement and the default is not cured by Quadrogen (as opposed to Apple) within the applicable notice and cure period, then in addition to all rights and remedies available to Apple against Quadrogen as a result of such default Apple shall have the right to pursue any one or more of the following: (i) upon the request of Apple, Quadrogen agrees to assign to Apple (which shall not require any prior consent by County) or to Apple's designee (which shall be subject to County's prior consent, not to be unreasonably withheld, conditioned or delayed) all of Quadrogen's rights under the Agreement (provided that the acceptance of such assignment by Apple shall not be

deemed to be an assumption of any liability or obligation of Quadrogen that arose prior to the effective date of the assignment), (ii) Apple shall have the right to recover from Quadrogen any costs incurred by Apple in curing such default under the Agreement by an offset against any amounts that may be or become due by Apple to Quadrogen under the Gas Purchase Agreement, and (iii) Apple shall have the right to treat such default under the Agreement as a default by Quadrogen under the Gas Purchase Agreement and pursue such rights and remedies, including termination of the Gas Purchase Agreement, as Apple may have under the Gas Purchase Agreement in accordance with its terms. If the Gas Purchase Agreement terminates for any reason, Apple shall have the right to require Quadrogen to and Quadrogen agrees to assign to Apple (which shall not require any prior consent by County) or to Apple's designee (which shall be subject to County's prior consent, not to be unreasonably withheld, conditioned or delayed) all of Quadrogen's rights under the Agreement (provided that the acceptance of such assignment by Apple shall not be deemed to be an assumption of any liability or obligation of Quadrogen that arose prior to the effective date of such assignment). Nothing herein shall limit any other rights or remedies that Apple may have under the Gas Purchase Agreement.

- i. If the Agreement is terminated by County or if the Agreement is terminated or rejected in any bankruptcy or insolvency proceeding, then in lieu of Apple succeeding directly to the interest of Quadrogen by assignment or by other legal means, County agrees to enter into a new agreement directly with Apple on the same terms as the Agreement and for the remaining term of the Agreement; provided, however, that County shall not be obligated to enter into any such new agreement with Apple unless: (i) all events of default under the Agreement have been cured or Apple agrees to cure them, and (ii) any such request by Apple for a new agreement must be made by Apple to County within sixty (60) days after the date that the Agreement has been terminated by County or terminated or rejected in any bankruptcy or insolvency proceeding.
- j. Apple may take any and all actions deemed advisable by Apple in order to exercise its rights under the Agreement, including communicating and or entering into agreements directly with County (with or without Quadrogen's knowledge and participation) regarding the subject matter of the Agreement.
- k. Within fifteen (15) days after a request by Apple, each of County and Quadrogen agree to provide Apple with a signed statement indicating, to the best of their knowledge, whether or not any defaults exist under the Agreement and information or confirmation about such other matters concerning the status of the Agreement as Apple may reasonably request.

County and Quadrogen have executed this Rider to acknowledge their agreement to the terms of this Rider.

**Catawba County**

By: \_\_\_\_\_

NORTH CAROLINA  
CATAWBA COUNTY

**GROUND LEASE**

This Ground Lease (the "Lease"), is made and entered into as of \_\_\_\_\_, 2016, by and between **Catawba County**, a body politic and corporate in nature of the State of North Carolina (hereinafter referred to as "Lessor") and **Apple Inc.**, a California corporation (hereinafter referred to as "Lessee"). Lessor and Lessee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

**STATEMENT OF PURPOSE:**

Lessor is the fee owner of the real property and all improvements thereon known as the Catawba County Blackburn Resource Recovery Facility, which consists of multiple parcels located generally at 4017 Rocky Ford Road, Newton, Catawba County, North Carolina, 28658, and which is more particularly identified and described on **Exhibit A** attached hereto and made a part hereof (the "Property"), on which Lessor currently collects methane gas produced from decomposition of materials buried at the landfill ("LFG") by means of

Lessor's existing LFG collection system and equipment on the Property (collectively the "County Gas Facility").

Lessee desires to lease that portion of the Property identified on **Exhibit B** attached hereto and made a part hereof (collectively with the appurtenant rights, easements and licenses herein described, the "Premises") for the purpose of constructing, installing, operating and maintaining a facility to consist of (i) fuel cells that will use LFG to generate electricity, (ii) equipment to treat and filter the LFG (the "Treatment Skid") before it is used by the fuel cells, (iii) natural gas storage tanks to provide an additional fuel source for the fuel cells, and (iv) related improvements, infrastructure, pads, equipment, pipes, wires, conduits and metering equipment (collectively, the "Facility").

The Facility will connect with and into the County Gas Facility so that LFG produced by Lessor at the County Gas Facility may be purchased from Lessor by a third party pursuant to a separate agreement (the "Landfill Gas Purchase Agreement") and then piped from the County Gas Facility to the Premises. The LFG will then be filtered and treated by such third party using the Treatment Skid located on a portion of the Premises, and the cleaned LFG will then be supplied to Lessee at the Premises pursuant to a separate agreement with the third party (the "Clean Gas Purchase Agreement").

Lessee will use the cleaned LFG to generate electricity at the Premises, which electricity is to be sold and transmitted by Lessee to Duke Energy Carolinas, LLC, its successors and/or assigns or applicable subsidiaries ("UtilityCo") or other third parties.

The Premises shall also include and be defined as being together with (i) easements and/or licenses for the construction, operation and maintenance of components of the Facility and for utilities on and across other portions of the Property (which may include locating pipes, wires, conduits and related equipment under existing roads) as may be required to connect the Facility to the County Gas Facility, to pipe LFG from the County Gas Facility to the Treatment Skid on the Premises, to operate the Treatment Skid and the Facility, and to connect the Facility to UtilityCo's electricity transmission grid; and (ii) the non-exclusive right of ingress and egress on and across other portions of the Property to and from the Premises and the public roads that provide access to the Property seven (7) days a week, twenty four (24) hours a day pursuant to the terms and conditions set forth in this Lease; provided, however, the other portions of the Property that may be subject to such easements, licenses and right of ingress and egress shall be specifically limited to that part of the Property described as the tax parcel on which the Premises is located (being tax parcel 361803441000 as referenced on **Exhibit A**) and the three (3) tax parcels located southwest of and across Rocky Ford Road from the Premises (being tax parcels 361803318190, 361803333381 and 361803330376 as referenced on **Exhibit A**).

Lessor and Lessee have agreed that this Lease is to be treated as a solid waste landfill affiliated enterprise involving a renewable energy facility that generates electric power by use of a renewable energy resource such as landfill methane gas, and Lessor is willing to lease the Premises to Lessee on the terms and conditions contained in this Lease.

In consideration of the terms, conditions, responsibilities, benefits and mutual agreements provided for herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1. DEFINITIONS

In addition to the terms defined elsewhere in this Lease, when used in this Lease the following terms shall have the following meanings (defined terms shall have the same meaning when used in either the singular or plural):

**"Affiliate"** means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person. For purposes of this definition, "control" (including related forms such as "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**"Commercial Operation"** means the condition existing when (i) the Facility is mechanically complete and operating, and (ii) the Electrical Output is delivered through the Facility to UtilityCo's transmission lines consistent with all applicable regulations.

**"Condensate"** means any liquid produced by the County Gas Facility.

**"Delivery Point"** means the delivery point whereby Lessee transfers the Electrical Output to UtilityCo's transmission lines.

"Electrical Output" means the total quantity of all actual net electricity generated by the Facility and delivered to the Delivery Point in any given period of time. Electrical Output does not include the Environmental Incentives or Environmental Attributes.

"Environmental Attributes" means the characteristics of electricity generation at the Facility that have intrinsic value, separate and apart from the Electrical Output, arising from the perceived environmental benefits of the Facility or the Electrical Output, including the use of LFG to be supplied by Lessor, all environmental and other attributes that differentiate the Facility or the Electrical Output from other energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the Facility that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Facility or the compliance of the Facility or the Electrical Output with the law, rules and standards of the United Nations Framework Convention on Climate Change or the Kyoto Protocol to the United Nations Framework Convention on Climate Change or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights.

"Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets, allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the use of LFG to be supplied by Lessor to the Facility, the Environmental Attributes of the Facility or the Electrical Output or otherwise from the development or installation of the Facility or the production, sale, purchase, consumption or use of the Electrical Output. Without limiting the foregoing, "Environmental Incentives" include RECs, green tags, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the North Carolina Utilities Commission or other incentive programs offered by the State of North Carolina, the right to claim any available North Carolina state income tax credits and the right to claim any federal income tax credits under the Internal Revenue Code and any Regulations relating thereto.

"Facility" has the meaning set forth in the second recital paragraph of this Lease.

"Fuel Cell Effluent" means any liquid produced by Lessee's fuel cells at the Premises.

"Good Industry Practice" means the practices, methods and acts that would be implemented and followed by a prudent operator of electricity generating facilities in the United States which are similar to the Facility and that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition. Good Industry Practices are not intended to be limited to the optimum practices, methods and acts to the exclusion of all others, but rather to include reasonable and prudent practices, methods and acts generally accepted by prudent operators of electricity generation facilities in the United States that are similar to the Facility.

"Person" means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

"Premises" has the meaning set forth in the second recital paragraph of this Lease.

"Property" has the meaning set forth in the first recital paragraph of this Lease.

"Reporting Rights" means the right of Lessee to report to any federal, state or local agency, authority or other party, under any present or future domestic, international or foreign emissions trading program, that Lessee owns the Environmental Attributes and the Environmental Incentives associated with the Electrical Output.

"RECs" means the set of non-energy attributes, including any and all "renewable energy certificates", directly attributable to the amount of electricity generated from the Facility, specifically including "renewable energy certificates" within Article 7 of Chapter 62 of the North Carolina General Statutes, otherwise known as the Renewable Energy and Energy Efficiency Portfolio Standard Act, but shall otherwise include no other Environmental Attributes or Environmental Incentives.

"Treatment Skid Effluent" means any liquid produced by the Treatment Skid.

ARTICLE 2. LEASE OF PREMISES, DESCRIPTION

Section 2.01. Lessor hereby leases and demises unto Lessee for and during the Term (defined herein) and under the terms and conditions hereinafter set forth, the Premises, together with all rights, privileges and appurtenances pertaining thereto. The Parties shall upon written agreement determine the exact location of any easements, licenses, rights of way or other appurtenances required for the development and use of the Premises and the operation of the Facility, and any such agreement and location shall be deemed automatically incorporated into this Lease; provided, however, the other portions of the Property that may be subject to such easements, licenses and right of ingress and egress shall be specifically limited to that part of the Property described as the tax parcel on which the Premises is located (being tax parcel 361803441000 as referenced on **Exhibit A**) and the three (3) tax parcels located southwest of and across Rocky Ford Road from the Premises (being tax parcels 361803318190, 361803333381 and 361803330376 as referenced on **Exhibit A**). The Parties agree that this Lease shall not grant Lessee any rights in or to (and the definition of the Premises shall not be deemed to include) include any (i) buried trash, waste, debris or other materials, (ii) any groundwater, or (iii) any liner or cap materials, pipes or other equipment related to the operation of the landfill at the Property, that may be located beneath the surface of the ground area encompassed by the boundaries of the Premises, and that Lessee shall at no time have or be deemed to have any control over or responsibility for the County Gas Facility or any trash, waste, debris or other materials that may have been disposed of by Lessor as part of Lessor's operation of the landfill at the Property.

Section 2.02. Lessee and its contractors, subcontractors, suppliers and engineers shall have such rights of ingress and egress to and from the Premises and over those necessary portions of the Property as may be required for the construction, installation, testing and start up of the Facility to place it in Commercial Operation. Lessee shall not use the Premises during the Term for any other uses without the express written permission of Lessor.

Section 2.03. Subject to the provisions of Section 13.04 of this Lease relating to the right to remove components of the Facility, Lessee shall be the legal and beneficial owner of the Facility at all times, and the Facility shall remain the personal property of the Lessee and shall not attach to or be deemed a part of, or fixture to, the Premises. The Facility shall at all times retain the legal status of personal property. Lessor covenants that it will place all parties having an interest in or lien upon the Premises on notice of the ownership of the Facility and the legal status or classification of the Facility as personal property of Lessee, and Lessor covenants not to permit any lien arising by, through or under Lessor to attach to the Facility. In the event the Property is encumbered by a deed of trust or other security interest, Lessor shall within thirty (30) days after this Lease is executed with respect to any current deed of trust or security instrument, and within thirty (30) days of the recording of any future deed of trust or security instrument, obtain and furnish to Lessee, a recordable non-disturbance agreement in form reasonably acceptable to Lessee that protects the interests of Lessee under this Lease in the event of the exercise of any rights of the secured party under such deed of trust or other security. Lessor represents that any required consent to the terms and provisions in this Lease by any of Lessor's lenders have been obtained. Additionally, Lessor agrees that this Lease and any, licenses, easements or rights-of-way granted herein shall run with the Premises and shall survive any transfer of the Property or the Premises. The Parties agree to cause to be filed in the relevant land records a memorandum of this Lease in form and substance acceptable to the Parties.

Section 2.04. Lessee, and any subleasing entities or agents, shall provide Lessor with any information or data relating to Lessee's operation of the Facility as is or may be required for Lessor to meet

Federal, State and/or Local regulatory requirements as related to Lessor's existing or any future Federal, State and/or Local permits, said permits to include but not be limited to Air Quality, Solid Waste, and Water Quality. Upon Lessor's written request for such information, Lessee agrees to promptly, but in no less than ten (10) days, supply the required information to Lessor. Lessor's written request to include regulatory justification for each such request.

### ARTICLE 3. TERM AND RENT

Section 3.01. The initial term of this Lease (the "Term", which shall include any extension thereof) shall be for sixteen (16) years, commencing on the date of this Lease (the "Commencement Date"). Provided that Lessee is not in default under this Lease at the time the option is exercised, Lessee has the option to extend the Term for an additional period of five (5) years by giving Lessor notice of Lessee's decision to so extend the Term at least six (6) months prior to the expiration of the initial Term.

Section 3.02. During the Term of this Lease, Lessee shall pay to Lessor an annual rent in an amount as indicated in Exhibit C within thirty (30) days following the Commencement Date and thereafter within thirty (30) days following each anniversary of the Commencement Date.

### ARTICLE 4. USE AND ADDITIONAL PROVISIONS

Section 4.01. The Premises may be used to perform all processes necessary for the Facility to generate electric power on the Premises using fuel cells powered by LFG supplied in its raw state from the County Gas Facility, to be cleaned to Lessee's requirements by a third party pursuant to an agreement separate from this Lease, and to connect to UtilityCo's electric grid to transmit such electric power from the Premises to UtilityCo, as described in this Lease. Lessee shall have the right to sell the electric power generated by the Facility to UtilityCo or any other third-party. Lessor may not unreasonably interfere with the use or enjoyment of the Premises by Lessee or unreasonably interfere with or materially adversely affect the operation of the Facility or conduct of Lessee's business in or on the Premises.

Section 4.02. Lessee and/or its Affiliate shall own, and may assign or sell in its sole discretion, all right, title and interest associated with any and all Environmental Incentives and Environmental Attributes resulting from the development and installation of the Facility and the production, sale, purchase or use of the Electrical Output, including the Reporting Rights and the exclusive rights to claim that the Electrical Output was generated by the Facility and to claim any reductions in emissions of pollution and greenhouse gases resulting from the generation of the Electrical Output and the delivery thereof to the Delivery Point (as compared to other electricity generation methods) resulting from the Facility. Lessee and/or its Affiliate are entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

Section 4.03. Lessee shall have the right to sublease or license a portion of the Premises and related rights hereunder to Fuel Cell Energy, Inc. and Quadrogen Power Systems, Inc., or an Affiliate of either of such companies (each, an "Operator") to own, install, maintain and/or operate the Treatment Skid and other components required for the operation of the Facility, to purchase, accept, process, treat and/or filter on the Premises LFG from the County Gas Facility, to provide cleaned LFG to Lessee on the Premises, and/or to perform other services relating to the operation of the Facility. Any change in or addition of any Operator shall require the consent of Lessor, which consent will not be unreasonably

withheld, conditioned or delayed. Lessee is responsible to Lessor for all actions of any Operator, sublessee or licensee of Lessee relating to such activities on the Premises.

Section 4.04. [Intentionally deleted].

Section 4.05. In accordance with all applicable laws and permits (and subject to (i) Lessor obtaining all required permits and authorizations, (ii) Lessee and Lessor confirming the technical feasibility and the cost of doing so, and (iii) Lessee and Lessor approving the plans therefor), Lessee will make available to Lessor, upon Lessor's request and at Lessor's sole cost, "waste heat" generated from Lessee's Facility if Lessor desires to make use of such waste heat for digester heating and/or heating of the Lessor's improvements elsewhere on the Property or for any other permitted use. Lessor, at its sole cost, shall (i) provide and install all such waste heat capture and conveyance equipment, (ii) be wholly liable for the operation of all such waste heat capture and conveyance equipment, and (iii) shall, to the extent allowed by North Carolina law, indemnify, defend and hold harmless Lessee Indemnified Parties from and against any loss, liability, claim, damage, or expense directly arising out of the operation of all such waste heat capture and conveyance equipment, except to the extent such damage is based on or results directly out of the negligent or willful acts or omissions of any Lessee Indemnified Party. If Lessor and Lessee decide to proceed with the installation of such waste heat capture and conveyance equipment by Lessor, Lessor shall have a right of access, ingress and egress upon and across the Premises as reasonably necessary for the installation, operation and maintenance thereof, provided that the exercise of such right by Lessor must not interfere with the activities of Lessee on the Premises.

Section 4.06. In accordance with all applicable laws and permits (and subject to obtaining all required permits and authorizations), Lessor, at its own cost, shall take and accept the Treatment Skid Effluent and the Fuel Cell Effluent for disposal or permitted use thereof by Lessor. Lessee shall deliver such effluents to mutually agreeable locations on the Property (and as to the Treatment Skid Effluent, Lessor and Lessee agree that delivery may be made by piping it to Lessor's existing storage tanks on the Property that are part of the County Gas Facility) at Lessee's sole cost and Lessor shall be deemed to have taken control of the effluents at such locations. It is understood and agreed that the Fuel Cell Effluent is generally clean and the Treatment Skid Effluent is generally unusable, and that the agreement of Lessor under this section of the Lease is based upon Lessor's acceptance, and Lessee's delivery, of both the Fuel Cell Effluent and the Treatment Skid Effluent.

The chemical composition of Lessee's effluents must be identical to (or cleaner than) the composition of Lessor's Condensate on the Commencement Date. Should Lessee's effluent have any altered chemical composition from Lessor's Condensate, Lessor will only accept it if combining it with Lessor's Condensate does not create any hazards, interfere with the performance of Lessor's equipment or operations and is permissible with all local, state and federal laws and regulations. Lessee agrees it shall be responsible for any additional costs incurred by Lessor associated with handling and processing any effluent with altered chemical composition that Lessor rejects because it does not meet the requirements in the previous sentence.

## ARTICLE 5. MAINTENANCE; UTILITIES

Lessee shall operate and maintain the Facility in accordance with Good Industry Practice, and Lessee shall pay all fees or other charges for the installation, connection, and utilization of all utilities required for the use and operation of the Facility. Lessor shall not be responsible for any costs associated with the construction, installation, operation, maintenance, improvement, repair or replacement of the Facility, including, but not limited to the cost of all utility services and connections to the Facility.

ARTICLE 6. COMPLIANCE WITH APPLICABLE LAWS

Lessee shall at its sole cost and expense comply, or ensure compliance, with all federal, state, and local laws, ordinances, rules, regulations, and requirements applicable to the installation, maintenance, use, operation, or management of the Facility.

ARTICLE 7. CONDITION OF PROPERTY

Lessor agrees to cooperate with Lessee with respect to obtaining all required permits, license and approvals for the construction of the Facility and the delivery of utilities to the Premises subject to (i) Lessor's general obligations applicable to review and approval of any development on the Premises and/or the Property, (ii) all applicable requirements in any applicable building code, and (iii) any specific development or permitting requirements that may be applicable to the Property as being used as a landfill by Lessor.

ARTICLE 8. OPERATION OF FACILITY

Section 8.01. Subject to the terms hereof, Lessor shall provide Lessee with non-exclusive reasonable rights of ingress and egress to the Premises and the Facility during the Term and such additional time as is provided in this Lease for the removal of the Facility as provided in this Lease. Lessor shall act reasonably in coordinating with Lessee with respect to Lessee's access needs over, upon and across any portion of the Property located outside of the Premises. Notwithstanding anything to the contrary contained herein, Lessee shall have the right to access the Premises in an emergency relating to the Facility without prior notice to Lessor; provided, however, that Lessee shall give notice to Lessor of such entry in a reasonable time period, which may be after such entry if the circumstances so dictate.

Section 8.02. Lessee shall use its commercially reasonable efforts to obtain necessary approvals from all governmental agencies and from UtilityCo for the operation of the Facility, including the submission of applications for interconnection of the Facility with UtilityCo. If UtilityCo fails to approve the interconnection of the Facility, or if Lessee is not able to obtain all necessary approvals and/or permits or any applicable tax credits, then Lessee may at Lessee's option, immediately terminate this Lease, in which case and unless otherwise consented to in writing by Lessor, Lessee at its sole cost and expense shall remove all of the Facility components, including without limitation any utility connections to or from the Facility, from the Premises. Lessee then shall substantially restore the Premises, and any other portion of the Property impacted by Lessee's use of the Premises, to their condition as of the effective date of this Lease, reasonable wear and tear and damage caused by casualty excepted, using prudent engineering standards to the reasonable satisfaction of Lessor, to be completed within six (6) months of the date of termination. Lessee's removal and restoration obligations in this Section shall survive the termination of this Lease. Lessor hereby agrees to cooperate with Lessee in obtaining any necessary permits or approvals but shall not be required to expend funds or incur any costs in assisting Lessee in obtaining any necessary permits and approvals. Lessee shall comply with the terms of all permits applicable to the operation of the Facility. Notwithstanding anything herein to the contrary, Lessor's agreement to cooperate with Lessee in obtaining any necessary permits or approvals shall not waive, vary or fulfill any of Lessor's development plans review obligations under any laws that are applicable to any development on the Premises and/or the Property.

## ARTICLE 9. HAZARDOUS MATERIALS

Section 9.01. Lessor represents that to the best of its knowledge no hazardous materials, hazardous substances, or other dangerous or toxic substances, or wastes have been added to the Premises by Lessor during the period of time it has been owned by Lessor, except in the context of the use and operation of the Property as a landfill. Lessor further represents and warrants that its use and operations of the Property as a landfill has been and during the Term of this Lease will be in compliance with all applicable federal, state and local laws and regulations. Lessor acknowledges and agrees that Lessor is responsible for any such hazardous materials, hazardous substances, or other dangerous or toxic substances, or wastes existing on the Premises as of the Commencement Date, and to the extent allowed by North Carolina law, Lessor further agrees to indemnify and hold harmless Lessee, its officers, members, managers, employees, successors and assigns (“Lessee Indemnified Parties”) from any and all damages, liabilities, claims, losses, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed upon or incurred by Lessee arising from or in connection with Lessor’s prior use of the Premises and ongoing operation at the Blackburn Landfill. This indemnity shall survive the termination of this Lease and shall be in addition to Lessor’s other obligations as set forth herein.

Section 9.02. Lessee shall not cause or permit the Premises or any part thereof to be used to generate, manufacture, refine, transport, produce, store, use or process hazardous materials, hazardous substances, or other dangerous or toxic substances, or wastes, except in the context of the use and operation of the Facility. Lessee further agrees to indemnify and hold harmless Lessor, its officers, members, managers, employees, successors and assigns (“Lessor Indemnified Parties”), from any and all damages, liabilities, claims, losses, reasonable legal, accounting, consulting, engineering and other expenses which may be imposed upon or incurred by Lessor to the extent based on or resulting from or in connection with Lessee’s treatment, use, storage, handling and disposal of any hazardous materials, hazardous substances, or other dangerous or toxic substances, or wastes on the Premises or associated with the Facility to the extent allowed by law. For clarity, Lessee’s indemnification obligations shall not extend to any pre-existing hazardous materials at the Premises or any hazardous materials not brought to the Premises by Lessee and its employees, agents, guests and/or invitees. However Lessee’s indemnification obligations shall extend to the activities on the Premises of any sublessee, agent or licensee of Lessee during the term of this Lease. This indemnity shall survive the termination of this Lease and shall be in addition to Lessee’s other obligations as set forth herein.

## ARTICLE 10. TAXES OR ASSESSMENTS

Any and all taxes and other assessments which may be levied upon the Facility, and upon any alterations, additions and improvements thereto, shall be paid by Lessee prior to the time when such taxes and other assessments become delinquent. However, Lessee shall not have any obligation to pay any ad valorem real property tax applicable to the Premises itself or applicable to the Premises as a portion of the Property. Lessee shall have the right, at Lessee’s own cost and expense, to contest the amount or legality of any taxes which it is obligated to pay hereunder and make application for the reduction thereof, or any assessment upon which the same may be based, but only in compliance and accordance with such procedures and requirements as may be imposed by the applicable taxing authority. If Lessee shall contest such tax assessment or other imposition, the time within which Lessee shall be required by this Lease to pay the same shall be extended only in compliance and accordance with the procedures and requirements of the applicable taxing authority until such contest or application shall have been finally determined; provided, however, that (i) Lessee shall be responsible for any penalty imposed by the taxing authority resulting from the late payment of taxes due to said contest, and (ii) Lessee shall pay such taxes (under protest if necessary) in time to prevent any tax lien or claim against the Property becoming the subject of an enforcement action.

## ARTICLE 11. INSURANCE

Section 11.01. Lessee agrees to maintain in force and effect for the entire Term insurance in such amounts as shown below. Lessor shall continuously be shown as an additional insured on the Commercial General Liability insurance required below. Prior to the beginning of the Term and annually thereafter, Lessee shall deliver to Lessor certificates of insurance, including additional insured endorsements, in a form reasonably acceptable to Lessor, which show that the insurance set forth herein are in effect. In the event of cancellation or non-renewal of any insurance during the Term, Lessee shall promptly replace the effected insurance so that no lapse in coverage occurs.

(a) Commercial General Liability Insurance. Lessee shall maintain in full force and effect during the Term of this Lease, and at its own expense, commercial general liability insurance for bodily injury, property damage, personal injury, advertising injury, contractual liability assumed under the provisions of this Lease, and products/completed operations liability arising out of, or related to, the use of the Facility, such insurance to provide liability limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, combined single limit. Lessor shall be named as additional insured on said policy to the extent of liabilities falling within Lessee's indemnity obligations under the terms of this Lease.

(b) Workers' Compensation Insurance. In the event that Lessee has employees for whom workers' compensation insurance is required to be carried under North Carolina law, Lessee shall maintain Workers' Compensation and Employer's Liability Insurance covering all of its employees to be engaged in the work related to the use of the Facility, providing the required statutory benefits under North Carolina Workers' Compensation Law and Employer's Liability Insurance providing limits at least in the amount of \$1,000,000/\$1,000,000/\$1,000,000 applicable to claims due to bodily injury by accident or disease. In addition, Lessee shall cause its contractor and any subcontractors entering the Premises and any operator of the Premises to maintain Workers' Compensation and Employer's Liability Insurance in connection with its activities on the Premises as required herein and by North Carolina law.

(c) Business Automobile Liability Insurance. Lessee shall maintain in full force and effect during the term of this Lease, and at its own expense, business automobile liability insurance with liability limits of not less than One Million Dollars (\$1,000,000) combined single limit, covering owned, non-owned and leased vehicles used by Lessee with respect to the use of the Facility.

(d) Property Coverage Insurance. During the Term, Lessee shall maintain property insurance against loss and/or damage to the Facility under a policy or policies covering perils as are ordinarily insured against by similar facilities, including without limiting the generality of the foregoing, fire, lightning, windstorm, windblown rain, hail, explosion, smoke and uniform standard extended coverage and vandalism and malicious mischief endorsements, but in all cases equivalent to coverage afforded by ISO Special Form Property Insurance. Such insurance shall be in an amount not less than the full replacement cost of the Facility (subject to reasonable deductibles to be paid by Lessee). No such policy of insurance shall be written so that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provision or otherwise, without the prior written consent of Lessor.

Section 11.02. Notwithstanding anything to the contrary herein, as long as Apple Inc. is the Lessee, then Lessee shall have the right to self-insure any or all of the insurance required under this Article 11. If Lessee self-insures such coverage, then Lessee agrees that it shall be responsible for any losses or

liabilities, including the provision of a defense, which would have been assumed by a reputable insurance carrier which would have issued the insurance required from Lessee under this Article 11, and Lessee agrees that it shall be bound by the waiver of subrogation as stated in Section 11.04 as if it were a third party insurer.

Section 11.03. Should any damage or impairment to the Facility result from fire or other insured casualty, Lessee agrees that all personal property of Lessee, including the Facility, in or on the Premises shall be at the risk of Lessee only and that Lessor shall not be liable for damage thereto under any circumstances, unless such damage or impairment results from the gross negligence or willful misconduct of Lessor, in which case Lessor shall be liable for such damage or impairment. Neither Lessor nor any of its mortgagees shall have any right, title or interest with respect to the Facility and/or any insurance proceeds with respect thereto.

#### ARTICLE 12. DESTRUCTION OF FACILITY

If the Facility is (i) partially or totally destroyed by any cause or (ii) condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of Electrical Output, Lessee shall have the option to terminate the Lease by providing written notice to Lessor. If Lessee elects to terminate the Lease, then Lessee, at its expense and at Lessor's option, shall be obligated to remove the Facility and restore any areas of the Premises affected by such removal to their condition that pre-existed the construction of the Facility.

#### ARTICLE 13. TERMINATION

Section 13.01. Lessee may at any time terminate this Lease without cause upon sixty (60) calendar days' advance written notice to Lessor.

Section 13.02. Lessor may terminate this Lease with no further obligation upon an Event of Default by Lessee. The following constitute an "Event of Default":

(a) Material breach of this Lease by Lessee, which is not cured after ninety (90) calendar days' written notice to the Lessee (or if such breach is caused by a default other than the failure of Lessee to pay a monetary amount then due and such breach cannot be cured within ninety (90) calendar days, then within a reasonable period of time, provided Lessee proceeds promptly and diligently to cure such default).

(b) If Lessee becomes the subject of a bankruptcy proceeding or otherwise files for protection against the claims of its creditors or ceases to exist; provided, however, neither (i) any change in the equity ownership of Lessee nor (ii) a merger of Lessee with another entity, shall terminate, or entitle Lessor to terminate, this Lease.

Section 13.03. In the event Lessor defaults in fulfilling any of the material terms, covenants or conditions of this Lease, Lessee shall give Lessor written notice thereof. If such material default is not remedied within ninety (90) days after receipt of such notice (provided that if such default is not susceptible of being cured within such ninety (90) day period, the time permitted Lessor to cure the default shall be extended for as long as shall be reasonably necessary to cure such default if Lessor commences promptly and proceeds diligently to cure such default), then Lessee shall have the right to terminate this Lease and Lessor shall pay to Lessee the costs incurred by Lessee in the removal of the Facility and the

restoration of the Premises as provided in Section 13.04, plus all other amounts then due and owing by Lessor to Lessee.

Additionally, in the event that any lender holding a lien on the Property who has not entered into and recorded a non-disturbance agreement in accordance with this Lease files a lis pendens, or otherwise commences a Foreclosure (defined below), and at all times thereafter, Lessee shall have the right to terminate this Lease and Lessor shall pay to Lessee the costs incurred by Lessee in the removal of the Facility and the restoration of the Premises as provided in Section 15.04, plus all other amounts then due and owing by Lessor to Lessee. For purposes of this Lease, a “**Foreclosure**” shall include a sheriff’s sale after judicial foreclosure proceedings, a trustee’s sale under the power of sale contained in any deed of trust, the termination of any superior lease of the Property and any other transfer of Lessor’s interest in the Property under peril of foreclosure, including an assignment or sale in lieu of foreclosure, the result of any of which is the termination of Lessee’s interest under this Lease.

Section 13.04. Upon expiration or termination of this Lease, Lessor shall, at its option and without further written notice, have the right to require removal of all of the above ground components of the Facility by Lessee; provided, however, if this Lease is terminated prior to the end of the stated Term or any extension thereof, then Lessor shall have the right to require Lessee to leave the Treatment Skid and related equipment that connects the Treatment Skid with and into the County Gas Facility and remove all of the other above ground components of the Facility. Notwithstanding the foregoing, in no event shall Lessee be required to remove any underground pipes, conduits or wires, but if these are left in place, Lessee shall cap or safely terminate them. In the event that Lessor elects to require removal of the Facility pursuant to this paragraph, Lessee shall, at Lessee’s expense, remove all of its tangible property comprising the Facility, including without limitation any above ground electric and/or communication connections or other utilities to or from the Facility (unless otherwise consented to in writing by Lessor), from the Premises and shall substantially restore the Premises, and any other portion of the Property impacted by Lessee’s use of the Premises, to their condition as of the effective date of the Lease, reasonable wear and tear and damage caused by casualty excepted, using prudent engineering standards to the reasonable satisfaction of Lessor, to be completed by a mutually convenient date but in no case later than one hundred eighty (180) days after the expiration or termination of this Lease. Removal of the Facility and any associated improvements shall be done in such a manner as to not adversely affect the potential re-use of the Premises. Lessor agrees and acknowledges that all of the Facility (including all of its components) shall remain the sole property of Lessee and Lessee shall in any event have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. Lessor waives any and all right, title and interest, and without limitation, any “landlord’s lien”, in and to the Facility. If Lessee fails to remove the Facility within 180 days of the end of the Term, the Facility shall be deemed abandoned and shall become the property of Lessor at no additional cost; however, Lessor may still enforce against Lessee the obligation to remove the Facility at Lessee’s expense, at the option of Lessor. Lessee’s obligation to remove the Facility and restore the Premises (and any other portion of the Property impacted by Lessee’s use of the Premises) as set out in this Section shall survive the expiration or termination of this Lease.

Section 13.05. In the case of a default by either Party that continues beyond any applicable notice and cure periods, the defaulting Party shall be liable to reimburse the non-defaulting Party for such non-defaulting Party’s reasonable attorneys’ fees, reasonable expenses and costs relating to such default.

ARTICLE 14. INDEMNIFICATION

Section 14.01. To the extent allowed by North Carolina law, Lessor shall indemnify, defend and hold harmless Lessee Indemnified Parties from and against any loss, liability, claim, damage, or expense directly arising out of any breach of any representation, warranty or covenant made by Lessor pursuant to this Lease, except to the extent such damage is based on or results directly out of the negligent or willful acts or omissions of any Lessee Indemnified Party.

Section 14.02. Lessee shall indemnify, defend and hold harmless Lessor Indemnified Parties from and against any loss, liability, claim, damage, or expense directly arising out of any breach of any representation, warranty or covenant made by Lessee pursuant to this Lease, except to the extent such damage is based on or results directly out of any breach by Lessor of its obligations hereunder or the negligent or willful acts or omissions of any Lessor Indemnified Party. Further, Lessee shall, to the greatest extent authorized by law, defend, indemnify and hold harmless Lessor Indemnified Parties from all claims based on injury to persons or damage to third party property, and all resulting damages, losses, and expenses including, but not limited to, reasonable attorneys' fees and other costs of defense related thereto, to the extent based on or resulting from the installation, operation, maintenance or repair of the Facility by Lessee and/or its contractors and/or subcontractors, including without limitation (i) the negligence or willful misconduct by Lessee and/or its contractors and/or subcontractors in connection with the construction, repair, maintenance, replacement or use of the Facility, (ii) any violation by Lessee and/or its contractors and/or subcontractors of any applicable law relating to the Facility or the use of the Facility, or (iii) the failure by Lessee and/or its contractors and/or subcontractors to keep the Facility in a safe operating condition.

ARTICLE 15. FORCE MAJEURE.

If either Lessor or Lessee is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control, to perform or comply with any obligation or condition of this Lease, upon giving notice to the other Party stating the particulars, such obligation or condition shall be suspended during the continuance of the inability so caused and such Party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period. Obligations to make payments presently due and payable when the force majeure arises shall not be excused by assertion of a force majeure situation. The Party asserting the force majeure shall have the obligation to remedy the problem as far as possible with all reasonable dispatch. The term "force majeure" shall include: acts of God, war, terrorism, fire, accidents, strikes, acts, orders or impositions of any kind of any courts or governmental authorities, equipment breakdowns, requirement by the North Carolina Utilities Commission that the Facility discontinue operation for any reason, appropriation or diversion of Electrical Output by sale or order of any governmental authority having jurisdiction thereof and other occurrences outside the asserting Party's control.

ARTICLE 16. COVENANTS AND ACKNOWLEDGMENTS OF THE PARTIES

Section 16.01. During the Term, Lessee shall peaceably and quietly have, hold and enjoy the Premises and the Facility for the purposes herein enumerated without hindrance, molestation or interruption by Lessor or anyone claiming by, through, or under Lessor, so long as Lessee observes all

terms, covenants and conditions to be performed and observed in this Lease, after giving effect to any applicable notice and cure period; provided, however, that the assertion of claims by third-parties, in litigation or otherwise, relating to Lessee's use or occupancy of the Premises that have not resulted in an enforceable order, judgment or settlement affecting such use or occupancy shall not be deemed to constitute a hindrance, molestation, or interruption of Lessee's quiet enjoyment of the Premises within the meaning of this Section unless such claims result in an actual or constructive eviction of Lessee. Without limiting the generality of the foregoing, Lessor has not and shall not in the future enter into any enforceable leases or other agreements with third-parties that would interfere with the rights granted to Lessee under this Lease, unless otherwise consented to in writing by Lessee.

Section 16.02. Lessor acknowledges and agrees that Lessee may finance the construction and installation of the Facility by equity investments in Lessee, conventional debt financing and/or otherwise (individually or collectively, "Financing"). Lessor agrees to cooperate with Lessee in connection with any Financing and to enter into such documents and agreements as may reasonably be required by the parties providing the Financing (the "Financing Parties"), including without limitation estoppel certificates, an assignment of rights under this Lease, a consent to a sublicense and sublease of the rights of the Lessee hereunder, a consent to the grant of a security interest herein and an agreement to provide notice of default to any Financing Party and the right of such Financing Party to cure any default hereunder (for at least a period equal to the greater of 30 days or the cure period available to the Lessee) and of the Financing Party to transfer any rights acquired by assignment, the grant of a security interest or otherwise. Notwithstanding the foregoing, Lessee agrees to obtain the consent of Lessor to any assignee or transferee, such consent not to be unreasonably withheld, conditioned or delayed; provided, however, that Lessor's consent shall not be required in connection with a foreclosure under any lien or any further transfer by any party obtaining an interest in the Facility or this Lease by way of foreclosure. In addition, upon Lessee's request, Lessor shall execute and deliver in favor of any Financing Party, an agreement pursuant to which Lessor shall permit any such Financing Party to enter the Premises as reasonably necessary to disassemble and remove any such equipment, machinery or other personal property (including the Facility) which may secure repayment of Lessee's indebtedness to such Financing Party. Any successor, assignee or transferee shall execute an assumption agreement reasonably acceptable to Lessor pursuant to which the assignee or transferee agrees to assume the obligations of the Lessee arising after the date of the assumption.

Section 16.03. Lessee shall not subject the Premises to any liens or encumbrances in connection with Lessee's construction, installation or operation of the Facility. Lessee shall not, at any time, suffer or permit the attachment to the Property or the Premises of any mechanic's or materialmen's lien for work done or materials furnished in connection with any improvement, construction, repair or maintenance of the Premises or the Facility by Lessee. If any such lien attaches to the Premises, Facility or Property and is not discharged or released within thirty (30) days from the date of attachment, Lessor may, at its option, at without limitation on any other right or remedy available to Lessor, pay to the lien claimant the amount of such lien and notify Lessee of such payment, in which event such amount shall be immediately due and payable by Lessee as additional rent.

Section 16.04. To the extent that Lessor provides and takes reasonable measures for security of Lessor's overall Property (such as inspecting and maintaining fences and gates, monitoring or controlling access by third parties or patrolling the Property), Lessee and the Premises shall be entitled to the indirect benefit thereof and Lessor shall not intentionally exclude the Premises from the benefit or scope of such security measures as conducted by Lessor from time to time, but in no event shall Lessor be or become liable to Lessee for the failure to provide or take any such security measures.

## ARTICLE 17. REPRESENTATIONS AND WARRANTIES

Section 17.01. Each Party represents and warrants to the other Party that (a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation, has duly qualified to transact business in North Carolina and has all requisite power and authority to enter into this Lease, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Lease and the performance of such Party's obligations hereunder have been duly authorized by all necessary action; (c) this Lease is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law); (d) to such Party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other Party) is required in connection with the due authorization, execution and delivery of this Lease by such Party or the performance by such Party of its obligations hereunder which such Party has reason to believe that it will be unable to obtain in due course; and (e) neither the execution and delivery of this Lease by such Party nor compliance by such Party with any of the terms and provisions of this Lease conflicts with, breaches or contravenes the provisions of such Party's organizational documents or any applicable laws, rules or regulations.

Section 17.02. Lessor represents, warrants and covenants to and with Lessee that (i) there are no circumstances known to Lessor or enforceable commitments to third parties that may damage, impair or otherwise adversely affect the Facility or its function or Lessee's ability to operate the Facility, (ii) Lessor will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Facility or its function or Lessee's ability to operate the Facility, and (iii) there are no enforceable restrictions, covenants, or commitments to third-parties that either (a) constitute a security interest in the Property, or (b) relate to the use and occupancy of the Property, including the operation of the Facility, which prevent Lessee's maintenance, operation, or removal of the Facility or intended use of the Premises.

## ARTICLE 18. LESSOR'S RIGHT TO INSPECT

Upon reasonable notice to Lessee, and, if required by Lessee, in compliance with Lessee's security requirements and accompanied by a representative of Lessee, Lessor shall have the continuing right of entry upon the Premises at reasonable times and in a reasonable manner for the purposes of inspecting and monitoring the Premises and the Facility and other reasonable uses and purposes not inconsistent with the Lessee's use of the Premises. Lessor may not, however, thereby unreasonably interfere with the use or enjoyment of the Premises or the Facility by Lessee or unreasonably interfere with or materially adversely affect the conduct of Lessee's business in or on the Premises.

## ARTICLE 19. CONFIDENTIALITY AND PUBLICITY

Section 19.01. Lessor and Lessee acknowledge and agree that the terms of this Lease are generally considered and treated as public information and shall be subject to all disclosure requirements as a public document. However, if in connection with the negotiation or administration of this Lease either Party discloses confidential information, as that term is defined by N.C. Gen. Stat. §132-1.2, to the other which is marked as "Confidential" on the document by the disclosing Party, then such confidential information shall be treated in a confidential manner to the extent allowed and as provided by law. Prior to the disclosure of

such confidential information to a third person, the Party proposing or required to do so shall seek the prior written consent of the non-disclosing Party, which consent shall not be unreasonably withheld. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

Section 19.02. Notwithstanding the preceding subsection, this Article and the restrictions herein contained shall not apply to any data or documentation which is:

(a) Required to be disclosed pursuant to state or federal law, an order or requirements of a regulatory body or a court, provided that the disclosing Party provides five Business Days' notice of such intended disclosure to the non-disclosing Party or if five Business Days' notice is not practical, then such shorter notice as is practical;

(b) Disclosed by a Party to an Affiliate of such Party, or to the Party or Affiliate's attorneys, accountants, or business advisers, or in connection with an assignment permitted by this Lease; or

(c) As of the time of disclosure, public knowledge without the fault of the disclosing Party.

Section 19.03. Each Party agrees that it shall not issue any press release regarding the Facility without the prior consent of the other, which the other Party may give or withhold in its sole discretion; provided, however, (i) Lessee may disclose the existence of and general information about the Facility as part of its disclosures relating to its renewable energy efforts and (ii) nothing set forth herein shall be deemed to limit the ability of any elected official or employee of Lessor to speak at conferences, as part of a panel discussion, or to the general public about the general benefits of the project undertaken by Lessor and Lessee under this Lease, provided that Lessor shall review the information to be conveyed with Lessee prior to conveying it and address any reasonable comments of Lessee.

## ARTICLE 20. LIMITATION ON LIABILITY

**FOR BREACH OF ANY PROVISION OF THIS LEASE THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. EXCEPT FOR THIRD PARTY CLAIMS FOR WHICH A PARTY IS REQUIRED TO INDEMNIFY THE OTHER PARTY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.**

## ARTICLE 21. NONDISCRIMINATION PROVISIONS.

Lessee, and its agents, officials, employees and servants, shall not discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote.

## ARTICLE 22. MISCELLANEOUS

Section 22.01. This Lease may only be amended or modified by a written instrument signed by both Parties. The Parties acknowledge that adjustments in the terms and conditions of this Lease may be necessary to address changes in laws or regulations that could not be anticipated at the date of execution of this Lease or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

Section 22.02. This Lease constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof.

Section 22.03. This Lease shall be governed under the laws of the State of North Carolina. Venue for any civil action between the Parties shall be Catawba County Civil Superior Court or the United States District Court for the Western District of North Carolina.

Section 22.04. This Lease may be executed by the use of electronic signatures and in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

Section 22.05. So that Lessee retains flexibility in the organization of its internal corporate structure as to the manner in which Lessee may choose to hold its rights under this Lease in its own name or in the name of an entity that controls or is controlled by or is under common control with Lessee, Lessor agrees that this Lease may be sold, assigned, subleased, licensed or transferred by Lessee without approval or consent of Lessor to any one or more of Lessee's Affiliates (as defined in Article 1) or members of its Affiliates. As to other Persons, this Lease may not be sold, assigned, subleased, licensed or transferred without the written consent of Lessor, which consent will not be unreasonably withheld, conditioned or delayed. Reasonable grounds to refuse an assignment or sublease include, without limitation, risks to national security or public health as set forth in the guidance, rules, regulations or opinions expressed by the U.S. Environmental Protection Agency, the U.S. Department of Homeland Security, or the N.C. Department of Environment and Natural Resources or the N.C. Commission for Health Services. This Lease shall be binding upon and enforceable against, and shall inure to the benefit of, Lessor and Lessee and their respective legal representatives, successors and assigns. The right of Lessee to sell, assign, sublease, license and transfer its rights under this Lease pursuant to the terms of other specific provisions of this Lease (including Sections 4.03, 4.04 and 16.02) shall be in addition to, and shall not be limited by, the provisions of this Section 22.05. No sale, assignment, sublease, license or transfer of Lessee's rights under this Lease shall be deemed to release Lessee from its liability under this Lease, unless a specific release of liability is agreed to by Lessor.

Section 22.06. Lessee shall have the right during the Term to make upgrades, alterations, modifications or repairs to the Facility. Lessee shall also have the right during the Term to attach fixtures or signs in or upon the Premises in accordance with local ordinances and/or special use permit conditions. Such fixtures or signs so placed in or upon or attached to the Premises under this Lease shall be and remain the property of Lessee and may be removed from the Premises by Lessee prior to the termination or expiration of this Lease, or within a reasonable time thereafter; provided, however, no such changes, attachments or signs may interfere with the use of the Property or any other user of the Property.

Section 22.07. All notices, requests or other communications herein provided to be given, or which may be given, by either Party to the other, shall be in writing and shall be deemed to have been fully given

when deposited with a nationally recognized overnight courier/delivery service or deposited in the United States mail, certified, return receipt requested and postage prepaid and addressed as follows:

To Lessor: Catawba County  
Attention: County Manager  
PO Box 389  
(Physical address: 100 A Southwest Boulevard)  
Newton, NC 28658

With a copy to: Debra Bechtel, County Attorney  
PO Box 389  
(Physical address: 100 A Southwest Boulevard)  
Newton, NC 28658

To Lessee: Apple Inc.  
1 Infinite Loop, MS 119-RE  
Cupertino, CA 95014  
Attention: Real Estate Department

With a copy to: Apple Inc.  
1 Infinite Loop, MS 4-DLAW  
Cupertino, CA 95014  
Attention: Real Estate Counsel

The Parties hereto may change their respective addresses by notice in writing given to the other Party.

Section 22.08. The use of headings, captions and numbers in this Lease is solely for the convenience of identifying and indexing the various provisions in this Lease and shall in no event be considered otherwise in construing or interpreting any provision in this Lease.

Section 22.09. Capitalized terms used in this Lease shall have the meanings ascribed to them at the point where first defined, irrespective of where their use occurs, with the same effect as if the definitions of such terms were set forth in full and at length every time such terms are used.

Section 22.10. Failure by either Party to complain of any action, non-action or breach of the other Party shall not constitute a waiver of the aggrieved Party's right hereunder. Waiver by a Party of any right arising from any breach of the other Party shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future.

Section 22.11. No provision of this Lease shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such party's having or being deemed to have prepared or imposed such provision.

Section 22.12. This Lease shall create the relationship of landlord and tenant between Lessor and Lessee. Nothing herein shall be deemed to create any partnership, joint venture, or agency relationship between the Parties. Neither Party shall make any representation or statement (whether oral or written) to any person or entity inconsistent with this provision.

Section 22.13. Lessee certifies that, as of the Commencement Date, it is not on the Final Divestment List or the Iran Parent and Subsidiary Guidance List as created by the State Treasurer pursuant to NCGS 147-86.58. In compliance with the requirements of the Iran Divestment Act (Article 6E of Chapter 147 of the North Carolina General Statutes), Lessee shall not utilize, in the performance of the contract, any subcontractor that is identified on the Final Divestment List or the Iran Parent and Subsidiary Guidance List.

Section 22.14. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof to the extent the Parties are in agreement as to the terms and intent of this Lease. Except as specifically provided in this Lease, neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. Without limiting the foregoing, the Parties acknowledge that they are entering into a long-term arrangement in which co-operation between the Parties will be required.

Section 22.15. Each of the Parties represents and warrants to the other that there are no claims for brokerage commissions or similar fees in connection with the execution of this Lease.

Section 22.16. If any term or provision of this Lease, or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

*[Signature Pages attached hereto.]*

11. Other Items of Business:

A. Adoption of the Catawba County Annual Budget for Fiscal Year 2016-17.

Chair Isenhower indicated that Budget Hearings with Departments and a Public Hearing and Wrap-up had occurred the prior week and asked County Manager Lundy to present the proposed annual budget. Mr. Lundy presented an overview of the budget process, Board goals and the financial status of the County. He indicated the County tax rate would remain the same. He stated two items had been changed based on the previous week's hearing and they included \$56,602 for the purchase of an EMS Operations Supervisor's Vehicle (from fund balance) and an increase in E-911 revenue & expense of \$9,414 due to State 911 Board allocation adjustment for Secondary PSAPs: Newton (\$10,429) and Hickory (-\$1,015). The total budget is \$252,801,734. Commissioner Barnes made a motion to adopt the budget as presented. The motion carried unanimously. Mr. Lundy praised Budget Manager Jennifer Mace and her staff for their excellent work. The following ordinance applies:

**BUDGET ORDINANCE**

BE IT ORDAINED by the Board of Commissioners of Catawba County:

**SECTION I**

**Budget Adoption, 2016/17**

The following budget with anticipated fund revenues of \$252,801,734 and departmental expenditures of \$252,801,734 is hereby adopted in accordance with G.S. 159 by the County of Catawba for the fiscal year beginning July 1<sup>st</sup>, 2016, and ending June 30<sup>th</sup>, 2017, and the same is adopted by fund and department.

The following procedures, controls, and authorities shall apply to transfers and adjustments within the budget except for the budgets of the Reinventing Departments as shown in Section II.

A. **Transfers Between Departments and Funds:** Transfers of appropriations between departments in a fund, between funds, and from contingency shall be approved by the Board of Commissioners or may be approved by the County Manager in conformance with all of the following guidelines:

1. The County Manager finds that they are consistent with operational needs and any Board approved goals.
2. Transfers between departments and funds do not exceed \$50,000 each.
3. Transfers from Contingency appropriations do not exceed \$50,000 each unless the County Manager finds an emergency exists.
4. All transfers between departments and funds are reported to the Board of Commissioners by its next regular meeting following the date of the transfer (with the exception of performance awards and reclassification/pay inequity funds, which the County Manager has the authority to transfer).

B. **Transfers within Departments and Activities:** Department Heads may transfer line item appropriations between and within activities within the departments under their jurisdiction with the approval of the Budget Manager.

- C. **Transfers of Appropriations from Contingency or Departments for Real Estate Transactions:** Transfers of appropriations from Contingency or departments may be made by the County Manager in order to secure options, pay deposits, or pay other necessary expenses related to real estate transactions approved by the Board of Commissioners.
- D. **Transfers of Capital Projects Appropriations:** Transfers of appropriations up to \$50,000 between projects within a capital project fund may be approved by the County Manager. All transfers between projects are reported to the Board of Commissioners by its next regular meeting following the date of the transfer.
- E. **Transfers of Appropriations from Special Departmental Expense and Revenue Contingencies:** Transfers of appropriations may be made by the Budget Manager from special departmental expense and revenue contingency accounts that have been set aside to accommodate mid-year adjustments for allocations from outside agencies. The budget for such special departmental contingency expenditures will not be used until revenues are received and the related funds are transferred out of the contingency accounts to an appropriate line item.

## **SECTION II**

### **Amendment to Procedures, Controls, and Authorities for Reinventing Departments**

The following procedures, controls, and authorities shall apply to transfers, personnel, and adjustments within the budget for the Reinventing Departments, as determined by the County Manager:

- A. As part of this process, the County's fund balance has been maintained by taking into account the average amount of unexpended funds turned back at the end of each year and making a onetime reduction in each Reinventing Department's allotment by that amount.
- B. The Board of Commissioners will appropriate funds for the Reinventing Departments based on approved outcomes to be achieved during the fiscal year.
- C. Department Heads are hereby authorized to transfer appropriations between activities or from special department contingencies under their jurisdiction with the approval of the Budget Manager. Requests for transfers from the General Fund contingency must be approved by the County Manager. The budget for such special departmental contingency expenditures will not be used until revenues are received and the related funds are transferred out of the contingency accounts to an appropriate line item. Department Heads within the Reinventing Departments are hereby authorized to reallocate existing positions between activities under their jurisdiction.
- E. Departments will be allowed to retain all unexpended allocations and/or revenues as defined by the County Manager.
- F. Reinventing Departments may create or abolish positions which impact the outcomes approved by the Board of Commissioners and within available revenues upon summary approval of the Board of Commissioners. Approval will come at the next regularly scheduled Board of Commissioners' meeting and will be attached and approved as part of the minutes.

## **SECTION III**

### **Tax Levy Rate**

A tax rate of \$0.575 per \$100 of assessed valuation is hereby levied for Fiscal Year 2016/17, all of which is levied in the General Fund. No discounts will be allowed for early payment of taxes.

The following rates are levied for fire protection service districts and revenue neutral rates are reported:

<u>Fire Protection Service District</u>	<u>Levied Tax Rate Per \$100 Valuation</u>
Bandys Fire	\$0.0820
Catawba Rural Fire	\$0.1000
Claremont Rural Fire	\$0.0800
Conover Rural Fire	\$0.0900
Cooksville Fire	\$0.0620
Hickory Rural Fire	\$0.0900
Longview Rural Fire	\$0.0730
Maiden Rural Fire	\$0.0800
Mt View Fire	\$0.0750
Newton Rural Fire	\$0.0900
Oxford Fire	\$0.0650
Propst Fire	\$0.0620
Sherrills Ford Fire	\$0.1100
St. Stephens Fire	\$0.1200

**SECTION IV  
Hospital Fund**

The Catawba Valley Medical Center Board of Trustees is hereby required to submit a monthly copy of its financial statements to the County Finance Director that will include a budget to actual comparison of all expenses and revenues. The Hospital maintains a balance with the County, in the Hospital Reserve Fund. This Fund is intended to be used to finance and construct major Hospital capital projects, if needed, and the school nurse program at Public Health. Catawba Valley Medical Center is a public non-profit hospital and an entity or component unit of Catawba County Government. The County owns the assets but the Hospital is not a line department of the County and therefore is not included in the County budget. The Hospital is authorized to operate as an enterprise fund.

**SECTION V  
Schools' Current Expense**

The allocation of general revenues for the schools' current expense per school system is \$1,483 per pupil based on the average daily membership of K-12, \$52 per pupil of which is budgeted separately in support of schools cooperating on the following inter-school system programs--Catawba County Bus Garage, HCAM Core Academy, Conover School for Exceptional Children, therapeutic day treatment, and Community Schools.

It is recommended that the three county school systems appropriate from their estimated fund balance an amount not to exceed 5 percent of the current expense fund for the purpose of establishing a contingency account.

In accordance with the School Budget and Fiscal Control Act, each Board of Education is required to submit to the Board of Commissioners, as soon as adopted, a copy of the School Board's budget resolution. The school finance officer will submit a quarterly statement of the financial condition of the Administrative unit to the Board of Commissioners.

## **SECTION VI**

### **Capital Projects and Grants**

Project Managers will be designated on a project-by-project basis for all County construction projects and the procedures set forth in "Architectural Procedures – Catawba County", adopted by the Board of Commissioners shall be used to coordinate the efforts of all parties involved in a project. Any changes in the estimate, as a result of bids or otherwise, shall be reported by the Project Managers and carry his or her recommendation of approval to the Board of Commissioners prior to the advertising of bids. When compiled and approved by user agencies, all projects must conform to the Catawba County Design and Construction Specifications.

In accordance with the School Budget and Fiscal Control Act each school system will submit to the County Budget Manager detailed project sheets for each capital project included in this budget on sheets as specified in the "Uniform Budget" format, by January 1, 2017.

The General Capital Projects Fund, the Hospital Construction Fund, the Water and Sewer Fund, the School Capital Outlay Fund, the School Bond Capital Projects Fund, the Schools' Construction Fund, the Fire Districts Funds, and the Community Development Fund are hereby authorized. Appropriations made for the specific projects or grants in these funds are hereby appropriated until the project is completed.

Any grant or capital project budget previously adopted, the balance of any anticipated, but not received, revenues and any unexpended appropriations remaining on June 30<sup>th</sup>, 2016, shall be reauthorized in the Fiscal Year 2016/17 budget unless a specific new budget has been prepared.

## **SECTION VII**

### **Emergency Approvals, Schools**

Emergency transfers to and from the School Capital Outlay Fund shall be in accordance with the School Budget and Fiscal Control Act.

## **SECTION VII**

### **Annual Financial Reports**

All agencies receiving County funding are required to submit an audit report by December 31<sup>st</sup>, 2016. Approved payments may be delayed pending receipt of this financial information.

## **SECTION IX**

### **Fees and Licenses**

Charges for fees and licenses by Catawba County Departments or Agencies shall be in accordance with the fee policy. Fee changes to be adopted by the Board of Commissioners are set forth in the attached Schedule A.

**SECTION X**  
**Per Diem Pay**

The Board of Commissioners and members of County boards are authorized to receive per diem pay as follows:

<b>Per Diem Pay</b>	
<b>Board</b>	<b>Pay</b>
Alcoholic Beverage Control Board	Chair, \$75 per meeting; Members, \$50 per meeting
Board of Adjustment	Chair, \$50 per meeting; Members, \$35 per meeting
Board of Commissioners	Chair, \$1,050 per month; Members, \$850 per month; In-County Travel Allowance, \$350 per month
Board of Elections	Chair, \$75 per meeting; Members, \$50 per meeting; \$100 for Election Day
Equalization & Review Board	Chair, \$50 per meeting; Members, \$35 per meeting
Hospital Board of Trustees	Chair, \$75 per meeting; Members, \$50 per meeting
Jury Commission	Chair, \$50 per meeting; Members, \$35 per meeting
Library Board	Chair, \$50 per meeting; Members, \$35 per meeting
Mental Health Board	Chair, \$60 per meeting; Members, \$40 per meeting
Planning Board	Chair, \$50 per meeting; Members, \$35 per meeting
Public Health Board	Chair, \$50 per meeting; Members, \$35 per meeting
Social Services Board	Chair, \$50 per meeting; Members, \$35 per meeting
Subdivision Review Board	Chair, \$50 per meeting; Members, \$35 per meeting
Value Review Committee	Chair, \$50 per meeting; Members, \$35 per meeting

**SECTION XI**  
**Personnel**

- A. Salaries - Salaries for Fiscal Year 2016/17 are based on the Fiscal Year 2016/17 pay plan for Catawba County that is adopted as a part of this budget and is effective July 1<sup>st</sup>, 2016. Funds are included for a 2.25 percent performance pay increase for employees who satisfy performance expectations as reflected in employees' annual performance evaluations. Top performers could receive \$500 added to base (awarded at the discretion of department heads).
- B. Performance Awards - Funds are allocated in the budget to provide one-time lump sum performance awards to recognize exceptional performance at the discretion of the County Manager.
- C. Travel Allowance - The travel allowance rate will be according to the IRS reimbursement rate.
- D. Special Payment - Positions that require specialized skills may be compensated by a special payment. This payment will only occur while the employee is serving in that capacity. This special payment is not considered a part of the annual base pay for classification. The amount of special payment is to be approved by the County Manager upon a recommendation by the Human Resources Director.

**SECTION XII**  
**Budget Policy for State and Federal Fund Decreases**

It will be the policy of this Board that it will not absorb any reduction in State and Federal funds; that any decrease shall be absorbed in the budget of the agency by reducing personnel or department expenditures to stay within the County appropriation as authorized.

This policy is extended to any agency that is funded by the County and receives State or Federal money. This shall remain in effect until otherwise changed or amended by the Board of Commissioners. The County Manager is hereby directed to indicate this to each of the agencies that may be involved.

**SECTION XIII**  
**Reappraisal Fund**

In accordance with the provisions of G.S. 153A-150, an appropriation of \$397,072 will be made from the General Fund to the Reappraisal Fund for the purpose of providing funds for the next reappraisal.

**SECTION XIV**  
**Fiscal Control Act**

The Budget Manager and the Finance Director are hereby directed to make any changes in the budget of fiscal practices that are required by the Local Government and Fiscal Control Act. This shall extend to permitted consolidations of funds and "Single Tax Levies" permitted in the Fiscal Control Act.

- A. As provided by G.S. 159-25 (b), the Board has authorized dual signatures for each check or draft that is made on County funds. The signatures of the County Manager, Finance Director, Assistant County Manager, and Assistant Finance Director shall be authorized signatures of the County.
- B. Operating funds encumbered on the financial records of the County as of June 30<sup>th</sup>, 2016, are hereby re-appropriated to this budget.
- C. The Board authorizes the appropriation of all Fund Balances earned by the Reinventing Departments as determined by the County Manager and as a result of the County's annual audit of June 30<sup>th</sup>, 2016.
- D. The Board also authorizes (as is the practice) one principal account as depository for all funds received by the Finance Director from any source. Current accounting techniques shall be used to assure that all funds will be properly accounted for in the financial records of the County.

**SECTION XV**  
**Authorization to Contract**

The County Manager or his designee are hereby authorized to execute agreements, within funds included in the Budget Ordinance or other actions by the Board of Commissioners, for the following purposes: 1) Form grant agreements to public and non-profit organizations; 2) Leases of routine business equipment; 3) Consultant, professional, or maintenance service agreements; 4) Purchase of supplies, materials, or equipment where formal bids are not required by law; 5) Applications for and agreements for acceptance

of grant funds from Federal, State, public, and non-profit organization sources, and other funds from other government units, for services to be rendered which have been previously approved by the Board; 6) Construction or repair projects; 7) Liability, health, life, disability, casualty, property, or other insurance or performance bonds other than similar items required by the Sheriff or Register of Deeds; and 8) Other administrative contracts which include agreements adopted in accordance with the directives of the Board of Commissioners.

**SECTION XVI**

**Authorization to Award and Reject Bids**

Pursuant to General Statute 143-129, the County Manager is hereby authorized to award formal bids received in amounts less than \$250,000 within the following guidelines: 1) bid is awarded to the lowest responsible bidder; 2) sufficient funding is available within the departmental budget; and 3) purchase is consistent with the goals and/or outcomes of the department. The County Manager shall further be authorized to reject any and/or all bids received if it is in the best interest of Catawba County. A report shall be made to the Catawba County Board of Commissioners of all bids awarded or rejected under this section and entered in the minutes of its formal sessions.

This ordinance is adopted this 6<sup>th</sup> day of June 2016.

B. Vice-Chair Barbara Beatty summarized the lengthy and thorough process the Board had gone through in its selection of a new county manager. She made a motion to approve the selection of Mick Berry as Catawba County Manager, with a starting date of July 5, 2016. The motion carried unanimously.

C. Budget Transfers: Pursuant to Board authority granted to the County Manager, the following budget transfers have been completed:

**County Manager Special Contingency Transfer:**

*From:*

115-150120-994200	Special Contingency (Expense)
\$4,635	
115-150120-691500	Special Contingency (Revenue)
\$4,635	

*To:*

115-150120-995525	Transfer to Solid Waste Fund
\$4,635	
115-150120-680800	Insurance Settlements
\$4,635	

Supplemental Appropriation

*Expense:*

525-350200-831090	Other Misc. Operating
\$4,635	

*Revenue:*

525-350050-695115	From Self Insurance
\$4,635	

5/6/16 - On 4/7/16, an unoccupied customer's vehicle rolled into the side of the electronics collection building at the Landfill causing damage to the building. The insurance loss payment of \$4,635 was

received on 4/29/16 and deposited into Insurance Settlements account. The funds are needed to cover the costs of the repairs to the building. In order to reimburse the Landfill operational expense account used to cover the cost of repairs, a special contingency transfer from self-insurance is needed to add the revenue and expense to the Solid Waste Management Fund in the amount of \$4,635.

**County Manager Contingency Transfers:**

*From:*  
110-190100-994000                      Contingency  
\$10,092

*To:*  
110-430100-984000                      Motor Vehicles  
\$10,092

5/6/16 - Funds are needed towards the purchase a Subaru Crosstrek hybrid replacement vehicle (\$27,018) for a truck that has a blown out motor, vehicle # 43-501. Funds are available in fuel (\$12,700) due to lower fuel costs and the requirement that new inspectors, not be allowed to go to job sites alone for about 5 months or so depending on the level of certification approved the State Building Code Council, and their knowledge of inspections and Catawba County. In addition to the funds available in fuel, there is \$4,226 remaining in the vehicle account from the budget revision completed in January to purchase vehicles for the building inspectors added.

*From:*  
110-190100-994000                      Contingency  
\$16,817

*To:*  
110-210400-984000                      Motor Vehicles  
\$16,817

5/23/16 - This transfer is needed to purchase a replacement boat motor at end of life now rather than delay into next fiscal year and peak summer season with the boat will be needed most.

**County Manager Contingency Transfer to Existing Capital Project:**

*From:*  
410-460100-994000-11000                      Contingency                      \$25,000

*To:*  
410-460100-982000-11202                      Infrastructure Upgrades (ITC)                      \$25,000

5/26/16 - Technology has two data centers located at different locations within County buildings. One at the main Government Center and another center located at the Gov't Center is a purpose built facility with central cooling, monitoring, etc. The PH center is comprised of two former offices, each with portable cooling units. Recently the cooling system in one side of the center failed - at 2am. This failure caused the servers to prematurely shut down, due to heat build-up, resulting in various system issues. Although this cooling system was replaced with another mobile unit, the other side of the center began to experience cooling issues. With summer quickly approaching and the importance of this data center running optimally 24/7, we asked maintenance to find a more permanent solution. They consulted with an engineering firm to create a cooling system designed specifically for the space and need. This transfer will cover the cost to purchase and install this cooling solution in the PH data center.

12. Attorney's Report:

County Attorney Debra Bechtel introduced Rachel Allen who will be interning with the Legal Department this summer. Attorney Bechtel then requested the Board authorize Utilities and Engineering Director

Edwards to execute a lease which was part of the negotiated offer to purchase the Heavner property near the Landfill. This will allow Rachel Heavner to occupy the residence until August 2017. Commissioner Butler made a motion to authorize Mr. Edwards to execute this lease. The motion carried unanimously.

13. Manager's Report:

County Manager Lundy congratulated the Board on its selection of Mick Berry as the next County Manager. He then thanked the Board for recognizing Catawba County Public Information Officer Dave Hardin in the Invocation at the beginning of the meeting. Dave had passed away in the early morning hours prior to this meeting and Mr. Lundy went on to praise him for his contributions to the County in his role as Public Information Officer for the past twenty-three years.

14. Adjournment. Commissioner Hunsucker made a motion to adjourn at 10:20 a.m. The motion carried unanimously.

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Randy Isenhower, Chair  
Catawba County Board of Commissioners

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Barbara E. Morris  
County Clerk