

Regular Session, August 1, 2016, 9:30 a.m.  
Catawba County Board of Commissioners

**Appointments**

NCACC Voting Delegate	22	08/01/16
Nursing and Rest Home Advisory Board	22	08/01/16

**Awards**

NACo 2016 Achievement Awards	13	08/01/16
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**Budget**

Budget Transfers	32	08/01/16
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**CDBG**

Close Out of Community Development Block Grant – Commerce Fellows Training Grant	13	08/01/16
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**CVMC**

Refunding of CVMC Series 2009 and 2010 Bonds	24	08/01/16
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**Closed Session**

Attorney-Client privilege; location or expansion of industry and negotiation of Contract for acquisition of property	32	08/01/16
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**Economic Development Corporation**

Public Hearing on DAE Incentives; Settlement Agreement on Shell Building; Creation of Permanent Spec Building Fund	13	08/01/16
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**Justice Center Expansion**

Technology for Board Meeting Room	32	08/01/16
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**Ordinance**

2016 Urgent Repair Grant	23	08/01/16
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**Planning**

2016 Limited English Proficiency Plan (LEP)	22	08/01/16
2016 Urgent Repair Grant	23	08/01/16

**Public Hearing**

Close Out of Community Development Block Grant – Commerce Fellows Training Grant	13	08/01/16
DAE Incentives (EDC)	13	08/01/16

**Purchasing**

Sole Source Exemption for Deployer for Landfill	23	08/01/16
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**Resolutions**

DAE Incentives (EDC)	13	08/01/16
Two Resolutions - Refunding of CVMC Series 2009 and 2010 Bonds	24	08/01/16

**Tax**

Refund Request	23	08/01/16
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**Utilities and Engineering**

Sole Source Exemption for Deployer for Landfill	23	08/01/16
Engineering Contract – Subtitle D Municipal Solid Waste Landfill Cell Unit 3, Phase 2	31	08/01/16

The Catawba County Board of Commissioners met in regular session on Monday, August 1, 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 Mick Berry, Assistant County Managers Dewey Harris and Mary Furtado, County Attorney Debra Bechtel 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. Commissioner Katherine W. Barnes led the Pledge of Allegiance to the Flag.
3. Commissioner Sherry E. Butler offered the invocation.
4. Vice-Chair Barbara G. Beatty made a motion to approve the minutes from the Board's Regular Meeting (as corrected) and Closed Session of July 18, 2016. The motion carried unanimously.
5. Recognition of Special Guests: Chair Isenhower welcomed everyone present, specifically acknowledging the press and County Staff and thanked them for their interest in the business of the County.
6. Public Comments. None.
7. Presentations.  
The Board presented National Association of Counties (NACo) 2016 Achievement Awards to five County departments. The award winning projects included "Educators of Revaluation" (Tax); "Performance Dashboard" (Technology/Budget); "TechConnect" (Library); "Trauma Informed Practice for Child Welfare" (Social Services), and "Emancipated Youths Website" (Social Services). It was noted that the County had a history of winning more than 200 NACo awards.
8. Public Hearings:
  - a. Western Piedmont Council of Governments Community Development Administrator Laurie Powell presented a request for the Board to hold a public hearing to receive citizen comments and approve the closeout of the 2015 Community Development Block Grant (CDBG) Commerce Fellows Training Grant and the Certificate of Completion. The \$27,476.01 CDBG grant assisted Catawba County and its non-entitlement local governments by engaging in high quality professional development and training with an emphasis on improving opportunities for low and moderate income individuals. All activities have been completed. CDBG funds financed 100% of the total project costs.

Five (5) Catawba County employees: Susan Ballbach, Brian Drum, Nathalia Queen, Jodi Stewart, and Korey Fisher-Wellman, along with Claremont City Manager Catherine Renbarger and City of Newton Planning Director Randolph Williams attended various classes throughout the year at the University of North Carolina School of Government, including the Community Development Academy Course, the Municipal and County Administration Course, and the Supervisory Management Course. All participants were required to provide a summary to the NC Department of Commerce on how they and their communities benefitted from their participation. The grant paid for the schooling, accommodations, travel and meals. The County had no match for this grant and CDBG funds financed 100% of the total project costs. The County expended \$25,717.48 of the \$27,476.01 awarded and de-obligated \$2,258.53 back to the North Carolina Department of Commerce, Rural Economic Development. The funds that were de-obligated were available, but not needed, for travel and meal expenses.

Chair Isenhower opened the public hearing. No one came forward to speak and Chair Isenhower closed the public hearing. Commissioner Barnes made a motion to approve the closeout of this grant and the certificate of completion. The motion carried unanimously.

b. Scott Millar, President and Julie Pruett, Director of Business Recruitment for the Catawba County Economic Development Corporation presented a request for the Board to hold a public hearing to receive citizen comments and approve an Economic Development Agreement with DAE Systems. The Board was also requested to approve the settlement of the December 2, 2013, agreement between the County, the City of Claremont, BG&A Properties and Catawba County Economic Development Corporation (EDC) facilitating the construction and related development of the Claremont Speculative Building, as well as the creation of a permanent Spec Building Fund with refunded amounts and money on account.

Subsequent to a December 2, 2013 agreement, BG&A built a shelled-in speculative building, leading to at least 28 client visits and another nearby project announcement (Substance Inc., currently under construction in Claremont International Business Park). As a part of the agreement, each party agreed to undertake certain expenses and risks to facilitate these opportunities. BG&A was to construct the facility, being responsible for providing the land, the facility, financing and other carrying costs (defined to include interest, insurance, and electricity), with the EDC Committee of 100 to provide the first \$10,000/year of these carrying costs for up to three years and the remainder of costs being split 50/50 by City/County (up to \$36,000 in carrying costs per entity for up to three years). The City and County also agreed to waive permitting fees, water and sewer connection fees, and agreed to provide grants equal to the amount of County/City taxes while the building was marketed (County for up to 36 months/City for up to 48 months).

The sale of the facility was conditioned on the requirement the building would be utilized by an end user creating jobs at or above the average county wage and to provide grants to defray the cost for an industrial access road. A certified appraisal of the site was performed, establishing a land value of \$295,000. The shell building contract price for the facility was \$1,442,000, and there was a requirement that Matthews Construction be allowed to submit a bid on any subsequent upfit/construction. Per the contract, upon the sale of the building, proceeds of the sale are required to be distributed in this order: 1) Landowner (BG&A) would be paid in the amount of \$295,000; 2) Developer (BG&A) would be paid for building construction in the amount of \$1,442,000; and 3) Any remaining proceeds would be distributed to City, County, and EDC to reimburse carrying costs pro rata to their participation, with any such proceeds earmarked by City/County for future shell building projects should such a program then exist.

An offer to purchase the Spec Building was made, with an expected closing date on or before 10/1/2016, facilitating a 15-year lease to a company that will meet all of the conditional requirements for job creation and wages. North Carolina Department of Transportation has agreed to construct the access road at no cost to the County/City. EDC will receive the payment from the developer in the amount of \$1,800,000 and will distribute payments to Landowner in the amount of \$270,000 (note that negotiations were successful in reducing the original \$295,000 cost for the land), contractor in the amount of \$1,442,000, and will be reimbursing EDC payments carrying costs made to date. In addition to satisfying these obligations, EDC will then be making Spec Building Cost Reimbursements at closing of \$26,732.39 to the County and \$27,966.95 to the City of Claremont, for carrying costs and property taxes. The EDC also will receive \$3,164.00 in reimbursement of costs at closing. Commissioner Barnes made a motion to approve this settlement. The motion carried unanimously.

After approval of the above settlement, the Board held the above-referenced public hearing and considered entering into an Economic Development Agreement with DAE Systems, a California aviation supplier, which intends to relocate to Claremont and commit to hire and maintain 53 jobs at a minimum average salary of \$51,618 (current County average \$38,238), and cause or make a minimum expenditure of \$7,255,000 during the investment period. Agracel LLC will be buying the facility and leasing it to DAE Systems for a minimum period of 15 years. The State of North Carolina will be considering additional incentives from the One NC fund and NCDOT has agreed to fund BGA Drive under separate contractual agreements.

DAE Systems considered multiple states and multiple sites within North Carolina for the project. Dynamic-Air Engineering, Inc. is a designer and manufacturer of military and FAA qualified, scalable air moving systems for the aerospace industry. Dynamic-Air Engineering, Inc. was founded in Los Angeles, CA in 1942, with what is believed to be the first fan-forced airborne convection heater for the Army Air Corps. In 1964, the company headquarters moved from Los Angeles to where it remains today in

Orange County, CA. Over the subsequent years, Dynamic-Air Engineering became DAE Systems by adding several divisions with specialized products and services. In 2010, DAE Protection began operations, providing small arms, armament subsystems, non-lethal defense technologies and services to the military and law enforcement sectors, both domestically and internationally. For over 70 years, DAE Systems has served and helped to define the defense, aerospace, and commercial industries around the globe while preserving its Dynamic-Air Engineering flagship brand and family origin. DAE Systems has remained in the family, which has fostered a culture where customers and employees are treated as honored members of the extended family.

The economic development agreement is based on a contract with obligations requiring satisfactory performance by the Company and adhering to all NC General Statutes. The contract requires a minimum investment of \$7,255,000, and the creation of 53 new jobs at the Claremont Spec Building. A sliding scale incentive of 75% for 2 years, 67% for 2 years, and 50% for the fifth year of new tax receipts will be paid after DAE submits an annual proof of performance. This amount will be subject to the County's usual contractual commitments and will total a maximum of \$128,415 (prior to depreciation). Based on the current tax rate, payments will equal a maximum of \$27,514 (years 1 & 2), \$24,579 (year 3), \$27,950 (year 4), and \$20,858 (year 5). All incentives will be paid to DAE Systems, and DAE will be responsible for all requirements within the contractual agreements.

Like all incentives provided by the County, these incentives will be based on an economic development agreement which requires DAE Systems to meet minimum thresholds of investment and job creation by 2022 which must be maintained for a minimum of three years following the payment of the final incentive. Clawbacks are included in the agreement requiring repayment should the investment and job creation amounts not be met or sustained.

Chair Isenhower opened the public hearing. No one came forward to speak and Chair Isenhower closed the public hearing. Vice-Chair Beatty made a motion to approve the Economic Development Agreement with DAE Systems and adopt the applicable resolution and noted that DAE was a warm, community-oriented family-owned company. The motion carried unanimously. The following resolution and agreement apply:

Resolution No. 2016-

Resolution Authorizing Economic Development Incentives for DAE Systems

**WHEREAS**, DAE Systems (herein referred to as "the Company") requested incentives to cause a minimum investment of \$7,255,000 including construction, upfit, and equipping of a facility at 2421 BGA Drive in Claremont, Catawba County by December 31, 2022, and the creation and maintenance of a minimum of 53 new jobs by December 31, 2022, which must be maintained for a minimum of three years following the payment of the final incentive, with a requirement to not hire anyone without a minimum of a high school diploma 25 years of age or below, and that all jobs will pay in excess of the Catawba County average wage.

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

The Board of Commissioners approves a performance based grant, based on the minimum investment and maintenance of \$7,255,000 and 53 new jobs, with a maximum payment of \$27,514 year 1, \$27,514 year 2, \$24,579 year 3, \$27,950 year 4, and \$20,858 year 5, (total maximum incentive of \$128,415). This grant will be used to reimburse the Companies' expenditures as eligible under North Carolina General Statute 158-7.1. The Board of Commissioners also directs the County to execute a contract and any necessary resolutions or addenda between the Company and the County under these terms and conditions and authorizes the Chair to execute these documents.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

August 1, 2016, MB#54

**Prepared by:**

Debra Bechtel, Catawba County Attorney  
PO Box 389, Newton, NC 28658

STATE OF NORTH CAROLINA  
**COUNTY OF CATAWBA**

COUNTY OF CATAWBA AND DAE SYSTEMS  
**ECONOMIC DEVELOPMENT AGREEMENT**

This **JOINT ECONOMIC DEVELOPMENT AGREEMENT** (this "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_, 2016, by and between **Catawba County** (the "County"), a North Carolina body politic, having a mailing address of **Post Office Box 389, Newton, NC, 28658**, and **Dynamic Air Engineering, Inc. dba DAE Systems** (or "Company" or "DAE Systems"), a California C Corporation qualified to do business in the State of North Carolina, having a mailing address of **620 East Dyer Road, Santa Ana, California, 92705**.

**WITNESSETH:**

**WHEREAS, North Carolina General Statute (NCGS) 158-7.1 authorizes County to make appropriations for the purpose of aiding and encouraging the location of business enterprises and industrial and commercial plants in or near its boundaries, and DAE Systems is engaged in manufacturing products for the aviation industry within the meaning of NCGS 158-7.1; and**

**WHEREAS, DAE Systems intends to equip, construct and occupy, or cause to have completed, a new manufacturing facility and provide capital equipment and trade fixtures used to assemble, manufacture, and process business-related goods and services (the "Improvements") at 2421 BGA Drive, Claremont, NC, 28610 (Parcel ID # 375112872357) (the "Property"), at cumulative expenditure costs incurred by DAE Systems and/or the owner of the Property ("Landlord") of not less than Seven Million Two Hundred Fifty Five Dollars (\$7,255,000) and intends to create a minimum of Fifty Three (53) new jobs at the facility, with the improvements to be made and new jobs to be created between June 1, 2017 and December 31, 2022 (the "Improvement Period"); and**

**WHEREAS, in an effort to encourage and maintain the highest educational attainment, Company will agree to require a minimum of a high school diploma or its equivalent (GED, Adult HS Diploma, etc.) for any permanent full-time employee 25 years of age or below; and**

**WHEREAS, DAE Systems expects to be a community-oriented company and intends to participate in philanthropy, community events and programs intended to increase the health and happiness of their employees and the greater community as a whole; and to consider participation in the Catawba EDC's corporate Committee of 100 501(c)(3) non-profit sponsorship; and**

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

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

**SECTION I – DAE SYSTEMS**

1. On or before August 31, 2016 DAE Systems shall:

1.1 Deliver to County a certificate confirming that DAE Systems has, or has caused to be acquired or leased, the real Property and the construction and installation of the Improvements will result in the creation, maintenance and availability of a minimum of 53 new jobs prior to December 31, 2022 and that the overall average weekly wage will equal or exceed \$51,618.00 for each year that County pays DAE Systems the economic development incentive provided for herein. DAE Systems affirms understanding

of, and agrees to comply with, the Calendar of Responsibilities as outlined in Exhibit "A". Such certificate shall be substantially in the form of the certificate attached to this Agreement as Exhibit "A".

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

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

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

2.1 DAE Systems is qualified to do business in the State of North Carolina, has a place of business within the State of North Carolina, and is in good standing and authorized to do business in the State of North Carolina;

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

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

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

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

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

2.7 DAE Systems is not engaged in a business that would be exempt from property taxes.

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

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

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

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

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

breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any indenture, agreement or other instrument to which County is a party; and

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

4. DAE Systems shall make or cause to be made investments to the Property and Improvements during the Improvement Period. Cumulative expenditures shall be, which are inclusive of all past, present and/or future Landlord costs for the Property, including but not limited to: all acquisition costs for the land of the Property, all construction costs for the Property, all architectural, engineering, and/or consulting fees for the Property, all costs for the improvements to the Property specific to DAE Systems occupancy of the Property, and capital equipment and trade fixtures used to assemble, manufacture, and process business-related goods and services ("TI Costs"), will meet or exceed Seven Million Two Hundred Fifty Five Thousand Dollars (\$7,255,000) by December 31, 2022, all of which will qualify and result in additional value for ad valorem tax purposes as determined by the Catawba County Tax Office, and DAE Systems further agrees to maintain in place, in good condition (ordinary wear and tear excepted), said Improvements for three years after the final incentive payment.

5. DAE Systems shall create a minimum of 53 new jobs at the Property in Claremont by December 31, 2022 and agrees to maintain or make available these jobs in place for three years after the final incentive payment. A job is defined as employment that provides 1600 hours or more of work in any 12 month period.

**SECTION II – COUNTY**

6. On or before August 31, 2016 County shall deliver to DAE Systems an Opinion of Counsel for County, in form and substance reasonably satisfactory to DAE Systems, that this Agreement has been duly authorized, executed and delivered by County; and stating that this Agreement complies with the terms and requirements of NCGS 158-7.1 and is binding upon and enforceable against County with its terms; and evidence in the form of a Resolution or Resolutions, or official minutes, which County duly adopted authorizing the economic development incentives set forth in this Agreement.

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

a. County will provide annual payments equal to 75% of the ad valorem taxes associated with the additional value (exclusive of rolling stock) as paid to County for a two year period, commencing with the taxes payable for the tax values on January 1, 2018, and January 1 of the succeeding year for investments made pursuant to paragraph 4 with maximum payments as reflected in paragraph 7.b. and in the chart below. Further, the County will provide annual payments equal to 67% of the ad valorem taxes associated with the additional value (exclusive of rolling stock), commencing with the taxes payable for the tax values on January 1, 2020, and January 1 of the succeeding year for investments made pursuant to paragraph 4 with maximum payments as reflected in paragraph 7.b. and in the chart below. Further, the County will provide an annual payment equal to 50% of the ad valorem taxes associated with the additional value (exclusive of rolling stock), commencing with the taxes payable for the tax values on January 1, 2021, for investments made pursuant to paragraph 4 above with maximum payments as reflected in paragraph and in the chart below.

b. In no event will the cumulative payments by County exceed One Hundred Twenty Eight Thousand Four Hundred Fifteen Dollars (\$128,415) for the five years.

Year	Grant Percentage	Maximum Payment By County by Year
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2019	75%	\$27,514
2020	75%	\$27,514
2021	67%	\$24,579
2022	67%	\$27,950
2023	50%	\$20,858
<b>Total</b>		<b>\$128,415</b>

c. Said amounts shall be payable annually, beginning in 2019 (Grant Year 1) and payable through 2023.

d. Upon payment of ad valorem taxes by Company to County for each of years 2018 through 2022 and certification by Company in the form or substantially in the form of the certificate attached hereto as Exhibit B, of Improvements made and proof of payment of taxes and verification that Company has created and maintained jobs as agreed herein, County will, within sixty (60) days, pay to Company an economic development incentive payment, the amount of which is calculated by multiplying by the appropriate grant percentage numeric value times the total ad valorem tax revenue received by County attributable to the value of the Improvements made by Company pursuant to this Agreement in excess of the assessed tax value on the site as of January 1, 2016.

e. Company shall furnish to County on or before March 5th of each calendar year, following and corresponding to the previous July 1st when taxes are billed, the certification required by this Section 7 and proof of payment of all applicable taxes. If requested, Company shall provide County, at County's expense, independent certification as to such expenditures and number of existing jobs.

**SECTION III - OTHER**

8. Force Majeure. Notwithstanding the provisions of Paragraph 9, in the event DAE Systems or Landlord is unable to meet the requirements of this Agreement as a result of (i) an event of force majeure, including but not limited to fires, explosions, acts of God, acts of public enemy, insurrections, riots, terrorism, embargoes, labor disputes, including strikes, lockouts and job actions, or boycotts; (ii) the inability to obtain the governmental permits or approvals (including zoning) necessary for the acquisition of the land or undertaking and operating the Improvements after a good faith effort to obtain same has been made; (iii) shortages of materials or energy; (iv) changes in laws; or (v) other causes beyond the control of and arising without the fault or negligence of DAE Systems; then, in such event, the Improvement Period shall be extended for a period equal to the delay caused by any of the foregoing events so long as DAE Systems shall (a) have furnished County on a timely basis, upon the occurrence of such event, a notice thereof, and (b) take all commercially reasonable steps necessary to relieve the effect of such event and to resume completion of the Improvements. In accord with the foregoing, should the DAE Systems be unable to meet the requirements as described above as a result of a force majeure, the obligation of the County to pay as provided in Section II above, shall be suspended until such time as the DAE Systems is relieved from the effect of an event of force majeure and resumes completion of the Improvements.

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

a. If DAE Systems, except in the event of force majeure, shall commit a material breach of a material obligation hereunder (including without limitation, the obligation to meet the investment goals and maintaining a minimum of 90% of the proposed (53) newly created jobs as set forth herein) and such breach shall continue for a period of sixty (60) or more days following receipt of written notice from County;

b. If DAE Systems shall fail to qualify and/or maintain the requirements for eligibility and participation in agreements for State of North Carolina incentives applied for and awarded;

c. If DAE Systems fails to timely file Exhibit A, or Exhibit B on or before March 5 of each year, following and corresponding to the previous July 1st when taxes are billed, and any qualifying incentive would be due to DAE Systems, this shall be deemed a breach of the Agreement and notwithstanding paragraph 10 below, the sole remedy will be that County will not owe DAE Systems any incentive that may have otherwise been due had those filings properly been made when due.

d. If any material representation, warranty or other statement of fact contained in this Agreement or in any final writing, certificate, report or statement furnished by DAE Systems to County in connection with the transaction described in this Agreement, shall, to DAE Systems' knowledge, to be false or misleading in any material respect at the time given;

e. If DAE Systems shall be unable to pay its debts generally as they become due; files a petition to take advantage of any insolvency statute; makes an assignment for the benefit of creditors; commences a proceeding for the appointment of a receiver, trustee, liquidator or conservator of themselves or of the whole or any substantial part of their property; files a petition or answer seeking reorganization or arrangement of similar relief under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state;

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

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

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

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

10. County Remedy: If DAE Systems fails to cure an Event of Default for which it receives written notice from County, the obligation of County as set out herein shall terminate, and DAE Systems shall immediately refund to County all economic development incentive payments paid to DAE Systems prior to the date of the Event of Default plus interest at the rate of prime plus one percent (1%). The date the prime interest rate shall be determined shall be the date the DAE Systems receives the notice of the Event of Default and prime will be the prime rate as published in the *Wall Street Journal (WSJ)*. DAE Systems shall, as it relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

11. DAE Systems Remedy: If County fails to cure an Event of Default for which it receives written notice from DAE Systems, the obligations of DAE Systems as set out herein shall terminate. County shall, as it

relates to an Event of Default, have sixty (60) days after receipt of the notice required above, to cure the Event of Default.

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

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

County of Catawba: Catawba County  
Attn: County Manager  
PO Box 389  
Newton, NC, 28658

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

DAE Systems: DAE Systems  
Attn: Jeremy I. Morrison, President  
2421 BGA Drive  
Claremont, NC, 28610

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

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

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

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

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

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

19. The term of this Agreement shall commence on the date of execution and expire upon payment by County of all payments due to DAE Systems and DAE Systems fulfilling all of its requirements including real and personal property investments and the creation and maintenance of jobs, unless earlier terminated as provided herein.

20. Both DAE Systems and County acknowledge and stipulate that this Agreement is the product of mutual negotiation and bargaining and that it has been drafted by Counsel for both DAE Systems and County.

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

The Board then considered approval of the creation of a Spec Building Account. The initial Spec Building agreement indicated the possibility of creating a recurring source of funding for speculative buildings in the event of a successful conclusion. "It is understood that any such proceeds will be earmarked by Catawba and Claremont for future shell building projects should such a program then exist." As a result of the successful sale of the Claremont Spec building, the development of Substance Incorporated on an adjacent site, and current project activity and multiple clients seriously interest in the Claremont Spec building, the EDC strongly recommended the creation of a Spec Building Account utilizing the Spec Building Cost reimbursements (County \$26,732.39) and the budgeted amounts on account for FY2015-2016 (\$36,000) and FY2016-2017 (\$36,000), totaling \$98,732.39, to fund a permanent Spec Building account. It should be recognized that future sites are not likely to have been pre-graded like the initial BGA site and future spec building sites will have a more difficult time being cost-competitive without having the cost advantage of a graded site.

Innovate Catawba recommended two or more spec buildings in the County, possibly one in the US321 corridor and another in the I-40/US70 corridor, and the next location recommendation may include funding/participation from Claremont and other municipalities, depending on site determination.

The Commissioners all voiced that this would be a good and timely investment. Commissioner Butler made a motion to approve the creation and proposed funding of this Spec Building Account. The motion carried unanimously.

9. Appointments.

Chair Isenhower recommended the appointment of Commissioner Barnes as the Voting Delegate at the North Carolina Association of County Commissioners Annual Conference in Forsyth County on August 11-14, 2016. Vice-Chair Beatty recommended the appointment of Richard Browder for an initial one year term on the Nursing and Rest Home Advisory Board. This term will expire July 31, 2017.

These recommendations came in the form of a motion, which carried unanimously.

10. Consent Agenda: Chair Isenhower asked if any Commissioner wished for an item to be removed from the consent agenda for individual consideration. None was requested.

County Manager Berry presented the following four items on the Consent Agenda:

a. A request for the Board to adopt the 2016 Limited English Proficiency Plan (LEP). Catawba County receives funding for various grants from the Department of Commerce and one of the requirements to ensure compliance with Title VI of the Civil Rights Act of 1964 is to have an adopted Limited English Proficiency Plan (LEP). The LEP certifies that every grantee will not discriminate on the basis of national origin. This includes providing meaningful access to programs for those with limited English proficiency. The County's previous LEP was adopted June 27, 2013, as part of the 2012 Scattered Sites Housing Project, and expired June 30, 2016. The Western Piedmont Council of Government recommended

adopting the 2016 LEP, extending coverage to 2021, in case the County has the opportunity to apply for future Department of Commerce grants, such as Economic Development. The updated LEP will expire in 2021. No changes have occurred to the Plan in comparison to the one previously adopted.

b. A request for the Board to authorize the sole source exemption for the purchase of a used Deployer 800 Alternate Daily Cover Machine from EPI Environmental Products Inc. in the amount of \$289,000. The Deployer 800 will be used to cover Municipal Solid Waste (MSW) Landfill working face with a biodegradable film. By State regulations, the working face must be covered daily using either dirt or some type of tarping material. The biodegradable material has been State-approved and will reduce soil usage, which saves airspace and thereby extends the useful life of the Landfill.

The Landfill has been renting this machine since September 2014 to test both the effectiveness of the tarping material and the impact of the machine on staff time required to perform routine covering and maintenance activities. Dirt usage and cover time have both been reduced, freeing staff to perform other tasks associated with maintaining the Landfill. The covering system has also been beneficial during wet weather conditions by allowing staff to cover garbage without damaging the haul road.

The Deployer 800 is only sold by EPI Environmental Products, Inc. and is the only machine of its type that is self-propelled. It also has a unique bio degradable cover material that is deployed from the rear of the machine. The Deployer 800 has a minimum life expectancy of ten years. General Statute 143-129 allows an exemption from bidding for purchase contracts when performance or price competition for a product are not available, when a needed product is available from only one source of supply or when standardization or compatibility is the overriding consideration. This exemption requires governing body approval and a record must be maintained of purchases made under this exemption. Commissioner Hunsucker confirmed the lease cost for this piece of equipment had been \$12,000 per year.

c. A request for the Board to approve a tax refund request totaling \$120.02. The records had been checked and this refund verified; therefore, the Tax Collector asked for approval of the refund request. According to General Statute 105-381, a taxpayer who has paid his taxes may request a refund (in writing) for the amount that was paid through error. This taxpayer was billed incorrectly for their untagged 2002 Pontiac Grand Am in 2015. The property was assessed incorrectly at \$21,000 instead of \$2,100. This resulted in a refund due to the taxpayer in the amount of \$120.02.

d. A request for the Board to approve the following items associated with the Catawba County 2016 Urgent Repair Program Grant: an agreement between the Western Piedmont Council of Governments (WPCOG) and Catawba County for the provision of Grant Management Assistance – Urgent Repair Housing Program –August 1, 2016 – January 31, 2018; a Project budget ordinance in the amount of \$100,000 for rehabilitation and administration; and the 2016 NCHFA Urgent Repair Grant Assistance Policy and Procurement/Disbursement Policy for Catawba County's Urgent Repair Program. The North Carolina Housing Finance Agency awarded Catawba County the 2016 Urgent Repair Program Grant in the amount of \$100,000 in April 2016. The Program will assist approximately twenty low-income households by providing energy efficiency improvements and minor structural repairs. NCHFA allows up to \$800 a house for administration, work write-ups and inspections. The WPCOG contract is for \$12,000 which averages out to about \$600 a house. The remaining \$88,000 will be used for rehabilitation for urgent needs such as leaking roofs, non-functional heating units, etc. The WPCOG will provide day-to-day management of the program with administration oversight being provided by the Planning Department. The following Budget Ordinance applies:

**ORDINANCE# \_\_\_\_\_**

**CATAWBA COUNTY'S PROJECT BUDGET ORDINANCE  
FOR THE 2016 URGENT REPAIR GRANT**

Be it ordained by the County Commissioners of the Catawba County that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby adopted.

Section 1. The project authorized is the North Carolina Housing Finance Agency Urgent Repair Grant described in the work statement contained in the Funding Agreement URP#1602 between this unit and the North Carolina Housing Finance Agency. This project is more familiarly known as the 2016 Catawba County Urgent Repair Program.

Section 2. The officers of this unit are hereby directed to proceed with the grant project within the terms of the grant document(s), the rules and regulations of the North Carolina Housing Finance Agency, and the budget contained herein.

Section 3. The following revenues are anticipated to be available to complete this project.

Revenues

North Carolina Housing Finance Agency-URP

NCHFA-URP Grants Revenue	\$100,000
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Section 4. The following amounts are appropriated for the project:

Expenditures

North Carolina Housing Finance Agency-URP

Rehabilitation-URP	\$88,000
WPCOG/Administration	<u>\$12,000</u>
	\$100,000

Section 5. The Finance Officer is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting records to provide the accounting to the grantor agency required by the grant agreement(s) and federal and state regulations.

Section 6. Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to the grantor agency in an orderly and timely manner.

Section 7. The Finance Officer is directed to report quarterly on the financial status of each project element in Section 4 and on the total grant revenues received or claimed.

Section 8. The Budget Officer is directed to include a detailed analysis of past and future costs and revenues on this grant project in every budget submission made to this Board.

Section 9. Copies of this grant project ordinance shall be made available to the Budget Officer and the Finance Officer for direction in carrying out this project.

Adopted this the 1st day of August, 2016.

Chair Isenhower made a motion to approve the consent agenda as presented. The motion carried unanimously.

11. Departmental Reports.

A. Finance/Catawba Valley Medical Center (CVMC).

CVMC Senior Vice-President of Finance/Chief Financial Officer David Boone presented a request for the Board to adopt two separate resolutions authorizing the refunding of CVMC's Series 2009 and 2010 bonds.

The first resolution authorizes the issuance of the 2016A bonds that will be used to refund the Series 2009 bonds, makes certain findings required by the North Carolina Local Government Commission ("LGC") and grants the appropriate approvals and authority to the Board of Commissioners and County officers to execute the 2016A bond documents. This resolution also confirms the selection of (a) Nexsen Pruet, PLLC as bond counsel to the County (and CVMC) for the issuance of the 2016A Bonds and matters related thereto and (b) Davenport & Company, as the Financial Adviser to the County (and CVMC) for the 2016A Bonds. The resolution and bond documents relating to the 2016A Bonds have been reviewed by CVMC attorney, Mr. Mike Thomas, of Patrick Harper and Dixon.

The 2016A bonds will be sold through a private placement to BB&T Community Holdings Co., which is an affiliate of BB&T. The 2016A bonds will have an initial term of ten years and will bear interest at a variable interest rate of 68% of One-Month LIBOR + .7475%. Interest is payable monthly, beginning October 1, 2016. Principal is payable monthly, beginning November 1, 2017. At the end of the ten year initial term, the bond documents permit the outstanding 2016A Bonds to be converted to another variable interest rate for a new negotiated term or to be converted to fixed rate for a negotiated term. The 2016A bonds will mature on October 1, 2039.

BB&T has also agreed to reduce the interest rate associated with the Series 2010 Bonds from the existing fixed rate of 4.96% to a ten year fixed rate currently estimated to be 2.14%. The 2010 Bonds were sold to BB&T through a private placement. The rate reduction will be accomplished by issuing 2016B bonds to refund the 2010 bonds that are now held by BB&T.

The 2016B bonds will be sold through a private placement to BB&T. The 2016B bonds will bear interest at a fixed interest rate, currently estimated to be 2.14%. Principal and interest are payable monthly, beginning October 1, 2016. The 2016B bonds will mature on October 1, 2026. The second resolution authorizes the issuance of the 2016B bonds that will be used to refund the Series 2010 bonds, makes certain findings required by the North Carolina Local Government Commission and grants the appropriate approvals and authority to the Board of Commissioners and County officers to execute the 2016B bond documents. This resolution also confirms the selection of (a) Nexsen Pruet, PLLC as bond counsel to the County (and CVMC) for the issuance of the 2016B Bonds and matters related thereto and (b) Davenport & Company, as the Financial Adviser to the County (and CVMC) for the 2016B Bonds. The resolution and bond documents relating to the 2016B Bonds have been reviewed by CVMC attorney, Mr. Mike Thomas, of Patrick Harper and Dixon.

CVMC engaged the services of Davenport & Company as Financial Adviser to evaluate the competitiveness of BB&T's proposals to refund the 2009 Bonds and 2010 Bonds and to calculate the savings that could result from the each refinancing. Davenport & Company stated in their report that "the fixed and variable rates provided by BB&T in their proposal dated February 23, 2016, to refinance CVMC's Taxable Variable Rate Demand Revenue Bonds, Series 2009 and modify CVMC's Hospital Revenue Bonds, Series 2010 are, in our opinion, competitive with market interest rates based upon comparative interest rates provided to other North Carolina issuers at the time of the proposal." Davenport & Company calculated the savings associated with the variable rate refinancing of the Series 2009 bonds to be \$1,366,207 through the end of the initial ten year term based on current market rates. Davenport & Company calculated the savings associated with the fixed rate refinancing of the Series 2010 bonds to be \$2,547,308 over the ten year term of the 2016B bonds based on current market rates.

Similar resolutions relating to the 2016A and 2016B bonds were approved by the Catawba Valley Medical Center Board of Trustees at their July 25, 2016 meeting. With the approval of the Board of Commissioners, the issuance of the 2016A and 2016B bonds will be presented to the LGC for approval on August 2, 2016. If approved by the LGC, CVMC will plan to close on the issuance of both the 2016A and 2016B bonds and redeem the Series 2009 bonds and Series 2010 bonds on August 25, 2016.

Commissioner Barnes made a motion to adopted the two applicable resolutions. The motion carried unanimously. The following resolutions apply:

**EXTRACT FROM MINUTES OF  
MEETING OF THE BOARD OF COMMISSIONERS FOR  
THE COUNTY OF CATAWBA, NORTH CAROLINA**

A regular meeting of the Board of Commissioners for the County of Catawba, North Carolina, was held in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, the regular place of meeting, at 9:30 a.m., on August 1, 2016.

PRESENT: Chair \_\_\_\_\_, presiding, and \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

ALSO PRESENT: \_\_\_\_\_

\* \* \* \* \*

Commissioner \_\_\_\_\_ introduced the following resolution, a copy of which had been provided to each Commissioner and which was read by title:

**RESOLUTION # 2016-\_\_\_\_**

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE BY THE COUNTY OF ITS HOSPITAL REFUNDING REVENUE BONDS (CATAWBA VALLEY MEDICAL CENTER), SERIES 2016A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$25,000,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH

**WHEREAS**, the County of Catawba, North Carolina (the "County") has heretofore issued its Taxable Variable Rate Demand Hospital Revenue Bonds (Catawba Valley Medical Center Project), Series 2009, of which \$25,000,000 aggregate principal amount is currently outstanding (the "Refunded Bonds");

**WHEREAS**, The Board of Hospital Trustees of Catawba County, North Carolina ("CVMC") has requested the County to issue the above referenced bonds for the purpose of providing funds, together with other available funds, to pay the costs of refunding all or a portion of the Refunded Bonds;

**WHEREAS**, there have been submitted to this meeting draft copies of the following documents and instruments (the "Financing Documents") relating to the issuance of the Bonds;

(a) a First Supplemental Trust Agreement, proposed to be dated as of August 1, 2016 (the "First Supplement"), between the County and the trustee named therein, relating to the County of Catawba, North Carolina Hospital Refunding Revenue Bonds (Catawba Valley Medical Center), Series 2016A (the "Bonds");

(b) a Covenant Agreement, proposed to be dated as of August 1, 2016 (the "Covenant Agreement"), between the County, CVMC and BB&T Community Holdings Co. ("Holdings"); as the initial purchaser of the Bonds; and

(c) a Contract of Purchase, to be dated the date of delivery thereof (the "Purchase Agreement"), between the Local Government Commission of North Carolina ("LGC") and Holdings, and approved by the County;

**WHEREAS**, the Board of County Commissioners (the "Board") is agreeable to the terms and conditions to be imposed upon it in connection with the issuance of the Bonds and the execution and delivery of the several documents necessary to the implementation thereof; and

**WHEREAS**, the Board desires to approve the Financing Documents and to authorize other actions in connection therewith; and

**WHEREAS**, in the event that the LGC requires the County to enter into a derivative agreement with respect to all or a portion of the Bonds, the Board desires to authorize designated representatives to solicit proposals for a derivative agreement from one or more counterparties, to negotiate the terms and provisions thereof, to approve the terms and provisions thereof on behalf of the Board and to take any and all such other necessary or appropriate action related thereto;

**NOW, THEREFORE, BE IT RESOLVED** by the Board as follows:

Section 1. The Financing Documents are hereby approved in substantially the form presented to this meeting, together with such changes, modifications and deletions as any of the Chairman or Vice-Chairman of the Board of Commissioners (the "Chairman" and the "Vice-Chairman," respectively) or the Chief Financial Officer, with the advice of counsel, may deem necessary and appropriate; and execution and delivery thereof by any of the Chairman, the Vice-Chairman or the Chief Financial Officer, as applicable, shall be conclusive evidence of the approval and authorization thereof by the County.

Section 2. The Board confirms (a) it has considered and evaluated both fixed and variable rate debt alternatives; (b) it has considered and recognizes that the current interest rate environment for fixed rate debt instruments similar to the Bonds could result in a fixed interest rate of approximately 2.620% if the Bonds were issued as fixed rate bonds; and (c) it has considered and recognizes that variable rate debt instruments subject CVMC and the County to the risk of higher interest rates in the future, that the rates may be higher than the fixed rates that are currently available to CVMC and the County, and that in addition to the variable interest rate cost, CVMC and the County may be required to pay fees to a remarketing agent in the future, which fees will increase the cost of the variable rate debt. CVMC desires the County to issue the Bonds as variable rate debt financing because (1) the initial interest rate is substantially below the fixed rate at which it is anticipated the Bonds could be sold if the Bonds were sold as fixed rate debt; (2) a variable interest rate provides the possibility of substantial cost savings over the life of the Bonds; (3) the interest rate on the Bonds can be fixed at any time; (4) variable rate bonds can be repaid at par upon approximately 30-days prior written notice; and (5) variable rate debt is a key component of CVMC's management of its liabilities in concert with its short-term liquid assets.

Section 3. The Board hereby makes the following findings: (i) the proposed issue of Bonds is necessary and expedient; (ii) the amount of the proposed issue of Bonds is adequate and not excessive for the proposed purposes of the issue of Bonds; (iii) the projects proposed to be refinanced by the Bonds are feasible; (iv) the County's debt management procedures and policies are good; (v) the proposed issue of Bonds can be marketed at reasonable interest costs to CVMC and the County; (vi) that no increase in taxes will be necessary to meet the sums to fall due under the Bonds as such hospital revenue bonds will not constitute or give rise to any charge against the County's general credit or taxing power; and (vii) the County is not in default under any of its debt service obligations.

Section 4. Each of the Chairman, the Vice-Chairman and the Chief Financial Officer are authorized to approve all details of all the financing, including, without limitation, the final par amount of the Bonds (which shall not exceed \$25,000,000), the maturities, the principal amounts and the interest amounts of the bonds (which shall not exceed the limits set forth in the First Supplement, as supplemented by a pricing certificate of the Chief Financial Officer). Execution of the Bonds as provided in the First Supplement shall conclusively evidence such approval of all such details of said financing.

Section 5. The Chairman, the Vice-Chairman, the County Manager, the Chief Financial Officer, the County Attorney and the Clerk to the Board of Commissioners, or any of them or their deputies, are hereby authorized to take any and all such further action, and to execute and deliver for and on behalf of the County such other documents and certificates as they may deem necessary or advisable to carry out the intent of this resolution and to effect the issuance of the Bonds pursuant to the First Supplement and the other Financing Documents. The Clerk to the Board of Commissioners is hereby authorized to affix the seal of the County to such documents and certificates as may be appropriate and to attest to the same and to execute and deliver such certificates as may be appropriate.

Section 6. The Board hereby requests the LGC to sell the Bonds at private sale and without advertisement in accordance with the provisions of Section 159-123 of the General Statutes of North Carolina.

Section 7. All actions heretofore taken by the officers or other representatives of CVMC, the Board of Trustees of CVMC and the County to effectuate the proposed financing including, but not limited to, (a) the selection of (i) Nexsen Pruet , PLLC, as bond counsel, and (ii) Davenport & Company, as financial advisor, each to the County and CVMC for the issuance of the Bonds and matters related thereto and (b) the actions of the Board of Trustees of CVMC in adopting their resolution dated July 25, 2016 relating to the proposed financing, are hereby ratified, approved and authorized pursuant to and in accordance with the transactions contemplated by the Financing Documents.

Section 8. The Chairman, the Vice-Chairman, the County Manager, the Chief Financial Officer, the County Attorney and the Clerk to the Board of Commissioners, or any of them or their deputies, are hereby authorized, jointly and severally, in the event that the LGC requires the County to enter into a derivative agreement with respect to all or a portion of the Bonds, to solicit proposals for a derivative agreement from one or more counterparties, to negotiate the terms and provisions thereof, to approve the terms and provisions thereof on behalf of the Board and to take any and all such other action necessary or appropriate to effectuate the implementation of a derivative agreement with respect to all or a portion of the Bonds.

Section 9. This Resolution shall take effect immediately upon its passage.

Upon motion of Commissioner \_\_\_\_\_, and unanimously carried, the Board approved the passage of the foregoing resolution entitled "RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE BY THE COUNTY OF ITS HOSPITAL REFUNDING REVENUE BONDS (CATAWBA VALLEY MEDICAL CENTER), SERIES 2016A, IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$25,000,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH."

I, Barbara Morris, Clerk to the Board of Commissioners for the County of Catawba, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on August 1, 2016, as relates in any way to the passage of a resolution (No. 2016-\_\_\_\_) authorizing the issuance of hospital refunding revenue bonds of said County and that said proceedings are recorded in Minute Book No. \_\_\_\_ of the minutes of said Board, beginning at page \_\_\_\_\_.

I DO HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board, stating that regular meetings of said Board are held on the first and third Mondays of each month at 9:30 a.m. and 7:00 p.m., respectively, (with such exceptions applicable thereto) in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, has been on file in my office as of a date not less than seven before the day of said meeting in accordance with G. S. §143-318.12.

WITNESS my hand and corporate seal of said County this \_\_\_\_ day of August, 2016.

**EXTRACT FROM MINUTES OF  
MEETING OF THE BOARD OF COMMISSIONERS FOR  
THE COUNTY OF CATAWBA, NORTH CAROLINA**

A regular meeting of the Board of Commissioners for the County of Catawba, North Carolina, was held in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, the regular place of meeting, at 9:30 a.m., on August 1, 2016.

PRESENT: Chair \_\_\_\_\_, presiding, and \_\_\_\_\_

ABSENT: \_\_\_\_\_

ALSO PRESENT: \_\_\_\_\_

\* \* \* \* \*

Commissioner \_\_\_\_\_ introduced the following resolution, a copy of which had been provided to each Commissioner and which was read by title:

**RESOLUTION # 2016-\_\_**

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE BY THE COUNTY OF ITS HOSPITAL REFUNDING REVENUE BONDS (CATAWBA VALLEY MEDICAL CENTER), SERIES 2016B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$19,000,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH

**WHEREAS**, the County of Catawba, North Carolina (the "County") has heretofore issued its Hospital Revenue Bonds (Catawba Valley Medical Center Project), Series 2010, of which \$18,340,000 aggregate principal amount is currently outstanding (the "Refunded Bonds");

**WHEREAS**, The Board of Hospital Trustees of Catawba County, North Carolina ("CVMC") has requested the County to issue the above referenced bonds for the purpose of providing funds, together with other available funds, to pay the costs of refunding all or a portion of the Refunded Bonds;

**WHEREAS**, there have been submitted to this meeting draft copies of the following documents and instruments (the "Financing Documents") relating to the issuance of the Bonds;

- (a) a Second Supplemental Trust Agreement, proposed to be dated as of August 1, 2016 (the "Second Supplement"), between the County and the trustee named therein, relating to the County of Catawba, North Carolina Hospital Refunding Revenue Bonds (Catawba Valley Medical Center), Series 2016B (the "Bonds");
- (b) a Covenant Agreement, proposed to be dated as of August 1, 2016 (the "Covenant Agreement"), between the County, CVMC and Branch Banking and Trust Company ("BB&T"); as the initial purchaser of the Bonds; and
- (c) a Contract of Purchase, to be dated the date of delivery thereof (the "Purchase Agreement"), between the Local Government Commission of North Carolina ("LGC") and BB&T, and approved by the County;

**WHEREAS**, the Board of County Commissioners (the "Board") is agreeable to the terms and conditions to be imposed upon it in connection with the issuance of the Bonds and the execution and delivery of the several documents necessary to the implementation thereof; and

**WHEREAS**, the Board desires to approve the Financing Documents and to authorize other actions in connection therewith;

**NOW, THEREFORE, BE IT RESOLVED** by the Board as follows:

Section 1. The Financing Documents are hereby approved in substantially the form presented to this meeting, together with such changes, modifications and deletions as any of the Chairman or Vice-Chairman of the Board of Commissioners (the "Chairman" and the "Vice-Chairman," respectively) or the Chief Financial Officer, with the advice of counsel, may deem necessary and appropriate; and execution

and delivery thereof by any of the Chairman, the Vice-Chairman or the Chief Financial Officer, as applicable, shall be conclusive evidence of the approval and authorization thereof by the County.

Section 2. The Board hereby makes the following findings: (i) the proposed issue of Bonds is necessary and expedient; (ii) the amount of the proposed issue of Bonds is adequate and not excessive for the proposed purposes of the issue of Bonds; (iii) the projects proposed to be refinanced by the Bonds are feasible; (iv) the County's debt management procedures and policies are good; (v) the proposed issue of Bonds can be marketed at reasonable interest costs to CVMC and the County; (vi) that no increase in taxes will be necessary to meet the sums to fall due under the Bonds as such hospital revenue bonds will not constitute or give rise to any charge against the County's general credit or taxing power; and (vii) the County is not in default under any of its debt service obligations.

Section 3. Each of the Chairman, the Vice-Chairman and the Chief Financial Officer are authorized to approve all details of all the financing, including, without limitation, the final par amount of the Bonds (which shall not exceed \$19,000,000), the maturities, the principal amounts and the interest amounts of the bonds (which shall not exceed the limits set forth in the Second Supplement, as supplemented by a pricing certificate of the Chief Financial Officer). Execution of the Bonds as provided in the Second Supplement shall conclusively evidence such approval of all such details of said financing.

Section 4. The Chairman, the Vice-Chairman, the County Manager, the Chief Financial Officer, the County Attorney and the Clerk to the Board of Commissioners, or any of them or their deputies, are hereby authorized to take any and all such further action, and to execute and deliver for and on behalf of the County such other documents and certificates as they may deem necessary or advisable to carry out the intent of this resolution and to effect the issuance of the Bonds pursuant to the Second Supplement and the other Financing Documents. The Clerk to the Board of Commissioners is hereby authorized to affix the seal of the County to such documents and certificates as may be appropriate and to attest to the same and to execute and deliver such certificates as may be appropriate.

Section 5. The Board hereby requests the LGC to sell the Bonds at private sale and without advertisement in accordance with the provisions of Section 159-123 of the General Statutes of North Carolina.

Section 6. All actions heretofore taken by the officers or other representatives of CVMC, the Board of Trustees of CVMC and the County to effectuate the proposed financing including, but not limited to, (a) the selection of (i) Nexsen Pruet, PLLC, as bond counsel, and (ii) Davenport & Company, as financial advisor, each to the County and CVMC for the issuance of the Bonds and matters related thereto and (b) the actions of the Board of Trustees of CVMC in adopting their resolution dated July 25, 2016 relating to the proposed financing, are hereby ratified, approved and authorized pursuant to and in accordance with the transactions contemplated by the Financing Documents.

Section 7. This Resolution shall take effect immediately upon its passage.

Upon motion of Commissioner \_\_\_\_\_, and unanimously carried, the Board approved the passage of the foregoing resolution entitled "RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE BY THE COUNTY OF ITS HOSPITAL REFUNDING REVENUE BONDS (CATAWBA VALLEY MEDICAL CENTER), SERIES 2016B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$19,000,000 AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS IN CONNECTION THEREWITH."

I, Barbara Morris, Clerk to the Board of Commissioners for the County of Catawba, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of said Board at a regular meeting held on August 1, 2016, as relates in any way to the passage of a resolution (No. 2016-\_\_\_\_\_) authorizing the issuance of hospital refunding revenue bonds of said County and that said proceedings are recorded in Minute Book No. \_\_\_ of the minutes of said Board, beginning at page \_\_\_\_\_.

I DO HEREBY FURTHER CERTIFY that a schedule of regular meetings of said Board, stating that regular meetings of said Board are held on the first and third Mondays of each month at 9:30 a.m. and

7:00 p.m., respectively, (with such exceptions applicable thereto) in the Robert E. Hibbits Meeting Room of the 1924 County Courthouse in Newton, North Carolina, has been on file in my office as of a date not less than seven before the day of said meeting in accordance with G. S. §143-318.12.

WITNESS my hand and corporate seal of said County this \_\_\_\_ day of August, 2016.

B. Utilities and Engineering.

Director of Utilities and Engineering Barry Edwards requested the Board consider approval of an engineering contract between Catawba County and CDM Smith for the design and permitting of the Subtitle D Municipal Solid Waste Landfill Cell Unit 3, Phase 2 in the amount of \$339,800.00.

In accordance with State law and keeping with Catawba County's rich history of environmental awareness, Catawba County began using Subtitle D Municipal Solid Waste (MSW) Landfill Cells in 1998. Catawba County is continuing this process by moving into the design of Phase 2 of the third Subtitle D Landfill Cell at the Blackburn Resource Recovery Facility. Currently, there are four landfill cells, including a closed, unlined landfill that predated Subtitle D regulations, designated as Unit 1; the Subtitle D MSW Landfills, designated as MSW Unit 2 Phase 1, MSW Unit 2 Phase 2, and MSW Unit 3 Phase 1. Based upon the most recent landfill capacity analysis, the existing landfill capacity is anticipated to be exhausted in November, 2020. The proposed Landfill Cell Unit 3 Phase 2 is estimated to meet the County's needs for approximately ten (10) years. Of course, this is dependent on waste flows, which are increasing.

North Carolina General Statute 143-64.31, Declaration of public policy, governs the solicitation of engineering services by local governments. Accordingly, staff issued a Request for Qualifications (RFQ) on February 18, 2016, which was sent to numerous engineering firms and advertised on the County's Website. Five statements of qualification were received on March 24, 2016 from the following respondents: CDM Smith, Charlotte, NC; Environmental Infrastructure Consulting, Roswell, GA; McGill Associates, Asheville, NC; SCS Engineers, Charlotte, NC, and Garrett & Moore, Inc., Cary, NC.

The Selection Committee, consisting of Utilities and Engineering Director, Barry Edwards, Assistant U&E Director, Jack Chandler, Landfill Superintendent, Rodney Hamby, and Purchasing Manager, Debbie Anderson reviewed the Statements of Qualification. Based on the Committee members review of the Qualifications and interviews with CDM Smith and McGill Associates, staff recommended CDM Smith. CDM Smith is familiar with the County's Solid Waste Management Plan and has been instrumental to Catawba County in solid waste projects and planning since 2002, including landfill projects, landfill gas projects, air quality compliance, a pump station and sanitary sewer project, and the design and construction administration of the LEED Certified Biodiesel Research and Production Facility.

The contract for engineering services with CDM Smith includes design in accordance with State regulations to obtain a Permit to Construct MSW Landfill Cell Unit 3, Phase 2. These regulations require twelve months of hydrogeological investigations and data analysis, an overall facility plan, an engineering plan, a construction quality assurance plan, an operations plan, and a closure/post-closure plan to be submitted to NC Department of Environmental Quality (DEQ), Solid Waste Section for approval and issuance of the Permit to Construct. DEQ approval is anticipated to take twelve months. The construction is expected to take twelve months. While it may appear that Unit 3 Phase 2 will be completed nine to twelve months early, neither the DEQ permit approval nor the construction timelines are guaranteed. Therefore, staff is allowing some extra time in the schedule in order to be ready when the current cell reaches capacity.

All costs associated with solid waste activities are paid from the Solid Waste Enterprise Fund, which is derived solely from solid waste tipping/user fees and contains no tax proceeds. The FY 2016/17 Budget includes funding for the development of Municipal Solid Waste Landfill Cell Unit 3, Phase 2 in a capital project and therefore, no budget revision or appropriation is needed at this time.

Commissioners confirmed the life of the landfill was approximately 80 years, with the caveat that no future Boards allow trash from other counties, and that the County had done an excellent job in regard to

